# Holland & Knight

701 Brickell Avenue, Suite 3300 | Miami, FL 33131 | T 305.374.8500 | F 305.789.7799 Holland & Knight LLP | www.hklaw.com

Tracy R. Slavens, Esq. 305 789 7642 tracy.slavens@hklaw.com

September 26, 2018

#### VIA HAND DELIVERY

Mr. Thomas Mooney Planning Director City of Miami Beach 1700 Convention Center Drive, 2<sup>nd</sup> Floor Miami Beach, Florida 33139

Re: Sunset Land Associates LLC / SH Owner LLC - Petition for Administrative Appeal to Board of Adjustment (ZBA18-0079)

Dear Mr. Mooney:

This shall constitute our Letter of Intent on behalf of SH Owner LLC and Sunset Land Associates LLC (together, the "Appellants"), in support of their petition for an administrative appeal to the Board of Adjustment pursuant to Section 118-9(b)(1) of the City Code in connection with the Planning Director's determination issued on August 30, 2018, published on August 31, 2018, and attached hereto Exhibit "A" (the "Determination"). SH Owner LLC is the owner of the properties located at 1724, 1730, and 1752 Bay Road, Miami Beach, Florida, as identified by Folio Nos. 02-3233-012-0490, -0510, and -0550, and Sunset Land Associates LLC is the owner of the property located at 1738 Bay Road, Miami Beach, Florida, as identified by Folio No. 02-3233-012-0530 (collectively, the "Appellants' Property"). The Appellants' Property is within 375 feet of the property located at 1349 Dade Boulevard, Miami Beach, Florida ("1349 Dade") from which Beach Towing Services, Inc. ("Beach Towing") operates and which property is the subject of this administrative appeal. The Appellants have prepared a radius map to demonstrate its proximity to 1349 Dade. See Exhibit "B." As such, the Appellants are affected persons in accordance with 118-9(b)(2)(iii) of the City Code.

The Appellants hereby appeal the Planning Director's Determination of legal non-conforming status for 1349 Dade because it fails to adequately address whether the towing operation at 1349 Dade is in compliance with Article IX the City Code.

#### I. Background and establishment of towing use

It is undisputed that the towing use was established on 1349 Dade before the City Code was amended in 1989 pursuant to Ordinance No. 89-2665 (the "Ordinance"). According to the Determination, an Occupational License (RL-86098263) for towing services at 1349 Dade was

issued on or before September 23, 1986. At the time, while 1349 Dade was ostensibly being operated as an automobile service station with accessory vehicle storage, based on an application to the City for a conditional use permit to operate a gasoline filling station, and was zoned C-6 (Intensive Commercial District), the owner of 1349 Dade testified that he never sold gas to customers at that location and never intended to do so. *See* Exhibits "C" and "D", respectively. The C-6 district allowed any non-residential use permitted in C-5 Districts, except those listed as Conditional Uses. The following uses were permitted in C-5 Districts under Section 6-12.B.20 of the zoning regulations in effect at the time the occupational license for towing services at 1349 Dade was issued (the "Pre-1989 Code"):

Storage Garages, automobile and truck storage, within an area enclosed by an opaque masonry wall or structural wood fence not less than 6 feet in height. Such wall or fence shall totally screen garage and work area from public view.

See Exhibit "E".

The Determination notes that towing services are consistent with the above permitted uses and the application of the C-5 District regulations by applicable City staff in 1986. However, in a deposition taken of the Planning Director on August 24, 2018, the Planning Director confirmed under oath that (i) the words "towing," "towing use," or "towing services" did not appear in the Pre-1989 Code; (ii) that if a use was not specifically enumerated under the Pre-1989 Code, then a conditional use permit would be required for said use; and (iii) "storage yard" and "towing/wrecker" uses are separate and independent uses under the Pre-1989 Code provisions that were in effect at the time the use on 1349 Dade was established. See Exhibit "F".

## II. 1349 Dade was not a main permitted use at the time it was established

The Determination states that the towing use constitutes a legally established use and is therefore a non-conforming use. However, the towing use is not legally non-conforming in accordance with Section 118-390(d)(3) of the City Code. This section of the City Code sets forth the criteria for determining whether a use was "legally established" as "an existing use which conformed to the code at the time it was established." Towing, towing use, and towing services were not listed as permitted uses under the C-5 or C-6 district regulations of the Pre-1989 Code. As noted above, the Planning Director confirmed that the words "towing," towing use," or "towing services" did not appear in the Pre-1989 Code and that if a use was not specifically enumerated under the Pre-1989 Code, then a conditional use permit would be required for that use to be a main permitted use. See Exhibit "F". Indeed, the Pre-1989 Code for C-6 districts specifically delineates that conditional uses in that district include "[u]ses not listed above, which are similar in character to one or more permitted uses, and which would not be inappropriate in the district." In other words, to use the Planning Director's word, non-listed but "consistent" uses like towing were allowed in C-6, but only with a conditional use permit (which Beach Towing did not have). This means that a towing use in the C-6 District would have required a conditional use permit approval to be "legally established" as a main use.

A Business Tax Receipt (formerly known as an "Occupational License," and hereinafter referred to as a "BTR") is not conclusive evidence that a use is legally established. BTRs are

regulated by the City's Finance Department, not the Planning Department. Under the City Code, a BTR may be denied for failure of a business to comply with zoning regulations, but compliance with zoning regulations is not an enumerated requirement for approval of a BTR application. See Sections 1062-371-372 of the City Code. BTRs state on their face that they "do[] not waive or supersede other City laws, do[] not constitute City approval of a particular business activity and do[] not excuse the licensee from all other laws applicable to the licensee's business." See Exhibit "G."

Likewise, a towing permit is not conclusive evidence that the towing use was legally established. The criteria for issuance of a towing permit does not consider land development regulations. *See* Section 106-266 of the City Code. The purpose/intent of Article VI of Chapter 106 of the City Code, which governs towing and immobilization of vehicles, is to ensure compliance with Section 715.07 of the Florida Statutes, which establishes the statewide regulatory guidelines for the towing of vehicles.

Because Beach Towing did not have a conditional use permit for the towing use, the towing use may have been issued a BTR as an accessory use to the main service station or vehicle storage uses on 1349 Dade, but that does not mean that it was legally established. As noted by the Planning Director, "towing" and "storage" are separate and independent uses and it is not unusual for a property owner or business to obtain multiple BTRs. See Exhibit "F." If a use is deemed to be accessory to a main use, it may obtain a BTR, which appears to have been the case for the 1349 Dade Occupational License. However, as uses on a property evolve, additional review by the Planning Department may not occur for a renewal of a BTR, and it may not be apparent to the administrator of the BTRs that an accessory use has become a main use over time, which is precisely the case with Beach Towing. 1349 Dade was first developed as a service station in 1956, it was known as "Beach Garage" between 1975-1980, a conditional use permit for the reinstallation of gas tanks was approved by the City in 1980 (these tanks were never reinstalled), and, in 1984, Beach Towing had towing operations and a storage yard but was neither operating as a gas station nor auto repair garage. Thus, by 1984, the towing operation had effectively, but not lawfully, become the primary use at 1349 Dade. Therefore, a BTR originally obtained for an accessory use that evolved into a main use, cannot be determinative of the legal establishment of said main use.

Given that Beach Towing does not have a conditional use permit granted by the City, the towing use was not "legally established" as a main use on 1349 Dade. Based on the foregoing, the conclusion in the Determination that the towing use is a legal non-conforming use is incorrect.

## III. 1349 Dade as a non-conforming use of land

The Determination states that the towing use on 1349 Dade constitutes a nonconforming use. A nonconforming use "means a use which exists lawfully prior to the effective date of these land development regulations and is maintained at the time of and after the effective date of these land development regulations, although it does not conform to the use restrictions of these land development regulations." See Section 114-1 of the City Code. In addition, pursuant to Section 118-391 of the City Code, a nonconforming use "is the main use and not accessory to the main use" and, more specifically:

Sec. 118-391. - Nonconforming use of land.

- (a) In any district where vacant land is being used as a nonconforming use, and such use is the main use and not accessory to the main use conducted in a building, such use shall be discontinued not later than two years from the effective date of these land development regulations. During the two-year period, such nonconforming use shall not be extended or enlarged either on the same or adjoining property. Any building incident and subordinate to such use of land shall be removed at the end of the two-year period or, if such building is so constructed as to permit the issuance of a permit for a use not excluded from the district, such building may remain as a conforming use; thereafter, both land and building shall be used only as conforming uses.
- (b) A use approved as a conditional use pursuant to article IV of this chapter shall be considered a conforming use as long as the conditions of the approval are met.

Towing is an open lot use of land. The building at 1349 Dade is a building where administrative tasks related to the towing use are conducted, and is, therefore, accessory to the main use. The characteristics of the building or structure do not affect the towing use on 1349 Dade.

In contrast, a nonconforming building or structure, as defined in the City Code, means a building or structure, or portion thereof, which was designed, erected or structurally altered prior to the effective date of the current land development regulations in such a manner that characteristics of the building or structure, other than its use, do not comply with the restrictions of these land development regulations. *See* Section 114-1. Section 118-393 of the City Code regulates nonconforming uses of buildings where said use inside the structure is the main use. Therefore, this section of the City Code does not apply to this analysis.

The Determination concluded that the towing use on 1349 Dade is a use that was permitted when established on or before September 23, 1986 but is no longer permitted as a result of the adoption of the Ordinance, which changed the zoning of 1349 Dade to CD-2. In addition, the Determination finds that, pursuant to Section 118-390(d)(3) of the City Code, the existing towing use, which conformed to the City Code at the time it was established, is a legally established nonconforming use. In this case, even if Beach Towing's towing use on 1349 Dade was "legally established," and as noted above it was not, towing is characterized as the main use of the land and the office building is accessory to the main use. Thus, in accordance with Section 118-391 relating to non-conforming uses of land, the towing use was required to be discontinued within two years of the adoption of the Ordinance and the current towing use at 1349 Dade does not comply with the City Code.

<sup>&</sup>lt;sup>1</sup> The term open land and vacant land have been used interchangeably by the City over time. The Pre-1989 Code used the word "open" and the current City Code uses the word "vacant" to describe nonconforming uses of land. See Section 12.1 of the Pre-1989 Code and Section 118-391 of the City Code. Additionally, Beach Towing's expert confirmed that the towing use was a nonconforming use of land. See Exhibit "H".

The Determination is inconsistent with the City's zoning regulations and their underlying intent in its application of Section 118-391 of the City Code, which governs nonconforming uses of land. Section 118-391(a) requires a nonconforming use to discontinue no later than two years from the effective date of the current land development regulations. Instead, this use has continued for 29 years since the language of this section was adopted. If the City had complied with Section 118-391, as it was required to do, the towing use on 1349 Dade should have discontinued two years after the adoption of the Ordinance. The sunsetting of such non-conforming uses is consistent with the intent of Article IX, which is to "encourage nonconformities to ultimately be brought into compliance with the current regulations." Moreover, Section 118-391(b) provides that a use approved as a conditional use shall be considered a conforming use as long as the conditions of the approval are met. This subsection (b) does not apply to 1349 Dade because the towing use was not approved as a conditional use and. Failing to properly apply Section 118-391 renders the Determination inaccurate.

## IV. Inconsistent conclusions reached in the Determination

The conclusions reached by the Planning Director in the Determination are inconsistent. Towing is not a main permitted use or a conditional use in the CD-2 district as set forth in the City Code. See Sections 142-302 and 142-303. Nor was towing a permitted use in the C-5 or C-6 district of the Pre-1989 Code. See Exhibit "E." All other permitted uses in the C-5 and C-6 districts as set forth in the Pre-1989 Code are permitted today in the CD-2 district as main permitted uses or conditional uses. If the towing use were permitted in the Pre-1989 Code, it would still be permitted today under the CD-2 district regulations. Towing is not a permitted use in the CD-2 zoning district because it was not compatible with the uses permitted in commercial districts in the Pre-1989 Code nor with the commercial character of CD-2 envisioned at the time the Ordinance was adopted. Instead, towing is only permitted today in the I-1 district (Light Industrial District) and even then only by conditional use. Again, even if the towing use was a legally established nonconforming use, such use, as a nonconforming use of land, would have ceased being legally established two years after adoption of the City Code.

This Determination will result in a negative impact on the Appellants as well as all of the affected persons in the vicinity of 1349 Dade, which includes residential uses, neighborhood-serving commercial uses, and a public park. The towing use is intense, intrusive, and is no longer compatible with the changed character of the surrounding CD-2 properties in the Sunset Harbour neighborhood. The CD-2 district is identified as a medium intensity commercial district that provides for commercial activities, services, offices and related activities which serve the entire City pursuant to the purpose identified by Section 142-301 of the City Code. This is not a district intended for industrial uses because these uses are too intense and are inherently incompatible with the commercial and mixed-use character of the CD-2 district. Regardless of whether the towing use on 1349 Dade is a legally non-conforming use, its ongoing existence violates the City Code and should be discontinued in accordance with the City's Code.

## V. The towing use on 1349 Dade must be discontinued

Based on the above, we respectfully seek an approval of the appeal by the Board of Adjustment along with a determination of the following:

1. That the towing use on 1349 Dade is a use that was not "legally established" under the City Code in effect at the time and all towing uses on the property must be ceased immediately.

#### Or, in the alternative:

- 2. (a) That the towing use on 1349 Dade is a nonconforming use of land pursuant to Article IX of the City Code; **and** 
  - (b) That, as a nonconforming use of land, the use on 1349 Dade was required to be discontinued two years after the adoption of the Ordinance in accordance with Section 118-391(a) of the City Code and all towing uses must be discontinued in compliance with the City Code.

Thank you in advance for your considerate attention to this petition. If you have any questions or require additional information, please feel free to call me directly at 305-789-7642.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

Tracy R. Slavens, Esq.

Enclosures

CC: David Buckner, Esq. Bradley Colmer, Esq.

Dan Marinberg, Esq.

# EXHIBIT "A"



## PLANNING DEPARTMENT MEMORANDUM

TO:

Mayor Dan Gelber and the Members of the City Commission

FROM:

Thomas R. Mooney, AICP, Planning Director

DATE:

August 30, 2018

SUBJECT: 1349 Dade Boulevard - Determination of Legal Non-Conforming Status for

Beach Towing Services, Inc. ("Beach Towing")

#### Overview

On July 25, 2018, the City Commission, pursuant to item R9E, directed the City Attorney to file an Amicus Brief with regard to the pending litigation between Beach Towing and Sunset Land Associates Inc. Specifically, the Commission requested that the Amicus Brief state the Planning Director's interpretation of the City Code regarding whether Beach Towing is a legal nonconforming use.

#### Background

Beach Towing is located at 1349 Dade Boulevard, which has been zoned CD-2 (Commercial, Medium Intensity) since the adoption of City Ordinance No. 89-2665 on October 1, 1989. Prior to October 1, 1989 the property at 1349 Dade Boulevard was zoned C-6 (Intensive Commercial District).

Towing is not currently a permitted use in the CD-2 zoning district. According to the City of Miami Beach Finance Department, the original Occupational License for towing services at 1349 Dade Boulevard (RL-86098263) was issued on September 23, 1986. This Occupational License (now referred to as a Business Tax Receipt or BTR) has been renewed by Beach Towing, and approved by the City, every year since then through the present day. The BTR is currently active.

#### Establishment of Use

When the Occupational License for Towing Services at 1349 Dade Boulevard (RL-86098263) was first issued on or before September 23, 1986, the list of permitted uses within the C-6 District included the following, under Sec 6-13.B.1 of the then-applicable Zoning Ordinance:

Any non-residential use permitted in C-5 Districts, except those listed as Conditional Uses.

Within the C-5 zoning district, the following was listed as a permitted use under Sec 6-12.B.20 of the Zoning Ordinance, when Beach Towing's Occupational License was first issued on or before September 23, 1986:

Storage Garages, automobile and truck storage, within an area enclosed by an opaque masonry wall or structural wood fence not less than 6 feet in height. Such wall or fence shall totally screen garage and work area from public view.

Towing services are consistent with the above noted permitted use under Sec. 6-12.B.20 of the Zoning Ordinance in the C-5 zoning district. As such, within the C-6 district, such use would fall within Sec 6-13.B.1 of the Zoning Ordinance, which allows as a permitted use 'Any non-residential use permitted in C-5 Districts, except those listed as Conditional Uses.' Based upon the review of City records, this is also consistent with the application of these regulations by applicable City staff in 1986.

#### Establishment of Legal Non-Conforming Status

Currently, towing is not a permitted use in the CD-2 zoning district. As such, no new towing service uses would be permitted at 1349 Dade Boulevard, or in any CD-2 zoning district within the City.

In accordance with Sec. 118-397 of the City Code, pertaining to the existence of a nonconforming building or use, the Planning and Zoning Director is required to make a determination as to the existence of a nonconforming use or building. In making such determination, in addition to other information, the data presented on the occupational license or any other official record of the City, may be utilized. Additionally, pursuant to Sec. 118-390(d)(3) of the City Code, "legally established" shall apply to an existing use which conformed to the City Code at the time it was established.

In this particular instance, towing services were established at 1349 Dade Boulevard on or before September 23, 1986, pursuant to the issuance of Occupational License RL-86098263. Such use conformed to the requirements of the City Code in place on or before September 23, 1986, and therefore constitutes a legally established use.

Further, since the legally established use for towing services at 1349 Dade Boulevard has continued without interruption since at least September 23, 1986, and continues to date, it would be considered a Legal Non-Conforming Use. As such, the towing services use at the Beach Towing site on 1349 Dade Boulevard may continue to operate in accordance with the applicable provisions of Chapter 118, Article IX of the City Code.

C: Jimmy L. Morales, City Manager Raul Aguila, City Attorney Rafael Granado, City Clerk

# EXHIBIT "B"

# RM-3 20TH ST GU 19TH CI GU CD-2

#### LEGAL DESCRIPTION:

Lots 11 and 12, Block 16A of **ISLAND VIEW SUBDIVISION**, according to the Plat thereof, as recorded in Plat Book 6, Page 115 of the Public Records of Miami-Dade County, Florida.

LOCATION: 1349 Dade Boulevard, Miami Beach FL 33139

FOLIO NO. 02-3233-012-0680

**ORDER:** 180909

DATE: September 12, 2018



SCALE: 1"= 150"

VENETIAN C SWY



# The Zoning Specialists Group, Inc.

7729 NW 146th Street
Miami Lakes FL 33016
Ph: (305) 828-1210
www.thezoningspecialistsgroup.com

I HEREBY CERTIFY: That all the properties shown herein are lying within a 375-foot radius from all boundary lines of the subject property.

BY: DE E LOR

NOTE: NOT VALID UNLESS SEALED WITH THE SIGNING SURVEYOR'S SEAL

Professional Surveyor & Mapper
No. 3086, State of Florida.



# EXHIBIT "C"

## ROLL CALL MIAMI BEACH CITY COMMISSION

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CITY OF MIAMI BEACH

G. CONSISSION NUMBERS NO. 1245
"I TRAFFIG SURVEY AND RECOMMENDATION FOR ADDITIONAL FUND ISLAND AT GAS STATION LOCATED BY 975-7157 SIRESY DEC. IN 1979

AUMERISTRATION RECOMMENDATION: THAT PUMP ISLAND BE RELOCATED TO ALLOW A MINIMUM OF 3G FRET FOR CAR STORAGE ON BOTH SIDES OF PUMP. (DEFERRED FROM 11/1/78) Mr. 3.3. Wikerson, representing the applicant, suppared.

City Angineer reported that the applicant has agreed to comply with the recommendations contained in the traffic study made at the Commission's request. A motion to defer failed of passage.

MORE - SEE REPORTS - Page 9

C. C. ADDITIONAL PUMP ISLAND AT 875-71st STREET GAS STATION

Commission approved the request for the conditional use of an additional pump island, subject to the following conditions: 1) relocation of island to provide a minimum of 30 feet of storage on both sides of the island; 2) the identification of a traffic circulation pattern through the use of signage and/or markings on pavement surfaces; 3) relocation of the vacuum pump to the northwest property line 54 feet from the right-of-way on Bay Drive; 4) installation of side yards landscaping to act as an effective buffer as set forth in Commission Memorandum No. 7073.

City Manager directed to meet with the Chairman of the Planning Board in an effort to develop a format in the granting of conditional uses which would serve to sufficiently inform the Commission of all steps taken by applicants in their efforts to conform with necessary requirements.

DEC 6 1978

G. PLANNING BOARD RECOMMENDATIONS TO APPROVE REQUESTED CONDITIONAL USE, SUBJECT TO CERTAIN CONDITIONS, RE: APPLICATION TO REMODEL AND EXPAND AN EXISTING FILLING STATION AT 1840 ALTON ROAD (LOTS 5 AND 6, BLOCK 12, ISLAND VIEW SUB.)

(DEFERRED FROM 12/6/78)

Planning Board's recommendation to grant conditional use approved. \*

City Manager and City Attorney requested to develop recommendations for changes in procedures now followed by the Planning Board in considering requests for conditional uses.

CONDITIONAL USE

Conditional use granted subject to the following: 1) a permanent structure shall be installed covering the two pump islands in earth-tone colors in accordance with the site plan; 2) the placement of a "No Left Turn" or "Right Turn Only" sign within the property line at the southeast corner of the lot; 3) placement of exit and entrance arrows within the property line; 4) preservation of the existing Banyan Tree and appropriate landscaping; 5) hose bibs shall be located within 25' of all landscaped areas; 5) air pump shall be located on one or more pump islands.

DEC 2 0 1978

B. COMMISSION MEMORANDUM NO. 8205
PLANNING BOARD RECOMMENDATION REGARDING CONDITIONAL USE APPLICATION FOR THE OPERATION OF
A FILLING STATION AT 1349 DADE BOULEVARD.

ADMINISTRATION RECOMMENDATION: COMMISSION ACCEPT THE PLANNING BOARD'S RECOMMENDATION FOR APPROVAL AND SCHEDULE A PUBLIC HEARING ON THE MATTER, IF THE COMMISSION SO DESIRES.

G B. COMMISSION MEMORANDUM NO. 8205 PLANNING BOARD RECOMMENDATION REGARDING CON-DITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD.

ADMINISTRATION RECOMMENDATION: COMMISSION
ACCEPT THE PLANNING BOARD'S RECOMMENDATION FOR
APPROVAL AND SCHEDULE A PUBLIC HEARING ON THE
MATTER, IF THE COMMISSION SO DESIRES.
(DEFERRED FROM 5/7/80)

3:00 P.M. - PUBLIC HEARING

C. COMMISSION MEMORANDUM NO. 8205
PLANNING BOARD RECOMMENDATION REGARDING CONDITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD.

ADMINISTRATION RECOMMENDATION: COMMISSION APPROVE THE PLANNING BOARD'S RECOMMENDATION TO APPROVE THE CONDITIONAL USE APPLICATION TO OPERATE A FILLING STATION AT 1349 DADE BOULEVARD WITH THE STIPULATION THAT THE EIGHT CONDITIONS DELINEATED IN COMMISSION MEMORANDUM NO. 8205 ARE MET.

1. NOTICE OF PUBLIC HEARING.

Not reached - deferred to 5/21/80.
MAY 71999

Public hearing scheduled for June 4, 1980, at 3:00 p.m.

MAY 2 1 1980

Hearing held and concluded.

Planning Board's recommendation to grant conditional use request for remodeling and expansion of an existing filling station approved subject to 8 conditions as set forth in Commission Memorandum No. 8205, with further amendment of Condition No. 1 that "storage area shall be decreased in size and a masonry wall of sufficient height to completely screen the storage area from all adjacent streets, but in no case less than 6 feet, shall be constructed".

JUN 4 1930

# City of Miami Beach

FLORIDA 33139

VACATIONLAND U.S.A."



OFFICE OF THE CITY MANAGER HAROLD T. TOAL CITY MANAGER

CITY HALL 1700 CONVENTION CENTER DRIVE TELEPHONE: 673-7010

COMMISSION MEMORANDUM NO

DATE:

TO:

Mayor Murray Meyerson and Members of the City Commission

FROM:

Harold T. City Manager

SUBJECT:

CONDITIONAL USE APPLICATION - FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD

Pursuant to the request for approval of the conditional use for the operation of a filling station at 1349 Dade Boulevard, the Planning Board considered the application at a meeting on April 24, 1980.

The applicant proposes to install 4 gasoline pumps on 2 existing "islands". No other improvements were indicated on the site plan which was submitted with the application. The station is located in a C-6 (Intensive Commercial) zoning district. Filling stations are permitted in this district as a conditional use. A full description of this application is provided in the attached Planning Division report.

Upon closure of the Planning Board Public Hearing and after extensive discussion of the Planning Division report and recommendations, the Planning Board recommended approval of the request. The following motion was passed.

"The Planning Board recommends approval of the conditional use application to operate a filling station at 1349 Dade Boulevard with the stipulation that the following conditions be met:

- The storage area shall be decreased in size and a masonry wall, at least 6 feet in height, shall be constructed around the storage area to conceal vehicles from public view.
- All stored vehicles, wrecked or otherwise, shall be placed wholly within the storage area.
- Additional landscaping shall be provided on the property and such landscaping shall be properly irrigated. A Landscape plan shall be approved by the Planning Division prior to issuance of a building permit or City license.
- The triangular metal sign shall be removed and a new sign shall be erected which is in compliance with the Zoning Ordinance.
- The curb cut on Dade Boulevard closest to the intersection of North Bay Road shall be closed and landscaped.

COMMISSIOM MEETING

JUN 4 1980

CITY OF MIAMI BEACH

COMMISSION MEMO NO: 8205
PAGE 2
MAY 7, 1980

- 6. No vehicles waiting for gasoline shall be permitted to line up on Dade Boulevard. A barricade shall be placed in the remaining driveway on Dade Boulevard if gas lines begin to form.
- 7. The applicant shall make primary use of the gasoline pumps on the "island" facing North Bay Road when only one "island" is in operation".
- An enclosed trash storage area shall be provided in accordance with the recommendation of the Public Works Department.

#### ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission approve this request for a filling station as a conditional use. The Planning Board and Planning Division have recommended approval with the aforementioned eight conditions. The Commission may elect to hold a public hearing, however, it is not mandatory that one be held.

HTT/RGD/rb

attachments

COMMISSION MEETING

JUN 4 1980

# City of Miami Beach

FLORIDA "VACATIONLAND U.S. A."



PLANNING BOARD

1700 CONVENTION CENTER DRIVE TELEPHONE: 673-7560

May 1, 1980

The Mayor and Members of City Commission 1700 Convention Center Drive Miami Beach, Florida 33139

Dear Commissioners:

SUBJECT: PLANNING BOARD RECOMMENDATION: CONDITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD

At the Planning Board meeting of April 24, 1980, the Board unanimously passed the following motion:

"The Planning Board recommends approval of the Conditional Use application for the operation of a filling station at 1349 Dade Boulevard with the stipulation that the following conditions are met:

- The storage area shall be decreased in size and a masonry wall, at least 6 feet in height, shall be constructed around the storage area to conceal vehicles from public
- All stored vehicles, wrecked or otherwise, shall be placed wholly within the storage area.
- 3. Additional landscaping shall be provided on the property and such landscaping shall be properly irrigated. A landscape plan shall be approved by the Planning Division prior to issuance of a building permit or City license.
- The triangular metal sign shall be removed and a new sign shall be erected which is in compliance with the Zoning Ordinance.
- The curb cut on Dade Boulevard closest to the intersection of North Bay Road shall be closed and landscaped.
- No vehicles waiting for qasoline shall be permitted to line up on Dade Boulevard. A barricade shall be placed in the remaining driveway on Dade Boulevard if gas lines begin to

MEMBERS

VICE-CHAIRMAN, EDWARD NEWMAN

CHAIRMAN, PHIL BROOKS Aaron Euster, Nat Fechtner, Ted Kipnis, Harry Mildner, Robert M. Reilly, Abe Resnick, Leon Sirkin, Molly Stoin, Leonard Zilbert

> COMMISSION MEETING

DEED IN MUL

- 7. The applicant shall make primary use of the gasoline pumps on the "island" facing North Bay Road when only one "island" is in operation.
- An enclosed trash storage area shall be provided in accordance with the recommendation of the Public Works Department.

Sincerely,

Phil Brooks Chairman

PB/rb

cc: City Manager City Attorney City Clerk

> COMMISSION ELTING

JUN A 1930

#### PLANNING DIVISION REPORT

#### CONDITIONAL USE REQUEST

#### BEACH GARAGE - 1349 DADE BOULEVARD

#### REQUEST

The applicant, Vincent Festa, owner of Beach Garage, requests that the Planning Board approve a conditional use application for the operation of a filling station at the site currently occupied by Beach Garage, a service station located at 1349 Dade Boulevard.

#### ZONING AND LOCATION

The existing service station is located within a C-6 District. The purpose of this District is to accommodate intensive commercial uses such as: sales, storage, repair, processing, wholesaling, and trucking activities. Filling stations are compatible with these uses and are therefore, permitted as a conditional use as long as the location is appropriate and no undue negative effects are caused.

Beach Garage is located on the northeast corner of the intersection of Dade Boulevard and North Bay Road. The orientation of the building is southwest, that is, it faces the intersection.

To the East of the service station is Newman Funeral Home; to the south across Dade Boulevard and Collins Canal are multiple family residential units; to the west across North Bay Road is a service station, American Typographies, a vehicle storage yard, and an animal hospital; and to the north is a newly renovated commercial structure. The multiple family residential units to the south of Beach Garage are located in an RM-125 zoning district which is designed to accommodate high-rise, high density, tourist lodging, and entertainment uses. All other uses surrounding the service station area are located in the C-6 District.

#### PAST USE

The filling station was built in 1956 and was operated as a full service filling station until 1975 at which time Cities Service Oil Company sold the filling station to the applicant. According to the applicant, the pumps were removed not because the sale of gasoline was not desired but because Beach Garage was denied, by contract with Cities Service Oil Company, the purchase of gasoline and petroleum products from other sources for a period of five (5) years; and Cities Service Oil Company would not sell gasoline and petroleum products to Beach Garage. Beach Garage has fulfilled its contractual agreement with Cities Service Oil Company and has made arrangements with Shell Oil Company to purchase the gasoline allocation previously received by the filling station at 1150 Collins Avenue.

#### EXISTING USE

#### Vehicle Maintenance and Storage

The garage and yard are currently used for repair and storage of vehicles. There is a fenced-in area on the north side of the site which is used to store vehicles involved in accidents, however, wrecked vehicles are also stored outside of the area. All vehicles are in full public view; none is concealed by a masonry wall as required by ordinance.

Current operating hours for vehicle maintenance generally are 8:00 a.m. to 6:00 p.m. weekdays. The station tends to close earlier on Saturdays. Towing services are available.

#### 2. Access and Traffic Circulation

The service station has four (4) driveways. Two (2) are on Dade Boulevard and two (2) are on North Bay Road. One (1) of the driveways on Dade Boulevard is very close to the intersection, and entry and exit of vehicles is hazardous because of the significant number of vehicles using Dade Boulevard. Access to and from the station is safer on North Bay Road because less vehicles use this road.

COMMISSION MEETING

JUN & 1980

#### 3. Landscaping

The property is bounded on the cast and north by shade trees and has three areas along the front property line which are sparsely landscaped. The grass area on North Bay Road is totally within the City right-of-way and the one on Dade Boulevard is wholly on the site. The existing landscaping does very little to enhance the site, and maintenance of the site appears to be negligible.

#### 4. Signs

One free-standing sign is located in the landscaped area at the intersection of Dade Boulevard and North Bay Road. Maintenance of the sign and lettering on the overhangs has not been sufficient to keep them in an acceptable condition.

#### PROPOSED USE

The applicant proposes to install gasoline pumps upon two (2) existing concrete "islands". Fuel will be stored in existing underground storage tanks. No additions or alterations to the site, other than the pumps, will be necessary to reactivate the site as a full-service filling station.

In addition to selling gasoline and petroleum products, the applicant will continue to service, repair, and store vehicles.

#### PLANNING DIVISION DISCUSSION AND ANALYSIS

The location of the station, although suitable in 1956, is less desirable in 1980 because utilization of the station will be higher by virtue of an absolute increase in the number of vehicles on adjacent highways.

Use of the site as requested will likely create periodic traffic circulation problems due to waiting gasoline customers who will queue on Dade Boulevard and North Bay Road particularly when gas allocations become scarce. Periodic episodes of customer build-up will create more chronic circulation problems on Dade Boulevard than North Bay Road primarily because Dade Boulevard is more heavily traveled.

Problems could be mitigated by restricting access to the site from Dade Boulevard, particularly via the driveway closest to the intersection. The Planning Division has prepared a schematic design plan indicating the removal of this driveway.

Vehicles will still be able to enter the site from Dade Boulevard, however, provisions should be made to prevent vehicles from "stacking-up" on the roadway. If such a situation results, a temporary barricade erected in this driveway will prohibit the blockage of traffic on Dade Boulevard.

The closed driveway should be reserved for landscaping in order to improve the visual appearance of the site. The Planning Division design plan indicates that landscaping should be done in a unified manner. New concrete curbing will be needed to protect the plantings and emphasize that this driveway has been permanently closed. In addition to landscaping along Dade Boulevard, the grass area on North Bay Road should also be resodded and landscaped.

Primary use of the gasoline pumps on North Bay Road would also minimize the congestion on Dade Boulevard. Customers would then stack up on North Bay Road which can easily accommodate more vehicles. The pumps facing Dade Boulevard could be closed unless a crisis situation occurs and all pumps are needed to effectively service customers. If such an event does occur, gas lines should be prohibited on Dade Boulevard unless police supervision is available.

Access to the site by North Bay Road could be improved by decreasing the size of the storage area. The chain link fence could be removed and a new masonry wall could be erected which is set back from the driveway. This improvement will not only improve access but will enhance the visual atmosphere of the station by screening wrecked vehicles from public view. No storage of vehicles should be allowed outside of the masonry wall.

Since the applicant's property is located on a busy roadway and is easily visible to residents and tourists entering the City via Venetian Causeway, the visual appearance of the site is an important consideration. The building could be repainted and new signs which conform to the ordinance could be installed. A new detached sign should be constructed in the landscaped area at the intersection of Dade Boulevard and North Bay Road. The sign cannot be greater than 30 square feet and the supporting pole and the height cannot exceed 25 feet above grade.

#### Police Department Comments

The Police Department submitted numerous valuable comments pertaining to the impact of the applicant's proposed use of the site on the traffic circulation system adjacent to the property. Four accidents unrelated to the applicant's property have occurred at or near the intersection of Dade Boulevard and North Bay Road during the period of January, 1979 - January, 1980.

At best, the traffic flow at and near this particular intersection is less than desirable due to the narrowness of the roadway when the lanes merge and the visual obstruction created by the bridge which was built over the Collins Canal at this point.

If the present fuel situation continues, traffic congestion will become a factor at this location and if the fuel situation becomes more critical than it is currently, this area will become one of the City's major traffic problem areas. The basic reason for this is that many customers would enter the gasoline station on the northeast corner of the intersection of Dade Boulevard and North Bay Road and a "line-up" area would occur on the north side of Dade Boulevard. This would definitely restrict the flow of traffic through the area and would result in delays and traffic flow build-up.

#### Code Enforcement Comments

The Code Enforcement Division has submitted photographs of Beach Garage which indicate numerous wrecked vehicles parked on the property, not only within the fenced-in area but all over the paved surface. This practice of haphazard vehicle storage creates a very unattractive situation and should be curtailed.

#### Public Works Department

The Public Works Department has recommended that an enclosed area be provided for storage of garbage. The Planning Division design plan indicates an enclosed trash storage area in the northwest corner of the site adjacent to the masonry wall surrounding the storage area. The trash storage area should contain at least 57 square feet of floor space to afford easy access and removal of trash.

#### PLANNING DIVISION RECOMMENDATION

The Planning Division recommends approval of the conditional use application for the operation of a filling station at 1349 Dade Boulevard with the stipulation that the following conditions be met:

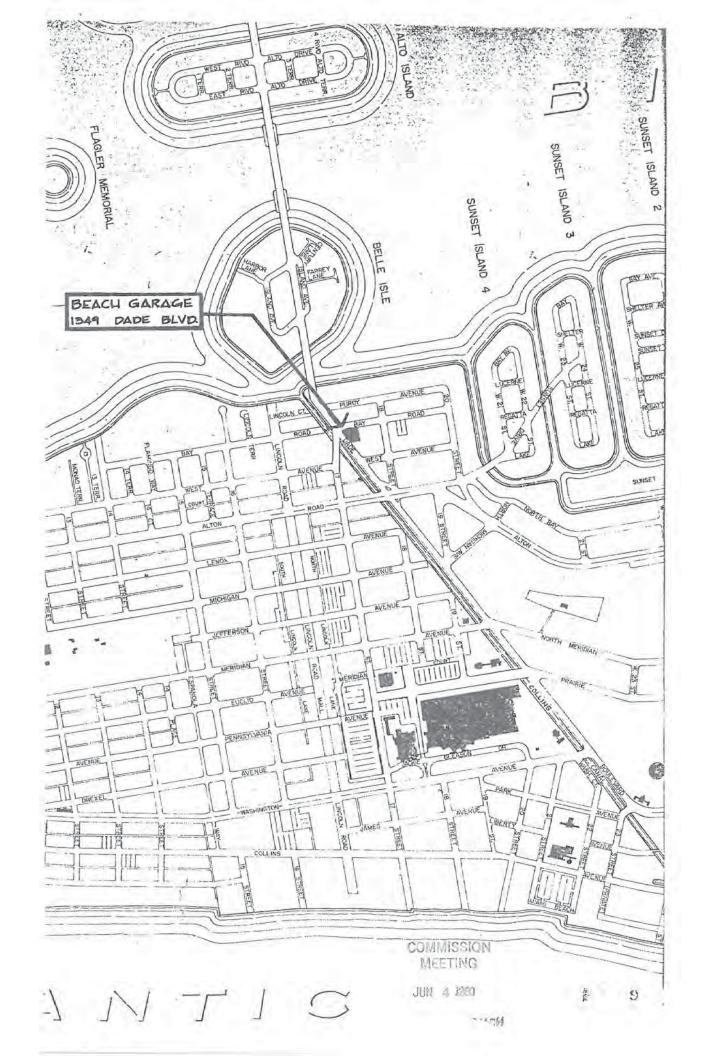
- The storage area shall be decreased in size and a masonry wall, at least 6 feet in height, shall be constructed around the storage area to conceal vehicles from public view.
- All stored vehicles, wrecked or otherwise, shall be placed wholly within the storage area.
- Additional landscaping shall be provided on the property and such landscaping shall be properly irrigated. A landscape plan shall be approved by the Planning Division prior to issuance of a building permit or City license.
- 4. The triangular metal sign shall be removed and a new sign shall be erected which is in compliance with the Zoning Ordinance.
- The curb cut on Dade Boulevard closest to the intersection of North Bay Road shall be closed and landscaped.
- 6. No vehicles waiting for gasoline shall be permitted to stack-up on Dade Boulevard.
- 7. The applicant shall make primary use of the gasoline pumps on the "island" facing North Bay Road when only one "island" is in operation.
- An enclosed trash storage area shall be provided in accordance with the recommendation of the Public Works Department.

COMMISSION:

JUN 4 1990

RGD/CSC/rb 4/24/80

CITY OF LALLE REACH



# City of meani beach



"VACATIONLAND U.S.A."

ELAINE MATTHEWS

1700 Convention Center Drive TELEPHONE: 673-7411

May 27, 1980

#### NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Commission of the City of Miami Beach, Florida, will hold a public hearing on Wednesday, June 4, 1980, beginning at 3:00 P.M., in the Commission Chambers, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, to consider the Planning Board's recommendation to the City Commission for approval of the conditional use application to operate a filling station at 1349 Dade Boulevard, subject to certain recommendations of the Planning Board.

INQUIRIES concerning this item should be directed to Robert G. David, Planning Division Director, telephone: 673-7550.

ALL INTERESTED PARTIES are invited to attend and will be heard.

Elaine Matthews City Clerk City of Miami Beach

COMMISSION MEETING

JUN 3 12:0

CITY OF MINMI BEACH

AGENDA R-3-C-1

# City of Miami Beach





OFFICE OF THE CITY MANAGER
HAROLD T. TOAL
CITY MANAGER

CITY HALL 1700 CONVENTION CENTER DRIVE TELEPHONE: 673-7010

#### ACTION SUMMARY

CITY COMMISSION MEETING

JUNE 4, 1980

COMMISSION CHAMBERS, 3RD FLOOR, CITY HALL 1700 CONVENTION CENTER DRIVE

MAYOR MURRAY MEYERSON
VICE-MAYOR ALEX DAOUD
COMMISSIONER MILDRED S. FALK
COMMISSIONER MICHAEL FRIEDMAN
COMMISSIONER MEL MENDELSON
COMMISSIONER LEONARD O. WEINSTEIN
COMMISSIONER DR. SIMON WIKLER

CALL TO ORDER - 9:45 A.M.

INVOCATION AND PLEDGE OF ALLEGIANCE

REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS

#### CONSENT AGENDA

#### C-1. LICENSES AND PERMITS

A. COMMISSION MEMORANDUM NO. 8244
APPLICATION FOR TRANSFER OF TAXICAB PERMIT NO. 21
FROM LESTER PROBER TO JOSEPH GATT.

ADMINISTRATION RECOMMENDATION: APPROVE

B. COMMISSION MEMORANDUM NO. 8245 APPLICATION FOR TRANSFER OF TAXICAB PERMIT NO. 37 FROM HARRIET LUREY AND BARBARA GLASS TO MIHAIL AND/ OR RAILLA SHPILMAN.

ADMINISTRATION RECOMMENDATION: APPROVE

#### C-2. COMPETITIVE BID REPORTS

A. COMMISSION MEMORANDUM NO. 8246
BID AWARD NO. 52-80, FUEL FACILITIES FOR PUBLIC WORKS RELOCATION, PB-76.
BID AMOUNT: \$148,797.00

ADMINISTRATION RECOMMENDATION: APPROVE BID AWARD NO. 52-80 IN THE AMOUNT OF \$148,797, PLUS AN ADDITIONAL \$19,000 FOR PAVING, GRADING, SITE PREPARATION, UTILITY ADJUSTMENTS, INSPECTION, CONTRACT ADMINISTRATION, AND INSTALLATION OF CONCRETE SLABS AT BOTH THE FIRE STATION AND THE NURSERY COMPLEX. THUS A TOTAL OF \$167,797 TO BE APPROPRIATED FROM THE MARCH 14, 1972 RELOCATION OF PUBLIC WORKS BOND FUND.

CITY MANAGER HAROLD T. TOAL \*CITY ATTORNEY JOHN A. RITTER CITY CLERK ELAINE MATTHEWS

#### ACTION

All present except for Commissioner Weinstein, who is out of town.

Rabbi Mayer Abramowitz

Reflected throughout Action Summary

Approved.

Approved.

Awarded, Pieco Miami, Inc.

Appropriation of \$167,797 from 3/14/72 Public Works Relocation Bond Fund, approved.

\*City Attorney Ritter in court; represented by Assistant City Attorney Lucia Allen in morning session. Present in afternoon session.

ACTION SUMMARY

JUNE 4, 1980

-1-

#### ACTION

#### R-3. TIME CERTAIN ITEMS

#### 11:00 A.M. - BOARD AND COMMITTEE REPORTS

A. REPORT FROM SIDNEY GOLDMAN, CHAIRMAN, MARINE AUTHORITY, REGARDING AN AMENDMENT TO MARINE ORDINANCE NO. 75-2050, ARTICLE VI, SECTION 7-68(4) MULTIPLE DWELLING HOUSEBARGE.

#### 11:00 A.M. - TIME CERTAIN ITEM

- B. DISCUSSION OF THE LEASING OF AIR RIGHTS OVER PARKING LOT BETWEEN 27TH AND 28TH STREETS ON COLLINS AVENUE TO PROVIDE FOR RENTAL HOUSING. (REQUESTED BY COMMISSIONER MILDRED FALK)

  (DEFERRED FROM 5/21/80)
  - Report from S.Z.Bennett re. parking lots and possible utilization for housing.

#### 3:00 P.M. - PUBLIC HEARING

C. COMMISSION MEMORANDUM NO. 8205
PLANNING BOARD RECOMMENDATION REGARDING CONDITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD.

ADMINISTRATION RECOMMENDATION: COMMISSION APPROVE THE PLANNING BOARD'S RECOMMENDATION TO APPROVE THE CONDITIONAL USE APPLICATION TO OPERATE A FILLING STATION AT 1349 DADE BOULEVARD WITH THE STIPULATION THAT THE EIGHT CONDITIONS DELINEATED IN COMMISSION MEMORANDUM NO. 8205 ARE MET.

NOTICE OF PUBLIC HEARING.

#### 3:15 P.M. - PUBLIC HEARING

D. COMMISSION MEMORANDUM NO. 8206
PLANNING BOARD RECOMMENDATION REGARDING CONDITIONAL USE APPLICATION TO REMODEL AND EXPAND AN EXISTING FILLING STATION AT 1840 ALTON ROAD

ADMINISTRATION RECOMMENDATION: COMMISSION APPROVE THE PLANNING BOARD'S RECOMMENDATION TO APPROVE THE CONDITIONAL USE APPLICATION TO REMODEL AND EXPAND A FILLING STATION AT 1840 ALTON ROAD WITH THE STIPULATION THAT THE TEN CONDITIONS DELINEATED IN COMMISSION MEMORANDUM NO. 8206 ARE MET.

NOTICE OF PUBLIC HEARING.

#### Mr. Goldman appeared.

An ordinance amending Section 7-68 of the Code, so as to add the following: "No housebarge designed to contain more than one (1) dwelling unit shall be permitted to be moored or docked within any waterways of the City of Miami Beach" was passed on first reading.

Hearing and second reading scheduled for 6/18/80, at 2:00 p.m.

Commissioner Falk's motion that the City consider leasing air rights for construction of rental housing failed of passage.

Report set forth that of sites surveyed, 27th St. only one suitable; further study being made.

Hearing held and concluded.

Planning Board's recommendation to grant conditional use request for remodeling and expansion of an existing filling station approved subject to 8 conditions as set forth in Commission Memorandum No. 8205, with further amendment of Condition No. 1 that "storage area shall be decreased in size and a masonry wall of sufficient height to completely screen the storage area from all adjacent streets, but in no case less than 6 feet, shall be constructed".

Hearing continued to August 20, 1980, at 3:15 p.m., at the applicant's request.

Owner agreed to bear expenses of re-advertising.



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MEYERSON: R-3C. Will you please call the Public Hearing, Miss Matthews? R-3C.

MATTHEWS: Mr. Mayor, notice was published in the Miami Beach Sun Reporter in issues of May 30th and 31st as well as being sent to various civic organizations that the Commission would at this time consider the PLANNING BOARD RECOMMENDATION FOR APPROVAL OF A CONDITIONAL USE APPLICATION FOR THE OPERATION OF A FILLING STATION AT 1349 DADE BOULEVARD Subject to recommendations which were made by the Planning Board.

MEYERSON: Very well.

MATTHEWS: No response.

MEYERSON: No responses?

MATTHEWS: No, sir. No written response. There may be some present.

MEYERSON: Very well. The Chair will entertain a motion to open the public hearing.

FRIEDMAN: Move it. FALK: Second.

MEYERSON: Moved by Mr. Friedman. Seconded by Mrs. Falk. All those in favor signify by saying "Aye".

GROUP: Aye

MEYERSON: Any opposed? None opposed. Public hearing is now open. We do not have any listed speakers on this item.

ARNOLD LEON: You don't have a quorum.

MEYERSON: Yes, Dr. Wikler is in the other room. Dr. Wikler are you there?

WIKLER: Yes.

MEYERSON: Yes, all right. Does anybody wish to be heard on Item R-3C? Item R-3C. Very well, the Chair will entertain a motion to close the public hearing.

FRIEDMAN: Move it.

MEYERSON: Moved by Mr. Friedman. Seconded by Mrs. Falk. All those in favor signify by saying "Aye".

FALK: Second.

GROUP: Aye

MEYERSON; Any opposed? None opposed. The public hearing is now closed. I turn to the Administration.

BOB DAVID: Members of the Commission, this is a recommendation that came before the Planning Board for a request for the reinstitution of a gas service at an existing filling station that's located on the northeast corner of Dade Boulevard and North Bay Road. The area in which this gas station is located is zoned for a RM-...excuse me, a C-6 which is an intensive commercial district which permits trucking, warehousing, paint and body shops, and similar types of heavy uses.

MMYERSON: Let me ask you a question before you begin, Mr. David. Is this the filling station which adjoins the fly-over?

DAVID: Yes. It is adjacent. it is one of the two that is right there. Yes, sir.

MEYERSON: Adjac nt to the fly-over.

DAVID: There are two of them located at that intersection.

MEYERSON; All right. Go right ahead.

DAVID: The applicant is asking to reinstitute as I said the gas service which had prior... which had been a prior use there. He had discontinued that due to some problems that he

DAVID (Con't): had with the original owers of the station. In any case conducted a regular garage service independent of the gas operation.

MEYERSON: Now, as I understand the backup material the gas station has not been in operation for a period of five years. Is that correct?

DAVID: That is correct. And as a conditionaluse it is necessary to come back before this Board for its reconsideration. The Planning Board in reviewing the original submission made several recommendations in conjunction with the Planning Division. The two diagrams that you see here illustrate on this side the original plan that was submitted which is in effect the gas station as It presently is constituted. The diagram over to your left indicates the revisions and modifications that have been recommended by the Planning Board. And very simply I'll go through those with you briefly. First of all this gas station also provides for the storage of wrecked vehicles. We are recommending that the wrecked vehicles be enclosed in a particular area within the site by a masonry wall. That is concealed from public view. We are also recommending that any other vehicles that are stored on the site, wrecked or otherwise, be stored within that area. The present drives that front on Dade Boulevard, there are two of them, is recommended that one of those two, the one further to the west be closed. (inaudible - not using microphone) There is presently a driveway located here and a second one is presently located here. Recommending that landscaping be incorporated along in front of the gas station so as to have only one entrance from Dade Boulevard leaving two remaining entrances or exits off of North Bay Road. intent of this of course is to reduce the traffic that may result from the Dade Boulevard side. It is also requested as a stipulation that in the event of any stacking of automobiles whether it be a gas crisis or otherwise, that the Dade Boulevard entrance be barricaded and all exits and entrances be from the North Bay Road approach to the site.

MEYERSON: You anticipate some difficulty in that regard?

DAVID: As far as further gas crisis?

MEYERSON: Yes.

DAVID: Well ...

MEYERSON; No, I'm talking about congestion in the area.

DAVID: There possibly ... you know, if cars stack up on North Bay ... on Dade Boulevard that would be a problem, in fact, because of the lanes being restricted at that point because of the fly-over.

MEYERSON: This is a particularly dangerous aren based on the automobile accidents. We've had some very serious accidents and I recall, Mr. David, that in 1974 and 1975 we had a great deal of difficulty with that fly-over. There were talks about changing it and changing the engineering sketches and tearing it down because it is an abortion in my opinion and it was an abortion in the opinion of people who served on the Council at that time. Has anything changed?

BAVID: Well, Mr. Mayor, there has been some modification, in fact that dates back several years. But to, you know, make a confirming opinion on that we requested the Dade County Department of Traffic and Transportation to make an analysis of this and they felt that with the stipulations that we have, that it wouldn't result in any, you know, undue hardship in terms of traffic or existing circulation in the area.

MEYERSON; O.K.

DAVID: So we felt ... and we also requested our Police Department to make a review of that also and they found it to be generally acceptable with these conditions. Going on

MEYERSON: Mr. Mendelson.

MENDELSON: Sorry I missed the beginning. Are you going to block off the Dade Boulevard entrance completely?

DAVID: One of the two. There are two entrances and exits now on Dade Boulevard. We're making it so that there would be only an entrance and one entrance from Dade Boulevard.

MEYERSON: Do you remember during the gas crunch or the crisis?

DAVID: Yes, sir.

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MEYERSON; Do you remember how far it was backed up? They had an animal clinic along side, I believe. They just blocked their driveway and nobody in that garage came out and helped the situation whatsoever.

DAVID: Well..

MEYERSON: Is it the same owner? The same people there?

DAVID: Yes, it is. In fact the applicant is here if you'd like to address questions directly to him.

MEYERSON: Yes, because I remember reading about it in the paper and I remember passing by that garage many a time and they had the cars stacked up all the way down Alton Road.

DAVID: Well..

FRIEDMAN: That's the other one. There's another permit. Mr. Mendelson, there's another permit coming up that deals with the Alton Road one. This one's on the.... Dade Boulevard and North Bay Road.

MEYERSON: Oh, O.K. Right.

FRIEDMAN: That's the other one. That did back up.

DAVID: But there is...you know, there is a possibility that that could occur and in this event, one of the stipulations of this conditional use is that entrance be barricaded Now, under conditional use provisions, the City has the right to withdraw this conditional use if these conditions are not adhered to. So this is not like any normal use where it is generally permitted. This is nomething that the City has the right to act on if the conditions are not met.

MEYERSON: Sometimes, Mr. David, based on conditional uses the conditions are questionable. It's a matter of interpretation and once the Commission grants the approval then of course the Courts have to decide whether the conditions have been met. Is that not true?

DAVID: Well, I'll read the condition to you, Mr. Mayor.

MEYERSON: Yes, please do.

DAVID: This is how it is worded. "No vehicle waiting for gasoline should be permitted to line up on Dade Boulevard. A barricade shall be placed in the remaining driveway on Dade Boulevard if gas lines begin to form." That's the wording presently. Now you may wish to amend that in some way and I'm certain that, you know, it could possibly be improved.

MEYERSON: What are some of the other conditions involved?

DAVID: O.K. Two remaining conditions are that the applicant make primary use of the gas pumps that are located on the Bay...North Bay Road side as opposed to the front. That is again in an effort to draw traffic over to the North Bay Road area and finally that a proper enclosed trash storage area be provided on site.

MEYERSON: Mr. David, let me ask you a question. Did the Planning Board take into consideration that that particular location now is going to generate a tremendous amount of traffic due to the fact that there are going to be 800 units on Purdy Avenue and perhaps even more than that on the Island View Hospital site?

DAVID: That was generally considered. Island View Hospital Site has not been considered but as far as the development of the Turchin property that was taken into consideration. In fact, when we asked for the reviews of this by Dade County we indicated that those developments would occur and that they should take those into consideration. Actually this is one street removed. It is close but it is one street removed from the main quarter that would service that development.

MEYERSON: The problem though, Mr. David, is that ...that Dade Boulevard is a very

MEYERSON (Con't): narrow strip and that anyone going to Purdy Avenue and those 800 units has to pass through that area. It's the only artery leading to the Purdy Avenue site, is down Dade Boulevard next to the fly-over. That concerns me. It also concerns me that there are what? 7 or 8 other conditions that have to be met. It seems to be an awful lot of conditions for conditional use. That's my thinking at the present time but go on. Go on with your presentation.

DAVID: Well, I think that completes the conditions that were imposed by the Board and the Division. I think the applicant in here and could possibly could give you further information.

MEYERSON: O.K.

DAVID: Please state your name.

MEYERSON: Very well, we'll hear from the applicant.

VINCENT J. FESTA: Yes, my name is Vincent J. Festa and I'm the owner of the property on 1349 Dade Boulevard. And all I'm trying to do is put four pumps back in the exact same spot that they were when we took them off. And I heard say something about a backup on Dade Boulevard. In that case this would be a help because if the backup becomes to the gas station which is adjacent to me on the Gulf station, there is where you're going to have a problem. You will not have any traffic going east and west because the traffic will back out. And that will be right in the street of Bay Road. And there's where you will have a problem. Mine is coming from Alton Road and it's before the problem occurs so what we would do if there is a line up they will come into my place so there is no line up on Bay Road and the existing Gulf station that's there. So I would assume that this would be a help ... a help to get rid of some of the traffic that's going to ... if there is a gas crunch as you're predicting.

MEYERSON: Mr. Pesta, are you the owner of the property or the lessee?

FESTA: No, I'm the owner, Your Honor.

