

City of Miami Beach
Planning, Design and Historic Preservation Division

Staff Recommendations

TO: Zoning Board of Adjustment Members

FROM: Dean J. Grandin, Jr.
Planning and Zoning Director



DATE: September 27, 1996

RE: MEETING DATE: OCTOBER 4, 1996

FILE NO. 2404

MICKY BISS/U.S.A. EXPRESS, INC.
120, 126, 130 OCEAN DRIVE

This application is a continued item from the meetings of September 9, 1994; February 10, March 3, April 7, September 8, December 1, 1995; and, March 1 and September 6, 1996.

The applicant, Micky Biss/USA Express, Inc., is appealing an administrative decision rendered by the Planning and Zoning Director on November 29, 1994, relative to plans submitted for a site at 120, 126, 130 Ocean Drive, Miami Beach. Specifically, it was the Director's administrative decision that the following five areas are to be included in the total floor area of the building in question when calculating its Floor Area Ratio (F.A.R.):

1. The elevator shaft at every level.
2. The stairwell at every level.
3. The plumbing and mechanical chases at every level.
4. The open common corridors/hallways at the apartment levels.
5. That portion of the balconies which are not projecting from the main face of the building and which are not open on two sides.

It is important to understand that this interpretation of the Zoning Ordinance 89-2665 has broad implications beyond the scope of the specific project being appealed. By excluding the contested items from the floor area of the proposed building, or any new building in the City, would effectively grant a significant floor area bonus above that which the Zoning Ordinance and the Comprehensive Plan now allow.

Before proceeding to examine each area being appealed, I believe it would be instructive in comprehending the current definition of floor area in Zoning Ordinance 89-2665. The definition is as follows:

79. **FLOOR AREA:** The sum of the gross horizontal areas of the floors of a Building or Buildings, measured from the Exterior faces of Exterior walls or from the Exterior face of an architectural projection, from the centerline of walls separating two attached Buildings.

However, the Floor Area of a Building shall not include the following unless otherwise provided for in this Ordinance.

- 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. However if the parking garage is the main permitted Use, then the Floor Area of the parking levels shall be included in the calculation of the Floor Area Ratio.
- f. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private Balconies.
- h. Floor Area located below Grade; however, if the ceiling is above Grade, 1/2 of the Floor Area that is below Grade shall be included in the FAR Floor Area Ratio calculation.
- i. Enclosed garbage rooms, enclosed within the Building on the Ground Floor level.

Volumetric Buildings, used for storage, where there are no interior floors, the Floor Area shall be calculated as if there was a floor for every eight (8) feet of height.

When Transfer of Development Rights are involved, see Section 6-29.C for additional regulations that address Floor Area.

Conceptually, the regulation of floor area by creating a floor area ratio is included in this Zoning Ordinance, as in other municipal zoning ordinances, as a mechanism to control the overall exterior mass of a building. That is why the floor area is measured to the exterior faces of exterior walls or from the exterior face of an architectural projection. It is from this total floor area volume that certain areas are excluded, as incentives to development.

Importantly, the current floor area definition is significantly similar to the definition in the prior Miami Beach Zoning Ordinance #1891, with a major exception. That definition reads as follows:

69. **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:

File No. 2404

Micky Biss/USA Express, Inc.

120,126,130 Ocean Drive

- 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 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 the following unless otherwise provided for in this Ordinance.

- 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.
- f. Mechanical equipment rooms located above main roof deck.
- g. Exterior unenclosed private balconies.

If the major exception is not readily obvious, it is that the prior definition included a listing of those types of areas that are to be included in floor area. When the Miami Beach Zoning Ordinance Review Committee (ZORC) examined this definition as part of the process in creating the new Zoning Ordinance 89-2665, it was decided to remove the "included spaces" since such a listing could not be entirely inclusive and could not possibly anticipate all types of specialized areas within a building. The definition did provide a basis, however, for the interpretation of that Ordinance, and has carried over to the interpretation of the current Zoning Ordinance.

It is interesting to note that most cities generally define floor area in the same manner, as exemplified in the Ordinance excerpts for the City of Miami and the City of Fort Lauderdale (see attached). What differs in these definitions are those specific areas which are either included or excluded from the floor area calculation. For instance, the City of Miami, prior to 1990, included stairways and elevator shafts in the floor area; after 1990, stairways and elevator shafts were excluded. The City of Fort Lauderdale does not include stairways or elevators in its calculation of floor area. The point being made here is that there is no universal definition of what is, or is not, included within a floor area calculation -- each municipality defines the term to meet its own development objectives and needs.

