

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: September 24, 2019

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB 19-0314. Common Variance Requests  
Allowable encroachments.**

#### **REQUEST**

**PB 19-0314. Allowable encroachments. AN ORDINANCE** OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 130, ENTITLED "OFF-STREET PARKING," ARTICLE III, ENTITLED "DESIGN STANDARDS," AT SECTION 130-64, ENTITLED "DRIVES," TO MODIFY DRIVEWAY REQUIREMENTS FOR LOW-SCALE MULTIFAMILY RESIDENTIAL BUILDINGS; BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," AT SECTION 142-106, ENTITLED "SETBACK REQUIREMENTS FOR A SINGLE-FAMILY DETACHED DWELLING," TO INCORPORATE AND MODIFY REQUIREMENTS FOR ALLOWABLE ENCROACHMENTS AND SWIMMING POOLS RELATED TO SINGLE FAMILY HOMES CURRENTLY LOCATED IN SECTIONS 142-1132 AND 142-1133; BY AMENDING DIVISION 21, ENTITLED "TOWN CENTER-CENTRAL CORE (TC-C) DISTRICT," AT SECTION 142-744, ENTITLED "SETBACKS AND ENCROACHMENTS," AND SECTION 142-745, ENTITLED "STREET FRONTAGE, DESIGN, AND OPERATIONS REQUIREMENTS," TO CLARIFY AND REVISE REQUIREMENTS FOR HABITABLE ENCROACHMENTS, SHADE STRUCTURES, SETBACKS, AND OFF-STREET LOADING; AND BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 4, ENTITLED "SUPPLEMENTARY YARD REGULATIONS," AT SECTION 142-1132, ENTITLED "ALLOWABLE ENCROACHMENTS WITHIN REQUIRED YARDS," TO REMOVE REQUIREMENTS FOR SINGLE FAMILY DISTRICTS AND MODIFY REQUIREMENTS FOR ALLOWABLE ENCROACHMENTS IN REQUIRED YARDS, AND AT SECTION 142-1133, ENTITLED "SWIMMING POOLS," TO REMOVE REQUIREMENTS FOR SWIMMING POOLS IN SINGLE FAMILY DISTRICTS AND AMEND REQUIREMENTS FOR SWIMMING POOLS IN OTHER DISTRICTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

#### **RECOMMENDATION**

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

### **HISTORY**

On January 16, 2019, at the request of Commissioner John Elizabeth Aleman, the City Commission referred the discussion item to the Land Use and Development Committee (Item R9 T – 2.b).

On April 3, 2019, the Land Use and Development Committee (LUDC) discussed the item recommended that a comprehensive ordinance be drafted by the administration, pursuant to the recommendations in the LUDC report, in an effort to streamline the code and development processes, and that the City Commission refer the proposed ordinances to the Planning Board.

On May 8, 2019, the City Commission referred the proposed ordinances to the Planning Board (item C4 Q).

### **REVIEW CRITERIA**

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

**Consistent** – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

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

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

**Consistent** - The proposed ordinance amendment is not out of scale with the surrounding neighborhood.

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

**Consistent** – The proposed ordinance will not affect the load on public facilities and infrastructure.

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

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

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

**Consistent** – The need to streamline development processes makes passage of the proposed change necessary.

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

**Consistent** – The proposed ordinance amendment will not adversely affect living conditions in the neighborhood.

**8. Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

**Consistent** – The proposed change will not create or increase traffic congestion from what is currently permitted.

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

**Consistent** – The proposed change will not reduce light and air to adjacent areas.

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

**Consistent** – The proposed change should not adversely affect property values in the adjacent areas.

**11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

**Consistent** – The proposed change should not be a deterrent to the improvement or development of properties in the City.

**12. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

**Not applicable.**

**13. Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

**Not applicable.**

**COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

**(1) Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

**Partially Consistent** – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

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

**level rise.**

**Consistent** – The proposal will allow for more streamlined development review, which encourages development that is more resilient with respect to sea level rise due to new code requirements.

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

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

**ANALYSIS**

This ordinance is a companion to two other items on the agenda related to common variances for “rooftop additions, setbacks (including mixed-use), and room sizes;” as well as “signage.” Per Section 118-353 (d) of the land development regulations of the city code, in order to authorize any variance from the terms of the land development regulations, the applicable land use board must determine that there are “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.” There are certain variances which are regularly requested and granted by the board of adjustment, design review board (DRB), and historic preservation board. Rather than being the exception to the rule, variance requests accompany most development proposals that are presented before the aforementioned boards. Several of the requests are quite common and usually granted by the applicable board.

The attached ordinance addresses the following commonly issued variances:

- 1) **Variance for minimum drive aisles widths.** The land development regulations (LDR’s) require two-way drive isles to be a minimum of 22 feet. For smaller buildings such widths are not always necessary, as they don’t generate significant traffic. As a result, smaller buildings often seek variances to reduce the driveway width.

***The proposed ordinance reduces the minimum two-way drive isle width for buildings with fewer than 25 units to 18 feet.***

- 2) **Variance of minimum side setbacks for mechanical equipment for existing buildings with non-conforming side setbacks.** Variances are often sought to allow for the encroachment of mechanical equipment into side yards for existing buildings. The City Commission recently adopted code amendments to allow encroachments into side-yards for mechanical equipment in the RS, TH, and RM-1 districts. Such allowances are currently not permitted in the RPS, RM-2 and RM-3 districts, which require side setbacks.

***The proposed ordinance extends the allowances for the limited encroachment of mechanical equipment in side setbacks currently permitted in the RS, TH, and RM-1 districts to the RPS, RM-2 and RM-3 districts.***

- 3) **Variance of side and rear pool setbacks for existing pre-1942 architecturally significant homes.** The LDR’s provide for reduced setbacks for architecturally significant pre-1942 homes and projections. The placement of the home may require that variances

be obtained for pools and pool decks to be built, as the rear yards may not be sufficiently large to accommodate currently required setbacks.

***The proposed ordinance incorporates a setback reduction to five feet for pools and pool decks into the incentives for the retention and preservation for pre-1942 architecturally significant homes.***

- 4) **Variance of fence heights.** Currently interior side fences are measured from grade in in RS-3 and RS-4 residential districts. Only the RS-1 and RS-2 residential districts allow such fences to be measured from adjusted grade if the lot is raised to adjusted grade. Due to the need and requirements to raise lots in many areas of the City due to sea level rise, variances are often sought to allow the height of a fence to be measured from adjusted grade.

***The proposed amendment allows the maximum height of interior side yard fences to be measured from the adjusted grade on sites that have approval for adjusted grade in all single-family districts .***

- 5) **Variance of accessory structure height.** The maximum height for accessory structures is currently measured from adjusted grade. Often accessory structures contain guest/servant quarters, which may be habitable. Per the requirements of the Florida building code and the city code, the minimum elevation of a habitable floor in any structure must be located at an elevation of base flood elevation plus a one foot of freeboard (BFE +1). As a result of current limitations, it is difficult for accessory structures to be built with the same resilience of the primary structure, even if a three-foot height variance is granted.