MEYERSON: The owner. You operate it also as the lessee?

FESTA: Yes, I'm operating it now. It was closed for a while.

MEYERSON: I see.

WESTA: O.K. While I had a gas station down at 1150 Collins Avenue which I had to get out after 30 years because I couldn't get a license for towing. A wrecker license after 30 years of doing wrecking service there for everybody on the Beach, we finally came up with a reason why It couldn't get renewed. So consequently to pay the taxes on the property I couldn't just do it by gas alone. I had to move to a C-6. This area is C-6, it's for gasoline, it's for, like Mr. David mentioned, it's for everything that I need. I'm not going past any ... I'm C-6. I'm not doing anything that's against the law or in violation. All I'm asking is gas for my trucks and for the public. And...That's all I'd like. I'd like the four pumps put back exactly where they were.

MEYERSON: O.K. Mrs. Falk.

FALK: Sir, I've been hearing conversation that you have on your property derelicts that are stacked up. Is that true?

FROTA:. No, they're not stacked up. They're behind a fence. What we did, Mrs. Falk, is we took them away from in front of your house... In front of building, Mr. Mendelson's building, et cetera, et cetera. We took it away from your building or your house so it doesn't deface your property and we put it in a C-6, one of the few properties...

FALK: Where? I understand it's on this lot.

FESTA: There's a fence. Right there behind the fence.

FALK: Is it visible.

FESTA: It's behind a fence.

FALK: Sir, I asked you, are those wrecks visible from the street?

FESTA: From the street?

FALK: Yes.

FESTA: Yes, I would say they're...from the street. From Bay Road.

FALK: Well, I don't know whether that is a very good recommendation for people coming over the Venetian to see ....

FESTA: Can't see it from the Venetian.

FRIEDMAN: Point of information.

FALK: You're coming up and if they're right in there....

FESTA: They're not in there. If you'd look at this piece of property is  $135 \times 200$ . and the last 30 to 40 feet of the 200 is where the cars are stored.

FALK: How long do you keep the cars in the lot, sir?

FESTA: How long do I keep the cars? The most I keep them is 45 days because they are derelicts. They are taken away from the streets.

FRIEDMAN: Point of information.

MEYERSON: Point of information, Mr. Friedman.

FRIEDMAN: Ms. Falk, if you'd refer to the agenda package you'll find that one of the conditions recommended by the Planning Department and the Planning Board is number one storage area shall be decreased in size and a masonry, it's a concrete type of wall so you can't see through it, at least 6 feet in height shall be constructed around the storage area to conceal the vehicles from public view. That's on page R-9... well, let me give you the right site. R-3, page 2, Commission Memorandum 8205. It's in your package.

FESTA: Right. O.K.

FALK: Mr. Meyerson, I'd like you to ask the Administration how they feel about this because in anticipation of giving out the towing contract, I assume this gentleman will want to bid on it.

FESTA: I already have the lowest bid.

FALK: There will be a question of that, whether the six foot high fence, Mr. Toal, whether in his opinion, in order to keep these cars from the view, our front door, I'd like to have some opinion on that.

MEYERSON: Very well. Mr. Cohen.

HAL COHEN: Relative to the towing business that Mrs. Falk refers to, we are going to require that all cars taken off the streets, towed out be behind an opaque fence of some type. What is being proposed here as I understand is a masonry fence which is the present ordinance. Probably we would relax that and allow other types of fences as long as they were opaque...

MEYERSON: One question, though, Mr. David you can answer this. I recognize that there'll be a six foot wall and probably that would be screened from the grading of the road on Dade Boulevard. Can the derelict automobiles be seen from the fly-over? Because you're raised somewhat.

DAVID: Well, they're in the back of the .. on the opposite side of the garage, so not having really made an aerial analysis, I would doubt that they could be seen, however because of the garage as well as the six foot wall.

MEYERSON: Coming from either direction?

DAVID: Yes, sir.

MEYERSON: Mr. Festa, you agree with that?

FESTA: Yes. I say they're not visible from Dade Boulevard.

MEYERSON: Mrs. Falk does that answer your question?

FALK: Yes, because I have to bow to these...to the planners and to the Administration on their assurance that the eyesore will be corrected.

PESTA: We're talking about gasoline now. We're talking about the gasoline...

FALK: We're talking about the Beach station.

FESTA: Yes, I understand that but that is a C-6. When Redevelopment comes in, they're going to be coming in asking where are we going to get more C-6 to take care of the businesses that are down First to Sixth Street. And I have a business down there that I...

FALK: I'm not opposed to your having the C-6 district. I'm not opposed to keeping the cars there but if in Mr. Cohen's opinion, Mr. Toal's opinion they would recommend a 7 foot fence and maybe all around fence with just one entrance and one exit. So...

FESTA: Whatever they want, I will comply.

FALK: .. So then I would have no further objection.

FESTA: O.K. I'm going to comply. I won't mention any names now but I am one of the few towing services that is ...has a C-6 and C-6 is what you need for towing.

COHEN: You know the Administration has no objection, Mrs. Falk, to an amendment stating that the fence shall be such that the storage cars cannot be seen from any of the adjacent roadways.

FALK: Perfect.

MEYERSON: Would you accept that amendment, Mr. Fester?

FESTA: Yes. Did we acknowledge whether it was masonry or whether it was opaque?

FALK: I don't care.

MEYERSON: Mr. Cohen?

COHEN: Under the present ordinance it must be masonry.

FESTA: O.K. That will go for the goose and the gander.

MEYERSON: Yes.

FESTA: O.K.

FRIEDMAN: What does that ....

MEYERSON: Well, what do you mean by the gander? We know what the goose is.

PESTA: Well, O.K. All right. There are five, six people involved in this and in the past...in the past I have been pointed out...I have been pointed out in violation even though I was C-6 and people who were in R-1, R-1-2-5 were not. We are not mentioning names.

COHEN: Mr. Mayor.

MEYERSON: Mr. Cohen.

COHEN: Yes, I just want to have the gentleman clear that we may amend that ordinance in the future so what we're suggesting here relates to his conditional use only and not to the towing contract and what bidders may or may not be required under that later on.

MEYERSON: Yes.

DAOUD: Mr. Mayor.

MEYERSON: You understand that, Mr. Festa, what Mr. Cohen is saying? Right now you're here on a conditional use.

FESTA: That's right.

MEYERSON: ..and those are the conditions that we're posing to you. It may not apply to the other members because they are not asking for conditional use.

FESTA: - All right. Now, what they're doing is, they're telling me that I have to do something different from anybody else even though I'm in the right zoning.

MEYERSON: Well, you're in the right zoning provided that the Commission gives you the conditional use. And the conditions have to be met.

FESTA: I understand but I just don't like to be favored by anybody and I just don't like to be not favored.

MEYERSON: Yes. Well, that's not the issue here. No one is taking advantage of you. You have a conditional use and we're trying to determine whether or not those conditions if they are met will be in the public interest. That's nll.

FESTA: Right. Well the public interest...a gas station...a filling station would be nicer to look at then a junk yard.

MEYERSON: O.K. You made your point.

FESTA: O.K.?

DAOUD: Mr. Mayor.

MEYERSON: Mr. Daoud.

DAOUD: I have two crucial questions. Number one, and this is very important so I want you to think it over before you answer It. Are you going to be open on week-ends when everybody else is closed?

FESTA: Yes, In the past I was open all night because I had the police towing and I also had Triple A. So we were all open. The Police Department is notified, Central Cab is notified, everybody is notified. And we were a God send that City Hall Garage was opened.

MEYERSON: What's the name of your towing service?

FESTA: Beach Towing.

MEYERSON: Beach Towing.

DAOUD: And number two, I wanted to clarify one point. Are you still doing the towing for...in the area. You're towing derelict cars away?

FESTA: Yes.

DAOUD: You still are presently?

FESTA: Yes, we do. I think...Yes, anybody who calls up, we are the ones. Even when Dade County had a problem, for an 8 month problem, and they would not take any of the cars out because they are contracted to take them out, the Police Department called me as a favor and took them out and I held them for 45 days. I'm talking about cars with no wheels on it, and I mean I'm talking about derelicts. And I held them for 45 days to sell it for \$25. So it was for the better of Miami Beach.

MEYERSON: Mr. David, what was the vote of the Planning Commission on the approval of the conditional use?

DAVID: This was a unanimous vote by the Commission with these conditions. And if I may, Mr. Mayor, for the record, there's two points I'd like to clarify. One is that in addition to the items that I read into the record, listed here is also another condition

DAVID (Con't): in regarding the sign. The triangular metal sign which should be removed and replaced by a sign that conforms with the sign code for that district. And the second thing is in regard to Mrs. Falk's amendment which is well accepted. I think just something that would indicate that in addition to that that it be not less than six feet, if it's required to be more that's fine but I think we should have something in there at least minimizing the height.

FALK: Mr. David I think Murray Meyerson expressed it very well. So that no matter what height is required so that the junked cars should not be visible for people traveling up and down Dade Boulevard.

DAVID: O.K.

FRIEDMAN: Mr. Mayor.

MEYERSON: Yes, Mr. Friedman.

FRIEDMAN: Yes. I have a couple of questions. First of all landscaping has to be added, is that correct?

COHEN: That's correct.

FRIEDMAN: It's not currently there. Another thing is, I'm a little bit concerned knowing that under normal circumstances you will control your gas station, the flow of traffic but that arrow is really not going to be a major degerent for someone going that way and out across Dade Boulevard or creating a bottleneck in that area there. Is there any possible way, I've seen other areas, I'm not too fond of them because my MG doesn't fit over them, but where they have where you can go in one way without any problem, you know, they're kinda like things in the ground but to go the other way you can't go without really damaging your car. That serves as a real deterrent for someone jumping across Dade Boulevard like that. I'll tell you something. I read this and it said that when this gas station First open which was in '56 - '58 something like that. That sticks in my head.

FESTA: '56

FRIEDMAN: '56. It was desirable. But '56 and 1980 is a different time and the amount of traffic flow in that area based on that fly-over there has.. well it creates a bottleneck. And I'm somewhat concerned that with added density in that area... residential density in that area, I don't know. I'm really kind of.. Bob, can you assure me that we won't have a bottleneck, backing cars up. Because it's nice to say that we will have someone who will put up a barrier and not let the cars backup. But you know, I'm in business to pump gas and if I'm pumping gas, the more I pump the more I make and so if I can get them in this way coming off Dade Boulevard, or if I can get them in coming from North Bay Road, the more I can get in the more the money I can make and the better it is for me. And it's nice to say that yes, we would have the option of withdrawing the conditional use but the guy is, you know, he's going to build it already and you're not going to go in and rip the pumps out of the ground. So you know, what is going to be our remedy? I mean if he says, hey, I've got it. I'm working. I'm in business and you know, I'm open for business and I'm open.

FESTA: Well, Mr. Friedman, there is no ... there's only one way. There's only traffic coming from Dade Boulevard. That's it.

PRIEDMAN: Can you cross Dade Boulevard going east?

FESTA: To go east?

FRIEDMAN: Does the over...the fly-over comes down that way. So I couldn't jump from this gas station going east on Dade Boulevard.

FESTA: No. You can't.

MEYERSON: You can't.

FRIEDMAN: Do you see the fly-over? Does that come...in other words could I make a left turn from ...

DAVID: There's a divider

MEYERSON: Yes.

DAVID: If you're talking about the eastbound lane...

FRIEDMAN: Yes.

DAVID: There's a divider that would prohibit you from making a left hand turn into the station at that point. The only way you could do it would be to go on North Bay Road.

FRIEDMAN: O.K. So in other words you could not go...you could not go east from the gas station out of that entrance.

DAVID: No.

FRIEDMAN: No. Because I couldn't tell from your diagram, and I didn't really remember. Well, I guess that takes care of my questioning. Thank you.

MEYERSON: Mr. Mendelson, any questions?

MENDELSON: No.

MEYERSON: The recommendation of the Administration is to approve the conditional use. The Planning Board has voted unanimously for it. The Administration concurs. Even though there are some questions in connection with this area, because of the fly-over predominately and because of the building of the 800 units and perhaps more on Purdy Avenue. You've been in business in this community for a long time, Mr. Festa, and you know what the Commission is trying to achieve. Where's the City Attorney? What is the vote that's necessary to approve the Planning Board's recommendation?

RITTER: I believe we need a 5/7th vote.

MEYERSON: Yes. A conditional use?

DAVID: It's a majority vote.

TOAL: To reject 5/7 - on conditional usc.

RITTER: What is this, a conditional use?

DAVID: Conditional use.

RITTER: For conditional use we need a majority, Mr. Mayor.

MEYERSON: Yes. All right. I think to reject the Planning Board it needs a 5/7th vote.

TOAL: That's right.

MEYERSON: O.K. If there's no further discussion the Chair will entertain a motion.

FALL: Move it

MEYERSON: You're moving to accept the recommendation of the Administration? Is that  $\dots$ ?

FALK: Yes.

MEYERSON: O.K. Mrs. Falk has moved to accept the recommendation of the Administration for the conditional use as approved by the Planning Board and concurred in by the Administration. Do T hear a second?

WIKLER: I'll second it.

MEYERSON: Seconded by Dr. Wikler.

WIKLER: With this comment that I hope this gentleman makes enough money to pay for his wall and all that sort of thing. I think he's been very accommodative with us and wish you good luck in your venture.

FESTA: Thank you very much.

MEYERSON: Very well. Any further discussion? Call the roll.

MATTHEWS: Mr. Mayor, is this with the further condition that was to be added? The additional condition.

MEYERSON: All conditions to be added as ...

MATTHEWS: You need to set that forth. That condition that it's a wall to be no less than...what..how it is to be worded.

MEYERSON; No. I don't think, Miss Matthews, I think that the recommendation of the Administration...

MATTHEWS: Was not that.

MEYERSON: Involves the 8 conditional uses that that have been delineated by Mr. David and is in the backup material as part of the Agenda package and has been stipulated by Mr. Festa.

FALK: Point of information.

MEYERSON: You intend to comply with all the conditions, do you not?

FESTA: The ones we talked about.

FRIEDMAN: Yes, plus the modification of condition one.

FALK: Mr. Mayor.

MEYERSON: Yes.

FALK: Mr. Cohen just told me that what I stated has to be added as an amendment.

MEYERSON: Yes, the 7 foot wall, you're talking about.

FRIEDMAN: Whatever was necessary.

COHEM: Whatever was necessary to conceal from all directions.

MEYERSON: Very well.

COMEN: But no less than 6 feet.

MEYERSON; With that modification. With that modification. Very well, any further discussion? Any thing from the Administration? Any thing from the City Attorney?

RITTER: No, Mr. Mayor, it's in proper legal form.

MEYERSON: Call the roll.

MATTHEWS: Mr. Daoud Yes. Mr. Mendelson Yes
Mrs. Falk Yes Mr. Meyerson Yes
Mr. Friedman Yes Dr. Wikler Yes

Six in favor. None opposed.

MEYERSON: Thank you, Mr. Festa.

FESTA: Thank you. Thank you gentlemen. Thank you hady.

MEYERSON: And good luck to you, sir.

FESTA: Thank you very much.

MEYERSON: We'll move on now to ITEM R3D This is an item where the applicant has requested that the Public Hearing be continued to August 20, 1980, at the same time

FRIEDMAN: Mr. Mayor. May I make a request. There are some people here. I know Mr. Goodman is here and I know the Bicycle Club from Miami Beach Senior High School is here, in terms of the bond re-allocation.

MEYERSON: R9A. Let's take R9A.

MATTHEWS: Mr. Mayor, excuse me, will you please make the announcement with respect to the hearing on the conditional use for 1840 Alton Road (R3D) that is to be continued at the request of the applicant.

MEYERSON: Thank you for reminding me.

MATTHEWS: This is to August 20, 1980, at 3:15 p.m.

MEYERSON: Ladies and Gentlemen, in connection with Item R3D. This is a public hearing on a conditional use. At the request of the applicant and based on the Administration recommendation this matter will be continued to the August 20, 1980, meeting. Those of you where are here to speak at the public hearing on this item will be available on August 20th and you will be heard.

# EXHIBIT "D"

# Vincent Festa November 10, 2017

1	IN THE CIRCUIT COURT OF THE			
2	11TH JUDICIAL CIRCUIT IN AND FOR			
3				
4	MIAMI-DADE COUNTY, FLORIDA			
	CIVIL DIVISION			
5				
6				
7	SUNSET LAND ASSOCIATES, LLC, CASE NO. 2016-004547 CA 01			
8	Plaintiff,			
9	vs.			
10	MARK FESTA, individually and as trustee,			
11	Defendants.			
12	——————————————————————————————————————			
13	AND ALL RELATED CROSS-ACTIONS.			
14				
15	VIDEOTAPED DEPOSITION OF VINCENT J. FESTA			
16	November 10, 2017			
17	10:09 a.m.			
18				
19	1230 Columbia Street, Suite 400			
20	San Diego, California			
21				
22				
23	REPORTED BY:			
24	Barbra Zucker			
25	CSR No. 11289			

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13	And CORONA STORAGE, LLC,	14			
14	Defendants.	15			
15	<del></del>	16			
1,2	and	17			
16		18			
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Vincent Festa November 10, 2017 Page 18 1 Q. -- but would it -- does the name Orange State 1 not complete by any means. So as we go through this 2 ring a bell? 2 stuff, if there is a document that might refresh your 3 A. No. It's not that. 3 recollection on some of this stuff, I am happy to give 4 Q. It wasn't Orange State? Okay. it to you, and we will go through them. I just --A. No, it wasn't that. It's a famous name. It A. Okay. 5 5 wasn't S-o --Q. -- I don't know what's going to help you 6 6 because --7 Q. Was it Citgo? 7 A. Citgo. Okay. Good one. 8 A. Yeah. 8 9 9 Q. Okay. And the reason I say that is, we'll go Q. -- I don't know the history. through some documents later, I saw the Citgo logo in A. If it helps you, see if it helps you. 10 10 there somewhere. I wasn't sure if you had a Citgo Q. We'll see. I don't know how much can help me. 11 11 12 station or if it was previous --I mean, we will have to see by the end of the day. 13 A. No. I had a Citgo station. I also had a Maybe not much. 14 station in -- on Miami Beach on 14th Street and -- Miami 14 A. All right. 15 Beach. 15 Q. Okay. So the 1349 Dade Boulevard was a gas 16 Q. Okay. So you had two -- at some point in time, station when you bought it. And is it your recollection 16 17 you had two gasoline stations on Miami Beach? 17 that you were able to continue operating as a gas A. Yes, and towing. station or were you --18 19 Q. And towing. 19 A. No. I didn't want gas. 2.0 Okay. So there was the one obviously 1349 Dade 20 Q. Okay. 21 Boulevard. That's the one that you bought that was a gas A. I didn't want gas because we had the gas wars, 21 22 station, correct? 22 not gas wars, but we had rationing for a while, a long 23 A. Was a gas station. 23 time ago. 24 Q. Right. And then there was another one, I think 24 Q. You are talking in the 1970s? 25 it was -- am I correct, it was on Alton that you owned? 25 A. Something like -- maybe before that too. Page 19 A. No. It was on Collins Avenue, actually. It was on Collins Avenue, yes. A. We had a gas station on Alton Road. It was a 3 Q. Which one did you own first, do you recall? Gulf station that we just leased it, you know. You buy 4 A. The one on Collins. their -- you buy their equipment, and they let you use 5 Q. Okay. And did you ever own any more than those their station. And I had AAA and I had towing, and I

Page 21

6 two gas stations on Miami Beach? 7 A. No, I don't think so. 8 Q. What prompted you to start buying gas stations? 9 A. Well, I had a friend of mine, we did a lot of investing. We bought properties and sold them, 10 11 properties. And we -- we went into Alton Road and 12 picked up a station that we did AAA and towing. 13 Q. Right. So you had a towing operation at the 14 gas station sort of as an accessory to the gas station? 15 A. Right. 16 Q. Okay. And so with regard to the gas station at 17 1349 Dade Boulevard, your recollection is that was a

A. I think so. I think you're right.

Q. Yeah, and, by the way, this -- I didn't say

23 this before, but I think I have sort of implied it, but

25 closed-book test. I have got some documents; they are

A. That would have been my guess.

24 I will say it now. This is not meant to be a

Citgo station?

O. Okay.

18

19

20

21

Q. Right. So when you bought the gas station -so -- let me strike that. So you had the other gas station --A. I had Alton Road first. Q. Okay. And I just want to make sure we are talking about the same thing because a moment ago you said you thought the other station was on Collins. A. It is Collins. Alton Road -- Alton Road was a different place. We did AAA there --Q. Oh, I see.

had -- I had everything.

7

8

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23

17 A. -- then we had Collins, then we had Collins Avenue which I bought the property and sold it. There is a high-rise there now. And then I had 1349 Dade 19 20 Boulevard. 21 Q. Okay. That's my mistake. I thought we were --22 A. That's okay.

Q. -- talking about two places. 24 A. No problem.

25 Q. So just so I am clear, you owned a gas station

```
November 10, 2017
                                                                                                           26 to 29
                                                   Page 26
                                                                                                                  Page 28
             So let me -- I have handed the witness --
1
                                                                            MS. RIBERO-AYALA: Right, right.
                                                                1
2
             MR. REISS: Okay.
                                                                            MR. BUCKNER: \operatorname{\mathsf{--}} there is more in here than
3
             MR. BUCKNER: I am going to tell you what they
                                                                3 just his stuff. So I don't want to --
    are, and we will see if we can get you to them, Allan.
                                                                4
                                                                            MS. RIBERO-AYALA: Right. Let's not bog him
 4
5
             I am going to hand the witness two documents.
                                                                5
                                                                   down with stuff. Let me let him go through whatever
6 All right? One is, on the cover of it, it says, "Exhibit
                                                                   belongs to him, and then he can say what he understands
7 F." It starts with the roll call, City of Miami Beach
                                                                7 it to be. So --
8 Commission. It's a series of documents related to the
                                                                8 BY MR. BUCKNER:
    conditional use permit, but it's Exhibit F. And the
9
                                                                9
                                                                         Q. Maybe I can help. You are in Exhibit 1,
    other one is Exhibit -- has got Exhibit D on the cover.
                                                               10 Mr. Festa. The fourth page of Exhibit 1 you will see a
10
11
             MR. REISS: I see that.
                                                                   City of Miami Beach letterhead.
             MR. BUCKNER: Okay. So we are going to -- here
12
                                                               12
                                                                            MR. BUCKNER: You are there, Susy.
13 is what we are going to do. We are going to mark
                                                               13 BY MR. BUCKNER:
    Exhibit F as Exhibit 1 here and Exhibit D as Exhibit 2
14
                                                               14
                                                                        Q. A memorandum dated May 7th, 1980. Do you see
15
    for this deposition. Okay?
                                                               15
                                                                   that?
             MR. REISS: Thank you.
                                                               16
                                                                            MS. RIBERO-AYALA: Okay. All right. So let's
16
                                                               17 let him read this.
17
             MR. BUCKNER: Yeah, no worries.
             (Exhibits No. 1 and No. 2 marked.)
                                                               18
                                                                            MR. BUCKNER: Go ahead. I think that may help.
18
19 BY MR. BUCKNER:
                                                               19
                                                                            THE WITNESS: Okay.
         Q. Mr. Festa, let me give you that.
2.0
                                                               20 BY MR. BUCKNER:
21
             (Discussion off the record.)
                                                               21
                                                                        {\tt Q.}\,\, So the reason I showed you that is because this
22 BY MR. BUCKNER:
                                                                   document relates to a conditional use application for
23
         Q. Here is a copy for each of you. So let me
                                                               23
                                                                   operating a filling station at 1349 Dade Boulevard.
   just -- I am going to hand you this in a second,
                                                               24
                                                                            Do you see that?
25 Mr. Festa.
                                                               25
                                                                            MR. REISS: Objection to the form.
                                                   Page 27
                                                                                                                  Page 29
             We have marked as Exhibit 1 a document that on
                                                                             THE WITNESS: I see it, but I don't remember
2 its face says, "Roll Call Miami Beach City Commission"
                                                                2 it.
    and has a series of agenda items behind it. And that's
                                                                3 BY MR. BUCKNER:
    your copy, Mr. Festa, Exhibit 1.
                                                                         Q. Okay. So you don't recall applying for a
             And Exhibit 2 is entitled -- well, it's on City
                                                                   conditional use permit to operate a filling station in
6 of Miami Beach letterhead, at least the first page, and
                                                                   1980 at the Dade Boulevard location?
    it's entitled, "Action Summary," but then behind it,
                                                                            MR. REISS: Objection to form, documents speak
    several pages back, there is a transcript of a hearing
                                                                  for themselves, mischaracterizing the witness'
                                                                    testimony.
```

from the City of Miami Beach Commission. It appears to be June 4th, 1980, I think. And that's No. 2. 10 11 Let me give you both of those. 12 And, by the way, when I hand you documents today, you can take as much time as you need to look at 14 them. We are not in a hurry. So, you know, be my guest. 15 A. This is saying that in 1980 I was selling gas? 16 Q. No. Well, let me go through it with you, and I 17 will tell you what I think it says, and we will see if it refreshes your recollection. There is -- the first item here is a -- in 19 20 Exhibit 1 -- let me find it. 21 MS. RIBERO-AYALA: Well, why don't we let him

MR. BUCKNER: Yes, go through it.

MR. BUCKNER: I don't want the --

MS. RIBERO-AYALA: Yeah.

go through it.

23

24

25

10 You can answer the question. THE WITNESS: No. I was doing mostly towing. I don't remember -- I was one of the few people that was -- in fact, at one time I was the only one that was doing towing. BY MR. BUCKNER: 16 Q. Right. 17 A. So I was towing from the -- I was also -- had a -- rented a place down on 5th Street, and we were 19 towing on Collins Avenue, and we were towing on 1349 20 Dade Boulevard. 21 I can't -- I can't remember how we could get all 22 those cars in and out with pumps there. I just -- that's 23 what I can't understand ---24 BY MR. BUCKNER:

25

Q. Okay.

# EXHIBIT "E"

# **ZONING ORDINANCE**

### 1891

## CITY OF MIAMI BEACH

EFFECTIVE DATE
OCTOBER 1, 1971
(As Amended through January 18, 1985)

#### MAYOR

Malcolm H. Fromberg

# COMMISSIONERS

Stanley H. Arkin

Alex Daoud

Ben Z. Grenald

William E. Shockett

Bruce Singer

Sidney Weisburd

CITY MANAGER

Rob W. Parkins

CITY ATTORNEY

Arnold M. Weiner

# ZONING ORDINANCE

# MIAMI BEACH, FLORIDA

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### ZONING ORDINANCE AMENDMENT

## MAILING LIST

The Development Services Department maintains a mailing list of persons interested in receiving notification of amendments to the Zoning Ordinance. If you would like your name placed on the mailing list, please fill out the portion of the sheet with your name and address and mail your request to:

Development Services Department

	1700 Convention Center Drive Miami Beach, Florida 33139
Name	
The Planning Bo Ordinance. If y them to:	oard from time to time considers amendments and revisions of the Zoning ou have any suggestions on how this Ordinance may be improved, please send  Miami Beach Planning Board c/o Director of Planning 1700 Convention Center Drive Miami Beach, Florida 33139
Name	

Thank You!!

ZONING ORDINANCE

MIAMI BEACH, FLORIDA

ORDINANCE NO. 1891

#### SECTION 1

#### TITLE

AN ORDINANCE TO REGULATE AND RESTRICT THE ERECTION, RECONSTRUCTION, ALTERATION, LOCATION AND USE OF BUILDINGS, STRUCTURES, LAND AND WATER, FOR TRADE, INDUSTRY, RESIDENCE, OR OTHER PURPOSES; TO REGULATE AND RESTRICT THE SIZE OF BUILDINGS AND OTHER STRUCTURES HEREAFTER ERECTED OR ALTERED, THE SIZE AND DIMENSIONS OF YARDS, COURTS AND OTHER OPEN SPACES SURROUNDING BUILDINGS; TO REGULATE AND RESTRICT BUILDING LINES AND THE PERCENTAGE OF LOT THAT MAY BE OCCUPIED, AND THE DENSITY OF POPULATION, AND FOR SAID PURPOSES TO DIVIDE THE CITY OF MIAMI BEACH INTO DISTRICTS OF SUCH NUMBER, SHAPE AND AREA AS MAY BE DEEMED BEST SUITED TO CARRY OUT THESE REGULATIONS, AND FOR EACH SUCH DISTRICT TO IMPOSE REGULATIONS AND RESTRICTIONS DESIGNATING THE KINDS OR CLASSES OF TRADES, INDUSTRIES, RESIDENCES OR OTHER PURPOSES FOR WHICH BUILDINGS OR OTHER STRUCTURES OR PREMISES MAY BE PERMITTED TO BE ERECTED, ALTERED OR USED; TO PROVIDE A METHOD FOR AMENDMENT, SUPPLEMENT, CHANGE, MODIFICATION AND REPEAL OF REGULATIONS, RESTRICTIONS AND BOUNDARIES; TO PROVIDE A PLANNING BOARD AND PRESCRIBE ITS POWERS AND DUTIES. MEETINGS AND PROCEDURES; TO PROVIDE A METHOD OF ADMINISTRATION; TO PROVIDE A BOARD OF ADJUSTMENT AND PRESCRIBE ITS POWERS AND DUTIES, TO PROVIDE SITE PLAN REVIEW REGULATIONS, APPLICABILITY AND EXEMPTIONS, AND APPEAL; AND TO PRESCRIBE PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE AND ALSO PROVIDE FOR ITS ENFORCEMENT AND REPEALING ALL ORDINANCES IN CONFLICT.

This Ordinance shall be known and cited as the "Zoning Ordinance of Miami Beach, Florida."

#### **SECTION 2**

#### **DECLARATION OF PURPOSE**

WHEREAS, by the provisions of Chapter 9837, No. 719 Special Laws of Florida, 1923, authority is conferred upon the City of Miami Beach to establish districts or zones within its corporate limits for the purpose of regulating the use of land and buildings, the height of buildings, the size of open spaces surrounding buildings and density of population, and

WHEREAS, the City Commission of the City of Miami Beach deems it necessary in order to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements, to make and promulgate such regulations with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout said City in accordance with a comprehensive plan:

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Miami Beach, Florida:

#### **SECTION 3**

#### DEFINITIONS

# 3-1 General Rules of Construction.

- A. The following general rules of construction shall apply to the regulations of this Ordinance:
  - 1. The singular number includes the plural and the plural the singular, unless the context clearly indicates the contrary.
  - 2. Words used in the present tense include the past and future tenses, and the future the present.
  - 3. The word "shall" is mandatory, the word "may" is permissive.
  - 4. The word "building" or "structure" includes any part thereof, and the word "building" includes the word "structure".
  - 5. The word "lot" includes the word "plot" or "parcel" or "tract" or "site".
  - 6. The words "used" or "occupied" include the words "intended", "designed" or "arranged" to be used or occupied.
  - 7. The words "required yards" or "minimum required yards" and "minimum yards" includes the word "setback".
  - 8. Words and terms not defined herein shall be interpreted in accord with their normal dictionary meaning and customary usage.

#### 3-2 Terms Defined.

- A. For the purpose of this Ordinance, certain terms and words are hereby defined.
  - 1. ACCESSORY BUILDING: A detached subordinate building or portion thereof, the use of which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use. Where there is no main building on the lot, an accessory building shall be considered as a main building for the purpose of the height, area, and bulk regulations.
  - 2. ACCESSORY USE: A subordinate use which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use.
  - 3. ADULT CONGREGATE LIVING FACILITY: Any State licensed institution, building or buildings, residence, private home, boarding home, home for the aged, or other place whether operated for profit or not, which undertakes

through its ownership or management to provide for a period exceeding 24 hours, one or more personal services for four or more adults, not related to the owner or administrator by blood or marriage, who require such services. A facility offering personal service for fewer than four adults shall be within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services. Personal services means services in addition to housing and food service, which include but are not limited to: personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, and assistance with securing health care from appropriate sources. Personal service does not include medical services. The language above shall not preclude an applicant from seeking conditional use approval contingent upon obtaining a valid State license.

- 4. AGGREGATE AREA OR WIDTH: The sum of two or more designated areas or widths to be measured, limited, or determined under these regulations.
- 5. ALCOHOLIC BEVERAGE: As defined by section 561.07 (7) Florida Statutes.
- 6. ALLEY: A public or private thoroughfare which affords only a secondary means of access to abutting property and which is not otherwise designated as a street.
- 7. APARTMENT: (See DWELLING UNIT.)
- 8. APARTMENT BUILDING: A building with or without resident supervision occupied or intended to be occupied by more than two families living separately and with separate cooking facilities in each unit.
- 9. APARTMENT HOTEL: A building containing both dwelling units and sleeping units, under resident supervision which maintains an inner-lobby through which all tenants must pass to gain access to the apartments or units.
- 10. AWNING: A detachable, rooflike cover, supported from the walls of a building for protection from sun or weather.
- 11. BALCONY; OPEN UNENCLOSED: A platform that projects from the wall of a building and is enclosed by a parapet or railing, the long side of which shall be open above the guard rail or parapet, and which serves only one unit.
- 12. BAR: Any place devoted to selling or dispensing and drinking alcoholic beverages, or any place where a sign is displayed indicating that alcoholic beverages are obtainable for consumption on the premises.
- 13. BASEMENT: (See SUBTERRANEAN)

- 14. BEACHFRONT PARK AND PROMENADE: A revegetation program including beach recreation structures which are primarily constructed of wood and located on the dune. It is designed to permit the passage of pedestrians over and across the dune in such a manner as to protect and stabilize the dune, vegetation, and natural beach.
- 15. BEER: An alcoholic fermented beverage made from malt and hops.
- 16. BLOCK: That portion of a street between two intersecting streets.
- 17. BOARDING HOUSE: Same as ROOMING HOUSE,
- 18. BUILDING WIDTH: The width of the lot left to be built upon after the required side yards are provided.
- 19. <u>BUILDING</u>: Any structure having a roof supported by columns or walls for the shelter or enclosure of persons or property.
- 20. BUILDING OFFICIAL: CODE ENFORCEMENT DIRECTOR.
- 21. BULKHEAD LINE: An official line therefore established by the City of Miami Beach and appropriately recorded - includes HARBOR LINE.
- 22. CABANA: A structure used as a bathhouse or a shelter directly associated with a swimming pool or deck.
- 23. CABARET: A bar which provides entertainment and which may or may not serve meals and which is accessory to a hotel, motor lodge or other building as provided in these regulations.
- 24. CAFE, OUTDOOR: A use associated with a restaurant that provides exterior table service which shall be adjacent and attached to the main structure.
- 25. CLINIC: An establishment where patients are not lodged overnight, but are admitted for examination and treated by a group of physicians or dentists practicing medicine together. The term does not include a place for the treatment of animals.
- 26. <u>CANOPY</u>: A detachable, rooflike cover, supported from the ground, or deck, or floor of a building, and from the walls of a building, for protection from sun or weather.
- 27. <u>CARPORT</u>: A canopy, rooflike structure, or shed, open on three sides and attached to the main building for the purpose of providing shelter for one or more motor vehicles.
- 28. CLUB, PRIVATE: Building and facilities or premises used or operated by an organization or association for some common purpose, such as, but not limited to, a fraternal, social, educational or recreational purpose, but not

including clubs organized primarily for profit or to render a service which is customarily carried on as a business. Such organizations and associations shall be incorporated under the Laws of Florida as a non-profit corporation and such corporation's major purpose shall not be for the purpose of serving alcoholic beverages to its members or others.

- 29. <u>COMMERCIAL VESSEL</u>: Every vessel which is used or operated for commercial purposes on the navigable waters of the city; that is either carrying passengers, carrying freight, towing, or for any other use.
- 30. COMPREHENSIVE PLAN: The document adopted by the City Commission pursuant to the Local Government Comprehensive Planning Act of 1975 (Chapter 163, Florida Statutes), presenting the principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the City.
- 31. CONDITIONAL USE: A use that would not be appropriate generally or without restriction throughout a particular Zoning District, but would, if controlled as to number, area, location, or relation to the neighborhood, be appropriate.
- 32. COURT: An open space which may or may not have direct street access and around which is arranged a single building or a group of related buildings.
- 33. DENSITY: For the purpose of this Ordinance density refers to the total number of dwelling units and/or sleeping units per gross acre of land excluding platted streets and rights-of-way and submerged land seaward from the established bulkhead line or where the bulkhead line is not established then seaward of the mean high water line. The number of permitted units per gross acre of land shall be rounded to the closest whole number computed in the density calculation. For example:

7.0 - 7.4 = 7 permitted units 7.5 - 7.9 = 8 permitted units

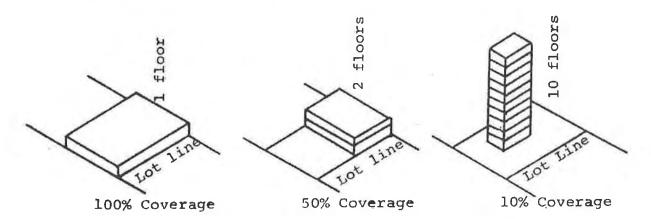
- 34. DORMITORY: A residence or building providing sleeping accommodations for students enrolled in a religious, educational, or business program who occupy rooms on a contractual basis generally corresponding to the length of the curriculum.
- 35. DRIVE-IN: A term used to describe an establishment designed or operated to serve a patron while seated in an automobile parked in an off-street parking space.
- 36. <u>DWELLING</u>: A building or portion thereof, designed or used exclusively for residential occupancy, but not including trailers, mobile homes, hotels, motels, motor lodges, boarding and lodging houses, tourist courts, or tourist homes.

- 37. <u>DWELLING</u>, <u>SINGLE-FAMILY</u>: A building designed for or occupied excusively by one family.
- 38. <u>DWELLING, MULTIPLE-FAMILY:</u> A building designed for or occupied by three or more families.
- 39. <u>DWELLING, TWO-FAMILY (DUPLEX):</u> A building designed for or occupied exclusively by two families.
- 40. <u>DWELLING</u>, <u>SINGLE-FAMILY DETACHED</u>: A single-family dwelling surrounded by yards or other open spaces on the same lot.
- DWELLING UNIT: A room, or group of rooms, occupied or intended to be occupied as separate living quarters by one family and containing independent cooking and sleeping facilities.
- being used, as a conveyance, upon the public streets and highways, containing a plumbing system suitable for connection to an external sewerage system and constructed in such a manner so as to permit occupancy thereof for dwelling or sleeping purposes.
- with the provisions of Florida Statutes 161.041 161.211 which represents the landward extent of the claims of the state in its capacity as sovereign titleholder of the submerged bottoms and shores of the Atlantic Ocean, Bays, Lagoons, and other tidal reaches thereof on the date of the recording of the survey as authorized in Statute 161.181.
- 44. FALLOUT SHELTER: A structure or portion of a structure intended to provide protection to human life during periods of danger from nuclear fallout, air raids, storms or other emergencies.
- 45. FAMILY: An individual or two or more persons related by blood or marriage, or a group of not more than three persons (excluding servants) who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling.
- 46. FILLING STATION: Any building, structure, or land used for the retail sale of motor vehicle fuels, oils, and accessories, and the servicing or repairing of minor parts and accessories, but not including major repair work, such as motor replacement, body and fender repair, or spray painting and excluding public garages.
- 47. FLOOR AREA: The sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of a projection, the area of which is included in the floor area calculation or from the centerline of walls separating two attached buildings. Floor area includes space used for:

- a. Elevator shafts or stairwells at each floor.
- b. Mechanical equipment.
- c. Penthouses.
- d. Attic floor space, whether or not a floor has been laid, providing structural headroom of seven feet, six inches or more.
- e. Exterior corridors from which access is gained to dwelling and/or sleeping units.
- f. Interior halls, enclosed balconies or interior mezzanines.
- g. Enclosed porches.
- h. Accessory buildings.
- i. Measured floor area less 180 square feet for a one-car capacity or 360 square feet for a two-car capacity private garage, attached or detached, accessory to a single-family or two-family dwelling.
- j. Any floor space used for residential use, no matter where located within the building.

However, the floor area of a building shall not include:

- a. Accessory water tanks or cooling towers.
- b. Uncovered steps.
- c. Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet, six inches.
- d. Terraces, breezeways, or open porches.
- e. Floor space used for required accessory off-street parking spaces.
- [. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private balconies.
- 48. FLOOR AREA RATIO: The floor area of the building or buildings on any lot divided by the area of the lot.



FLOOR AREA RATIO

Each example illustrated above has a floor area ratio of 1.0

- 49. GARAGE, COMMUNITY: A building or a portion thereof, used for indoor parking of private passenger vehicles by residents in the vicinity of said building.
- 50. GARAGE, MECHANICAL: Any premise where vehicles are mechanically repaired, rebuilt or constructed for commercial purpose.
- 51. GARAGE, PRIVATE: An accessory building designed or used for the parking of private passenger vehicles by the occupants of the building to which it is accessory.
- 52. GRADE: Grade shall be defined as the City sidewalk elevation at the center line of the property. If there is no sidewalk, the Public Works Department shall establish the City sidewalk elevations. The owner will submit a current survey and other required documents to the Public Works Department to aid in establishing sidewalk grade. The Public Works Department will be required to give final approval of grade.
- 53. GROUP HOUSE: (TOWN HOUSE) A group or row of more than two attached single-family dwellings, designed and built as a single structure, facing upon a street or place.
- 54. GROUND That portion of a building or structure which is equal to or less than 20 feet in height above sidewalk elevation and is utilized solely and exclusively for the purpose of parking, equipment, public spaces, access ways, swimming pools, cabanas, lobbies, shops and offices, but under no circumstances used for apartment units and/or sleeping units. Where a subterranean level area, as described herein is utilized, the ground level area shall be that portion of a building or structure above the subterranean level area and equal to or less than 20 feet in height above the sidewalk elevation.
- 55. GUEST HOUSE: Living quarters within a detached or semi-detached accessory building located on the same lot with the main building for use by temporary guests of the occupants of the premises, such quarters having no kitchen facilities or separate utility meters and not rented or otherwise used as a separate dwelling.
- HEIGHT OF BUILDING: The vertical distance from the grade to a roof. The highest point of the roof shall be determined by the following: (a) the highest point of a flat roof; (b) the deck line of a mansard roof; (c) the average height between eaves and ridge for gable, hip, and gambrel roofs; or (d) the average height between high and low points for a shed roof.
- 57. HELIPORT: An area excluding docks, used or to be used for landing or take-off of helicopters or other steep-gradient aircraft capable of hovering, and may include any or all of the area or buildings which are appropriate to accomplish these functions, including refueling and meets with FAA approval.

- 58. HELISTOP, PRIVATE: An area, excluding docks, used or to be used for landing or take-off of helicopters or other aircraft capable of hovering, which are owned or controlled by the owner or occupant of the premises or by guests or patrons of such owner or occupant; such private helistop does not afford refueling, maintenance, or repair facilities and all tie-down or hangar facilities are for the accommodation of a single aircraft.
- 59. HELISTOP, PUBLIC: An area excluding docks, used or to be used for landing or take-off of helicopters or other aircraft capable of hovering, which does not afford refueling, maintenance, or repair facilities, in which tie-down facilities alone are available and for the accommodation of a single aircraft, regardless of ownership or control, and which area is open to use of any helicopter or other aircraft capable of hovering.
- 60. HOSPITAL: A building or group of buildings having room facilities for overnight patients, used for providing services for the in-patient medical or surgical care of sick or injured humans, and which may include related facilities, central service facilities, and staff offices; provided, however, that such related facility must be incidental and subordinate to the main use and must be an integral part of the hospital operations. Hospital-related facilities include Nursing Homes and Convalescent Homes or Extended Care Facilities.
- 61. HOTEL: A building occupied or intended to be occupied generally by transient residents with all residents occupying sleeping units and with ingress and egress to and from all rooms made through an inside lobby and/or office supervised by a person in charge at all times.
- 62. HOUSEBOAT: A watercraft designed for dwelling purposes which is propelled by sail, motor or both.
- 63. HOUSEBARGE: A vessel or watercraft capable of being utilized as a residence floating on water, usually permanently moored, which does not have a system of propulsion.
- 64. INDIVIDUAL: Any person, corporation, firm, partnership, limited partnership, association, joint stock association or business entity.
- 65. LIQUOR: All distilled or rectified spirits, brandy, whiskey, rum, gin, cordials or similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing.
- 66. LIVE ABOARD: Any person who utilizes a vessel as a temporary or permanent place of abode or habitation. A person using a vessel during parts of a day for recreation or entertainment, but not sleeping shall not be deemed a live aboard.
- 67. LOADING SPACE: Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are

filled. Required off-street loading spaces are not to be included as offstreet parking spaces in the computation of required off-street parking spaces.

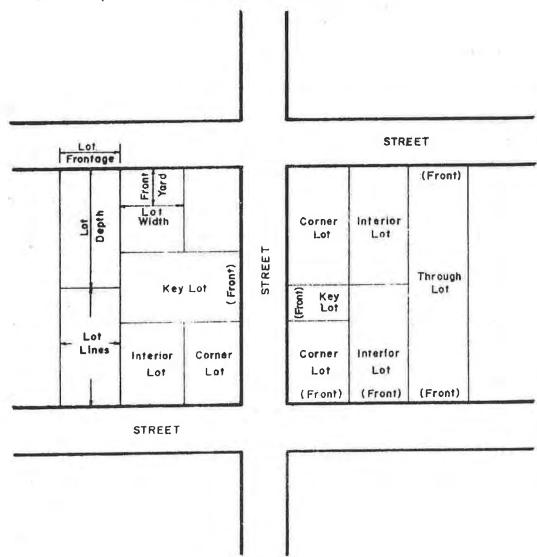
- 68. LOT: A parcel of land of at least sufficient size to meet minimum zoning requirements for use, minimum width, and area, and to provide such yards and other open spaces as are required in the Zoning Ordinance. Such lot shall have frontage on a public street, and may consist of:
  - a. A single lot of record;
  - b. A portion of a lot of record;
  - c. A combination of complete lots of record, and portions of lots of record; or of portions of lots of record;
  - d. A parcel of land described by metes and bounds.

Provided that, in case of division or combination of property, no residual lot or parcel shall be created that does not meet the aforementioned requirements of the Zoning Ordinance.

Lot of record shall mean a lot which is part of a subdivision, the map of which has been recorded in the Office of the Circuit Court Clerk, or a lot described by metes and bounds, the description of which has been recorded in the Office of the Circuit Court Clerk. (See SITE)

- 69. LOT AREA: The total horizontal area within the lot lines of the lot.
- 70. LOT, CORNER: A lot abutting upon two or more streets at their intersection.
- 71. LOT COVERAGE: The percentage of the total area of a lot that, when viewed directly from above, would be covered by all principal and accessory buildings and structures, or portions thereof; provided, however, that exterior unenclosed private balconies, awnings and porte-cocheres shall not be included in determining the building area.
- 72. LOT DEPTH: The mean horizontal distance between the front and rear lot lines.
- 73. LOT FRONT: The front of a lot shall be construed to be the portion nearest the street. For corner lots, the lot front shall be the narrowest portion abutting the street unless determined otherwise by the Code Enforcement Director.
- 74. LOT FRONTAGE: The distance for which the front lot line and the street line are coincident.
- 75. LOT, INTERIOR: A lot, other than a corner lot.

- 76. LOT, THROUGH (DOUBLE FRONTAGE): Any lot having frontages on two parallel or approximately parallel streets.
- 77. LOT, KEY: An interior lot having its side lot lines coincident on one or both sides with the rear lot lines of adjacent lots.
- 78. LOT LINE: The boundary line of a lot. On waterfront lots the established bulkhead line or, where the bulkhead line has not been established, the mean high water shall be construed to be a lot line.
- 79. LOT WIDTH: The horizontal distance between the side lot lines measured at the required front yard line and parallel to the front street line.



ILLUSTRATIONS OF LOT DEFINITIONS

- MARINA: A place for docking pleasure boats or commercial boats and providing services to the occupants thereof, including minor servicing and minor repair to boats, sale of fuel and supplies, and provision of lodging, food, beverages, commercial offices, and entertainment as accessory uses. A yacht club shall be considered as a marina, but a hotel, motel, or similar use, where docking of boats and provision of services thereto, is incidental to other activities shall not be considered a marina, nor shall boat docks accessory to a multiple dwelling where no boat-related services are rendered.
- 81. MARINE DOCKAGE: Accessory use only A place for docking of pleasure boats.
- 82. MEZZANINE: An intermediate floor in any story or room with floor area not exceeding one-third the total floor area in that room or story in which the mezzanine occurs and with clear height above or below the mezzanine floor construction lot less than seven feet.
- 83. MOBILE HOME: (See PORTABLE DWELLING UNIT)
- 84. MOTEL, MOTOR COURT, TOURIST COURT, OR MOTOR LODGE: A building occupied or intended to be occupied by transient residents traveling by automobile, with all residents occupying sleeping units and ingress or egress may or may not be through a common lobby or office that is supervised by a person in charge at all times.
- 85. NIGHT CLUB: A business operated to supply music or entertainment or both and which provides beverages and meals prepared on the premises, seating for not less than 40 persons at tables, a dance floor at least 300 square feet in area, and a total floor area of at least 2,200 square feet.
- 86. NONCONFORMING BUILDING OR STRUCTURE: A building or structure or portion thereof existing at the effective date of this Ordinance, or any amendment thereto, which was designed, erected or structurally altered in such a manner that characteristics of the building or structure, other than use regulations, do not meet the provisions of this Ordinance.
- 87. NONCONFORMING USE: The lawful use of land or a building or a portion thereof, which use does not conform with the use regulations of the district in which it is located.
- 88. NURSERY, DAY: Any establishment providing care of children not members of the resident family during the day, but not overnight, including nurseries for children of working mothers, kindergartens, and nursery schools for children under the minimum age for admission to public schools, or for after-school care of school children and other establishments of a similar nature.
- 89. NURSING HOME: A State Licensed facility providing long-term care of the chronically ill, the physically disabled, and the aged who are unable to move about without the aid of another person or device.

- OPEN SPACE: That part of a lot, including courts and yards which: 90.
  - is open and unobstructed from its lowest level upward, and

is accessible to all residents on the lot without restrictions except as b.

may be required for safety, and

- is not occupied by off-street parking, streets, drives, or other C. surfaces for vehicles, except as may be required to provide one parking space per dwelling unit on the lot. Open space shall, in general, be available for entry and use by the occupants of the building or buildings on the premises, but may include space located and treated to enhance the amenity of the development by providing landscaping, screening for the benefit of the occupants or neighboring areas, or a general appearance of openness. Open space may include water surfaces that comprise not more than 10 percent of total open space.
- Constitutes a set of regulations which are OVERLAY DISTRICT: 91. superimposed upon and supplement, but not replace, the underlying zoning district and regulations otherwise applicable to the designated areas.
- OVERLAY ZONE: The designation of a site within an Overlay District. 92.
- Open, or Enclosed, Non-Commercial PARKING LOT, AUTOMOBILE: 93. provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
- PARKING LOT, COMMERCIAL: Any lot upon which space for the parking 94. of vehicles is provided for or offered to the general public for compensation.
- PARKING LOT, STORAGE: A landscaped at grade all weather surface or 95. gravel area, not in a street or alley, with a minimum area of 7,500 square feet and a maximum area not to exceed 45,000 square feet that is completely screened from public view through the placing of landscaped materials and a solid wood fence or decorative masonry wall at grade level; and, partially screened, from public view from adjoining properties at elevations above grade, through the use of landscaped materials. Screening and landscaping of the street, alley, interior, and rear perimeters shall be pursuant to Section 9-5, I-1 of this Ordinance. There shall be a minimum five foot landscaped area between the fence or decorative mansonary wall and the street or alley. Such landscaped areas shall include an underground irrigation system with sprinkler heads located at 10 foot centers or hose bibs at 50' intervals. The interior of the lot shall include at least one tree on each and every individual 1000 square foot area or portion thereof. A 4 x 4 unpaved ground area shall surround the tree at the base of the trunk and shall contain pervious ground material. A concrete curb shall surround each 4 x 4 space. The use of such areas shall be exclusively reserved for the temporary storage of new passenger vehicles provided no vehicle shall

- exceed 2½ tons in gross weight. Signs shall only be permitted in commercial districts and in accordance with Section 11. Hours of operation shall be 7:30 a.m. to 6:00 p.m.
- 96. PARKING SPACE, OFF-STREET: An all-weather surfaced area not in a street or alley and having an area as required by Section 9-5 of this Ordinance exclusive of driveways, permanently reserved for the temporary storage of one automobile and connected with a street or alley by an all-weather surfaced driveway which affords ingress and egress for an automobile without requiring another automobile to be moved.
- 97. PEDESTAL: That portion of a building or structure which is equal to or less than 50 feet in height above sidewalk elevation. Where a ground level and/or subterranean level area, as described herein, is utilized, the pedestal level area shall be that portion of a building or structure above the ground level area or subterranean level if no ground level is utilized, and equal to or less than 50 feet in height above the sidewalk elevation. No pedestal portion of a building shall contain more than five (5) floors, except in those cases where the maximum clear height between finished floor and finished ceiling for all floor levels except garage levels is 8'0", provided the minimum height from finished floor to finished ceiling for garage levels is 7'6".
- 98. PLANNING DIRECTOR: The Director of the Planning Department of the City of Miami Beach, Florida.
- 99. PLANNING BOARD: The Planning Commission of the City of Miami Beach, Florida.
- PLEASURE CRAFT OR PLEASURE BOAT: A vessel not within the classification of a commercial vessel, housebarge, or houseboat and which is designed primarily for the purpose of movement over a body of navigable water and which is equipped with a means of propulsion, in operating condition, which is appropriate to the size and type of vessel.
- 101. PREMISES: A lot, together with all buildings and structures thereon.
- PROMENADE LINKAGE: A structure constructed of wood which functions as a stairway or ramp connecting the upland property to the Beachfront Park and Promenade. Said structure shall conform to the design specifications for the Beachfront Park and Promenade and shall be located at points previously established by the Planning Department. All such structures shall conform to the requirements of the Department of Natural Resources, Division of Beaches.
- 103. RESIDENTIAL DISTRICT: Districts RS-1 through RM-125.
- RESTAURANT: An establishment where refreshments or meals may be purchased by the public and where the primary business is the serving of food to be consumed on or off the premises.

- ROOMING HOUSE: A building other than an apartment, apartment hotel, hotel, motel, or motor lodge where, for compensation and by prearrangement for definite periods, lodging, meals, or lodging and meals are provided for three or more persons but not exceeding 20 persons.
- 106. SAFETY BARRIERS: Safety barriers shall take the form of a screened-in patio, a wooden or wire fence, a stone or concrete block wall or other materials, so as to enable the owner to blend the same with the style or architecture planned or in existence on the property.

The minimum height of the safety barrier shall be not less than four feet and shall be erected either around the swimming pool or around the premises or a portion thereof thereby enclosing the area entirely, thus prohibiting unrestrained admittance to the enclosed area.

Where a wooden type fence is to be provided, the boards, pickets, louvers, or other such members shall be spaced, constructed and erected so as to make the fence nonclimable and impenetrable.

The walls, whether of the stone or block type, shall be so erected to make them nonclimable.

Where a wire fence is to be used, it shall be the two inch chain like or diamond weave nonclimable type, or of an approved equal, with a top rail and shall be of heavy galvanized material.

Gates, where provided, shall be of the spring lock type so that they shall automatically be in a closed and fastened position at all times. They shall also be equipped with a gate lock and shall be locked when the swimming pool is not in use.

- 107. SELF-SERVICE LAUNDRY: A business establishment equipped with customer operated automatic washing machines having a capacity per unit not exceeding twenty-five (25) pounds of dry clothing.
- 108. SERVANTS' QUARTERS: Living quarters within a portion of a main building or in an accessory building located on the same lot with the main building, used for servants employed on the premises, such quarters having no kitchen facilities or separate utility meters, and not rented or otherwise used as a separate dwelling unit.
- 109. SERVICE STATION: (See FILLING STATION)
- SIDEWALK CAFE: A use associated with a restaurant that has exterior table service which is not attached or adjacent to the main structure and where prepared food and/or beverages is delivered to and/or placed on warming and/or cooling facilities for consumption on the premises. It is characterized by shade structures limited to covered porches, canvas, umbrellas, wood trellises, wood gazebos, or chickees which are predominantly open on all sides and in which tables and chairs are either wholly or partially placed under.

