

**BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 500 Alton Road

FILE NO. ZBA19-0097

IN RE: Appeal of a decision of the Planning Director, dated July 10, 2019, regarding the calculation of "floor area" and/or "floor area ratio" (FAR), pursuant to the Land Development Regulations.

**LEGAL
DESCRIPTION:** See Exhibit "A"

FOLIO NUMBER: 02-4204-006-0010, 02-4204-006-0070, 02-4203-001-0100, 02-4203-001-0280, 02-4203-001-0161, 02-4203-001-0170, 02-4203-001-0180, 02-4203-001-0190, 02-4203-001-0201, 02-4203-001-0200, 02-4203-001-0210, & 02-4203-001-0220

MEETING DATE: November 1, 2019

ORDER

South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC and KGM Equities, LLC (the "Appellants") have filed an application, pursuant to Article I, Section 2 of the Related Special Acts, to appeal an administrative determination of the Planning Director, issued on July 10, 2019, regarding the calculation of "floor area" and/or "floor area ratio" ("FAR"), pursuant to the Land Development Regulations ("LDRs") (altogether, the "Determination", attached hereto as Exhibit "B").

Specifically, the Appellants challenged the inclusion of the following building elements in Floor Area calculations:

- Voids in floors to accommodate elevator shafts;
- Voids in floors to accommodate mechanical/ventilation/trash shafts; and
- Voids in floors to accommodate stairwells, including voids to accommodate stairwells within accessory garages.

City Code Section 114-1 defines "floor area" as follows:

[T]he sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. However, the floor area of a building shall not include the following unless otherwise provided for in these land development regulations.

- (1) Accessory water tanks or cooling towers.
- (2) Uncovered steps.
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- (4) Terraces, breezeways, or open porches.
- (5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be

MB

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- provided without being included in the calculation of the floor area ratio.*
- (6) *Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.*
 - (7) *Mechanical equipment rooms located above main roof deck.*
 - (8) *Exterior unenclosed private balconies.*
 - (9) *Floor area located below grade when the top of the slab of the ceiling is located at or below grade. However, if any portion of the top of the slab of the ceiling is above grade, the floor area that is below grade shall be included in the floor area ratio calculation. Despite the foregoing, for existing contributing structures that are located within a local historic district, national register historic district, or local historic site, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area ratio calculation.*
 - (10) *Enclosed garbage rooms, enclosed within the building on the ground floor level.*

Volumetric buildings, used for storage, where there are no interior floors, the floor area shall be calculated as if there was a floor for every eight feet of height.

When transfer of development rights are involved, see chapter 118, article V for additional regulations that address floor area.

Prior to 1989, the Zoning Ordinance defined "floor area" with a list of express exclusions and inclusions. Elevator shafts or stairwells at each floor and mechanical equipment were contained in the list of inclusions.

In 1989, the City's Zoning Ordinance Review Committee ("ZORC") reviewed the definition of "floor area" as part of its comprehensive redraft of the LDRs. The ZORC recommended that the definition of Floor Area be amended, in order to remove the list of inclusions and state only the exclusions. The City Commission accepted the recommendation of the ZORC, and amended the definition of Floor Area. (See Ordinance No. 89-2665).

On two prior occasions, the Planning Director has been formally asked to determine whether the definition of Floor Area includes voids in floors to accommodate elevator shafts, voids in floors to accommodate mechanical/ventilation/trash shafts, and stairwells. In 1994, the Planning Director determined that the definition of Floor Area included (1) exterior corridors/hallways; (2) open stairwells within a tower; and (3) stairwells and elevator shafts on each floor with parking. The determination was appealed to the Board of Adjustment ("BOA"), and the BOA affirmed the Director's determination.

Following this ruling, the same applicant sought a second determination from the Planning Director. In response, the Planning Director determined that the following elements are included with in the definition of Floor Area: (1) the elevator shaft at every level; (2) the stairwell at every level; (3) the plumbing and mechanical chases at every level; (4) the open common corridors/hallways at the apartment levels; and (5) the portion of balconies which are not projecting from the main façade of the building and which are not open on two sides. This second determination was appealed to the BOA, and the BOA again affirmed the Director's determination.