***The proposed amendment modifies the basis for the measurement of the the maximum height of accessory structures from adjusted grade to BFE+1.***

- 6) **Variance of allowable encroachments to allow for planters.** The LDR's list specific items which are permitted as an allowable encroachment. Planters are currently not listed as an allowable encroachment.

***The proposed ordinance adds planters to the list of allowable encroachments in Section 142-1132, along with a height limit of four feet from the finished floor elevation.***

- 7) **Variance for installation of fences where the finished side is required to face neighbors.** The LDR's require the finished side of a fence to face neighbors. There are numerous occasions where a neighbor has their own fence or significant landscaping and they are comfortable with the unfinished side facing their property. Miami-Dade County allows for such exceptions with a signed affidavit from the affected neighbor.

***The proposed ordinance provides an exception to not require a fence to not have a highly finished material facing a neighbor with an affidavit from an affected neighbor accepting the condition.***

- 8) **Variance for exceeding the maximum allowable height of porches and terraces.** Chapter 142-1132 (o)(6) allows for porches, platforms, and terraces up to 30 inches above

grade elevation to encroach up to 25 percent into a required setback. Recent amendments regarding the City of Miami Beach Freeboard requirements, which provide for a higher elevation of ground floors, creates a need for porches, platforms, and terraces which exceed 30 inches in order to be able to provide access and ADA accessibility into buildings. As a result, variances are sought to raise the height of porches, platforms, or terraces beyond 30 inches.

***The proposed ordinance modifies the requirements for the maximum height of porches, platforms, and terraces to be measured from adjusted grade, as opposed to grade.***

The proposed ordinance also provides clarifications for improved usability. Chapter 142, Article IV, Division 4, entitled "Supplementary Yard Regulations" contains provisions that apply only to single-family districts, others to non-single-family districts, and others to all districts. The ordinance relocates all requirements that are applicable to single-family homes, inclusive of the modifications described above, to Chapter 142, Article II, Division 2, related to "RS-1, RS-2, RS-3, and RS-4 Single Family districts" to facilitate usability of the code. Other clarifications are incorporated to improve the internal consistency of the LDR's.

In addition, there have been three proposals for new development within the North Beach Town Center – Central Core (TC-C) district that are expected to be considered by the DRB this year. These developments have requested variances which staff is supportive of as they achieve a better urban form and improve pedestrian facilities. Since these variances lead to a better result, modifications have been incorporated into the proposed ordinance to remove the need for such variances. Additionally, the ordinance provides for some clarifications of other requirements. The modifications proposed to the TC-C district are as follows:

- 1) **Variance to allow for the shade structure to be located at a lower elevation.** The North Beach TC-C ordinance currently requires non-residential ground floor uses to provide a shade structure. The structure is required to be located at an elevation of 15 feet above a 5-foot City of Miami Beach Freeboard. The elevation was intended to allow for greater flexibility in the raising of streets in the future due to sea level rise. However, this requirement will also result in the shade structure being located very high above the sidewalk, limiting its effectiveness to provide shade for pedestrians. As a result, all applications have sought a variance to allow them to lower the shade structure.

***The proposed ordinance allows for the shade structure to be located at a lower elevation, provided that it is not an integral structural component of the building. This allows for a more useful shade structure, while still allowing for it to be modified in the future, should changes in elevation be necessary for the adjacent right-of-way.***

- 2) **Variance for interior side setbacks for small lots.** The requirements for interior side setbacks are tailored for larger development sites. The requirements make development of narrow lots (100 feet or less) difficult. The TC-C area contains many small lots which due to their location are unlikely to be incorporated into larger unified development sites. These sites provide opportunities to for small infill development which could be of great benefit to the town center.

***The proposed ordinance modifies the upper-level interior side setbacks for small lots (110 feet wide or less). If the lot is 110 feet wide or less, an upper-level setback would be required at 75 feet in height, as opposed to at 55 feet.***

- 3) **Variance for setbacks of decks consistent with requirements for habitable encroachments.** The TC-C regulations allow for encroachments of habitable spaces, such as balconies into setbacks above a certain height. The ordinance needs clarifications as to what structures qualify as a habitable encroachment. As a result, variances have been sought to allow for pool decks and other structures to qualify for the same setbacks as habitable encroachments.

***The proposed ordinance provides additional clarifications as to what is considered a habitable encroachment, including pool decks, roof top decks, amenity decks, bay windows, trellises, and pergolas.***

- 4) **Variance for parking access and loading requirements on lots that only have access from Class A frontages.** The TC-C regulations establish 71<sup>st</sup> Street, 72<sup>nd</sup> Street, Collins Avenue, and Indian Creek Drive as Class A streets. These are the most prominent streets in the area and they are intended to provide the best pedestrian environment. As such, driveways are prohibited on Class A streets unless there are no other access points to the site. Only those lots located along Collins Avenue, which is a major state road have the potential for not having access to other street classes. Currently, no driveways exist on this portion of Collins Avenue, and introducing driveways would not be desirable. The corridor is also primarily made up of small lots which are likely to develop independently. If these small lots were required to incorporate driveways for loading and parking, the result would be an unfriendly pedestrian environment on a street that currently has a high volume of pedestrians. Since those lots are small, it is expected that they will have minimal parking and loading impacts, so the high number of driveways would service a very limited amount of parking and loading. As a result, a proposed development that only has access from Collins Avenue has sought variances from loading requirements.

***The proposed ordinance provides the DRB with the ability to waive parking and loading requirements on lots that only have access from Class A frontages. Additionally, it clarifies that drive-through commercial uses are prohibited in order to reduce the potential for unnecessary drive-ways.***

### **RECOMMENDATION**

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

**ADDRESS COMMON VARIANCES FOR ALLOWABLE ENCROACHMENTS**

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 130, ENTITLED "OFF-STREET PARKING," ARTICLE III, ENTITLED "DESIGN STANDARDS," AT SECTION 130-64, ENTITLED "DRIVES," TO MODIFY DRIVEWAY REQUIREMENTS FOR LOW-SCALE MULTIFAMILY RESIDENTIAL BUILDINGS; BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," AT SECTION 142-106, ENTITLED "SETBACK REQUIREMENTS FOR A SINGLE-FAMILY DETACHED DWELLING," TO INCORPORATE AND MODIFY REQUIREMENTS FOR ALLOWABLE ENCROACHMENTS AND SWIMMING POOLS RELATED TO SINGLE FAMILY HOMES CURRENTLY LOCATED IN SECTIONS 142-1132 AND 142-1133; BY AMENDING DIVISION 21, ENTITLED "TOWN CENTER-CENTRAL CORE (TC-C) DISTRICT," AT SECTION 142-744, ENTITLED "SETBACKS AND ENCROACHMENTS," AND SECTION 142-745, ENTITLED "STREET FRONTAGE, DESIGN, AND OPERATIONS REQUIREMENTS," TO CLARIFY AND REVISE REQUIREMENTS FOR HABITABLE ENCROACHMENTS, SHADE STRUCTURES, SETBACKS, AND OFF-STREET LOADING; AND BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 4, ENTITLED "SUPPLEMENTARY YARD REGULATIONS," AT SECTION 142-1132, ENTITLED "ALLOWABLE ENCROACHMENTS WITHIN REQUIRED YARDS," TO REMOVE REQUIREMENTS FOR SINGLE FAMILY DISTRICTS AND MODIFY REQUIREMENTS FOR ALLOWABLE ENCROACHMENTS IN REQUIRED YARDS, AND AT SECTION 142-1133, ENTITLED "SWIMMING POOLS," TO REMOVE REQUIREMENTS FOR SWIMMING POOLS IN SINGLE FAMILY DISTRICTS AND AMEND REQUIREMENTS FOR SWIMMING POOLS IN OTHER DISTRICTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach (the "City") has the authority to enact laws which promote the public health, safety, and general welfare of its citizens; and

