

# MIAMI BEACH

## 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 16-0077. Ocean Drive Accessory Retail Modifications**

#### **REQUESTS**

**PB 16-0077. OCEAN DRIVE ACCESSORY RETAIL MODIFICATIONS. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-546 THEREOF, ENTITLED "ADDITIONAL RESTRICTIONS FOR LOTS FRONTING ON OCEAN DRIVE, OCEAN TERRACE AND COLLINS AVENUE," TO MODIFY REGULATIONS PERTAINING TO RETAIL USES ON LOTS FRONTING OCEAN DRIVE, AND BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 2, "ACCESSORY USES," BY AMENDING SECTION 142-904 THEREOF, ENTITLED "ADDITIONAL MIXED USE ENTERTAINMENT DISTRICT REGULATIONS" TO MODIFY REGULATIONS PERTAINING TO RETAIL USES ON LOTS FRONTING OCEAN DRIVE AND PRECLUDING VARIANCES OF THE PROVISION; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

#### **RECOMMENDATION:**

Transmit the proposed amendment to the City Commission with a favorable recommendation.

#### **HISTORY/ BACKGROUND**

On November 9, 2016, at the request of Comm. Ricky Arriola, the City Commission referred this item to the Land Use and Development Committee and the Planning Board (Item C4M).

On December 12, 2016 the Land Use and Development Committee discussed the Ordinance and recommended that the Planning Board transmit the item to the City Commission with a favorable recommendation.

#### **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..

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 is not out of scale with the needs of the neighborhood.

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** – Increasing development pressure for disproportionate accessory uses within the MXE districts necessitates the proposed changes.

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 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.**

**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** – The Ordinance does not change the list of allowable uses.

**ANALYSIS**

Within the MXE, Mixed-Use Entertainment zoning districts, the main permitted uses are apartments; apartment-hotels; hotels; commercial development as specified in section 142-546, and religious institutions with an occupancy of 199 persons or less.

Section 142-546 of the City Code provides for additional restrictions for lots fronting on Ocean Drive, Ocean Terrace and Collins Avenue.

**Existing** Buildings with 2-stories or less fronting Ocean Drive or Ocean Terraces may have offices, retail, food service establishments, alcoholic beverage establishments, and residential uses or any combination thereof.

Buildings with more than 2-stories may only contain the main permitted uses listed of apartments; apartment-hotels; or hotels. Section 142-904 outlines additional requirements for accessory uses within MXE districts for these uses. These development regulations were created in order to ensure the retention and preservation of the historic buildings and predominant historic uses of apartments, apartment-hotels, and hotels within these areas.

Section 142-904

(b) *Permitted accessory uses.* The following are permitted accessory uses in the mixed use entertainment district.

(1) *Permitted accessory uses in hotels.*

- a. Those accessory uses that are customarily associated with the operation of a hotel as determined by the planning and zoning director. The amount of retail space shall not exceed 75 square feet per hotel unit.
- b. Hotels may have offices not associated with the operation of a hotel. The floor space associated with offices shall not exceed 35 square feet per hotel unit; medical or dental related offices are prohibited.
- c. Restaurants, outdoor cafes, sidewalk cafes.
- d. Solarium, sauna, exercise studio, health club or massage service which are located in either the subterranean, ground, mezzanine or roof levels only and are operated by an individual licensed by the state or other appropriate agencies.
- e. Antiques, bookstore, art/craft galleries, artist studios.
- f. Sale of alcoholic beverages as per article V, division 4 of this chapter.
- g. Uses located on the porch, terrace or patio of a building are limited to table seating for eating and drinking establishments, which have their fixtures and cooking facilities located in the interior of the building, and the sale of flowers when conducted from a movable stand that is placed inside the building at the close of business.

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(2) *Permitted accessory uses in apartment buildings.* The following are permitted accessory uses in apartment buildings:

- a. Apartment buildings may have commercial, office, eating or drinking uses, with access to the street, on the ground floor and subterranean level or in the highest floor of a building; however, no more than 25 percent of the floor area of the subterranean or ground floor shall be used for commercial uses. Office space, when located on the ground floor, shall be located at least 50 feet from the front property line.
- b. Restaurants, outdoor cafes, sidewalk cafes with sale of alcoholic beverages as per article V, division 4 of this chapter.
- c. Solarium, sauna, exercise studio, health club or massage service by an individual licensed by the state or other appropriate agencies.

(3) *Permitted accessory uses in apartment hotels.* Apartment hotels may have the same accessory use regulations as hotels if a minimum of 75 percent of the total number of units are hotel units.

(c) *Additional requirements.* In addition to the regulations and accessory uses listed in subsections (a) and (b) of this section, structures located in the below areas shall comply with the following:

(1) Permitted accessory uses for properties on Collins Avenue from Sixth to 15th Streets and on the west side of Collins Avenue from 15th to 16th Streets and Ocean Terrace include the above accessory uses but must comply with the following requirements:

- a. Offices that are medical or dental related are prohibited.
- b. Offices are only allowed in existing structures, otherwise, they are prohibited.
- c. If a lobby is present or was originally constructed it shall be retained or reinstated. Such lobby may be used for a reception area with no partitions; however, offices are not permitted in the lobby.
- d. Commercial uses, apartments, or hotel units either as a main permitted use or in any combination.