On June 6, 2019 the Appellants requested a determination from the Planning Director relating to the Planning Director's calculation of Floor Area pursuant to the Land Development Regulations.

On July 10, 2019, the Planning Director issued the subject Determination, which confirmed that the following elements are included within the definition of Floor Area: (1) voids in floors to accommodate elevator shafts; (2) voids in floors to accommodate mechanical/ventilation/trash shafts; and (3) voids in floors to accommodate stairwells, including voids to accommodate stairwells within accessory garages.

On July 19, 2019, the Appellants filed the subject appeal to the BOA of the Planning Director's Determination. Notice of the appeal was given as required by law and mailed to owners of property within a distance of 375 feet of the exterior limits of the property on which this application was made.

Following a quasi-judicial public hearing on Friday, November 1, 2019, the Board of Adjustment voted to **REVERSE** the Determination by a vote of 5-2.

All exhibits submitted by the parties prior to and on the date of the hearing were admitted into the record.

IT IS HEREBY ORDERED by the Board that the Determination is **REVERSED**.

BOARD OF ADJUSTMENT
CITY OF MIAMI BEACH, FLORIDA

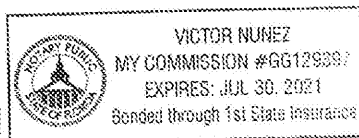
BY: Michael Belush

Michael Belush, AICP
Chief of Planning & Zoning
For the Chair

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 2 day of December, 2019, by Michael Belush, Chief of Planning and Zoning of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[NOTARIAL SEAL]



Notary: Victor Nunez

Print Name: Victor Nunez

Notary Public, State of Florida

My Commission Expires: July 30, 2021

Commission Number: GG129397

Approved As To Form:
City Attorney's Office (12/2/19)

Filed with the Clerk of the Board of Adjustment Jessie G. [Signature] (12/2/19)

MB

COUSINS SURVEYORS & ASSOCIATES, INC.

3921 SW 47TH AVENUE, SUITE 1011
 DAVIE, FLORIDA 33314
 CERTIFICATE OF AUTHORIZATION : LB # 6448
 PHONE (954) 689-7766 FAX (954) 689-7799

EXHIBIT A

CRESCENT HEIGHTS

LAND DESCRIPTION AND SKETCH**LAND DESCRIPTION:**

LOTS 2 THROUGH 16, INCLUSIVE, A PORTION OF LOTS 1, 17, 18 AND 19 AND THAT CERTAIN 15 FOOT VACATED ALLEY LYING WITHIN SAID LOTS, OF "AMENDED PLAT OF AQUARIUM SITE RESUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 21, PAGE 83, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 11;

THENCE NORTH 89°37'30" EAST ALONG THE NORTH LINES OF SAID LOTS 10 AND 11, A DISTANCE OF 210.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHWEST;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°59'39" AND AN ARC DISTANCE OF 31.41 FEET;

THENCE SOUTH 00°22'51" EAST ALONG THE EAST LINE OF SAID LOTS 1 THROUGH 10, A DISTANCE OF 277.46 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 65.5 FEET, A CENTRAL ANGLE OF 87°00'49" AND AN ARC DISTANCE OF 99.47 FEET;

THENCE SOUTH 86°38'28" EAST, A DISTANCE OF 112.67 FEET TO A POINT ON A NON-TANGENT CURVE (A RADIAL LINE THROUGH SAID POINT BEARS SOUTH 19°33'06" WEST);

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 29.30 FEET, A CENTRAL ANGLE OF 46°06'19" AND AN ARC DISTANCE OF 23.58 FEET;

THENCE NORTH 24°20'35" WEST ALONG THE WESTERLY LINE OF SAID LOTS 17 AND 16, A DISTANCE OF 73.04 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE EAST;

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 335.75 FEET, A CENTRAL ANGLE OF 23°57'44" AND AN ARC DISTANCE OF 140.42 FEET (THE LAST DESCRIBED BARING AND DISTANCE IS BEING ALONG THE WEST LINE OF SAID LOTS 16, 15 AND 14);

THENCE NORTH 00°22'51" WEST ALONG THE WEST LINE OF SAID LOTS 13, 12 AND 11, A DISTANCE OF 130.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHEAST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'21" AND AN ARC DISTANCE OF 31.42 FEET TO THE POINT OF BEGINNING.

