

**Reform of Rehearing and Appeal Provisions**

**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," TO AMEND AND CLARIFY THE CITY'S RULES OF PROCEDURE RELATING TO REHEARINGS AND APPEALS OF DECISIONS OF THE CITY'S LAND USE BOARDS, INCLUDING TIMEFRAMES FOR CONSIDERING REHEARINGS AND NOTICE REQUIREMENTS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the Land Development Regulations authorize the Design Review Board (DRB) to grant design review approval, and the Historic Preservation Board (HPB) to grant certificates of appropriateness; and

**WHEREAS**, quasi-judicial hearings on individual DRB and HPB applications require public notice to neighboring property owners; and

**WHEREAS**, the City's Land Development Regulations, at Chapter 118, Article IV, establish rules of procedure for rehearings and appeals of decisions of the DRB and HPB; and

**WHEREAS**, on July 20, 2022, the City Commission adopted Ordinance No. 2022-4502, amending the City's rules of procedure regarding rehearings and appeals of land use board decisions, including provisions governing the automatic stay pending appeal; and

**WHEREAS**, the City Commission now desires to adopt additional amendments to the City's rules of appellate procedure, to promote efficiency, safeguard procedural due process, and guard against abuse; 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 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~~ govern ~~rehearings and appeals to or from of~~ decisions of the city's land 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" shall mean the board of adjustment, design review board, historic preservation board and planning board.

\* \* \*

*(a) Rehearings.*

(1) The following types of land use board decisions are eligible for a rehearing ~~are as follows:~~

- A. ~~Historic preservation board. Historic preservation board order relating to the issuance of a~~ Any final order granting or denying a certificate of appropriateness, certificate of appropriateness to dig, or certificate of appropriateness for demolition. Petitions for rehearing under the Bert J. Harris, Jr., Private Property Rights Protection Act, Fla. Stat. §70.001, et seq., rehearing is are separately addressed at subsection (a)(~~6~~)(7), below.
- B. ~~Design review board. Any final order of the Design rReview bBoard final order relating to~~ granting or denying design review approval, only.
- C. ~~Except as delineated above, Rrehearings are not available for any other application, or for any other land use board action without a final order.~~
- D. ~~There shall only be allowed one rehearing for each final order arising from an application, although multiple persons may participate in or request the rehearing. All petitions for rehearing of a particular land use board decision shall be heard at the same duly-noticed hearing before the respective land use board.~~

(2) ~~Eligible~~ A petition for rehearing applications shall be filed in accordance with the process as outlined in subsections A through ~~D~~ E below:

- A. *Timeframe to file.* A petition for rehearing shall be submitted to the planning director on or before the 15th day after the rendition of the board order. Rendition shall be the date upon which a signed written order is executed by the board's clerk.
- B. *Eligible parties.* Parties eligible to file an ~~application~~ petition for rehearing are limited to:

- (i) ~~The~~ Ooriginal applicant(s);
- (ii) The city manager on behalf of the city administration;

- (iii) An affected person, which for purposes of this subsection (a)(2) shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (directly or represented by counsel), and whose appearance is confirmed in the record of the board's public hearing(s) for such project;
  - (iv) Miami Design Preservation League;
  - (v) Dade Heritage Trust.
- C. *Application requirements.* The petition to the board shall be in a writing that contains all facts, law and argument, by or on behalf of an eligible party.
- D. Standard of review. ~~and~~ In order to grant a petition for rehearing, the applicable land use board must find that the petition demonstrates the following:
  - (i) Newly discovered evidence which is likely to be relevant to the decision of the board, or
  - (ii) The board has overlooked or failed to consider something which renders the decision issued erroneous.
- ~~D E.~~ Notice requirements. ~~All land use board applications eligible to request for a~~ A petition for rehearing ~~are shall be~~ 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 rehearing applicant petitioner shall be responsible for all associated costs and fees.
- ~~E F.~~ Rehearing timeframe. Only one rehearing request per eligible party, and per land use board order, shall be permitted. Each petition for rehearing shall be heard at the next scheduled meeting of the applicable land use board, subject to the notice requirements in subsection (a)(2)(E), and shall be acted on by the board at such meeting, unless a lack of quorum or length of the agenda requires the rehearing to be continued. Failure to act upon the rehearing at the next scheduled land use board meeting shall render the request denied as of the date of this meeting, unless all affected parties agree to a continuance of the rehearing. A duly-noticed rehearing may only be continued to a future meeting on the basis of a lack of quorum, length of the agenda, or cancellation of a meeting.
- (3) *Outside counsel to the planning department.* ~~In the event of a rehearing to the applicable land use board~~ For petitions for rehearing filed pursuant to the requirements of this section, 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 ~~administrative officer and planning staff~~ director during the rehearing.

