

## PLANNING BOARD CUP APPEAL STAYS

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

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH BY AMENDING CHAPTER 118 OF THE LAND DEVELOPMENT REGULATIONS, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING ARTICLE I, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING SECTION 118-9, ENTITLED "REHEARING AND APPEAL PROCEDURES," TO ALLOW THE ISSUANCE OF A BUILDING PERMIT, CERTIFICATE OF OCCUPANCY, OR A BUSINESS TAX RECEIPT TO ISSUE TO AN APPLICANT WHOSE PLANNING BOARD CONDITIONAL USE APPROVAL APPLICATION IS ON APPEAL, ALLOWING AN EXCEPTION TO THE CITY'S RULE THAT REQUIRES FINAL RESOLUTION OF ALL ADMINISTRATIVE AND COURT PROCEEDINGS, SO LONG AS THE CERTAIN CONDITIONS CONTAINED IN 118-9 ARE COMPLIED WITH, AND PROVIDED THE APPLICANT EXECUTES A WRITTEN AGREEMENT HOLDING THE CITY HARMLESS AND INDEMNIFYING THE CITY FROM ANY LIABILITY OR LOSS SHOULD THE COURT PROCEEDINGS NOT END FAVORABLY TO THE APPLICANT; AND PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

**WHEREAS**, the City's Land Development Regulations, at Chapter 118, Article IV, establish a process to determine if certain uses, referred to as conditional uses, should be permitted, given a particular location; and

**WHEREAS**, the Land Development Regulations grant the Planning Board the power and duty to consider conditional use permit applications; and

**WHEREAS**, conditional use permit application hearings are public, quasi-judicial hearings for which notice is provided to neighboring properties; and

**WHEREAS**, the Planning Board may approve conditional use permit applications in accordance with the procedures and standards set forth in the Land Development Regulations; and

**WHEREAS**, the purpose of a Planning Board hearing on a conditional use permit application is to analyze the facts particular to the application, and weigh all pertinent factors to determine the impacts of the proposed use on neighboring properties; and

**WHEREAS**, the Land Development Regulations set forth the regulations through which the approval of a conditional use permit may be appealed; and

**WHEREAS**, pursuant to City Code Section 118-9(c)(5), "[a]n appeal of a board order stays all work on the premises and all proceedings in furtherance of the action appealed from," unless one of two exceptions applies; and

**WHEREAS**, accordingly, the Land Development Regulations do not permit the issuance of a building permit, certificate of occupancy, or a business tax receipt during the pendency of an appeal (to Circuit Court) of a conditional use permit; and

**WHEREAS**, pursuant to the Florida Rules of Appellate Procedure, Planning Board orders on applications for conditional use permits may be reviewed by petition for writ of certiorari, which must be filed in Circuit Court; and

**WHEREAS**, appeals to Circuit Court can delay the development of a project and render the finalization of a project financially impracticable; and

**WHEREAS**, this Ordinance creates a very limited exception to the automatic stay provisions in City Code Section 118-9(c)(5), in order to allow an applicant to be issued a building permit, certificate of occupancy, or a business tax receipt, pending an appeal of an order granting a conditional use permit. However, the applicant would only be eligible for this exception to the automatic stay provisions if strict conditions are met. Additionally, the applicant would be required to agree to indemnify and hold the City harmless from any liability or loss resulting from (i) the underlying appellate or administrative proceedings, (ii) any challenge to the application of this Ordinance, and (iii) any proceedings resulting from the issuance of a building permit, certificate of occupancy, or business tax receipt; and

**WHEREAS**, therefore, the applicant would be required to assume all risks associated with the pending appeal, including the possibility that the applicant would be required to restore the property to its original condition, in the event that the conditional use permit is reversed; and

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

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

**SECTION 1.** Chapter 118 is hereby amended as follows:

**CHAPTER 118  
ADMINISTRATION AND REVIEW PROCEDURES**

\* \* \*

**ARTICLE I. IN GENERAL**

\* \* \*

**Sec. 118-9. – Rehearing and appeal procedures.**

The following requirements shall apply to all rehearings and appeals by land development boards unless otherwise more specifically provided for in these land development regulations, and applicable fees and costs shall be paid to the city as required under section 118-7 and appendix A to the Land Development Regulations. As used herein, "land use board(s)" shall mean the board of adjustment, design review board, historic preservation board and planning board.

