

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: January 28, 2020

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB 19-0335. Demolition by Neglect - Presumption clause.**

REQUEST

PB 19-0335. Demolition by Neglect – Presumption Clause. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE X, "HISTORIC PRESERVATION," DIVISION 1, "GENERALLY," BY AMENDING SECTION 118-503 THEREOF, ENTITLED "SCOPE, POLICIES AND EXEMPTIONS," TO AMEND THE REGULATIONS APPLICABLE TO CONTRIBUTING BUILDINGS THAT ARE DEMOLISHED WITHOUT A CERTIFICATE OF APPROPRIATENESS; 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 July 17, 2019, at the request of Commissioner Ricky Arriola, the City Commission referred a discussion item to the Land Use and Development Committee (Item C4 O), pertaining to the establishment of penalties for property owners engaging in demolition by neglect. The item was discussed at the October 30, 2019 meeting, and the Land Use Committee recommended that the City Commission refer an amendment to chapter 118, article X, pertaining to a presumption clause, to the Planning Board.

On October 30, 2019, the LUDC recommended that the City Commission referred the proposed amendment to the Planning Board. On December 11, 2019, the City Commission referred the proposed amendment to chapter 118, article X, pertaining to a presumption clause, to the Planning Board and Historic Preservation Board.

On January 14, 2020, the Historic Preservation Board reviewed the proposed ordinance amending Section 118-503 of the City Code to create a presumption for the reconstruction of demolished contributing structures. The Board voted unanimously (5-0, 2 absent) to transmit a favorable recommendation to the Planning Board and City Commission for adoption of the ordinance.

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 strengthen and clarify the consequences of demolition by neglect 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.**
Partially Consistent – The proposal will not affect the resiliency of the City with respect to sea level rise.
- (3) **Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**
Partially Consistent – The proposal does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

Attached is a proposed amendment to chapter 118, Article X of the Land Development Regulations, which creates a presumption clause if a contributing structure is demolished, for any reason, including, but not limited to demolition by neglect, without first obtaining a Certificate of Appropriateness from the Historic Preservation Board. The following is the specific draft amendment to section 118-503:

Sec. 118-503. - Scope, policies and exemptions.

* * *

(b) Policies.

(1) *After-the-fact certificates of appropriateness for demolition.* In the event any demolition as described above or in subsection (b) of this section should take place prior to historic preservation board review, the demolition order shall be conditioned to require the property owner to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board, within 15 days of the issuance of the demolition order. No "after-the-fact" fee shall be assessed for such application. The board shall review the demolition and determine whether and how the demolished building, structure, landscape feature or the partially or fully demolished feature of the exterior or public interior space of a structure, shall be replaced. The property owner shall also be required, to the greatest extent possible, to retain, preserve and restore any demolished feature of a structure until such time as the board reviews and acts on the "after-the-fact" application. In the event the property owner fails to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board within 15 days of the issuance of an emergency demolition order, the city may initiate enforcement proceedings including proceedings to revoke the certificate of use, occupational license, any active building permit(s) or certificate of occupancy of the subject site, whichever is appropriate. Additionally, this article may be enforced and violations may be punished as provided in section 114-8 of this Code; or by enforcement procedures as set forth in the Charter and penalties as provided in section 1-14 of this Code.

(2) *Replacement of existing structures.* The policy of the City of Miami Beach shall be a **presumption** that a contributing building demolished without obtaining a certificate of appropriateness from the historic preservation board, shall only be replaced with a new structure that incorporates the same height, massing and square footage of the previous structure on site, not to exceed the **FAR of the demolished structure, and not to exceed the maximum FAR and height permitted under the City Code, with no additional square footage added.** This **policy presumption** shall be applicable in the event a building permit for new construction or for repair or rehabilitation is issued, and demolition occurs for any reason, including, but not limited to, an order of the building official or the county unsafe structures board. This **policy presumption** shall also be applicable to any request for an "after-the-fact" certificate of appropriateness. This **policy presumption** may be rebutted, and the historic preservation board may allow for the addition of more square footage, where appropriate, not to exceed the maximum permitted under the City Code, if it is established to the satisfaction of the historic preservation board that the following criteria have been satisfied:

- a. The proposed new structure is consistent with the context and character of the immediate area; and
- b. The property owner made a reasonable effort to regularly inspect and maintain the structure free of structural deficiencies and in compliance with the minimum maintenance standards of this Code.

(3) *Replication of demolished contributing structures.* The historic preservation board shall determine, on a case-by-case basis, whether the replication of an original, contributing

structure is warranted. For purposes of this subsection, replication shall be defined as the physical reconstruction, including all original dimensions in the original location, of a structure in totality, inclusive of the reproduction of primary facade dimensions and public area dimensions with appropriate historic materials whenever possible, original walls, window and door openings, exterior features and finishes, floor slab, floor plates, roofs and public interior spaces. The historic preservation board shall have full discretion as to the exact level of demolition and reconstruction required. If a building to be reconstructed is nonconforming, any such reconstruction shall comply with all of the requirements of chapter 118, article IX, of these land development regulations.

From a legal standpoint, a presumption shifts the burden of proof from one party to the other. In the case of an after-the-fact Certificate of Appropriateness (C of A) for demolition, replacing the word 'policy' with 'presumption', more clearly places the legal burden on the property owner of a building that was demolished without a C of A to demonstrate evidence why the HPB should allow the building to be replaced by something other than a structure that does not exceed the height, massing, and square footage of the previous structure on site (which is the presumed default).

