

MIAMIBEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: December 20, 2016

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 16-0073. Discontinuance of Nonconforming Uses**

REQUESTS

PB 16-0073. DISCONTINUANCE OF NONCONFORMING USES. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES", ARTICLE IX., "NONCONFORMANCES," TO ADD SECTION 118-390 "PURPOSE/APPLICABILITY," AND AMEND SECTION 118-394, "DISCONTINUANCE OF NONCONFORMING USES" TO DEFINE THE PROCESS FOR RETAINING LEGAL NON-CONFORMING USES AND ESTABLISH GUIDELINES FOR DETERMINING WHETHER THERE HAS BEEN AN INTENTIONAL AND VOLUNTARY ABANDONMENT OF A NONCONFORMING USE; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION:

Transmit the proposed amendment to the Land Development Regulation (LDR) to the City Commission with a favorable recommendation.

HISTORY/ BACKGROUND

On July 13, 2016, at the request of Commissioner Michael Grieco, the City Commission referred this request to the Land Use and Development Committee (Item R5I).

On July 20, 2016, the Land Use and Development Committee discussed the item and continued the discussion until September 21, 2016 by acclamation. On September 21, 2016 the item was continued to a date certain of October 26, 2016.

On October 26, 2016 the Land Use Committee discussed the revised draft of the Ordinance, and recommended that the City Commission refer the item to the Planning Board.

On November 9, 2016, the City Commisison referred the proposed Ordinance to Planning Board (Item C4 C).

REVIEW CRITERIA

In accordance with Section 118-163 (3), when reviewing a request for an amendment to these

land development regulations, the Board shall consider the following where applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The proposed LDR change is consistent with Comprehensive Plan..

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2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Not Applicable – The amendment does not modify district boundaries.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

Not Applicable – The proposed amendment does not modify district boundaries.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

Consistent – The proposed ordinance does not increase the development capacity for the area and would not tax the existing load on public facilities.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

Not Applicable – The proposal does not modify district boundaries.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

Consistent – The need to allow property owners a reasonable timeframe to allow tenants to obtain permits makes the proposed change necessary.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

Consistent – The proposed amendments should not adversely influence living conditions in the surrounding 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 amendment will not create or excessively increase traffic congestion.

9. Whether the proposed change will seriously reduce light and air to adjacent areas.

Consistent – The proposed changes do not modify the scale of development and will not seriously reduce light and air to adjacent areas.

10. Whether the proposed change will adversely affect property values in the adjacent area.

Consistent – Property values should not be negatively impacted.

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 would not be a deterrent to the redevelopment or improvement of any adjacent property.

12. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.

Consistent – Although the properties can be used in accordance with existing zoning, the modification would allow existing legal non-conforming uses the ability to remain for a longer period of time to allow for a more reasonable time for a property owner to find a tenant and open an establishment.

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 – The amendment does not propose modifying permissible uses.

ANALYSIS

When the City Code is amended in a way that prohibits a use or restricts the use in a zoning district, those existing uses in the district that are not conforming to the new regulations that are pre-existing become legal non-conforming uses. Legal non-conforming uses are allowed to continue their operation as long as the use remains active and does not cease operations for a time period set forth in the City Code Section 118-394. The current language in the City Code regarding the discontinuance of a non-conforming use is stated below:

Sec. 118-394. - Discontinuance of nonconforming uses.

No building, structure, equipment, fixtures or land, or portion thereof, used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of six months, or for 18 months during any three-year period whether or not the equipment or fixtures are removed, shall again be used, except in conformity with the regulations of the district in which such building or land is located.

With the recent amendments to the City Code, such as prohibited uses near residential zoning districts and the operating hours of alcoholic beverage establishments, issues have arisen with

regard to those businesses that are already in operation.

Currently, in order to establish the idle status of a non-conforming use, staff researches the BTR and building permit history. If the BTR has not been expired for more than six (6) months, or a building permit has been issued within the six months that tolls the time until the building permit was finalized, then the non-conforming use would be allowed to continue.

The previous proposal to increase the time frame for legal non-conforming uses from six (6) months to eighteen (18) months, as recommended by the Land Use Committee was amended to a maximum of twelve (12) months by the City Commission at the time of referral on November 9, 2016. In this regard, 12 months is a more reasonable amount of time to find a tenant, contract with design professionals, apply for building permits and obtain a building permit. The increase in the amount of time might help in the case of tenant disputes as well.

As a point of clarification, the reason staff uses the application for a renovation or repair of a property to toll the time limit, although that provision is not explicitly written into the current ordinance, stems from the case of *City of Miami Beach v. State ex rel. Parkway Co.*, 174 So. 443 (Fla. 1937). In that case, the Florida Supreme Court held that a use was not discontinued for the purpose of the Miami Beach ordinance if the use had been shut down for the purpose of renovations or repairs.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed amendment to the Land Development Regulation (LDR) to the City Commission with a favorable recommendation.