**WHEREAS**, there City has observed that a large number of variances from certain code sections are routinely sought as part of land development applications; and

**WHEREAS**, the City has analyzed these variance applications, which are frequently sought and granted; and

**WHEREAS**, the granting of such variances has no negative impact on surrounding areas; and

**WHEREAS**, the City has determined that amendments to the land development regulations to reduce the need for such variances is warranted; and



**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives.

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

**Section 1.** That Chapter 130, entitled "Off-Street Parking," Article III, entitled "Design Standards," at Section 130-64, entitled "Drives," is hereby amended as follows:

**Chapter 130 - OFF-STREET PARKING**

\* \* \*

**ARTICLE III. - DESIGN STANDARDS**

\* \* \*

**Sec. 130-64. - Drives.**

Drives shall have a minimum width of 22 feet for two-way traffic and 11 feet for one-way traffic. Notwithstanding the foregoing, for residential buildings with fewer than 25 units, drives shall have a minimum width of 18 feet for two-way traffic. For those grade level parking areas with less than ten parking spaces, inclusive of those parking areas underneath a building or structure, the two-way curb-cut and driveway entrance shall have a minimum width of 12 feet.

**Section 2.** Chapter 142, entitled "Zoning Districts and Regulations," Article II, entitled "District Regulations," at Division 2, entitled "RS-1, RS-2, RS-3, RS-4 Single-Family Residential Districts," is hereby amended as follows:

**Chapter 142 - ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. - DISTRICT REGULATIONS**

\* \* \*

**DIVISION 2. - RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS**

\* \* \*

**Sec. 142-106. - Setback requirements for a single-family detached dwelling.**

(a) The setback requirements for a single-family detached dwelling in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are as follows:

\* \* \*

(b) Allowable encroachments within required yards.

(1) Accessory buildings. In all single-family districts, the following regulations shall apply to accessory buildings within a required rear yard:

- a. *Lot coverage.* Accessory buildings that are not a part of the main building, shall be included in the overall lot coverage calculations for the site, and may be constructed in a rear yard, provided such accessory building (or accessory buildings) does not occupy more than 25 percent of the area of the required rear yard. Areas enclosed by screen 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.
- b. *Size.* The area of enclosed accessory buildings shall be included in the overall unit size calculation for the site. In no instance shall the total size of all accessory building(s) exceed ten percent of the size of the main home on the subject site, or 1,500 square feet, whichever is less.
- c. *Two-story structures.* The second floor of an accessory building shall not exceed 50 percent of the first floor area.
- d. *Building separation.* Accessory buildings shall be separated from the main home by a minimum of five feet. open to the sky with no overhead connections.
- e. *Setbacks.*
  1. *Single story.* A single story accessory building shall not be located closer than seven and one-half feet to an interior rear or interior side lot line, and 15 feet when facing a street. When facing a waterway, the minimum rear setback shall not be less than one-half of the required rear setback.
  2. *Two-story.* A two-story accessory building shall not be located closer than ten feet to an interior side lot line, or the required side yard setback, whichever is greater, 15 feet when facing a street, and a rear setback of 15 feet. When facing a waterway, the minimum rear setback shall not be less than one-half of the required rear setback, or 15 feet, whichever is greater.
- f. *Height.* Accessory buildings shall be limited to two stories. Height for accessory buildings shall be measured from the base flood elevation plus freeboard of one (1) foot. The maximum height above shall not exceed 12 feet for a one-story structure and 20 feet for a two-story structure. The allowable height exceptions set forth in section 142-1161 shall not apply to accessory buildings in single-family districts.
- g. *Uses.* Accessory buildings shall be limited to uses that are accessory to the main use, including, but not limited to, garage, carport, pergola, cabana, gazebo, maid's or guest's quarters. Components of the main structure, such as detached bedrooms or any habitable area of the single-family structure, shall not be considered accessory uses.
- h. *Utilities.* Accessory buildings may contain heating and air conditioning, washers and dryers, toilets, bar sinks and showers, but may not have full kitchen facilities. An outdoor built-in barbecue grill or similar cooking equipment shall be allowed as an accessory use, as may be permitted by the fire marshal and in accordance with the regulations contained in any applicable safety code or Florida Building Code.

- (2) Awnings. 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.
- (3) Boat, boat trailer, camper trailer or recreational vehicle storage. Accessory storage of such vehicles shall be limited to a paved, permanent surface area within the side or rear yards, no such vehicle shall be utilized as a dwelling and such vehicles shall be screened from view from any right-of-way or adjoining property when viewed from five feet six inches above grade.
- (4) Carports and solar carports. Only one (1) carport or solar carport shall be erected within a required yard of a single-family home, subject to the following requirements, as may be applicable:

a. Carports shall be subject to the following requirements:

1. Carports shall be constructed of canvas and pipe for the express purpose of shading automobiles.
2. Setbacks. Minimum setbacks for carports shall be as follows:
  - i. Front yard – 18 inches from the property line, provided the carport is attached to or immediately adjacent to the main building.
  - ii. Interior side yard – four (4) feet from the property line.
  - iii. Side yard facing the street – 18 inches from the property line, provided the carport is attached to or immediately adjacent to the main building.
  - iv. The side of the carport that faces the required rear yard may be permitted to align with the walls of the existing residence, provided the residence is located a minimum of five (5) feet from the rear property line.
  - v. When a carport is detached and located more than 12 inches from the main home it shall not be located in the required front or side-facing-the-street yards.
3. Carports shall not be permitted to exceed 20 feet in width or 20 feet in length. An unobstructed view between the grade and the lower ceiling edge of the carport of at least seven (7) feet shall be maintained.
4. Carports constructed prior to the adoption of this section shall be considered legal nonconforming structures. Such nonconforming canopies may be repaired or replaced; however, the degree of their nonconformity shall not be increased thereby.

b. Solar carports. Solar carports shall be subject to the following requirements:

1. Setbacks. Minimum setbacks for solar carports shall be as follows:
  - i. Front yard – 15 feet from the property line, provided the solar carport is attached to or immediately adjacent to the main building.