With these introductory findings and observations put forth for consideration, the balance of this report will focus on the specific areas of contention.

Elevator Shafts, Stairwells, Plumbing and Mechanical Chases at Every Level

I believe these three areas are related in that they deal with the issue of what constitutes a floor. The definition of floor area, as prescribed in Zoning Ordinance 89-2665, has already been provided herein; in part, it states, "...The sum of the gross horizontal areas of the floors of a Building or Buildings, measured from Exterior faces of Exterior walls or from the Exterior face of an architectural projection...". When taking this measurement, it extends to the exterior face of the building, meaning that the thickness of the exterior walls are included in each floor. Clearly this portion of the floor can not be walked on, but by definition it does exist as part of the floor. The same is true with regard to the interior walls and partitions.

As the term floor is not defined in the Zoning Ordinance, we must go to the dictionary for common usage. Webster's New World Dictionary (Second College Edition, 1982) defines "floor", when used as a noun, as follows:

1. the inside bottom surface of a room, hall, ext. on which one stands or walks
2. the bottom surface of anything (the ocean floor)
3. the platform of a bridge, pier, etc.
4. a level or story in a building (an office on the sixth floor)
5. a) the part of a Legislative chamber, stock exchange, etc. occupied by the members and not including the gallery or platform b) such members as a group
6. permission or the right to speak in an assembly (to ask a chairman for the floor)
7. a Lower Limit set on anything, as by official regulation
8. Naut. the part of a ship's bottom

Given that the definition of floor area in the Zoning Ordinance extends to the exterior of the building, the only definition of "floor" which would be applicable to the Zoning Ordinance is the fourth definition, i.e. a level or story in a building. Since the definition of floor area in the Ordinance also describes it as the gross horizontal areas of the floors, this would include everything on each floor, including even vertical projections piercing through said floors, such as elevator shafts, stairwells and chases.

In addition to the above argument, the following can be added. First, an elevator shaft accommodates an elevator cab which represents, in essence, a moving floor that stops at each stationary floor. With regard to stairwells, the treads and landings alone can add up to more square footage than that of a floor in this area, were it to be flat; furthermore, stairwells are generally accessed at each floor. As for mechanical and plumbing chases, they provide connections at each floor to provide the necessary service for each level of the building.

When referring back to Zoning Ordinance 1891, "elevator shafts and stairwells at each floor" were specifically listed as areas to be included in the calculation of floor area. Likewise, "mechanical equipment" was also listed in said Ordinance as an area to be included; the chases accommodating or serving said equipment were, and continued to be deemed, included in the calculation of floor area.

File No. 2404
Micky Biss/USA Express, Inc.
120,126,130 Ocean Drive

In conclusion, the Planning and Zoning Director has taken the position that elevator shafts, stairwells and plumbing and mechanical chases are to be included in the floor area of all levels of a building, including those levels that have parking.

Open Common Corridors/Hallways

In his letter to the Board (dated December 23, 1994) the applicant has not specifically addressed the issue of open common corridors/hallways, except to reference back to the administrative appeal (File #2377) for the property at 940 17th Street in Miami Beach. As such, I would reiterate the same arguments that were made for that case.

The applicant has contended that the open common corridor/hallway areas of the building "are nothing more than the functional equivalent of a terrace, open porch or breezeway". This argument might be viewed as acceptable if it were not for the fact that these exterior corridors offer the only means of egress to the hotel rooms and are a necessary component of the building's pedestrian circulation. Again referring back to the prior Zoning Ordinance #1891, exterior corridors have continually been interpreted as areas to be included in the floor area of a building.

The applicant previously referred to the definition of "terrace" in the American Heritage Dictionary, Second College Edition, as an argument as to why these exterior corridors should be considered as terraces and be excluded from the floor area. Specifically, the definition is quoted as follows: "1a. an open colonnaded platform, as a porch or promenade. b. a platform extending outdoor from the floor of the home or apartment building...".

In rebuttal, I offered the following definitions which clearly describe a terrace as an area generally raised slightly above ground level and not a projecting balcony from a building: "1. a raised level with a vertical or sloping front or rider joined with masonry, turf or the like, esp. one of a series of levels rising one above another" -- Random House Dictionary of the English Language, 1968; or, "a level space raised above the adjoining land, and usually flanked by a building." -- Dictionary of Architecture, Saylor, 1963; or "1. an embankment with level top often paved, planted and adorned for leisure use" - Dictionary of Architecture and Construction, MacGraw Hill, 1993.