\* \* \*

*(c) Appeals of land use board applications:*

(1) Decisions of the following shall be final, and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari:

- A. Planning board.
- B. Board of adjustment.
- C. Design review board, with respect to variance decisions and administrative appeals, only.
- D. Historic preservation board, with respect to variance decisions and administrative appeals, only.
- E. Historic preservation special master.

\* \* \*

(5) Stay of work and proceedings on appeal. An appeal of a board order stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:

- (i) A stay would cause imminent peril to life or property. In such a case, proceedings or work shall not be stayed except by a restraining order, which may be granted by the board or by a court of competent jurisdiction, upon application for good cause shown; or
- (ii) ~~If the appeal arises from an application for development review board hearing or other approval requiring a hearing before a land use board, the final order shall contain appropriate conditions to stay its effectiveness until the final resolution of all administrative and court proceedings. No building permit, or certificate of occupancy, or business tax receipt, dependent upon such hearing approval, shall be issued until the final resolution of all administrative and court proceedings as certified by the city attorney. The applicant for such land use board hearing shall hold the city harmless and agree to indemnify the city from any liability or loss resulting from such proceedings. Notice of the final resolution of administrative and court proceedings shall be provided as required for notice of hearings under these land development regulations. Notwithstanding the foregoing, an appeal to the board or court, or other challenge to an administrative official's decision, shall neither stay the issuance of any building permit, full building permit or phased building permit nor stay the running of the required time period set by board order or these land development regulations to obtain a full building permit or phased building permit.~~
- (ii) As applicable only to an appeal arising from the planning board's approval of a conditional use permit, the city may issue a building permit, certificate of occupancy, or a business tax receipt to the applicant,

pending the final resolution of all administrative and court proceedings, so long as the following conditions are met:

- a. The conditional use permit was appealed by a party other than the city;
- b. The property subject to the conditional use permit is located within a commercial district and is also located within a historic district;
- c. The scope of the conditional use permit is limited to modifications to an existing structure;
- d. The applicant is not seeking the demolition of any portion of a contributing structure; and
- e. In the event that the conditional use permit is reversed on appeal, the applicant must immediately cease all operations subject to the conditional use permit, and the applicant's business tax receipt shall be automatically revoked.

In order to apply for a building permit, certificate of occupancy, or business tax receipt pursuant to this subsection (c)(5)(ii), while an appeal is pending, the applicant shall be required to comply with all of the conditions in subsections (c)(5)(ii)(a) through (e), as well as all conditions of the conditional use permit. The applicant shall also be required to execute a written agreement (in a form acceptable to the city attorney) holding the city harmless and indemnifying the city from any liability or loss resulting from the underlying appellate or administrative proceedings, any civil actions relating to the application of this subsection (c)(5)(ii), and any proceedings resulting from the issuance of a building permit, certificate of occupancy, or business tax receipt. Such written agreement shall also bind the applicant to all requirements of the conditional use permit, including all enforcement, modification, and revocation provisions; except that the applicant shall be ineligible to apply for any modifications to the conditional use permit or any other land use board order impacting the property, until the final resolution of all administrative and court proceedings as certified by the city attorney. Additionally, the applicant must agree that, in the event that the conditional use permit is reversed, the applicant shall be required to restore the property to its original condition.

\* \* \*

## **SECTION 2. REPEALER.**

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

**SECTION 3. CODIFICATION.**

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

**SECTION 4. SEVERABILITY.**

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

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

**ATTEST:**

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

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

First Reading: December 13, 2017  
Second Reading: January \_\_\_\_, 2018

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