- ii. Interior side yard – four (4) feet from the property line.
  - iii. Side yard facing the street – five (5) feet from the property line, provided the solar carport is attached to or immediately adjacent to the main building.
  - iv. The sides of the solar carport that face the required rear yard may be permitted to align with the walls of the existing residence, provided the residence is located a minimum of five (5) feet from the rear property line.
  - v. When a solar carport is detached and located more than 12 inches from the main home, it shall not be located in the required front or side-facing-the-street yards.
- 2. Solar carports shall not be permitted to exceed 20 feet in width or 20 feet in length. An unobstructed view between the grade and the lower ceiling edge of the carport of at least seven (7) feet shall be maintained.
- (5) Central air conditioners, emergency generators, swimming pool equipment, and other mechanical equipment. Accessory central air conditioners, generators, swimming pool equipment, and any other mechanical equipment, including attached screening elements, may occupy a required side or rear yard, provided that:
  - a. They are not closer than five (5) feet to a rear or interior side lot line, or ten (10) feet to a side lot line facing a street.
  - b. The maximum height of the equipment including attached screening elements, shall not exceed five (5) feet above current flood elevation, with a maximum height not to exceed ten (10) feet above grade, as defined in subsection 114-1, of the lot at which they are located.
  - c. If visible from the right-of-way, physical and/or landscape screening shall be required.
  - d. Any required sound buffering equipment shall comply with the setback requirements established in subsection a., above.
  - e. If the central air conditioning and other mechanical equipment do not conform to subsections (1), (2), (3), and (4) above, then such equipment shall follow the setbacks of the main structure.
- (6) Driveways. Driveways and parking spaces leading into a property are subject to the following requirements:
  - a. Driveways shall have a minimum setback of four (4) feet from each side property line.
  - b. Driveways and parking spaces parallel to the front property line shall have a minimum setback of five (5) feet from the front property line.
  - c. Driveways and parking spaces located within the side yard facing the street shall have a minimum setback of five (5) feet from the rear property line.

- d. Driveways and parking areas that are open to the sky within any required yard shall be composed of porous pavement or shall have a high albedo surface consisting of a durable material or sealant, as defined in section 114-1 of this Code.
- e. Driveways and parking areas composed of asphalt that does not have a high albedo surface, as defined in section 114-1 of this Code, shall be prohibited.

(7) Fences, walls, and gates. Regulations pertaining to materials and heights for fences, walls and gates are as follows:

- a. Within the required front yard, fences, walls and gates shall not exceed five (5) feet, as measured from grade. The height may be increased up to a maximum total height of seven (7) feet if the fence, wall or gate is set back from the front property line. Height may be increased one (1) foot for every two (2) feet of setback.
- b. Within the required rear or side yard, fences, walls and gates shall not exceed seven (7) feet, as measured from grade, except when such yard abuts a public right-of-way, waterway or golf course, the maximum height shall not exceed five (5) feet. In the event that a property has approval for adjusted grade, the overall height of fences, walls and gates may be measured from adjusted grade, provided that the portion of such fences, walls or gates above four (4) feet in height consists of open pickets with a minimum spacing of three (3) inches, unless otherwise approved by the design review board or historic preservation board, as applicable.
- c. All surfaces of masonry walls and wood fences shall be finished in the same manner with the same materials on both sides to have an equal or better quality appearance when seen from adjoining properties. The structural supports for wood fences, walls or gates shall face inward toward the property.
- d. Chain link fences are prohibited in the required front yard, and any required yard facing a public right-of-way or waterway (except side yards facing on the terminus of a dead end street in single-family districts) except as provided in this section and in section 142-1134.
- f. Barbed wire or materials of similar character shall be prohibited.

(8) Hedges. There are no height limitations on hedges. Hedge material must be kept neat, evenly trimmed and properly maintained. Corner visibility regulations are set forth in section 142-1135.

(9) Hot tubs, showers, saunas, whirlpools, toilet facilities, decks. Hot tubs, showers, whirlpools, toilet facilities, 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 30 percent of the area of the required rear yard and provided it is not located closer than seven and one-half (7 ½) feet to a rear or interior side lot line. Freestanding, unenclosed facilities including surrounding paved or deck areas shall adhere to the same setback requirements as enclosed facilities.

(10) Lightpoles. The following regulations shall apply to lightpoles:

- a. Lightpoles shall have a maximum height of ten (10) feet. Lightpoles shall be located seven and one-half (7 ½) feet from any property line except that when such property line abuts a public right-of-way, or waterway there shall be no required setback.

b. All light from lightpoles shall be contained on-site or on any public right-of-way as required by the city Code.

(11) Marine structures. Seaward side yard setbacks for boat slips, decks, wharves, dolphin poles, mooring piles, davits, or structures of any kind shall not be less than seven and one-half (7 ½) feet. This requirement pertains to the enlargement of existing structures as well as to 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, and the mooring of any type of vessel or watercraft shall be prohibited along either side of the walkway leading from the seawall to a boat dock. Land side decks may extend to the deck associated with the marine structure. Lighting associated with, but not limited to, the deck, or marine structure shall be installed in such a manner to minimize glare and reflection on adjacent properties and not to impede navigation. The maximum projection of a marine structure shall be determined by the county department of environmental resource management. If a dock or any kind of marine structure/equipment, whether or not it is attached to a dock, projects more than 40 feet into the waterway or it extends beyond the maximum projection permitted under section 66-113, the review and approval of the applicable state and county authorities shall be required.

(12) Ornamental fixtures or lamps. Requirements for ornamental fixtures and lamps shall be as follows:

a. Ornamental fixtures and lamps are permitted to be placed on walls or fences when they are adjacent to a public street, alley, golf course or waterway. The total height of the combined structure shall not exceed the required fence or wall height by more than two (2) feet.

b. 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.

(13) Projections. Every part of a required yard shall be open to the sky, except as authorized by these land development regulations. The following may project into a required yard for a distance not to exceed 25 percent of the required yard up to a maximum projection of six (6) feet, unless otherwise noted.

a. Belt courses.

b. Chimneys.

c. Cornices.

d. Exterior unenclosed private balconies.

e. Ornamental features.

f. Porches, platforms and terraces up to 30 inches above the adjusted grade elevation of the lot, as defined in chapter 114. Such projections and encroachments may be located up to the first habitable floor elevation and include stairs, steps, ADA-compliant ramps and related walkways, not exceeding five (5) feet in width, which provide access to all porches, platforms, terraces and the first floor when elevated to meet minimum flood elevation requirements, including freeboard.

g. Roof overhangs.

h. Sills.

i. Window or wall air conditioning units.

j. Bay windows (not extending floor slab).

k. Walkways: Maximum 44 inches. May be increased to a maximum of five feet for those portions of walkways necessary to provide Americans with Disabilities Act (ADA) required turn-around areas and spaces associated with doors and gates. Walkways in required yards may exceed these restrictions when approved through the design review or certificate of appropriateness procedures, as applicable, and pursuant to chapter 118, article VI, of the city Code. Notwithstanding the foregoing, when required to accommodate ADA access to an existing contributing building within a local historic district, or National Register District, an ADA walkway and ramp may be located within a street side or interior side yard, with no minimum setback, provided all of the following are adhered to:

1. The maximum width of the walkway and ramp shall not exceed 44 inches, and five (5) feet for required ADA landings;
2. The height of the proposed ramp and landing shall not exceed the finished first floor of the building(s); and
3. The slope and length of the ramp shall not exceed that which is necessary to meet the minimum Building Code requirements.

