

MIAMI BEACH

PLANNING DEPARTMENT

BOARD OF ADJUSTMENT STAFF REPORT

FROM: Thomas R. Mooney, AICP
Planning Director



DATE: November 1, 2019 Meeting

RE: File No. ZBA19-0097
500 Alton Road – Appeal of Administrative Determination Related to the Calculation of Floor Area/Floor Area Ratio (FAR)

South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC and KGM Equities, LLC (the “Appellants”) have filed an application, pursuant to Article I, Section 2 of the Related Special Acts, to appeal an administrative determination of the Planning Director, issued on July 10, 2019, regarding the calculation of “floor area” and/or “floor area ratio” (FAR), pursuant to the Land Development Regulations.

STAFF RECOMMENDATION:

DENY the appeal and **AFFIRM** the determination of the Planning Director.

PLANNING SUMMARY

An appeal has been filed to the Board of Adjustment regarding the Planning Director’s calculation of “floor area” pursuant to the City’s Land Development Regulations. Specifically, the Appellants challenge the inclusion of the following building elements in floor area calculations: elevator shafts, stairwells, and mechanical chutes and chases (the “Elements”) (altogether, the “Determination”). Attached is a comprehensive brief and sworn affidavit of the Planning Director, setting forth the Planning Director’s response to the appeal, and asserting several compelling reasons for the Board of Adjustment to deny the appeal and, correspondingly, affirm the Determination. The appellant presents no legitimate basis to overturn the Determination and many good reasons exists to affirm it.

At the outset, it is important to note that the change to the definition or calculation of floor area advocated by the appellants has broad implications that reach far beyond the scope of the project referenced in the subject appeal. The exclusion of the Elements from the calculation of floor area for the proposed development at 500 Alton Road, and any new building in the City, would result in an increase in floor area above that which is currently allowed under both the Land Development Regulations and the Comprehensive Plan. Additionally, any such change would create new available floor area for existing buildings that were built at the current maximum FAR.

Floor area ratio (FAR) is a defined term in Section 114-1 of the Land Development Regulations (LDRs) and is essentially a multiplier used to regulate the maximum size of a building based on the lot size. For example, a 10,000 square foot lot with an FAR of 2.0 would be allowed to build up to a 20,000 square foot building. Floor area is also a defined term in Section 114-1 of the LDRs and provides the specific requirements for the calculation of floor area. Under

section 114-1, floor area consists of the gross horizontal areas of the floors of a building, unless such areas are specifically exempted. The only exceptions to the definition of floor area are expressly listed in Section 114-1. It is vitally important to note that no exception exists for the Elements. Because they are not excluded, it follows necessarily that they are included (see Response pages 6 and 13-15). This is the way that the City has calculated floor area for decades (see Response pages 5-6), it is the same way that the prior Planning Director calculated floor area (see Response pages 6-7 and 15), it is the same way that the Board of Adjustment previously ordained that floor area be calculated (see Response pages 6-7); and, notably, it is the same way that floor area has been calculated in several projects proposed by the principals of the appellants (see Response pages 8 and 17). In sum, there is nothing new or novel about the Determination. It's the same way the City always calculates floor area.

The purpose of the regulation of floor area, including FAR, both in the City of Miami Beach and in other municipalities, is to provide a quantifiable mechanism to control both the size and intensity, as well as the overall exterior mass, of a building. That is why floor area is measured to the exterior face of exterior walls or from the exterior face of an architectural projection. Under the Miami Beach City Code, it is from this total floor area volume that certain areas are excluded.

The current requirements for FAR and floor area have been in place since 1989 (Ordinance 89-2665), and the only amendments subsequent to 1989 have been to the exceptions from floor area. More importantly, the current floor area definition is substantially similar to the definition of floor area in the prior Miami Beach Zoning Code (Ordinance 1891). The major difference is that under Ordinance 1891, the areas included in the calculation were expressly identified, and included *elevator shafts or stairwells at each floor*, as well as any floor space used for residential use, no matter where it was located within the building.

As you will see in the attached response brief, this historic context is very important relative to the Miami Beach Zoning Ordinance Review Committee's (ZORC) examination of the definition of floor area in 1987 and 1988, as part of the process to create Ordinance 89-2665. In this regard, ZORC recommended that individually listed "included spaces" be removed from Ordinance 89-2665, and that the definition be broadened to simply include all the spaces previously listed individually. The reason for this change was that any attempt to list all spaces included in the definition of "floor area" could not be entirely inclusive, and could not anticipate all types of specialized areas within a building.

Finally, it is important to note that most cities using FAR as a method for regulating building intensity generally define floor area in the same manner as Miami Beach. What differs in these definitions are those specific areas which are either included or excluded from the floor area calculation. Some cities include stairways and elevator shafts in the floor area, and some do not. As noted previously when the Board of Adjustment upheld the current interpretation of floor area in 1994, the key point made then, and now, 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.

In summary, while the attached response brief is lengthy, it is also thorough, and I cannot impress enough upon the members of the Board of Adjustment the importance of reviewing the entire document. Most importantly, the response underscores the importance of upholding over 40 years of well-established zoning precedent and recognizes that the sole authority to effectuate significant changes in public policy lies in the legislative body—the City

Commission. The City Commission has had the repeated opportunity to change the definition of floor area to exclude the Elements (see Response pages 13-15) and it has elected not to do so. Relatedly, the Board of Adjustment has previously looked at this issue and it too declined to exclude the Elements. For the reasons more particularly explained in the attached brief, the arguments presented in the appeal do not withstand scrutiny and should be rejected accordingly.

RECOMMENDATION:

In view of the foregoing analysis, staff recommends the appeal be **DENIED** and the determination of the Planning Director be **AFFIRMED**.