In conclusion, the Planning and Zoning Director continues to contend that the exterior corridors/hallways are necessary as a means of building circulation and must be construed as elements of the building which are included in the floor area. Further, these exterior corridors are not the "functional equivalent" of a terrace, as the applicant has argued.

Non-projecting Portions of Balconies

With regard to balconies, the Planning and Zoning Director acknowledges that at least a portion, if not all, of these areas are excluded from the calculation of floor area. However, based on the definition of the term "balcony" in the Zoning Ordinance 89-2665, it has been interpreted that those portions of a balcony which do not project from the face of the building and are open on at least two sides (in other words, that area that is recessed behind the face of the building) are to be included in the calculation of floor area.

File No. 2404

Micky Biss/USA Express, Inc.

120,126,130 Ocean Drive

The definition of the term "balcony" in the Zoning Ordinance is as follows:

BALCONY: A platform that projects from the wall of a Building and has a parapet or railing, the long side of which is open above the guardrail or parapet. The platform may service one unit or it may be a continuous platform serving more than one unit with a wall separating the platform between the units.

I believe that the Ordinance has been consistently interpreted to mean that only that portion of the balcony which projects from the face of the building may be excluded from the calculation of floor area. Conversely, that area of the balcony recessed behind the face of the building is included in the floor area, since it adds to the visual bulk and mass of the building. In a sense, these recessed areas function more as a lanai which is defined as "a veranda or open-sided living room of a kind found in Hawaii" (from Webster's New World Dictionary, College Edition, 1982). The attached exhibit shows several conditions of balcony designs and how the Zoning Ordinance has been interpreted.

In conclusion, the Planning and Zoning Director has taken the position that only that portion of balconies projecting from the face of the building should be excluded from the floor area calculation and that all other areas are to be included in the floor area.

Conclusion

These conclusions and the administrative decision of the Planning and Zoning Director in the interpretation of Zoning Ordinance 89-2665 have not been done capriciously or solely with regard to the project at hand. Consultation with City staff, who have been assisting in the administration of both the current Zoning Ordinance and the preceding Ordinance 1891, has confirmed that these interpretations have been consistently applied for at least the past decade -- perhaps longer.

In view of the foregoing, the Planning and Zoning Director urges the Board to uphold his administrative decision, and deny the appeal made by the applicant.

DJG/ah
attachments

cc: Jose Garcia-Pedrosa, City Manager
Harry Mavrogenes, Assistant City Manager
Diana Grub, First Assistant City Attorney
Anthony O'Donnell, Baker and McKenzie

F:\PLAN\SZBA\RECOMM\2404OCT.96

Sec. 2012. Definitions and methods of measurement relating to standard LUI ratios; requirements and limitations.

The following definitions and methods of measurement shall be used in the districts and for the uses regulated under the LUI system. Subject to modifications made herein, specifically or in general, where further detail is needed in connection with definitions or methods for measurement in relation to residential uses regulated by the system, reference shall be made to appropriate sections of MPS or MAP. The floor area, open space, livability space, and recreation space ratios shall be applied only to such land area as is allocated for residential uses and accessory uses incidental to and compatible with residential uses.

For nonresidential uses, the floor area, open space, and pedestrian open space ratios shall be applied only to such land as is allocated for nonresidential uses.

2012.1. Reserved

2012.2. Residential land area

Residential land area is land for residential development and related uses, including open space on the lot or tract. Such lands shall be construed to include streets entirely within the residential portion of the development and lands accepted for dedication for public purposes. Residential land area shall not be construed to include lands not beneficial to residential use due to location or character, or areas used predominantly for commercial or other nonresidential purposes.

As a further guide, where floor area of a building is predominantly in residential use, the building site shall be included in residential land area (as, for example, in the case of a multifamily structure with ten (10) percent of its floor area in accessory commercial and service uses).

2012.3. Floor area defined; inclusions and exclusions; maximum limitations

2012.3.1. Residential floor area defined; inclusions and exclusions; maximum limitations

Residential floor area is the sum of areas for residential use on all floors of buildings, measured from the outside faces to the exterior walls or windows, including interior and exterior halls, lobbies, stairways, elevator shafts, mechanical rooms, enclosed porches and private enclosed balconies, and floor areas below Plane 1 (as defined in section 2016.1) used for habitation and residential access.