- 111. SIGN: An identification, description, illustration, or device which is affixed to or represented directly or indirectly upon a building, structure, or land and which directs attention to a place, activity, product, person, institution, or business.
- SIGN AREA: That area within a line including the outer extremities of all letters, figures, characters, and delineations, or within a line including the outer extremities of the framework or background of the sign, whichever line includes the larger area. The support for the sign background, whether it be columns, a pylon, or a building or part thereof, shall not be included in the sign area. Only one side of a double-faced sign shall be included in a computation of sign area. The area of a cylindrical sign shall be computed by multiplying one-half of the circumference by the height of the sign.
- 113. SIGN, AWNING: Any sign painted, stamped, perforated or stitched on an awning, canopy, roller curtain or umbrella.
- SIGN, DETACHED: A sign not attached to or painted on a building but which is affixed to the ground. A sign attached to a flat surface such as a fence or wall not a part of the building, shall be considered a detached sign.
- 115. SIGN, DOUBLE-FACED: A sign with two parallel, or nearly parallel, faces, back to back and located not more than 24 inches from each other.
- 116. SIGN, ESTABLISHMENT-IDENTIFICATION: A sign which pertains only to the use of a premises and which, depending upon the zoning district in which it is located, contains any or all of the following information:
  - a. The name of the owner, occupant, and/or management of the use.
  - b. The address of the use.
  - c. The kind of business and/or the brand name of the principal commodity sold on the premises.
  - d. Other information relative to a service or activity involved in the conduct of the business, but not including the names of subsidiary products except where specifically permitted by the provisions of this Ordinance.
- 117. SIGN, FLASHING: An illuminated sign on which the artificial or reflected light is not maintained stationary and constant in intensity and color at all times when in use. Any revolving illuminated sign shall be considered a flashing sign.
- 118. SIGN, FLAT: Any sign attached to, and erected parallel to, the face of, or erected or painted on the outside wall of a building and supported throughout its length by such wall or building and not extending more than 12 inches from the building wall.

- 119. SIGN, GENERAL ADVERTISING: Any sign which is not an accessory sign or which is not specifically limited to a special purpose by these regulations.
- 120. SIGN, ILLUMINATED: Any sign designed to give forth artificial light or designed to reflect light from one or more sources of artificial light erected for the purpose of providing light for the sign.
- 121. SIGN, MARQUEE: Any sign attached to or hung from a marquee. For the purpose of this Ordinance, a marquee shall be as defined in the Code of the City of Miami Beach.
- 122. SIGN, PROJECTING: A sign which is attached to and projects more than 12 inches from the face of a wall of a building. The term projecting sign includes a marquee sign. A projecting sign which extends more than 36 inches above a roof line or parapet wall shall be designated as a roof sign.
- 123. SIGN, ROOF: A sign which is fastened to and supported by or on the roof of a building or which extends over the roof of a building or a projecting sign which extends more than 36 inches over or above the roof line or parapet wall of a building.
- SITE: A parcel of land considered as a unit or capable of being occupied by a use permitted in this Ordinance. A site which is used to calculate setbacks, density, or floor area for a given use occupying such site, cannot be subdivided and sold or leased or otherwise utilized except as permitted by the Zoning Ordinance. A site must also possess a continuous or unbroken boundary that is, a site cannot be divided by a public street, right-of-way, private street, or waterway.
- 125. SITE PLAN: A drawing illustrating a proposed development and prepared in accordance with the specifications of Section 7.
- 126. SLEEPING UNIT: A room, or group of rooms, with one access to the corridor, intended for rental to transients on a day-to-day, week-to-week, or month-to-month basis, not intended for use or used as a permanent dwelling and without cooking facilities.
- 127. STORY: That portion of a building, other than a basement or mezzanine, included between the surface of any floor and the surface of the floor next above it; or, if there be no floor next above it, then the space between such floor and the ceiling next above it.
- 128. STREET: A public thoroughfare which affords the principal means of access to abutting property.
- 129. STREET LINE: The right-of-way line of a street.
- 130. STRUCTURAL ALTERATION: Any change, except for repair or replacement, in the supporting members of a building or structure, such as bearing walls, columns, floor or roof joists, beams or girders.

- 131. STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground. Among other things, structures include buildings, walls, fences, signs and screen enclosures.
- SUBTERRANEAN: That portion of a building or structure which is equal to or less than 7 feet in height above sidewalk elevation and is utilized solely and exclusively for the purpose of parking and equipment. Where a subterranean area abuts a side lot line, open and unencumbered access shall be provided from the front yard area to the roof or deck of such area by means of a ramp or stairs.
- 133. SWIMMING POOL: COMMERCIAL: A commercial pool is any conventional pool, spa type pool, wading pool, or special purpose pool, as per State of Florida, Department of Health and Rehabilitation Standards, serving any type of structure or group of structures of four (4) or more dwelling units.
- 134. TOURIST RESIDENCE: A dwelling containing one dwelling unit for use of the manager and a number of sleeping units or suites of rooms, where lodging is provided with or without meals.
- 135. TOWER: That portion of a building or structure greater than 50 feet in height.
- 136. TOWNHOME RESIDENTIAL DEVELOPMENT: A grouping of single family attached or detached units on one building site. Each townhome unit shall have separate ingress and egress and independent electrical and water utilities.
- 137. TRAILER: Any portable structure or vehicle designed so as to be used as a conveyance upon the public streets and highways, containing a self-contained plumbing system which is not connected to an external sewerage system and constructed in such a manner so as to permit the occupancy thereof for dwelling or sleeping purposes.
- 138. <u>USE:</u> Any purpose for which buildings or other structures or land may be arranged, designed, intended, maintained, or occupied; or any occupation, business, activity, or operation carried on or intended to be carried on in a building or other structure or on land.
- VARIANCE: A variance is a relaxation of certain regulations contained in this Ordinance where such variance shall not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. As used in this Ordinance, a variance may be authorized only for height, area, size of structure, size of yards and open spaces, and off-street parking and loading requirements. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining zoning district. (Refer to Section 13)

- 140. <u>VENDOR:</u> An individual who has received a City of Miami Beach occupational license to sell, offering for space or keeping for sale with the intention of selling a product.
- WINE: The product of the normal alcoholic fermentation of the juice of fresh, sound, ripe fruit, with the usual cellar treatment and necessary additions to correct defects due to climatic saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-four (24) per cent by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which same was predominantly produced or as artificial or imitation wine.
- WATERWAY: Any body of water, including any creek, canal, river, lake, bay, or ocean, or any other body of water, natural or artificial except a swimming pool or ornamental pool located on a single lot.
- 143. YARD: An open area, other than a court, on the same lot with a building unoccupied and unobstructed from the ground upward, except as otherwise provided in these regulations.
- 144. YARD, FRONT: A yard across the full width of the lot extending from the front line of the building to the front street line of the lot.
- 145. YARD, REAR: A yard extending the full width of the lot between the main building and the rear lot line.
- 146. YARD, REQUIRED: The minimum distance allowed between a lot line and a building or structure excluding allowable encroachments.
- 147. YARD, SIDE: A yard between the building and the adjacent side of the lot, and extending from the front yard to the rear yard thereof.

#### **SECTION 4**

#### ZONING DISTRICTS

# 4-1 Districts Established.

A. To achieve the purposes of this Ordinance and of Part I, Division II, Article VI, Related Laws, The Code of the City of Miami Beach, Florida, and regulate the use of land, water and buildings, height and bulk of buildings and other structures, and population density and open space, the City is hereby divided into the following districts:

SYMBOL	DISTRICT
RS-1	Single-Family Residential
RS-2	Single-Family Residential
R5-3	Single-Family Residential
RS-4	Single-Family Residential
RM-14	Multiple-Family Low Density
RM-24	Multiple-Family Medium Low Density
RM-60	Multiple-Family Medium Density
RM-100	Multiple-Family Medium High Intensity
RM-125	Multiple-Family High Density
C-1	Neighborhood Business
C-2	General Office
C-3	Central Business
C-4	Business
C-5	General Business
C-6	Intensive Commercial
RH	Hospital District
MR	Marine Recreational
MU	Municipal Use
PUD	Planned Unit Development
HM	Hotel-Motel District
CCC	Convention Center District
MD-I	Marine District
MD-II	Marine District
NH	Nursing Home
R-PSI	Residential Medium-Low Density
R-PS2	Residential Medium-Low Density
R-PS3	Residential Medium-High Density
R-PS4	Residential High Density
C-PSI	Commercial Limited Mixed Use
C-PS2	Commercial General Mixed Use
C-P53	Commercial Intensive Mixed Use

# 4-2 District Map.

A. The locations of these Districts are shown on a map designated as the City of Miami Beach Zoning District Map, dated and signed by the Mayor and City Clerk

of the City of Miami Beach, upon adoption. This Zoning District Map, together with all notations, dimensions, references and symbols shown thereon, pertaining to such districts, is hereby adopted by reference and declared to be as much a part of this Ordinance as if fully described herein. Such map shall be available for public inspection in the office of the Code Enforcement Director and any later alterations to this map, adopted by amendment as provided in this Ordinance, shall be similarly dated, filed, and made available for public reference.

# 4-3 Interpretation of District Boundaries.

A. A district name or symbol shown on the district maps indicates that the regulations pertaining to the district designated by that name or letter-number combination extend throughout the whole area in the municipality bounded by the district boundary lines within which such name or symbol is shown or indicated, except as otherwise provided by this section.

Where uncertainty exists with respect to the boundaries of the various districts as shown on the map accompanying and made a part of this Ordinance, the following rules apply:

- 1. In cases where a boundary line is given a position within a street or alley, easement, canal, navigable or non-navigable stream, it will be deemed to be in the center of the right-of-way of the street, alley, easement, canal, or stream, and if the actual location of such street, alley, easement, canal, or stream varies slightly from the location as shown on the district map, then the actual location controls.
- 2. The boundary line adjacent to Biscayne Bay is the established bulkhead line.
- The boundary line adjacent to the Atlantic Ocean is the Erosion Control Line as determined in accordance with Florida Statutes. Except as provided in Section 30, the area of land between the established Bulkhead Line and the Erosion Control Line shall not be used in any computation for purposes of determining compliance with the Miami Beach Zoning Ordinance. Therefore, the established bulkhead line shall be the official line of demarkation for computing standards for uses and structures located west of the said line. Structures located east of the established bulkhead line and extending to the Erosion Control Line shall be considered similar to an accessory use to the upland property and allowed only pursuant to the provisions of Section 30 Dune Overlay Regulations.
- 4. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries will be construed to be the lot lines, and where bounded approximately by lot lines, the lot lines will be construed to be the boundary of such districts unless the boundaries are otherwise indicated on the map or by ordinance.

- 5. If a parcel of property is crossed by a zoning district boundary and thus lies in two zoning districts, the district boundary shall be treated as if it were a lot line separating the two separately zoned parcels.
- 6. The east boundary line of the Dune Overlay Zone shall be the Erosion Control Line as established by the appropriate regulatory agencies and the west boundary line shall be the established Bulkhead Line. The north and south boundary line shall be the City limits.

#### **SECTION 5**

#### **GENERAL PROVISIONS**

## 5-1 Compliance with Regulations Required.

Except as hereinafter provided:

- A. No land or water area may be used except for a purpose permitted in the district in which it is located.
- B. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, nor shall any building or part thereof, be used except for a use permitted in the district in which the building is located.
- C. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered to exceed the height limit herein established for the district in which the building is located.
- D. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the area regulations of the district in which the building is located.
- E. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, except in conformity with the off-street parking and loading regulations of the district in which the building is located.
- F. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the floor area ratio, or open space ratio regulations of the district in which it is located.
- G. No building shall be erected or moved except in conformity with the established flood criteria applicable to the site on which the building is to be located.
- H. No building permit shall be issued for any lot or site that does not meet the requirements of the definition of lot as stated in this Ordinance.

# 5-2 Encroachment; Reduction of Lot Area.

A. The minimum yards, parking space, open spaces, including lot area per family required by these regulations for each and every building existing at the time of the passage of these regulations or for any building hereafter erected, shall not be encroached upon or considered as required yard or open space for any other building, except as hereinafter provided, nor shall any lot area be reduced below the requirements of these regulations.

# 5-3 Accessory Buildings, Prior Construction of.

A. No accessory building shall be constructed upon a lot until the construction of the main use building has been actually completed or construction of main and accessory buildings is concurrent. No accessory building shall be used unless the main use building on the lot is also being used.

## 5-4 Building Under Construction.

A. Any building or structure for which a lawful building permit has been issued, and the construction of which has been started prior to the Effective Date of this Ordinance, may be completed and used in accordance with the plans and specifications upon which said building permit was granted, provided such construction is completed within one (1) year after the Effective Date of this Ordinance.

## 5-5 Outstanding Permits.

- A. Where, at the Effective Date of this Ordinance, there are outstanding valid building permits, authorizing the construction of buildings, structures, additions or alterations, the use of construction of which do not conform to the requirements of this Ordinance, such permits shall be void unless actual construction work, excluding grading or excavating, is substantially underway on that date.
- B. Where, at the Effective Date of this Ordinance, there are outstanding valid permits, authorizing the use of land or buildings without construction work, and where such use is not permissable under the terms of this Ordinance, such permit shall be void unless the use is actually in operation on that date.

## 5-6 Tractor-trailer, Trailer, Portable Dwelling Units.

A. No tractor-trailer, truck, semi-trailer, trailer or portable dwelling units shall be permitted on any parcel of land except for purposes of loading and unloading, except where provided elsewhere in this Ordinance.

## 5-7 Store Enclosures.

A. In all use districts designated in this Ordinance, the sale, or exposure for sale or rent, of any personal property, including merchandise, groceries, perishable foods, such as vegetables and fruits, is prohibited, unless such sale, or exposure for sale, is made from permanent, substantial, and permanently structurally enclosed buildings or structures; provided, however, that nothing herein contained shall be deemed applicable to gasoline stations, automobile service stations or repair shops, revocable permits or beach concessions operated or granted by the City, or newspaper stands, wherever such uses are otherwise permissible."

## 5-8 Division of Lot; Lot-Split.

A. No lot, plot or parcel of land, whether improved or unimproved, designated by number, letter or other description in a plat of a subdivision, shall be further divided or split, for the purpose, whether immediate or future, or transfer of ownership or development, without prior review and approval by the Director of the Code Enforcement Department.

- 5-9 Relationship to the Comprehensive Plan.
  - A. All regulations contained herein and the maps attached thereto shall be amended, supplemented or changed only in compliance with Chapter 163 of the Florida Statutes as pertains to comprehensive planning activities.

#### **SECTION 6**

#### SCHEDULE OF DISTRICT REGULATIONS

## 6-1 RS-1, RS-2, RS-3, and RS-4 Single Family Residential Districts.

- A. <u>DISTRICT PURPOSE</u>. These Districts are designed to foster and protect Miami Beach's single-family residential neighborhoods. The four Districts vary only in minimum lot area and lot width requirements.
- B. <u>USES PERMITTED</u>. No land, water or structure may be used, in whole or in part, except for one or more of the following uses:
  - Single-family detached dwelling.
  - 2. The following uses may be permitted as a conditional use:
    - a. Recreational facilities such as playground, playfield, park, beach or golf course.
    - b. Municipal buildings and uses.
    - c. Temporary use for a period not to exceed 15 days.
  - 3. Accessory uses for above uses.

#### C. MINIMUM LOT AREA.

- 1. RS-1 30,000 square feet.
- 2. RS-2 18,000 square feet.
- 3. RS-3 10,000 square feet.
- RS-4 6,000 square feet.

#### D. MINIMUM LOT WIDTH.

- RS-1 100 feet.
- 2. RS-2 75 feet.
- 3. RS-3 60 feet.
- 4. RS-4 50 feet.

#### E. MINIMUM YARDS.

- 1. Front: 20 feet.
- 2. Side: The sum of the side yard width shall be at least 25% of the lot width but no side yard adjacent to a street shall be less than 15 ft. and no interior side yard shall be less than 7.5 ft. except that where an existing building has at least a minimum 5 ft. interior side yard setback be allowed to follow the existing building line for said building. The maintenance of the minimum required 5 ft. side yard setback shall apply to the linear extension of a single story building or the construction of a second floor addition to existing single family buildings.
- 3. Rear: 15% of the lot depth, but not less than 20 feet.

- F. MAXIMUM BUILDING HEIGHT: 30 feet.
- G. MINIMUM FLOOR AREA: 1,800 square feet.
- 6-2 RM-14 Multiple-Family Low Density District.
  - A. <u>DISTRICT PURPOSE</u>: This is a low density, low rise, single and multiple family, permanent residence District.
  - B. <u>USES PERMITTED</u>. No land, water or structure may be used, in whole or in part, except for one or more of the following uses:
    - 1. Apartment building.
    - 2. Group houses.
    - 3. One- or two-family dwelling.
    - 4. Townhome Residential Development pursuant to Section 26: Townhome Residential Development Regulations.
    - 5. The following uses may be permitted as a conditional use:
      - a. Church, synagogue and temple.
      - b. Municipal buildings and uses.
      - c. Public and governmental buildings and uses.
      - d. Public utilities or public service uses, structures and appurtenances thereto.
      - e. Publicly owned and operated recreational facility, playground, playfield, park and beach.
      - f. School, elementary or high, having a curriculum substantially equivalent to public schools or comparable grades and having approval of the State Department of Education.
      - g. Temporary use for a period not to exceed 15 days.
    - 6. Accessory uses for above uses.
  - C. MINIMUM LOT AREA. 6,000 square feet.
  - D. MINIMUM LOT WIDTH. 50 feet.
  - E. MINIMUM YARDS. As provided in Section 8.

- F. MAXIMUM DENSITY. 14 units per acre.
- G. MAXIMUM BUILDING HEIGHT. 30 feet.
- H. MINIMUM FLOOR AREA.
  - 1. Single-family detached dwelling: 1,800 square feet.
  - 2. Two-family dwelling and group house: 900 square feet per dwelling unit.
  - 3. Apartment building: 750 square feet per dwelling.
- 6-3 RM-24 Multiple Family Medium Low Density District.
  - A. <u>DISTRICT PURPOSE</u>: This is a medium density low-rise, single and multi-family residential district primarily designed to encourage and enhance family residence. The district is intended to produce an environment of desirable character and result in a superior quality of housing, open space and parking areas.
  - B. <u>USES PERMITTED</u>: No land, water or structure may be used, in whole or in part, except for one or more of the following uses:
    - 1. Apartment building.
    - 2. Group houses.
    - 3. One or two-family dwellings.
    - 4. Townhome Residential Development pursuant to Section 26: Townhome Residential Development Regulations.
    - 5. The following uses may be permitted as a conditional use:
      - a. Automobile parking lot, open, non-commercial.
      - b. Marine dockage.
      - c. Public and governmental buildings and uses.
      - d. Publicly owned and operated recreation facility, playground, playfield and park.
      - e. Public utilities or public service uses, structures and appurtenances.
      - f. Temporary use for a period not to exceed 15 days.
    - Accessory uses for the above uses.
  - C. MINIMUM LOT AREA: 6,000 square feet.

- D. MINIMUM LOT WIDTH: 60 feet.
- E. MINIMUM YARDS: As provided in Section: 8.
- F. MAXIMUM BUILDING HEIGHT: 30 feet.

#### G. MINIMUM FLOOR AREA:

- 1. Single family detached dwelling: 1,800 square feet.
- 2. Two family dwelling and group house: 900 square feet per dwelling unit.
- 3. Apartment building: 750 square feet per dwelling.
- H. MAXIMUM DENSITY: 24 units per acre.

### 6-4 PUD Planned Unit Development Residential District.

A. <u>DISTRICT PURPOSE</u>. PUD District is intended for a transitional area where there is a need for allowing flexibility as to the arrangement of buildings and a need to regulate access and circulation in order to preserve the character and natural habitat of an existing neighborhood. Large sites best lend themselves to this type of development and incentives have been provided to encourage assembly of properties. The proposed development must be designed to produce an environment of desirable character and in harmony with the particular area. The provisions herein are intended to result in a superior quality of housing and open space relationships, high standards for recreational areas, parking areas and service areas. The objectives can only be defined in general terms and their realization can be obtained only by review and approval of the development plans for each development in the PUD Residential District.

#### B. USES PERMITTED.

- 1. Single family detached dwelling.
- 2. The following uses are subject to site plan approval:
  - a. Adult Congregate Living Facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
  - b. Apartment building.
  - Automobile parking lot, open, or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
  - d. Churches, synagogues and temples.

- e. Group house.
- f. Municipal buildings and uses.
- g. Private club.
- h. Two family dwelling.
- i. Townhome Residential Development Pursuant to Section 26: Townhome Residential District Regulations.
- j. Temporary use for a period not to exceed 15 days.
- 3. Accessory uses for above.

## C. MINIMUM LOT AREA.

I. PUD: 7,000 square feet.

#### D. MINIMUM LOT WIDTH.

1. PUD: 50 feet.

## E. MINIMUM YARDS.

- 1. PUD: Front, side and rear yard minimums shall be determined according to specific site plans but shall not be less than those specified for MF-10 unless approved otherwise.
- F. MAXIMUM HEIGHT. None.

#### G. MINIMUM FLOOR AREA.

- 1. Single Family detached dwelling: 800 square feet per dwelling unit.
- 2. Two family dwelling and group house: 800 square feet per dwelling unit.
- 3. Apartment building: 800 square feet per unit.
- 4. Adult congregate living facility: 200 square feet per unit.

#### H. MAXIMUM FLOOR AREA RATIO. 2.0

#### I. MAXIMUM LOT COVERAGE.

1. PUD: 50%.

## J. MAXIMUM DENSITY.

1. PUD: Density is determined by size of the site as specified below:

LOT AREA 7,500 15,000 22,500 30,000/Over
UNIT/ACRE 40 50 55 60

### K. SITE PLAN APPROVAL.

- 1. When required a site plan shall be submitted, meeting the requirements of Section 14, and other information as may be required by the specific project.
- 2. Procedures: Approval of site plan shall be in accordance with Section 7-1, D, as applied to conditional uses.

## 6-5 RM-60 Multiple Family Medium Density District.

- A. <u>DISTRICT PURPOSE</u>. This is primarily a residential apartment district, which is not intended to provide tourist lodging accommodations.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following uses:
  - 1. Apartment building.
  - 2. Group houses.
  - One- or two-family dwelling.
  - 4. Rooming house.
  - 5. Community garage.
  - 6. Townhome Residential Development Pursuant to Section 26: Townhome Residential District Regulations.
  - 7. The following uses may be permitted as a conditional use:
    - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
    - b. Automobile parking lot, open, or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
    - c. Camp, day or boarding.

- d. Church, synagogue and temple.
- e. College, junior college, or institution of higher learning.
- f. Day nursery.
- g. Institution, educational or philanthropic, including museum and art gallery.
- h. Marine dockage.
- i. Municipal buildings and uses.
- i. Private club.
- k. Public and governmental buildings and uses.
- 1. Publicly owned and operated recreation facility, playground, playfield, park and beach.
- m. Public utilities or public service uses, structures and appurtenances.
- n. School, elementary or high, having a curriculum substantially equivalent to public schools of comparable grades and having approval of the State Department of Education.
- o. Storage parking lots.
- p. Temporary use for a period not to exceed 15 days.
- 8. Accessory use for above uses.
- C. MINIMUM LOT AREA. 5,000 square feet.
- D. MINIMUM LOT WIDTH. 50 feet.
- E. MINIMUM YARDS. As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA PER UNIT.
  - 1. Multiple family buildings other than adult congregate living facilities:
    - a. Dwelling Unit Shall have a minimum of 400 square feet.
    - b. Sleeping Unit Shall have a minimum of 400 square feet.
  - 2. Adult congregate living facility: 200 square feet per unit.

## H. MAXIMUM FLOOR AREA RATIO.

- 1. 1.52 for sites comprised of one platted lot.
- 2. 2.00 for sites comprising two or more platted lots.
- MAXIMUM DENSITY. 60 units per acre.

#### 6-6 RM-100 Multiple Family Medium High Density District.

- A. <u>DISTRICT PURPOSE</u>. This is a hotel and apartment district, which accommodates both long term residents and tourists.
- B. <u>USES PERMITTED</u>. No land, water or structure may be used in whole or in part, except for one or more of the following permitted uses:
  - 1. Apartment building and apartment hotel.
  - 2. Group houses.
  - 3. Hotel, motel and tourist residence.
  - 4. One- or two-family dwelling.
  - 5. Community garage.
  - 6. The following uses may be permitted as a conditional use:
    - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
    - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
    - c. Bus terminal
    - d. Camp, day or boarding.
    - e. Church, synagogue and temple.
    - f. College, junior college, or institution of higher learning.
    - g. Day nursery.
    - h. Institution, educational or philanthropic, including museum and art gallery.

- i. Marina.
- j. Marine dockage.
- k. Municipal buildings and uses.
- 1. Private club.
- m. Public and governmental buildings and uses.
- n. Publicly owned and operated recreation facility, playground, playfield, park and beach.
- o. Public utilities or public service uses, structures and appurtenances.
- p. School, elementary or high, having a curriculum substantially equivalent to public schools of comparable grades and having approval of the State Department of Education.
- q. Temporary use for a period not to exceed 15 days.
- 7. Accessory use for above uses.
  - a. Any accessory use in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.
- C. MINIMUM LOT AREA. 5,000 square feet.
- D. MINIMUM LOT WIDTH. 50 feet.
- E. MINIMUM YARDS. As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA
  - 1. Multiple family buildings other than adult congregate living facilities:
    - a. Dwelling Unit Shall have a minimum of 400 square feet.
    - b. Sleeping Unit Shall have a minimum of 400 square feet.
  - 2. Adult congregate living facility: 200 square feet per unit.
- H. MAXIMUM FLOOR AREA RATIO. 3.0
- I. MAXIMUM DENSITY. 100 units per acre. Hotels and motels shall be permitted to increase their density by 40%.

## 6-7 RM-125 Multiple Family High Density District.

- A. <u>DISTRICT PURPOSE</u>. This is a high-rise, high density tourist lodging and entertainment district.
- B. <u>USES PERMITTED</u>. No land, water or structure may be used in whole or in part, except for one or more of the following permitted uses:
  - 1. Apartment building and apartment hotel.
  - 2. Group houses.
  - 3. Hotel, motel and tourist residence.
  - 4. One or two-family dwelling.
  - 5. Community garage.
  - 6. Night club, without exterior entrances or exits, accessory to a hotel or motel containing 100, or more, sleeping units.
  - 7. Restaurant, with or without an accessory bar, but not a drive-in restaurant, without exterior entrances or exits, the accessory to a hotel or motel containing 100, or more, sleeping units.
  - 8. The following uses may be permitted as a conditional use:
    - a. Adult congregate living facility subject to the following mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
    - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
    - c. Bus terminal.
    - d. Camp, day or boarding.
    - e. Church, synagogue and temple.
    - f. College, junior college, or institution of higher learning.
    - g. Day nursery.
    - h. Institution, educational or philanthropic, including museum and art gallery.
    - Marina.

- j. Marine dockage.
- k. Municipal buildings and uses.
- 1. Private club.
- m. Public and governmental buildings and uses.
- n. Publicly owned and operated recreation facility, playground, playfield, park and beach.
- o. Public utilities or public service uses, structures and appurtenances.
- p. Storage parking lots.
- Temporary use for a period not to exceed 15 days.
- 9. Accessory use for above uses.
  - a. Any accessory use in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.
- C. MINIMUM LOT AREA. 5,000 square feet.
- D. MINIMUM LOT WIDTH. 50 feet.
- E. MINIMUM YARDS. As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA
  - Multiple family buildings other than adult congregate living facilities:
    - Dwelling Unit Shall have a minimum of 400 square feet.
    - b. Sleeping Unit Shall have a minimum of 400 square feet.
  - Adult congregate living facilities: 200 square feet per unit.
- H. MAXIMUM FLOOR AREA RATIO. 6.0.
- I. MAXIMUM DENSITY. 125 units per acre. Hotels and motels shall be permitted to increase their density by 40%.
- 6-8 C-1 Neighborhood Business District.
  - A. <u>DISTRICT PURPOSE</u>. This is a retail sales, personal services, and related convenience shopping district, designed to provide convenient shopping facilities to surrounding residential neighborhoods.

- B. <u>USES PERMITTED</u>. No land, water or structure may be used in whole or in part, except for one or more of the following uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Any use permitted in RM-60 Multiple Family District except those uses listed as Conditional Uses.
  - 2. Automobile parking lot, open or enclosed, commercial or non-commercial.
  - 3. Automatic ice distribution station or other drive-in automatic vending machine station. Groups of vending machines shall be contained in a completely enclosed building.
  - 4. Retail bakery with sale of bakery products only and no baking on the premises.
  - 5. Banks, savings and loan associations.
  - 6. Bar.
  - 7. Bicycle store, rental or sales, and bicycle repair shop.
  - 8. Drug Store
  - 9. Garden shop, florist shop, greenhouse, nursery and landscape office.
  - 10. Grocery Store
  - 11. Office, professional or business.
  - 12. Personal service uses, conducted entirely within completely enclosed buildings. Such uses include barber shops, beauty parlors, photographic or artists studios, photographic developing or printing establishment, picture framing shop, shoe repair shop, tailor shop, travel bureau, ticket office, messenger service, taxicab office, newsstand, telephone exchange or telegraphic service stations, dry cleaning or laundry receiving stations, hat cleaning and blocking, self-service or coin operated laundry or dry cleaning establishment and other personal services uses of similar character.
  - 13. Post office.
  - 14. Private club, lodge, fraternity, sorority, meeting hall, and other private meeting places not operated for profit.
  - 15. Repair or rental of household appliances, tools, bicycles, and items of a similar character, provided all activities, including storage and display, are conducted entirely within completely enclosed building.
  - 16. Restaurant with or without outdoor table service but not a drive-in restaurant.

- 17. Retail stores, provided that all activities, including sale, storage and display, are conducted entirely within completely enclosed building.
- 18. Theatres.
- 19. Tutorial Center.
- 20. The following uses may be permitted as a conditional use:
  - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
  - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
  - c. Churches, synagogues and temple.
  - d. Day nursery.
  - e. Filling station, but with no lighting fixture or illuminated sign extending to a height greater than 15 feet.
  - f. Municipal buildings and uses.
  - g. Undertaking establishment or funeral home.
  - h. Temporary use for a period not to exceed 15 days.
- 21. Accessory uses for above uses.

## C. MINIMUM LOT AREA.

- 1. Non-residential use: None.
- 2. Residential use: 5,500 square feet.

#### D. MINIMUM LOT WIDTH.

- 1. Non-residential use: None.
- Residential use: 50 feet.

#### E. MINIMUM YARDS.

- 1. Residential use: As provided in Section 8.
- Non-residential use:

- a. Front: None.
- b. Side: 10 feet when abutting a residential district; otherwise none.
- c. Rear: 20 feet when abutting a residential district; otherwise none.
- F. MAXIMUM BUILDING HEIGHT. 40 feet.

#### G. MINIMUM FLOOR AREA.

- Non-residential use: None
- 2. Multiple Family buildings.
  - a. Dwelling Unit Shall have a minimum of 400 square feet.
  - b. Sleeping Unit Shall have a minimum of 400 square feet.
- H. MAXIMUM FLOOR AREA RATIO. 2.0.

#### I. MAXIMUM DENSITY

- 1. Non-residential use: None.
- 2. Residential Use: 60 units per acre.

## 6-9 C-2 General Office District.

- A. <u>DISTRICT PURPOSE</u>. This district provides for supporting commercial activities, serves as a transitional area between general and residential districts, and is located generally adjacent to the central business district. It houses those offices and related facilities which serve the entire city.
- B. <u>USES PERMITTED</u>. No land, water or structure may be used, in whole or in part, except for one or more of the following uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Any use permitted in the RM-100 Multiple Family District; and in the C-1 Neighborhood Business District except the following:
    - a. Those uses listed as conditional uses in each of these districts.
    - b. Automatic ice distribution station or other drive-in automatic vending station.
    - c. Bicycle store, rental or sales, and bicycle repair shop.
  - 2. Clinic.
  - 3. Health or athletic club or studio, bath or massage parlor.

- 4. The following uses may be permitted as a conditional use:
  - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
  - b. Municipal buildings and uses.
  - c. Private club.
  - d. Temporary use for a period not to exceed 15 days.
- 5. Accessory uses for the above uses.
- C. MINIMUM LOT AREA. 6,000 square feet.
- D. MINIMUM LOT WIDTH. 50 feet.

#### E. MINIMUM YARDS

- 1. Non-residential use:
  - a. Front: 10 feet, but no point on a building shall be closer than one-half the height of the point above grade.
  - b. Side: 10% of the width of the lot or 10% of the height of the building whichever is greater, but no side yard adjacent to a street shall be less than 10 feet, and no point on the building shall be closer to the centerline of a side street than one-half the height of the point above grade.
  - C. Rear: 10 feet or 10% of the building height, whichever is greater.
- F. MAXIMUM BUILDING HEIGHT. None,
- G. MINIMUM FLOOR AREA.
  - 1. Non-residential use: None.
  - 2. Multiple Family buildings.
    - a. Dwelling Unit Shall have a minimum of 400 square feet.
    - b. Sleeping Unit Shall have a minimum of 400 square feet.
- H. MAXIMUM FLOOR AREA RATIO. 4, plus 0.5 for each 10 feet of front yard depth in excess of the minimum requirement.
- I. MAXIMUM DENSITY.

- 1. Non-residential use: None.
- 2. Residential use: 100 units per acre. Hotels and motels shall be permitted to increase their density by 40%.

## 6-10 C-3 Central Business District.

- A. <u>DISTRICT PURPOSE</u>. This district is designed to accommodate a highly concentrated pedestrian oriented business core, in which businesses serving all residents and visitors of the City are located.
- B. USES PERMITTED. No land, water or structure may be used in whole or in part except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - Any residential use in RM-125 Multiple Family District.
  - 2. Antique stores.
  - 3. Appliance stores.
  - 4. Art Goods stores.
  - 5. Artists studios.
  - 6. Bakeries, baking not permitted on premises.
  - Banks, including savings and loan associations.
  - Barber shops.
  - 9. Beauty parlors.
  - 10. Bicycle stores.
  - 11. Book stores.
  - 12. Clothing and costume stores, selling new merchandise or rentals.
  - 13. Club, private.
  - 14. Confectionary or ice cream stores.
  - 15. Dental office.
  - 16. Drug stores selling pharmaceutical and medical supplies.
  - 17. Electronic stores.
  - 18. Florist shops.

- 19. Fruit shippers.
- 20. Gift shops.
- 21. Greeting card stores.
- 22. Interior design shops, office and display only.
- 23. Jewelry stores selling new or previously owned merchandise.
- 24. Leather goods and luggage shops.
- 25. Linen shops.
- 26. Medical offices.
- 27. Messenger service.
- 28. Music stores.
- 29. Newsstands.
- 30. Nite clubs.
- 31. Optical stores
- 32. Photography stores and studios.
- 33. Picture framing shops.
- 34. Pottery shops
- 35. Printing and developing establishments.
- 36. Professional offices.
- 37. Radio or television broadcasting station, studio, and office, but not sending or receiving towers.
- Restaurants in which the roofed-in floor area of the room or portion of the building wherein food is served to guests is not less than 400 square feet with not less than 75 percent of the total of such roofed-in floor area being utilized for the seating of guests at tables or booths. The ratio of the number of seats at tables and booths to the number of seats at counters shall be not less than three to one, and the total number of seats shall not exceed the ratio of ten (10) square feet of such roofed-in area to one guest. Toilet facilities shall be so arranged as to provide the public direct accessibility thereto from within such roofed-in floor area, provided however, that the foregoing requirements shall not be applicable if the preparation and serving of food or beverages is a customary incident to the uses or businesses permitted in or by this section. Such restaurants and cafes having sidewalk cafes may also sell finished pastry products such as donuts, danishes, and coffee on a carry out basis.

- 39. Shoe stores.
- 40. Sporting goods stores.
- 41. Tailor shops.
- 42. Taxi-Cab offices
- 43. Telephone exchange or telegraph service station.
- 44. Theatre and cinema.
- 45. Ticket office.
- 46. Tobacco shop.
- 47. Travel bureau.
- 48. a. The following uses shall be permitted throughout the District with the exception of properties abutting Lincoln Road between Alton Road and the Atlantic Ocean where such uses shall only be located above the first floor level.
  - 1. Clubs, private.
  - 2. Dance or music school, modeling school, or athletic instruction.
  - Health studio or club, reducing salon, and massage parlor.
  - 4. Hotel, apartment, apartment hotel. Entrances and lobbies shall be permitted on the first floor level provided that commercial uses front on Lincoln Road. Access to the lobby shall be permitted from Lincoln Road.
  - 5. Medical or dental clinic.
  - 6. Offices, business and professional.
  - b. The following uses shall not be permitted on properties fronting on Lincoln Road from Alton Road to the Atlantic Ocean.
    - 1. Religious institutions.
    - 2. Stores selling staple foodstuffs, household supplies, meats, produce, and dairy products.
    - Stores in which the principal products sold or exhibited include surgical supplies, hospital supplies, medical devices, prosthetic or orthopedic devices.

- 14). The following uses may be permitted as a conditional use:
  - Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
  - b. Personal service uses such as postal station, theatre ticket outlet, artists studios, book stores, music stores, florists, gift shops, greeting card store, fruit shippers selling prepackaged gift boxes and newsstands when associated with an existing store on Lincoln Road Mall may be located in the public right-of-way within a distance not to exceed 400 feet from such store for the sale of goods and services customarily associated with an existing permitted store. Such uses shall be subject to review and approval by the Planning Board. Such uses will not constitute or create unreasonable obstructions to the prior and paramount right of the public for passage upon public ways.

A suitable and appropriate plan or sketch showing the location of the proposed use in relationship to the main use required, hereby, shall be submitted to the Planning Board for approval prior to the issuance of any revocable permit granted by the City Commission. In instances where the location of said personal service use extends into the right-of-way of another property owner, the owner of the proposed use shall be responsible for securing a lease agreement with the affected property owner prior to the execution of a revocable permit by the City Commission.

- Public and governmental buildings and uses.
- d. Publicly owned and operated recreational facility, playground, playfield, park and beach.
- e. Public utilities or public service uses, structures and appurtenances.
- Sidewalk cafes, when associated with an existing restaurant on Lincoln Road Mall, may be located in the public right-of-way within a distance not to exceed 400 feet from such restaurant subject to prior findings and determinations by the Planning Board that such permitted sidewalk cafes will not constitute or create unreasonable obstructions to the prior and paramount right of the public for passage upon the public way.

A suitable and appropriate plan or sketch showing the proposed location of said sidewalk cafe in relationship to the main restaurant or cafe required hereby, and the proposed seating arrangement to be utilized by said sidewalk cafe shall be submitted to the Planning Board and the City Commission for approval prior to the issuance of any revocable permit for such sidewalk cafe. In instances where the location of said sidewalk cafe extends into the right-of-way of another property owner, the owner of the proposed use shall be responsible for securing a lease agreement with the affected property

owner prior to the execution of a revocable permit by the City Commission.

- g. Uses not listed above which are similar in character to one or more permitted uses, and which would not be inappropriate in this District.
- h. Temporary use for a period not to exceed 15 days.
- 50. Accessory uses for above uses.

## C. MINIMUM LOT AREA.

- 1. Non-residential use: None.
- 2. Residential use: 7,500 square feet.

#### D. MINIMUM LOT WIDTH.

- I. Non-residential use: None.
- 2. Residential use: 50 feet.

#### E. MINIMUM YARDS.

- 1. Non-residential use: 10 feet when abutting a residential district; otherwise none.
- 2. Residential Use: As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.

## G. MINIMUM FLOOR AREA.

- 1. Non-residential use: None.
- Multiple Family Buildings.
  - a. Dwelling Unit Shall have a minimum of 400 square feet.
  - Sleeping Unit Shall have a minimum of 400 square feet.
- H. MAXIMUM FLOOR AREA RATIO. 10.0 plus 2.0 for every 10% of lot area developed and maintained as permanent open space at grade.

#### MAXIMUM DENSITY.

- 1. Non-residential use: None.
- 2. Residential use: 125 units per acre. Hotels and motels shall be permitted to increase their density by 40%.

## 6-11 C-4 Business District.

- A. <u>DISTRICT PURPOSE</u>. This district is designed to accommodate a highly concentrated business core, in which businesses serving all residents and visitors of the City are located.
- B. <u>USES PERMITTED</u>. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Any use permitted in C-1, C-2, or C-3 except those uses listed as Conditional Uses.
  - 2. Cabaret.
  - 3. Night club.
  - 4. Retail meat and fish market provided that such use shall not occupy more than 2,500 square feet of floor area per establishment and no noxious odors shall be produced by improper storage and handling of refuse.
  - 5. The following may be permitted as a conditional use.
    - a. Adult congregate living facilities subject to the mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
    - b. Aquarium, commercial.
    - c. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
    - d. Beaches, commercial.
    - e. Bus terminals.
    - f. Churches, synagogue and temple.
    - g. Colleges, junior colleges, or institutions of higher learning.
    - h. Filling station.
    - i. Institution, educational or philanthropic, including museum and art gallery.
    - i. Marina.

- k. Municipal buildings and uses.
- Private club.
- m. Storage parking lots.
- n. Uses not listed above which are similar in character to one or more permitted uses, and which would not be inappropriate in this District.
- o. Temporary use for a period not to exceed 15 days,
- 6. Accessory uses for above uses.
  - a. Any accessory use in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.

## C. MINIMUM LOT AREA.

- 1. Non-residential use: None,
- Residential use: 7,500 square feet.

## D. MINIMUM LOT WIDTH.

- 1. Non-residential use: None.
- 2. Residential use: 50 feet.

#### E. MINIMUM YARDS.

- 1. Non-residential use: 10 feet when abutting a residential district; otherwise none.
- Residential use: As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.

#### G. MINIMUM FLOOR AREA.

- 1. Non-residential use: None.
- 2. Multiple Family Buildings.
  - a. Dwelling Unit Shall have a minimum of 400 square feet.
  - b. Sleeping Unit Shall have a minimum of 400 square feet.
- H. MAXIMUM FLOOR AREA RATIO. 10.0, plus 2.0 for every 10% of lot area developed and maintained as permanent open-space at grade.

#### I. DENSITY.

- 1. Non-residential use: None.
- 2. Residential use: 125 units per acre. All hotels and motels shall be permitted to increase their density by 40%.

#### 6-12 C-5 General Business District.

- A. <u>DISTRICT PURPOSE</u>. This is a mixed use district which permits high density residential, retail, and light and heavy service commercial development.
- B. <u>USES PERMITTED</u>. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Any use permitted in C-4 except those uses listed as Conditional Uses.
  - 2. Amusement enterprise, including a billard, pool or table tennis hall, games of skill, shooting gallery and the like if conducted wholly within a completely enclosed building.
  - Auction parlor.
  - 4. Automobile accessories, new parts and equipment store, including new tires and sale of trade-in tires.
  - 5. Automobile, truck sales or rentals, new, open or enclosed. All servicing or repairs shall be conducted wholly within a completely enclosed building.
  - 6. Boat sales, or rentals, new or used open or enclosed.
  - 7. Bowling alleys.
  - Grinding and sharpening shops.
  - 9. Hospital or clinic for small animals, dogs, cats, birds, and the like, provided that such hospital or clinic and any treatment rooms, cages, pens, or kennels be maintained within a completely enclosed, soundproof building, and that such hospital or clinic be operated in such a way as to produce no objectionable noise or odors outside its walls.
  - 10. Laboratories, research and experimental, but not for testing internal combustion engines.
  - 11. Mirror silvering or glass cutting or installation shops.
  - 12. Moving or storage offices with or without storage warehouses.
  - 13. Musical instrument sales and repair shops.

- 14. Printing, publishing, and engraving establishments, including blueprinting and photostating, provided that no use permitted in this item shall occupy more than 2,500 square feet of floor area.
- 15. Public dance halls.
- Rental businesses.
- 17. Schools, commercial instructions of all kinds.
- 18. Sign painting and fabricating shops and venetian blind, window shade, or awning shops, custom, including repairs, limited to 2,500 square feet of floor area per establishment.
- 19. Skating rinks, swimming pools,
- 20. Storage garages, automobile and truck storage within an area enclosed by an opaque masonry wall or structural wood fence not less that 6 feet in height. Such wall or fence shall totally screen garage and work area from public view.
- 21. Trade expositions or convention halls with capacity in each case limited to 2,500 persons.
- 22. Retail meat and fish market.
- 23. The following uses may be permitted as a conditional use:
  - a. Adult congregate living facilities subject to mandatory requirements and review criteria set forth in Section 28, Adult Congregate Living Facilities.
  - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
  - c. Bus terminals.
  - d. Churches, synagogues and temples.
  - e. Colleges, junior colleges, or institutions of higher learning.
  - f. Filling stations.
  - g. Institution, educational or philanthropic, including museum and art gallery.
  - h. Municipal buildings and uses.

- i. Private club.
- j. Storage parking lots.
- k. Undertaking establishment or funeral home.
- 1. Temporary use for a period not to exceed 15 days.
- 24. Accessory uses for above uses.
  - a. Any accessory in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.

## C. MINIMUM LOT AREA.

- I. Non-residential use: None.
- 2. Residential use: 5,500 square feet.

### D. MINIMUM LOT WIDTH.

- 1. Non-residential use: None
- 2. Residential use: 50 feet.

#### E. MINIMUM YARD.

- 1. Non-residential use: 10 feet when adjacent to any residential district; otherwise none.
- 2. Residential use: As provided in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.

#### G. MINIMUM FLOOR AREA.

- 1. Non-residential use: None.
- 2. Multiple family Buildings.
  - a. Dwelling Unit Shall have a minimum of 400 square feet.
  - b. Sleeping Unit Shall have a minimum of 400 square feet.
- H. MAXIMUM FLOOR AREA RATIO. 3.0.

#### MAXIMUM DENSITY.

- 1. Non-residential use: None.
- 2. Residential use: 100 units per acre.

#### 6-13 C-6 Intensive Commercial District.

- A. <u>DISTRICT PURPOSE</u>. This is a utilitarian district characterized by sales, storage, repair, processing, wholesaling and trucking activities and shall not include any residential uses.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Any non-residential use permitted in C-5 District except those uses listed as Conditional Uses.
  - 2. Bakery.
  - 3. Blacksmith, gas, steam fitting shop.
  - 4. Boat or yacht storage and repair.
  - 5. Building material storage yard.
  - 6. Cabinet making, carpentry.
  - 7. Contractors plant and storage yard, providing the area used is enclosed by a building or by a masonry wall not less than 6 feet in height.
  - 8. Dry cleaning plant and dyeing establishment.
  - Garage for mechanical service provided work area is enclosed by a wall or fence not less than 6 feet in height. Such wall or fence shall be constructed of opaque material and shall totally screen work area from public view.
  - 10. Laundry, including self-service laundry.
  - 11. Machine shop.
  - 12. Meat marketing, including fish and live poultry market.
  - 13. Metal working shop.
  - 14. Motion picture studio.
  - 15. Painting and decorating shop.

- 16. Printing and publishing.
- 17. Roofer, plasterer, plumber or tinsmith.
- 18. Wholesale salesroom and storage room.
- 19. Any light manufacturing or processing use which creates no danger to health and safety in surrounding areas and no offensive noise, vibration, smoke, dust, lint, odor, heat or glare in excess of the Performance Standards set forth in Section 7 of this Ordinance.
- 20. The following uses may be permitted as a conditional use:
  - a. Aquarium, commercial.
  - b. Automobile parking lot, open or enclosed, non-commercial provided such use is accessory to a primary use in accordance with the provisions of Section 9-3 of the Ordinance. For the purpose of this Section a written agreement shall be construed as a Unity of Title and shall be recorded in the Circuit Court.
  - c. Bus terminals.
  - d. Filling station.
  - e. Institution, educational or philanthropic, including museum and art gallery.
  - f. Municipal buildings and uses.
  - g. Private club.
  - h. Storage parking lots.
  - i. Uses not listed above, which are similar in character to one or more permitted uses, and which would not be inappropriate in the district.
  - Temporary use for a period not to exceed 15 days.
- 21. Accessory uses for above uses.
- C. MINIMUM LOT AREA. None.
- D. MINIMUM LOT WIDTH. None.
- E. MINIMUM YARD. 20 feet when adjacent to any residential district; otherwise none.
- F. MAXIMUM BUILDING HEIGHT. 40 feet.
- G. MINIMUM FLOOR AREA. None.

## 11. MAXIMUM FLOOR AREA RATIO. 1.0.

## 6-14 RH Hospital District.

- A. <u>DISTRICT PURPOSE</u>. This district is designed to accommodate hospital facilities.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Hospital
  - 2. Accessory hospital facilities, consisting of laundry, centralized services, educational and research facilities, recreational facilities, staff offices, parking structures and lots. All structures and parking facilities must be subordinate to the main use and must be an integral part of hospital operations.

## C. MINIMUM YARDS

HOSPITAL	Front	Rear	Side
St. Francis	25'	40'	15'
Mt. Sinai	25'	40*	1 <i>5</i> '
South Shore	20'	20'	15'
Heart Institute	20'	20'	15'
Island View	20'	20'	15'

The enlargement of existing RH Hospital Districts and the establishment of the new RH Hospital Districts with their respective yard setbacks shall be subject to City Commission approval.

#### 6-15 MR Marine Recreation District.

- A. <u>DISTRICT PURPOSE</u>. This is a waterfront district designed to accommodate recreational boating activities and services.
- B. <u>USES PERMITTED</u>. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Marina.
  - Boat docks, slips, piers, wharves, anchorages, and moorages for yachts and pleasure boats or for boats for hire carrying passengers on excursion, sightseeing, pleasure or fishing trips.
  - 3. Yacht clubs.

- 4. Boat rentals, boat livery, and boats for hire.
- 5. Boat storage, including the incidental repair or painting of stored boats, restricted to boats 40 feet or less in length.
- 6. Boat and marine motor services and minor repair while boats are in the water, restricted to boats 65 feet or less in length.
- 7. Boat and marine engine sales and display, yacht broker, marine and insurance broker.
- 8. Boat fuel sales for pleasure boats, with above-ground storage limited to 2,000 gallons.
- 9. Retail sale or rental of boating, fishing, diving, and bathing supplies and equipment.
- 10. Piers for fishing.
- 11. Aquarium.
- 12. Restaurants, outdoor cafes, refreshment stands, bars, or cabarets, but not drive-in restaurants.
- 13. The following uses may be permitted as a conditional use:
  - a. Municipal buildings and uses.
  - b. Uses not listed above, which are similar in character to one or more permitted uses, and which would not be inappropriate in the district.
  - c. Temporary use for a period not to exceed 15 days.
- Accessory uses for the above uses.
- C. MINIMUM LOT AREA. None.
- D. MINIMUM LOT WIDTH. None.
- E. MINIMUM YARD. 20 feet when adjacent to any residential district; otherwise none.
- F. MAXIMUM BUILDING HEIGHT. 30 feet.
- G. MINIMUM FLOOR AREA. None.
- H. MAXIMUM FLOOR AREA RATIO. None.
- I. MAXIMUM LOT COVERAGE. 30% of the lot may be covered by structures.

## 6-16 MU Municipal Use District.

- A. DISTRICT PURPOSE. Upon ownership of any property by the City, said property shall automatically convert to an MU Municipal Use District.
- B. USES PERMITTED. The specific use shall be determined in accordance with the City's Comprehensive Plan and under the regulations set forth for Conditional Uses. No land, water, air or structure may be used in whole or in part, except for one or more of the following uses but not limited to permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Publicly owned and operated recreational facility, playground, playfield, park and beach.
  - 2. Public and governmental buildings, services and uses such as governmental office, police headquarter, fire station, library, museum, auditorium.
  - 3. Municipal parking areas, parking structure, vehicle and equipment storage, maintenance and service areas.
  - 4. Public utilities or public service structures or appurtenances.
  - 5. Any use similar to those listed above and in accordance with the Comprehensive Plan for the specific area under consideration.
  - 6. Accessory uses for the above uses.
    - Any accessory use in the area located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.
- C. MINIMUM LOT AREA. None.
- D. MINIMUM LOT WIDTH. None.
- E. MINIMUM YARD. Shall be determined by the adjacent Use District or Districts and consistent with Yard regulations of similar uses as designated in this Ordinance.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA. None.
- H. MAXIMUM FLOOR AREA RATIO. Shall be determined by the adjacent Use District or Districts and consistent with Floor Area Ratios of similar uses as designated in this Ordinance.
- I. MAXIMUM DENSITY. Applies only to residential uses and shall be determined by the adjacent use district or districts and consistent with maximum densities of similar uses as designated in this Ordinance.

## 6-17 HM Hotel-Motel District.

- A. DISTRICT PURPOSE. This district is designed to accommodate hotel and motel facilities.
- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Hotels.
  - 2. Motels and Motor Lodges.
  - 3. Hotels containing 100 or more sleeping units may have the following service facilities only: ballrooms, bars, barber shops, beauty shops, cabarets, dance studios, dining rooms, laundries, massage service, newsstands, restaurants, valet service, travel service, automobile rental office, and retail stores for books, gifts, flowers, package fruits, tobacco, drugs, sundries, house doctor with patients limited to residents of the building. Such service facilities shall not have exterior entrances or exits in accordance with the regulations contained in this Section.
  - 4. Coin-operated vending machines for candy, tobacco, ice, soft drinks and sundries.
  - Accessory off-street parking and loading spaces.
  - 6. Night club, with exterior entrances or exits, accessory to a hotel or motel containing 100 or more sleeping units.
  - 7. Restaurant, with or without an accessory bar, but not a drive-in restaurant, without exterior entrances or exits, accessory to a hotel or motel containing 100 or more sleeping units.
  - 8. The following uses may be permitted as an accessory use:
    - a. Uses enumerated under Section 7-3, Accessory Uses.
- C. MINIMUM LOT AREA. 10,000 square feet.
- D. MINIMUM LOT WIDTH. 100 feet.
- E. MINIMUM YARD. As set forth in Section 8.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA PER UNIT. 200 square feet.

- H. MAXIMUM FLOOR AREA RATIO. 6.0.
- 1. MAXIMUM DENSITY. 220 units per acre.