Additionally, subject to the approval of the design review board or historic preservation board, as applicable, an awning may be provided to protect users of the ADA walkway and ramp from the weather.

l. Electric vehicle charging stations and fixtures, located immediately next to an off-street parking space, shall be permitted where driveways and parking spaces are located.

m. Electrical transformers and associated concrete pads, as required by Florida Power and Light (FPL) may be located up to the front or street side property line.

n. Planters, not to exceed four (4) feet in height when measured from the finished floor of the primary structure.

(15) *Satellite dish antennas.* Satellite dish antennas are only permitted in the rear yard. Antennas shall be located and sized where they are not visible from the street. Satellite dish antennas shall be considered as an accessory structure; however the height of the equipment including its base to the maximum projection of the antenna, based upon maximum operational capabilities, to the top part of the antenna shall not exceed 15 feet. If it is attached to the main structure it may not project into a required yard.

(16) *Swimming pools.* Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:

a. *Rear yard setback.*

1. A six-foot minimum setback from rear property line to swimming pool deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure associated or not associated with a swimming pool.
2. Swimming pool decks may extend to the property line and be connected to a dock and its related decking when abutting upon any bay or canal.

3. There shall be a minimum seven-and-one-half-foot setback from the rear property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool.
4. For oceanfront properties, the setback shall be measured from the old city bulkhead line.
5. For properties containing a pre-1942 architecturally significant home, a five-foot setback from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure.

b. Side yard, interior setback.

1. A seven-and-one-half-foot minimum required setback from the side property line to a swimming pool deck, or platform, the exterior face of an infinity edge pool catch basin, or screen enclosures associated or not associated with a swimming pool.
2. Nine-foot minimum required setback from side property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool.
3. For properties containing a pre-1942 architecturally significant home, a five-foot setback from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure.

c. Side yard, facing a street.

1. A ten-foot setback from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure.
2. For properties containing a pre-1942 architecturally significant home, a five-foot setback from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure.

d. Walk space. A walk space at least 18 inches wide shall be provided between swimming pool walls and fences or screen enclosure walls. Every swimming pool shall be protected by a sturdy non-climbable safety barrier and by a self-closing, self-locking gate approved by the building official.

1. The safety barrier shall be not less than four (4) feet in height, 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 swimming pool area.
2. 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 not climbable and impenetrable.
3. The walls, whether of the stone or block type, shall be so erected to make them non-climbable.
4. Where a wire fence is to be used, it shall be composed of two-inch chainlink or diamond weave non-climbable type, or of an approved equal, with a top rail and shall be constructed of heavy galvanized material.
5. 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.

e. *Visual barriers for swimming pools.* Accessory swimming pools when located on any yard, facing a public street or alley, 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 division. The maximum height of the visual barrier shall be pursuant to article IV, division 5 of this chapter.

f. *Corner properties.* For corner lots with a home built prior to 2006, a ten-foot setback from the front property line and from the side lot line facing the street to the swimming pool, deck, platform or screen enclosure. For corner lots with radial corners, the front setback and the side setback facing the street shall be taken from the midpoint of the curve of the corner of the property.

g. *Homes with two fronts, or through lots, within single-family districts.* Lots with two fronts, or through lots (double frontage), as defined by section 114-1 of the City Code, shall be permitted to place a pool and pool deck, with a minimum ten-foot setback from the front property line, at the functional rear of the house.

(17) The following regulations shall apply for fences, lightpoles or other accessory structures associated with court games.

1. In a required front yard the maximum height of fences shall be ten (10) feet and the fences shall be set back at least 20 feet from the front property line.
2. In a required side and required rear yard, the maximum height of fences shall be ten (10) feet and the fences shall be set back at least seven-and-one-half (7½) feet from the interior side or rear property line. When the fence faces a street, the maximum height shall be ten (10) feet and the fence shall be set back at least 15 feet from the property line. For oceanfront properties, the rear lot line shall be the old city bulkhead line.
3. Accessory lighting fixtures, when customarily associated with the use of court games, shall be erected so as to direct light only on the premises on which they are located. 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 20 feet. Light is permitted to be cast on any public right-of-way.
4. All chainlink fences shall be coated with green, brown, or black materials.
5. When fences are located in required yards, they shall be substantially screened from view from adjacent properties, public rights-of-way, and waterways by landscape materials.
6. Any play surface, whether paved or unpaved, when associated with such court games, shall have the following minimum required yards: front—20 feet; interior side—7½ feet; any side facing on a street—15 feet; rear—7½ feet.
7. Landscaping, when associated with tennis courts, shall be allowed to equal the height of the fence. The area between the tennis court fence and the front lot line shall be landscaped and approved by the planning director prior to the issuance of a building permit.

**Section 3.** Chapter 142, entitled “Zoning Districts and Regulations,” Article II, entitled “District Regulations,” at Division 21, entitled “Town Center-Central Core (TC-C) District,” is hereby amended as follows:

**Chapter 142 - ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. - DISTRICT REGULATIONS**

\* \* \*

**DIVISION 21. - TOWN CENTER-CENTRAL CORE (TC-C) DISTRICT**

\* \* \*

**Sec. 142-744. Setbacks and encroachments.**

Setbacks and allowable encroachments into setbacks shall be as ~~per set~~ set forth in table A below. For the purposes of new construction in this zoning district, heights shall be measured from the City of Miami Beach Freeboard of five feet, unless otherwise noted.

\* \* \*

Street Class	Property line abutting	Building height at which Setback occurs	Minimum Setback from property line	Allowable Habitable Encroachments into setback
* * *				
N/A	Interior Side	Grade to 55 feet <u>on lots greater than 110 feet wide, or</u> Grade to 75 feet <u>on lots 110 feet wide or less.</u>	<u>0 feet</u>	<u>0 feet</u>
		55 feet to <u>maximum height on lots greater than 110 feet wide, or 75 feet to maximum height on lots 110 feet wide or less</u>	30 feet	10 feet

\* \* \*

**Sec. 142-745. - Street frontage, design, and operations requirements.**

The development regulations and street frontage requirements for the TC-C district are as follows:

(a) The following regulations shall apply to all frontages:

\*

\*

\*

(4) ~~Balconies~~ Habitable Encroachments. ~~Balconies~~ Habitable encroachments may encroach into required setbacks above a height of 15 feet up to the applicable distance indicated for allowable habitable encroachments in table A. Habitable encroachments include balconies, bay windows, trellises, pergolas, pool decks, roof top decks, and amenity decks. Notwithstanding the foregoing, allowable encroachments shall be permitted within required yards, as set forth in section 142-1132.