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.

Demolition by Neglect – Presumption Clause

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, FLORIDA, BY AMENDING CHAPTER 118, “ADMINISTRATION AND REVIEW PROCEDURES,” ARTICLE X, “HISTORIC PRESERVATION,” DIVISION 1, “GENERALLY,” BY AMENDING SECTION 118-503 THEREOF, ENTITLED “SCOPE, POLICIES AND EXEMPTIONS,” TO AMEND THE REGULATIONS APPLICABLE TO CONTRIBUTING BUILDINGS THAT ARE DEMOLISHED WITHOUT A CERTIFICATE OF APPROPRIATENESS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the demolition of contributing structures without obtaining a Certificate of Appropriateness from the Historic Preservation Board threatens the urban fabric, character, and integrity of the City’s historic districts; and

WHEREAS, City Code Section 118-503(b)(2) currently provides that “[t]he policy of the City of Miami Beach shall be that a contributing building demolished without obtaining a certificate of appropriateness from the historic preservation board, shall only be replaced with a new structure that incorporates the same height, massing and square footage of the previous structure on site, not to exceed the maximum FAR and height permitted under the City Code, with no additional square footage added”; and

WHEREAS, this Ordinance clarifies that the demolition of a contributing building without obtaining a Certificate of Appropriateness raises a *presumption* that any replacement structure shall be limited to the height, massing, square footage, and FAR of the demolished structure.

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

SECTION 1. Chapter 118, “Administration and Review Procedures”, Article X, “Historic Preservation”, Division 1, “Generally” is hereby amended as follows:

**CHAPTER 118
ADMINISTRATION AND REVIEW PROCEDURES**

* * *

ARTICLE X. – HISTORIC PRESERVATION

DIVISION 1. – GENERALLY

* * *

Sec. 118-503. - Scope, policies and exemptions.

* * *

(b) *Policies.*

(1) *After-the-fact certificates of appropriateness for demolition.* In the event any demolition as described above or in subsection (b) of this section should take place prior to historic preservation board review, the demolition order shall be conditioned to require the property owner to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board, within 15 days of the issuance of the demolition order. No "after-the-fact" fee shall be assessed for such application. The board shall review the demolition and determine whether and how the demolished building, structure, landscape feature or the partially or fully demolished feature of the exterior or public interior space of a structure, shall be replaced. The property owner shall also be required, to the greatest extent possible, to retain, preserve and restore any demolished feature of a structure until such time as the board reviews and acts on the "after-the-fact" application. In the event the property owner fails to file an "after-the-fact" application for a certificate of appropriateness for demolition to the historic preservation board within 15 days of the issuance of an emergency demolition order, the city may initiate enforcement proceedings including proceedings to revoke the certificate of use, occupational license, any active building permit(s) or certificate of occupancy of the subject site, whichever is appropriate. Additionally, this article may be enforced and violations may be punished as provided in section 114-8 of this Code; or by enforcement procedures as set forth in the Charter and penalties as provided in section 1-14 of this Code.

(2) *Replacement of existing structures.* The policy of the City of Miami Beach shall be a presumption that a contributing building demolished without obtaining a certificate of appropriateness from the historic preservation board, shall only be replaced with a new structure that incorporates the same height, massing and square footage of the previous structure on site, not to exceed the floor area ratio (FAR) of the demolished structure, and not to exceed the maximum FAR and height permitted under the City Code, with no additional square footage added. This ~~policy~~ presumption shall be applicable in the event a building permit for new construction or for repair or rehabilitation is issued, and demolition occurs for any reason, including, but not limited to, an order of the building official or the county unsafe structures board. This ~~policy~~ presumption shall also be applicable to any request for an "after-the-fact" certificate of appropriateness. This ~~policy~~ presumption may be rebutted, and the historic preservation board may allow for the addition of more square footage, where appropriate, not to exceed the maximum permitted under the City Code, if it is established to the satisfaction of the historic preservation board that the following criteria have been satisfied:

- a. The proposed new structure is consistent with the context and character of the immediate area; and
- b. The property owner made a reasonable effort to regularly inspect and maintain the structure free of structural deficiencies and in compliance with the minimum maintenance standards of this Code.

(3) *Replication of demolished contributing structures.* The historic preservation board shall determine, on a case-by-case basis, whether the replication of an original, contributing structure is warranted. For purposes of this subsection, replication shall be defined as the physical reconstruction, including all original dimensions in the original location, of a structure in totality, inclusive of the reproduction of primary facade dimensions and public area dimensions with appropriate historic materials whenever possible, original walls, window and door openings, exterior features and finishes, floor slab, floor plates, roofs and public interior spaces. The historic preservation board shall have full discretion as to the exact level of demolition and reconstruction required. If a building to be reconstructed is nonconforming, any such reconstruction shall comply with all of the requirements of chapter 118, article IX, of these land development regulations.

SECTION 2. Repealer.

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

SECTION 3. Codification.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida, as amended. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. Severability.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. Effective Date.

This Ordinance shall take effect the ____ day of _____, 2020.

PASSED AND ADOPTED this ____ day of _____, 2020.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

City Attorney

Date

First Reading: _____, 2020

Second Reading: _____, 2020

Verified by: _____
Thomas R. Mooney, AICP
Planning Director