Not countable as residential floor area are:

- (a) Open terraces, patios, atriums, or balconies;
- (b) Carports, garages, breezeways, tool sheds;
- (c) Special purpose areas for common use of occupants, such as recreation rooms or social halls;
- (d) Staff space for therapy or examination in group care housing;
- (e) Basement space not used for living accommodations; or
- (f) Any commercial or other nonresidential space.

Maximum residential floor area shall not exceed the number of square feet derived by multiplying gross residential land area by the floor area ratio (FAR) applying.

2012.3.2. Nonresidential floor area defined; inclusions and exclusions; maximum limitations. Nonresidential floor area is the sum of areas for nonresidential use on all floors of buildings, measured from the outside faces of the exterior walls or windows, including interior and exterior halls, lobbies, stairways, elevator shafts, mechanical rooms, enclosed porches and balconies, and floor areas below Plane 1 (as defined in section 2016.1) used for nonresidential uses.

Not countable as nonresidential floor area are:

- (a) Parking and loading areas within buildings;
- (b) Open terraces, patios, atriums or balconies; or
- (c) Floor areas specifically excluded from floor area limitations by special provisions of these regulations.

Maximum floor area shall not exceed the number of square feet derived by multiplying gross residential land area by the floor area ratio (FAR) applying.

2012.4. Open space

2012.4.1. Open space definitions, residential and nonresidential

2012.4.1.1. Open space. Open space is the total horizontal area of uncovered open space plus half the total horizontal area of covered open space subject to limitations set forth below.

2012.4.1.2. Uncovered open space; residential and nonresidential

- (a) For residential uses, uncovered open space is total gross residential land area not covered by buildings, plus open exterior balconies and roof area improved as livability space.
- (b) For nonresidential uses, uncovered open space is total gross nonresidential land area not covered by buildings, plus open exterior balconies and roof areas improved as pedestrian open space.

2012.4.1.3. Covered open space. Covered open space is open space closed to the sky, designed for use as livability (residential) or pedestrian open space (nonresidential). Such space shall have not less than twenty (20) percent of its perimeter open or partially open. "Partially open" is to be construed as being unenclosed by grillwork, railings, glass or the like for at least fifty (50) percent of its surface area. Examples of covered open space are covered balconies, covered portions of roof area, or spaces under buildings supported by posts, columns, or cantilevers. The square feet countable as covered open space shall not exceed the square footage of the open or partially open sides.

2012.4.2. Minimum open space requirements; residential and nonresidential

- (a) Residential open space required shall be not less than the number of square feet derived by multiplying gross residential land area by the residential open space ratio (OSR) applying.

Floor area, nonresidential. Nonresidential floor area is the sum of areas for nonresidential use on all floors of buildings, measured from the outside faces of the exterior walls, including interior and exterior halls, lobbies, enclosed porches and balconies used for nonresidential uses.

Not countable as nonresidential floor area are:

- (a) Parking and loading areas within buildings;
- (b) Open terraces, patios, atriums or balconies;
- (c) Stairways, elevator shafts, mechanical rooms; or
- (d) Floor areas specifically excluded from floor area limitations by special provisions of these regulations.

Floor area, residential. The sum of areas for residential use on all floors of buildings, measured from the outside faces of the exterior walls or windows, including interior and exterior halls, lobbies, enclosed porches and private enclosed balconies and floor areas below floodplain.

Not countable as residential floor area are:

- (a) Open terraces, patios, atriums, or balconies;
- (b) Carports, garages, breezeways, tool sheds;
- (c) Special purpose areas for common use of occupants, such as recreation rooms or social halls;
- (d) Staff space for therapy or examination in group care housing;
- (e) Basement space not used for living accommodations;
- (f) Stairways, elevator shafts or mechanical rooms; or
- (g) Any commercial or other nonresidential space.

Florists. See Retail.

Food processing. A commercial establishment in which food is prepared or otherwise processed for human consumption but is not consumed on premises and is generally sold to a distributor.

Food establishment—take-out only. An establishment serving prepared food, not for consumption on the premises, from which tables, chairs, eating counters and stools are excluded. Such establishments shall not encompass waiting areas totalling over one hundred (100) square feet in size.

Fortuneteller. See Astrologists.