#### 6-18 CCC Convention Center District.

- A. <u>DISTRICT PURPOSE</u>. The general goals of this district include the following specific purposes:
  - to create a special district characterized by the facilities necessary to maintain the City's international reputation as a tourist and convention center;
  - 2. to provide adequate support facilities for convention, cultural and civic activities on or over City-owned property within the District, as defined in this Ordinance, thereby enhancing and supporting the economic growth of the community; and
  - 3. to promote the unique character of the district through environmental design and selected land uses in a harmonious and compatible manner so as to establish a connector to Lincoln Road Mall.
- B. <u>USES PERMITTED</u>. No land, water, air or structure may be used in whole or in part, except for one of the following uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Publicly owned and operated recreation facility or park.
  - 2. Public and governmental buildings, services and uses such as governmental office, fire station, library, museum, auditorium, garden center.
  - 3. Municipal parking areas, parking structures, vehicle and equipment storage, maintenance and service areas.
  - 4. Public utilities or public service structures or appurtenances.
  - 5. Hotels and the following service facilities only: ballrooms, bars, barber shops, beauty shops, cabarets, dance studios, dining rooms, laundries, massage service, newsstands, night clubs, restaurants, valet service, travel service, automobile rental office, and retail stores for books, gifts, flowers, package fruits, tobacco, drugs, sundries, house doctor with patients limited to residents of the building; also such coin-operated vending machines for candy, tobacco, ice, soft drinks and sundries. Such service facilities shall have entrances only from (1) the hotel lobby, or (2) the elevated pedestrian walkway system.
  - 6. Merchandise Mart (National and International) and other exhibition/display facilities for non-retail purposes.
  - 7. Retail Commercial and office development compatible and consistent with

- the purpose set forth in Item A. Such uses shall be subject to the requirements and limitations described in the Request for Proposal issued by the City for each specific site within this District.
- 8. Accessory off-street parking, with or without valet service, and loading spaces.
- 9. Other uses compatible and consistent with the purposes set forth in Item A, provided such uses shall be subject to the requirements and limitations described in the Request for Proposal issued by the City for each specific site within this District.
- 10. Any use similar to those listed above and in accordance with the Development Plan for the specific area under consideration.
- C. MINIMUM LOT AREA. None.
- D. MINIMUM LOT WIDTH. None.
- E. MINIMUM YARD. As defined in the Request for Proposal issued by the City for each specific use or development.
- F. MAXIMUM BUILDING HEIGHT. None.
- G. MINIMUM FLOOR AREA PER HOTEL GUEST ROOM. As defined in the Request for Proposal issued by the City for each specific use or development.
- H. MAXIMUM FLOOR AREA RATIO. None.
- I. MAXIMUM DENSITY.
  - 1. Maximum number of hotel guest rooms in this district shall not exceed 3000.
  - 2. Minimum number of guest hotel rooms per hotel will be 500.
  - 3. Maximum allowable gross area of retail commercial and/or office space shall be as defined in Request for Proposal issued by the City for each specific use and development.
- J. PARKING. The determination of the required parking shall be by the Planning Department based upon the following criteria:
  - 1. The amount of available parking within the Convention Center District at the time the Request for Proposal is issued by the City;
  - The specific requirements of existing and proposed uses in the Convention Center District based upon the availability of parking facilities to meet the needs of such uses when these uses customarily require parking. The intent being, for purposes of determining the amount of required parking spaces, to allow any parking space to be counted more than once as a required space for more than one use.

- 3. Uses One space for each two hotel rooms or fraction thereof; all of which are to be integral with the hotel itself. Required parking for hotel accessory uses, other permitted uses and their accessory uses shall be in accordance with criteria set forth in this Section;
- 4. For purposes of achieving the goals of this Section, all of the existing parking spaces within the District at the time this Section is adopted by the City Commission, are to be considered as provided spaces and not required spaces for any existing use in this District;
- 5. Parking requirements listed in Section 9 of the Ordinance are to be considered as guidelines in determining the required parking in accordance with criteria set forth in this Section; and,
- 6. Required parking spaces may be provided within public facilities which are located in this District by means of lease arrangements with the City or as described in the Request for Proposal issued by the City.
- K. COMPREHENSIVE REVIEW PROCESS. Once a developer has been selected to develop a given site, such developer's proposals for development within the special CCC District shall be approved by the following: (1) City Administration; (2) Planning Board; and (3) City Commission. Such approvals shall be based on the following criteria:
  - 1. Consistency and compatibility with the overall Development Plan for the Civic Convention Center.
  - 2. Request for Proposal issued by the City for each specific use or development.
  - 3. Overall compatibility with the surrounding districts.

#### a. Documents required:

The applicant shall be required to submit adequate design and development documents so as to fully describe the scope and extent of the proposed project, including those items listed in Section 14-3 of this Ordinance, and any other information which may be specifically requested during the review process.

#### b. Procedures:

An applicant shall file his application and all supportive documents, in duplicate, with the Department of Planning which will forward one copy to the Department of Public Works and copies to all Departments participating in the review process. To facilitate such process the applicant shall submit 12 copies of his application. Written comments and recommendations shall be provided by all appropriate departments and forwarded to the City Manager who

shall prepare a final Administrative recommendation which is to be completed within forty-five (45) days after the original receipt of the application by the Planning Department.

The application and Administrative recommendations shall then be submitted to the Planning Board at an advertised public hearing for its review and advisory recommendations.

The recommendations from both the Administration and the Planning Board shall then be forwarded to the City Commission which shall hold a public hearing to consider the application and may thereafter grant or deny by majority vote the application for the proposed development.

#### 6-19 MD-1 Marine District.

- A. <u>DISTRICT PURPOSE</u>. This district is designed to permit the non-commercial dockage of pleasure craft; live aboards shall not be permitted.
- B. <u>USES PERMITTED</u>. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses:
  - 1. The non-commercial, wet dockage of pleasure craft.

#### C. MINIMUM YARDS.

- 1. Front: 7½ feet.
- 2. Side: 7% feet or 10% of the lot frontage whichever is greater. The side yard requirements shall be deemed to extend to the water side development as well as the land side. No use other than open space shall be permitted in side yards in this District.
- D. MAXIMUM STRUCTURE HEIGHT. Structures shall not exceed 10 ft. above the sidewalk elevation.
- E. MINIMUM LOT WIDTH. 40 feet.
- F. DENSITY. 0 units per acre.
- G. LANDSCAPE CRITERIA. A minimum of 85% of the lot area of any lot in this District shall be landscaped with plant materials or decorative paving surfaces. The Board of Adjustment shall have authority to grant variance from this provision in the same manner as other variances are granted.

### 6-20 MD-II Marine District.

A. <u>DISTRICT PURPOSE</u>. This district is designed to accommodate wet dockage of pleasure craft, and commercial vessels strictly limited to the following: fishing boats, tour boats, sail boat charters and sport boat charters, subject to the strict compliance with conditions set below.

- B. USES PERMITTED. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses:
  - 1. Wet dockage of pleasure craft, not including house boats or house barges. Live aboards shall be limited as provided in subparagraph 2 (a) below.
  - 2. Wet dockage of the following commercial vessels only: fishing boats, tour boats, charter sail boats, and charter sport boats, subject to the restrictions below. The following restrictions shall apply to the dockage of pleasure craft and commercial vessels in this district.
    - a. Live aboards on pleasure craft or permitted commercial vessels shall be limited to no more than one person serving as caretaker or crew of a pleasure craft, or permitted commercial vessel, provided that said person must maintain a residence at some place other than the pleasure craft or permitted commercial vessels of which he is either caretaker or crew; and further provided that in the case of any pleasure craft, or permitted commercial vessel, docked principally in Miami Beach for a period in excess of twenty-one (21) days in any calendar year, the owner of the vessel and such caretaker or crewman shall be required to register with the City and provide such documentation as shall establish to the satisfaction of the City that said person meets all the requirements of this provision.
    - b. The dockage of permitted commercial vessels shall be allowed solely as a subordinate use to a hotel facility having an excess of two hundred and fifty (250) sleeping units and which hotel facility is located adjacent to the dockage use or which is separated by a public way from such dockage use but is not more than one hundred and fifty (150) feet from such dockage site.
    - c. No signage advertising the existance or availability of any permitted commercial vessel shall be allowed except within the interior of the hotel structure which is the main use to which such permitted commercial vessel dockage is a subordinate use. Provided however that a permitted commercial vessel may have more than one sign, the appearance which is of professional quality, located on the vessel, visible to the public, and which conforms to the following criteria:
      - 1. the signage shall be of no more than two colors on a neutral background;
      - 2. the maximum length of permitted signage shall not exceed the lesser of 6 feet or 10% of the length of the vessel, measured at the mean waterline of said vessel;
      - 3. the maximum height of permitted signage shall not exceed the lesser of 2½ feet or 10% of the length of the vessel, measured at the mean waterline of said vessel.
    - d. The cleaning, processing, storage, or selling of fish, fish products or other sea foods is specifically prohibited within this District.

#### C. MINIMUM YARDS.

- 1. Front: 20 feet.
- 2. Side: Minimum of 10 feet or 10% of the lot frontage whichever is greater. The side yard shall be deemed to extend to the water side development as well as the land side. No use other than open space shall be permitted in side yards in this District.

### D. EXISTING HOUSEBOAT DOCKAGE.

Houseboat dockage existing on June 28, 1978, within the area described in Paragraph E of this Ordinance may be continued for a period of not more than three and one-half years from the date this ordinance takes effect; subject to the following conditions:

- 1. Houseboat dockage is permitted solely for houseboats or housebarges docked within the area described in Paragraph E of this Ordinance on June 28, 1978, and which houseboats or housebarges remain continuously docked within that area thereafter;
- 2. The houseboat or housebarge complies with all requirements for the control of water pollution imposed by federal, state and local law.
- E. That portion of land lying along the eastern bank of Indian Creek Waterway between the southerly line of 55th Street extended and the northerly line of 41st Street and on the east by the westerly line of Collins Avenue by and the same is hereby rezoned from its present use classification of RS-4 to the classification of MD-II.
- F. That portion of land lying along the eastern bank of Indian Creek Waterway and Lake Pancoast bounded on the north by the southerly line of 41st Street and on the south by the northerly line of 24th Street and on the east by the westerly line of Collins Avenue by and the same is hereby rezoned from its present classification of RS-4 to the classification of MD-I.

# 6-21 NH Nursing Home District

- A. <u>DISTRICT PURPOSE</u>. This District is designed to accommodate facilities providing direct or supervised nursing care and rehabilitation services for the chronically ill, the physically disabled, and the aged who require services provided by medical professionals.
- B. <u>USES PERMITTED</u>. No land, water, or structure may be used, in whole or in part, except for one or more of the following uses:
  - 1. Nursing Homes provided, however, that a "Certificate of Need" has been issued by the State Department of Rehabilitative Services.

- 2. Accessory facilities necessary to the operation of a nursing home such as:
  - a. Chapel.
  - b. Dining Facilities including kitchens.
  - c. Laundry.
  - d. Offices for administrative personnel,
  - e. Recreation facilities and Employee Lounges.
  - f. Parking lots and structures.
- C. MINIMUM YARDS. Minimum yards shall be no less than the minimum required yards for the District in which the property was located immediately prior to the change of zoning to NH Nursing Home District.
- D. MINIMUM LOT AREA AND FRONTAGE. As provided in Section 16. Changes and Amendments. However, not withstanding any other provision of this Zoning Ordinance, applications for Change of Zoning to a Nursing Home District shall contain an area of not less than 40,000 square feet.
- E. MINIMUM FLOOR AREA PER UNIT. No unit shall have less than 200 square feet, and, each unit accommodating more than 2 persons, shall contain 100 square feet of additional area for each person in excess of two.
- F. MAXIMUM DENSITY. The maximum density permitted shall be no greater than the permitted residential density for the District in which the property was located immediately prior to the change of zoning to NH Nursing Home district.
- G. MAXIMUM HEIGHT. The maximum building height for any Nursing Home shall not exceed four (4) stories or 45 feet.
- H. LOCATION. No application for a change of zoning to an NH Nursing Home District shall be considered for any property which is located within an RS-1, RS-2, RS-3 or RS-4 Single Family Residential District, C-6 Intensive Commercial District, MU Municipal Use District, as of the Effective Date of this Ordinance. In addition, no nursing home shall be located within 1,500 feet of another existing nursing home.

#### **SECTION 7**

#### SUPPLEMENTARY USE REGULATIONS

The regulations set forth in this Section qualify or supplement the District Regulations appearing elsewhere in this Ordinance.

#### 7-1 Conditional Uses.

- A. <u>PURPOSE</u>. The purpose of this Section is to establish a process which is designed to determine if certain uses, hereunder after referred to as Conditional Uses, should be permitted. Special review of Conditional Uses is required because these generally are of a public or semi-public character and are esstential and desirable for the general convenience and welfare of the community; but because of the nature of the use and possible impact on neighboring properties, require the exercise of planning judgement on location and site plan.
- PROCEDURES Applications for approval of a conditional use shall be submitted В. to the Planning Department, who shall prepare a report and recommendation for consideration by Planning Board and City Commission, Within a reasonable time, but in no instance less than thirty (30) days after receipt of a complete application, the Planning Board shall hold a public hearing, at which parties in interest and citizens shall have an opportunity to be heard. Approximately fifteen (15) days prior to the public hearing date, a description of the request, the time and place of such hearing shall be posted on the property, advertised in a paper of general paid circulation in the community, and notice shall be given by mail to the owners of record of land lying within 375 feet of the property. Within thirty (30) days after the public hearing, the Planning Board shall submit a report and recommendations to the City Commission. The report may contain additional conditions which should be imposed by the City Commission in approving the conditional use. The City Commission may establish additional conditions for an approval by a simple majority vote, but shall require a vote of five-sevenths (5/7) of all members of the Commission to overrule a Planning Board recommendation for disapproval or to eliminate or substantially change any conditions attached to an approval by the Planning Board.
  - 1. Site Plan Required. Each application for approval of a conditional use shall be accompanied by a site plan meeting the requirements of Section 14, and such other information as may be required for a determination of the nature of the proposed use and its effect on the Comprehensive Plan, the neighborhood, and surrounding properties.

#### 2. Time Limitations

a. Approval of a conditional use under this Section shall become null and void if a building permit has not been issued within six (6) months after the date of approval. Such conditional use may also become null and void if a Certificate of Occupancy, Certificate of Completion or an Occupational License is not issued within two (2) years after Commission approval.

- b. When extenuating circumstances or compelling reasons prevent the applicant from complying with conditions of approval within the above stated time periods, the applicant may request the Planning Board to grant a nine (9) month extension of time to (1) obtain a building permit or (2) to complete all construction work and obtain a Certificate of Occupancy, Certificate of Completion or Occupational License. Notice Requirements for a request for an extension of time shall be satisfied by placing the request on the Planning Board Agenda.
- An approved and operational conditional use which remains idle or unused in whole or in part for a continuous period of six (6) months or for eighteen (18) months during any three (3) year period whether or not the equipment, fixtures, or structures remain, shall be required to seek re-approval of the Conditional Use from the Planning Board. Such use shall not be permitted to be re-used until the Planning Board approval has been granted.

### Compliance with Conditions

- a. No licensing permit, Certificate of Occupancy, or Certificate of Completion shall be issued until all conditions of approval have been met. Permits issued under a conditional use approval may be revoked by the Building Official for failure to comply with conditions of approval or applicable regulations.
- b. Within a reasonable time after a conditional use application or amendment has been approved by the City Commission or approval of the Planning Board, the applicant shall record in the Circuit Court the action and conditions, if any. No Building Permit, Certificate of Occupancy, Certificate of Completion or licensing permit shall be issued until this regulation has been complied with.

# 4. Amendment of an Approved Conditional Use

- An approved conditional use may be amended upon a decision by the Planning Board who shall first determine whether the request is a substantial or minor amendment. The process for a substantial amendment shall be the same as for a new application. The process for a minor amendment shall include listing the request on the regular meeting agenda. In determining whether the request is a substantial or minor amendment, the Board shall at a minimum consider the overall impact of the change, increase or decrease in parking or floor area, landscaping and design, consistency with this Ordinance, efficient utilization of the site and circulation pattern. Any increase in lot area, parking requirements, floor area ratio, density, and/or lot coverage shall automatically be considered as a substantial amendment.
- 5. Fees The below fees are for the purpose of defraying expenses of public notices and other administrative costs in connection with processing applications:

- a. Any applicant requesting and obtaining a public hearing before the Planning Board shall pay the following fees:
  - Conditional Use when a fee has not been established for a specific use

\$400.00 plus \$0.50 per mailing address

- 2. Planned Unit Development (PUD) \$200.00 plus \$0.50 per as described in Sec. 6-4 K.2. mailing address
- 3. Adult Congregate Living Facility \$400.00 plus \$35.00 per bed plus \$0.50 per mailing address
- b. A request for minor amendment to an approved conditional use, clarification of conditions or an extension of time shall require a fee of \$100.00.
- c. A request for a substantial amendment to an approved conditional use shall require a fee of \$200.
- d. If an applicant withdraws his application prior to the date of the public hearing and requests a new hearing date, a fee of \$500 shall be required. The fee is to defray the costs of scheduling the new public hearing, to notify the property owners of the cancellation of the original public hearing and establishment of the revised hearing date.
- C. REVIEW GUIDELINES. Conditional Uses may be approved in accordance with the procedures and standards of this Section, provided that:
  - 1. the application is consistent with the Comprehensive Plan;
  - 2. structures and uses associated with the request are consistent with the Ordinance;
  - the public health, safety, morals, and general welfare will not be adversely affected;
  - 4. that adequate off-street parking facilities will be provided;
  - 5. that necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values; and
  - 6. the intended use or construction does not place a burden upon City services.

#### 7-2 Control of Entrances and Exits.

Where these regulations specify that there shall be no exterior entrances or exits to an

accessory commercial use in a residential district, the general intent is that there shall be no exterior evidence of the existence of such use, and for this purpose, the following regulations shall apply:

- A. The entrance or exit shall be located so that it shall not be visible from any street, walk, or other public way.
- B. The entrance or exit shall not be accessible to patrons from a public street, walk, or other public way, or indirectly by means of any vestibule, foyer, entryway, or room unless such vestibule, foyer, entryway, or room is accessible only from the main entrance and main lobby of the building.
- C. The entrances or exits may be accessible from a patio, court, yard, bay or ocean frontage, or other open space adjoining the side or rear of a building, if such entrances or exits are obscured from all streets by a wall.
- D. No store fronts, show windows, or displays, or exterior signs or displays shall indicate the presence of the commercial use except as specifically permitted in these regulations.
- E. Exterior emergency exits may be permitted as required, provided such exits are identified as for emergency use only, are kept closed except for emergency use, and are constructed so as to be opened only from the inside.

### 7-3 Accessory Uses.

The following uses of structures, land or water are specifically permitted as an accessory use to a principal use of the type indicated in any District in which such principal use may be located. A use other than listed here may be permitted as an accessory use provided that it is a use customarily associated with the principal use to which it will be accessory, it will not be out of character with the general area, it will be used by residents primarily, and it will pose no problem to neighboring properties.

# A. RM-60 MULTIPLE-FAMILY ACCESSORY.

- 1. Office located in a main building for administration of a multiple-family development, containing 10 or more dwelling units.
- Laundry room for use of occupants of a multiple-family dwelling development.
- 3. Newsstand within and operated primarily for convenience of occupants of a multiple-family dwelling containing 100 or more dwelling units, such newsstand to have no exterior entrances or exits, in accordance with the regulations of this Section.
- 4. Public telephones, inside a main building.
- 5. Coin-operated vending machines for candy, tobacco, soft drinks, and postal stamps inside a building with 20 or more dwelling units. The number of machines shall not exceed two (2) machines per twenty (20) units. Machines are prohibited on the outside of a building.

- 6. A dining room within and operated primarily for convenience of occupants of a multiple-family dwelling containing one hundred (100) or more dwelling units, such dining room to have no exterior entrances or exits in accordance with the Regulations of this Section.
- 7. Accessory off street parking and loading spaces.
- 8. Valet Parking.
- Washing and drying machines may be located inside or outside of a building. When located outside of the building, they shall not be in any required yard or visible from a right-of-way. The total number of machines on the site, whether inside or outside the building, shall not exceed two (2) pair per ten (10) units or fraction thereof. One pair shall mean one (1) washer and one (1) dryer.

# B. RM-100 MULTIPLE-FAMILY MEDIUM HIGH DENSITY AND RM-125 MULTIPLE FAMILY HIGH DENSITY AND HOTEL-MOTEL ACCESSORY.

- 1. Any Single-Family Residential or Multiple-Family Low Density and Medium Density accessory.
- 2. An office for administration of a multiple-family dwelling, hotel, or motel, containing ten (10) or more dwelling units or guest rooms.
- Coin-operated vending machines for candy, tobacco, ice, soft drinks, and sundries, inside a building with twenty (20) or more dwelling units or guest rooms.
- 4. Hotels containing one hundred (100) or more sleeping units may have the following service facilities only: ballrooms, bars, barber shops, beauty shops, cabarets, dance studios, dining rooms, laundries, massage service, newsstands, restaurants, valet service, travel service, automobile rental office, and retail stores for books, gifts, flowers, package fruits, tobacco, drugs, sundries, house doctor with patients limited to residents of the building. Such service facilities shall not have exterior entrances or exits in accordance with the regulations contained in this Section.
- 5. Apartments and apartment hotels containing one hundred (100) or more units may have the following service facilities only: restaurants, solariums, saunas and massage services and sundry shops which shall be limited to the sale of the following items: tobacco and tobacco products, magazines and newspapers, candies, sodas, suntan oils, patent medicines, milk, bread, eggs, tea, coffee, toilet and facial tissues. House doctor with patients limited to residents of the building. Such service facilities shall have no exterior entrances or exits in accordance with the regulations contained in this Section.

Customer-Bank Communication Terminals and/or remote financial service units as an accessory use in apartment buildings having four hundred (400) or more dwelling units, and located in RM-100 and RM-125 zoning districts, provided that no agent or employee of the bank is to be stationed at the location of such facility.

- Accessory Restaurants shall be permitted in the RM-100 Multiple Family Medium High Density and RM-125 Multiple Family High Density Use Districts and may be used by the general public, and such accessory restaurant uses shall be permitted to advertise the existence of such accessory restaurant use to the general public; provided, however, that nothing herein contained shall authorize or permit the use of the exterior signs prohibited by Section 7-2,D except as provided for in Section 7-3, B-4 and 5 and Section 11-1, C-6.
- Any Apartment Hotel having one hundred (100) sleeping units or more for transients shall be considered a Hotel for purposes of permissible accessory uses as set forth in Section 7-3, B-4, subject, however, that such service facilities shall not be out of character with the general area; that the same shall be used by residents primarily; and that such service facilities will pose no problem to neighboring properties.

In addition to the stipulations set forth in Section 7-2, Control of Entrances and Exits, and 7-3, Accessory Uses, Apartment Hotels with one hundred (100) or more sleeping units shall comply with the following criteria to apply for accessory uses permitted in Hotels with one hundred (100) or more sleeping units:

- 1. Registration Desk staffed twenty-four (24) hours.
- 2. Open key and mail compartments for one hundred (100) or more designated sleeping units.
- 3. Central telephone switchboard connecting in service to one hundred (100) or more designated sleeping units.
- 4. One hundred (100) or more designated sleeping units shall not have independent electrical or water meters.

Prior to the issuance of permits for such accessory uses, the applicant shall receive an annual written certification statement from the Development Services Department verifying compliance with the above listed requirements.

- Accessory off street parking and loading spaces.
- 7. Retail stores selling primarily alcoholic beverages for consumption on the premises shall only be permitted to sell beer, wine, liquor, and other items that are directly related and associated with their consumption.
- 8. Coin-operated Vending Machines

- a. Washing and drying machines may be located inside or outside of a building. When located outside of a building they shall not be in any required yard or visible from a right-of-way. The total number of machines on the site, whether inside or outside of a building shall not exceed one (1) pair per ten (10) units or fraction thereof. One (1) pair shall mean one (1) washer and one (1) dryer.
- b. Vending machines for postage stamps, candy, tobacco, and soft drinks shall only be permitted inside a building with a total of twenty (20) or more dwelling units, sleeping units, or fraction thereof. Buildings with less than twenty (20) units shall not be permitted to have such vending machines. The number of machines shall not exceed one (1) per twenty (20) units or fraction thereof.

# OFFICE AND BUSINESS ACCESSORY.

- Storage of office supplies or merchandise normally carried in stock in connection with a permitted office or business use subject to applicable District regulations.
- Accessory off street parking and loading spaces, subject to applicable District regulations.

#### D. INDUSTRIAL.

- Storage of goods used in or produced by permitted industrial uses or related activities, subject to applicable District regulations.
- Accessory off street parking and loading spaces.

# E. R-PS 1-4 ACCESSORY

Permitted accessory uses shall include those listed in Sections 7-3A and B of this Ordinance provided, however, that such accessory uses shall: (1) be designed principally to accommodate and serve the residents/occupants of the principal use; (2) have limited accessibility to the general public; (3) be of size and character consistent with the needs of the residents/occupants of the principal use; (4) meet any increased parking requirements necessitated by such use; (5) not require additional loading facilities; and (6) not cause the need for any variance in minimum required yards, height, setback, bulk, parking, loading, floor area ratio, open space ratio, or other requirements of this Ordinance.

# F. C-PS 1-3 ACCESSORY

Permitted accessory uses shall include those listed in Section 7-3C of this Ordinance for non-residential principal uses and those listed in Sections 7-3A and B, as modified by Section 7-3E of this Ordinance, for residential principal uses. Accessory uses in a mixed use development shall be subject to the requirements for residential principal uses if 25% or more of the total area of the building is used for dwelling purposes and to the requirements for non-residential principal uses if less than 25% of the total area of the building is used for dwelling purposes.

### 7-4 Performance Standards.

All Districts shall be so operated as to comply with the standards of performance described in this Section below. In addition to the performance standards hereinafter specified, all uses shall be so constructed, maintained, and operated as not to be injurious to the use of occupation of the adjacent premises by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic or noxious waste materials, odors, radiation, fire and explosive hazard or glare.

#### A. NOISE.

Any use in the locations specified above and below shall be so operated as to comply with the performance standards governing noise set forth below. Objectionable noises of an intermittent nature shall be controlled so as not to become a nuisance to adjacent uses.

Sound levels shall be measured with a sound level meter and associated octave band filter manufactured in compliance with standards prescribed by the American Standards Association.

At no point on a property line or district boundary as indicated, shall the sound intensity level of any individual operation or plant other than the operation of motor vehicles or other transportation facilities exceed the decibel levels in the designated octave bands shown in the following table.

# Between 8:00 A.M. and 6:00 P.M.

Octave Band	Maximum Permitted Sound Level (Decibels).				
(Frequency, Cycles per second)	Along Property Lines Abutting or within a Residential District	Along Property Lines Within a Business or Industrial District.			
63	72	79			
125	67	74			
250	59	66			
500	52	59			
1,000	46	53			
2,000	40	47			
4,000	34	41			
8,000	32	39			

Maximum permitted sound level shall be reduced by three decibels in each octave band between the hours of 6:00 F.M. and 8:00 A.M.

### B. VIBRATION.

No use shall be operated so as to produce ground vibration noticable, without instruments, at the lot line of the premises on which the use is located.

#### C. SMOKE AND OTHER PARTICULATE MATTER.

No use shall be operated except in compliance with the prohibitions against air pollution of the Pollution Control Ordinance of Metropolitan Dade County.

#### D. ODORS.

No use shall be operated so as to produce the emission of objectionable or offensive odors in such concentration as to be readily perceptible at any point at or beyond the lot line of the property on which the use is located. The guides and standards contained in the prohibitions against air pollution of the Pollution Control Ordinance of Metropolitan Dade County are hereby adopted as a guide in determining the quantities of offensive odors.

#### E. TOXIC OR NOXIOUS MATTER.

No use shall for any period of time discharge across the boundaries of a lot on which it is located, toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, comfort, or general welfare or cause injury or damage to persons, property, or the use of property or land.

#### F. RADIATION HAZARDS.

Applicable standards of the Florida State Board of Health Sanitary Code are hereby adopted.

#### G. ELECTROMAGNETIC INTERFERENCE.

No use, activity, or process shall be conducted which produces electromagnetic interference with normal radio or television reception in any residential or business district.

#### H. FIRE AND EXPLOSIVE HAZARDS.

Each use shall be operated so as to minimize the danger from fire and explosion and to comply with the regulations contained in the South Florida Building Code and Chapter 14. The Code of The City of Miami Beach.

#### I. HUMIDITY, HEAT, OR GLARE.

Any activity producing humidity in the form of steam or moist air, or producing heat or glare shall be carried on in such a manner that steam, humidity, heat or glare is not perceptible at any lot line.

#### **SECTION 8**

# SUPPLEMENTARY YARD, AREA, HEIGHT AND BULK REGULATIONS

The regulations set forth in this section qualify or supplement the District Regulations appearing elsewhere in this Ordinance.

## 8-1 Supplementary Yard Regulations.

#### A. GENERAL.

- 1. Public Alleys Whenever a lot abuts upon a public alley, one-half (1/2) of the alley width may be considered as a portion of the required yard, however, a required yard of ten (10) feet shall be provided exclusive of the alley width and no portion of the building, including any allowable encroachment, shall be permitted within ten (10) feet of the alley.
- 2. Determination of Side Street Where these regulations refer to side streets, the Code Enforcement Director shall be guided by the pattern of development in the vicinity of the lot in question in determining which of two (2) streets is the side street.
- 3. Established Right-of-Way Where an official line has been established for the future widening or opening of a street upon which a lot abuts, the depth of a front or side yard shall be measured from such official line to the building line.
- 4. Through Lots Except as otherwise provided in this Ordinance, on through lots the required front yard shall be provided on each street.
- Minimum Side Yards, Public and Semi-Public Buildings -The minimum depth of interior side yards for schools, libraries, churches, community houses, and other public and semi-public buildings in residential districts shall be fifty (50) feet, except where a side yard is adjacent to a business district, in which case, the depth of that yard shall be as required for the district in which the building is located.

#### B. ALLOWABLE ENCROACHMENTS.

Projecting - Every part of a required yard shall be open to the sky, except as authorized by this Ordinance, and except ordinary projections of sills, belt courses, roof overhangs, window air conditioning units, chimneys, cornices, exterior unenclosed private balconies and ornamental features which may project into a required yard a distance not to exceed 25% of the width of the required yard provided such projections are not to exceed six (6) feet and provided that there should not be less than eight (8) feet clear height under any such projection where egress to more than one (1) unit is provided under such projection. Exterior unenclosed private balconies as herein described, may be contiguous provided access between such balconies is prohibited.

- 2. Awnings Movable awnings attached to, and supported by a building wall may be placed over doors or windows in any required yard, but such awnings shall not project closer than three (3) feet to any lot line.
- Canopies A canopy shall be permitted to extend from the entrance door to the street line of any main building in a multiple-family residential district. Where a sidewalk or curb exist, the canopy may extend to within eighteen (18) inches of the curb line. Such canopies shall not exceed fifteen (15) feet in width or twelve (12) feet in height or be screened or enclosed in any manner and shall provide an unobstructed, clear space between the grade and the bottom of the valance of at least seven (7) feet.
- Porches and Platforms Open, unenclosed porches or platfroms not covered by a roof or canopy, and which do not extend above the level of the first floor of the building and completely enclosed below the floor of the porch or platform, may extend or project into the front or side yard not more than six (6) feet; however, at least two and one half (2 1/2) feet of the required yard must be maintained as permanent landscaped open space excluding parking areas.
- 5. Fences, Walls, Hedges, Gates and Lightpoles are permitted as follows:

### Single family districts

### 1. Required Front Yard

- a. Except as provided, the maximum height of fences and walls shall not exceed five (5) feet when located in any required yard. Ornamental fixtures or lamps are permitted to be placed on poles, walls or fences only when located in the required front yard or any yard facing a public street, alley, golf course, or body of water. The total height of the combined structure shall not exceed seven (7) feet. Ornamental fixtures and lamps shall be located with a minimum separation of eight (8) feet on center with a maximum width of two (2) feet.
- b. Fences and walls shall be permitted to exceed the five (5) foot height limit; however, for every one (1) foot increase in height or fraction thereof, the fence or wall shall be set back two (2) feet from the front property line. Ornamental fixtures and lamps shall be permitted with the same size and space requirements listed above however their portion of the increased height shall not be computed in determining the setback requirement. In no instance shall the height of the wall or fence exceed seven (7) feet. The total height of the combined structure, including the ornamental fixture and lamp, shall not exceed a height of nine (9) feet.

- c. Open picket type gates are permitted to have a maximum height of ten (10) feet and a width of twenty (20) feet, however for every one (1) foot in height or fraction thereof in excess of the five (5) foot height limit, the gate shall be set back two (2) feet from the property line. Solid or opaque gates which exceed the five (5) foot height limit are prohibited.
- d. Hedges shall not exceed a maximum height of seven (7) feet.
- e. Lightpoles including ornamental fixtures and lamps shall not exceed a maximum height of ten (10) feet.

### Required Side or Required Rear Yard

- a. Fences and Walls The maximum height, including ornamental fixtures shall not exceed seven (7) feet; except for the following as provided below:
  - 1. Tennis courts as listed in Section 8-1, B-5 (g).
  - When any side or rear yard abutting the bay, a canal, waterway or golf course, the maximum height of a fence or wall shall not exceed five (5) feet.
- b. Hedges maximum height shall not exceed seven (7) feet.
- c. Lightpoles are only permitted pursuant to Section 8-1, B-5(g) or when not located within the side yard setback. All light shall be contained on site as required by Section 7-4, Performance Standards.
- Chain Link Fences are prohibited in the required front yard, any required yard facing the bay or canal or in any required side yard adjacent to a street except as provided in Section 8-1, B-5 (g).

# b. C-6 Commercial Interior District

1. The maximum height of a wall or fence in the required front, rear, or any side yard shall not exceed seven (7) feet, excluding barbed wire or materials of similar character. Provided that barbed wire or materials of similar character shall be elevated seven (7) feet above grade and be angled towards the interior of the lot. The combined height of a wall or fence plus barbed wire or materials of similar character shall not exceed nine (9) feet.

# c. In any district except single family and C-6

- 1. The maximum height shall not exceed five (5) feet in the required front yard and seven (7) feet in the required side and rear yards. Ornamental fixtures and lamps are permitted to be placed on walls or fences only when located in the required front yard or when fronting on any yard facing a public street or alley, golf course, or body of water. The total height of the combined structure shall not exceed seven (7) feet.
- d. All surfaces of masonry walls and wood fences, when seen from adjoining properties, shall have a stucco or painted finish.
- e. Along the boundary between a residential and business district ten (10) foot maximum height.
- The use of barbed wire or materials of similar character is prohibited in all districts except in the C-6 district.
- g. The following regulations shall apply for fences, lightpoles or other accessory structures associated with a tennis court, basketball court or similar court games in all single family districts.
  - 1. Required front yard maximum height of fences shall be ten (10) feet when located at least ten (10) feet from the front property line.
  - 2. Required side and required rear yard maximum height of fences shall be 10 feet when located seven and a half (7 1/2) feet from the interior property line. When the fence faces a street, the maximum height shall be ten (10) feet when located fifteen (15) feet from the property line.
  - 3. Any and all accessory lighting, customarily associated with the use of court games, shall be erected as to direct light on the premises only. The maximum height of light fixtures shall not exceed ten (10) feet when located in a required yard; otherwise, the maximum height shall not exceed twenty (20) feet.
  - 4. All chain link fences shall be coated with green or black materials.
  - 5. When fences are located in required yards, they shall be substantially screened from public view from adjacent properties, public right-of-ways, and waterways by landscape materials.
  - 6. Any play surface, whether paved or unpaved, when associated with said court games, shall have the following minimum required yards: front twenty (20) feet; interior side seven and one half (7½) feet, any side facing on a street fifteen (15) feet, rear seven and one half (7½) feet.

- h. Ornamental fixtures and lamps shall have a minimum separation of eight (8) feet on center and a maximum height of two (2) feet.
- 6. Swimming Pools Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may occupy a required rear or side yard, provided:

#### a. Rear Yard Setback

1) Six (6) feet minimum setback from rear property line to pool deck or platform, or screen enclosure associated or not associated with a pool, provided, however, that pool decks may extend to the property line when abutting upon any bay or canal. There shall be a minimum seven and a half (7 1/2) feet setback from the rear property line to the water edge of the pool.

#### b. Side Yard Setback.

- 1) Nine (9) feet minimum required setback from side property line to the water edge of the pool.
- 2) Seven and one half (7 1/2) feet minimum required setback from side property line to pool deck or platform, or screen enclosures associated or not associated with a pool.
- 3) MF District seven and one half (7 1/2) feet minimum required setback from an interior side property line to pool deck or platform and fifteen (15) feet minimum required setback facing a street.
- 4) Single Family District Seven and one half (7 1/2) feet minimum required setback from an interior side property line to pool deck or platform except for corner lots which shall provide a minimum ten (10) feet setback from the property line to the pool, deck or platform or screen enclosure.
- c. The highest water level of all pools shall be no higher than the finished floor elevation of any adjacent and contiguous dwelling or sleeping units.

A walk space at least eighteen (18) inches wide shall be provided between pool walls and fences or screen enclosure walls. Every swimming pool shall be protected by a safety barrier and self-closing and self-locking gate approved by the Code Enforcement Director.

The minimum size of all commercial swimming pools shall be four hundred fifty (450) square feet with a minimum dimension of fifteen (15) feet and all required walkways shall have a minimum width of four (4) feet around the pool, exclusive of the coping. Commercial swimming pools shall also satisfy all requirements of the State Health Code.

- 7. Visual Barriers for Swimming Pools Accessory swimming pools when located on the front or side yard, facing a public street, shall be screened from public view as provided for in Section 32-6E.
- 8. Accessory Buildings Accessory buildings which are not a part of the main building may be constructed in a rear yard, provided such accessory building does not occupy more than thirty (30) percent of the area of the required rear yard and provided it is not located closer than seven and one half (7 1/2) feet to a rear or interior side lot line. A screen enclosure shall be included in the computation of area occupied in a required rear yard lot but an open uncovered swimming pool shall not be included.
- 9. Boat, Boat Trailer, Camp Trailer Storage -Permitted accessory storage of a boat, boat trailer or camp trailer shall not be conducted in a front yard.
- 10. Central Air Conditioners Accessory central air conditioners may occupy a required side or rear yard, for one (1) or two (2) family homes or group houses provided:
  - a. They are not closer than five (5) ft. to a rear or side lot line.
  - b. They meet the sound level requirements of Section 7-4.
  - c. They shall not exceed a height of two (2) It., six (6) inches above the sidewalk elevation.
  - d. They maintain any required sound buffering equipment outside the minimum five (5) ft. yard area specified in part a. above.
- Hot Tubs, Showers, Saunas, Whirlpools, Toilet Facilities, Swimming Pool Equipment, Decks Hot tubs, showers, whirlpools, toilet facilities, swimming pool equipment, decks and cabanas, are structures which are not required to be connected to the main building but may be constructed in a required rear yard, provided such structure does not occupy more than thirty (30) percent of the area of the required rear yard and provided it is not located closer than seven and one half (7 1/2) feet to a rear or interior side lot line. Free standing, unenclosed facilities including surrounding paved or deck areas shall adhere to the same setback requirements as enclosed facilities.
- Marine Structures Seaward sideyard setbacks for boat slips, decks, wharves, dolphin poles, mooring piles, davits, or structures of any kind shall be equal to landward sideyard setbacks. The minimum setback shall not be less than seven and one half (7 1/2) feet. These setback requirements pertain to the enlargement of existing structures as well as the construction of new structures. It is further provided that any boat, ship, or vessel of any kind shall not be docked or moored so that its projection extends into the required seaward side yard setback.

- Carports An open carport which is constructed of canvas and pipe for the express purpose of shading automobiles shall have a minimum required interior sideyard setback of four (4) feet and shall be permitted to extend into the required front yard setback of a single family residence, provided such carport is at least eighteen (18) inches from the property line or sidewalk. Carports shall not be permitted to exceed twenty (20) feet in width, twenty (20) feet in length and ten (10) feet in height or be screened or enclosed in any manner. An unobstructed view between the grade and the lower ceiling edge of the carport of at least seven (7) feet shall be maintained. Only one (1) carport shall be erected on a single building site. For setback purposes only, carports constructed prior to the adoption of this Section shall be considered as legal non-conforming uses, however, the degree of non-conformity shall not be compounded although they may be repaired or replaced.
- 14. <u>Driveways</u> All driveways in single family residential districts shall have a minimum four (4) foot setback from the side property line.

### 8-2 Corner Visibility.

A. On a corner lot, there shall be no structure or planting which materially obstructs traffic visibility between the height of two (2) feet and ten (10) feet above the street corner grade, within the triangular space bounded by the two (2) intersecting right-of-way lines and a straight line connecting the right-of-way lines fifteen (15) feet from their intersection.

# 8-3 Minimum Yard Regulations for Multiple-Family Zoning Districts.

# A. MF DISTRICTS ESTABLISHED.

- 1. For the purpose of establishing setback regulations for multiple-family zoning districts and for residential uses in commercial districts, the City of Miami Beach shall be divided into eleven (11) area districts as described on the Multiple-Family Zoning Area District Map included herein, and hereafter referred to as MF-1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11. Districts I through 4 include ocean front properties. Districts 5 through 8 include waterway and bayfront properties. Districts 9, 10 and 11 include interior properties.
- 2. Any property located within a multiple-family, I-M, or commercial zoning district that is not assigned a specific MF District by ordinance or by provisions contained herein, shall be automatically included in the following: MF-1 for oceanfront properties; MF-5 for waterway and bayfront properties; and MF-10 for interior properties.

# B. FRONT AND REAR - MINIMUM YARDS.

Front and Rear Yards shall be provided in accordance with the following table. No minimum yard requirement for an upper level shall be less than the minimum yard requirement for any lower level.

	DISTRICT	LEVEL	FRONT	RE	AR
	MF-I	Sub Ground Pedestal Tower	50 50 50 50	50 50 90 90	+ .4 height**
Summanushabum per senerar	MF-2	Sub Ground Pedestal Tower	20 20 40 40	50 50 75	height**
Samuel Company	MF-3	Sub Ground Pedestal Tower	20 20 20 40	50 50 50	height**
	MF-4	Sub Ground Pedestal Tower	20 20 20 20 20	50 50 50 .33	height**
and the second second second second	MF-5	Sub Ground Pedestal Tower	20 20 20 40	0 10 40 40	
4	MF-6	Sub Ground Pedestal Tower	20 20 20 20 20	0 10 20 20	
	MF-7	Sub Ground Pedestal Tower	25 25 25 25	0 10 40 40	
	MF-8	Sub Ground Pedestal Tower	20 20 20 20	0 20 20 30	

	DIS	DISTRICT		EL	FRONT	RI	EAR		
-				subterrane	ean area sh	nall b	e allowed i	n thi:	s district.
	MF-	-9	Grou	und	20	10			
				estal	20	10			
			Tow	er	20	.3	height**		
			No s	subterrane	ean area sh	nall b	e allowed ii	n this	s district.
	MF-	-10	Grou		20	10			
				estal	20	10			
			Tow	er	*	.3	height**		main in
	We will be a second of the sec								
							SIDE		
DISTR	NCT LEVE	L FR	ONT	REAR	INTER		SIDE	ST.	OR ALLEY
DISTR		L FR	ONT	REAR	INTER		SIDE	ST. 10'	OR ALLEY
		L FR	ONT	REAR 0	INTER		SIDE		OR ALLEY  -Grade  -Below
	<u>l</u>	20	ONT			IOR		10'	-Grade
	L Sub.	20 d 20	ONT	0	0	IOR 7.5'	Min.	10'	-Grade -Below

<sup>\*</sup>There shall be a minimum front yard of twenty (20) feet. No point on a building or structure shall be closer to the center line of a street than .5 the height above sidewalk elevation, however, no minimum front yard shall be required to exceed forty (40) feet.

<sup>\*\*</sup>The minimum front and rear yard for the tower, when based on height, shall not exceed the setback required for a height of two hundred and one tenth (200.1) feet. The minimum front yard for the tower shall be constant.

- C. SIDE YARD MINIMUMS. No minimum yard requirement for an upper level shall be less than the minimum yard requirement for a lower level.
  - 1. RM-14 and RM-24 Multiple-Family District The sum of the side yard widths shall be at least twenty five (25) percent of the lot width, but no side yard adjacent to a street shall be less than fifteen (15) feet and no interior side yard shall be less than seven and one half (7 1/2) feet.
  - 2. RM-60, RM-100, RM-125 Multiple-Family Districts.
    - a. Subterranean. This portion of the building is not permitted in districts MF-9 and MF-10. Where permitted, subterranean areas that abut a side lot line, shall provide an open and unencumbered access from the front yard to the roof of such area by means of ramp or stairs. Minimum yards shall be as follows:
      - 1) Interior sides. None required.
      - Streets and Alleys. A ten (10) feet minimum yard shall be required adjacent to a street or alley and shall be developed and maintained as a landscaped area.
    - b. Ground and Pedestal. The sum of the side yards shall be at least twenty five (25) percent of the lot width.
      - 1) Interior sides. No interior side yard shall be less than ten (10) percent of the lot width or seven and one half (7 1/2) feet, whichever is greater.
      - 2) Streets. No side yard adjacent to a street shall be less than fifteen (15) feet or ten (10) percent of the lot width, whichever is greater. The first ten (10) feet shall be developed and maintained as a landscaped area.
    - c. Tower. The minimum side yard shall not exceed 0.33 of the lot width.
      - 1) Interior sides. The minimum side yard setback shall be constant and equal to 0.3 of the building height.
      - 2) Side streets. No point on the tower shall be closer to the center line of a side street than 0.50 of the building height. The resulting minimum yard shall be constant.

# 8-4 Lot Coverage for Multiple-Family Zoning Districts.

#### A. EXEMPTIONS.

1. On a lot with a total area less than 10,000 square feet, there shall be no lot coverage restrictions.

2. That portion of a building or structure which is equal to or less than twenty (20) feet in height and is utilized solely and exclusively for the purposes of parking, equipment, public spaces, access ways, swimming pools, cabanas, lobbies, shops, and offices, but under no circumstances used for apartment units or sleeping units, shall be excluded from lot coverage computation. Open balconies, awnings and porte cocheres shall not be included in determining the building area.

#### B. MAXIMUM LOT COVERAGE.

 On a lot with a total area of 10,000 square feet or greater, the lot coverage permitted shall be determined by the height of the building in accordance with the following table; provided that the maximum lot coverage permitted shall be fifty (50) percent for the pedestal level, as described herein, of any building or group of buildings, regardless of the total height of the building.

In determining compliance with the provisions of this section, maximum lot coverage requirements shall vary based upon the total height each portion of the building is above grade as noted below:

Height of Building	Lot	Coverage
50 ft. or less	* * *	50%
50.1 - 60 ft. · · · · · · · · · · · · · · · · · · ·	• • •	31%
60.1 - 70 ft. · · · · · · · · · · · · · · · · · · ·	•••	29%
70.1 - 80 ft. · · · · · · · · · · · · · · · · · · ·	• • •	28%
80.1 - 90 ft. · · · · · · · · · · · · · · · · · · ·	• • •	27%
90.1 - 100 ft······	• • • •	26%
100.1 - 150 ft. · · · · · · · · · · · · · · · · · · ·	* * *	25%
150.1 - 200 ft	• • •	20%
200.1 or greater	• • •	15%

# C. OFF-SITE FACILITIES EXCLUDED.

 Required off-street parking not located on the same lot with building or use served as specified in Section 9-3, Off-Site Facilities, shall not be included in the lot coverage computation.

# 8-5 Mixed Use - Yards, Area and Bulk Requirements.

- A. Where more than twenty five (25) percent of the total floor area of any building in a business district is used for dwelling purposes, the height, area and bulk requirements for residential development as described in this Ordinance shall apply, in accordance with the appropriate Multiple-Family Area District regulations imposed on such business districts as described on the Multiple-Family Zoning Area District Map subject to the yard modification for mixed uses contained elsewhere in this article. However, no minimum yard required for a residential use shall be less than that required for a non-residential use. Where twenty five (25) percent or less of the total area of such building is used for dwelling purposes, the buildings shall be subject to non-residential buildings in the district.
- B. Where a building containing both residential and non-residential uses is subject to the height, area and bulk requirements applicable to residential development, a minimum required front yard of ten (10) feet shall be provided and developed and maintained as a landscaped area. The minimum required side yard, when adjacent to a street, shall be ten (10) feet and be developed and maintained as a landscaped area. Yard requirements for residential development shall be applied only to the lowest floor (and all floors above it) which contain more than twenty-five (25%) percent of its area used for dwelling space. Yard requirements for non-residential development shall be those required in the applicable business or MF district.
- Whenever a lot in a business district abuts upon a public off-street parking area, residential rear yard requirements may be reduced by one half (1/2) however, a minimum rear yard of ten (10) feet shall be provided for those areas of residential development as described herein.
- 8-6 Oceanfront Lots For purposes of this section, the term Oceanfront Lot shall mean all lots, in whole or in part, whose district boundary includes the established Bulkhead Line. Land located between the Erosion Control Line and the established Bulkhead Line are not included in this definition.
  - A. Oceanfront lots shall have a minimum required rear yard setback of fifty (50) feet measured from the bulkhead, in which there shall be no construction of any dwelling, hotel, motel, apartment building, commercial building, seawall, revetment or other structure incidental to or related to such structure except in accordance with the following provisions:
    - All structures, applicants for any occupational license, or building permit, whether new or renewal applications, and uses shall be approved by the Design Review Board.
    - Permitted uses are limited to the following: shade structures, sidewalk cafes, swimming pools, cabanas, hot tubs, showers, whirlpools, toilet facilities, swimming pool equipment, decks, patios, and court games when said games require no fences.

- 3. There shall be a minimum required fifteen (15) feet setback from a side lot line and a minimum required ten (feet) setback from the bulkhead line.
- 4. The maximum height of any structure, shall not exceed one (1) story or twelve (12) feet, whichever is greater.
- 5. The finished floor elevation of decks, patios, platforms, or any other structure shall have a maximum height of two and one half (2 1/2) feet above the top of the dune.
- 6. The maximum floor area shall be four hundred (400) square feet for any structure.
- 7. Lot Coverage At least fifty (50) percent of the required rear yard setback is to be open to the sky and landscaped. All areas covered by permitted uses, other than portable beach furniture, shall be considered in the lot coverage calculation.
- 8. View Corridor A minimum of fifty (50) percent of the required rear yard setback shall represent an open and unencumbered view, apart from landscaping and decorative open picket type fences, from the Erosion Control Line to the Rear Setback Line.
- Comply with Chapter 161 of Florida Statutes and any governmental agencies having jurisdiction.
- 10. The required rear yard setback area shall not be used for off-street parking.

# 8-7 Modification of Height Regulations.

- A. The height regulations as prescribed in this Ordinance shall not apply to the following when not used or intended to be used for habitation.
  - 1. Belfries.
  - 2. Chimneys.
  - 3. Church spires.
  - 4. Conveyors.
  - 5. Cooling towers.
  - 6. Elevator bulkheads.
  - 7. Fire towers.
  - 8. Flag poles.
  - 9. Monuments.
  - 10. Ornamental towers and spires.
  - 11. Smoke stacks.
  - 12. Stage towers or scenery lofts.
  - 13. Tanks.
  - 14. Water towers.
  - 15. Radio and television towers less than 125 feet in height.

- 3. There shall be a minimum required fifteen (15) feet setback from a side lot line and a minimum required ten (feet) setback from the bulkhead line.
- 4. The maximum height of any structure, shall not exceed one (1) story or twelve (12) feet, whichever is greater.
- 5. The finished floor elevation of decks, patios, platforms, or any other structure shall have a maximum height of two and one half (2 1/2) feet above the top of the dune.
- 6. The maximum floor area shall be four hundred (400) square feet for any structure.
- 7. Lot Coverage At least fifty (50) percent of the required rear yard setback is to be open to the sky and landscaped. All areas covered by permitted uses, other than portable beach furniture, shall be considered in the lot coverage calculation.
- 8. View Corridor A minimum of fifty (50) percent of the required rear yard setback shall represent an open and unencumbered view, apart from landscaping and decorative open picket type fences, from the Erosion Control Line to the Rear Setback Line.
- 9. Comply with Chapter 161 of Florida Statutes and any governmental agencies having jurisdiction.
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  - 9. Monuments.
  - 10. Ornamental towers and spires.
  - 11. Smoke stacks.
  - 12. Stage towers or scenery lofts.
  - 13. Tanks.
  - 14. Water towers.
  - 15. Radio and television towers less than 125 feet in height.

- B. The height of all allowable items in Paragraph A. above shall not exceed twenty-five (25) feet in height above the height used to establish a required minimum yard.
- C. Notwithstanding other provisions of these regulations, the height of all structures and natural growth shall be limited by the requirements of the Federal Aviation Agency and any airport zoning regulations applicable to one (I) structure and natural growth.

#### **SECTION 9**

#### PARKING REGULATIONS

## 9-1 Parking Districts Established.

For the purpose of establishing off-street parking requirements, the City of Miami Beach shall be divided into three parking districts.

- A. PARKING DISTRICT NO. 1 Parking District No. 1 is that area of the City of Miami Beach, Florida, not included in Parking District No. 2 or in Parking District No. 3.
- B. PARKING DISTRICT NO. 2 Parking District No. 2 includes the following area:

Commencing at the north side of 44th Street and the east side of Collins Avenue extended as point of beginning; thence run westerly along the north side of 44th Street to the east bank of Indian Creek; thence run northerly along the east bank of Indian Creek to the south side of 63rd Street; thence run easterly along the south side of 63rd Street to the east side of Collins Avenue; thence run northerly along the east side of Collins Avenue to the southside of 69th Street; thence run easterly along the south side of 69th Street extended to the established bulkhead line; thence run southerly along the established bulkhead line to the north side of 44th Street extended; thence run westerly along the north side of 44th Street to the point of beginning.

C. PARKING DISTRICT NO.3 - Parking District No. 3 is that area of Miami Beach, Florida bounded by the established bulkhead line and the erosion control line extended to the northern and southern boundary of the City.

# 9-2 Off-Street Parking Required.

Except as otherwise provided in this Ordinance, when any building or structure is erected or structurally altered, accessory off-street parking spaces shall be provided for the building, structure, or additional floor area as follows:

# A. PARKING DISTRICT NO. 1 -

- Single-family detached dwelling 2 spaces.
- Two, three and four-family 1 1/2 spaces for each unit.
- 3. Group House 1 1/2 spaces for each unit.
- 4. Apartment building and apartment-hotel I space for each I efficiency unit; I space per one-bedroom unit; 3 spaces per 2 dwelling units with two or more bedrooms. Dwelling unit with more than three bedrooms shall provide I extra space per bedroom unit for any bedroom exiting upon the corridor; and I space per sleeping room. For the purpose of computing parking requirements, an efficiency unit shall have a maximum of 750 square feet, and a one-bedroom unit a maximum of 1,200 square feet.

- Rooming, boarding, or lodging house 1 space per sleeping unit plus 2 spaces for the building.
- 6. Hotel I space for each I sleeping unit.
- Motel or motor lodge 1 space per sleeping unit.
- Church, synagogue or temple, auditorium or place of assembly 1 space per 6 seats, or bench seating spaces in main auditorium.
- 9. College 1 space per 5 seats in the main auditorium, or 1 space per 3 seats per classroom, whichever is greater.
- 10. High school 1 space per 12 seats in the main auditorium, or 2 spaces per classroom, whichever is greater.
- 11. Junior high, elementary, or nursery school 1 space per 15 seats in main assembly room, plus 1 space per classroom.
- Private clubs, country clubs, fraternities, sororities, and lodges 1 space per 250 square feet of floor area.
- 13. Funeral home 1 space per 6 seats or bench seating spaces in chapel.
- 14. Auditorium, theatre, gymnasium, stadium, arena, or convention hall 1 space per 4 seats.
- 15. Grocery stores, fresh fruit, fish, meat, poultry 1 space per 250 square feet of floor area.
- 16. "RH" Hospital Districts. The following parking regulations shall apply to structures situated in the "RH" Hospital District:

The number of off-street parking spaces required for any structure shall be determined by the primary use of the structure in accordance with the requirements as follows:

- a. Hospital 1 1/2 spaces per hospital bed.
- b. Educational facility 1 space per 5 seats in the main auditorium or 1 space per 3 seats per classroom, whichever is greater.
- c. Offices, clinics I space for each 400 square feet of floor area.
- d. Research facility 1 space for each 1,000 square feet of floor area.

