

Clarifications To COA Administrative Appeals And Application Form Requirements

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 "IN GENERAL," BY AMENDING SECTION 118-9, ENTITLED "REHEARING AND APPEAL PROCEDURES," IN ORDER TO CLARIFY THE STANDARDS AND PROCEDURE FOR ADMINISTRATIVE APPEALS BEFORE THE BOARD OF ADJUSTMENT; BY AMENDING ARTICLE X, ENTITLED "HISTORIC PRESERVATION," BY AMENDING DIVISION 3, ENTITLED "ISSUANCE OF CERTIFICATE OF APPROPRIATENESS/CERTIFICATE TO DIG/CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION," TO CLARIFY THE REVIEW PROCEDURE FOR ADMINISTRATIVE LEVEL CERTIFICATES OF APPROPRIATENESS, INCLUDING APPEALS THEREOF; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Article I, Section 2 of the City's Related Special Acts provides that the "Board of Adjustment shall hear and decide appeals from, and review, any order, requirements, decision or determination made by an administrative official charged with the enforcement of the Zoning Ordinance of the City of Miami Beach"; and

WHEREAS, the Related Special Acts vest the Board of Adjustment with the exclusive jurisdiction to hear appeals from administrative decisions of the Planning Director; and

WHEREAS, Section 118-9 of the Land Development Regulations of the City Code sets forth the standards and rules of procedure for appeals to the Board of Adjustment; and

WHEREAS, Section 118-563(d) of the Land Development Regulations of the City Code delineates certain types of improvements within local historic districts for which the required Certificate of Appropriateness may be reviewed and approved by Planning Department staff; and

WHEREAS, Section 118-563 also creates a detailed process and procedural requirements for the review of staff-level Certificates of Appropriateness; and

WHEREAS, the City desires to clarify the standards and rules of procedure for review of Certificates of Appropriateness approved pursuant to Section 118-563 of the Land Development Regulations of the City Code, in order to conform the Code to longstanding City practices; and

WHEREAS, the proposed revisions to section 118-9 and 118-563, herein, are necessary to achieve these objectives.

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

SECTION 1. That Chapter 118 "Administration and Review Procedures," Article I "In General," 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 to or from the City's by land development use 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 City Code. As used herein, "land use board(s)" shall mean the board of adjustment, design review board, historic preservation board and planning board.

* * *

(b) *Board of adjustment—Administrative appeal procedures:*

~~(1) The board of adjustment shall have the exclusive authority to hear and decide all administrative appeals when it is alleged that there is error in any written planning order, requirement, decision, or determination made by the planning director or his designee in the enforcement of these land development regulations. The planning director's decision shall be published within 30 days on the city's website for at least 30 days. An eligible part, as defined in this code, shall have 30 days, from posting on the web page to appeal the administrative determination.~~

(1) The board of adjustment shall have the exclusive authority to hear and decide the following administrative appeals:

A. Written determinations of the planning director. Appeals when it is alleged that there is an error in any written determination made by the planning director in the enforcement of these land development regulations. An applicant shall first request a written determination from the planning director and pay the applicable fees set forth in Appendix A. Within 30 days of the issuance of a written determination by the planning director, the determination shall be published on the city's website for a period of at least 30 days. An eligible party, as defined in subsection (b)(2)(B), shall have 30 days from the publication of the determination on the city website to appeal the determination.

B. Appeals expressly authorized under section 118-395, "Repair and/or rehabilitation of nonconforming buildings and uses"; section 118-609, "Completion of work"; and section 142-108, "Provisions for the demolition of single-family homes located outside of historic districts." An eligible party, as defined in subsection (b)(2)(B), shall have 30 days from the date of the decision to appeal an administrative decision issued under sections 118-395, 118-609, or 142-108.