LAND DESCRIPTION CONTINUED...

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION AND SKETCH	09/12/18	-----	AM	REC
REVISED L/D AND SKETCH	09/27/18	-----	AM	REC

**LAND DESCRIPTION
AND SKETCH
FOR
OVERALL SITE
NOT INCLUDING
6TH STREET**

PROPERTY :
500-600-700 ALTON

SCALE: N/A

SHEET 1 OF 5

COUSINS SURVEYORS & ASSOCIATES, INC.

3921 SW 47TH AVENUE, SUITE 1011
 DAVIE, FLORIDA 33314
 CERTIFICATE OF AUTHORIZATION : LB # 6448
 PHONE (954) 689-7766 FAX (954) 689-7799

PROJECT NUMBER : 6844-12

CLIENT :
 CRESCENT HEIGHTS

LAND DESCRIPTION AND SKETCH

LAND DESCRIPTION CONTINUED...

TOGETHER WITH:

A PORTION OF LOTS 1 AND 2, AND LOTS 3 THROUGH 14, INCLUSIVE, AND LOTS 23 THROUGH 32, INCLUSIVE, BLOCK 2, "AMENDED PLAT FLEETWOOD SUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 28 AT PAGE 34, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SAID LOT 1;

THENCE SOUTH 89°37'30" WEST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 111.13 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHEAST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 73°36'39" AND AN ARC DISTANCE OF 19.27 FEET;

THENCE NORTH 16°45'51" WEST, A DISTANCE OF 51.32 FEET;

THENCE NORTH 11°41'42" WEST, A DISTANCE OF 50.99 FEET;

THENCE NORTH 00°22'51" WEST ALONG THE WEST LINE OF SAID BLOCK 2, A DISTANCE OF 250.00 FEET;

THENCE NORTH 89°37'30" EAST ALONG THE NORTH LINE OF SAID LOT 7, A DISTANCE OF 10.00 FEET;

THENCE NORTH 00°22'51" WEST ALONG A LINE 10 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID BLOCK 2, A DISTANCE OF 350.00 FEET;

THENCE NORTH 89°37'00" EAST ALONG THE NORTH LINE OF SAID LOT 14, A DISTANCE OF 140.00 FEET;

THENCE SOUTH 00°22'51" EAST ALONG THE EAST LINE OF SAID LOTS 14 THROUGH 11, A DISTANCE OF 200.00 FEET;

THENCE NORTH 89°37'30" EAST ALONG THE NORTH LINE OF SAID LOT 23, A DISTANCE OF 170.00 FEET;

THENCE SOUTH 00°22'51" EAST ALONG THE EAST LINE OF SAID BLOCK 2, A DISTANCE OF 495.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 90°00'21" AND AN ARC DISTANCE OF 23.56 FEET;

THENCE SOUTH 89°37'30" WEST ALONG THE SOUTH LINE OF SAID LOT 32, A DISTANCE OF 155.00 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE. LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI/DADE COUNTY, FLORIDA; CONTAINING 273,429 SQUARE FEET OR 6.2771 ACRES MORE OR LESS.

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION AND SKETCH	09/12/18	-----	AM	REC
REVISED L/D AND SKETCH	09/27/18	-----	AM	REC

**LAND DESCRIPTION
 AND SKETCH
 FOR
 OVERALL SITE
 NOT INCLUDING
 6TH STREET**

PROPERTY :
 500-600-700 ALTON

SCALE: N/A

SHEET 2 OF 5

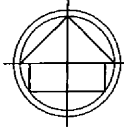
COUSINS SURVEYORS & ASSOCIATES, INC.