(8) *Commercial, hotel, and access to upper level frontages*. In addition to other requirements for specific frontage types and other requirements in the City Code, frontages for commercial, hotel, and access to upper level frontage shall be developed as follows:

\*

\*

\*

c. A shade structure that projects for a minimum depth of five feet into the setback beyond the building façade, shall be provided at a height between 15 feet and 25 feet. Said shade structure may consist of an eyebrow or similar structure. Additionally, an allowable habitable encroachment such as balconies or parking deck may take the place of the shade structure. Notwithstanding the foregoing, if the shade structure is not an integral structural component of the building, it may be located at a height between 15 feet measured from grade and 25 feet measured from the required City of Miami Beach Freeboard.

\*

\*

\*

(13) Drive-through. The use of driveways for drive-through commercial purposes shall be prohibited.

\*

\*

\*

(e) Class A. In addition to other requirements in the City Code, Class A frontages shall be developed as follows:

\*

\*

\*

(3) Driveways and vehicle access to off-street parking and loading shall be prohibited on a Class A frontage, unless it is the only means of egress to the site. Permitted drive-ways on Class A frontages shall be limited by the following:

- c. If a driveway is permitted it shall be limited to 22 feet in width and be incorporated into the façade of the building.
- d. Driveways shall be spaced no closer than 60 feet apart.
- e. Driveways shall consist of mountable curbs that ensure a continuation of the ten-foot clear pedestrian paths.
- f. If the only means of egress to the site is from a Class A frontage, automobile parking requirements may be waived by the design review board.

(4) Off-street loading shall be prohibited on a Class A frontage, unless it is the only means of egress to the site. Should the only means of egress to a site be from a Class A frontage, loading requirements may be waived by the design review board.

**Section 4.** Chapter 142, entitled "Zoning Districts and Regulations," Article IV, entitled "Supplementary District Regulations," at Division 4, entitled "Supplementary Yard Regulations," is hereby amended as follows:

**Chapter 142 - ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE IV. - SUPPLEMENTARY DISTRICT REGULATIONS**

\* \* \*

**DIVISION 4. - SUPPLEMENTARY YARD REGULATIONS**

\* \* \*

**Sec. 142-1132. - Allowable encroachments within required yards for districts other than single-family districts.**

The following regulations shall apply to allowable encroachments in all districts except single-family residential districts, unless otherwise specified in this code.

(a) *Accessory buildings.*

(1) — ~~In all districts, except single-family districts, a~~ 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 30 percent of the area of the required rear yard and provided it is not located closer than seven and one-half feet to a rear or interior side lot line and 15 feet when facing a street. Areas enclosed by screen 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.

(2) — ~~In single-family districts the following regulations shall apply to accessory buildings within a required rear yard:~~

a. — ~~Lot coverage. Accessory buildings that are not a part of the main building, shall be included in the overall lot coverage calculations for the site, and may be constructed in a rear yard, provided such accessory building (or accessory buildings) does not occupy more than 25 percent of the area of the required rear yard. Areas enclosed by screen 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.~~

b. ~~Size.~~ The area of accessory buildings shall be included in the overall unit size calculation for the site. In no instance shall the total size of all accessory building(s) exceed ten percent of the size of the main home on the subject site, or 1,500 square feet, whichever is less.

c. ~~Two-story structures.~~ The second floor of an accessory building shall not exceed 50 percent of the first floor area.

d. ~~Building separation.~~ Accessory buildings shall be separated from the main home by a minimum of five feet, open to the sky with no overhead connections.

e. ~~Setbacks.~~

1. ~~Single story.~~ A single story accessory building shall not be located closer than seven and one-half feet to an interior rear or interior side lot line, and 15 feet when facing a street. When facing a waterway, the minimum rear setback shall not be less than one-half of the required rear setback.

2. ~~Two-story.~~ A two-story accessory building shall not be located closer than ten feet to an interior side lot line, or the required side yard setback, whichever is greater, 15 feet when facing a street, and a rear setback of 15 feet. When facing a waterway, the minimum rear setback shall not be less than one-half of the required rear setback, or 15 feet, whichever is greater.

f. ~~Height.~~ Accessory buildings shall be limited to two stories. The maximum height shall not exceed 12 feet for a one-story structure and 20 feet for a two-story structure. The allowable height exceptions of Section 142-1161 shall not apply to accessory buildings in single-family districts.

g. ~~Uses.~~ Accessory buildings shall be limited to uses that are accessory to the main use, including, but not limited to, garage, carport, pergola, cabana, gazebo, maid's or guest's quarters. Components of the main structure, such as detached bedrooms or any habitable area of the single-family structure shall not be considered accessory uses.

h. ~~Utilities.~~ Accessory buildings may contain heating and air conditioning, washers and dryers, toilets, bar sinks and showers, but may not have full kitchen facilities. An outdoor built-in barbecue grill or similar cooking equipment shall be allowed as an accessory use, as may be permitted by the fire marshal and in accordance with the regulations contained in any applicable safety code or Florida Building Code.

(b) ~~Awnings.~~ In all districts, a~~n~~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 feet to any lot line except:

(1) An awning associated with a commercial use shall be permitted to extend from the entrance door to the street line of any building except those in a ~~single-family or townhome~~ district;

(2) The setbacks for awnings in a locally designated historic district or in the National Register of Historic Places shall be determined under the design review procedures pursuant to chapter 118, article VI, and shall be based upon the architecture of the building.

(c) *Boat, boat trailer, camper trailer or recreational vehicle storage.* In all districts, accessory storage of such vehicles shall be limited to a paved, permanent surface area within the side or rear yards, no such vehicle shall be utilized as a dwelling and such vehicles shall be screened from view from any right-of-way or adjoining property when viewed from five feet six inches above grade. Nothing in this subsection shall be construed to prohibit a dry dock facility when such facility is associated with a marina.

(d) *Canopies.* A canopy shall be permitted to extend from an entrance door to the street line of any building except those located in a ~~single-family or townhome~~ district. Where a sidewalk or curb exists, the canopy may extend to within 18 inches of the curb line. Such canopies shall not exceed 15 feet and 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 canopy valance of at least seven feet. The location of vertical supports for the canopy shall be approved by the public works director.