Fraternity; sorority; student center. The terms "fraternity," "sorority" or "student center" refer to buildings or portions of buildings constructed and reserved primarily for fraternity, sorority, or student center purposes. Application of the regulations herein set out is intended

elling, multiple-family. See "Apartment."

elling, one-family. A "one-family dwelling" is a detached building designed for or occupied exclusively by one family.

ily. A "family" is one or more persons living together in a single housekeeping unit, supplied with a kitchen or facilities for doing their cooking on the premises.

ce. A fabricated vertical physical barrier extending above grade and anchored below it, but not constructed as a wall.

r area. The gross floor area measured from the exterior faces of the exterior walls, the exterior faces of supporting exterior columns for any floor not enclosed by exterior walls, the centerline of any party wall separating two buildings, or as measured from the exterior face of a building, the area of which is included in this definition. The area does include:

Exterior corridor space from which access is gained to dwelling units or hotel rooms.

Floor space in penthouses.

Floor space in accessory buildings.

Floor space in interior balconies or mezzanines.

The area does not include:

Covered or enclosed parking areas.

Exterior unenclosed private balconies.

Floor space used for mechanical equipment for the building.

Elevator shafts and stairwells at each floor.

7. "Fowl" is any guineas, peafowl, pigeons, pheasants and birds.

ge apartment. A "garage apartment" is a detached building that is erected as an accessory building and, where located, contains living quarters for not more than two (2) families in addition to the garage space. Unless garage space for more than two (2) automobiles is provided, living quarters for more than one family shall not be provided in the building. The building must conform with all requirements for accessory buildings, and with the lot area and floor area of existing buildings in the zone wherein located.

8. 81-1

1. 1.1

Garage, mechanical. A "mechanical garage" is a building, except those described as a private or storage garage, where automotive vehicles are mechanically repaired or reconstructed.

Garage, private. A "private garage" is a garage used for business, service or industry connected directly or indirectly with motor vehicles is carried on.

Garage, public. A "public garage" is a building used for public use for the storage and repair of automotive vehicles.

Garage, storage. A "storage garage" is a building, except those described as a private garage, used for the storage of automotive vehicles.

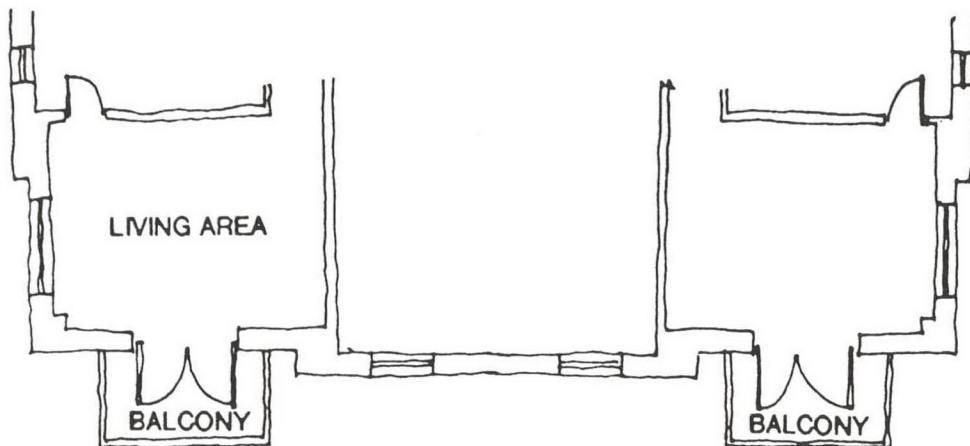
Gasoline and oil filling stations. "Gasoline and oil filling stations" are structures or places where gasoline and oil are supplied and dispensed to the motor vehicle where only minor repair work is performed.

Grade. The natural elevation of the ground, whether to abutting properties, or the grade established as a floor elevation by the flood insurance map published by the U.S. Department of Housing and Urban Development.

Miami Beach Balcony Types

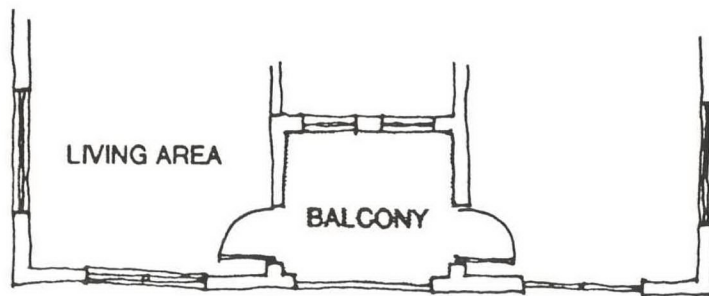
Example "A"

Balcony projects completely from the face of building and is open on three sides. No portion is counted in the floor area.