- C. Appeals pursuant to section 118-260. The applicant and/or property owner shall have 15 days from the issuance of the approval or denial pursuant to section 118-260, to file an appeal.
 - D. Appeals pursuant to subsections 118-563(d)(1) and 118-563(d)(3). With the exception of properties located within an RS district, an eligible party, as defined in subsection (b)(2)(B), shall have 15 days from the issuance of a certificate of appropriateness pursuant to subsections 118-563(d)(1) or 118-563(d)(3) to file an appeal. For purposes of this subsection, the date of issuance of the certificate of appropriateness shall be the date of the issuance of the corresponding building permit.
- (2) Eligible administrative appeals shall be filed in accordance with the process as outlined in subsections A through D below:
- A. Timeframe to file: A petition for an administrative appeal, by an eligible party, as defined in this ~~section~~, shall be submitted to the planning director in accordance with the timeframes noted in subsection 118-9(b)(1) above ~~on or before the 30th day after the date of the publication.~~
 - B. Eligible parties. Parties eligible to file an application for an administrative appeal are limited to the following:
 - (i) Original applicant/property owner.
 - (ii) The city manager on behalf of the city administration, except for administrative appeals pursuant to sections 118-260, "Special review procedure," 118-395, "Repair and/or rehabilitation of nonconforming buildings and uses," 118-609, "Completion of work" and 142-108, "Provisions for the demolition of single-family homes located outside of historic districts".
 - (iii) An affected person, which for purposes of this section shall mean a person owning property within 375 feet of the site or application which is the subject of the administrative appeal, except for administrative appeals pursuant to sections 118-260, "Special review procedure" 118-395, "Repair and/or rehabilitation of nonconforming buildings and uses," 118-609, "Completion of work," and 118-260, "Special review procedure."
 - (iv) Miami Design Preservation League, except for administrative appeals pursuant to sections 118-260, "Special review procedure," 118-395, "Repair and/or rehabilitation of nonconforming buildings and uses," 118-260, "Special review procedure," 118-609, "Completion of work," and 142-108, "Provisions for the demolition of single-family homes located outside of historic districts."
 - (v) Dade Heritage Trust, except for administrative appeals pursuant to sections 118-260, "Special review procedure," 118-395, "Repair and/or rehabilitation of nonconforming buildings and uses," 118-260, "Special review procedure," 118-609,

“Completion of work,” and 142-108, “Provisions for the demolition of single-family homes located outside of historic districts.”

- C. *Application requirements.* The following shall be required for all applications for administrative appeals:
- (i) The petition to the board shall be in writing; and
 - (ii) The petition shall be submitted by or on behalf of an eligible party; and
 - (iii) The petition shall set forth the factual, technical, architectural, historic and legal bases for the appeal; and
 - (iv) The party filing the appeal shall be responsible for providing all plans and exhibits, subject to planning department procedures, as well as the duplication of all pertinent plans and exhibits.
- D. *Notice requirements.* All administrative appeal applications are subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8, ~~“Notice Procedures for Quasi-Judicial Land Use Board Actions and for Administrative Decisions Requiring Notice.”~~ The hearing applicant shall be responsible for all associated costs and fees.
- E. *Standard of review.* The appeal shall be “de novo,” meaning that the party appealing the administrative decision bears the burden of going forward with evidence and of persuasion at before the board of adjustment ~~administrative appeal proceeding~~, and to that end, the board shall have all the powers of the officer from whom the appeal is taken. ~~Witnesses~~ Relevant evidence and witness testimony may be considered during the hearing. The hearing is ~~considered~~ quasi-judicial in nature, and a public hearing is required.
- (3) *Outside counsel to the planning department.* In the event of an administrative appeal to the board of adjustment, the planning director may engage the services of an attorney, or utilize a separate, independent, attorney from the city attorney's office, for the purpose of representing the planning director who made the decision that is the subject of the appeal.
- (4) *Board of adjustment decisions on administrative appeals.* The board of adjustment may, upon appeal, reverse or affirm, wholly or partly, the order, requirement, decision, or determination of the planning director. The concurring vote of five members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of the planning director or to decide in favor of the applicant on any matter upon which the board of adjustment is required to pass under these land development regulations.
- With the exception of appeals filed pursuant to subsections 118-563(d)(1) or 118-563(d)(3), ~~n~~No permit shall be issued for work prior to expiration of the appeal period or final disposition of any appeal.
- (5) *Stay of work and proceedings on appeal.* An administrative appeal to the board of adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:
- A. The planning director shall certify to the board of adjustment that, by reason of facts stated in the certificate, 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, with notice to the officer from whom the appeal is taken and for good cause shown; or

- B. Associated land use board hearings, may proceed to a final order, provided, however, (i) 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; and (ii) 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.