(2) Permitted accessory uses for properties that front on Ocean Terrace:

- a. Commercial uses.
- b. Offices. If the office space is located on the ground floor shall be 50 feet from any front property line facing a street and be consistent with subsections (c)(1)a and (c)(1)b of this section.
- c. At least 50 percent of the total floor area shall be used as hotel or apartment, the floor area for hotel or apartment units shall meet the minimum area requirements established for the zoning district.

The City Code provisions above have specific size limitations in order to ensure that the primary use is retained and not overcome by accessory uses that would detract from the character of the historic neighborhoods. However, as currently written, variances from these limitations could be sought and granted. This ordinance adds a no variance provision to Section 142-904 in order to ensure that accessory uses do not overwhelm the main permitted uses in the MXE districts.

### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed amendment to the City Commission with a favorable recommendation.

TRM/MAB

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Ocean Drive –Accessory Retail Modifications

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-546 THEREOF, ENTITLED "ADDITIONAL RESTRICTIONS FOR LOTS FRONTING ON OCEAN DRIVE, OCEAN TERRACE AND COLLINS AVENUE," TO MODIFY REGULATIONS PERTAINING TO RETAIL USES ON LOTS FRONTING OCEAN DRIVE, AND BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 2, "ACCESSORY USES," BY AMENDING SECTION 142-904 THEREOF, ENTITLED "ADDITIONAL MIXED USE ENTERTAINMENT DISTRICT REGULATIONS" TO MODIFY REGULATIONS PERTAINING TO RETAIL USES ON LOTS FRONTING OCEAN DRIVE AND PRECLUDING VARIANCES OF THE PROVISION; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, properties fronting Ocean Drive and Collins Avenue that have a zoning designation of MXE Mixed Use Entertainment are located in the Ocean Drive/Collins Avenue Historic District, as well as the Miami Beach Architectural National Register Historic District; and

**WHEREAS**, Ocean Drive and Collins Avenue are some of the premier streets in Miami Beach and provide residents and visitors with a unique cultural, retail, and dining experience and are vital to Miami Beach's economy, especially the tourism industry; and

**WHEREAS**, properties fronting Ocean Terrace are within the Harding Townsite Historic District and the North Shore National Register Historic District; and

**WHEREAS**, the City of Miami Beach has undertaken a master planning process for the North Beach area that includes the Harding Townsite Historic District and North Shore National Register District, in order to encourage the revitalization of the area by improving cultural, retail, and dining experiences for residents and visitors to the area; and

**WHEREAS**, these areas have many contributing structures utilized as hotels and restaurants associated with those hotel uses; and

**WHEREAS**, allowing an accessory use to "overcome" or "daunt" the hotel and restaurant uses would impede tourism and detract from the iconic tourist experience; and

**WHEREAS**, the City desires to limit retail uses on Ocean Drive, Collins Avenue, and Ocean Terrace; 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 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 13, "MXE Mixed Use Entertainment District," Is amended as follows:

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**Sec. 142-546. - Additional restrictions for lots fronting on Ocean Drive, Ocean Terrace and Collins Avenue.**

In the MXE mixed use entertainment district permitted uses in existing buildings at the time of adoption of this section with two stories or less fronting on Ocean Drive or Ocean Terrace and any building fronting on Collins Avenue from Sixth Street to 16th Street shall comply with the following:

\* \* \*

- (5) For existing buildings with two stories or less fronting on Ocean Drive or Ocean Terrace, the addition of a story shall require that commercial uses comply with all provisions of section 142-904 for accessory uses, ~~unless a variance from the provisions of section 142-904 is granted.~~ For purposes of example only, in buildings described in the foregoing sentence, the existence of commercial uses on the ground floor which exceed 25 percent of the floor area shall not, upon the addition of one story, be deemed grandfathered in, and the percentage of commercial uses on the ground floor, upon the addition of one story, must comply with the requirements of section 142-904, ~~except if a variance is granted.~~
- (6) No variances shall be granted from the requirements of this section 142-546, except as specified in subsections 142-546(2), ~~and 142-546(5).~~

**SECTION 2.** Chapter 142, "Zoning Districts and Regulations," Article IV, "Supplementary District Regulations," Division 2, "Accessory Uses," Is amended as follows:

**Sec. 142-904. - Additional mixed use entertainment district regulations.**

- (a) *General provisions.* Accessory uses shall comply with the following mandatory criteria in addition to the regulations contained in sections 142-901 and 142-902:

\* \* \*

- (b) *Permitted accessory uses.* The following are permitted accessory uses in the mixed use entertainment district.

\* \* \*

- (d) No variances shall be granted from the requirements of this section 142-904.

**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 re-numbered or re-lettered 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 \_\_\_\_\_, 2017.

\_\_\_\_\_  
Philip Levine  
Mayor

ATTEST:

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Rafael E. Granado  
City Clerk

First Reading: \_\_\_\_\_, 2017

Second Reading: \_\_\_\_\_, 2017

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