# 17. Accessory Uses.

Parking requirements for permitted accessory uses in an apartment building, apartment-hotel, hotel, motel, or motor lodge and containing 100 or more dwelling units and/or sleeping units, shall be provided as follows:

- One space per 600 square feet of retail, personal services, and/or office floor space, utilized as rental space.
- b. One space per 10 seats of total, combined seating capacity in public eating and drinking facilities and 1 space per 5 seats of available seating area in assembly and meeting rooms.
- c. One space per 5 boat berths.
- d. One space per two cabanas.
- 18. Retail store or personal service establishment 1 space per 300 square feet of floor area including stock brokerage.
- 19. Furniture store, hardware, machinery, equipment and automobile and boat sales and service I space per 400 square feet of floor area.
- 20. Nursing homes I space for each 2 beds.
- 21. Office or office building 1 space per 400 square feet of floor area, however, medical offices and clinics shall provide 1 space per 300 square feet.
- 22. Restaurants or other establishment for consumption of food or beverages on the premises 1 space per 4 seats.
- 23. Animal hospital 1 space per 400 square feet of floor area.
- 24. Bus or other mass transit station 1 space per 50 square feet of floor area.
- 25. Bowling alley or pool room 2 spaces for each alley or per billiard or pool table.
- 26. Amusement place, dance hall, skating rink, swimming pool, natatorium or exhibition hall without fixed seats I space for each fifty (50) feet of floor area available for seats.
- 27. Banks and savings and loan associations 1 space per 300 square feet of floor area.
- 28. General service or repair establishment, printing, publishing, plumbing, heating, broadcasting 1 space per 1,000 square feet of floor area.
- 29. Laundry I space per 500 square feet of floor area.
- Manufacturing or industrial establishment, research or testing laboratory, creamery, bottling plant, wholesale, warehouse or similar establishment 1 space per 1,000 square feet of floor area.
- 31. Telephone exchanges or equipment buildings 1 space per 1,500 square feet of floor area.

- 32. Marina I space per boat berth.
- 33. Dormitory I space for each 150 square feet of dormitory floor area plus I space per 10 students based on maximum enrollment at time of conditional use approval.
- 34. Adult Congregate Living Facility 1 space for each 2 beds.

### B. PARKING DISTRICT NO. 2

The off-street parking required in this district shall be the same as set forth in Parking District No. 1 above, except as follows:

1. Apartment building and apartment-hotel - 1 space for each efficiency unit, 3 spaces for every 2 one-bedroom units, 3 spaces for every 2 dwelling units with 2 or more bedrooms. Dwelling units with more than three bedrooms shall provide 1 extra space per bedroom unit for any bedroom exiting upon the exterior of the building or upon a corridor; and 1 space per sleeping room. For the purpose of computing parking requirements, an efficiency unit shall have a maximum of 750 square feet, and a one-bedroom unit a maximum of 1,200 square feet.

### C. PARKING DISTRICT NO. 3

There shall be no off-street parking required for any permitted use in this district.

D. Exemptions to Required Parking - Any permitted use located within 50 feet of an oceanfront bulkhead line shall have no parking requirement; except for those uses and structures permitted by the Board of Adjustment. In these cases, said uses and structures shall provide parking spaces as required in this section.

#### 9-3 Off-Site Facilities.

- A. All parking spaces required herein shall be located on the same lot with the building or use served, or within a distance not to exceed 400 feet from such lot.
- B. Where the required parking spaces are not located on the same lot with the building or use served and used as allowed in paragraph 9-2 A, preceding a written agreement thereby assuring their retention for such purposes, shall be properly drawn and executed by the parties concerned, approved as to form by the City Attorney and shall be filed with the application for a building permit.

# 9-4 Interpretation of Off-Street Parking Requirements.

- A. The parking required herein is in addition to space for storage of trucks or other vehicles used in connection with a business, commercial, or industrial use.
- B. Where fractional spaces result, the parking spaces required shall be construed to be the next highest whole number.

- C. The parking space requirements for a use not specifically listed in this Section shall be the same as for a listed use of similar characteristics of parking demand generation.
- D. In the case of mixed uses, uses with different parking requirements occupying the same building or premises, the parking spaces required shall equal the sum of the requirements of the various uses computed separately, except that parking requirements for permitted accessory uses in an apartment building, apartment-hotel, hotel, motel, or motor lodge and containing 100 or more dwelling units and/or sleeping units, shall be as provided in Section 9, Parking Regulations.
- E. Whenever a building or use, constructed or established after the Effective Date of this Ordinance, is changed or enlarged in floor area, number of dwelling or sleeping units, seating capacity or otherwise, to create a requirement for an increase in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change.
- F. Thirty-five (35) percent of the required parking spaces may be provided for compact cars, provided each such space shall be clearly designated for "compact vehicles only".

### 9-5 Design Standards.

- MINIMUM AREA. For the purpose of this Ordinance, a standard off-street parking space is an all-weather surfaced area, not in a street or alley, and having a width of not less than nine (9) feet and length of not less than twenty (20) feet except for parallel parking where such space shall be twenty-three (23) feet in length. A compact off-street parking space shall be not less than eight (8) feet in width and 17.5 feet in length except for parallel parking where such space shall be twenty-one (21) feet in length. The length required shall be measured on an axis parallel with the vehicle after it is parked. The width required is to be column-free clear space, except those standard off-street spaces immediately adjacent to a structural column within an enclosed parking structure may have a width of 8'6" and those compact spaces adjacent to a structural column may have a width of 7'6". The required area is to be exclusive of driveways, permanently reserved for the temporary parking of one automobile and connected with a street or alley by an all-weather surfaced driveway. This driveway must be contiguous to the parking space and afford unobstructed ingress and egress for an automobile to be moved, except in the case of attendant parking. For the purpose of this Ordinance, attendant parking spaces shall not apply toward the computation of the minimum parking requirements.
- B. DRAINAGE AND MAINTENANCE. Off-street parking facilities shall be drained to prevent damage to abutting property and/or public streets and alleys and surfaced with erosion-resistant material in accordance with applicable city specifications. Off-street parking areas shall be maintained in a clean, orderly, and dust free condition at the expense of the owner or lessee and not used for the sale, repair, or dismantling or servicing of any vehicles, equipment, materials or supplies.

- C. <u>SEPARATION FROM WALKWAYS AND STREETS</u>. Off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys by a wall, fence, or curbing or other approved protective device, as specified by Dade County Ordinance No. 67-75.
- D. ENTRANCES AND EXITS. Location and design of entrances and exits shall be in accord with the requirements of applicable traffic regulations and standards. Landscaping, curbing, or approved barriers shall be provided along lot boundaries to control entrance and exit of vehicles or pedestrians, as specified by Dade County Ordinance No. 67-75.
- E. RAMPS. A maximum grade of five (5%) percent shall be permitted for sloped portions of sloping floor garages where ramps provide direct access to stalls. Interfloor ramps and ramps to and from the established grade of any street shall not exceed twelve (12%) percent, and no parking shall be permitted directly off these ramps.
- F. INTERIOR DRIVES. Interior drives shall be of adequate width to serve a particular design arrangment of parking spaces, the following being minimum widths permitted:

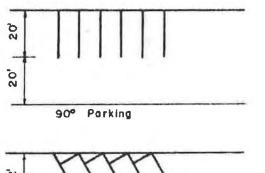
90° parking - twenty (20) feet, with columns parallel to the interior drive on each side of the required drive set back an additional one (1) foot six (6) inches, measured from the edge of the required interior drive to the face of the column.

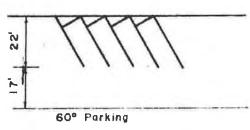
45° parking - eleven (11) feet.

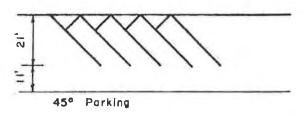
60° parking - seventeen (17) feet.

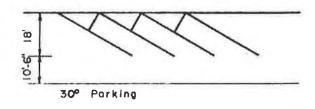
30° parking - ten (10) feet, six (6) inches.

Further defined by the following illustrations:









- G. MARKING. Parking spaces in lots of more than ten (10) spaces shall be marked by painted lines or curbs or other means to indicate individual spaces. Each individual space shall be provided with a car stop or curb or other similar device to prevent vehicular encroachment. Signs or markers shall be used as necessary to ensure efficient traffic operations of the lot.
- H. <u>LIGHTING</u>. Adequate lighting shall be provided in lots of more than ten (10) spaces if off-street parking spaces are to be used at night. The lighting shall be arranged and installed to minimize glare on property in a residential district.
- I. SCREENING AND LANDSCAPING. At grade parking lots and parking garages shall conform to the minimum Landscape Standards as set forth in Section 32-6.

### 9-6 Parking in Front Yards.

- A. Single-Family Residential Districts.
  - 1. Required parking spaces may be located in the minimum front yard setback area.
  - 2. Accessory carport structures within the front yard shall not be permitted in the minimum sideyard setback pursuant to Section 8-1, B-13 of this Ordinance.
  - 3. Parking or storage of vehicles in the minimum required front yard setback shall be restricted to automobiles. No Commercial vehicles shall be parked or stored in any yard.
- B. Multiple Family Districts.
  - 1. On lots under 10,000 square feet, the required parking may be located in the minimum front yard setback.
  - 2. On lots under 10,000 square feet which do not locate parking in the minimum front yard, the density and floor area ratio may be increased by 20%.
  - 3. On lots of 10,000 square feet or more parking spaces shall not be located in the minimum front yard setback.
- C. Commercial Districts, C-1 to C-6.
  - 1. On lots under 10,000 square feet, parking spaces may be located in the minimum front yard setback.

### OFF-STREET LOADING

## 10-1 Off-Street Loading Required

Except as otherwise provided in this Ordinance, when any building or structure is erected, structurally altered, or converted in use, accessory off-street loading spaces shall be provided for the building, structure, additional floor area or new use in accordance with the following schedule:

A. For each retail store, department store, restaurant, wholesale house, warehouse, repair, general service, manufacturing or industrial establishment, or similar use, which has an aggregate floor area in square feet of:

	1.	Over 2,000 but not over 10,000	1 space			
	2.	Over 10,000 but not over 20,000	2 spaces			
	3.	Over 20,000 but not over 40,000	3 spaces			
	4.	Over 40,000 but not over 60,000	4 spaces			
	5.	For each additional 50,000 over 60,000	1 space			
В.	For each office building, hospital or similar institutions, places of public assembly, or similar use, which has an aggregate floor area in square feet of:					
	1.	Over 5,000 but not over 10,000	1 space			
	2.	Over 10,000 but not over 100,000	2 spaces			
	3.	Over 100,000 but not over 200,000	3 spaces			
	4.	For each additional 100,000 over 200,000	l space			
C.	Fore	each apartment building, apartment-hotel, hotel or motel:				
	1.	Over 36 units but not more than 50 units	l space			
	2.	Over 50 units but not more than 100 units	2 spaces			
	3.	Over 100 units but not more than 200 units	3 spaces			
	4.	For each additional 100 units or fraction thereof, over 200 units	l space			

# 10-2 Interpretation of Off-Street Loading Requirements

- A. The loading space requirements apply to all districts except the C-3 Central Business Districts and properties fronting 41st Street from Alton Road to Indian Creek, where no requirements are imposed.
- B. The loading requirements in this Section do not limit special requirements which may be imposed in connection with Conditional Uses, Section 7.
- C. For uses which contain less than 10,000 square feet of floor area, the Code Enforcement Director may waive or reduce the loading requirements whenever the character of the use is such as to make unnecessary the full provision of loading facilities or where such provision would impose an unreasonable hardship upon the use of the lot.

### 10-3 Design Standards

- A. SIZE AND LOCATION. For the purpose of these regulations a loading space is a space within the main building or on the same lot, logically and conveniently located for bulk pick-ups and deliveries, scaled to delivery vehicles expected to be used but not less than 10 x 20, and accessible to such vehicles when required off-street parking spaces are filled.
- B. DRAINAGE AND MAINTENANCE. Off-street loading facilities shall be drained to prevent damage to abutting property and/or public streets and alleys and surfaced with erosion-resistant material in accordance with applicable city specifications. Off-street loading areas shall be maintained in a clean, orderly and dust-free condition at the expense of the owner or lessee and not used for the sale, repair, dismantling, or servicing of any vehicles, equipment, materials, or supplies.
- C. ENTRANCES AND EXITS. The location and design of entrances and exits shall be in accordance with applicable traffic regulations and standards. Where the entrance or exit of a building is designed for truck loading and unloading, such entrance or exit shall be designed to provide at least one off-street loading space. However, no such loading space shall be located in the required front yard setback.

#### SIGNS

To achieve the purposes of this Ordinance and of Part I, Div. II, Article VI, Related Laws, The Code of the City of Miami Beach, Florida, and provide for the general welfare and safety of the public, it is necessary that regulations be established for the location, size, purpose and lighting of signs erected or displayed in the City.

## 11-1 General Sign Regulations.

The following regulations apply generally to all signs and are in addition to the regulations contained elsewhere in this Ordinance.

- A. PERMIT REQUIRED. No sign, unless herein accepted, shall be erected, constructed, posted, painted, altered, maintained, or relocated, except as provided in this Section, until a permit has been issued by the Building Official. Before any permit is issued, an application, especially provided by the Code Enforcement Division, shall be filed, together with such drawings and specifications as may be necessary to fully advise and acquaint the Division with the location, construction, materials, manner of illuminating, and securing or fastening and number of signs applied for and the wording of the sign or advertisement to be carried on the sign. All signs which are electrically illuminated by neon or by any other means shall require a separate electrical permit and inspection. Each sign requiring a permit shall be clearly marked with the permit number and name of the person or firm placing the sign on the premises.
- B. CODE REQUIREMENTS. Structural and safety features and electrical systems shall be in accordance with the requirements of the South Florida Building Code. No sign shall be approved for use unless it has been inspected and found to be in compliance with all the requirements of this Ordinance and applicable technical codes.
- C. EXEMPT SIGNS. The following signs are exempt from the provisions of these regulations and may be erected or constructed without a permit but in accordance with the structural and safety requirements of the South Florida Building Code:
  - 1. Official traffic signs or sign structures, or municipal information signs and provisional warning signs or sign structures, when erected or required to be erected by a governmental agency, and temporary signs indicating danger.
  - 2. Changing of the copy on a bulletin board, poster board, display encasement, or marquee.
  - 3. Temporary non-illuminated signs not more than fifty (50) square feet in area, erected in connection with new construction work and displayed on the premises during such time as the actual construction work is in progress, one such sign for each street frontage. These signs shall be removed upon issuance of the Certificate of Occupancy.

- 4. Non-illuminated signs, not exceeding six (6) square feet in area with letters not exceeding eight (8) inches in height, painted, stamped, perforated, or stitched on the surface area of an awning, canopy, roller curtain, or umbrella, but not in Zoning Districts RS-1, RS-2, RS-3, RS-4 and RM-14.
- 5. Sign on truck, bus or other vehicle, while in use in the normal course of a business.
- D. <u>ERECTION OF SIGNS IN SPECIAL CASES</u>. The Board of Adjustment shall grant approval or deny signs not conforming to the requirements of this Section. For purposes of this Section signs considered by the Board of Adjustment shall only be those exceeding the maximum size, location, or those relating to graphics and illustrations; in other cases when this Ordinance does not contain specific sign regulations, they shall be considered by the City Commission.
- E. PENNANTS, BANNERS, STREAMERS. Pennants, banners, streamers, and all other fluttering, spinning or similar type signs and advertising devices are prohibited except for national flags and flags of political subdivisions of the United States, and except for flags of bona fide civic, charitable, fraternal, and welfare organizations, and except during nationally recognized holiday periods, pennants, banners, streamers, and other fluttering, spinning, or similar type advertising devices pertaining to said holiday periods may be displayed on a temporary permit basis as provided in paragraph 11-1 D., preceding.

## F. SIGNS OVER PUBLIC PROPERTY.

- No sign of any character shall be suspended across any public street, alley or waterway; nor shall any sign of any description be painted on or applied to any curb, sidewalk, tree, light standard, utility pole, hydrant, bridge, wall, or any structure, other than an awning, which is within the property lines of any street, alley or waterway within the city; except on a temporary permit basis as provided in paragraph 11-1 D, preceding, and with permission of the City Commission.
- 2. No portion of any flat sign which extends over a public sidewalk or alley shall be less than nine (9) feet above such sidewalk or fifteen (15) feet above such alley, measured vertically directly beneath the sign.
- 3. No projecting sign, except a marquee, and no detached, ground or pole sign shall extend or project over any portion of any sidewalk, street, alley, waterway or any other public way or any public property.
- G. CAMPAIGN SIGNS. A candidate for public office may construct or maintain signs advertising his candidacy at each of not more than four (4) of his headquarters, provided no such signs shall be located in a residential district.
  - Political signs, except political signs appearing as copy on general advertising structures, political signs on the premises of an authorized campaign headquarters, or political signs as permitted window signs in accordance with the regulation applicable to window signs shall be prohibited. This prohibition shall not apply to political signs on moving

- vehicles or to political signs on operable vehicles which are parked on private property, for a period not in excess of eight continuous hours on any one lot, during the time between qualification and election.
- All political candidates shall deposit with the City \$150 as security for his
  undertaking to remove his political signs within seven days following the
  date of the general election involving his campaign.
- II. GENERAL ADVERTISING SIGNS. No general advertising sign shall be constructed, erected, used, operated or maintained in the City of Miami Beach.

## I. YARD REQUIREMENTS.

- 1. Unless otherwise specified in these regulations, all signs shall comply with the yard requirements of the district in which they are located.
- 2. One accessory sign may occupy required yards in a district where such sign is permitted by these regulations, provided such sign is not more than thirty (30) square feet in area, does not contain flashing, moving, or intermittent illumination, and provided other requirements of these regulations are complied with.
- 3. No sign, portable or otherwise, is to be placed or located to conflict with the vision clearance requirements of Section 8 of this Ordinance.
- 4. In addition to the side yards required elsewhere in these requiations, any sign exceeding thirty (30) square feet in area shall be set back from interior side property lines as follows: ten (10%) percent of the street frontage of the property in question, if such frontage does not exceed one hundred (100) lineal feet; twenty (20%) percent of the street frontage of the property if such frontage exceeds one hundred (100) lineal feet, but does not exceed two hundred (200) lineal feet; thirty (30%) percent of the street frontage of the property in question if such frontage exceeds two hundred (200) lineal feet.

## J. LIGHTING.

- 1. Any sign may be indirectly illuminated if illumination is not otherwise limited by the provisions of these regulations.
- 2. No sign may be a flashing sign, intermittent, moving or revolving.

## K. NONCONFORMING USES.

- 1. Permitted signs for a nonconforming business, commercial, or industrial use in a residential district shall consist of those signs permitted in the C-1 Zoning District.
- 2. Except as otherwise specifically provided in these regulations, all signs shall be subject to the provisions of Section 12, Non-Conforming Structures and Uses.

### L. REMOVAL REQUIRED.

- 1. All signs shall be maintained in good condition and appearance. The Building Official may cause to be removed any sign which shows gross neglect or becomes dilapidated where the area around such sign is not well maintained after due notice has been given as provided below.
- 2. Any accessory sign previously associated with a vacated premises shall be either removed from the premises by the owner or lessee not later than six (6) months from the time such activity ceases to exist, or said signs shall be altered or resurfaced by the owner or lessee within the same six-month time period, so that the sign will not display letters, numerals, symbols, figures, designs, or any other device for visual communication that would pertain to the activity formerly associated with the vacated premises.
- 3. The Building Official shall remove or cause to be removed, any sign erected or maintained in conflict with these regulations if the owner or lessee of either the site or the sign fails to correct the violation within thirty (30) days after receiving written notice of violation from the Code Enforcement Department. Removal of a sign by the Building Official shall not affect any proceedings instituted prior to removal of such sign.
- 4. In any district where a sign does not comply with the provisions of this Ordinance, such sign and any supporting structures other than a building shall be removed not later than five years from the Effective Date of this Ordinance. Supporting structures for nonconforming signs may continue in use for a conforming sign if they comply in all respects to the applicable requirements of the regulations contained herein and other codes and ordinances.
- 5. Any sign which does not comply with the provisions of this Ordinance and which is damaged, by any cause, to an extent that the cost of repairing the sign equals fifty (50%) percent, or more, of the original installation cost of the sign, shall be removed.

## M. SIGNS AND SIGN DEVICES PROHIBITED.

- 1. No sign shall be constructed, erected, used, operated, or maintained so as to display intermittent lights, to move or to revolve.
- 2. No sign shall be constructed, erected, used, operated or maintained which uses the word "Stop" or "Danger" or presents or implies the need or requirement for stopping, or the existence of danger, or which is a copy or imitation of an official sign. This provision regarding the words "Stop" and "Danger" does not apply when the words are a part of attraction titles for a broadcast, motion picture, theatre event, opera or concert, or when they are used in descriptive lines of advertising, so long as they are not used to stimulate, copy or imply any official traffic warning, either for vehicles or for pedestrians.

- 3. No sign shall be constructed, erected, used, operated or maintained so as to provide a background of colored lights blending with the traffic signals to the extent of confusing a motorist when viewed from a normal approaching position of a vehicle at a distance of twenty-five (25) to three hundred (300) feet.
- 4. No sign shall be attached or otherwise applied to trees, utility poles, bus benches, trash receptacles, or any other unapproved supporting structures.
- 5. No sign shall have spinning, or strings of spinning, or similar type devices.
- 6. Signs which are not securely affixed to the ground, or otherwise affixed in a permanent manner to an approved supporting structure, shall be prohibited.
- 7. Political signs, except political signs on the premises of an authorized campaign headquarters, or political signs as permitted window signs in accordance with the regulations applicable to window signs shall be prohibited. This prohibition shall not apply to political signs on moving vehicles, during the time between qualification and election.
- 8. Except where permitted within certain zoning districts, no sign indicating the presence of an accessory commercial use in a hotel, motel, apartment-hotel, or apartment building located in a residential district shall be constructed, erected, used, operated, or maintained so as to be visible from a public street, walk, or other public way.
- Detached signs, when permitted, shall not exceed a height of twenty-five
   (25) feet above grade except as elsewhere provided.

## 11-2 Zoning District Sign Regulations.

All signs permitted in these regulations shall be Establishment Identification Signs unless otherwise specified.

# A. SIGNS PERMITTED IN THE RS-I, RS-2, RS-3, RS-4 and RM-14-DISTRICTS

- 1. A name plate, one (1) square foot in area, to identify the owner or occupant of a dwelling or building.
- 2. Private directional sign, one (1) square foot in area.
- 3. A sign, limited in area to ten (10) square feet for identification of a subdivision.
- 4. A customary church bulletin board, limited in area to thirty (30) square feet.
- 5. A sign, limited in area to thirty (30) square feet for identification of permitted public and semi-public uses or clubs.

- 6. A temporary, non-illuminated sign, advertising real estate for sale or lease, subject, however, to the following conditions:
  - a. No such sign shall be displayed, constructed, reconstructed, situated, maintained or erected by any other than the owner or lessee, of the lot, parcel of land or premises, except only on the lot or premises as herein set forth.
  - b. There may be only one (1) such sign on the lot or parcel of land or on the improvements thereon, regardless of the size of such lot, parcel or improvements, and such sign may contain only one of the following designation, to wit: For lease, for sale, for sale or lease, open for inspection, for rent.

Such sign may have the following appearing thereon:

- The name of the real estate broker or realtor as the same is registered with the Florida Real Estate Commission, in letters not exceeding one inch in height.
- 2) A designation following such name, as being either; (a) "Realtor", or (b) "Broker".
- 3) The telephone number of said Realtor or Broker.
- 4) By appointment only.

Provided, however, that nothing herein contained shall prohibit the use of an additional strip sign, not exceeding two (2) inches by eighteen (18) inches, which will provide for one (1) inch letters, and placed immediately beneath the sign authorized by this paragraph, and containing the information set forth in Items (1) through (4) of this paragraph; and, further provided, that nothing herein contained shall be deemed to prohibit the use of the name, address, and telephone number of the owner or lessee in lieu of that of the Real Estate Broker or Realtor.

- c. The face surface of such sign shall not exceed a height of fourteen (14) inches nor a width of eighteen (18) inches, and the top of the sign shall not be more than five (5) feet above the ground. Color of the sign shall be plain black on white or plain white on black, no iridescent or other lighting permitted. The sign shall be securely placed in the ground or attached to the building. The date and permit number shall be placed on the bottom of the face of the sign.
- d. Said sign shall not be nearer than ten (10) feet from any property line if placed upon vacant property, and if placed on land improved by building, it shall not be placed nearer than five (5) feet from any property line, unless the main part of the building is less than five (5) feet from the property line, in which case it may be placed in or upon a front or side door or window of the building; if there is a wall upon the property line, then such sign may be placed on or against such wall.

e. Permits for such signs may be issued by the Building Official upon application by the owner or lessee, in person and giving proof of such ownership or tenancy, and all such permits shall automatically expire within six (6) months from the date of issuance.

### B. SIGNS PERMITTED IN THE RM-60 DISTRICT.

- 1. Any sign permitted in an RM-14 District.
- 2. A flat, awning or marquee sign, non-illuminated and limited in total area to fifteen (15) square feet, giving the name and/or address or management of a multiple-family dwelling or group of multiple-family dwellings. The height or letters shall not exceed one (1) foot on a marquee or awning sign.

## C. SIGNS PERMITTED IN THE RM-100 AND RM-125 DISTRICTS.

- 1. Any sign permitted in an RM-14 District.
- Any sign permitted in an RM-60 District, illuminated or non-illuminated, for a multiple-family dwelling, hotel, apartment-hotel, or motel, containing less than fifty (50) dwelling units.
- 3. For a multiple-family dwelling, hotel, apartment-hotel, or motel containing fifty (50) or more dwelling units, accessory signs, flat, projecting, or detached, illuminated or non-illuminated with total aggregate sign area limited to forty (40) square feet for each two hundred (200) feet or fraction thereof, of street frontage and limited to no more than two (2) separate signs for each street frontage. Detached and projecting signs shall be limited in area to twenty (20) square feet for each sign. A flat sign shall be limited in area to forty (40) square feet plus any premium permitted for height of location.
- 4. Two (2) directional signs with sign area not exceeding eight (8) inches by twenty-four (24) inches.
- 5. Flat signs may be increased in area by ten (10) square feet for each story above the fourth story on which the sign is located and such increased area shall not be included in the computation of the total aggregate sign area.
- 6. In addition to signage permitted elsewhere in this Ordinance, only a hotel, motel or apartment-hotel may have one (1) sign, flat, single or double faced pole or mounted, illuminated or non-illuminated, indicating the presence of an accessory commercial use if the following criteria are met:
  - a. The hotel, motel, or apartment hotel must contain a minimum of one hundred (100) sleeping units for the private use of transients. Permitted accessory use signage includes flat, single or doubled faced pole or mounted signs.

- b. The accessory sign may be located in the required front yard with a minimum ten (10) foot setback from any property line.
- c. The area of flat or mounted signs may not exceed one-half (1/2) of the total aggregate sign area permitted by this Ordinance. Single or doubled faced pylon signs shall have a maximum area of twenty-four (24) square feet and a maximum height of four (4) feet measured from grade to the top of the sign. Signage erected under this section shall be in addition to the total permitted aggregate sign area.

Pole signs are prohibited in these Districts.

- d. Sign copy may only advertise the names of entertainment accessory uses. For purposes of this Section, entertainment is confined to restaurants, bars, and meeting areas that feature live (not recorded) musicians, singers, bands, and comedians or pre-recorded music if accompanied by a professional announcer. The entertainment use which is the subject of the sign copy shall appear within the area occupied by the hotel, motel, or apartment hotel. Sign copy advertising room rates, price of meals or price of entertainment is prohibited.
- e. A sign or sign structure erected pursuant to this Section shall by January 1 of each year receive written certification from the Code Enforcement Director verifying compliance with the provisions of this Ordinance. Failure to receive such certification will result in a termination of the sign permit.
- f. Signage permitted by this Section shall be consistent with Section 7-2, Control of Entrances and Exits.

### D. SIGNS PERMITTED IN THE C-1 AND C-2 DISTRICTS.

- 1. Any sign permitted in an RM-60 District.
- 2. Flat signs, illuminated or non-illuminated, with total aggregate sign area not more than ten (10%) percent of the area of walls fronting on a street and no one (1) sign with sign area of more than thirty (30) square feet. Illuminated signs inside of show windows and within five (5) feet thereof shall be included in the computation of sign area, and in addition, shall be limited to ten (10%) percent of the total glass area of the window in which they are placed. Neon tubing outlining a show window shall be included in sign area and measured by multiplying the length of the tubing by six (6) inches.
- 3. Projecting signs, illuminated or non-illuminated, one (1) for each business on the premises, with sign area limited to twenty (20) square feet.
- 4. Detached signs, if there are no projecting signs, illuminated or non-illuminated, one (1) for each business on the premises, with sign area limited to ten (10) square feet.

- 5. Marquee signs, illuminated or non-illuminated, two (2) for each business on the premises, with sign area limited to three (3) square feet.
- 6. Temporary, non-illuminated paper or painted signs in windows, limited to twenty (20%) percent of the total glass area of the window in which they are placed.
- 7. Directional signs limited in area to four (4) square feet, shall only provide directions to motorists regarding the location of parking areas and access drives, shall be permitted as accessory signs and not included in any computation of sign area.

# E. SIGNS PERMITTED IN THE C-3 AND C-4 DISTRICTS.

- 1. Any sign permitted in an RM-125 District.
- 2. Flat signs in C-3 with a total aggregate sign area not more than ten (10%) percent and in C-4 with total aggregate sign area not more than twenty (20%) percent of the area of walls fronting on a street, and no one (1) sign with sign area of more than one hundred twenty-five (125) square feet. Illuminated signs inside of show windows and within five (5) feet thereof, shall be included in the computation of aggregate sign area, and in addition, shall be limited to ten (10%) percent of the total glass area of the window in which they are placed.
- 3. Total aggregate sign area for all signs listed above in this group shall be limited to one hundred and fifty (150) square feet for each fifty (50) feet of street frontage.
- 4. Temporary, non-illuminated paper or painted signs in windows shall be limited to ten (10%) percent of the total glass area of the window in which they are placed.
- Directional signs limited in area to four (4) square feet, giving directions to motorists regarding the location of parking areas and access drives shall be permitted as accessory signs and not included in any computation of sign area.
- 6. Permitted sign area of one (1) accessory flat sign may be increased by ten (10) square feet for each story above the fourth (4th) story on which the sign is located and not included in the computation of the total aggregate sign area.

# F. SIGNS PERMITTED IN THE C-5 DISTRICT.

- 1. Any sign permitted in an RM-125 District.
- 2. Flat signs, with total aggregate sign area not more than twenty (20%) percent of the area of walls fronting on a street, and no one sign with sign area of more than one hundred twenty-five (125) square feet. Illuminated signs inside of show windows and within five (5) feet thereof, shall be

included in the computation of aggregate sign area, and in addition, shall be limited to twenty (20%) percent of the total glass area of the window in which they are placed. Neon tubing outlining store windows shall not be included in the computation of aggregate sign area.

- 3. Projecting signs, one (1) for each business on the premises, with sign area limited to forty (40) square feet.
- 4. Detached signs, limited in area to thirty (30) square feet, one (1) for each business or one (1) for each fifty (50) feet of street frontage.
- 5. Marquee signs, illuminated or non-illuminated, one for each business on the premises, with sign area limited to three (3) square feet.
- Total aggregate sign area for all signs listed above in this group shall be limited to two hundred (200) square feet for each fifty (50) feet of street frontage.
- 7. Temporary, non-illuminated paper or painted signs in windows shall be limited to twenty (20%) percent of the total glass area of the window in which they are placed.
- 8. Directional signs limited in area to four (4) square feet, giving directions to motorists regarding the location of parking areas and access drives shall be permitted as accessory signs and not included in any computation of sign area.
- 9. Permitted sign area of one (1) accessory flat sign may be increased by ten (10) square feet for each story above the fourth story on which the sign is located and not included in the computation of the total aggregate sign area.

# G. SIGNS PERMITTED IN THE C-6 AND MR DISTRICTS.

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- 1. Flat signs limited in area to one hundred (100) square feet, for each business.
- 2. Detached signs, if there are no projecting signs, limited in area to thirty (30) square feet, one for each business.
- 3. Projecting signs, if there are no detached signs, limited in area to thirty (30) square feet, one (1) for each business.
- 4. Directional signs of any type limited in area to four (4) square feet, in such number and such locations as required for proper management of the premises. Such signs shall not be included in computation of sign area.
- 5. Total aggregate sign area for all signs shall be limited to two (2) square feet for each lineal foot of lot frontage.

# H. SIGNS ERECTED PURSUANT TO DUNE OVERLAY REGULATIONS

All signs shall be approved by the Design Review Board pursuant to Section 24 of their regulations. However, one sign shall be permitted per site or Promenade linkage; whichever is greater. Said sign is required to have copy only pertaining to the street address, name and function of the Use with each sign(s) having a maximum size not to exceed six (6) square feet.

## I. SIGNS PERMITTED IN THE R-PS 1-4 DISTRICTS

Zoning District	Notes	Awning/ Marquee	Flat	Projecting	Detached (Pole/Pylon)
R-PS 1 R-PS 2		15 sq. ft.	15 sq. ft.	not permitted	not permitted
R-PS 3 R-PS 4	Aggre- gate Sign Area 40 sq. ft./ 100' of street frontage	15 sq. ft.	60 sq. ft.	not permitted	not permitted

### J. SIGNS PERMITTED IN THE C-PS 1-3 DISTRICTS

Zoning District	*	Notes	Awning/ Marquee	Flat	Projecting	Detached (Pole/Pylon)
C-PS I			15 sq. ft.	10% of wall 40 sq. ft. max.	20 sq. ft.	not permitted
C-PS 2		Aggre- gate Sign Area 150 sq. ft./ 100' of street frontage	15 sq. ft.	15% of wall 70 sq. ft. max.	20 sq. ft.	20 sq. ft.

Zoning District	Notes	Awning/ Marquee	Flat	Projecting	<u>Detached</u> (Pole/Pylon)
C-PS 3	Aggre- gate Sign Area 200 sq. ft./ 100' of street frontage	15 sq. ft.	15% of wall 100 sq. ft. max.	40 sq. ft.	40 sq. ft.

## NONCONFORMING STRUCTURES AND USES

## 12-1 Nonconforming Use of Land.

- A. In any district where open land is being used as a nonconforming use, and such use is the main use and not accessory to the main use conducted in a building, such use shall be discontinued not later than two (2) years from the date of passage of this Ordinance. During the two (2) year period, such nonconforming use shall not be extended or enlarged either on the same or adjoining property. Any building incident and subordinate to such use of land shall be removed at the end of the two (2) year period or, if such building is so constructed as to permit the issuance of a permit for a use not excluded from the district, such building may remain as a conforming use; thereafter, both land and building shall be used only as conforming uses.
  - A use approved as a Conditional Use shall be considered a conforming use so long as the conditions of the approval are met.

## 12-2 Nonconforming Signs.

A. Nonconforming signs shall be removed as provided in Section 11-1 L, Signs of this Ordinance. No permits for additional signs shall be issued for any premises on which there are any nonconforming signs.

## 12-3 Nonconforming Use of Buildings.

A. Except as otherwise provided herein, the lawful use of a building existing at the Effective Date of this Ordinance may be continued, although such use does not conform to the provisions hereof. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or of a more restricted classification. Whenever a nonconforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use. The nonconforming use of a building may be hereafter extended throughout those parts of a building which were lawfully and manifestly arranged or designed for such use at the time of passage of these regulations.

# 12-4 Discontinuance of Nonconforming Uses.

A. No building, structure, equipment, fixtures or land, or portion thereof, used in whole or in part, for a nonconforming use which remains idle or unused for a continuous period of six (6) months, or for eighteen (18) months during any three (3) year period whether or not the equipment or fixtures are removed, shall again be used, except in conformity with the regulations of the district in which such building or land is located.

## 12-5 Destruction of Nonconforming Uses.

A. No building which has been damaged by any cause whatever to the extent of more than fifty (50%) percent of the County tax-assessed value of the building shall be restored except in conformity with the regulations contained in this Ordinance and all rights as a nonconforming use are terminated. If a building is damaged by less than fifty (50%) percent of the tax-assessed value, it may be repaired and used as before the time of damage, provided that such repairs or reconstruction be substantially completed within twelve (12) months of the date of such damage.

## 12-6 Intermittent or Illegal Uses.

A. The casual, intermittent, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use and the existence of nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

## 12-7 Existence of a Nonconforming Use.

A. The Director of Code Enforcement shall make an initial determination of the existence of a non-conforming use and in so doing may make use of affidavits and investigation as he may determine necessary and in a particular case.

The question as to whether a nonconforming use exists shall be a question of fact and in case of doubt or challenge raised to the initial determination made, the question shall be decided by the Board of Adjustment after public notice and hearing and in accordance with the rules of the Board.

# 12-8 Building Nonconforming in Height, Area, or Bulk.

A. A building nonconforming only as to height, area, yards, or bulk requirements may be altered or extended, provided such alteration or extension does not increase the degree of nonconformity in any respect.

#### BOARD OF ADJUSTMENT

### 13-1 Membership.

A. The City's Planning Director and Public Works Director shall be ex officion members without the right to vote, and whose presence shall not be counted for the determination of a quorum. The remaining five (5) members shall consist of the following:

One (1) member shall be appointed from one (1) of the following professions or callings: Law, Architecture, Engineering, Real Estate Development, Certified Public Accounting, Financial Consultation and General Business. The members representing the professions of Law, Architecture, Engineering and Public Accounting shall be duly licensed by the State of Florida; the member representing General Business shall be of responsible standing in the community, and each member shall be bound by the requirements of the Conflict of Interest Ordinance of the City and shall be subject to removal from office for the violation of the terms thereof. No member shall have any financial or other interest in any matter coming before the Board. Members shall be appointed for a term of one (1) year by a five-sevenths (5/7) vote of the City Commission.

### 13-2 Notification of Hearings.

A. The Board shall not vary or modify any regulation or provision of this Ordinance until a public hearing has been held. Notice of the public hearing shall appear in a newspaper of general paid circulation at least fifteen (15) days prior to the public hearing date and be given by mail to the owners of record of land lying within 375 feet of the property. The notice shall indicate the use, construction or alteration of which is proposed to be changed.

### 13-3 Meetings and Records.

A. Meetings of the Board shall be held at least once monthly, or at such other times as the Board may determine, or upon call of the chairman. All meetings of the Board shall be open to the public. The Board shall adopt its own rules or procedures and keep minutes of its proceedings showing its action on each question considered. All records of the Board and its official actions shall be filed in the office of the Board and shall be a public record.

### 13-4 Determination of Jurisdiction.

A. All variance requests shall be first submitted to the City Attorney for a determination whether the requested variance is properly such, and does not constitute a change or amendment to the Zoning Ordinance. The jurisdiction of the Board of Adjustment shall not attach unless and until the Board has before it a written certificate of the City Attorney that the subject matter of the request is properly before the Board. The separate written recommendations of the Planning Director and of the Public Works Director shall be before the Board prior to its consideration of any matter before it.

## 13-5 Procedure.

- A. Any person appearing before the Zoning Board of Adjustment on an application for a variance from the provisions of this Ordinance shall be administered the following oath by any person duly authorized under the laws of Florida to administer oaths:
  - 'I, \_\_\_\_\_, do hereby swear, under oath that any and all testimony to be given by me in this proceeding is the truth, the whole truth, and nothing but the truth, so help me God.'
  - 1. Any person giving false testimony before the Zoning Board of Adjustment on an application for a variance from the provisions of this Ordinance shall be deemed to have violated the provisions hereof and shall be subject to the maximum penalty prescribed by Section 2 of the Code of the City of Miami Beach, Florida. (1647)
- B. Upon the withdrawal or final denial of an application for a variance from the provisions of this Ordinance, no new application may be filed for such variance within six (6) months following such withdrawal or denial, unless, however, the decision of the Zoning Board of Adjustment taking any such final action is made without prejudice, or unless the withdrawal of such application is permitted to be made without prejudice. An application may be withdrawn without prejudice by the applicant as a matter of right, if such request is signed by the applicant and filed with the appropriate agency prior to the giving of any notice required by this Ordinance; otherwise, all such requests for withdrawal shall be with prejudice, save and except that the Zoning Board of Adjustment may permit withdrawals without prejudice at the time the application for said variance is considered by the said Board; provided further, that no application may be withdrawn after final action has been taken. (1682)
- C. Within a reasonable time after a request has been properly considered by the Board of Adjustment, the City shall record in the Circuit Court the action and conditions, if any. No building permit, Certificate of Occupancy, Certificate of Completion or licensing permit shall be issued until the recordation has been complied with. Prior to the recordation, the City Attorney shall approve the instrument and is empowered to release the conditions only upon agreement with the Board of Adjustment that the conditions are no longer applicable. If a question should arise as to the release of any conditions, the Board of Adjustment is authorized to make the appropriate determination.

#### 13-6 Powers and Duties.

- A. The Board of Adjustment shall have the following powers and duties:
  - 1. To hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Ordinance.

In exercising this power, the Board of Adjustment, may upon appeal, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass under Ordinance.

- 2. a. To authorize upon appeal such variance from the terms of this Ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of this Ordinance would result in unnecessary and undue hardship. In order to authorize any variance from the terms of this Ordinance, the Board of Adjustment must find:
  - That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;
  - 2) That the special conditions and circumstances do not result from the action of the applicant;
  - 3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;
  - 4) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;
  - 5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
  - 6) That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
  - b. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.
  - c. The Board of Adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall begin

or be completed or both. Notwithstanding the above, the applicant shall obtain a building permit within two (2) years from the date the Board approved the variance request. If a building permit has not been issued for the work or if the work has not commenced within the two (2) year period, then the applicant may request an extension of time for a period not to exceed one (1) year. Said request shall occur within the two (2) year period. If the building permit is not issued within the two (2) year period or an extension of time is not granted then the original approval is void. If the request for an extension of time is within the two (2) year period, notice requirements as listed in Section 13-2 shall not apply; however, the request shall be placed on the agenda and a notice shall be placed in a paper of general paid circulation within fifteen (15) days of the public hearing date.

- d. Under no circumstances except as permitted above shall the Board of Adjustment grant a variance to permit a use not generally permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of this Ordinance. No nonconforming use of neighboring lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.
- e. The Board shall fix a reasonable time for the hearing of the appeal taken within the time specified by its rules, give public notice thereof as well as due notice to the parties in interest, and decide same within a reasonable time.
- B. FEES The below fee schedule is established for the purpose of defraying expenses of public notices, postage, printing, determining the impact of the request and other administrative costs in connection with variance requests; when it is alledged there is an error in any administrative order, requirement, decision, or determination made by an administrative official; or a request for the Board to clarify a condition, finding, or amend a decision.

### 1. Variances, Appeals from Administrative Decisions and Signs:

(a)	Single-Family Residences	\$100 filing fee plus \$25 for each individual variance requested
(b)	Parking Requirements for allowable Commercial Use in existing structures	\$200 filing fee plus \$100 for each individual variance requested
(c)	Multi-Family and Commercial properties	\$400 filing fee plus \$100 for each individual variance requested
(d)	Appeal from Administrative Decision	\$250
(e)	Signs	\$200

With the exception of variances associated with single family residences, the fixed application fee shall be supplemented by an additional \$0.50 per mailing address:

2. If a deferment is requested by the applicant, an additional fee shall be assessed as follows:

(a)	Single-Family Residences	\$50
(b)	Parking Requirements for Allowable Commercial Use	\$75
(c)	Multi-Family and Commercial Properties	\$150
(b)	Appeal from Administrative Decision	\$150
(e)	Signs	\$100

- 3. When an applicant requests a clarification of a previous Board of Adjustment finding, a fee of \$250.00 shall be assessed. Public Notice requirements listed in Section 13-2 shall be applied.
- 4. If a deferment is given by the Board of Adjustment, and not at the request of an applicant, there will be no additional fee.
- 5. If the applicant removes his file from the Agenda after it has been accepted by the appropriate agency, the Board shall refund 50% of all fees paid by the applicant and no further refund shall be made.
- 6. No public hearing shall be scheduled until the responsible agency has determined the application be complete and the fee paid.

## 13-7 Stay of Work and Proceedings on Appeal

An appeal to the Board of Adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from unless the official from who the appeal was taken shall certify to the Board of Adjustment that, by reason of facts stated in the certificate, 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 of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

#### **ADMINISTRATION**

### 14-1 Enforcement.

- A. It shall be the duty of the Director of the Code Enforcement Division to enforce the provisions of this Ordinance and to refuse to approve any permit for any building or for the use of any premises, which would violate any of the provisions of this Ordinance. It shall also be the duty of all officers and employees of the City to assist the Code Enforcement Director by reporting to him any seeming violation in new construction, reconstruction or land uses.
- B. For the purpose of inspection, the Code Enforcement Director and his authorized representatives shall have free access to materials and work at all times and either or both shall have the power to stop work pending investigation as to materials, work, grades, use and other provisions of these regulations.
- C. The Code Enforcement Director is authorized, where he deems it necessary for enforcement of these regulations, to request the execution of an agreement for recording.
- D. In case any building is erected, constructed, reconstructed, altered, repaired, or converted, or any building or land is used in violation of this Ordinance, the Code Enforcement Director, or the City, or the City in his behalf is authorized and directed to institute any appropriate action to put an end to such violation.
- E. Upon good cause and upon presentation of proper credentials, the Code Enforcement Director or his authorized representative, may enter at any reasonable time, any building, structure or premises, for the purpose of determining whether this Ordinance is being violated. In the event it is found and determined that there are violations of this Ordinance, the Code Enforcement Director, or his authorized representative, is empowered to issue a summons to the person or persons violating the same.

### 14-2 Permits and Plot Plans.

- A. A building permit shall not be issued for any building or structure to be erected, constructed, altered, moved, converted, extended, enlarged or used, or for any land or water to be used, except in conformity with the provisions of this Ordinance.
- B. A license or permit shall not be issued by any Department, Agency or Official of the City of Miami Beach for the use of any premises or the operation of any business, enterprise, occupation, trade, profession or activity which would be in violation of any of the provisions of this Ordinance.

#### 14-3 Site Plans.

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A. Where this Ordinance requires the submittal of site plans, said site plans shall contain all of the information required by applicable laws and ordinances governing the approval of subdivisions and, in addition, shall show the following:

- 1. The proposed title of the project and the name of the engineer, architect, or landscape architect, and the developer.
- The northpoint, scale, and date.
- 3. Existing zoning and zoning district boundaries.
- 4. The boundaries of the property involved, all existing easements, section lines, and property lines, existing streets, buildings, waterways, watercourses, or lakes, and other existing physical features in or adjoining the project.
- 5. Topography of the project area with contour intervals of one (1) foot or less.
- 6. The location and sizes of sanitary and storm sewers, water mains, culverts, and other underground structures in or near the project.
- 7. Proposed changes in zoning, if any.
- 8. The location, dimensions, and character of construction of proposed streets, alleys, driveways, curb cuts, entrances and exits, loading areas (including numbers of parking and loading spaces), outdoor lighting systems, storm drainage and sanitary facilities.
- 9. The location and dimensions of proposed lots, setback lines, and easements, and proposed reservations for parks, playgrounds, open spaces, and other common areas.
- 10. Location with respect to each other and to lot lines of all proposed buildings and structures, or major excavations, accessory and main.
- 11. Preliminary plans and elevations of the building or buildings, as may be necessary.
- 12. Location, height, and material of all fences, walls, screen planting, and landscaping.
- 13. Location, character, size, and height and orientation of proposed signs, if any.
- 14. A tabulation of the total number of dwelling units of various types in the project and the over-all project density in square feet of lot area per dwelling unit, gross or net as required by district regulations.
- B. The Planning Director may establish additional requirements for site plans, and in special cases, may waive a particular requirement if, in his opinion, the requirement is not essential to a proper decision on the project.

# 14-4 Certificates of Occupancy.

- A. No building or structure, or part thereof, or premises, which are hereafter erected or altered, or changed in occupancy, or land upon which a new or different use is established, shall be occupied or used until a Certificate of Occupancy shall have been applied for and issued.
- B. Certificates of Occupancy shall not be issued until the premises have been inspected and found to comply with all requirements of the Code of the City of Miami Beach and of this Ordinance, and with all other agencies when required, such as Hotel Commission, Dade County Health Department, etc.
- C. A record of all Certificates of Occupancy issued hereunder shall be kept on file in the office of the Code Enforcement Director.
- D. All applications for Certificates of Occupancy shall be approved or disapproved within three (3) days following application.

#### INTERPRETATION

## 15-1 Interpretation, Purpose and Conflict.

A. In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity, or general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreement between parties, provided, however, that where the regulations in this Ordinance impose a greater restriction upon the use of buildings or premises or upon the height of buildings, or require larger open spaces, or yards or lot areas than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this Ordinance shall govern. If, because of error or omission in the Zoning District Map, any property in the City of Miami Beach is not shown as being in a zoning district, the classification of such property shall be classified RS-1 Single Family Residential District, until changed by amendment.

#### CHANGES AND AMENDMENTS

### 16-1 General.

- A. The City Commission may, from time to time, amend, supplement, or change, by ordinance the boundaries of the districts or the regulations herein established in accordance with the following provisions:
  - 1. In cases in which the proposed rezoning involves less than five (5%) percent of the total land area of the City, the City Commission shall direct the Clerk of the City of Miami Beach to notify by mail each real property owner whose land the City will rezone by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. Provided further, notice shall be given by mail to the owners of record of land lying within 375 feet of the land, the boundaries of which are proposed to be changed. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least thirty (30) days prior to the date set for the public hearing, and a copy of such notice shall be kept available for public inspection during the regular business hours of the office of the City Clerk. The City Commission shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the Ordinance.
  - 2. In cases in which the proposed ordinance deals with more than five (5%) percent of the total land area of the City, the City Commission shall provide for public notice and hearings as follows:
    - a. The City Commission shall hold two (2) advertised public hearings on the proposed ordinance. Both hearings shall be held on a weekday, and the first shall be held approximately seven (7) days after the day that the first advertisement is published. The second hearing shall be held approximately two (2) weeks after the first hearing and shall be advertised approximately five (5) days prior to the public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.
    - b. The required advertisements shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than eighteen (18) point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the City of Miami Beach and of general interest and readership in the community, not one of limited subject matter. Whenever possible, the advertisement shall appear in a newspaper that is published at least five (5) days a week unless the only newspaper in the community is published less than five (5) days a week.

C. The advertisement shall be in the following form.

## NOTICE OF ZONING CHANGE

The proposes to rezone the land within the area shown in the map in this advertisement.

A public hearing on the rezoning will be held on

at

- d. The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the area.
- e. In lieu of the publishing the advertisement set out in this paragraph, the City may mail a notice to each person owning real property within the area covered by the Ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance.
- 3. An affirmative vote of 5/7ths of all members of the City Commission shall be necessary to enact any ordinance which amends, supplements, changes, modifies or repeals the regulations and boundaries herein established, and provided further, that such ordinance can only be enacted after having held a public hearing following at least fifteen (15) days notice of time, place, and object of such hearing published in an official paper, or a paper of general circulation in said City of Miami Beach. On final passage, the vote of each member of the City Commission voting shall be entered on the official record of the meeting. The effective date of any ordinance shall be prescribed therein, but the effective date shall not be earlier than ten (10) days after its enactment.
- 4. All changes and amendments shall be consistent and compatible with the Comprehensive Plan.
- B. Before taking any action on any proposed amendment, supplement, or change, the City Commission shall submit the same to the Planning Board for its recommendations and report.
- C. The Planning Board shall, within sixty (60) days, hold a public hearing thereon and submit its report and recommendations on the proposal to the City Commission within thirty (30) days from the date of the public hearing. Notice of public hearings before the Board shall be given by publishing the time, place, and nature of the hearing not more than thirty (30) nor less than fifteen (15) days, before the hearing, at least in one (1) or more newspapers of general circulation in the City, and the Board shall cause to be posted conspicuously on the property, in accordance with the rules of the Board. In addition, the Board shall give fifteen (15) days notice by mail to the owners of record of land lying within 375 feet of land, the boundaries of which are proposed to be conspicuously

posted on the property, in accordance with the rules of the Board. In addition, the Board shall give fifteen (15) days notice by mail to the owners of record of land lying within 375 feet of land, the boundaries of which are proposed to be changed. The Planning Board may swear witnesses on their own volition or on request of any party to a hearing and may compel appearance of witnesses.

- D. Any application for a change of zoning, amendment to the Zoning Ordinance, or conditional use may be withdrawn by a request in writing from the applicant at any time before a decision of the Planning Board, but if withdrawn after advertisement for a public hearing or posting of the property, the same or a substantially similar petition covering the same property shall not be resubmitted for at least one (1) year after the date established for the prior hearing. Filing fees shall not be refunded once the public hearing has been advertised.
- E. Any person appearing before the City Commission at a public hearing in regard to an application for a change of zoning or other amendment to this Ordinance shall be administered the following oath by any person duly authorized under the laws of Florida to administer oaths:
  - "I, , do hereby swear, under oath, that any and all testimony to be given by me in this proceeding is the truth, the whole truth and nothing but the truth, so help me God."
- F. Any person giving false testimony before the City Commission at a public hearing in regard to an application for a change of zoning or other amendments to this Ordinance shall be deemed to have violated the provisions hereof and shall be subject to the maximum penalty prescribed by Section 2 of the Code of the City of Miami Beach.

### 16-2 Petition for Changes and Amendments

- A. A petition for an amendment, supplement or change may be submitted to the Planning Director by the City Manager or upon an adopted motion of the City Commission, Planning Board, Board of Adjustment, or by the owners of a majority of frontage in any area. Said area shall contain not less than four hundred (400) feet of frontage on at least one (1) public street or a parcel not less than eighty thousand (80,000) square feet.
- B. The petition shall be in accord with a form approved by the City Attorney. The Planning Director shall forthwith forward notice of the petition to the City Manager for notation in the record of Commission business.
- C. The petitioner or appointed agent shall be responsible for filing an application with the Planning Department in accord with a form approved by the City Attorney. All applications shall be received not less than thirty (30) days prior to the Planning Board meeting at which the hearing on said application is to be held. Any application submitted to the Planning Department shall be complete, as required by Section 14-3.

- D. Any petitioner requesting and obtaining a public hearing on any application for change of zoning or other amendment to this Ordinance shall pay, upon submission of the application the following fees:
  - Change of Zoning when an applicant requests one of the below districts, the following fee schedule shall apply plus \$0.50 per mailing address.
    - a. Single-Family Residential District \$0.03 per square foot of lot area.
    - Multiple Family Residential District \$0.06 per square foot of lot area.
    - c. Commercial District \$0.10 per square foot of lot area.
    - d. All other Districts \$0.08 per square foot of lot area.
    - e. When an applicant requests a change of zoning involving multiple districts, the fee shall be based on the lot area in each requested district according to the above schedule.
  - 2. Amendment to the Zoning Ordinance not involving a zoning change. plus newspaper notice.

\$350 per section of the Ordinance requiring language modification

3. Amendment to Zoning Ordinance requiring individual mailing, plus newspaper notice.

\$500 plus \$0.50 per mailing address

The above fees are for the purpose of defraying expenses of public notices, primarily postage and other administrative costs associated with processing and analyzing the request.

### 16-3 Reconsideration of District Boundary Changes.

A. When a proposed change in district boundaries has been acted upon by the City Commission and disapproved or failed of passage, such proposed change, in the same or substantially similar form shall not be reconsidered by the City Commission for a period of at least one (1) year following the date of such action.

#### 16-4 Withdrawal of a Petition

A. Any petition for amendment, supplement, or change, may be withdrawn by a request in writing from the petitioner at any time before a decision of the City Commission, but if withdrawn after advertisement for a public hearing or posting of the property, the same property shall not be resubmitted, except by a public official or a member of the City Commission, sooner than one (1) year after the date established for the prior hearing. Filing fees shall not be refunded upon any withdrawal.

## 16-5 Periodic Review

A. It shall be the duty of the Planning Board, in cooperation with the Planning Director and the City Attorney to continuously review the provisions of the regulations in this Ordinance, including the District Maps, and from time to time, to offer recommendations to the City Commission as to the sufficiency thereof, in accomplishing the development plans of the City.

#### PLANNING BOARD

### 17-1 Composition.

A. The Board shall be composed of eleven (11) members, four (4) of whom shall be appointed by a majority vote of the City Commission and each member of the City Commission shall be entitled to appoint one (1) of the remaining seven (7) members. Each member shall serve for a term of two (2) years.

## 17-2 Eligibility.

A. No person except a resident of the City of Miami Beach, or an individual having their main business interest in the City of Miami Beach shall be eligible for appointment to said Board. In the event any member of the Board fails to attend more than two consecutive meetings without due cause or bona fide excuse, as found and determined by a majority of the Board, said member shall cease to be a member of said Board.