- (4) ~~Actions by the applicable land use board on a petition for rehearing.~~ After the rehearing ~~request~~ petition is heard, the applicable land use board may take any of the actions outlined in subsections (i) through (v) below:
- (i) Grant or deny the petition for rehearing ~~Rehear or not rehear a case,~~
  - (ii) If the decision is to rehear the application, the board may take additional testimony,
  - (iii) Reaffirm ~~their~~ the board's previous decision,
  - (iv) Issue a new decision, and/or
  - (v) Reverse or modify the previous decision.
- (5) *Stay of work.* A petition for rehearing ~~application to the an~~ applicable land use board stays all work on the premises and all proceedings in furtherance of the board action until (i) the petition for rehearing is denied by the board, or (ii) the petition for rehearing is granted and the board reaffirms or modifies an approval, or issues a new approval. ~~;~~ However, nothing herein shall prevent the issuance of building permits or partial building permits necessary to prevent imminent peril to life, health or property, as determined by the building official.
- (6) *Tolling.* See The tolling provisions under in (c)(6) shall apply during the pendency of a petition for rehearing.

\* \* \*

(c) *Appeals of land use board decisions.*

\* \* \*

- (3) Eligible appeals of the design review board or historic preservation board shall be filed in accordance with the process as outlined in subsections A through ~~D~~ E below:

\* \* \*

- A. *Timeframe to file.* A petition for an appeal for review of an order of the Historic Preservation Board or Design Review Board shall be ~~submitted to~~ filed with the city clerk on or before the 20th day after the rendition of the board order. The date of Rrendition of an order shall be the date upon which a signed written the order is executed by the board's clerk to the applicable board.
- B. *Eligible parties.* Eligible parties to file ~~an application for an appeal~~ a petition under this subsection (c) are limited to the following:
- (i) The Original applicant for the subject Historic Preservation Board or Design Review Board approval;
  - (ii) The city manager on behalf of the city administration;

- (iii) An affected person, which for purposes of this subsection (c) shall mean either a person owning property within 375 feet of the applicant's project reviewed by the board, or a person that appeared before the board (~~directly or represented by counsel~~) and whose appearance is confirmed in the record of ~~the board's public hearing(s) for such project~~;
- (iv) Miami Design Preservation League;
- (v) Dade Heritage Trust.

C. *Application requirements:*

- (i) The ~~appeal~~ petition shall be in writing, and shall include all record evidence, facts, law and arguments ~~necessary for in support of the appeal petition (this appellate document shall be called the "brief");~~ and
- (ii) Shall include be accompanied by all applicable fees, as provided in appendix A; and
- (iii) Shall be filed by or on behalf of a named appellant(s); and
- (iv) Shall state the factual bases and legal argument in support of the appeal; and
- (v) Sufficient copies of the entire record before the board, including Aa full verbatim transcript of all proceedings which are the subject of the appeal, shall be provided by the party filing the petitioner, along with a written statement identifying those specific portions of the transcript upon which the party filing it will rely for purposes of the appeal. The verbatim transcript and written statement shall be filed no later than two weeks prior to the first scheduled public hearing to consider the appeal. Sufficient copies of the record before the board shall be filed on or before the same date as the petition is due.