SECTION 2. That Chapter 118, Article X "Historic Preservation," Section 118-563, entitled "Review Procedure," is hereby amended as follows:

ARTICLE X. – HISTORIC PRESERVATION

* * *

DIVISION 3. - ISSUANCE OF CERTIFICATE OF APPROPRIATENESS/CERTIFICATE TO DIG/CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION

* * *

Sec. 118-562. Application.

- (a) An application for a certificate of appropriateness may be filed with the historic preservation board at the same time or in advance of the submission of an application for a building permit. Copies of all filed applications shall be made available for inspection by the general public.
- (b) All applications for historic preservation board review involving demolition, new building construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with sections 118-591, 118-592 and 118-593, or located within an historic district shall be on a form provided by the planning department and shall include such information and attached exhibits as the board and the planning department determine are needed to allow for complete evaluation of the proposed demolition, construction and other physical improvements, alterations or modifications including, but not limited to, the following:

* * *

Sec. 118-563. Review procedure.

Any applicant requesting a public hearing on any application pursuant to this section shall pay, upon submission, the applicable fees in section 118-7. No application shall be considered complete until all requested information has been submitted and all applicable fees paid.

* * *

- (d) Notwithstanding subsections 118-563(a) through (c) above, all applications for certificates of appropriateness involving minor repairs, demolition, alterations and

improvements (as defined below and by additional design guidelines to be adopted by the board in consultation with the planning director or designee) shall be reviewed by the staff of the board. The staff shall approve, approve with conditions, or deny a certificate of appropriateness or a certificate to dig after the date of receipt of a completed application. For purposes of this subsection, the application requirement for certificate of appropriateness review shall be satisfied by the submission of a corresponding building permit application, or such other permit application form required by the planning department. Such minor repairs, alterations and improvements include the following:

- (1) Ground level additions to existing structures, not to exceed two stories in height, which are not substantially visible from the public right-of-way (excluding rear alleys), any waterfront or public parks, provided such ground level additions do not require the demolition or alteration of architecturally significant portions of a building or structure. For those lots under 5,000 square feet, the floor area of the proposed addition may not exceed 30 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 1,500 square feet. For those lots between 5,000 square feet and 10,000 square feet, the floor area of the proposed addition may not exceed 20 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 2,000 square feet. For those lots greater than 10,000 square feet, the floor area of the proposed addition may not exceed 10 percent of the floor area of the existing structure or primary lot, whichever is less, with a maximum total floor area not to exceed 5,000 square feet.
 - (2) Replacement of windows, doors, storefront frames and windows, or the approval of awnings, canopies, exterior surface colors, storm shutters and signs.
 - (3) Facade and building restorations, recommended by staff, which are consistent with historic documentation, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.
 - (4) Minor demolition and alterations to address accessibility, life safety, mechanical and other applicable code requirements, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.
 - (5) Minor demolition and alterations to rear and secondary facades to accommodate utilities, refuse disposal and storage, provided the degree of demolition proposed is not substantial or significant and does not require the demolition or alteration of architecturally significant portions of a building or structure.
- (e) For certificates of appropriateness issued pursuant to subsections 118-563(d), with the exception of certificates of appropriateness for awnings, canopies, exterior surface colors, storm shutters, and signs, the applicant shall mount a laminated posting, in a form prescribed by the planning director, at the front of the property, in a manner and location clearly visible from the public right-of-way, indicating that an application for a certificate of appropriateness has been filed. The applicant shall provide evidence to the planning director that the posting has been installed on site prior to the issuance of a building permit. The posting shall be for informational purposes only and the validity of any building permit or certificate of appropriateness shall not be affected by any failure to mount or continuously maintain the posting throughout any applicable appeal period established in section 118-9(b)(1)(D). Any decision of the planning director

regarding certificate of appropriateness issued pursuant to subsections 118-563(d)(1) and/or 118-563(d)(3), may be appealed to the board of adjustment pursuant to the requirements of section 118-9.

SECTION 3. Repealer.

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

SECTION 4. 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 5. Severability.

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

SECTION 6. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this ____ day of _____, 2022.


ATTEST:

Dan Gelber
Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

First Reading: March 9, 2022
Second Reading: April 6, 2022

 3-29-22

City Attorney NK Date

Underline denotes additions
~~Strikethrough~~ denotes deletions

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