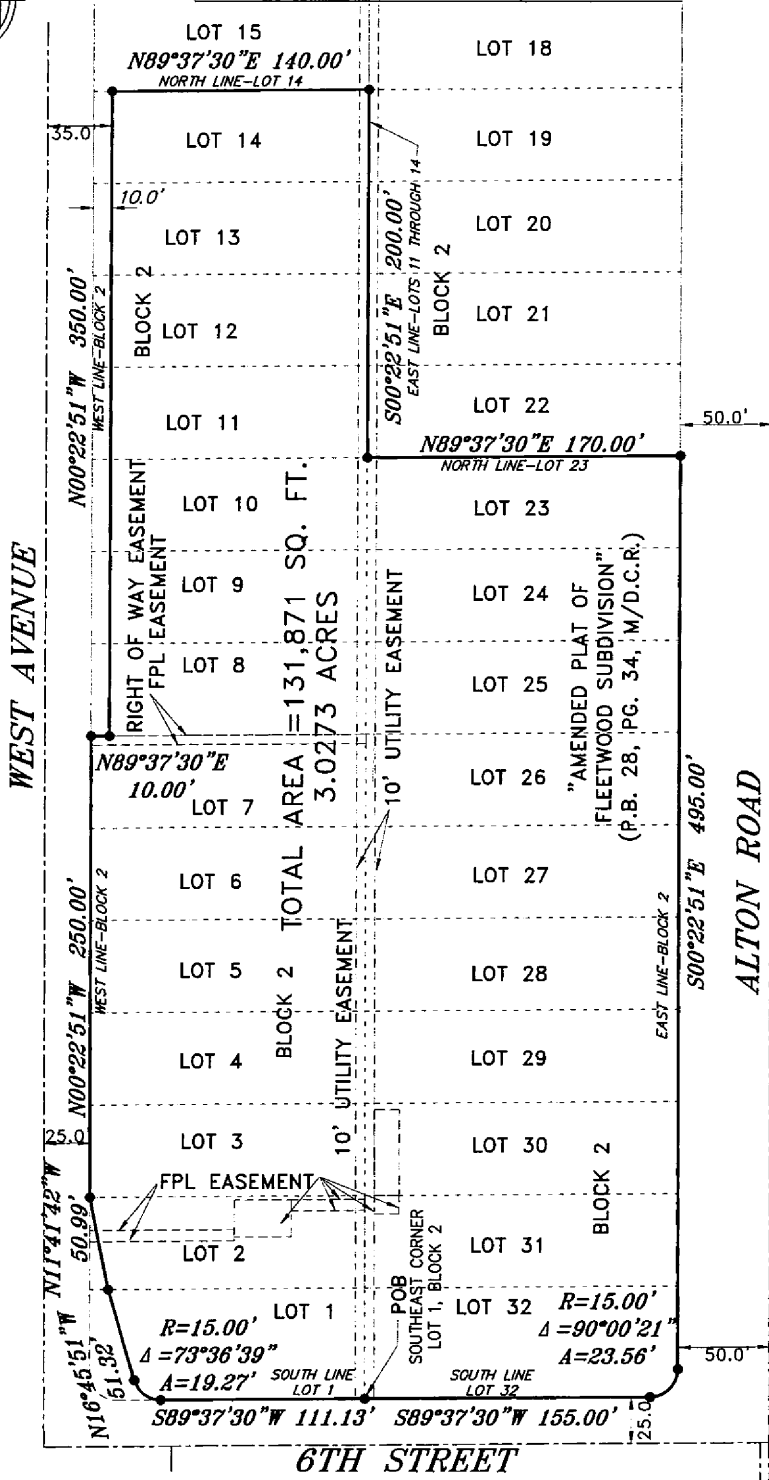
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CLIENT :
CRESCENT HEIGHTS



LAND DESCRIPTION AND SKETCH



REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION AND SKETCH	09/12/18	-----	AM	REC
REVISED L/D AND SKETCH	09/27/18	-----	AM	REC

LAND DESCRIPTION
AND SKETCH
FOR
OVERALL SITE
NOT INCLUDING
6TH STREET

PROPERTY :
500-600-700 ALTON

SCALE: 1" = 80'

SHEET 4 OF 5

COUSINS SURVEYORS & ASSOCIATES, INC.