TRM/MAB/RAM

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DISCONTINUANCE OF NONCONFORMING USES

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES", ARTICLE IX., "NONCONFORMANCES," TO ADD SECTION 118-390 "PURPOSE/APPLICABILITY," AND AMEND SECTION 118-394, "DISCONTINUANCE OF NONCONFORMING USES" TO DEFINE THE PROCESS FOR RETAINING LEGAL NON-CONFORMING USES AND ESTABLISH GUIDELINES FOR DETERMINING WHETHER THERE HAS BEEN AN INTENTIONAL AND VOLUNTARY ABANDONMENT OF A NONCONFORMING USE; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, over time, amendments to the City Code have made certain uses prohibited in zoning districts throughout the City; and

WHEREAS, due to amendments to the City Code, there are existing uses that have become legal non-conforming; and

WHEREAS, the City Code allows existing legal non-conforming uses to remain and change ownership and tenancy as long as the use remains active and does not become idle for a period of time set forth in the City Code; and

WHEREAS, the City Code lacks adequate specificity regarding the requirements for determining if a use has remained active or become idle; and

WHEREAS, the Mayor and the City Commission desire to standardize the time frame set forth in the City Code for legal non-conforming uses to obtain permits to repair or renovate their premises; 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, "Administration and Review Procedures," Article IX, "Nonconformances," is hereby amended as follows:

CHAPTER 118.

ADMINISTRATION AND REVIEW PROCEDURES

* * *

ARTICLE IX. NONCONFORMANCES

118-390 Purpose/Applicability.

1. Nothing contained in this article shall be deemed or construed to prohibit the continuation of a legally established non-conforming use, structure, or occupancy, as those terms are defined in Sections 114.1. The intent of this Section is to encourage nonconformities to ultimately be brought into compliance with current regulations. This section shall govern in the event of conflicts with other regulations of this code pertaining to legally established nonconforming uses, structures, and occupancies.

2. The term "nonconformity" shall refer to a use, building, or lot that does not comply with the regulations of this article. Only legally established nonconformities shall have rights under this section.

3. For purposes of this section, the term "expansion" shall mean an, addition, enlargement, extension, or modification to a structure that results in an increase in the square footage of the structure, an increase in the occupant content or an increase in the number of seats.

4. For the purposes of this section, "legally established" shall apply to the following circumstances:

- a. A lot that does not meet the lot frontage, lot width, lot depth, and/or lot area requirements of the current zoning district, provided that such lot met the regulations in effect at the time of platting.
- b. A site or improvement that is rendered nonconforming through the lawful use of eminent domain, an order of a court of competent jurisdiction, or the voluntary dedication of property.
- c. An existing use which conformed to the code at the time it was established.
- d. A building and/or site improvement that had received final site plan approval through a public hearing pursuant to this chapter or through administrative site plan review and had a valid building permit.
- e. There shall be no variance of the nonconforming use(s) section of this Article IX.

* * *

Sec. 118-394. Discontinuance of nonconforming uses.

~~No building, structure, equipment, fixtures or land, or portion thereof, used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of six months, or for 18 months during any three-year period whether or not the equipment or fixtures are removed, shall again be used, except in conformity with the regulations of the district in which such building or land is located.~~

(1) A nonconforming use may not be enlarged, extended, intensified, or changed, except for a change to a use permitted in the district in which the property is located.

(2) If there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 366 consecutive days, or if a nonconforming use is changed to a conforming use, said use shall lose its nonconforming status. Thereafter, subsequent occupancy and use of the land, building, and/or structure shall conform to the regulations of the districts in which the property is located and any structural alterations necessary to make the structure or building conform to the regulations of the district in which the property is located shall be required. An intentional and voluntary abandonment of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use.

(3) The Planning Director or designee shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:

1. Continual operation of the use;
2. Continual maintenance of the structure and property;
3. Continual possession of any necessary and valid state and local permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.

Evidence of an intentional and voluntary abandonment of a nonconforming use may include, but shall not be limited to:

1. Public records, including those available through applicable City of Miami Beach, Miami-Dade County, and State of Florida agencies;
2. Utility records, including water/sewer accounts, solid waste accounts, and electrical service accounts;
3. Property records, including executed lease or sales contracts;

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 _____, 2017.

Philip Levine
Mayor

ATTEST:

Rafael E. Granado
City Clerk

Verified By:

Thomas R. Mooney, AICP
Planning Director

First Reading: _____, 2017

Second Reading: _____, 2017

(Sponsored by Commissioner Michael Grieco)

Underline denotes new language

~~Strikethrough~~ denotes removed language

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