### 17-3 Meetings and Procedures.

A. The Board created hereby shall elect a Chairman, a Vice Chairman, and a Secretary. It shall have authority to adopt rules and regulations for its guidance in the transactions of its business, subject to the limitations of the City's Charter and ordinances. The Board shall, appropriate rules, establish the time, place and manner of holding regular and special meetings. The Board is also authorized to call public hearings and to create committees and sub-committees when deemed appropriate or convenient for the performance of its duties.

### 17-4 Powers and Duties.

A. To acquire, compile and collate all available data, materials, statistics, maps, photographs, reports and studies necessary to obtain an understanding of past trends and present conditions, which affect the City and the economic and general welfare of its residents and the forces now at work which are and will continue to affect the future of the City.

The Board shall evaluate the data so acquired and derive there from the past, present and future trends as they relate to population, property values, economic bases, land use, and to evolve the principles and policies required to guide the direction and type of future development and expansion of the City.

- B. To conduct such public hearings as may be helpful in gathering information and data necessary for the drafting of suitable and appropriate plans for the comprehensive and systematic development of the City and to transmit the same to the City for consideration thereof by said City Commission.
- C. To make, cause to be made, or obtain special studies on the location, condition and adequacy of specific facilities of the City. These may include, but are not limited to, studies on single and multiple family housing, including hotels,

apartment houses, cooperatives and condominiums, commercial and industrial conditions and facilities, beaches, parks, playgrounds and other recreational facilities, public buildings, public and private utilities, traffic, transportation and parking. The Board shall be authorized to study and consider any and all studies in this field made and published by the Federal, State and County governments.

- D. To make appropriate studies of the location and extent of present and anticipated use of land, population, social and economic resources and problems, and to submit such data, with the recommendations of said Board, to the City Commission.
- E. To consider and to act upon any and all matters referred to it by the City Commission or by the provisions of any City ordinance pertaining to the development of the City of Miami Beach, and to submit its findings and recommendations on such matters to the City Commission.

### **VIOLATIONS AND PENALTIES**

## 18-1 Violations and Penalties.

A. Any person, firm or corporation who shall violate or fail to comply with any of the provisions of this Ordinance or with any of the requirements thereof, or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder, shall be brought before the Code Enforcement Board of the City of Miami Beach. The Code Enforcement Board may assess a fine and impose a lien to the maximum allowed by City Ordinance and Florida Statute or in the alternative, may be brought to the Dade County Court as a violation of municipal ordinance. Each day such violation shall be permitted to exist shall constitute a separate offense. The owner or owners of any building or premises, or part thereof, where anything in violation of these regulations shall be placed or shall exist, and any agent, person, or corporation employed in connection therewith and who has assisted in the commission of any such violation may be guilty of a separate offense, and upon conviction, fined as hereinbefore provided.

### **VALIDITY**

## 19-1 Validity.

A. If any section, paragraph, subdivision, clause, phrase, or provision of this Ordinance shall be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole or any part of provisions thereof, other than the part so declared to be invalid.

# CONFLICTING ORDINANCES REPEALED

# 20-1 Conflicting Ordinances Repealed.

A. All ordinances or laws in conflict with the provisions of this Zoning Ordinance or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Zoning Ordinance full force and effect.

## **SECTION 21**

## FORCE AND EFFECT

## 21-1 Force and Effect.

A. This Ordinance shall take effect as provided by the laws of The City of Miami Beach.

#### **SECTION 22**

#### MAPS

22-1 Designation of Zoning Districts, MF Districts, overlay zones on the Official Zoning Map. The Official Zoning Map shall indicate the location of zoning districts, MF Districts, and Overlay Zones. The below tables explain the symbols used for each designation:

## A. Explanation of Symbols.

## Zoning Districts

Symbol	Use	Density (U/A)
RS-1	Single Family Residential	1.452
RS-2	Single Family Residential	2.42
RS-3	Single Family Residential	4.356
RS-4	Single Family Residential	7.26
RM-14	Multiple Family Low Density	14
RM-24	Multiple Family Medium Low Density	24
RM-60	Multiple Family Medium Density	60
RM-100	Multiple Family Medium High Density	100
RM-125	Multiple Family High Density	125
PUD	Planned Unit Development Res. District	as specified
C-1	Neighborhood Business	60
C-2	General Office	100
C-3	Central Business	125
C-4	Business	125
C-5	General Business	100
C-6	Intensive Commercial	0
RH	Hospital District	0
MR	Marine Recreational	0
MU	Municipal Use	0
HM	Hotel-Motel	220
CCC	Convention Center District	as specified
MD-I	Marine District	0
M.D-II	Marine District	0
NH	Nursing Home District	as specified
R-PS 1	Residential Medium Low Density	N/A
R-PS 2	Residential Medium Density	N/A
R-PS 3	Residential Medium High Density	N/A
R-PS 4	Residential High Density	N/A
C-PS 1	Commercial Limited Mixed Use	N/A
C-PS 2	Commercial General Mixed Use	N/A
C-PS 3	Commercial Intensive Mixed Use	N/A

Note: All city-owned properties are zoned MU although they may not be designated on the map.

N/A - means not applicable

## B. Explanation of MF Districts

## MF Districts

Symbol	Location
MF-1 MF-2 MF-3 MF-4 MF-5 MF-6 MF-7 MF-8 MF-9 MF-10 MF-11	Ocean Front Ocean Front Ocean Front Ocean Front Ocean Front Bay or Waterway Bay or Waterway Bay or Waterway Bay or Waterway Interior Interior

## C. Explanation of Overlay Zones and Districts.

DOD DOZ Dune Overlay Distriction HOD Hotel Overlay Distriction	
HOD Hotel Overlay Distri HOZ Hotel Overlay Zone HPD Historic Preservation	
District	
POD Parking Overlay Dist	rict
POZ Parking Overlay Zon	е

#### **SECTION 23**

## PS - PERFORMANCE STANDARD DISTRICT

### 23-1. Short Title.

This Ordinance shall be known and cited as the "Performance Standard District Ordinance of Miami Beach Florida."

#### 23-2. Definitions.

- A. For the purposes of this Ordinance, words and terms used herein are defined in Section 3 of the Miami Beach Zoning Ordinance.
- B. In addition, as used in this section, the following words and terms shall have the following meaning, unless another meaning is plainly intended:
  - 1. APPLICANT means any person, including a governmental agency, seeking to undertake any development as defined herein.
  - 2. AREA or PLAN AREA means the area included within the boundaries of the South Shore Redevelopment Project as established pursuant to Fla. Stat. §163.330 et seq. and as specified in the Redevelopment Plan.
  - 3. <u>BUILDING PERMIT</u> means a permit issued by the designated Building Official or authorized agency or department of the City which allows a building or structure to be erected, constructed, altered, moved, converted, extended, enlarged or used, for any purpose, in conformity with applicable City Codes and Ordinances.
  - 4. CITY means the City of Miami Beach, Florida.
  - 5. <u>CITY COMMISSION</u> means the City Commission of the City of Miami Beach, Florida, the governing body of the City.
  - 6. COMMUNITY REDEVELOPMENT AGENCY OF 1969 means and refers to the community redevelopment law, Fla. Stat. §163.330 et seq.
  - 7. COMMUNITY REDEVELOPMENT AGENCY or AGENCY means the Redevelopment Agency of the City of Miami Beach, Florida, a public agency created pursuant to Fla. Stat. §163.330 et seq.
  - 8. DESIGN REVIEW means the process and includes the requirements as set forth in Section 24 of the Zoning Ordinance.
  - 9. <u>DEVELOPMENT</u> means the undertaking of any building or construction, including new construction, rehabilitation, renovation or redevelopment, the making of any material changes in the use or appearance of property or structures, the subdivision of land, or any other action for which development approval is necessary.

- 10. DEVELOPMENT AGREEMENT means and refers to an agreement entered into by the City and the Property Owner with respect to the project, by which the development, use, timing, capital improvements and other elements of the project may be specified.
- 11. <u>DEVELOPMENT APPROVAL</u> includes any zoning, rezoning, conditional use, special exception, variance or subdivision approval, or any other official action of local government having the effect of approving the development of land.
- DEVELOPMENT RIGHTS means and refers to the equivalent number of dwelling units per acre calculated as the difference between 60 dwelling units per acre and the number of dwelling units per acre for which development approval is being sought by the applicant; development rights are transferable to properties in the receiving area only.
- 13. MIAMI BEACH PROPERTY MAINTENANCE STANDARDS means and refers to Chapter 17B of the Miami Beach City Code, as amended.
- 14. OPEN SPACE RATIO means and refers to a percentage calculated as the area of open space, including required yards, at grade to the gross lot area of a parcel.
- 15. PERFORMANCE STANDARD USE means any development in the PS Performance Standard District for which a building permit or development approval is required, and, which use is permissible as of right or by conditional use in the PS district.
- 16. PROJECT means the performance standard use or development for which a development approval is being sought by the applicant.
- 17. PROPERTY OWNER means the person or persons having a legal or equitable interest in real property, including property that is the subject of a development agreement, and includes the property owner's successor in interest.
- 18. REDEVELOPMENT PLAN means the South Shore Revitalization Strategy prepared pursuant to Fla. Stat. §163.330 et seq., adopted by the City Commission on February 15, 1984, and constituting the Redevelopment Plan for the area as well as the redevelopment element of the City's Comprehensive Plan.
- 19. <u>SITE PLAN</u> means a plan meeting each of the requirements as set forth in Section 14-3 and 24 of the Zoning Ordinance.
- 20. SITE PLAN APPROVAL means final approval by the properly designated City agency, department or official pursuant to the procedure set forth in Section 7 or 24 of the Zoning Ordinance.

- 21. SOUTH FLORIDA BUILDING CODE means Chapter 8, Sections 8-1 through 8-4 of the City Code, as amended.
- 22. SUBSTANTIAL REHABILITATION means the expenditure of funds in an amount not less than 50% of the assessed valuation of the subject property for the reconstruction and improvement of buildings, accessory uses and structures; for the construction or improvement of parking and open space; and for site development, that will result in such project then meeting all applicable performance standards and requirements of this Ordinance.
- 23. ZONING DISTRICT MAP means the City of Miami Beach Zoning District Map as amended, dated and signed by the Mayor and City Clerk of the City of Miami Beach, upon adoption.
- ZONING ORDINANCE means the City of Miami Beach Zoning Ordinance, Ordinance No. 1891, as amended.

## 23-3. Establishment of District and Divisions

The PS - Performance Standard District is hereby established as shown on the map designated as the City of Miami Beach Zoning District Map. The PS district generally consists of all privately-owned land in the South Shore Redevelopment area and consists of two divisions: a Residential-Performance Standard (R-PS) district and a Commercial-Performance Standard (C-PS) district, each of which is further subdivided based upon the type and density or intensity of permitted uses.

## 23-4. District Purpose and Subdistricts

A. Residential-Performance Standards. The residential-performance standards district is designed to accommodate a broad spectrum of medium-low to high density residential development including townhomes and multiple-family development pursuant to "performance standards" which shall control the permissible type and density of residential development. Performance standards development will allow for modification of certain individual lot requirements, greater flexibility, particularly for large-scale development, and incentives for provision of certain amenities and for conformance with specified objectives, thereby encouraging more flexible and innovative design and development, in accordance with the goals and objectives of the Comprehensive Plan and the Redevelopment Plan.

In order to adequately and properly distinguish between permissible types and densities of residential development in the Redevelopment Area, the Residential-Performance standards district is further divided into the following subdistricts:

R-PS 1 Medium - Low Density

R-PS 2 Medium Density

R-PS 3 Medium - High Density

R-PS 4 High Density

## B. Commercial Performance Standards.

The Commercial-Performance Standards district is designed to accommodate a range of business, commercial, office and hotel uses, as well as medium to high density residential development pursuant to "performance standards" which shall control the permissible type, density or intensity, and mix of development. Performance standards development will allow for modification of certain individual lot requirements, greater flexibility, particularly for large-scale development and incentives for provision of certain amenities and for conformance with specified objectives, thereby encouraging more flexible and innovative design and development in accordance with the goals and objectives of the Comprehensive Plan and the Redevelopment Plan.

In order to adequately and properly distinguish between types, densities and intensities of uses and mix of permitted development in the Redevelopment Area, the Commercial-Performance Standards district is divided into the following sub-districts:

C-PS1 Limited Mixed-use Commercial
C-PS2 General Mixed-use Commercial
C-PS3 Intensive Mixed-use Commercial

## 23-5. Use Regulations

## A. Uses Permitted By Right, Uses Permitted by Conditional Use Permit and Uses Not Permitted.

No building, structure or land shall be used or occupied except as a main permitted use, a conditional use, or an accessory use to a main permitted use, in accordance with the Table of Permitted Uses. A use in any district denoted by the letter "P" is a use permitted by right in such district or subdistrict, provided that all requirements and performance standards applicable to such uses have been met. A use in any district denoted by the letter "C" is permissible as a conditional use in such district or subdistrict, provided that all requirements and performance standards applicable to such use have been met and provided that all requirements of Section 7 of the Zoning Ordinance have been met. A use in any district denoted by the letter "N" is not permitted in such district or subdistrict. Uses permitted by right, as a conditional use, or as an accessory use shall be subject to all use regulations and performance standards contained herein and to such other regulations as may be applicable, including site plan review and/or design review. Uses not listed in the Table of Permitted Uses are not permitted in the district or subdistrict. No use is permitted on a parcel, whether listed by right, as a conditional use or as an accessory use in such district, unless it can be located on such parcel in full compliance with all of the performance standards and other requirements of the Zoning Ordinance applicable to the specific use and parcel in question.

## B. Table of Permitted Uses

#### Districts and Subdistricts

General Use Category	Residential-Performance Standards			Commercial-Performance Standards			
	R-PS 1	R-PS 2	R-PS 3	R-PS 4	C-PS 1	C-PS 2	<u>C-PS 3</u>
Residential	P	Р	P	P	P	Р	P
Hotel/Motel	N	N	С	P	С	P	p
Commercial	N	N	N	N	P	P	P
Office	N	N	N	N	P	P	P
Institutional	P	P	P	Р	Р	P	P
Accessory	P	P	P	P	Р	P	P

P - Main Permitted Use

C - Conditional Use

N - Not Permitted

#### C. General Use Categories

- 1. Residential: includes single-family dwelling, two-family dwelling, multi-family dwelling, townhouse, group home, apartment building.
- 2. Hotel/Motel: includes hotel, motel, and apartment hotel.
- 3. <u>Commercial:</u> includes retail sales, personal services, restaurants, theatre, clinics, clubs and similar uses.
- 4. Offices: includes professional, business, medical, laboratory, research, and similar office uses.
- 5. <u>Institutional</u>: includes public buildings and uses, public utilities, post office, educational and philanthropic uses, museums, religious institutions, public recreation, and other similar uses.
- 6. Accessory: as defined in Section 3-2A.2 and subject to the regulations of Section 7-3 of this Ordinance.

#### D. Non-Conforming Uses, Lots and Structures

1. Applicability. Non-conforming uses, lots and structures shall be subject to the regulations contained in Section 12 of this Ordinance and the additional and supplemental regulations prescribed herein.

## 2. Supplemental Regulations As To Non-Conforming Structures.

- a. Any structure in existence in the PS district as of the effective date of this Section that is non-conforming as to height, area, yard, bulk, setback, open space ratio, floor area ratio, parking, loading, or floor area per unit may be maintained.
- b. If such non-conforming structure has been cited by the Dade County Unsafe Structures Board, the owners shall bring the structure into conformance with the applicable codes within the time period specified by the Dade County Unsafe Structures Board. If it is not brought into compliance within said time period, the building shall not again be used except in compliance with the zoning regulations of the PS district.
- c. If such non-conforming structure is unused as of the effective date of this ordinance and either (1) has remained idle or unused for a continuous period of six (6) months, or (2) has remained idle or unused for eighteen (18) months during any three (3) year period whether or not the equipment or fixtures are removed, the structure shall not again be used except in conformity with the regulations of the PS district.
- d. If such non-conforming structure has been damaged by any cause whatever to the extent of more than fifty (50%) percent of the County tax-assessed value of the building, it shall not be restored except in conformity with the regulations of the PS district. If a building is damaged by less than fifty 50% of the tax-assessed value, it may be repaired and used as before the time of damage, provided that such repairs or reconstruction be substantially completed within twelve (12) months of the date of such damage; provided that such repairs or rehabilitation result in such structure meeting all applicable standards of the Miami Beach Property Maintenance Standards and the South Florida Building Code; and provided that such structure meets the minimum floor area per unit and minimum average floor area per unit requirements of the PS district.
- Supplemental Regulations As To Rehabilitation of Non-Conforming Structures. Except as provided above, no building or other permit(s) shall be issued by the City for repair or rehabilitation of an existing non-conforming structure for residential use (i) where the cost of such repair or rehabilitation is less than fifty (50%) percent of the assessed valuation of the structure or fifty (50%) percent of the replacement value as determined by the Dade County Tax Appraisor, whichever is greater. After such repair or rehabilitation, the structure will then meet all applicable standards of the Miami Beach Property Maintenance Standards and the South Florida Building Code as determined by an on-site inspection and no other building or City permit for repair or rehabilitation has been issued during the preceding calendar year; and (ii) where the cost of such repair or rehabilitation is equal to or greater than fifty (50%) percent of the

assessed valuation of the structure or fifty (50%) percent of the replacement value as determined by the Dade County Tax Appraisor, whichever is greater, after such repair or rehabilitation, the structure will then meet all applicable standards of the Miami Beach Property Maintenance Standards and the South Florida Building Code as determined by an on-site inspection; not less than eighty-five (85%) percent of all dwelling units in the structure(s) shall have a minimum gross floor area of not less than 750 square feet; and not more than fifteen (15%) percent of the dwelling units in the structure(s) shall have a minimum gross floor area of not less than 400 square feet, unless a variance is granted pursuant to Section 13 of this Ordinance.

## 23-6 Performance Standard Regulations

A. General Requirement. No building, structure or land shall be used or occupied except in conformance with the performance standards applicable to the use and subdistrict as set forth in the applicable Table of Performance Standards. The purpose of the performance standards is: to provide detailed regulations by means of minimum criteria which must be met by all uses in order to ensure development consistent with the goals and objectives of the Comprehensive Plan and the Redevelopment Plan; to protect the integrity of the Comprehensive Plan and the Redevelopment Plan and the relationships between uses and densities that are essential to the viability of the Plan and the redevelopment of South Shore; and to promote and protect the public health, safety, and general welfare by requiring all development to be consistent with the land use, circulation and amenities components of the redevelopment element of the Comprehensive Plan and the capital improvements program for the area.

All minimum performance standards applicable to a given use and subdistrict must be met, unless a variance is granted pursuant to Section 13 of this Ordinance.

## B. Table of Residential Performance Standards

## Residential Subdistricts

Perfo	ormance Standard	R-PSI	R-PS2	R-PS3	R-PS4	
1.	Minimum Lot Area	10,000 sq.ft.	10,000 sq.ft.	10,000 sq.ft.	10,000 sq.ft.	
2.	Minimum Lot Width	100 ft.	100 ft.	100 ft.	100 ft.	
3.	Required Open Space Ratio	.60	.65	.70	.70	
4.	Maximum Building Height (in feet) (excluding enclosed parking)* for parcels less than 40,000 square feet	30 e	40	60	None	
5.	Maximum Building Height (in feet) (excluding enclosed parking)* for parcels of 40,000 square feet or more	60	60	80	None	
6.	Maximum FAR (without bonus)	.75	1.0	1.25	1.5	
7.	Maximum FAR (with bonus)	1.5	1.75	2.00	2.25	
8.	Minimum Floor Area Per Dwelling Unit (in square feet)	750	600	500	400	
9.	Minimum Average Floor Area Per Dwelling Unit (in square feet)	1000	900	800	750	
10.	Minimum Floor Area Per Sleeping Unit (in square feet)	N.A.	N.A.	400	400	
11.	Minimum Yards	Pursuant to Seby 23-6G herei		ing Ordinance	e, except as mod	ified
12.	Minimum Parking Requirement	Pursuant to Secherein.	ction 9 of Zon	ing Ordinance	and Section 23-	6H

Minimum Off-Street Loading Pursuant to Section 10 of Zoning Ordinance.

14. Signs

Pursuant to Section 11 of Zoning Ordinance.

\*enclosed parking shall meet the requirements set forth in Section 9-5 I of this Ordinance, shall be covered by a roof and shall contain no residential use.

## C. Table of Commercial Performance Standards

## Commercial Subdistricts

Performance Standard	C-PS I	C-PS 2	C-PS 3
1. Minimum Lot Area	10,000 sq.ft.	10,000 sq.ft.	10,000 sq.ft.
2. Minimum Lot Width	100 ft.	100 ft.	100 ft.
<ol> <li>Maximum Building Height (in feet) (excluding enclosed parking)*</li> </ol>	40 ft.	None	None
4. Maximum Floor Area Ratio (without bonus)	1.0	2.0	2.5
5. Maximum Floor Area Ratio (with bonus)	2.0	2.5	3.5
6. Residential Development	Pursuant to all R-PS2 district regulations.	Pursuant to all R-PS3 district regula- tions.	Pursuant to all R-PS4 district regula- tions, except maximum floor area ratio shall be 3.5 and open space ratio shall be .60 measured at or above grade.

400

400

400

8. Minimum Yards

Pursuant to Section 8 of Zoning Ordinance except as modified by 23-6G herein.

9. Minimum Parking Requirements

Pursuant to Section 9 of Zoning Ordinance except as modified by 23-6I herein.

 Minimum Off-Street Loading Pursuant to Section 10 of Zoning Ordinance.

11. Signs

Pursuant to Section 11 of Zoning Ordinance.

\*enclosed parking shall meet the requirements set forth in Section 9-5 I of this Ordinance, shall be covered by a roof and shall contain no residential use.

- Performance Standard Bonuses. In order to encourage the aggregation of D. parcels, an appropriate mix and scale of development, and architectural and site design compatible with the standards and guidelines of the Comprehensive Plan and the Redevelopment Plan, floor area ratios may be increased up to the maximums specified, in accordance with the applicable Table of Performance Standard Bonuses and the criteria enumerated therein. Floor area ratio bonuses may be accumulated by meeting one or more of the criteria as set forth in the applicable Table; provided, however, that in no event shall any use be permitted an increase in floor area ratio greater than the maximum specified in the applicable Table of Residential or Commercial Performance Standards, except through the use of development rights transfers. Bonuses shall be determined, in accordance with the applicable Table of Residential or Commercial Performance Standard Bonuses and the urban design and development guidelines incorporated in the adopted Redevelopment Plan, during the Design Review process pursuant to Section 24 of this Ordinance.
- E. Table of Residential Performance Standard Bonuses

### Residential Bonus Factors

## Maximum Bonus

- 1. Parcel Aggregation
  - a) for each 10,000 sq.ft. above minimum lot area, up to 40,000 sq.ft.

.15 increase in FAR

b) for each 20,000 sq. ft. above 40,000 sq.ft. up to 80,000 sq. ft.

.1 increase in FAR

## 2. Dwelling Unit Size

- a) for each 100 sq.ft increase in minimum average floor area per dwelling unit up to 200 sq. ft. increase
- b) For each 100 sq. ft. increase in minimum floor area per dwelling unit for all units, up to 200 sq. ft. increase
- 3. Design Features.

All site plans shall be consistent with Urban Design guidelines for the redevelopment area as set forth in the adopted Redevelopment Plan and the adopted Private Sector Development Controls and Guidelines (Ordinance No. 77-2099). The Design Review Board may recommend that the applicant receive a bonus, within the ranges herein specified, for exceptional achievement in urban design in any of the following areas:

a) Planting and landscaping (considering type of plant materials, lushness, shading and cooling effect, screening, wind control effect, buffering effect, color, size and area of planting, maturity at time of initial planting, maintenance provisions, irrigation and relationship to buildings and street scape)

.1 increase in FAR

.1 increase in FAR

.75 increase in FAR (but in no event, whether alone or in combination with other bonus factors as established herein, to cause the project to exceed the "maximum floor area ratio with bonus" as set forth in Section 23-6B herein).

Maximum Permissible Bonus Range

.05 - .15

b) Paving
(considering surface material,
solar reflection and absorption,
texture and color, richness and
unity, transition with public
spaces, creation of arrival
plaza and internal paving)

c) grading
(considering slope, drainage,

.05 - .10

c) grading
(considering slope, drainage,
use of ground cover, air movement,
use separation, public and private
circulation, form and scale, visual
interest, space creation, publicprivate transitions and continuity,
and architectural integration)

.05

d) water features
(considering movement, sound,
reflection, recreation, cooling
effect, architectural effect,
coordination with plaza or other
special place, public-private
transition, visual impact, and
relation to overall project design)

.05 -.10

e) signs and graphics
(considering function and purpose scale, orientation, size, style, aesthetics, location, relationship to architecture, visual impact, consistency and uniformity, view blockage, illumination, movement, conflict and relationship to public and private spaces)

.05

f) street furniture
(considering pedestrian orientation,
function, seating capacity, visual
impact, integration with architectural
and other design elements, integration
with use of public spaces, and activity
areas, uniformity of style,
location and scale)

.05

- g) lighting
  (considering function, circulation, security, identification, aesthetics, lighting of exterior spaces, lighting of planting, lighting of architectural and/or design features, lighting of parking area, lighting levels, impact beyond project, uniformity and consistency with architecture and other urban design features, type of lighting, and lighting fixtures)
- .05 .10

.05

- h) arcades
  (considering pedestrian access,
  accommodation of activities, linkage
  in circulation pattern, relationship
  to architectural and urban design
  features, shading and cooling effect,
  protective effect, relationship to
  public and private spaces, accessibility and usability)
- .05 .15
- site planning
   (considering vehicular and pedestrian
   circulation and orientation, parking
   location and access, quality and
   amount of open space, building setbacks,
   views and vistas, building orientation,
   relation to adjacent buildings and
   structures, relation to public and
   private spaces)
- .05 .25

building design
 (considering scale, height, mass,
 facade, surface materials, rooftop,
 aesthetics, integration with urban
 design features, color, relation—
 ship to adjacent buildings and
 spaces and continuity with respect
 to architectural design)

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## F. Table of Commercial Performance Standard Bonuses

### Commercial Bonus Factors

## I. Parcel Aggregation

- a) for each 10,000 sq. ft. above minimum lot area, up to 40,000 sq. ft.
- b) for each 20,000 sq. ft. above 40,000 sq. ft., up to 80,000 sq. ft.

#### 2. Design Features

All site plans shall be consistent with Urban Design guidelines for the redevelopment area as set forth in the adopted Redevelopment Plan and the adopted Private Sector Development Controls and Guidelines (Ordinance No. 77-2099). The Design Review Board may recommend that the applicant receive a bonus, within the ranges herein specified, for exceptional achievement in urban design in any one or more of the following areas:

- a) planting and landscaping (considering type of plant materials, lushness, shading and cooling effect, screening, wind control effect, buffering effect, color, size and area of planting, maturity at time of initial planting, maintenance provisions, irrigation and relationship to buildings and street scape)
- b) paving
  (considering surface material,
  solar reflection and absorption,
  texture and color, richness and
  unity, transition with public
  spaces, creation of arrival plaza
  and internal paving)

#### Maximum Bonus

.15 increase in FAR

.1 increase in FAR

.5 increase in FAR (but in no event, whether alone or in combination with other bonus factors as established herein, to cause the project to exceed the "maximum floor area ratio with bonus" as set forth in Section 23-6C herein, except through use of development rights as provided in this Ordinance.

## Maximum Permissable Bonus Range

.05 - .15

.05 - .10

c) grading
(considering slope, drainage,
use of ground cover, air movement,
use separation, public and private
circulation, form and scale, visual
interest, space creation, publicprivate transitions and continuity,
and architectural integration)

.05 - 1.10

.05

d) water features
(considering movement, sound,
reflection, recreation, cooling
effect, architectural effect,
coordination with plaza or other
special place, public-private
transition, visual impact, and
relation to overall project design)

.05 - .10

e) signs and graphics
(considering function and purpose, scale, orientation, size, style, aesthetics, location, relationship to architecture, visual impact, consistency and uniformity, view blockage, illumination, movement, conflict and relationship to public and private spaces).

.05 - .10

f) street furniture
 (considering pedestrian orientation,
 function, seating capacity, visual impact,
 integration with architectural and other
 design elements, integration with use
 of public spaces and activity
 areas, uniformity of style, location
 and scale)

.05 - .10

(g) lighting
(considering function, circulation, security, identification, aesthetics, lighting of exterior spaces, lighting of planting, lighting of architectural and/or design features, lighting of parking areas, lighting levels, impact beyond project, uniformity and consistency with architecture and other urban design features, type of lighting, and lighting fixtures)

- h) arcades
  (considering pedestrian access,
  accommodation of activities, linkage
  in circulation pattern, relationship
  to architectural and urban design
  features, shading and cooling effect,
  protective effect, relationship to
  public and private spaces, accessibility
  and usability)
- .05 .15

.05 - .15

- site planning
   (considering vehicular and pedestrian
   circulation and orientation, parking
   location and access, quality and amount
   of open space, building setbacks, views
   and vistas, building orientation, relation
   to adjacent buildings and structures,
   relation to public and private spaces)
- building design
   (considering scale, height, mass, facade,
   surface materials, rooftop, aesthetics,
   integration with urban design features,
   color, relationship to adjacent buildings
   and spaces and continuity with respect to
   architectural design)

.05 - .25

## 3. C-PS 2 Only

- a) Outdoor cafe (with minimum of 500 square feet)
- .05 .15 increase in FAR
- b) First Floor Commercial Use (with minimum of 1,000 square feet)
- .05 .15 increase in FAR \*
- Development Rights Transfer for each development right

1,000 gross square foot increase in maximum permissible floor area

## G. Supplementary Yard Regulations

Applicability. The yard regulations set forth in this section (a) supplement the regulations set forth in Sections 8-1, 8-2, 8-6, 8-7 and 8-8 of this Ordinance, which remain applicable to all development in the PS district; and (b) substitute for the yard regulations set forth in Sections 8-3, 8-4 and 8-5 of this Ordinance, which shall not be applicable in the PS district.

2. Minimum Required Yards for R-PS 1-4 Districts. The following minimum yards are required for development in the R-PS 1-4 districts at and above grade level:

#### Front and Rear

20' + 1' for each 10' in height above 60 feet measured from grade up to a maximum front and rear setback of 40' each.

## Side

the sum of the side yard widths shall be at least 25% of lot width, but no interior side yard shall be less than 10% of the lot width or 10' whichever is greater; and no side yard adjacent to a street shall be less than 15 feet or 10% of the lot width, whichever is greater. The first 10' of such side yard adjacent to a street shall be developed and maintained as a landscaped area.

Provided, however, that townhouse residential development as defined by and pursuant to the regulations established in Section 26 of this Ordinance on parcels not less than 21,000 square feet and at a height not greater than 30 feet above grade including enclosed parking shall be exempt from the side yard setback specified above and shall be subject in-lieu thereof to a minimum side yard setback of 10 feet; and shall be exempt from the minimum open space ratio otherwise required pursuant to Section 23-6B herein and shall be subject in-lieu thereof to a minimum open space ratio of .40.

Minimum Required Yards in Relation to Minimum Open Space Ratio. In all cases, except as otherwise provided herein, an applicant must comply with both minimum required yard and minimum open space requirements. Where the minimum open space ratio results in greater required open space at grade than that resulting from the minimum yards requirements alone, the applicant must provide not less than 50% of the difference in the form of open space at grade and the remainder either at or above grade. Open space above grade may be in the form of recreational facilities above the pedestal portion of the building. Required yards and open space, whether at or above grade, may not be utilized for parking or accessory structures except as set forth above; however, at-grade drives in the C-PS 3 District shall be permitted when said drive is not less than 7½ feet from the property line.

## 4. Minimum Required Yards for C-PS 1-3 Districts.

a. The following minimum yards are required for non-residential development in the C-PS 1-3 districts and residential development in the C-PS 3 District at and above grade levels:

Front 10 feet, but no point on a building shall be closer to the front lot line than one-half the height of the point above grade; not withstanding the above no front setback shall be required for buildings in the C-PS 2 district whose front lot line is on Fifth Street (Miami Beach Boulevard) and the minimum required setback in the C-PS 3 District for buildings fronting on the east side of Washington Avenue shall be a constant twelve (12) feet.

Rear 10 feet or 10% of the building height, whichever is greater.

10% of the width of the lot or 10% of the height of the building, whichever is greater; provided, however, that no side yard adjacent to a street shall be less than 10 feet and no point on the building shall be closer to the centerline of a side street than onehalf the height of the point above grade. Not withstanding the above, the minimum required side yard setback in the C-PS 3 District along Biscayne Street east of Washington Avenue shall be 15 ft. provided however all other side yard setback requirements shall remain applicable.

- b. Residential development in the C-PS 1-3 districts shall be subject to the yard and other regulations applicable to the appropriate R-PS district as shown in Section 23-6C and Section 23-6G (1) - (3) of this Ordinance.
- c. Mixed use development in the C-PS 1-3 districts shall be subject to the minimum required yards for non-residential development pursuant to Section 23-6G4(a) if 25% or less of the total area of such building is used for dwelling purposes. If 25% or more of the total area of such building is used for dwelling purposes, the building shall be subject to the minimum required yards for residential development pursuant to Section 23-6G4(b) as modified by the following:
  - where such use abuts a public off-street parking area, the residential rear yard requirement may be reduced by one-half, but shall, in no event, be less than 10 feet;
  - (2) minimum required yards for residential development shall be applied only to the lowest floor (and all floors above it) which contain one or more dwelling units; otherwise, applicable nonresidential yard requirements shall apply; and

(3) where the applicant incorporates an atrium or other interior space at the ground level and extending to the top floor of the structure, an "interior setback" credit shall be applied for such square footage at ground level against the otherwise required exterior setbacks, but, in no event shall any exterior setbacks be less than that required for non-residential development in the C-PS 1-3 districts. For purposes of this subsection only, hotels and motels shall be considered as non-residential uses.

## H. Alternative Parking Requirement for Multi-Family Residential Development in R-PS Districts.

In lieu of meeting the multi-family residential parking requirement as set forth in Section 9-2A(4) of this Ordinance, the applicant may provide one (1) parking space per dwelling unit, regardless of size of unit or number of bedrooms, on site, and pay a fee in the amount of Five Thousand Dollars (\$5,000.00) per space in lieu of providing the otherwise required parking pursuant to Section 9-2A(4), representing the difference between one (1) parking space per unit and the requirements of Section 9-2A(4). The fee shall be paid prior to issuance of a building permit for such development and all fees collected shall be placed in a special interest-bearing South Pointe Development Area Off-Street Parking Fund, and such fees and interest thereon shall be dedicated toward and used solely and exclusively for the development of off-street parking in the South Pointe Redevelopment area pursuant to the adopted Redevelopment Plan and any amendments thereto.

## I. Supplemental Parking Regulations: C-PS3 District

1.25 parking spaces per dwelling unit, I parking space per sleeping unit, and 2.5 parking spaces per 1,000 square feet of commercial space. Up to forty percent (40%) of the total parking spaces created on the parcel may be for compact cars. Required parking for hotel, hotel accessory uses and club uses may be satisfied through the provision of valet parking spaces. Twenty percent (20%) of dwelling unit parking spaces may be satisfied through the provision of valet parking spaces.

Parking spaces shall be sized in accordance with the following chart:

Parking Angle	Standard Spaces	Compact Spaces
900	9'0" Wide 18'0" Long	7'8" Wide 15'0" Long
60°	8'6" Wide 18'0" Long	7'6" Wide 15'0" Long
4 50	8'6" Wide 18'0" Long	7'6" Wide 15'0" Long
Parallel	9'0" Wide 23'0" Long	7'8" Wide 20'0" Long
Handicapped	12'0" Wide 18'0" Long	

## Access aisles shall be provided in accordance with the following chart:

Size/Car	Angle of Parking	Width of Aisle: One-Way Traffic Double Loaded	Width of Aisle: Two-Way Traffic Double Loaded	Width of Aisle One-Way Traffic Single Loaded
Standard	900	23.0 feet	23.0 feet	23.0 feet
Standard	600	11.8 feet	19.3 feet	12.7 feet
Standard	450	9.5 feet	18.5 feet	10.8 feet
Compact	900	20.0 feet	21.0 feet	20.0 feet
Compact	600	9.5 feet	19.0 feet	10.3 feet
Compact	4 50	9.2 feet	18.7 feet	10.6 feet
Standard	Parallel	10.0 feet	20.0 feet	10.0 feet
& Compact	Parking			

## 23-7. Development Rights Transfer

## A. Transfer Areas

The R-PS 1 and 2 subdistricts are designated, for purposes of this section, as the transferor area and the C-PS 2 subdistrict is designated, for purposes of this section, as the receiving area.

## B. Attachment of Development Rights

Any owner of property in the transferor area may, upon construction of a new development or substantial rehabilitation of an existing development with a density less than 60 units per acre, acquire and transfer development rights to properties in the receiving area.

## C. Calculation of Development Rights Equivalencies

Each development right shall be equivalent, upon transfer, to a 1,000 gross square foot increase in the maximum permissible floor area otherwise permitted on the receiving area site in the first three (3) years following the effective date of this subsection as provided in E, below. Thereafter, each development right shall have the following equivalent values:

Year	Gross Square Foot Increase in Floor Area in Receiving Area
Year 4	900
Year 5	800
Year 6	700
Year 7	600
Year 8	500
Year 9	400
Year 10	300
Year II	200
Year 12	100
Year 13 and afte	er 0

Development rights shall accrue at the following rate: One (1) per dwelling unit if resulting from substantial rehabilitation on the transferor area site; one and a half (1 1/2) per dwelling unit if resulting from new construction on the transferor area site, if such site is less than forty thousand (40,000) square feet; and two (2) per dwelling unit if resulting from new construction on the transferor area site, if such site is 40,000 square feet or greater.

## D. Limitations on Development Rights Transfers in C-PS 2 Subdistrict

Development rights may be transferred to properties in the receiving area only. The maximum increase in permissible square footage of development on a site in the receiving area on which development rights are being used may not exceed 50% of the total square footage otherwise permissible pursuant to this Ordinance without use of development rights.

## E. Development Right Administration

The City Commission shall formulate and adopt appropriate rules and regulations to guide the implementation of this provision consistent with the language herein and the intent of this section. This subsection will become effective when such rules and regulations have been adopted by the City Commission.

# 23-8 Procedure for Review and Approval of Uses in the Performance Standards District

- A. Permitted Uses: Applicants for a building permit for the construction, or for the repair or rehabilitation of a permitted use in the Performance Standards District shall be subject to the requirements of Section 14 and Section 23 as to required site plan review and design review.
- B. Conditional Uses: Applicants for a conditional use in the Performance Standard District shall be required to obtain such aproval in accordance with the procedures and subject to the requirements of Section 7 of the Zoning Ordinance, and shall additionally be subject to the requirements of Section 14 and Section 24 of the Zoning Ordinance as to required site plan review and design review. To the maximum extent possible, these processes and the requirements therefor shall be coordinated so as to avoid unnecessary duplication and expense.
- C. <u>Variances:</u> Applications for variances may be made by the applicant pursuant to the procedure and subject to all requirements as set forth in Section 13 of the Zoning Ordinance.
- D. Development Agreements: As a condition of site plan and/or design review, the City and the applicant may enter into a Development Agreement by which the applicant may be assured that upon approval, the project will be permitted to proceed in accordance with existing ordinances and regulations, and by which the applicant and the City may agree to certain terms and conditions relating to the timing of development, provision of public facilities, vacation, dedication and such other matters as may reasonably relate to the project.

## 23-9 Administration

- A. Enforcement: Enforcement of this Ordinance shall be pursuant to the provisions of Section 14-1 of the Zoning Ordinance.
- B. <u>Interpretation</u>: Interpretation of this Ordinance shall be pursuant to the provisions of Section 15 of the Zoning Ordinance.
- C. <u>Violations and Penalties</u>: Violations of this Ordinance and penalties therefore shall be pursuant to the provisions of Section 18 of the Zoning Ordinance.

#### **SECTION 24**

#### DESIGN REVIEW REGULATIONS

#### 24-1 Purpose.

The primary purpose of the design review is to insure a high degree of aesthetics, promote quality and compatible development of land uses, buildings, and structures which enhance the value of property and the physical environment of the community in certain highly visible, tourist, commercial and residential areas of the City.

### 24-2 Scope of Review.

Design Review encompasses the examination of the below criteria with regard to the aesthetics, appearances, and function of the structure in relation to the site, adjacent structures and surrounding community. The Design Review Board and Planning Department shall review plans based upon the below criteria and Section 24-5A as established in this Section of the Zoning Ordinance. If the Board determines that an application is not consistent with the criteria, it shall set forth in writing and with specificity the reasons substantiating its finding.

- A. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.
- B. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures and signs, and lighting and screening devices.
- C. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably required to determine compliance with this Ordinance.
- D. The color, design, selection of landscape materials and architectural elements of exterior building surfaces for developments requiring a building permit in areas of the City identified in Section 24-3,A.
- E. The proposed structure is in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines, and plans insofar as the location and appearance of the buildings and structures are involved.
- F. The proposed structure indicates a sensitivity to and is compatible with the environment, adjacent structures, and enhances the appearance of the surrounding properties.
- G. The design and layout of buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety and fire protection, relationship to the surrounding neighborhood impact on contiguous and adjacent buildings and lands, pedestrian sight lines and view corridors.

- Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that all parking spaces are usable and are safely and conveniently arranged. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site.
- 1. Lighting shall be reviewed to ensure safe movement of persons and vehicles; for security purposes and to minimize glare and reflection on adjacent properties.
- J. Landscape and paving materials shall be reviewed so as to ensure an adequate relationship with and enhancement of the overall site plan design.
- K. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are purposely shielded from public view and pedestrian areas.
- L. Storm drainage, sanitary waste disposal, and water supply shall be reviewed and considered in terms of the adequacy of existing systems, and the need for improvements, both on-site and off-site, to adequately carry runoff and sewage, and to maintain an adequate supply of water at sufficient pressure.
- M. Garbage disposal shall be reviewed to ensure freedom from vermin and rodent infestation. All disposal systems shall meet municipal specifications as to installation and construction.
- N. The overall project shall be reviewed for compliance with the City's Comprehensive Plan or special plans that apply to or affect the subject property.

## 24-3 Applicability and Exemptions.

- A. APPLICABILITY. All building permits for new construction, alterations, or additions to existing buildings within the following areas shall be subject to review by the Design Review Board. No building permit shall be issued without the express written approval by the Design Review Board or otherwise provided for in these regulations for the following areas:
  - 1. Any use, structure or building located between the oceanfront bulkhead line and the erosion control line.
  - 2. Any use, structure or building within the fifty (50) foot bulkhead rear yard setback for oceanfront lots.
  - 3. Any use, structure or building within Marine Districts (MD) I and II, the Municipal Use (MU) District, and Convention Center (CCC) District except for the following projects which have been either conceptually approved and submitted to the City Commission for consideration prior to the effective date of this subsection: The Convention Center Expansion, TOPA, Miami Beach Marina, South Pointe Park and Specialty Restaurant, Island View Park, Police and Justice Center, 21st Street Recreation Center and Fire Station No. 2
  - 4. Any use, structure or building located within a designated redevelopment area.

- B. EXEMPTIONS. Exemptions to these regulations include all the following provided no new construction and/or additions to existing buildings are required:
  - 1. all permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment when such work is entirely within the interior of the building; however, the Planning Director may approve such building permit applications for minor work on the exterior of buildings.
  - 2. any permit necessary for the compliance with a lawful order of the Code Enforcement Director, Fire Marshall or Public Works Director related to the immediate public health or safety.
  - 3. all permits for interior alterations and repairs.
  - 4. all permits for demolition or wrecking.

## 24-4 DESIGN REVIEW BOARD POWERS AND DUTIES

## A. POWERS AND DUTIES

- 1. Responsible for promoting excellence in urban design.
- 2. Responsible for reviewing all applications requiring Design Plan Review.
- Responsible for preparing and recommending adoption of design plans for areas subject to its review authority.

## B. MEMBERSHIP

- 1. Composition The Design Review Board shall be composed of seven (7) regular members and two (2) ex-officio members. The seven (7) regular members shall consist of two (2) registered architects, one (1) registered landscape architect, one (1) professional engineer, one (1) professional land planner and two (2) citizens at-large. The two (2) ex-officio members shall be the Planning Director and Public Works Director. The City Attorney's office shall provide legal counsel.
- 2. Appointment The two (2) architects, one (1) landscape architect, one (1) professional engineer, and one (1) professional land planner shall be appointed by the City Manager in consultation with the Planning Board from an eligibility list solicited from their representative professional associations as listed below:
  - a. American Institute of Architects, local chapter
  - b. American Society of Landscape Architects, local chapter
  - c. Florida Engineer Society, local chapter
  - d. American Planning Association, local chapter

The two (2) citizens at-large members shall be appointed by the Planning Board.

- all permits for plumbing, heating, air conditioning, elevators, fire alarms and extinguishing equipment, and all other mechanical and electrical equipment when such work is entirely within the interior of the building; however, the Planning Director may approve such building permit applications for minor work on the exterior of buildings.
- 2. any permit necessary for the compliance with a lawful order of the Code Enforcement Director, Fire Marshall or Public Works Director related to the immediate public health or safety.
- all permits for interior alterations and repairs.
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  - b. American Society of Landscape Architects, local chapter
  - c. Florida Engineer Society, local chapter
  - d. American Planning Association, local chapter

The two (2) citizens at-large members shall be appointed by the Planning Board.

Residency and Place of Business - All regular members shall reside in or have their primary place of business in Dade County; however, three (3) professional members shall not reside in or have their place of business in the City of Miami Beach. The two (2) citizen-at-large members shall be residents of the City.

## C. TERMS OF OFFICE

The term of service on the Design Review Board shall be two (2) years. No regular member shall serve more than three (3) consecutive terms.

The members of the first Board shall be appointed as follows: one (1) architect, one (1) citizen-at-large, the professional engineer, and the professional land planner shall be appointed for a one (1) year term and the remaining three (3) members shall be appointed for two (2) year terms. Thereafter, every member appointed shall be appointed to serve a two (2) year term.

#### D. REMOVAL

Removal of appointed members shall be by the City Manager for cause. Failure to attend three (3) consecutive meetings shall be considered cause for removal.

## E. QUORUM AND VOTING

A quorum shall constitute five (5) regular members. An affirmative vote of four (4) regular members shall be required to approve an application for design review. Prior to a decision of the board, the ex-officio members shall submit a recommendation for each item on the agenda, in addition, the City Attorney shall determine whether a request is properly before the Board. If an application is denied, the Board shall provide a written statement in support of its finding.

#### F. MEETINGS

The Board shall meet within a reasonable time upon receipt of an application, at the call of the Chairperson or the Planning Director. All meetings shall be open to the public and shall be conducted in accordance with the rules and regulations adopted by the Board.

#### G. ORGANIZATION

- 1. The Chairperson and Vice-Chairperson shall be elected from the members of the Board by a majority vote.
- 2. The Department of Planning shall provide the necessary staff to assist the Board in the performance of its duties.

#### H. CONFLICT OF INTEREST

A member of the Board should not vote on an application if it involves the members' own property or property owned by members of his or her family or

current business associates either individually or of a company. Any board member is prohibited from conducting business with any applicant for as long as the board member remains on the board. Failure to comply with this requirement will result in the automatic removal of all approvals received by the applicant. All other state, county and municipal laws governing the ethical conduct of public officials shall apply to members of the board.

## 24-5 DESIGN REVIEW PROCEDURE

## A. CONSISTENCY WITH DESIGN REVIEW BOARD STANDARDS

All plans shall be consistent with the Design Review Board's adopted guidelines for the area in which the site is located and with the criteria listed.

## B. APPLICATION FOR DESIGN REVIEW

Any applicant requesting a hearing before the Design Review Board shall pay, upon the submission of an application to the Planning Department, a fee of 1% of the estimated value of construction; but not to exceed a sum of \$200.00. An application pertaining only to signs shall require a fee of \$50.00. If a deferment or clarification hearing is requested by the applicant, a \$50.00 fee shall be assessed. If a deferment or clarification of conditions is requested by the Board, there will be no additional fee. If the applicant removes his file from the agenda after it has been accepted by the Planning Department, the City shall retain 50% of the application fee.

The above fee schedule is provided to defray the costs associated with the Administration of this Section.

Should a question arise as to compliance with the conditions as outlined by the Design Review Board, a clarification hearing before the Board may be called by any City Department having jurisdiction or the applicant.

## C. PRELIMINARY DESIGN REVIEW

The applicant shall submit a Preliminary Design Review Application to the Planning Department. The Planning Department, with the assistance of any other applicable City Department, will review the zoning, architectural and other plan elements of the application and provide written comments to the applicant within ten (10) days of the application.

## D. FINAL DESIGN REVIEW

The applicant shall obtain a Design Review application from the Planning Department which shall be responsible for the overall coordination and administration of the Design Review Process. Once the application and appropriate set(s) of plans have been received by the Planning Department and determined to be complete, the Planning Department shall within ten (10) working days conduct a Staff review and prepare a recommendation to the Design Review Board.

The Design Review Board shall consider the application and Planning Department recommendation within a reasonable time from the date of submission of a complete application to the Planning Department. The Board shall announce its decision within three (3) working days of the hearing. The Design Review Board shall have mandatory powers to approve or disapprove applications, with or without conditions.

The Design Review Board may require such changes in said plans and specifications as in its judgment may be requisite and appropriate to the maintenance of a high standard of architecture, as established by the standards contained in this Ordinance and as more specifically outlined in the City's Comprehensive Plan and other specific plans pertaining to the areas identified in Section 24-3A.

Upon approval of an application by the Design Review Board, the Planning Director or his authorized representative shall stamp and sign three (3) sets of plans. Two (2) sets of plans shall be returned to the applicant who may only then submit an application for a building permit. The remaining approved plan shall be part of the Board's official record and shall be maintained on file with the Planning Department.

#### E. BUILDING PERMIT APPLICATION

The applicant or his authorized agent shall make application for a building permit. The application shall include, at a minimum, the two (2) sets of plans which were approved by the Design Review Board and stamped and signed by the Planning Director or his authorized representative.

No building permit, certificate of occupancy, certification of completion, or occupational license shall be issued unless all the plans, including amendments, notes, revisions, or modifications, have been approved by the Planning Director. Minor modifications to plans that have been approved by the Design Review Board shall be permitted when approved by the Planning Director.

No building permit shall be issued for any plan subject to design review except in conformance with the approved plans. The applicant shall have up to one (1) year from the date of design plan approval to obtain all necessary building permits required to proceed with construction. If the applicant fails to obtain said building permit(s) within the time period, all Staff and Design Review Board approvals shall be null and void and the applicant shall be required to re-initiate the design review process; however, an extension for cause, not to exceed one (1) year, may be granted by the Board.

An applicant may submit an application for a building permit simultaneously with a design plan review in order to expedite processing, however, no building permit shall be issued until the Final Design Plan has been stamped and signed by the Planning Director or his authorized representative in accordance with this Ordinance.

#### F. SPECIAL REVIEW PROCEDURE

For minor work associated with alterations and additions to existing buildings, the Planning Director or his designated representative, upon the written authorization of the Chairman of the Design Review Board, shall have the authority to approve, approve with conditions or deny an application on behalf of the Design Review Board. Appeal of the Planning Director's finding shall be to the Board and scheduled at the next regular meeting date.

## 24-6 APPEAL

The applicant or any city department having jurisdiction may appeal any decision of the Design Review Board to the City Commission. The appeal shall be in writing and submitted to the Planning Director within twenty (20) days of the date the Design Review Board reached a decision on an application. The Planning Director shall place the appeal on the City Commission agenda within thirty (30) days of receipt of the appeal. In order to reverse, amend, or modify any decision of the Design Review Board, the City Commission:

- 1. Shall find that the Design Review Board acted arbitrarily and capriciously in abuse of its discretionary powers; and
- 2. The vote to reverse, amend or modify shall be by a five-sevenths (5/7) majority of the entire City Commission.

Appeal from a decision of the City Commission shall be to the court of appropriate jurisdiction pursuant to the laws of Florida and within the time period as set forth in those laws.

#### **SECTION 25**

#### **FACADE REVIEW REGULATIONS**

## 25-1 Purpose.

A. The purpose of Facade Review is to enhance the tropical environment of Miami Beach by establishing guidelines for the choice of primary paint color for the exterior surfaces of buildings and structures.

## 25-2 Scope of Review.

A. Facade Review encompasses the regulations of the primary paint color of exterior building surfaces for all developments.

## 25-3 Applicability and Exemptions.

A. All public and private development in the City of Miami Beach including new buildings, additions or alterations requiring painting and existing buildings requiring repainting shall be subject to Facade Review with the exception of single family homes.

## 25-4 Criteria for Facade Review

A. A Miami Beach Facade Review Color Chart shall be approved by the Planning Board and shall serve as a basic criteria for facade review. For the purposes of this Section, no less than 75% of the total paint to be used on the exterior of a building shall be the primary paint color selected from the Miami Beach Facade Review Color Chart. There shall be only one primary paint color selected for each building subject to the regulations of this Section.

## 25-5 Color Selection Procedure

- A. The Miami Beach Facade Review Color Chart shall be available in the Code Enforcement Department. When an applicant has made a color selection, he must provide a paint chip or dry sample sufficient to indicate that the specified paint to be used is shown on the Miami Beach Facade Review Color Chart or is a color which is lighter in shade than any other color on the Color Chart.
  - 1. EXISTING STRUCTURES. No permits for repainting shall be issued until the applicant has made a color selection from the Miami Beach Facade Review Color Chart and has submitted the required color sample, pursuant to this section. The color selection shall be approved and indicated on the painting permit and the building card. The color sample shall be retained by the Code Enforcement Department for future reference.
  - NEW CONSTRUCTION AND ADDITIONS. When applying for the original building permit, the applicant must follow the same procedures as provided in Section 25-5A.

B. If the structure to be painted requires Site Plan Review, the applicant may submit an application for a painting or building permit simultaneously with Site Plan Review to expedite processing. However, no painting permit shall be issued until the Final Site Plan has been approved and a building permit issued by the Code Enforcement Department.

## 25-6 Appeal.

A. The applicant may appeal a decision regarding Facade Review to the Board of Adjustment.

#### **SECTION 26**

## TOWNHOME RESIDENTIAL DEVELOPMENT REGULATIONS

### 26-1 Purpose.

A. These regulations provide for the arrangement of townhome dwelling units so as to result in the efficient and aesthetically pleasing use of land; create meaningful open spaces; and provide for the protection of the surrounding residential area.

## 26-2 Uses Permitted.

A. No land, body of water or structure shall be used, in whole or in part, and no structure shall be hereinafter erected, constructed, moved, or reconstructed, structurally altered or maintained for any purpose under these regulations which is designed, arranged or intended to be used or occupied for any reason or purpose, except for townhomes and related accessory uses and structures that support the Townhome Residential Development.

## 26-3 Districts Permitted.

- A. Townhome Residential Developments are permitted in the following districts:
  - 1. RM-14 Multiple Family Low Density District
  - 2. RM-24 Multiple Family Medium Low Density District
  - 3. PUD Planned Unit Development Residential District
  - 4. RM-60 Multiple Family Medium Density District

## 26-4 Filing Requirements.

- A. Petitioners for a Townhome Residential Development shall file an application with the Planning Department in accordance with the following provisions:
  - 1. All Townhome Residential Developments shall meet the requirements of Section 24. Design Review Regulations. The Site Plan shall become a part of the official record.
  - When a Townhome Residential Development is not a permitted use in the zoning district, the petitioner may file for an amendment to the Ordinance or a change of zoning pursuant to the process as set forth in Section 16. General (Changes and Amendments). A request for an amendment to the Ordinance for a change of zoning to allow townhome development shall be accompanied by a site plan in accordance with the requirements of Section 24. Design Review Regulations and such site plan shall become part of the official record of the change of zoning request. Notwithstanding any other provisions of this Zoning Ordinance, applications for Change of Zoning to Planned Unit Development (PUD) shall contain an area not less than 21,000 square feet and frontage on a public street of not less than 150 feet.