3921 SW 47TH AVENUE, SUITE 1011
 DAVIE, FLORIDA 33314
 CERTIFICATE OF AUTHORIZATION : LB # 6448
 PHONE (954) 689-7766 FAX (954) 689-7799

PROJECT NUMBER : 6844-12

CLIENT :

CRESCENT HEIGHTS

LAND DESCRIPTION AND SKETCH

LEGEND:

CKD CHECKED BY
 DWN DRAWN BY
 FB/PG FIELD BOOK AND PAGE
 P.B. PLAT BOOK
 M/D.C.R. MIAMI/DADE COUNTY RECORDS
 POB POINT OF BEGINNING
 POC POINT OF COMMENCEMENT
 R RADIUS
 A ARC DISTANCE
 Δ CENTRAL ANGLE

NOTES:

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE ASSUMED.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN SEPTEMBER, 2018. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE STANDARDS OF PRACTICE FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE. PURSUANT TO SECTION 472.027, FLORIDA STATUTES. SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

FOR THE FIRM, BY: -----

RICHARD E. COUSINS
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA REGISTRATION NO. 4188

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	09/12/18	----	AM	REC
REVISED L/D AND SKETCH	09/27/18	-----	AM	REC

LAND DESCRIPTION
 AND SKETCH
 FOR
 OVERALL SITE
 NOT INCLUDING
 6TH STREET

PROPERTY ADDRESS :
 500-600-700 ALTON

SCALE: N/A

SHEET 5 OF 5

EXHIBIT B**MIAMI BEACH****PLANNING DEPARTMENT****City of Miami Beach**, 1700 Convention Center Drive, Miami Beach, Florida 33139

Tel: (305) 673-7550, Fax: (305) 673-7559

July 10, 2019

Graham Penn
 Bercow Radell Fernandez & Larkin
 200 South Biscayne Blvd., Suite 850
 Miami, FL 33131

Subject: Request for Zoning Interpretation - Floor Area Ratio (FAR)
500 Alton Road
Miami Beach, Florida

Dear Mr. Penn:

This correspondence is in response to your June 6, 2019 request (attached) for a zoning determination letter regarding floor area. Specifically, you requested a determination as to whether the following constitutes floor area:

1. The portion of mezzanine levels where no floor exists.
2. Voids in floors to accommodate elevator shafts.
3. Voids in floors to accommodate mechanical/ventilation/trash shafts.
4. Voids in floors to accommodate stairwells, including voids to accommodate stairwell within accessory garages.

In accordance with Section 114-1 of the City's Land Development Regulations, floor area is defined as follows:

The sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls or from the exterior face of an architectural projection, from the centerline of walls separating two attached buildings. However, the floor area of a building shall not include the following unless otherwise provided for in these land development regulations:

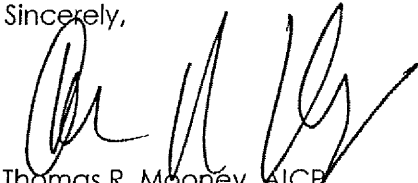
- (1) Accessory water tanks or cooling towers.*
- (2) Uncovered steps.*
- (3) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.*
- (4) Terraces, breezeways, or open porches.*
- (5) Floor space used for required accessory off-street parking spaces. However, up to a maximum of two spaces per residential unit may be provided without being included in the calculation of the floor area ratio.*
- (6) Commercial parking garages and noncommercial parking garages when such structures are the main use on a site.*

- (7) Mechanical equipment rooms located above main roof deck.
- (8) Exterior unenclosed private balconies.
- (9) Floor area located below grade when the top of the slab of the ceiling is located at or below grade. However, if any portion of the top of the slab of the ceiling is above grade, the floor area that is below grade shall be included in the floor area ratio calculation. Despite the foregoing, for existing contributing structures that are located within a local historic district, national register historic district, or local historic site, when the top of the slab of an existing ceiling of a partial basement is located above grade, one-half of the floor area of the corresponding floor that is located below grade shall be included in the floor area ratio calculation.
- (10) Enclosed garbage rooms, enclosed within the building on the ground floor level.

The portion of a mezzanine level where no floor exists does not count as floor area. However, voids in floors which accommodate elevator shafts, mechanical/ventilation/trash shafts, and stairwells, including stairwells within accessory garages, do count as floor area. This is consistent with prior administrative determinations, as well as administrative determinations that were upheld by the Miami Beach Board of Adjustment in 1994 (BOA File No. 2377) and in 1999 (BOA File No. 2404).

If we may be of further assistance, please do not hesitate to contact this department again.

Sincerely,



Thomas R. Mooney, AICP
Planning Director