(e) ~~*Reserved. Carports and solar carports.*~~ Only one (1) carport or solar carport shall be erected within a required yard of a single-family home, subject to the following requirements, as may be applicable:

~~c. Carports shall be subject to the following requirements:~~

~~a. Carports shall be constructed of canvas and pipe for the express purpose of shading automobiles.~~

~~b. Setbacks. Minimum setbacks for carports shall be as follows:~~

~~i. Front yard — 18 inches from the property line, provided the carport is attached to or immediately adjacent to the main building.~~

~~ii. Interior side yard — four (4) feet from the property line.~~

~~iii. Side yard facing the street — 18 inches feet from the property line, provided the carport is attached to or immediately adjacent to the main building.~~

~~iv. The side of the carport that faces the required rear yard may be permitted to align with the walls of the existing residence, provided the residence is located a minimum of five (5) feet from the rear property line.~~

~~v. When a carport is detached and located more than 12 inches from the main home it shall not be located in the required front or side-facing-the-street yards.~~

~~c. Carports shall not be permitted to exceed 20 feet in width or 20 feet in length. An unobstructed view between the grade and the lower ceiling edge of the carport of at least seven (7) feet shall be maintained.~~

~~d. Carports constructed prior to the adoption of this section shall be considered as legal nonconforming structures. Such nonconforming canopies may be repaired or replaced; however, the degree of their nonconformity shall not be increased thereby.~~

~~d. Solar carports. Solar carports shall be subject to the following requirements:~~

~~a. Setbacks. Minimum setbacks for solar carports shall be as follows:~~

~~i. Front yard — 15 feet from the property line, provided the solar carport is attached to or immediately adjacent to the main building.~~

~~ii. Interior side yard — four (4) feet from the property line.~~

~~iii. Side yard facing the street — five (5) feet from the property line, provided the solar carport is attached to or immediately adjacent to the main building.~~

~~iv. The sides of the solar carport that face the required rear yard may be permitted to align with the walls of the existing residence, provided the residence is located a minimum of five (5) feet from the rear property line.~~

~~v. When a solar carport is detached and located more than 12 inches from the main home, it shall not be located in the required front or side-facing-the-street yards.~~

~~b. Solar carports shall not be permitted to exceed 20 feet in width or 20 feet in length. An unobstructed view between the grade and the lower ceiling edge of the carport of at least seven (7) feet shall be maintained.~~

(f) *Central air conditioners, emergency generators, swimming pool equipment, and other mechanical equipment.* Accessory central air conditioners, generators, swimming pool equipment, and any other mechanical equipment, including attached screening elements, may occupy a required side or rear yard, in single-family, townhome, or in the RM-1 residential multifamily-low-intensity districts, provided that:

(1) They are not closer than five (5) feet to a rear or interior side lot line or ten (10) feet to a side lot line facing a street.

(2) The maximum height of the equipment including attached screening elements, shall not exceed five (5) feet above current flood elevation, with a maximum height not to exceed ten (10) feet above grade, as defined in subsection 114-1, of the lot at which they are located.

(3) If visible from the right-of-way, physical and/or landscape screening shall be required.

(4) Any required sound buffering equipment shall comply with the setback requirements ~~is located outside the minimum five-foot yard area specified in subsection (f)(1) of this section.~~

(5) If the central air conditioning and other mechanical equipment do not conform to subsections (1), (2), (3), and (4) above, then such equipment shall follow the setbacks of the main structure.

(6) Washers and dryers located in the RM-1 district, which are abutting and connected to an existing building, shall comply with the following:

a. Washers and dryers shall be for the sole use of building residents.

b. Washers and dryers may be located closer than five (5) feet from a rear or interior side lot line, provided there are not adverse impacts on pedestrian circulation.

c. Washers and dryers shall be setback a minimum of 50 feet from the front property line, and shall not be located within any open courtyards.

d. Washers and dryers shall be physically screened, so that they are not visible from a public street or sidewalk.

e. The overall height of washers and dryers may exceed ten (10) feet above grade, if required to be located at or above minimum flood elevation.

(g) *Driveways.* Driveways and parking spaces leading into a property located in ~~single-family and~~ townhome districts are subject to the following requirements:

\*

\*

\*

(h) *Fences, walls, and gates.* Regulations pertaining to materials and heights for fences, walls and gates are as follows:

(1) All districts except I-1 and WD-2:

a. Within the required front yard, fences, walls and gates shall not exceed five (5) feet, as measured from grade. The height may be increased up to a maximum total height of seven (7) feet if the fence, wall or gate is set back from the front property line. Height may be increased one (1) foot for every two (2) feet of setback. For properties zoned multifamily and located within a locally designated historic district or site, fences shall be subject to the certificate of appropriateness review procedure, and may be approved at the administrative level.

b. Within the required rear or side yard, fences, walls and gates shall not exceed seven (7) feet, as measured from grade, except when such yard abuts a public right-of-way, waterway or golf course, the maximum height



shall not exceed five (5) feet. Within RS-1 or RS-2 single-family district, in the event that a property has approval for adjusted grade, the overall height of fences, walls and gates may be measured from adjusted grade, provided that the portion of such fences, walls or gates above four feet in height consists of open pickets with a minimum spacing of three inches, unless otherwise approved by the design review board or historic preservation board, as applicable.

- c. All surfaces of masonry walls and wood fences shall be finished in the same manner with the same materials on both sides to have an equal or better quality appearance when seen from adjoining properties. The structural supports for wood fences, walls or gates shall face inward toward the property. In the event that a masonry wall or wood fence cannot be equally finished on both sides an affidavit may be submitted at the time of inspection signed by the affected property owner waving this requirement, this shall not apply to portions of masonry wall or fence which face the right-of-way or water.

\*

\*

\*

(i) *Hedges.* ~~In all districts, t~~ There is are no height limitations. Hedge material must be kept neat, evenly trimmed and properly maintained. For corner visibility regulations see section 142-1135.

(j) *Hot tubs, showers, saunas, whirlpools, toilet facilities, swimming pool equipment, decks.* ~~In all districts, h~~ Hot tubs, showers, whirlpools, toilet facilities, 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 30 percent of the area of the required rear yard and provided it is not located closer than seven and one-half (7 ½) feet to a rear or interior side lot line. Swimming pool equipment may be located in the rear and/or side yard when it is at least two feet from a rear or interior side lot line; however, when a side yard faces a street, swimming pool equipment shall be located at least ten feet from the property line with landscaping or fencing constructed in a manner that prevents it being viewed from the street. Freestanding, unenclosed facilities including surrounding paved or deck areas shall adhere to the same setback requirements as enclosed facilities.

(k) *Lightpoles.* ~~In all districts~~ The following regulations shall apply to lightpoles:

- (1) Lightpoles shall have a maximum height of ten (10) feet. Lightpoles shall be located seven and one-half (7 ½) feet from any property line except that when such property line abuts a public right-of-way, or waterway there shall be no required setback.
- (2) All light from lightpoles shall be contained on-site or on any public right-of-way as required by the city Code.

(l) *Marine structures.* ~~In all districts, s~~ Seaward side yard setbacks for boat slips, decks, wharves, dolphin poles, mooring piles, davits, or structures of any kind shall not be less than seven and one-half (7 ½) feet. This requirement pertains to the enlargement of existing structures as well as to 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, and the mooring of any type of vessel or watercraft shall be prohibited along either side of the walkway leading from the seawall to a boat dock. Land side decks may extend to the deck associated with the marine structure. Lighting associated with, but not limited to, the deck, or marine structure shall be installed in such a manner to minimize glare and reflection on adjacent properties and not to impede navigation. The maximum projection of a marine structure shall be determined by the county department of environmental resource management. If a dock or any kind of marine structure/equipment whether it is or is not attached to a dock projects more than 40 feet into the waterway or it extends beyond the maximum projection permitted under section 66-113, the review and approval of the applicable state and county authorities shall be required. In the event any dock, boat slips, decks, wharves, dolphin poles, mooring piles, davits, or structures of any kind are proposed to extend greater than 40 feet from a seawall adjacent to, or abutting the WD-1 or WD-2 district, conditional use approval from the planning board, in accordance with chapter 118, article IV of the city Code, shall also be required.