## 26-5 Development Regulations

- A. These regulations shall apply to all Townhome Residential Developments where permitted in this Zoning Ordinance.
- B. <u>DEVELOPMENT COMPATIBILITY</u>. As part of the Site Plan Review Process required in Section 24-4 of this Ordinance, each Townhome Residential Development must demonstrate a compatibility with neighboring uses. The Townhome Residential Development shall also be designed to preserve and/or enhance the character and natural habitat of adjoining properties and neighborhood.
- C. <u>DENSITY</u>. Density shall not exceed the maximum density permitted in the district in which the Townhome Residential Development is located. No more than four (4) townhome units shall be constructed in any one building.
- D. MINIMUM BUILDING SITE. 21,000 square feet.
- E. MINIMUM FLOOR AREA. No individual townhome dwelling unit shall have less than one thousand (1,000) square feet of floor area and the average floor area of the townhome residential development shall be no less than thirteen hundred (1,300) square feet.
- F. PARKING. A minimum of two (2) off-street parking spaces shall be provided for each individual townhome dwelling unit. When parking is not located in the minimum front yard setback, the parking requirement shall be one and three quarters (1-3/4) spaces for each townhome dwelling unit. In addition to the above required spaces, a minimum of one (1) additional off-street space for every three (3) townhome units shall be provided; however, said space shall not be located in the minimum front yard setback, and such spaces shall be designated as visitor space. All required parking shall be located on site.
- G. HEIGHT. The maximum building height shall not exceed thirty (30) feet above grade. With the exception of carports, accessory structures shall be enclosed on all sides, one of which may be a building wall. The maximum height of all accessory structures shall not exceed one story in height.
- H. LOT COVERAGE. The maximum lot coverage for the development shall not exceed forty (40%) percent of the site.
- I. YARDS. Structures may be arranged irrespective of platted lot lines. For the purposes of this Section, the perimeter boundary lines of the site shall be referred to as the site line.
  - No structure shall be permitted within twenty (20) feet of a public street. No structure shall be permitted within twenty (20) feet of a front or rear site line or within seven and one-half (7½) feet of an interior side site line.
  - 2. The minimum setback between groups of attached or detached townhome units shall be no less than fifteen (15) feet measured between the nearest points of adjacent buildings.

- 3. For the purposes of this Section, a private drive shall be a roadway that is privately owned which provides the primary means of vehicular access to the driveway(s) and/or parking areas serving each townhome structure. Private drives which provide for traffic in one (1) direction shall have a minimum width of ten (10) feet. Private drives which provide for traffic in two (2) directions shall have a minimum width of twenty (20) feet. There shall be a four (4) foot wide landscaped setback area between a private drive and any site line and a three (3) foot wide landscaped setback area between any private drive and any structure or obstruction. In addition, each townhome unit shall be located at least twenty (20) feet from a private drive.
- J. LANDSCAPING. All required yard areas shall have a minimum of one (1) shade or flowering tree located on each and every four hundred (400) square feet of said area. Said trees shall be 8-10 feet in overall height when planted. When perimeter fences or walls are located adjacent to sidewalks, there shall be a minimum three (3) foot setback from the perimeter wall to the sidewalk. This space shall be planted with shrubs no less than thirty (30) inches in height when planted. All pervious surfaces shall be landscaped with shrubs, hedge material, flowers, grass or other acceptable landscaping treatments. All plant materials shall be maintained by the property owner so as to assure the landscaping treatment indicated in the approved plans.
- K. <u>SERVICES AND UTILITIES</u>. Each townhome dwelling unit shall be serviced by separate water, telephone, gas and electric services. Electric, telephone, or any other form of cable, wire, etc, shall be placed underground.
- L. DESIGN. No townhome dwelling unit shall be located over another unit.
- M. <u>COMPLIANCE WITH REGULATIONS REQUIRED</u>. When not specifically addressed in these regulations, all other regulations contained within this Zoning Ordinance shall apply.

## **HP-HISTORIC PRESERVATION DISTRICT REGULATIONS**

## 27-1 Purpose

It is hereby declared by the City Commission of the City of Miami Beach that the preservation and conservation of properties of historical, architectural and archeological merit in the City is a public policy of the City of Miami Beach and is in the interest of the City's future prosperity.

The general purpose of these regulations is to protect and encourage the revitalization of sites and districts within the City having special historic, architectural or archeological value to the public. This general purpose is reflected in the following specific goals:

- A. The identification of historically, architecturally, and archeologically significant sites and districts (hereinafter: "significant sites and districts");
- B. The protection of such significant sites and districts to combat urban blight, promote tourism, foster civic pride, and maintain physical evidence of the City's heritage;
- C. The encouragement and promotion of restoration, preservation, rehabilitation and reuse of significant sites and districts by providing technical assistance, investment incentives, and facilitating the development review process;
- D. The promotion and excellence in urban design by assuring the compatibility of restored, rehabilitated or replaced structures within designated historic preservation districts.

#### 27-2 Definitions

- A. "Alteration" means any material change in the external features of any historic site or improvement within an historic district, or to the interior of any such site or improvement if the interior features have been designated pursuant to this Ordinance.
- B. "Archeological Site" means a single specific location which has yielded or is likely to yield information on local history or prehistory. Archeological sites may be found within archeological zones, historic sites, or historic districts.
- C. "Certificate of Appropriateness" means a certificate issued by the Historic Preservation Board indicating that a new construction, alteration or demolition of an historic site or an improvement within an historic district is in accordance with this chapter.
- D. "Certificate to Dig" means a certificate issued by the Historic Preservation Board allowing for the excavation or fill on a site designated as archeologically significant.

- E. "Demolition" means the complete or substantial removal or destruction of any historic site or any structure or improvement located within an historic district.
- F. "Evaluation Guidelines" means the standards applicable to alteration, renovation, new construction for an Historic site or improvement within an Historic district, which standards will be used as criteria by the Board and its staff in making decisions on applications for Certificates of Appropriateness.
- G. "Exterior" means the front facade of any building and those external surfaces of any improvement visible from public ways.
- H. "Historic District" means two or more sites, buildings, structures, landscape features or other improvements that are concentrated in the same area and have been designated as a district pursuant to this Section.
- I. "Historic Site" means an individual building, structure or other improvement not exceeding one platted lot which has been designated an Historic site pursuant to this Section. Interior features or space may be designated an historic site only where the building or structure containing the interior feature or space has been designated an historic site.
- J. "Improvement" means any building, structure, fence, gate, wall, walkway, parking facility, light fixture, bench, fountain, sign, work of art, earthworks or other man-made object constituting a physical betterment of real property.
- K. "Landscape Feature" means all vegetation, geological features, ground elevation, bodies of water, or other natural or man-made environmental feature.
- L. "Undue Economic Hardship" shall mean an exceptional financial burden upon an owner that constitutes a taking of the owner's property without just compensation. The evidence and testimony needed to establish an "Undue Economic Hardship" shall be specified in regulations to be established in accordance with Section 27-4(B) below.

## 27-3 Scope and Exemptions

#### A. Scope

Unless expressly exempted by Sub-Section 27-3(B) herein, no permits for new construction, demolition, alteration, repair, signage or any other physical modification of an individual archeological or historic site or of a property within a district designated as historically, architecturally, or archeologically significant may be issued by the City without the prior issuance of a Certificate of Appropriateness or Certificate to Dig in accordance with the procedures specified in this Section.

#### B. Exemptions

The following permits are exempt from the regulations of this Section:

1. All permits for plumbing, heating, air conditioning, elevators, fire alarms

and extinguishing equipment, and all other mechanical and electrical equipment not involving exterior facade changes or construction visible from public right-of-way.

- 2. Any permit necessary for the compliance with a lawful order of the Code Enforcement Director, Fire Marshall, or Public Works Director including any permit necessary for the immediate public health or safety.
- 3. Any permit issued for an existing structure in a designated historic district which has been specifically excluded from the District pursuant to Sub-Section 27-5(B) (3).

## 27-4 Historic Preservation Board

There is hereby created a Miami Beach Historic Preservation Board for the purposes of carrying out the provisions of this Section. The Board shall have the authority to recommend the designation of areas, places, buildings, structures, landscape features, archeological sites and other improvements or physical features, as individual sites, districts, or archeological zones that are significant to Miami Beach's history, architecture, archeology, or culture or possess an integrity of location, design, setting, material or workmanship, in accordance with the goals of this Section.

## A. Powers and Duties

#### The Board shall:

- 1. Recommend to the Planning Board and City Commission the designation of historically, architecturally or archeologically significant sites and districts;
- Prepare and recommend for adoption specific guidelines for each designated site or district, to be used to evaluate the appropriateness and compatibility or proposed alteration or development within designated sites or district;
- 3. Issue or deny Certificates of Appropriateness and Certificates to Dig in accordance with procedures specified in this Section.
- 4. Promote the preservation of historic properties by granting special incentives to property-owners in accordance with law including, but not limited to, transfer of development rights, floor area bonuses, special use exceptions, and by administering financial assistance, loans and grants.
- Vary, waive, or supersede other sections of the Zoning Ordinance when appropriate as a means of encouraging renovation and/or compatible new construction. When appropriate to accomplish the purposes and goals of this section, the Board shall have the power to waive and supercede the requirements and restrictions of other sections of the Zoning and Building Codes.
- 6. Facilitate the redevelopment of historic sites and districts by directing the

Department of Planning to provide advisory and technical assistance to property owners, applicants for Certificates of Appropriateness, and other City departments.

The Board shall make and prescribe such rules and regulations reasonably 7. necessary and appropriate for the proper administration and enforcement of the provisions of this chapter. Such rules and regulations shall conform to the provisions of this Section and shall not conflict with the Constitution and general laws of the State of Florida, and shall govern and control procedures, hearings and actions of the Board. No such rules and regulations shall become effective until a public hearing has been held upon the proposed rules and regulations, and any amendments or modifications thereto, and the same have been approved by the City Commission and filed with the Clerk of the Commission. Upon approval by the Commission, such rules and regulations shall have the force and effect of law. The Board shall prescribe forms for use by applicants in compliance with the provisions of this Section. The Board may authorize any one of its members to administer oaths and certify to official acts.

## B. Membership

The Historic Preservation Board shall be composed of thirteen (13) members. There shall be one architect and one landscape architect, both registered in the State of Florida; one builder, developer or general contractor with considerable construction experience on Miami Beach; one historic preservationist or historian qualified by education and practical experience in the rehabilitation of historic structures; five members as follows: a registered real estate broker; a hotel owner; an apartment building owner; an owner of a commercial property in the City, and a person holding an executive position in a Miami Beach lending institution; and four (4) additional members-at-large.

All members of the Board shall be residents of, or have business interests in, the City of Miami Beach; provided, however, that the City Commission may waive these requirements in the event a person not meeting these requirements is available to serve on the Board and is exceptionally qualified by training and experience, in historic preservation matters. All appointments shall be made on the basis of civic pride, integrity, experience and interest in the field of historic preservation.

# C. Appointment

Historic Preservation Board members shall be appointed by the City Manager with the consent of the City Commission. An eligibility list solicited from the organizations listed below shall be considered by the City Manager in selecting Board members:

- American Institute of Architects, local chapter
- American Society of Landscape Architects, local chapter
- Miami Design Preservation League

- Miami Beach Developer's Council
- Miami Beach Chamber of Commerce
- Miami Beach Jaycees
- Miami Beach Visitors and Convention Bureau
- Miami Beach Development Corporation
- Miami Beach Resort Hotel Association
- Miami Beach Apartment Association
- Any person of any other organization representing the interests of the professions or industries listed in the membership categories in Section 27-4(B).

The term of service on the Historic Preservation Board shall be two (2) years. In order to provide continuity, the members of the first Board appointed under this Section shall be appointed as follows: the architect, the landscape architect, the builder, developer or general contractor, and the historic preservationist or historian shall be appointed for a two-year term and the remaining nine (9) members shall each be appointed for one-year terms. Thereafter, every member appointed shall serve a term of two years.

## E. Removal

Removal shall be by the City Manager and approved by a majority vote of the City Commission. No member may be involuntarily removed from office except upon a finding of good cause by the City Commission.

### F. Quorum

A guorum shall be seven (7) members of the Board.

#### G. Meetings

The Historic Preservation Board shall meet at least once a month or more often at the call of the Chairperson, in order to carry out the provisions of this Section. All meetings shall be open to the public and shall be conducted in accordance with the rules and regulations adopted by the Board.

## H. Organization

- 1. The Chairperson and Vice Chairperson shall be elected from the members of the Board by a majority vote.
- 2. The Department of Planning shall provide the necessary staff to assist the Board in the performance of its duties.

## 1. Voting

A member of the Board may not vote on the designation of an individual site or any Certificate of Appropriateness if it involves or affects the members' own property or property owned by members of his or her family. All other state, county and municipal laws governing the ethical conduct of public officials shall apply to members of the Board.

## 27-5 Designation of HP Districts

## A. Criteria for Designation

- 1. The designation of any individual site or district as historically, architecturally or archeologically significant requires that the following qualification criteria be met:
  - a. Listing on the National Register of Historic Places. This requirement may be waived at the owner or owners' request.
  - b. Before any property may be designated historically, architecturally or archeologically significant, the owner or owners of such property, or a majority of the owners of properties within the district in the case of an Historic Preservation District, shall consent, in writing, to such designation.
- 2. The following additional criteria must also be considered:
  - a. The quality of significance in American history, architecture, archeology, and culture is present in districts, site, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship and association, and
    - 1. That are associated with events that have made a significant contribution to the broad patterns of our history; or
    - 2. That are associated with the lives of persons significant in our past; or
    - 3. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
    - 4. That have yielded, or are likely to yield information important in prehistory or history.

## B. Designation Procedure

Proposals

Proposals for designation of individual sites or districts may be made to the Historic Preservation Board by one of its members, the Board staff, the City Manager, a member of the Miami Beach Planning Board or City Commission, by any property owner with respect to his own property.

## 2. Preliminary Evaluation

The Board shall conduct a preliminary evaluation of the designation proposal in order to determine general conformance with the criteria set forth in Section 27-5 and the relationship of the proposal to the Board's objectives. After considering the staff's recommendation, the Board may direct the preparation of a designation report.

# 3. Designation Report

The designation report shall describe the historic, architectural or archeological significance of the property proposed for site or district designation, recommend evaluation guidelines to be used by the Board to evaluate the appropriateness and compatibility of proposed developments affecting a designated site or district, and, if applicable, provide a list of non-conforming structures which shall be excluded from the proposed district. The designation report shall be delivered to the Board at a regularly-scheduled meeting.

# 4. Public Hearing - Notification

A public hearing on a proposed designation shall be conducted by the Historic Preservation Board within thirty (30) days from the date a designation report has been filed. All property owners of record within the proposed designation area shall be notified by mail of the public hearing at least ten (10) days in advance of the hearing.

## 5. Recommendation

If the Board finds the proposed designation meets the intent and criteria set forth in this Section, it shall transmit such recommendation to the Planning Board and City Commission, along with the designation report, and any additions or modifications deemed appropriate. If the Historic Preservation Board finds that the proposed designation does not meet the intent and criteria in this Section, no further Board action shall be required.

# C. HP District Designation

- Following a favorable recommendation by the Historic Preservation Board, the proposed designation shall be transmitted to the Miami Beach Planning Board to be processed as a change of zoning in accordance with the procedures specified in Section 16-1 of the Zoning Ordinance.
- 2. The ordinance adopting a proposed designation shall contain or reference the specific evaluation guidelines for the site or district.

- 3. All historically, architecturally, or archeologically significant sites and districts shall be delineated on the City's zoning map.
- 4. The provisions of this Section shall be in addition to the provisions and regulations of the existing zoning districts; this Section shall supersede any conflicting provisions of the Zoning Ordinance.

# 27-6 Certificate of Appropriateness/Certificate to Dig

A Certificate of Appropriateness issued under the authority of the Historic Preservation Board shall be required prior to the issuance of any permit for new construction, demolition, alteration, repair, signage or other physical modification or development affecting any property designated under the provisions of this Section unless the permit applied for is exempt pursuant to Section 27-3(B). A Certificate to Dig shall be required prior to the initiation of any development involving the excavation or fill on a site or in a district designated as archeologically significant pursuant to the provisons of this Section. The procedure to obtain a Certificate to Dig shall be the same as indicated below for a Certificate of Appropriateness.

## A. Application

- An application for a Certificate of Appropriateness may be filed with the Board at the same time or in advance of the submission of an application for a building permit.
- The application shall be on a form provided by the Historic Preservation Board and shall include the following information and such other information as the Board may determine is needed to allow for a complete evaluation of the proposed demolition, construction or other physical improvement, alteration or modification.
  - A written description of the proposed action;
  - b. A site plan as described in Section 14-3(A) of this Ordinance;
  - c. An elevation showing proposed changes to all architectural features.

# B. Review Procedure

- All applications involving demolition, new building construction, additions
  to existing buildings, major renovation work or substantial alteration of a
  designated structure or site shall be placed on the agenda of the Historic
  Preservation Board for their review and consideration within thirty (30)
  days after the date of receipt of a completed application.
  - a. At least ten (10) days prior to consideration of an application by the Board, notice of such consideration shall be mailed to the applicant, and all property owners of record within 375 feet of the subject property, or in the case of a property with an Historic Preservation district, to all other property owners within the District.

- b. The Board shall approve, deny, approve with conditions or suspend action on an application for a Certificate of Appropriateness. In any case, the Board must act on an application within sixty (60) days from the date of the receipt of a completed submission, provided, however, that if specific revisions to an application submission are requested by the Board, the Board may have an additional thirty (30) days in which to render a decision. Upon the approval of the applicant and the Board, the review period may be extended beyond the maximum ninety (90) days provided for herein.
- c. Failure to render a decision within the time limits specified herein, provided all required data have been submitted by the applicant as required under this Section, shall constitute approval of the application.
- d. Notwithstanding any other provision or clause within this Section, no new structure may be constructed within a designated Historic Preservation District, nor any permit issued for such purposes, until the Board certifies that the new structure will be architecturally compatible with the structures within the surrounding district. The Board shall issue its final decision with respect to compatibility within sixty (60) days or the application will be deemed automatically approved. The procedures specified in Section 27-8 below shall apply to the Board's decision with respect to compatibility.
- 2. All other applications for Certificates of Appropriateness involving exterior structural repairs, and minor physical improvements, or alterations (as may be more specifically defined by Board regulation) shall be reviewed by the staff of the Board. The staff shall approve, approve with conditions, or deny a Certificate of Appropriateness or a Certificate to Dig within thirty (30) days from the date of receipt of a completed submission; the applicant may agree to an extension of this review time.
  - a. In the case of a denial of an application by the staff, the applicant may request consideration of the completed application by the Historic Preservation Board which shall proceed to review the application in accordance with the procedures set forth in Section 27-6(B). The Board may concur, modify, or reverse the staff's decision.
  - b. Failure to render a decision within the time limits specified herein, provided all required data have been submitted by the applicant as required by the provisions of this Section, shall constitute approval of the application.
- 3. The approval of Certificate of Appropriateness or a Certificate to Dig shall not excuse the applicant of responsibility to comply with all other zoning and building laws and regulations of the City, County and State, including the receipt of applicable zoning variances, site plan approvals and building permits.

# C. Decisions on Certificates of Appropriateness/Certificates to Dig

- 1. A decision on an application for a Certificate of Appropriateness shall be based upon evaluation of the compatibility of the physical alteration or improvement with and adherence to the adopted evaluation guidelines for the applicable designated site or district.
- Where, by reason by particular site conditions and restraints or because of unusual circumstances applicable to a particular applicant, strict enforcement of the provisions of this Section would result in an undue economic hardship to the applicant, the Board shall have the power to vary or modify the provisions in this Section, including adherence to the adopted Evaluation Guidelines. The Board shall adopt administrative rules to specify the standard for demonstrating undue economic hardship.
- An approved Certificate of Appropriateness, together with any conditions or limitations imposed by the Board, shall be in written form and attached to the site plan and/or the schematics submitted as part of the applications. Copies of the Certificate shall be kept on file with the Board and shall be transmitted to the Code Enforcement Director. The applicant shall receive a copy of the Certificate of Appropriateness.
- 4. The Board may for a period of up to six (6) months deny, or impose conditions for approval on, an application for a Certificate of Appropriateness for demolition, replacement, alterations or improvements to a designated structure. The length of the denial period shall be determined by the Board based upon the relative significance of the structure, the applicable evaluation guidelines of the designated site or district, and the probable time required to investigate or arrange for possible alternatives to demolition.
- 5. A decision on an application for a Certificate to Dig may include specific guidelines and procedures to be followed in excavation of the site.

## 27-7 Special Provisions

- A. The Historic Preservation Board shall have the power to waive with or without conditions the parking, setback, height, use, signage, density and floor area ratio requirements of the underlying zoning district of those properties designated as historically, architecturally or archeologically significant. The Board shall have the specific authority, nothwithstanding any other provisions of the City Code, to grant owners: (1) a minimum of a 25% increase in maximum floor area ratio; (2) the right to operate lawful commercial establishments on the ground floors of such properties. The Board shall only grant such rights to property owners who have agreed to designation of their properties and in conjunction with an application for a Certificate of Appropriateness establishing that physical improvements will result in significant historic renovation or preservation. However, no such decision of the Board shall become final until ratified by the City Commission.
- B. The Historic Preservation Board shall have the authority to grant Certificates

for Transfer of Development Rights (TDR) to property owners of individual sites or owners of properties within districts designated as historically, architecturally, or archeologically significant. The exercise of this authority shall in accordance with the criteria for Transfer of Development Rights as shall be enacted by the City Commission.

## 27-8 Appeal

Any person affected by a decision of the Board may appeal the Board decision to the City Commission which shall issue a final determination.

## ADULT CONGREGATE LIVING FACILIITES

## 28-1 Purpose:

A. The purpose of this Section is to provide mandatory requirements and review criteria to be used in reviewing conditional use applications for Adult Congregate Living Facilities.

## 28-2 Mandatory Requirements

- A. Adult Congregate Living Facilities shall be subject to the following mandatory requirements:
  - 1. For fire safety reasons, these facilities shall be located in structures of no more than four (4) stories in height.
  - Facilities shall not be located on bayfront or oceanfront properties.
     Oceanfront includes property on the west side of Ocean Drive and Ocean Terrace.
  - 3. Facilities shall not be located along the following tourist or commercially oriented streets: Ocean Drive, Collins Avenue, Ocean Terrace, Indian Creek Drive, 41st Street, Lincoln Road and Washington Avenue.
  - 4. ACLF facilities in the City of Miami Beach will not exceed 2,000 residents subject to review based upon any substantial population characteristic changes revealed by the next U.S. Census, but in any event said review shall take place every ten (10) years.
  - 5. Facilities shall not be located in any designated redevelopment area.

#### 28-3 Review Criteria

- A. Adult Congregate Living Facilities shall be in substantial compliance with the following review criteria as determined by the Planning Board and City Commission:
  - Smaller scale (6-16 residents) are encouraged in order to provide a noninstitutional environment.
  - 2. The City should encourage equal distribution of facilities serving various income groups.
  - 3. Facilities located in newly constructed buildings should be encouraged.
  - 4. The location of facilities should be compatible with the City's Comprehensive Plan and all other adopted special area plans.
  - 5. Facilities shall be aestically compatible with the surrounding neighborhood and adjacent properties.

- 6. Facilities should not be encouraged to be located on waterfront properties.
- 7. Facilities should be encouraged to provide social, recreational, dining, and landscaping amenities.
- 8. In order to encourage geographic distribution, facilities should not be located within 1,500 feet from another facility.
- 9. Facilities should be compatible with the elderly population characteristics of its surrouding neighborhood.

## LIQUOR CONTROL REGULATIONS

## 29-1 GENERAL PROVISIONS

## A. Purpose

To achieve the purposes of this Ordinance and of Chapter 18, Intoxicating Liquors, of the Miami Beach City Code, and provide for the general welfare and safety of the public, it is necessary that regulations be established relating to the location, size, and hours of operation of uses that permit the sale and/or consumption of alcoholic beverages.

## B. <u>Licenses</u>

No vendor shall sell or distribute any alcoholic beverages without securing an occupational license from the City and a license from the State Beverage Department. Prior to receiving a City of Miami Beach occupational license, the locations must be approved as to zoning pursuant to the provisions of this Ordinance.

## C. Hours of Sale

The sale of liquor and all other alcoholic beverages shall be according to the following schedule:

- 1. Retail stores for package sales only, either as permitted main or accessory use. Vendors having a license from the State Beverage Department for the sale of liquor and other alcoholic beverages for consumption off the premises, shall only offer for sale alcoholic beverages within the hours of 8:00 a.m. to 10:00 p.m. on any day of the week.
- 2. Retail stores, either as permitted main or accessory uses, who primarily offer for sale products other than alcoholic beverages may make sales of beer and wine in sealed containers for consumption off the premises between the hours of 8:00 a.m. through 2:00 a.m. on any day of the week.
- 3. Restaurants, bars, night clubs, cabarets either as permitted main or accessory uses shall only offer for sale the on-premise consumption of alcoholic beverage within the hours of 8:00 a.m. and 5:00 a.m. on any day of the week. Every vendor shall close and keep closed the place of business and not allow any person, other than those employed by the vendor, to remain therein during the hours that sales are not permitted.
- 4. Private Clubs, either as a permitted main or accessory use, shall only offer for sale the consumption of alcoholic beverages within the hours of 8:00 a.m. and 8:00 a.m., Monday through Sunday, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club electing to remain open after 2:00 a.m. shall purchase an extra hours license and any private club electing to remain

open after 5:00 a.m. must provide for security in its premises by hiring private security guards or off-duty policemen between the hours of 5:00 a.m. and 8:00 a.m. each day. Further, such private clubs shall not admit members to its premises between the hours of 7:00 a.m. and 8:00 a.m. each day. Private clubs which secure a license from the Division of Alcoholic Beverages and Tobacco by complying with the requirements of Florida Statutes 561.20 for racquetball, tennis or golf course facilities, may admit its members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless it is the holder of an extra hours license and complies with the above requirements.

## D. Locational and Use Restrictions

- 1. Public Worship and Educational Facilities No alcoholic beverage shall be sold within 300 feet from any property used for public worship purposes, public school or private school property operated for the instruction of minors in the common branches of learning, including religious instruction, except for the following:
  - a. For purposes of this Section, restaurants, carbarets, night clubs, and outdoor cafes, if a permitted use in the applicable district, shall only be considered under the regulations set forth for variances.
  - Uses in the Civic and Convention Center (CCC) District and Hospital (RH) District
- 2. The minimum distance separation between retail stores as permitted main uses and which primarily sell alcoholic beverages for consumption off the premises shall be 300 feet.
- 3. Sales in filling stations and motion picture theatre no alcoholic beverages shall be sold in any filling station, motion picture theatre or any room opening directly or indirectly or in connection with any motion picture theatre.
- 4. Curb service sales no alcoholic beverages shall be sold or served to persons in a vehicle of any kind or from an exterior counter or any type of walk up window. All sales are to be from the interior of the structure.
- 5. All sales of alcoholic beverages for consumption off the premises shall be in a sealed container.

## E. Determination of Minimum Distance Separation

1. With the exception of cases involving public worship and education facilities, the required minimum distance separation shall only apply when one or more permitted main uses are involved. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the main entrance or exit in

which the use associated with alcoholic beverage occurs to the nearest point of the property used for public worship purpose, public or private school. In cases where a minimum distance is required between two uses associated with the alcoholic beverages for consumption on or off the premises, the minimum requirement shall be determined by measuring a straight line between the principle means of entrance of each use.

2. When a distance separation is required, a scaled survey drawn by a registered land surveyor shall be submitted attesting to the separation of uses in question. This requirement may be waived upon the written certification by the Code Enforcement Director that the minimum distance separation has been met.

## 29-2 Permitted Districts and Standards

- A. Permitted Districts. Vendors shall be permitted to sell or distribute alcoholic beverages, either for consumption on or off the premises in the following zoning districts:
  - 1. C-1 Neighborhood Business District
  - 2. C-2 General Office District
  - 3. C-3 Central Business District
  - 4. C-4 Business District
  - 5. C-5 General Business District
  - 6. C-6 Intensive Commercial district
  - 7. RM-100 Multiple Family Medium High Density District
  - 8. RM-125 Multiple Family High Density District
  - 9. MR Marine Recreation District
  - 10. MU Municipal Use District
  - 11. HM Hotel Motel District
  - 12. CCC Convention Center District
  - 13. RH Hospital District
  - 14. South Pointe Performance Standards Districts
- B. Permitted Main and Accessory Uses Vendors shall be permitted to sell alcoholic beverages within the zoning districts listed in Section 29-2A, if said district permits as a permitted main use or accessory use one of the following: restaurant, bar, nightclub, outdoor cafe, cabaret, private club, or golf clubhouse pursuant to the following standards:

#### 1. Permitted Main Use:

- a. Restaurants, night clubs, bars, cabarets, and private clubs shall be permitted to sell alcoholic beverages for consumption on the premises based upon the following; when beer and wine is served a minimum of thirty (30) seats shall be provided; and when, beer, wine and liquor is served, a minimum of sixty (60) seats shall be provided.
- b. Outdoor cafes, when visible from or fronting on a public street, shall have a minimum of twenty (20) seats and be permitted to sell only beer and wine for consumption on the premises. The establishment of outdoor cafes under this section shall be pursuant to Section 7-1, Conditional Uses.
- c. Outdoor cafes, when not visible from or on a public street, alley, or way, shall have no minimum seating requirement and shall be permitted to sell alcoholic beverages only for consumption on the premises.
- d. Golf Clubhouse When located on a golf course, the sale of alcoholic beverages is permitted only for consumption on the premises.
- 2. Accessory Use: Hotel, Hotel-apartments, or apartments, or any mixed use having a minimum of one hundred (100) dwelling units or a minimum of one hundred (100) sleeping units shall be permitted to have accessory uses which sell alcoholic beverages pursuant to the following minimum standards:
  - a. Restaurants, night clubs, bars, cabarets, or private clubs shall have a minimum of forty (40) seats and be permitted to sell alcoholic beverages. Sales for consumption of the premises is permitted.
  - b. Outdoor cafes when visible from a public street shall have a minimum of twenty (20) seats and be permitted to sell beer and wine for consumption only on the premises. The establishment of the outdoor cafe shall be pursuant to Section 7-1, Conditional Uses.
  - c. Outdoor cafes when not visable from a public street, alley, or way, shall have no minimum seating requirement and shall be permitted to sell alcoholic beverages only for consumption on the premises.
  - d. Golf Clubhouse When located on a golf course, the sale of alcoholic beverages is permitted only for consumption on the premises.
- 3. Nothing herein shall be construed to restrict sales of alcoholic beverages in the Theatre of the Performing Arts or in the Civic and Convention Center District.

### **DUNE OVERLAY REGULATIONS**

- 30-1 LOCATION. These regulations shall apply to all uses and structures located east of the established Bulkhead Line, west of the Erosion Control Line and by the City boundary line to the north and south.
- PURPOSE. These regulations are designed to accommodate and promote recreational, open space and related uses between the established Bulkhead Line and the Erosion Control Line. Detailed review of all use and structures are required because this area functions as a transitional zone between the intensely developed uplands and the dune and beach. It accommodates uses and structures which are compatible and supportive of the Beachfront Park System and the natural beach environment.

## 30-3 COMPLIANCE WITH REGULATIONS

- A. As specified in Section 24, Design Review Regulations applications for a building permit shall be reviewed and approved by the Design Review Board.
- B. All applications for an Occupational License, including new, renewal or change of license, shall be reviewed and approved by the Oceanfront Management Review Board (Section 30-6).
- C. All structures shall comply with all other local, state, and federal regulations governing such uses including but not limited to Chapter 161, Florida Statutes and Chapter 16B 33, Florida Administrative Code. Notwithstanding these requirements, the applicant may receive a City of Miami Beach Building Permit or Occupational License prior to receiving approvals pursuant to the above referenced statutes.
- 30-4 USES AND STRUCTURES PERMITTED. Uses and structures permitted under this Section shall be designed to accommodate and channel pedestrian movement in such a manner as to protect and enhance vegetation and the beach. No land or structure shall be used, in whole or in part, except for one or more of the following permitted uses:
  - A. Shade structures and chickees shall be open on all sides and, with the exception of supporting columns, have an unobstructed, clear space between the edge of the roof covering and finished floor of not more than eight (8) feet.
  - B. Decks and patios constructed of wood materials with or without "built in" tables, chairs, lighting, and benches. All structures shall be located a minimum of ten (10) feet west of the Erosion Control Line.
  - C. Drainage Structures as per the requirements of the Public Works Department and applicable regulations of the County, State, and Federal agencies.

- D. Promenade linkage shall be constructed of wood materials and shall conform to the design specifications established in the Beachfront Park and Promenade. Sites having less than three hundred (300) linear feet of oceanfront frontage shall be limited to one (1) dune crossing and/or promenade linkage. Sites having more than three hundred (300) linear feet of oceanfront frontage shall be permitted one (1) crossing or linkage per each additional one hundred (100) linear feet of frontage or part thereof. In no instance, however, shall the total aggregate number of crossings and linkages exceed four (4) sites.
- E. Portable beach furniture such as chaise lounges, chairs, and umbrellas. In no instance shall said furniture be stored east of the bulkhead line.
- F. Walkways and ramps constructed of wood materials and are not more than six (6) feet in width.
- G. Landscaping conforming to the specifications of the Beachfront Park and Promenade.
- H. Sidewalk cases shall only be permitted when directly associated with an adjoining upland hotel or apartment-hotel having a minimum of one hundred (100) sleeping units. No other commercial use shall be permitted.

## 30-5 DEVELOPMENT REGULATIONS

- A. Minimum Open Space Requirements: At least eighty (80) percent of the site shall remain open to the sky and landscaped. All areas covered by the uses permitted above, other than portable beach furniture, shall be considered in the lot coverage calculation.
- B. Maximum Floor Area: No single structure shall have a floor area exceeding three hundred and fifty (350) square feet.
- C. Spacing Of Chickees, Shade Structures And Outdoor Cafes: There shall be a minimum of twenty five (25) feet from a chickee, shade structure, or sidewalk cafe to another such structure. Distance shall be measured from the closest points of each structure. One structure shall be permitted for every three hundred (300) feet of oceanfrontage; however, nothing herein shall prohibit the clustering of structures meeting the minimum twenty five (25) foot spacing restriction nor prohibit the location of at least one (1) structure per building site.
- D. Minimum Lot Area: All applications for a building permit shall provide a landscape and development plan for the entire site. For purposes of this Section, the site shall constitute all of the area within the lot lines.

## E. Minimum Yards:

- I. Zero (0) feet adjacent to any bulkhead line.
- 2. Fifteen (15) feet adjacent to any side property line, municipal park, street end, or right-of-way.

- 3. Ten (10) feet from the erosion control line when any structure has an elevation of three (3) feet or less than the elevation of the top of the dune; plus two and one half (2 1/2) feet; otherwise 15 feet.
- F. Finished Floor Elevation: Shall have a maximum height of two and one half (2 1/2) feet above the dune. Notwithstanding the above limit, the Planning Department shall determine the maximum permitted elevation for structures based upon existing site conditions, the proposed construction, the dune and relationship between all structures.
- G. MAXIMUM BUILDING HEIGHT: One (1) story or twelve (12) feet; whichever is greater. Notwithstanding the above limit, the Planning Department shall determine the maximum permitted elevation for structures based upon existing site conditions, the proposed construction, the dune and relationship between all structures.
- H. MAXIMUM DENSITY: Zero (0)
- 30-6

  OCEANFRONT MANAGEMENT REVIEW BOARD. Said Board is hereby created and impowered to review all applications whether new, renewal or change of licensee, for an Occupational License and building permit with regard to item listed in Section 6-19, L. The Board shall be governed by the following procedures.
  - A. Composition The Board shall be composed of five (5) regular members. The City's Planning Director and Public Works Director shall serve as exofficio members and shall provide written recommendations on all applications considered by the Board. The City Attorney shall determine if the application is properly before the Board.
    - Four (4) members shall be appointed by the City Manager. Each of the members shall have a principle residence on a lot which abuts the Dune Overlay Zone or have their primary source of income from employment in any hotel having 100 or more sleeping units which directly abuts the Dune Overlay Zone. Two (2) of the four (4) members shall have their principle residence in a structure abutting the Dune Overlay. The remaining two (2) of the four (4) members shall have their primary source of income from employment in any hotel having 100 or more sleeping rooms directly abutting the Dune Overlay Zone.

The remaining fifth member shall be approved by a majority vote of the above four (4) members; said member shall be selected from a list prepared by the City Manager. The fifth member must have a principle residence in the City of Miami Beach.

- B. Term of Office The term of service on the Board shall be two (2) years.
- C. Removal Removal of members shall be by the City Manager and only for cause. Failure to attend three (3) consecutive meetings shall be considered cause for removal.

- D. Quorum and Voting A quorum shall be four (4) members. A majority vote of the Board shall determine the Board's findings.
- E. Meetings The Board shall meet within a reasonable time upon receipt of an application at the call of the Chairperson or the Planning Director. All meetings shall be open to the public and shall be conducted in accordance with the rules and regulations adopted by the Board.
- F. Organization The Chairperson and Vice-Chairperson shall be elected from the membership of the Board by a majority vote. The Department of Planning shall provide the necessary staff to assist the Board in the performance of its duties.
- G. Conflict of Interest A member of the Board may not vote on an application if it involves the members own property or property owned by members of his or her family or current business associates either individually or of a company. Any Board member is prohibited from conducting business with any applicant for as long as the Board member remains on the Board and one (1) year thereafter. Failure to comply with this requirement will result in the automatic removal of all approvals received by the applicant. All other state, county, and municipal laws governing the ethical conduct of public officials shall appy to members of the Board.
  - 1. During the review and consideration of any application, approval of said application shall not be unreasonably withheld.
  - 2. In order to deny an application, the Board shall provide cause for said denial.
- H. Clarification Hearing Should a question arise as to compliance with the conditions as outlined by the Board, a clarification hearing before the Board may be called by any City department, the applicant, or any aggrieved party.
- I. Fees In order to defray the costs of administering the application process, the Board shall assess a \$50.00 fee. If a deferment or clarification hearing is requested by the applicant, one-half of the application fee shall be assessed. If a deferment or clarification of conditions are requested by the Board, there will be no additional fee. If the applicant removes his file from the agenda after it has been accepted by the Planning Department, the City shall retain 50% of the application fee.
- J. Appeal The applicant or any City Department having jurisdiction may appeal a decision regarding any or all revisions and/or modifications to the Planning Board. The appeal shall be in writing and submitted to the Planning Director who shall place the request on the Planning Board Agenda. In order for the Planning Board to reverse a decision or condition of the Oceanfront Management Review Board, an appealing party shall

- receive a minimum of seven (7) votes in their favor. An appeal from the Planning Board shall be submitted to the court of appropriate jurisdiction.
- K. Management Plan. Said Plan shall be submitted to the Management Review Board as part of the application for use approval. The plan at a minimum shall include the background of the operator, proposed use and management procedures that will govern the operation of the use, garbage collection, hours of operation and maintenance plans to insure the site and structures shall be professionally maintained throughout the life of the use of the structure, whether active or inactive. The Board may require additional requirements all of which shall be required as part of the issuance of an Occupational License.

## PARKING OVERLAY REGULATIONS

## 31-1 GENERAL PROVISIONS

## A. Purpose

 To provide parking facilities in proximity to commercial, multiple family and municipal uses in such a manner as to be compatible with surrounding uses and the underlying zoning district.

#### B. Uses Permitted

- 1. At-grade parking lots, commercial or non-commercial.
- 2. Parking garages, commercial or non-commercial; however, in no instance shall these facilities be located in a single family district.
- 3. Accessory structures customarily associated with uses permitted in this section.

## 31-2 FILING REQUIREMENTS

- A. Petitioners for a Parking Overlay District shall file an application with the Planning Department in accordance with the following procedures:
  - 1. In order to designate a district, the applicant shall follow the procedures set forth in Section 16 Changes and Amendments.
  - 2. Notwithstanding Section 16-2, A, the minimum lot frontage shall not be less than 100 feet.
- B. Petitioners for a Parking Overlay Zone shall file an application with the Planning Department in accordance with the following procedures:
  - 1. Applications for at-grade parking lots shall meet the requirements as set forth in Section 7-1 Conditional Uses and Section 14-3 Site Plan.
  - 2. Applications for parking garages shall meet the requirements set forth above and in Section 24 Design Review Regulations.
  - All plans submitted in support of a building permit application shall substantially conform with plans submitted pursuant to above procedures.

## C. Listing of Parking Overlay Zone

1. Lots 12-13, Block 15, Orchard Subdivision #'s 2-3; 428-440 W. 40th Street.

## 31-3 DEVELOPMENT REGULATIONS

- A. Compability. As part of the Site Plan or Design Plan Review Process, each project shall demonstrate a compatibility with neighboring uses. The project shall be designed to enhance the character of the neighborhood and adjoining properties.
- B. Parking Standards. Shall meet the requirements of Section 9 of this Ordinance.
- C. Required Yard. The Planning Department shall determine the minimum required yards based on the requirements of adjoining districts. The required yard shall be within 25% of the minimum yard requirement as established in the adjoining district.
- D. Landscaping. All projects shall meet the landscaping requirements as listed in this Ordinance. Based upon the Standards contained in the City's Landscape Manual. The Department is authorized to require additional landscaping in consideration of the site, design of the project, and the underlying and/or adjacent districts and uses.
- E. <u>Compliance with Regulations Required</u>. All regulations contained within this Ordinance shall be applicable unless specifically addressed in this Section.

#### LANDSCAPE STANDARDS

## 32-1 PURPOSE

A. These regulations are designed to result in the placement of landscape materials in such manner as to improve overall certain highly visible tourist, commercial and residential areas of the City, to protect and preserve landscape features, and to enhance the value of property.

## 32-2 SCOPE OF REVIEW

- A. All elements of landscaping shall be selected for their functional value, aesthetic appeal and consistency with the City-wide Master Landscape Plan Manual as maintained by the Planning Department. Landscape plans shall be in compliance with the following criteria:
  - 1. provision of shade and coolness;
  - 2. enhancement of architectural features;
  - 3. achievement of beauty and pride in the community;
  - 4. separation of noncompatible uses or obtrusive elements;
  - 5. amelioration of the impact of noise and light;
  - 6. integration of any structures with adjacent body of water; and
  - 7. preservation and protection of existing plant materials and energy conservation.

### 32-3 APPLICABILITY AND EXEMPTIONS

- A. Applicability. All building permits for new construction or additions to existing buildings when located in areas designated for design review pursuant to Section 24-3A, shall be subject to Landscape Plan Review. These standards shall apply to landscape review conducted under the Conditional Use Process or any approval by the Planning Board or Board of Adjustment, or City Commission. Such review shall include but not be limited to parking decks, all required yards, decks associated with recreation facilities, or any open space areas that are visible to the public.
- B. Permits for demolition or wrecking shall require a landscape survey to insure that valuable existing trees are not damaged or destroyed; however, this requirement may be waived by the Planning Director. In the event a survey is waived, the applicant shall provide a detailed landscape narrative.
- C. Exemptions. Exemptions to these regulations include all the following provided no new construction and/or additions to existing buildings are required:

- 1. All permits for plumbing, heating, air conditioning, elevators, fire alarms, and extinguishing equipment, and other mechanical and electrical equipment.
- 2. Any permit necessary for the compliance with a lawful order of the Building Official, Fire Marshall, or Public Works Director including:
  - a. Any permit necessary for the immediate public health or safety.
  - b. All permits for interior alterations and repairs.

## 32-4 ELEMENTS OF THE LANDSCAPE PLAN

- A. Landscape elements shall include but not be limited to:
  - 1. palms and trees;
  - 2. shrubs, ground cover and lawn areas;
  - walls and wood fencing;
  - 4. any non-living durable material commonly used in landscaping but not limited to rocks, pebbles or sand;
  - 5. sculptures and water features;
  - 6. outdoor furniture such as benches and outdoor lighting; and
  - 7. paving materials such as concete pavers, wood decking, and unit pavers.

### 32-5 LANDSCAPE PLAN SUBMISSION

- A. Prior to the issuance of a building permit, the Planning Department shall approve a preliminary landscape plan. During the course of construction, the Planning Department shall approve a final landscape plan that is in substantial conformance with the preliminary plan. The final plan shall at a minimum include the following:
  - 1. location of all existing vegetation by name and size, trees to remain, to be relocated either on or off site, or to be removed;
  - 2. location of all proposed landscape elements including botanical names, common names, quantities, height, spread, spacing and grades;
  - all paving materials;
  - 4. all site furnishings, such as benches, and planters;
  - 5. mulching, fertilizing, staking, planting bed preparation; and
  - 6. note the existence of irrigation system, if required.

Prior to the issuance of a Certificate of Completion, Occupational License, or Certificate of Occupancy, the Planning Department shall review and approve the installed landscaping.

## 32-6 MINIMUM LANDSCAPE STANDARDS

When the site is located in an area designated for Landscape review, the following shall apply:

## A. All districts except C-6

Surface/ground treatment. One (1) canopy tree or grouping of three (3) palms shall be provided for every twenty five (25) linear feet of frontage in a required yard abutting a public right-of-way. Where a driveway crosses a landscaped easement and a curb cut is provided, the driveway shall be paved with a hard surface material such as concrete, asphalt, or decorative unit pavers and shall have a clearly defined edge between paving and landscaped easement.

Planting of trees in the right-of-way shall be consistent with the City-wide Master Landscape Plan. Any plantings located in the right-of-way including but not limited to trees, shrubs, ground cover, and sod shall be maintained by the abutting property owner and approved by the Planning Department.

## 2. Hedges or other living barriers

a. Required front yards.

Hedges, ground cover, vines, and sod may be placed in the required yards. Hedges or other living barriers not associated with a fence or wall shall have a maximum height of five (5) feet. Hedges or other living barriers provided in concert with a fence or wall shall not exceed a height of five (5) feet or the height of the permitted fence or wall, whichever is greater.

b. Required Interior or Side or Rear Yards

Hedges shall not exceed seven (7) feet in height. Hedges installed along the interior side or rear boundary between a residential district and a commercial district may obtain a maximum height of ten (10) feet.

c. Side or Rear Yards Abutting a Right-of-Way

Hedges or other living barriers not associated with a fence or wall shall have a maximum height of five (5) feet. Hedges or other living barriers provided in concert with a fence or wall may reach a maximum height of five (5) feet or the height of the permitted wall or fence, whichever is greater.

## B. At Grade Parking Lots

For the purpose of this section, the term "at grade" parking lot shall encompass automobile and commercial parking lots as described in Section 3-2 of the Ordinance. Notwithstanding the requirements in this section in no instance shall the required landscaped area be less than 20% of the total area.

1. Required landscaping adjacent to the public right-of-way shall be landscaped as follows:

Landscaping to include one tree or grouping of three (3) palms for each forty (40) linear feet or any fraction thereof. Such trees shall be located between the abutting right-of-way and parking lot area and shall be planted in a planting area of at least twenty-five (25) square feet with a minimum dimension of five (5) feet. In addition, a hedge, wall or other landscape barrier of at least three and one half (3½) feet in height shall be placed only along the right-of-way. If such barrier is of nonliving material, one shrub or vine shall be planted abutting the barrier for each ten (10) linear feet. Such shrubs or vines shall only be planted between the property line and barrier. The remainder of the required landscaped areas shall be landscaped with grass, ground cover, or other landscape treatment excluding paving.

Planting of trees in the right-of-way shall be consistent with the City-wide Master Landscape Plan. Any plantings located in the right-of-way including, but not limited to, trees, shrubs, ground cover, and sod shall be maintained by the abutting property owner.

Necessary accessways from the street through all such landscaping shall be permitted to service the parking lot and such accessways may be subtracted from the linear dimension used to determine the number of trees required.

2. Perimeter parking adjacent to side and rear property lines:

The perimeter of parking areas abutting residential or commercial properties shall provide, at a minimum, a five (5) feet landscaped strip. The perimeter of the parking area shall also be screened with a wall or hedge or other durable landscape barrier. The height of the screening device shall not be greater than seven (7) feet nor less than three and one half (3 1/2) feet. The height shall be determined by the Planning Department based on the proximity of the parking area to residential or commercial properties. All landscape areas along the perimeter of the parking areas abutting residential or commercial properties shall provide one (1) tree or cluster of three (3) palms for every fifty (50) linear feet of property relating to an abutting property.

## 3. Parking Area - Interior Landscaping:

Parking areas shall provide a minimum of five (5) percent of net interior area as landscaping. One (1) tree or grouping of three (3) palms with a clear trunk of at least five (5) feet shall be provided for each one hundred (100) square feet or fraction thereof of required landscaped area. Such landscaped areas shall be located and designed in such a manner as to divide and break up the expanse of paving. In instances where the strict application of this subsection will seriously limit the function of the parking area, the required landscaping may be located near the perimeter of the paved area. Such required interior landscaping shall be in addition to the perimeter landscaping requirements. Landscaped area shall require protection from vehicular encroachment. Car stops shall be placed at least three (3) feet from the edge of the paved area. The minimum paved area designated as the required parking space shall be as stated in Section 9 of this Ordinance. In no instance shall the landscaped area be included within the required parking space area.

## C. Other Vehicular Use Areas

Landscape requirements of vehicular use areas, such as service stations, are subject to regulations as stated in Section 32-6(B). Notwithstanding the requirements in this section, in no instance shall the required landscaped area be less than twenty (20) percent of the total area.

## D. Parking Garages

Parking garage requirements for landscaping use are subject to regulations as stated in Section 32-6(A) of this Ordinance.

# E. Landscape Requirements for Deck Areas, Plazas and Roof Areas

Where all or a portion of a deck area, plaza or roof area is used for parking, that portion used for parking shall be landscaped pursuant to off street parking regulations set forth in Section 32-6(B) and as required below:

- 1. Deck areas, plazas, and roof areas used for parking within the subterranean level and open to the sky shall have trees planted in planting wells. Planting wells shall be a minimum of twenty five (25) feet in area with a minimum dimension of five (5) feet. Required planting wells shall penetrate the deck, plaza, or roof area to existing grade.
- 2. Any deck areas, plazas and roof areas excluding balconies and open to the sky 50 feet or less shall have a minimum of one (1) shade tree or three (3) palms provided for each seven hundred (700) square feet of such area.

# F. Visual Barriers for Swimming Pools

Accessory swimming pools when located in a required front or side yard facing a public street shall be screened from public view by a hedge, wall or fence not less than five (5) feet in height. The hedge shall be planted and maintained so as

to form a continuous dense row of greenery as per the requirements of this Section.

The maximum height of the visual barrier shall be pursuant to Section 8-1, B-5.

G. Dumpsters shall not be located within any required yard. They shall be within an enclosed area.

#### H. Landscape Manual

The selection of landscape materials shall be in substantial compliance with the City's Landscape Manual. The Planning Department shall maintain the manual and provide a copy to all applicants requesting approval of a landscape plan pursuant to this Ordinance. All appeals regarding the interpretation of the Landscape Manual shall be to the Design Review Board. All other types of appeals shall be to the Board of Adjustment.

#### HOTEL OVERLAY REGULATIONS

## 33-1 PURPOSE.

These regulations are designed to encourage the construction of new hotels and renovation of existing facilities.

## 33-2 APPLICABILITY

- A. These regulations constitute overlay zoning which is superimposed upon and supplements the underlying zoning district. When not specifically addressed in this Section, all other regulations contained within this Ordinance shall apply.
- B. These regulations shall only be applicable to sites east of Collins Avenue between 15th Street and 75th Street and where the underlying zoning district permits hotels. This area is designated as a Hotel Overlay District.
- C. These regulations are only applicable when a developer requests a site be designated as a Hotel Overlay Zone. Petitioners for a Hotel Overlay Zone shall file an application with the Planning Department. All plans submitted in support of the application shall be approved by the Design Review Board pursuant to Section 24. No building permit shall be issued unless the Board has approved the Development.
- D. Upon the Design Review Board's approval, the site shall be listed below as a Hotel Overlay Zone:

#### 33-3 DEVELOPMENT REGULATIONS

- A. Uses permitted. No land, water or structure may be used, in whole or in part, except for one or more of the following permitted uses. Permitted uses that sell, serve or otherwise distribute alcoholic beverages in this district shall comply with the standards and regulations found in Section 29.
  - 1. Hotel
  - 2. Apartment/Hotel
  - 3. Accessory Uses a) Entrances and exits for accessory uses in residential districts shall be controlled by Section 7-2. The accessory use restrictions in Section 7-3, B shall not apply; and, b) accessory use shall be limited to those that are customarily associated with the operation of a permitted use; however, accessory uses located between the established Bulkhead Line and the Erosion Control Line shall be in accordance with Section 30 Dune Overlay Regulations.
- B. <u>DWELLING UNIT AND SLEEPING UNIT RATIO.</u> The number of dwelling units shall not exceed twenty five (25) percent of the total number of sleeping units provided on the site.
- C. DENSITY AND LOT COVERAGE, None.

## D. MINIMUM FLOOR AREA PER UNIT

## Sleeping Unit

- a. Eighty five (85) percent of the total number of sleeping units shall have a minimum gross floor area of at least three hundred thirty five (335) square feet.
- b. Fifteen (15) percent of the total number of sleeping units shall have a minimum gross floor area between three hundred (300) and three hundred thirty five (335) square feet.
- c. In no instance shall any sleeping unit have a minimum floor area less than three hundred (300) square feet.

## 2. Dwelling Unit

a. The minimum gross floor area of any dwelling unit shall not be less than seven hundred fifty (750) square feet.

## E. REQUIRED PARKING

- 1. Sleeping Unit One (1) space per two (2) units. For purposes of this section, any room having bathroom facilities and one (1) or more doors to a corridor shall constitute a sleeping unit. The term bathroom facilities shall mean a commode, lavatory, and bath, with or without a shower.
- 2. Dwelling Unit One and a half (1 1/2) spaces per one unit.
- 3. Accessory Uses Except for meeting rooms, conference rooms, ballrooms, banquet rooms, nite clubs or similar uses, the parking requirement shall be one half (1/2) of the requirement as listed in Section 9 of this Ordinance. The requirement for meeting rooms, banquet rooms, conference rooms, nite clubs or similar uses shall be determined by the maximum occupancy based on a standard of one (1) person per fifteen (15) square feet of available floor area for seating. The parking requirement shall then be calculated as listed in Section 9-2, A-17.

#### F. MAXIMUM BUILDING HEIGHT - None.

### G. MAXIMUM FLOOR AREA RATIO

#### 1. Residential Sites

4.0 for sites having less than three hundred fifty (350) linear feet of street frontage or one (1) acre. For each additional one hundred (100) feet of frontage in excess of three hundred fifty (350) linear feet or fraction thereof, the maximum permitted FAR may be increased by 0.75 based upon the FAR performance standard bonuses as listed in Section 23-6 A and B; however, in no instance shall the maximum permitted FAR exceed 6.0. For purposes of this section, only one side of a corner lot shall be counted in determining the maximum permitted FAR.

### 2. Commercial Sites

6.0 for sites having less than three hundred fifty (350) linear feet of street frontage or one acre. For each additional one hundred (100) feet of frontage in excess of three hundred fifty (350) linear feet or fraction thereof, the maximum permitted FAR may be increased by 0.75 based upon the FAR performance standard bonuses as listed in Section 23-6 A and B; however, in no instance shall the maximum permitted FAR exceed 8.0. For purposes of this section, only one side of a corner lot shall be counted in determining the maximum permitted FAR.

## H. MINIMUM REQUIRED YARDS

When a development is located in a residential district, the following required yards shall apply:

## FRONT AND REAR

SIDE

As required by the designated MF District pursuant to Section 8-3B.

As required by Section 8.