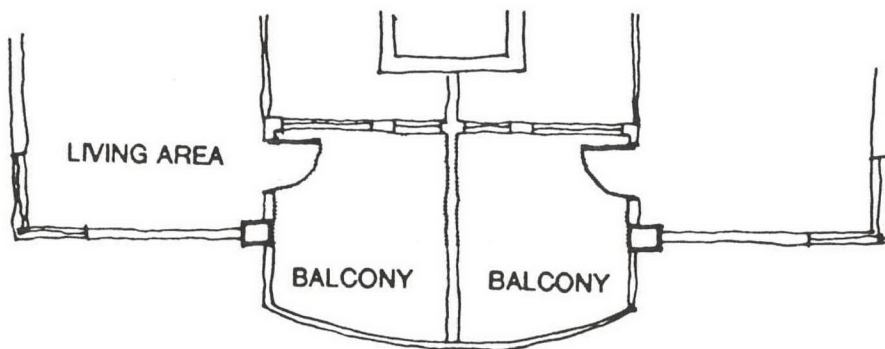
Example "B"

Balcony is completely behind the face of building, only open on one side. All of the balcony is counted in the floor area.



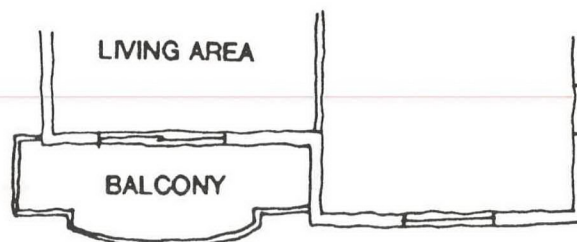
Example "C"

Balcony has portions projecting from building and behind the building face. Only that portion projecting from building faces is excluded in the floor area.



Example "D"

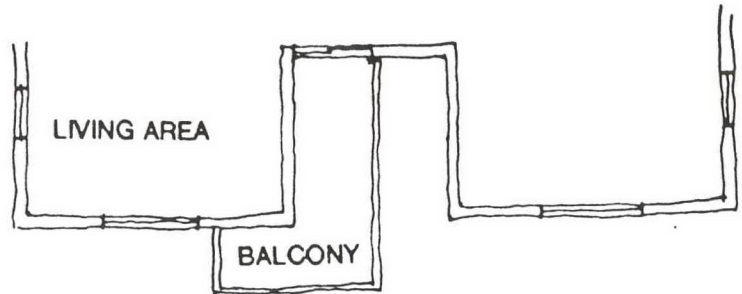
Balcony is projecting from face of building and is open on two sides. No portion is counted in the floor area.



Miami Beach Balcony Types

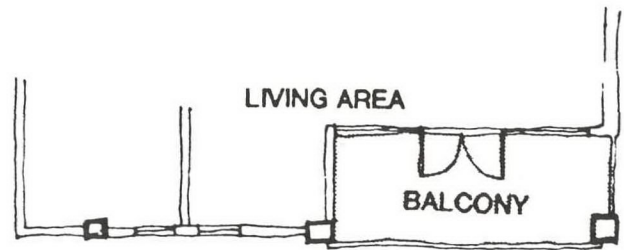
Example "E"

Balcony is projecting from face of building and is open on two sides. No portion is counted in the floor area.



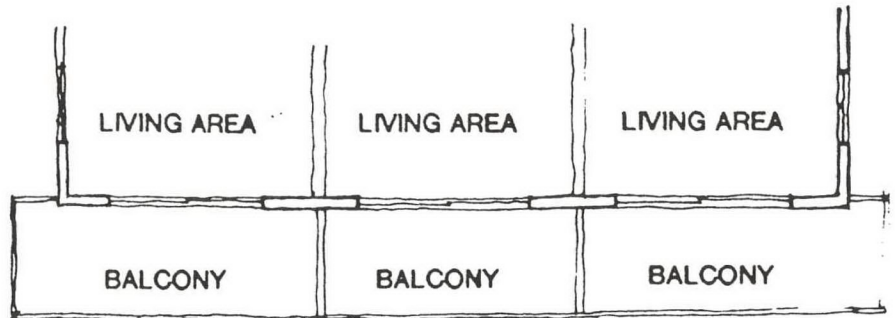
Example "F"

Balcony is not open above the guardrail as required by definition. All of the balcony is counted in the floor area.



Example "G"

Balcony is a continuous platform which project from the face of building and services more than one unit. No portion is counted in the floor area.



Example "H"

Balcony has a portion behind the main building face. Only that portion projecting from building face is excluded in the floor area.