D. *Notice requirements.* ~~All applications for an Oral argument on an appeal of the design review board or historic preservation board shall require a ten (10) day published notice either in a newspaper of general circulation or on the City's website. 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 appeal applicant petitioner shall be responsible for all associated costs and fees.

E. *Deadlines.* Oral argument for a design review board or historic preservation board appeal shall take place within 90 days of the date the appeal is filed, unless a lack of quorum of the city commission, or the availability of the special magistrate, requires the oral argument to be continued to a later date.

- (i) *Answer brief.* The respondent may serve an answer brief within 30 days of the City's written acceptance of the petition.
- (ii) *Reply brief.* The petitioner may serve a reply brief within 15 days of the filing of the answer brief.
- (iii) *Oral argument.* Oral argument shall occur within 90 days of the City's acceptance of the petition, except that oral argument may be continued to a future date due to lack of quorum of the City Commission or the unavailability of the special magistrate.
- (iv) *Decision.* A decision of the city commission or special magistrate shall be rendered within 120 days of the date the appeal is filed.

These deadlines may be modified by consent of the parties to the appeal.

\* \* \*

(5) *Stay of work and proceedings on appeal.* An appeal of a land use board order stays all work on the premises and all proceedings in furtherance of the action appealed from, unless one of the exceptions below applies:

- (i) *Imminent peril to life or property.* 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 for good cause shown;
- (ii) *Specified appeals from the Planning Board.* As applicable only to an appeal arising from the planning board's approval of a conditional use permit, the city may accept, for review purposes only, a building permit application during a pending appeal in circuit court. The applicant shall be required to pay all building permit fees, which fees shall be nonrefundable. Despite the foregoing, no building permit shall issue while the circuit court appeal is pending. Should the decision on the circuit court appeal (petition for certiorari) decision be rendered in favor of the conditional use permit applicant, the applicant may proceed with construction and operations, excluding entertainment operations, pending any further appeals to the Third District Court of Appeal or other appellate proceedings, so long as the following conditions are met:
  - a. The building permit may issue and shall remain active until the final resolution of all administrative and court proceedings;
  - b. No final certificate of occupancy (CO) or certificate of completion (CC) shall be issued, and no entertainment operations or entertainment business shall commence or take place, until the final resolution of all administrative and court proceedings;
  - c. The conditional use permit was appealed by a party other than (i) the city, or (ii) an applicant appealing a denial of a conditional use permit application;



- d. The property subject to the conditional use permit is located within (i) a commercial district, and (ii) a historic district;
- e. The scope of the conditional use permit is limited to modifications to an existing structure;
- f. The applicant shall prior to the issuance of the building permit, either: (i) place funds in escrow, or (ii) obtain a bond, either of which must be in an amount that is at least equal to or greater than 100 percent of the value of the work proposed under the building permit;
- g. The applicant is not seeking the demolition of any portion of a contributing structure; and
- h. In the event that the conditional use permit is reversed on appeal, the applicant must immediately amend or abandon the building permit or building permit application without any liability to the city, and a CC or CO shall not be issued. Additionally, no BTR for entertainment shall issue.

In order for a building permit to issue pursuant to this subsection (c)(5)(ii), pending any further appeals to the Third District Court of Appeal or other appellate proceedings, the applicant shall be required to comply with all of the conditions in subsections (c)(5)(ii) a. through h., as well as all conditions of the conditional use permit. The applicant shall also be required to execute a written agreement (in a form acceptable to the city attorney) holding the city harmless and indemnifying the city from any liability or loss resulting from the underlying appellate or administrative proceedings, any civil actions relating to the application of this subsection (c)(5)(ii), and any proceedings resulting from the issuance of a building permit, and the non-issuance of a TCO, TCC, CC, CO or BTR for the property. Such written agreement shall also bind the applicant to all requirements of the conditional use permit, including all enforcement, modification, and revocation provisions; except that the applicant shall be ineligible to apply for any modifications to the conditional use permit or any other land use board order impacting the property, until the final resolution of all administrative and court proceedings as certified by the city attorney. Additionally, the applicant must agree that in the event that the conditional use permit is reversed, the applicant shall be required to restore the property to its original condition. The city may utilize the bond to ensure compliance with the foregoing provisions.