(m) *Ornamental fixtures or lamps.* ~~In all districts, r~~ Requirements for ornamental fixtures and lamps shall be as follows:

- (1) Ornamental fixtures and lamps are permitted to be placed on walls or fences when they are adjacent to a public street, alley, golf course or waterway. The total height of the combined structure shall not exceed the required fence or wall height by more than two (2) feet.
  - (2) 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.
- (n) *Porte-cochere.* A porte-cochere shall be permitted to extend from an entrance door to the street line of any building except that porte-cocheres shall not be permitted in a ~~single-family or townhome~~ district. Where a sidewalk or curb exist, the porte-cochere may extend to within 18 inches of the sidewalk. The porte-cochere shall not exceed 30 percent of building core frontage in width or 16 feet in height or be screened or enclosed in any manner. It shall provide an unobstructed, clear space of not less than nine (9) feet between the grade and the underside of the roof of the porte-cochere.
- (o) *Projections.* ~~In all districts, e~~ Every part of a required yard shall be open to the sky, except as authorized by these land development regulations. The following may project into a required yard for a distance not to exceed 25 percent of the required yard up to a maximum projection of six (6) feet, unless otherwise noted.
- (1) Belt courses.
  - (2) Chimneys.

- (3) Cornices.
- (4) Exterior unenclosed private balconies.
- (5) Ornamental features.
- (6) Porches, platforms and terraces up to 30 inches above the adjusted grade elevation of the lot, as defined in chapter 114. ~~Within single-family districts, such projections and encroachments may be located up to the first habitable floor elevation and include stairs, steps, ADA-compliant ramps and related walkways, not exceeding five feet in width, which provide access to all porches, platforms, terraces and the first floor when elevated to meet minimum flood elevation requirements, including freeboard.~~
- (7) Roof overhangs.
- (8) Sills.
- (9) Window or wall air conditioning units.
- (10) Bay windows (not extending floor slab).
- (11) Walkways: Maximum 44 inches. May be increased to a maximum of five (5) feet for those portions of walkways necessary to provide Americans with Disabilities Act (ADA) required turn around areas and spaces associated with doors and gates. Walkways in required yards may exceed these restrictions when approved through the design review or certificate of appropriateness procedures, as applicable, and pursuant to chapter 118, article VI, of the city Code. Notwithstanding the foregoing, when required to accommodate ADA access to an existing contributing building within a local historic district, or National Register District, an ADA walkway and ramp may be located within a street side or interior side yard, with no minimum setback, provided all of the following are adhered to:
  - a. The maximum width of the walkway and ramp shall not exceed 44 inches and five (5) feet for required ADA landings;
  - b. The height of the proposed ramp and landing shall not exceed the finished first floor of the building(s); and
  - c. The slope and length of the ramp shall not exceed that which is necessary to meet the minimum Building Code requirements.

Additionally, subject to the approval of the design review board or historic preservation board, as applicable, an awning may be provided to protect users of the ADA walkway and ramp from the weather.

- (12) Electric vehicle charging stations and fixtures, located immediately next to an off-street parking space, shall be permitted where driveways and parking spaces are located.

~~(13) Electrical transformers and associated concrete pads, as required by Florida Power and Light (FPL) may be located up to the front or street side property line in single-family districts.~~

(13) Planters, not to exceed four (4) feet in height, when measured from the finished floor of the primary structure.

(p) *Satellite dish antennas.* ~~In all districts, s~~ Satellite dish antennas are only permitted in the rear yard or on top of multifamily or commercial buildings. Antennas shall be located and sized where they are not visible from the street. Satellite dish antennas shall be considered as an accessory structure; however the height of the equipment including its base to the maximum projection of the antenna, based upon maximum operational capabilities, to the top part of the antenna shall not exceed 15 feet. If it is attached to the main structure it may not project into a required yard.

#### **Sec. 142-1133. - Swimming pools.**

This section applies to swimming pools in all districts, except where specified. Accessory swimming pools, open and enclosed, or covered by a screen enclosure, or screen enclosure not covering a swimming pool, may only occupy a required rear or side yard, provided:

(1) *Rear yard setback.* ~~A six-foot minimum setback from rear property line to swimming pool deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure associated or not associated with a swimming pool, provided, however, that swimming pool decks may extend to the property line and be connected to a dock and its related decking when abutting upon any bay or canal. There shall be a minimum seven and one-half-foot setback from the rear property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool. For oceanfront properties, the setback shall be measured from the old city bulkhead line.~~

a. A six-foot minimum setback from rear property line to swimming pool deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure associated or not associated with a swimming pool.

b. Swimming pool decks may extend to the property line and be connected to a dock and its related decking when abutting upon any bay or canal.

c. There shall be a minimum seven and one-half-foot setback from the rear property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool.

d. For oceanfront properties, the setback shall be measured from the old city bulkhead line.

(2) *Side yard, interior setback.* ~~A seven and one-half-foot minimum required setback from the side property line to a swimming pool deck, or platform, the exterior face of an infinity edge pool~~

~~catch basin, or screen enclosures associated or not associated with a swimming pool. Nine-foot minimum required setback from side property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool.~~

a. A seven and one-half-foot minimum required setback from the side property line to a swimming pool deck, or platform, the exterior face of an infinity edge pool catch basin, or screen enclosures associated or not associated with a swimming pool.

b. Nine-foot minimum required setback from side property line to the water's edge of the swimming pool or to the waterline of the catch basin of an infinity edge pool.

(3) *Side yard facing a street.* For a side yard facing a street:

~~a. Single-family district. In a single-family district a ten-foot setback from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure.~~

~~b. All other districts. In all other districts a~~ A ~~15-foot setback from the property line to the swimming pool, deck or platform, the exterior face of an infinity edge pool catch basin, or screen enclosure.~~

\*

\*

\*

~~(7) Corner properties within single-family districts. For corner lots with a home built prior to 2006, a ten-foot setback from the front property line and from the side lot line facing the street to the swimming pool, deck, platform or screen enclosure. For corner lots with radial corners, the front setback and the side setback facing the street shall be taken from the midpoint of the curve of the corner of the property.~~

~~(8) Homes with two fronts, or thru lots, within single-family districts. Lots with two fronts, as defined by section 114-1 of the City Code, shall be permitted to place a pool and pool deck, with a minimum ten-foot setback from the front property line, at the functional rear of the house.~~

#### **SECTION 5. Repealer.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

#### **SECTION 6. Codification.**

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

#### **SECTION 7. Severability.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 8. Effective Date.**

This Ordinance shall take effect ten days following adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

ATTEST:

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

APPROVED AS TO FORM  
AND LANGUAGE  
AND FOR EXECUTION

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

\_\_\_\_\_  
Date

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

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

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