2. When a development is located in a commercial district, the following required yards shall apply:

	FRONT	REAR
Subterranean	0 ft.	50 ft. except as listed in Section 8-6.
Ground	0 ft,	50 ft. except as listed in Section 8-6.
Pedestal	For that portion of the pedestal above ground level, 2.5 ft. setback per floor	50 ft.
Tower	15 ft.	75 ft.
	INTERIOR SIDE	SIDE ADJACENT TO STREET
Subterranean	0 ft.	0 ft.
Ground	10 ft.	10 ft.
Pedestal	For that portion of the pedestal above ground level, 2.5 ft. setback per floor	For that portion of the pedestal above ground level, 2.5 ft. setback per floor
Tower	Each interior side yard shall provide a side yard equal to 50% of the width of the lot,	15 ft. setback

however, the maximum side yard setback shall not exceed 75 ft.

- 3. Supplemental yard regulations are applicable for any development constructed pursuanted to Section 23.
  - a. For developments which utilize the FAR bonus provision listed in Section 23-6, G each required side yard shall be increased by 40% for each 1.0 increase or fraction thereof in the floor area ratio.
  - b. Accessory structures located in the required 50 foot rear yard setback shall be pursuant to Section 8-6A.
  - c. Any building constructed under this section shall have a zero (0) subterranean side setback for that portion of the building located below grade. Any part of the building located at or above grade shall meet the required setback as listed above.
  - d. Balconies shall not be permitted to extend into the Required Yard except when at least 50% of the balcony railing or wall is constructed in an open and unenclosed manner.
  - e. Sites having a lot width of 125 ft. or less shall be permitted to have unenclosed garage ramps extend into the pedestal portion of the interior side yard setback to a point equal to the interior sideyard setback at ground level. However, in no instance shall any portion of the ramp be located within 100 ft. of the front property line. In no instances shall ramps be permitted in the ground portion of the pedestal or in the tower interior side yard setback.
- I. COMPLIANCE WITH THE BEACHFRONT PARK AND PROMENADE PROGRAM The developer shall construct the Beachfront Park and Promenade Program on property adjacent to the site, including improvements and landscaping in the area between the established bulkhead line and the erosion control control line, and to the street-ends pursuant to the City's specifications. Such improvements shall be included in the building permit plans and constructed, 1) prior to any use approval, temporary or otherwise including the issuance of a Certificate of Occupancy and/or Completion; or 2) at a subsequent request by the Planning Department. As determined by the Planning Department, the latter procedure shall only be applicable if the expansion of the existing promenade is not anticipated during the course of construction of the development and upon the posting of a Performance Bond, letter of credit or similar instrument which insures the construction of the Promenade Program. The Performance Bond, letter of credit, or the similar instrument shall be recorded in the Circuit Court prior to the issuance of a Building Permit.

### EXHIBIT "F"

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 2016-004547 CA 01

SUNSET LAND ASSOCIATES, LLC, Plaintiff,

vs.

MARK FESTA, individually and as trustee, MAUREEN FESTA, VINCENT J. FESTA, individually and as trustee, BARBARA A. FESTA, individually and as trustee, THE FESTA TRUST, and BEACH TOWING SERVICES, INC., BEACH TOWING SERVICES OF MIAMI, INC., CONSOLIDATED STORAGE YARDS, INC., GOOFE PARTNERS, INC., MIAMI AVENUE PROPERTIES, INC., 1718 BAY ROAD CORPORATION, FESTA TRANSPORT AND STORAGE, INC., and CORONA STORAGE, LLC, Defendants.

and

THE LOFTS AT SOUTH BEACH
CONDOMINIUM ASSOCIATION, INC.,
Intervenor-Defendant.

1700 Convention Center Drive 4th Floor Miami Beach, Florida Friday, August 24, 2018 Scheduled: 9:00 a.m. Commenced: 9:11 a.m.

DEPOSITION

OF

THOMAS R. MOONEY

	Page 2
1	APPEARANCES:
2	
3	On behalf of the Plaintiff:  BUCKNER + MILES  3350 Mary Street
4	Miami, Florida 33133 (305) 964-8003
5	By: DAVID M. BUCKNER, ESQ. By: BRETT E. VON BORKE, ESQ.
6	
7	On behalf of the Plaintiff: HOLLAND & KNIGHT, LLP
8	701 Brickell Avenue Suite 3300
9	Miami, Florida 33131 (305) 789-7642
10	By: TRACY R. SLAVENS, ESQ.
11	
12	On behalf of the Defendants, Mark Festa, Maureen Festa, Beach Towing Services, Inc., Beach Towing Services of Miami, Inc.,
13	Consolidated Storage Yards, Inc., Goofe
14	Partners, Inc., Miami Avenue Properties, Inc., 1718 Bay Road Corporation, Festa Transport and Storage, Inc., and Corona Storage, LLC:
15	LEVINE & PARTNERS, P.A.  3350 Mary Street
16	Miami, Florida 33133-5215 (305) 372-1350
17	By: ALLAN S. REISS, ESQ.
18	
19	On behalf of Touch of Class Paint & Body Shop, Inc. and Rudolf Budja Gallery, LLC:
20	BRODSKY, FOTIU-WOJTOWICZ, PLLC 169 East Flagler Street Suite 1224
21	Miami, Florida 33131 (305) 503-5054
22	By: BENJAMIN H. BRODSKY, ESQ.
23	
24	
25	

Page 3 1 APPEARANCES: On behalf of Thomas R. Mooney: 3 CITY OF MIAMI BEACH CITY ATTORNEY'S OFFICE 1700 Convention Center Drive 4 4th Floor Miami Beach, Florida 33133 5 (305) 673-7000 6 By: ALEKSANDR BOKSNER, ESO. By: NICK KALLERGIS, ESQ. 7 ALSO PRESENT: 8 9 Daniel Marinberg Bradley Colmer W. Tucker Gibbs, Esq. 10 Rafael E. Andrade, Esq. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

- 1 MR. REISS: And then we're going to switch
- back on redirect?
- 3 MR. BUCKNER: Yes.
- 4 (There was a recess taken from 1:26 p.m.
- 5 to 1:30 p.m.)
- 6 MR. BUCKNER: Okay. I'm going to
- 7 continue. I apologize to you all in advance.
- I forgot to make enough extra copies. So I've
- 9 got one for the witness and one for them or
- 10 you.
- 11 MR. BOKSNER: That's fine.
- MR. BUCKNER: We'll figure it out. A lot
- of it's stuff we've already used.
- 14 CROSS-EXAMINATION
- 15 BY MR. BUCKNER:
- 16 O All right. Mr. Mooney, I'm going to try
- 17 not to cover all the ground Mr. Reiss covered. I
- 18 just want to -- I want to talk to you about some of
- 19 this stuff.
- Okay. What's an accessory use?
- 21 A A use that is subordinate to the main
- 22 permitted use.
- Q Okay. And am I correct that an accessory
- 24 use cannot continue unless the main permitted use is
- 25 continuing?

- 1 A That's correct.
- 3 with an accessory towing use, when the gas station
- 4 ceased to function, the towing use would have to end
- 5 as well, correct?
- 6 MR. REISS: Object to the form.
- 7 A If the towing function was accessory to
- 8 the gas station, yes.
- 9 O And there's been a lot of different words
- 10 used today. I want to make sure I'm using the right
- ones the way you use them in your professional work.
- 12 Do you refer to it as a main permitted use?
- 13 A Yes.
- 14 Q And I know we've gone through this, but
- 15 what is a main permitted use?
- 16 A A main permitted use is the use -- the
- 17 main use on the property. And it would not be
- 18 considered an accessory use.
- 19 Q And main permitted uses are set out in the
- 20 code we've been talking about, correct?
- 21 A That's correct.
- Q Both the post-1989 code and the pre-1989
- 23 code?
- 24 A That's correct.
- 25 Q And those main permitted uses are the uses

- 1 that are allowed in each zoning district as set
- 2 forth in the code, correct?
- 3 A That's correct.
- 4 Q And so one way the citizens of the City of
- 5 Miami Beach can tell what kind of uses they're
- 6 permitted to put their property to is by going to
- 7 the zoning code and looking to see what the main
- 8 permitted uses are, correct?
- 9 A That's correct.
- 10 Q And in addition to main permitted uses,
- 11 there's also, we've talked about accessory uses,
- 12 correct?
- 13 A That's correct.
- 14 Q And there are also things known as
- 15 conditional use, right?
- 16 A That's correct.
- 17 O What's a conditional use?
- 18 A A conditional use is a use that requires
- 19 the review and approval of the Planning Board before
- 20 it can become an operational use.
- 21 O And so a conditional use is something that
- 22 could potentially be allowed, but only with certain
- 23 approvals, in this case, as you described, from the
- 24 Planning Board, correct?
- 25 A That's correct.

- O And were there conditional uses in --
- 2 strike that.
- 3 Are there conditional uses under the
- 4 current code?
- 5 A Yes.
- 6 Q And were there conditional uses under the
- 7 pre-1989 code?
- 8 A Yes.
- 9 Q And just so we're clear, because I don't
- 10 want the record to be in any way ambiguous later,
- 11 when I say "the code," we're talking about the Land
- 12 Development Regulations of the city code?
- 13 A That's correct.
- Q Okay. So if I refer to that as "the
- 15 code, " you know what that is?
- 16 A Okay. Yes.
- 17 Q All right. And I'm going to try and be
- 18 careful, because I know we're dealing with pre and
- 19 post 1989, so I'll try and put a date on it. But if
- 20 for some reason I'm not clear to you you seem very
- 21 adept at asking for a restatement you will, I'm
- 22 sure, ask me to restate?
- 23 A Yes.
- Q Okay. So the fact that something's a main
- 25 permitted use in a particular district, that means

- 1 that someone who owns property that's zoned in that
- 2 district can put their property to that use without
- 3 any further approval, correct?
- 4 A They would need building permit approval
- 5 potentially if they're doing physical improvements
- 6 on the site and the use would also require a
- 7 Business Tax Receipt.
- 8 Q Okay. But they wouldn't need a
- 9 conditional use approval, would they?
- 10 A No. Not if it's listed as a main
- 11 permitted use.
- 12 Q Right. And so if it's not listed as a
- 13 main permitted use in a particular district and
- 14 someone wants to put their property to that use,
- 15 they need to get a conditional use approval,
- 16 correct?
- 17 MR. REISS: Form.
- 18 A If it is listed as a conditional use
- 19 within that zoning district, they would need to get
- 20 conditional use approval.
- 21 O Well, let me ask you this. In going
- 22 through the code, is every single possible use to
- 23 which a particular parcel of land could put actually
- 24 listed somewhere in the code?
- 25 A No.

- 1 0 In fact, isn't it the case that both in
- 2 the pre-1989 code and the current code there are
- 3 certain uses that are set forth in there, correct?
- 4 A Correct.
- 5 Q And there are some set forth as primary --
- 6 I'm sorry, as main permitted uses, correct?
- 7 A That's correct.
- 8 O And there are some set forth as
- 9 conditional uses, correct?
- 10 A That's correct.
- 11 O And there are other uses that are not
- 12 listed anywhere?
- 13 A That's correct.
- 14 Q But those uses do exist within the City of
- 15 Miami Beach today, do they not?
- 16 A Yes, they do.
- 17 Q And prior to 1989, such uses existed
- 18 within the City of Miami Beach, did they not?
- 19 A Yes.
- 20 O So the mere fact that -- well, strike
- 21 that.
- 22 And the reason for that is because the
- 23 Zoning Code cannot possibly anticipate every single
- 24 potential use to which property can be put, correct?
- 25 A Yes.

- 1 O And so the main permitted uses tell you
- 2 what you can do without further approval from the
- 3 zoning -- from the Planning Board, correct?
- 4 MR. REISS: Form.
- 5 A That's correct.
- 6 Q And the conditional uses are uses you can
- 7 put property to if you get Planning Board approval,
- 8 correct?
- 9 A That's correct.
- 10 Q And back before 1989 -- well, strike that.
- 11 Today when -- is the City of Miami Beach
- 12 still -- strike that.
- Today does the City of Miami Beach still
- 14 approve on occasion conditional uses of property?
- 15 A Yes.
- 16 O And do those conditional uses require
- 17 approval from the Planning Board?
- 18 A Yes.
- 19 Q Do they require commission approval?
- 20 A No. Not under today's code.
- 21 O Did they used to require commission
- 22 approval?
- 23 A Under the previous code, City Commission
- 24 approval was required.
- Q And when you say "the previous code,"

- 1 you're talking pre-1989?
- 2 A Yes.
- 3 Q And were they also recorded in the records
- 4 of the Circuit Court in and for Miami-Dade County,
- 5 Florida?
- 6 A I don't know.
- 8 approvals are recorded in the Circuit Court records?
- 9 A Yes, they are.
- 10 Q So as of the current time period when the
- 11 city Planning Board grants conditional use approval
- 12 to a particular use, that is recorded in the Circuit
- 13 Court's records?
- 14 A Yes.
- 15 Q And what you don't know as you sit here is
- 16 whether pre-1989 they were also recording those
- 17 conditional uses in the Circuit Court records?
- 18 A That I don't know.
- 20 recording those conditional use approvals?
- 21 A Since they were reviewed by the City
- 22 Commission, I would imagine that the city clerk kept
- 23 a record of that at the time.
- Q Do you know for a fact that the city clerk
- 25 kept a record?

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- 1 A That I don't know.
- 3 today?
- 4 A That I don't know.
- 5 Q Do you know if those records still exist
- 6 today if they're complete?
- 7 A That I don't know.
- 8 O And the reason that those conditional use
- 9 approvals are required to be recorded is so that if
- 10 some years down the road someone wants to find out
- if there was a conditional use, they would have a
- 12 place to go to check?
- 13 MR. REISS: Form. Predicate.
- 14 Speculation.
- 15 A Right now conditional use approvals are
- 16 recorded so that there is a formal record and so
- 17 that future property owners will be aware of any
- 18 conditions that are part of that conditional use
- 19 approval.
- 20 Q But as you sit here today, you don't know
- 21 how complete the older records from prior to your
- 22 tenure are, do you?
- 23 A No, I don't.
- Q And you don't know how complete the
- 25 records are from prior to 1989, do you?

- 1 A No.
- 2 Q But one of your predecessors who worked as
- 3 planning director in the city back then might know,
- 4 correct?
- 5 MR. REISS: Form. Speculation as to the
- 6 mind of another. Predicate.
- 7 A I couldn't speak to my predecessor's
- 8 knowledge.
- 9 O Well, let me ask you this. In terms of
- 10 how -- in terms of how conditional use approvals
- 11 were recorded and maintained prior to 1989, would
- 12 you defer to your predecessors as planning director
- 13 who were there at the time in terms of their
- 14 knowledge on that issue?
- 15 MR. REISS: Form. Predicate.
- 16 Speculation.
- 17 A In terms of how commission actions were
- 18 recorded, I would defer to the city clerk at the
- 19 time.
- 20 Okay. And with regard to how the -- how
- 21 the Planning Department handled conditional use
- 22 approvals prior to 1989, would you defer to your
- 23 predecessors who were working as planning directors
- 24 prior to 1989 on that procedure?
- 25 MR. REISS: Form. Predicate.

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- 1 Speculation.
- 2 A For the Planning Department and Planning
- 3 Board recommendations, I would defer to my
- 4 predecessors.
- 5 Q Now, you've said several times today that
- 6 towing is not permitted within the CD-2 district,
- 7 correct?
- 8 A That's correct.
- 9 Q And so the only way today that Beach
- 10 Towing could be lawfully towing at 1349 Dade
- 11 Boulevard is if it was a legal nonconforming use,
- 12 correct?
- 13 A They -- Beach Towing has an active BTR.
- 14 That's how they're able to continue their towing
- 15 operation.
- 16 O Okay. But in terms of the determination
- 17 that Mr. Reiss was asking you about that you're
- 18 going to be completing by the end of the month,
- 19 which is, as I understand it, whether Beach Towing
- 20 is operating lawfully where it is, that's what the
- 21 determination will be, right?
- MR. REISS: Form.
- 23 A Yes. That's correct.
- Q Okay. And so as part of that
- 25 determination -- well, strike that.

- 1 Because Beach Towing is not lawfully able
- 2 to tow at 1349 Dade Boulevard under the current
- 3 code, correct?
- 4 MR. REISS: Form. Predicate.
- 5 A Towing would not be a permitted use under
- 6 the current code.
- 7 Q So the only way you can make a
- 8 determination that they are towing lawfully there
- 9 today, and your determination at the end of the
- 10 month, is if you find they're a legal nonconforming
- 11 use, correct?
- 12 MR. REISS: Form. Legal conclusion.
- 13 A Again, the -- the determination as to
- 14 their legal nonconforming status is a question of
- 15 fact that I will be putting together and finalizing
- 16 by the end of next week.
- 17 Q Right. And I understand that. What I'm
- 18 trying to get at is something different. I'm trying
- 19 to make sure there's nothing I'm missing here. For
- 20 you to find that Beach Towing is operating legally
- 21 at 1349 Dade Boulevard, you would have to find that
- they're a legal nonconforming use, because there's
- 23 no other legal basis for them to be operating there
- 24 today; is that not right?
- 25 MR. REISS: Form. Predicate. Legal

- 1 conclusion.
- 2 A That's a very broad question that I
- 3 couldn't answer at least until I make the
- 4 determination regarding legal nonconforming use.
- 5 Q Okay. Is the towing operation at 1349
- 6 Dade Boulevard, to your knowledge, an accessory use
- 7 to any other use?
- 8 A The current operation, no.
- 9 Q And you've said it's not a main permitted
- 10 use under the current code, correct?
- 11 A That's correct.
- 12 Q And does Beach Towing have a conditional
- 13 use permit to tow at 1349 Dade Boulevard?
- 14 A No.
- 15 Q Other than being a legal nonconforming
- 16 use, is there any other status under the code that
- 17 would allow them to tow there today?
- 18 MR. REISS: Form. Predicate. Legal
- 19 conclusion.
- 20 A That's something that I also couldn't
- 21 answer, again until I make the determination as to
- 22 the legal nonconformance.
- 23 O Okay. Well, am I missing -- is there a
- 24 status other than main permitted use, conditional
- 25 use or accessory use that I've missed?

- 1 permitted -- is a main permitted use in I-1,
- 2 correct, under the current code?
- 3 A Under the current code, towing is a
- 4 conditional use in the I-1.
- Just so you know, there's a scrivener's
- 6 error in Municode. We fixed it.
- 7 Q Okay. Because I was like am I losing my
- 8 mind? I know I read this.
- 9 A I know. We fixed it.
- 10 Q So --
- 11 A It's a conditional use. I apologize.
- 12 Q No, no. It's okay. So let me explore
- 13 this, because I --
- 14 A It was previously a permitted use.
- 15 O Okay.
- 16 A And then it became a conditional use.
- 17 Q All right.
- 18 A That happened about 2008.
- 19 Q Okay.
- 20 A And then in 2012 or 2014, with another
- 21 code change, that somehow got deleted during the
- 22 Municode translation. And we noticed it. And I
- 23 worked with the city attorney. We fixed it. We
- 24 sent the corrected version to Municode.
- 25 Q Okay. So --

- 1 permitted -- is a main permitted use in I-1,
- 2 correct, under the current code?
- 3 A Under the current code, towing is a
- 4 conditional use in the I-1.
- Just so you know, there's a scrivener's
- 6 error in Municode. We fixed it.
- 7 Q Okay. Because I was like am I losing my
- 8 mind? I know I read this.
- 9 A I know. We fixed it.
- 10 Q So --
- 11 A It's a conditional use. I apologize.
- 12 Q No, no. It's okay. So let me explore
- 13 this, because I --
- 14 A It was previously a permitted use.
- 15 O Okay.
- 16 A And then it became a conditional use.
- 17 Q All right.
- 18 A That happened about 2008.
- 19 Q Okay.
- 20 A And then in 2012 or 2014, with another
- 21 code change, that somehow got deleted during the
- 22 Municode translation. And we noticed it. And I
- 23 worked with the city attorney. We fixed it. We
- 24 sent the corrected version to Municode.
- 25 Q Okay. So --

- 1 A And I can get you both sides if you need
- 2 it, all the relevant adopted ordinances that back
- 3 that up.
- 4 Q No, that's fine. They're obviously not
- 5 zoned I-1. So I'm just a little surprised. But
- 6 okay.
- 7 So currently towing is only allowed in the
- 8 City of Miami Beach, a towing use, on property in an
- 9 I-1 district with a conditional use permit?
- 10 A That's correct.
- 11 Q Is Tremont Towing on an I-1 -- is their
- 12 building on an I-1 lot?
- 13 A I believe so, yes.
- 14 Q Do they have a conditional use permit?
- 15 A I believe so, yes.
- 16 Q And, in fact, the current code in I-1,
- 17 when you say it's in the conditional uses, it
- 18 specifically says "towing services;" it uses those
- 19 words, correct?
- 20 A That's correct.
- 21 O So it's a specific delineated use?
- 22 A That's correct.
- 23 Q But as Mr. Reiss asked you several times,
- in the pre-1989 code you cannot find the words
- 25 "towing" or "towing use" or "towing services"

- 1 anywhere in there?
- 2 A That's correct.
- 3 Q You also, by the way, in the pre-1989
- 4 code, if I'm not mistaken, cannot find the term
- 5 "nuclear power plant;" is that correct?
- 6 A That's correct.
- 7 Q And you also can't find --
- 8 MR. BUCKNER: Guys. You can whisper.
- 9 BY MR. BUCKNER:
- 10 Q And like I was asking you before, there
- 11 are a number of other uses that don't appear in the
- 12 code. That's correct?
- 13 A That's correct.
- 14 Q In the pre-1989 code?
- 15 A That's correct.
- 16 O If I owned land in the City of Miami Beach
- 17 pre-1989, and I had a use to which I wanted to put
- 18 it that was not listed, what would I be required to
- 19 do?
- 20 MR. REISS: Form. Predicate. Improper
- 21 hypothetical.
- 22 A Depending upon the use and depending upon
- 23 the property that you wanted to put the use, we
- 24 would have to evaluate whether or not that use would
- 25 be consistent with the listed permitted uses.

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- 1 O Right. But if you determined -- if the
- 2 city determined that the use was consistent with the
- 3 listed permitted uses, I would still need a
- 4 conditional use permit because it's not listed,
- 5 right?
- 6 MR. REISS: Form. Lack of predicate.
- 7 A No. You're only required to get
- 8 conditional use approval for uses specifically
- 9 called out as conditional uses.
- 10 Q Let's look at that. I've got -- here's an
- 11 even older code that was produced in discovery. I
- 12 believe this is the 1979 code.
- 13 (Plaintiff's Exhibit No. 2 was marked for
- 14 Identification.)
- 15 BY MR. BUCKNER:
- 16 O Exhibit 2. And we're going to come back
- 17 to this. I'm going to ask a few questions and we're
- 18 going to come back to this.
- 19 If you go to page 6.18, which is the C-6
- 20 Intensive Commercial District.
- 21 A 6.18?
- 22 Q 6.18, yes, sir.
- 23 A Okay.
- Q Okay. First of all what it says, "Uses
- 25 Permitted." It says, "No land, water or structure

- 1 may be used, or whole or in part, except for one or
- 2 more of the following uses, " correct?
- 3 A Okay.
- 4 Q Did I read that right?
- 5 A Yes.
- 6 Q And that means that in the C-6 district
- 7 you can't use land, water or a structure unless it's
- 8 one of the following uses delineated therein, 1
- 9 through 19, correct?
- 10 A That's correct.
- 11 Q And then 20 says, "The following uses may
- 12 be permitted as a conditional use: A, Uses not
- 13 listed above, which are similar in character to one
- or more permitted uses, and which would not be
- 15 inappropriate in the district." Did I read that
- 16 right?
- 17 A Yes.
- 18 Q And what that means is, if it's not one of
- 19 the listed uses, you can use it in that district,
- 20 you can use the land for that, as long as it is not
- 21 inappropriate and consistent with the character of
- 22 the listed permitted uses, right?
- 23 A That's correct.
- 24 Q And then it would be a conditional use?
- 25 A That's correct.

- 1 O And then you would need a conditional use
- 2 permit?
- 3 A That's correct.
- 4 Q One of those, by the way, another thing
- 5 that you would need a conditional use permit for is
- 6 a filling station, right?
- 7 A That's correct.
- 9 Because I want to ask the other stuff first.
- 10 A Okay.
- 11 O So let me go to where I was before.
- 12 (Plaintiff's Exhibit Nos. 3 and 4 were
- 13 marked for Identification.)
- 14 BY MR. BUCKNER:
- 15 Q I'll give you these both at the same time.
- 16 A This is three and four, right?
- 17 Q Three and four.
- 18 A Okay.
- MR. BUCKNER: Al, I actually have another
- one. Just one.
- MR. BOKSNER: Just one.
- MR. BUCKNER: Just one. I'm going to keep
- apologizing.
- MR. BOKSNER: That's all right.
- 25 MR. BUCKNER: I'm going to keep

- 1 apologizing, Al.
- 2 (Witness reviews document.)
- 3 BY MR. BUCKNER:
- 4 Q Do you recognize three and four as screen
- 5 printouts from the City of Miami Beach website with
- 6 regard to Business Tax Receipt categories?
- 7 A Yes.
- 8 Q Okay. And obviously these are not every
- 9 BTR category, right?
- 10 A That's correct.
- 11 O These are BTR categories, at least some of
- 12 them, in the transportation and warehousing
- 13 category, correct?
- 14 A That's correct.
- 15 O And these are different uses to which real
- 16 property in the City of Miami Beach can be put?
- 17 A That's correct.
- 18 Q And on here, for example, one of the uses
- is storage yard on Exhibit 3. You see that?
- 20 A Yes.
- 21 O And a storage yard is -- what's your
- 22 understanding of what a storage yard is?
- 23 A A place where things are stored.
- Q Is it specifically a place where
- 25 automobiles are stored?

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- 1 A It could be automobiles.
- 2 Q Okay. In addition, one of the other uses
- 3 is tow truck/wrecker, correct?
- 4 A That's correct.
- 5 O And on Exhibit 4, the last is
- 6 wrecker/towing service; that's another use, correct?
- 7 A That's correct.
- 8 Q And these are all separate and independent
- 9 uses to which real property can be put, correct?
- 10 A That's correct.
- 11 Q And obviously, if you have a BTR -- strike
- 12 that.
- 13 You can have a BTR -- a particular
- 14 property owner can have -- let me not step all over
- 15 myself. Strike that.
- A particular property owner can have a BTR
- 17 for his or her property that has more than one use
- 18 listed on it, correct?
- 19 A That's correct.
- 20 Q In fact, it's probably not an unusual
- 21 occurrence that property owners have multiple uses
- 22 listed on their BTRs?
- 23 A That's correct.
- 24 Q But each use is separate and independent,
- 25 correct?

- O Okay. And you recall Mr. Reiss asked you
- 2 some questions about when Beach Towing started
- 3 towing at 1349 Dade Boulevard?
- 4 A Yes.
- 5 Q Now, do you have any personal knowledge,
- 6 as you sit here today, when Beach Towing started
- 7 towing at 1349 Dade Boulevard?
- 8 A No.
- 9 Q Did you know, for example, that Vincent
- 10 Festa, the original owner of Beach Towing, had
- 11 several locations to which he towed on Miami Beach?
- 12 A No.
- 13 Q Did you know that he lost the right to tow
- 14 at some of those locations at some period of time?
- 15 A No.
- 16 O And by the way, Mr. Festa's testified in
- 17 this case. Did you know he testified that when he
- 18 sought the conditional use permit for the gas
- 19 station, he never intended to pump gasoline and
- 20 never pumped a gallon of gasoline?
- 21 A I did not know that.
- 22 Q Okay. And looking here at Exhibit A,
- 23 remember Mr. Reiss showed you this, dated July 18,
- 24 1979 there on the middle card, right?
- 25 A Yes.

- 1 O And he showed you this to try and
- 2 establish that Beach Towing was towing to 1349 Dade
- 3 Boulevard as of that date, right?
- 4 A I believe so.
- 5 Q But that's not actually what it says, is
- 6 it? If you read it, the second part says,
- 7 "determine appropriate action city may take to
- 8 require them to maintain their 1349 Dade Boulevard
- 9 property clear of disabled vehicles." Doesn't that
- 10 mean they were allowed to tow vehicles to that
- 11 property as of that time?
- 12 A I don't know. I could not answer that.
- 13 Q Okay. This document does not establish
- 14 that Beach Towing was lawfully towing at 1349 Dade
- 15 Boulevard as of 1979, does it?
- 16 MR. REISS: Form. Argumentative. Legal
- 17 conclusion.
- 18 A I couldn't reach that conclusion.
- 19 Q So you would not be able to conclude that
- 20 Beach Towing was towing as of that date from this
- 21 document, would you?
- 22 A No.
- 23 Q And so when Mr. -- the import of
- 24 Mr. Larkin's letter in part was that Beach Towing
- 25 was towing as an accessory use to a gas station use

- 1 at 1349 Dade Boulevard as of 1980, correct?
- 2 MR. REISS: Form.
- 3 A I would have to review Mr. Larkin's letter
- 4 to determine that.
- 5 Q Okay. If they were towing as an accessory
- 6 to the gas station use, that gas station use was
- 7 under the old code, as we've seen, only allowed with
- 8 a conditional use permit, right?
- 9 MR. REISS: Form. Predicate. Improper
- 10 hypothetical.
- 11 A Under the C-6, it listed filling stations
- 12 as a conditional use.
- 13 Q Right. So they would have needed a
- 14 conditional use permit, right?
- 15 A For a filling station.
- 16 O Right. And, in fact, the building card
- 17 shows they sought and received a conditional permit
- 18 for a filling station, correct?
- 19 A Correct.
- 20 O And towing could be an accessory use to a
- 21 filling station, right?
- 22 MR. REISS: Form. Improper hypothetical.
- 23 Predicate.
- 24 A Towing generally could be an accessory use
- 25 to a filling station.

- 1 O Right. Because if you're -- if you have a
- 2 repair operation, for example, you might need to tow
- 3 cars that aren't running, right?
- 4 A Correct.
- 5 Q But if that filling station use ceases to
- 6 exist at some point in time, so must the accessory
- 7 towing use, correct?
- 8 MR. REISS: Form. Predicate.
- 9 A It would depend upon how the towing use
- 10 was licensed and permitted.
- 11 O Okay. But even if it had -- even if the
- 12 towing use had a BTR and everything else -- let me
- 13 ask you this. Are you familiar with the situation
- 14 where an accessory use grows to overtake the main
- 15 permitted use?
- MR. REISS: Form. Improper hypothetical.
- 17 Predicate.
- 18 A I'm familiar with how that could
- 19 potentially happen.
- 20 O Right. And if an accessory use expands
- 21 and overtakes the permitted use, that doesn't make
- 22 the accessory use permitted, does it?
- MR. REISS: Form. Predicate.
- 24 A It doesn't remove its status as an
- 25 accessory use if the code still listed it as an

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- 1 accessory use.
- 2 Q And so if the main permitted use goes
- 3 away, then the accessory use is not allowed to stand
- 4 on its own; it too has to end?
- 5 MR. REISS: Improper hypothetical. Form.
- 6 A If the accessory use is not a main
- 7 permitted use in the zoned district.
- 8 Q Mr. Reiss -- if you go to D and E for me.
- 9 I'll try and move through these expeditiously.
- 10 MR. REISS: The Resolutions.
- MR. BUCKNER: Yes, the two.
- MR. BOKSNER: He's got it, D and E.
- 13 BY MR. BUCKNER:
- 14 Q Okay. Perfect. Let's start with -- let's
- 15 start with D.
- 16 A Okay.
- 17 Q Mr. Reiss asked you, in the third to last
- 18 "Whereas" clause, "Whereas, the permittees are the
- 19 only two service providers which satisfy all the
- 20 requirements in the Miami Beach City Code and
- 21 Administrative Rules and Regulations for police and
- 22 parking towing permits, including the requirement to
- 23 provide vehicle storage facilities within the city
- 24 limits." Do you recall him asking you about that?
- 25 A Yes.

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### EXHIBIT "G"

## CITY OF MIAMI BEACH CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive Miami Beach, Florida 33139-1819

TRADE ADDRESS:

**Business Type** 

Code

#Locations

LICENSE NUMBER:
Beginning:
Expires:
Parcel No:

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

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### EXHIBIT "H"

#### Susana Alonso September 06, 2018

1	IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA				
2	Case No. 2016-004547 CA 01				
3					
4					
5	SUNSET LAND ASSOCIATES, LLC,				
6	Plaintiff,				
7	vs.				
8	MARK FESTA, individually and as				
9	trustee, MAUREEN FESTA, VINCENT J. FESTA, individually and as trustee,				
10	THE FESTA TRUST, and BEACH TOWING SERVICES, INC., BEACH TOWING SERVICES OF MIAMI, INC., CONSOLIDATED STORAGE				
11	OF MIAMI, INC., CONSOLIDATED STORAGE YARDS, INC., GOOFE PARTNERS, INC.,				
12	MIAMI AVENUE PROPERTIES, INC., 1718  BAY ROAD CORPORATION, FESTA TRANSPORT  AND STORAGE, INC., and CORONA				
13	STORAGE, LLC,				
14	Defendant(s).				
15					
16	and THE LOFTS AT SOUTH BEACH CONDOMINIUM ASSOCIATION, INC.				
16	ASSOCIATION, INC.				
16 17	ASSOCIATION, INC.  Intervenor-Defendant,  and				
16 17 18	ASSOCIATION, INC.  Intervenor-Defendant,				
16 17 18 19	ASSOCIATION, INC.  Intervenor-Defendant,  and  MARK FESTA, MAUREEN FESTA, and BEACH				
16 17 18 19 20	ASSOCIATION, INC.  Intervenor-Defendant,  and  MARK FESTA, MAUREEN FESTA, and BEACH TOWING SERVICES, INC.				
16 17 18 19 20 21	ASSOCIATION, INC.  Intervenor-Defendant,  and  MARK FESTA, MAUREEN FESTA, and BEACH TOWING SERVICES, INC.  Counter-Plaintiffs,  v.  SUNSET LAND ASSOCIATES, LLC, a				
16 17 18 19 20 21 22	ASSOCIATION, INC.  Intervenor-Defendant,  and  MARK FESTA, MAUREEN FESTA, and BEACH TOWING SERVICES, INC.  Counter-Plaintiffs,  v.				

	September	06	5, 2018 54 to 57
	Page 54		Page 56
1	aware of any written finding or written document by the	1	A. And he says well, first we will have to
2	administrative official for the City of Miami Beach	2	determine whether it's a legal nonconforming use.
3	that Beach Towing is a legal nonconforming use at 1349	3	Q. And did he make that determination?
4	Dade Boulevard?	4	A. We went about it together, yes.
5	A. No, sir.	5	Q. And how did you decide it was a legal
6	Q. And prior to and are you aware of any other	6	nonconforming use?
7	record finding by an administrative official for the	7	A. We did some research.
8	City of Miami Beach that Beach Towing specifically is a	8	Q. And what did you find?
9	local nonconforming use at 1349 Dade Boulevard?	9	A. We found it was.
10	A. How do you define a record?	10	Q. Why?
11	Q. Any kind of finding at all.	11	A. Because the use had been existing prior to
12	A. Yes.	12	1989. Legally existing prior to 1989.
13	Q. Okay. And tell me what.	13	Q. And I understand the use existed prior to
14	A. It was requested to determine once and it was	14	1989. How did you determine that it was legal prior to
15	determined verbally.	15	1989?
16	Q. Okay. And tell me when that was.	16	A. We looked for BTR'S and occupational license
17	A. 2010.	17	records.
18	Q. Is this in your discussion with who's the	18	Q. All right. And BTR's and occupational license
19	planning director at the time?	19	records showed that Beach Towing was operating a towing
20	A. Mr. Lorber.	20	operation prior to 1989, correct?
21		21	
	Q. Okay. And Mr. Lorber was requested to	22	A. Yes, sir.
22	determine whether Beach Towing was a legal		Q. What other evidence did you have?
23	nonconforming use at 1349 Dade Boulevard?	23	A. Prior approval of other planners going back to the '70s.
24	A. Yes, sir. Q. Who requested it?	25	Q. So when you say prior approvals, approvals of
25	g. who requested it:	23	Q. 50 when you say prior approvats, approvats of
	Page 55		Page 57
1	A. I did.	1	what?
2	Q. And did he create a written document that	2	A. Approvals of BTR's, approvals of changes in
3	reflected his findings?	3	small changes here and there. Just accumulation of
4	A. No, it was a verbal determination.	4	stuff that happens through the years.
5	Q. So he just told you.	5	Q. Are any of those documents that you reviewed,
6	A. Yes.	6	are those referenced in your list of documents?
7	Q. And you were working for the City at the time.	7	A. No, sir. I don't have access to them right
8	A. Yes.	8	now.
9	Q. Other than what he told you, is there any	9	Q. Okay. So in terms of what documents would
10	record of that?	10	back up what you're telling, those are all documents
11	A. I approved the license based on his approval.	11	you don't have.
12	Q. And which license did you approve?	12	A. I don't have them, no.
13	A. I approved well, I approved the	13	MR. REISS: Just for the record, I think she
14	occupational business tax receipt. I don't remember	14	was listed as both a fact and expert witness, just
15	what it was for. We had to determine it was for adding	15	for your clarification.
16	an additional owner or an additional associate to the	16	MR. BUCKNER: Okay.
17	operation.	17	BY MR. BUCKNER:
18	Q. Okay. This was in 2010?	18	Q. So the basis for your statement here today
19	A. A-ha.	19	that Beach Towing was a legal nonconforming use prior
20	Q. Is that a yes?	20	to 1989 is based on what about Mr. Lorber told you,
21	A. Yes, sir.	21	correct?
22	O. You had a conversation with Mr. Lorber. Tell	22	MR. REISS: Form.
- 1	Q. Tou had a conversacion with Mr. Horber. Terr	44	PIC. REISS. POIII.
23	me what you asked him.	23	THE WITNESS: No, sir.
23 24	~		

Q. What's it based on?

25

Q. And what did he say?

Page 60 A. That was what it was based off in 2010. Today Q. And that's the transcript from the Magnum 1 1 2 it's based on Mr. Kurlancheek's determination, Towing matter, correct? 3 A. Yes. 3 contemporaneous determination that it was legal nonconforming at the time. Q. Other than those two things, do you have any 5 Q. Okay. And that's based on the records you 5 other basis for determining that Beach Towing was a cite from the Magnum Towing matter. legal nonconforming use at 1349 Dade Boulevard? 6 7 7 MR. REISS: Form. A. Yes, sir. Q. And so with regard to what Mr. Kurlancheek 8 THE WITNESS: There is also several contracts 8 9 9 with the police. The uses are very well meant and what he was talking about, you would obviously defer to him on that, correct? established prior to 1989. 10 10 11 A. Yes, because he's the official. BY MR. BUCKNER: 11 12 Q. Okay. But let's talk about prior to 2010. I 12 Q. Okay. 13 want to break this up. Leave aside Mr. Kurlancheek's 13 A. So the transition, you just have to prove determination. I want to finish with Mr. Lorber's 14 existence before and existence after the transition. 15 determination. 15 Q. Well, you have to prove lawful existence. 16 With regard to Mr. Lorber's determination that 16 A. Yes. 17 Beach Towing was a legal nonconforming use, that's 17 Q. So if Beach Towing was operating a towing based solely on what he told you, correct? operation unlawfully at 1349 Dade Boulevard before 18 19 A. No, sir. 1989, the mere fact of the transition to the new code 2.0 2.0 wouldn't convert it to a legal nonconforming use, Q. Okay. What's it based on? 21 A. Like I said, we went through the records, the correct? 21 22 old records and he asked me to do some research before 22 A. Define lawfully. he made a determination. 23 23 Q. Well, there is legal and there is more than 24 Q. All right. And you found old BTR's and old one kind of nonconforming use, isn't there? 24 25 licenses for the City? A. No. Page 59 Page 61 1 A. Yes, sir. Q. There is only a legal nonconforming use? Q. For the City of Miami Beach for Beach Towing. A. If it's nonconforming, then you can't -- it's either legal nonconforming or not permitted. 4 Q. You didn't find any conditional use permits, Q. Okay. So if something was not permitted prior 5 correct? to 1989 on a particular district, the mere fact that a 6 A. No, sir. new code is enacted doesn't make it legal 7 Q. And you didn't make the determination that nonconforming, correct? 8 Beach Towing was a legal nonconforming use. Mr. Lorber A. True. 9 had to do that, right? Q. It has to be both nonconforming and legal 10 A. Yes, sir. prior to the change in code. 11 Q. Because he's the administrative officer. 11 MR. REISS: Form. 12 A. Yes. 12 THE WITNESS: You have to rephrase that. 13 Q. So he told you that. 13 BY MR. BUCKNER: 14 A. Yes. 14 Q. Sure. What does the word legal in legal 15 Q. That's how you know that because he had to 15 nonconforming use mean? 16 tell you, correct? 16 A. It means authorized by the City. 17 A. Yes. 17 Q. And it means it had to be authorized under the 18 Q. You would agree with me that -- strike that. old code, correct? 19 So I want to make sure I exhausted the 19 A. It had to be authorized in some form, yes. universe of stuff you know about this area. 20 Q. Right. Because if it was authorized under the 20 new code, that use, you wouldn't need to go through the 21 So other than your conversations with Mr. Lorber and the documents you brought to him that you legal nonconforming analysis, right? don't have, there is the stuff that you said from Mr. 23 23 A. Okay.

24

25

Q. Is that right?

A. Sure.

24

25

Kurlancheek, right?

A. Yes.

62 to 65

	bepeember		02 00 05
1	Page 62 Q. For example, if CD-2 allowed a towing use,	1	Page 64 you ever encounter a BTR that was issued in error?
2	Beach Towing would be able to operate at 1349 Dade	2	A. I don't think so.
3	Boulevard under the current code, correct?	3	Q. Okay. So Beach Towing's status today at 1349
4	A. Sure.	4	Dade Boulevard is a nonconforming use of land, correct?
5	Q. But because CD doesn't allow towing, right?	5	MR. REISS: Form.
6	A. It doesn't.	6	THE WITNESS: I don't understand that
7	Q. The only way Beach Towing can operate lawfully	7	question.
8	there is if they are a legal nonconforming use,	8	BY MR. BUCKNER:
9	correct?	9	Q. I said Beach Towing's use at 1349 Dade
10	MR. REISS: Form.	10	Boulevard today is as a nonconforming use of land,
11	THE WITNESS: Yes.	11	correct?
12	BY MR. BUCKNER:	12	MR. REISS: Form.
13	Q. I want to make sure I'm done with this.	13	THE WITNESS: Yeah. I object to the form,
14	Other than Mr. Kurlancheek that you told me	14	too.
15	about and Mr. Lorber and your discussions with him, are	15	BY MR. BUCKNER:
16	there any other basis for your assertion that Beach	16	Q. Okay. You can't object to the form.
17	Towing is a legal nonconforming use at 1349	17	A. Rephrase, please.
18	A. Yes.	18	Q. You know what a nonconforming use of land is,
19	Q. Okay. And you said one of them was that they	19	right?
20	had gotten permits, towing permits, correct?	20	A. Again, nonconforming use of land.
21	A. No.	21	Q. Okay. Tell me what kinds of nonconforming
22	Q. Okay. Tell me what else.	22	uses there are.
23	A. The use was well established prior to 1989 and	23	A. This is an existing use that is nonconforming
24	it's on records, including police contracts, including	24	to the district.
25	BTR's and there is records of that available in	25	Q. Okay.
	Page 63	1	Page 65
1	microfiche and they are included on my list of stuff.	1	A. So it's not it's not a land use that is I know it's complicated. It's difficult to understand.
3	<ul><li>Q. Okay. Anything else?</li><li>A. No, that's sufficient.</li></ul>	3	Q. Well, what I'm asking you is
4	Q. Have you looked at the pre-1989 code as part	4	A. There is a line in there.
5	of your work in this case?	5	Q. Okay. I'm trying to figure out what that line
6	A. Yes, sir.	6	is. You can have a nonconforming use of a building,
7	Q. And do you find in looking at the pre-1989	7	right?
8	code, is a towing listed anywhere in the code?	8	A. Yes.
9	A. No, sir.	9	Q. And you can have nonconforming use of land,
10	Q. And you are aware BTR's have language on them	10	right?
11	that say strike that. Let's just use one.	11	A. Yes.
12	MR. REISS: Off the record.	12	Q. And so is there anything else other than land
13	(Thereupon a recess was taken in	13	and buildings on which zoning is involved?
14	deposition, after which the	14	A. No.
15	deposition continued as follows:)	15	Q. Okay. So it's either a nonconforming use of a
16	BY MR. BUCKNER:	16	building or it's a nonconforming use of land, correct?
17	Q. Just so I'm clear, in the entirety of your	17	A. Okay.
18	work for the City of Miami Beach, you never have been	18	Q. I'm asking you, Beach Towing has a large, we
19	the administrative officer charged with making the	19	will call it a lot, on which they keep cars that they
20	determination of whether something is or is not	20	have towed, right?
21	consistent with the code, correct?	21	A. Okay.
22	A. No, sir.	22	Q. You have been out there, right?
23	Q. You have not been.	23	A. Yes.
24	A. I have not been.	24	Q. Have you been out there recently?
25	Q. In the time that you worked for the City, did	25	A. Yes.
1	- · · · · · · · · · · · · · · · · · · ·	1	

66 to 69

	bepeember		7, 2010 00 00 07
1	Page 66 Q. Okay. So that's the land they are using to	1	Page 68 A. Currently, yes. They are morphing it into, I
2	store those cars, correct?	2	think CD's or a mixture of commercial and residential.
3	A. Yes.	3	They are working on it.
4	Q. And so the legal nonconforming use of that	4	Q. Who's make that change?
5	property is a legal nonconforming use of land, correct?	5	A. The City of Miami Beach and some applicants.
6	A. Yes.	6	Q. Have you had any involvement in that?
7	Q. Okay. So let's talk about some other stuff.	7	A. No, sir. I've seen some
8	I want to you don't have to look at your report.	8	Q. You just heard about it, right?
9	You can always look at whatever you want. It's not a	9	A. Right, through the grapevine.
10	closed book test. I want to ask you some stuff about	10	Q. So I want to bounce around a little bit. Let
11	your other parts of your report.	11	me see if we can move this along.
12	First of all, you talk about, on page five,	12	One of the things you reviewed in this case
13	you say the only other industrial district is located	13	was Ms. Dougherty's report, correct?
14	on Watson Island, a small island off MacArthur	14	A. Yes, sir.
15	Causeway, right?	15	Q. And you also reviewed her declaration?
16	A. Yes.	16	A. Yes.
17	Q. Isn't Watson Island part of the City of Miami?	17	Q. You saw where she discussed uses in the Sunset
18	A. No, sir.	18	Harbour area that had changed, correct?
19	Q. Watson Island is part of the City Miami Beach?	19	A. I need to go read it again.
20	A. No, sir. That's where the City's municipal	20	Q. Sure.
21	lot is. It's the portion close to Miami Beach. It's	21	A. Do you want to walk me through it?
22	called Terminal Island really, but it's a portion of	22	Q. On page seven let's do this. I'm going to
23	Watson Island that is part of Miami Beach.	23	mark her report. Exhibit 7 Ms. Dougherty's report.
24	O. Is it zoned industrial?	24	(The document referred to
25	A. Yes. It's changing now. There is obligations	25	was thereupon marked as
	ii. leb. le b dimigning now. mere ib obliquerons	23	was dicreased marked as
1	Page 67	1	Page 69
1	to morph it into nonindustrial.	1	Plaintiff's Exhibit Number
2	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned	2	Plaintiff's Exhibit Number 7 for Identification,
2 3	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?	2 3	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached
2 3 4	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's	2 3 4	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.)
2 3 4 5	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.	2 3 4 5	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.) BY MR. BUCKNER:
2 3 4 5 6	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.	2 3 4 5 6	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.) BY MR. BUCKNER: Q. Okay.
2 3 4 5 6	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.  Prior to the current change, when strike	2 3 4 5 6	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.) BY MR. BUCKNER: Q. Okay. A. Did you say page seven?
2 3 4 5 6 7 8	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.  Prior to the current change, when strike that. When did the effort to change Watson Island	2 3 4 5 6 7 8	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.) BY MR. BUCKNER: Q. Okay. A. Did you say page seven? Q. Right. On pages seven and eight of the
2 3 4 5 6 7 8	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.  Prior to the current change, when strike that. When did the effort to change Watson Island start, do you know?	2 3 4 5 6 7 8	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.)  BY MR. BUCKNER: Q. Okay. A. Did you say page seven? Q. Right. On pages seven and eight of the report. You see there is a summary of changes from
2 3 4 5 6 7 8 9	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.  Prior to the current change, when strike that. When did the effort to change Watson Island start, do you know?  A. Terminal Island. I think two years ago.	2 3 4 5 6 7 8 9	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.)  BY MR. BUCKNER: Q. Okay. A. Did you say page seven? Q. Right. On pages seven and eight of the report. You see there is a summary of changes from 2003 to 2014 in the first block, and then there is from
2 3 4 5 6 7 8 9 10	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.  Prior to the current change, when strike that. When did the effort to change Watson Island start, do you know?  A. Terminal Island. I think two years ago.  Q. Okay. You refer to Watson. Is it Watson	2 3 4 5 6 7 8 9 10	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.)  BY MR. BUCKNER: Q. Okay. A. Did you say page seven? Q. Right. On pages seven and eight of the report. You see there is a summary of changes from 2003 to 2014 in the first block, and then there is from 2014 to 2017 in the second block. Do you see those?
2 3 4 5 6 7 8 9 10 11	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.  Prior to the current change, when strike that. When did the effort to change Watson Island start, do you know?  A. Terminal Island. I think two years ago.  Q. Okay. You refer to Watson. Is it Watson Island or Terminal Island?	2 3 4 5 6 7 8 9 10 11	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.)  BY MR. BUCKNER: Q. Okay. A. Did you say page seven? Q. Right. On pages seven and eight of the report. You see there is a summary of changes from 2003 to 2014 in the first block, and then there is from 2014 to 2017 in the second block. Do you see those? A. Say that again.
2 3 4 5 6 7 8 9 10 11 12	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.  Prior to the current change, when strike that. When did the effort to change Watson Island start, do you know?  A. Terminal Island. I think two years ago.  Q. Okay. You refer to Watson. Is it Watson Island or Terminal Island?  A. Terminal Island is a piece of Watson and	2 3 4 5 6 7 8 9 10 11 12 13	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.)  BY MR. BUCKNER: Q. Okay. A. Did you say page seven? Q. Right. On pages seven and eight of the report. You see there is a summary of changes from 2003 to 2014 in the first block, and then there is from 2014 to 2017 in the second block. Do you see those? A. Say that again. Q. That's okay.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.  Prior to the current change, when strike that. When did the effort to change Watson Island start, do you know?  A. Terminal Island. I think two years ago.  Q. Okay. You refer to Watson. Is it Watson Island or Terminal Island?  A. Terminal Island is a piece of Watson and that's the part that belongs to Miami Beach.  Q. All right. So Watson Island	2 3 4 5 6 7 8 9 10 11 12 13 14	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.)  BY MR. BUCKNER: Q. Okay. A. Did you say page seven? Q. Right. On pages seven and eight of the report. You see there is a summary of changes from 2003 to 2014 in the first block, and then there is from 2014 to 2017 in the second block. Do you see those? A. Say that again. Q. That's okay. A. I was reading. Q. That's all right. Let's be specific.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	to morph it into nonindustrial.  Q. Is the whole of Watson Island zoned industrial?  A. No, they are changing it. Like I said, it's under change right now.  Q. Okay. Let's break it into pieces.  Prior to the current change, when strike that. When did the effort to change Watson Island start, do you know?  A. Terminal Island. I think two years ago.  Q. Okay. You refer to Watson. Is it Watson Island or Terminal Island?  A. Terminal Island is a piece of Watson and that's the part that belongs to Miami Beach.  Q. All right. So Watson Island  A. Miami.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Plaintiff's Exhibit Number 7 for Identification, a copy of which is attached hereto.)  BY MR. BUCKNER: Q. Okay. A. Did you say page seven? Q. Right. On pages seven and eight of the report. You see there is a summary of changes from 2003 to 2014 in the first block, and then there is from 2014 to 2017 in the second block. Do you see those? A. Say that again. Q. That's okay. A. I was reading. Q. That's all right. Let's be specific. Have you looked at this part of Ms.
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70 to 73

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	Page 70			Page 72
1	A. Not incorrect. How's that?	1	Q. Do you kn	ow if that's a legal nonconforming
2	Q. That's fine. So looking at the second block	2	use?	
3	of bullet the summary of notable changes from 2014 to	3	A. It must b	e.
4	2017, in reviewing those, have you found that any of	4	Q. Well, whe	n you say it must be, do you know?
5	her determinations there are incorrect?	5	A. I don't k	now. I know it's existing.
6	A. No, they are not incorrect.	6	O. You know	it exists today in 2018.
7	Q. Okay. And tell me again, what exhibit did I	7	-	s existed there for a few years.
8	mark that?	8	Q. Do you kn	ow if it existed there prior to 1989?
9	A. 7.	9	A. I don't.	-
10	Q. Now, you attached to your latest version of	10	Q. And so to	be a legal nonconforming use, it
11	your report, a map entitled distribution of existing	11		existed there prior to 1989,
12	industrial uses in Sunset Harbour neighborhood XT.	12	correct?	-
13	A. Yes.	13	A. Probably,	ves.
14	Q. Did you create that?	14		didn't, it's not a legal
15	A. Yes.	15	nonconforming use,	
16	Q. I want to ask you about this. I'm going to go	16	A. Probably	
17	ahead and mark it separately because I actually pulled	17	<del>-</del>	e time you worked for the City of
18	it off your thumb drive last night. I'm going to put	18		ou ever take any enforcement action
19	the sticker here.	19	against the scoote	
20	(The document referred to	20	A. No, sir.	z sliog.
21	was thereupon marked as	21		t here today, you said you don't know
22	Plaintiff's Exhibit Number	22	whether it existed	
23	8 for Identification,	23		now. It never came up.
24	a copy of which is attached	24		k you about that. When you say it
25	hereto.)	25		t does it take for a illegal use to
	Page 71			Page 73
1	BY MR. BUCKNER:	1	come up	
2	Q. All right. So I want to ask you about a few	2	MR. REISS	: Form.
3	things on here and I may need you to mark stuff so we	3	BY MR. BUCKNER:	
4	know later on what we are talking about. I have a pen	4	Q at the	City of Miami Beach when you worked
5	if you need one. Tell me what you were trying to do	5	there?	
6	with this map.	6	A. They would	d have to come in for an application,
7	A. Show existing industrial uses in the Sunset	7	for a new applicat	ion or they would have to have a code
8	Harbour neighborhood.	8	enforcement action	against them.
9	Q. Okay. And the existing industrial uses are	9	Q. And who s	tarts code enforcement actions?
10	the ones you circled in, what is that, light purple?	10	A. Code. The	e code department.
11	A. Yes.	11	Q. Sp they w	ould have to discover the illegal use
12	Q. I want to ask you about a few of these.	12	and bring it to you	ur attention. When I say your, I
13	First of all, there is a use on the corner of	13	mean the planning	department.
14	Purdy and 18th furthest to the west, right north of the	14	A. Yes.	
15	assembled properties, do you see that?	15	Q. I assume	that happened from time to time when
16	A. Purdy and 18th, yes.	16	you worked at the	City.
17	Q. Okay. And that building there is used for	17	A. Quite oft	en.
18	kayak rentals, correct?	18	Q. But not w	ith regard to the scooter rental
19	A. Yes, and a motorcycle shop.	19	shop.	
20	Q. When you say a motorcycle shop, scooter	20	A. Not partic	cularly that I remember. Not that I
21	rentals, right?	21	remember with regar	rds to the scooter rentals.
22	A. They have repairs on site. Repairs are not	22	Q. Okay. If	we go let's head due east from
- 1			-	9
23	allowed in the City.	23		k, on the same block as the Tremont

24 and Beach Towing. You've got a use on the corner of

25 18th and West Avenue.

24

25

A. Yes.

Q. That's a CD-2 zoned lot, right?