- (iii) *Other appeals from land use board decisions.* Except for appeals arising from the planning board's approval of a conditional use permit, which are governed by subsection (ii) above, the appeal of any land use board order for a property located outside the RS-1, RS-2, RS-3, or RS-4 single-family zoning districts, if timely and properly filed subject to the requirements of this section or the Florida Rules of Appellate Procedure (as applicable), shall stay all work on the premises and all proceedings in furtherance of the action appealed from, at a minimum, for a period of either 120 days from the date the appeal is filed or until such time as the applicant obtains a favorable ruling by the body or

court with jurisdiction at the first level of appeal (whether the special magistrate, for appeals from the historic preservation board; the city commission, for appeals from the design review board; or the circuit court, for appeals of decisions on variances and appeals from other land use boards), whichever occurs first. Notwithstanding the foregoing, and only as applicable to appeals before the city commission or special magistrate, in the event that a decision is not rendered within 120 days due to a lack of quorum of the city commission or the unavailability of the special magistrate, the stay shall remain in place, at a minimum, until such time as the appeal is ruled on by the city commission or special magistrate. The provisions of this paragraph shall not be applicable to appeals filed by the city manager or the applicant for the land use board approval. In order to lift the automatic stay once the initial 120-day period has elapsed, or upon a favorable ruling by the body or court with jurisdiction at the first level of appeal, whichever is applicable, under this subsection (c)(5)(iii), an applicant shall first be required to satisfy the following requirements:

- a. The applicant shall execute a written agreement (in a form acceptable to the city attorney) to hold harmless and indemnify the city from any claim, liability, or loss resulting from the approval of the application, the underlying appellate proceedings, the application of this subsection (c)(5)(iii), the issuance of a building permit, and/or the non-issuance of a final certificate of completion (CC) or a final certificate of occupancy (CO) for the property.
  - b. The written agreement shall bind the applicant to all requirements of the conditions of the applicable order of the respective land use board, including all enforcement, modification, and revocation provisions; except that the applicant shall be ineligible to apply for any modifications to the board order that are subject to the appeal, until the final resolution of all administrative and court proceedings as certified by the city attorney. Notwithstanding the foregoing, an applicant shall be eligible to apply for modifications that, as determined by the planning director and the city attorney, (i) are minor, (ii) do not affect the portions of the project that are challenged in the appeal, or (iii) are necessary to effectuate a settlement.
  - c. The applicant shall agree that in the event that the decision of the board is reversed, the applicant shall be required to restore the property to its previous condition, except that portions of the project that are not affected by the final order or resolution on the appeal, as determined by the planning director and city attorney, may remain, unless subsequent modifications are approved by the respective land use board.
  - d. No final certificate of occupancy (CO) or final certificate of completion (CC), shall be issued until the final resolution of the appeal (including all judicial proceedings), as determined by the city attorney.
- (6) *Tolling during all appeals.* Notwithstanding the provisions of subsections 118-193(2), "Applications for conditional uses," 118-258(c), "Building permit application," 118-532(c), "Proceedings before the historic preservation board," or 118-564(11), "Decisions on certificates of appropriateness," in the event the original decision (board order) of the applicable board, is timely appealed, the applicant



shall have 18 months, or such lesser time as may be specified by the board, from the date of final resolution of all administrative and/or court proceedings to obtain a full building permit, a certificate of occupancy, a certificate of use or a certificate of completion, whichever occurs first. This tolling provision shall only be applicable to the original approval of the board and shall not apply to any subsequent requests for revisions or requests for extensions of time.

**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 \_\_\_\_\_, 2023.

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado, City Clerk

\_\_\_\_\_  
Dan Gelber, Mayor

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

12-6-22  
\_\_\_\_\_  
Date

NK

First Reading: December 14, 2022  
Second Reading: February 1, 2023

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