

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: October 27, 2015

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **Ordinance Amendments:**
File No. 2273 – Consolidation and standardizing of notification procedures.
File No. 2297 – Consolidation of notification procedures for single family home determination of architectural significance.
File No. 2276 – Consolidation and standardization of rehearing and appeal procedures.

RECOMMENDATION

Transmit the proposed ordinance amendments to the City Commission with a favorable recommendation.

HISTORY/ BACKGROUND

On June 10, 2015, at the request of Commissioner Deede Weithorn, the City Commission referred these items to both the Land Use and Development Committee and the Planning Board (Item C4F).

On October 7, 2015, the Land Use and Development Committee recommended approval of the proposed ordinance amendments (Ordinances for File Nos. 2273 & 2276). The ordinance for File No. 2297 has not yet been heard by the Land Use and Development Committee.

On October 14, 2015, the City Commission approved the proposed ordinance amendments on first reading (Ordinances for file nos. 2273 & 2276.) The ordinance for File No. 2297 has not yet been heard by the City Commission.

The City Commission is scheduled to hear the proposed amendments (Ordinances for file nos. 2273 & 2276) for second reading on December 9, 2015.

REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

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

Consistent – The proposed ordinance amendments are consistent with the Goals, Objectives, and Policies of the Comprehensive Plan.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Consistent – The consolidation and standardization of notification, rehearing, and appeal procedures will facilitate the implementation of the City's new software systems, Energov and NOVUS Agenda.

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

Not applicable.

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.**

Not applicable.

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

Not applicable.

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

Not applicable.

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 amendments should not be a deterrent to the improvement or development of properties in the City.

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.

ANALYSIS

The City of Miami Beach is in the process of updating the City's procedures and on-line capabilities through the use of Energov and NOVUS Agenda. These systems will allow for an online collaboration in processing board applications and creating agendas for all City Commission and quasi-judicial board meetings. As part of this initiative, City departments are in the process of configuring the workflows, which include the type of notice needed for the type of application being heard – whether there is a public hearing notice requirement, whether mailed notice or posting is required, and the time tables for producing said notice.

Currently, the notice provisions for each board are located throughout the code, and are not easy to find. Often, the notice provision is subsumed within a larger ordinance, and differ from board to board making it very difficult for the general public to understand the type of notice they can expect. The administration is recommending that the various notice provisions contained in the Land Development Code be consolidated in one ordinance, in one section of the Code, and be uniform for the various land use board applications. This would also facilitate the implementation of the Energov and NOVUS Agenda software systems and ensure that staff does not err in providing proper notice.

The notice requirements for quasi-judicial land use boards have not changed in the proposed **Consolidation and Standardizing of Notification Procedures Ordinance**, with the exception of the inclusion of additional language regarding requirements for posting, as noted in the underlined section below:

118-8 Notice Procedures.

Applications requiring notice shall be noticed in accordance with the following provisions, unless otherwise more specifically provided for in these Land Development Regulations:

- (a) *Advertisement.* At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be noticed in a newspaper of general circulation. Applicant shall pay advertisement fee as applicable.
- (b) *Mail Notice.* At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be given by mail to the owners of record of land lying within 375 feet of property. Applicants shall submit all information and certifications necessary to meet this requirement, as determined by the department. Additionally, courtesy notice shall also be given to any state nonprofit community

organization which has requested of the director in writing to be notified of board hearings. Applicant shall pay mailing fees as applicable.

- (c) *Posting.* At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be posted on the property. Such posting shall be a minimum dimension of 11 inches by 17 inches, and located in a visible location at the front of the property, and shall not be posted on a fence or wall that would be obstructed by the operation of a gate. The applicant shall pay posting fee as applicable.

The ordinance for the **Consolidation of notification procedures for single family home determination of architectural significance** has been included as a separate amendment, as the notification procedures for architecturally significant homes was overlooked in the in the initial **Consolidation and Standardizing of Notification Procedures Ordinance**. In order to standardize the time frames for public notice, the timeframe has been extended from 10 days to 30 days for the public notice and for the planning director to make a determination concerning the architectural significance of a single family home.

Similarly, the rehearing and appeal procedures are also scattered throughout the City Code, are difficult to find, and are inconsistent in listing the requirements for filing such an application. The proposed **Rehearing and Appeal Procedures Ordinance** has been organized as follows:

Sec. 118-9 – Rehearing and appeal procedures.

(a) *Rehearings*

- (1) *Decisions eligible for a rehearing*
- (2) *Eligible rehearing filing requirements*
 - A. *Timeframe to file.*
 - B. *Eligible parties*
 - C. *Application requirements.*
 - D. *Notice requirements.*
- (3) *Actions by the board.*
- (4) *Stay of work.*
- (5) *Tolling.*

(b) *Administrative appeal procedures*

- (1) *Decisions eligible for administrative appeals*
- (2) *Eligible appeal filing requirements:*
 - A. *Timeframe to file:*
 - B. *Eligible parties*
 - C. *Application requirements.*
 - D. *Notice requirements.*
- (3) *Outside Council to the Planning Department.*
- (4) *Actions by the board.*
- (5) *Stay of work and proceedings on appeal.*
- (6) *Tolling.*

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

- (1) *Decisions ineligible for appeal except to circuit court*
- (2) *Decisions eligible for appeal*
- (3) *Eligible appeal filing requirements*
 - A. *Timeframe to file.*
 - B. *Eligible parties*
 - C. *Application requirements:*

D. Notice requirements.

(4) Action.

(5) Stay of work and proceedings on appeal.

The substance of the regulations have not changed in the proposed ordinance, with the following noted exceptions:

1. Section 118-193. – Applications for conditional uses. Currently the timeframe to obtain a building permit for an adult congregate living facility is 12 months, and any the Planning Board may only approve an extension of time for up to three months. The Ordinance changes the timeframe to obtain a building permit to 18 months, and an additional 12 months for an extension of time, in order be consistent with all other conditional use applications. Also, an appeal of an extension of time for an ALF currently is required to go to the City Commission, and the proposed ordinance eliminates this provision; defaulting instead to the standard appeal procedures of a Planning Board application.
2. Section 118-537. – Rehearings and appeals. The proposed ordinance relocates this entire section into the newly incorporated Section 118-9. – Rehearing and appeal procedures.
3. To keep all appeals consistent as to timing, an appeal of an HPB administrative decision from 10 days to 15 days to be consistent with all other administrative appeals to the DRB.
4. Under the sections relating to hiring of outside counsel, language has been added to include the ability to use another attorney from the City Attorney's office that would be independent from the attorney presiding over the Boards.
5. The requiremenets for the Design Review Board and Historic Preservation Board have not changed.
6. The Planning Board appeal process has been revised to include additional parties eligible to file an appeal, including someone who appears at a hearing may appeal, and MDPL/DHT can now appeal regardless of whether or not the subject of the appeal is located in a historic site or district.
7. The Board of Adjustment had no standards defined, and to be consistent, the same standards of the DRB and HPB have been added.

Now, all boards now have eligible parties as follows:

- Applicant,
- City manager,
- A property owner within 375 feet of the subject property,
- A party appearing at hearing,
- MDPL/DHT,

RECOMMENDATION

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

TRM/MAB/SMW

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Rehearing and Appeal Procedures

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CONSOLIDATING AND STANDARDIZING THE REHEARING AND APPEAL PROCEDURES, INCLUDING ADMINISTRATIVE APPEALS AND QUASI-JUDICIAL APPLICATIONS BEFORE HISTORIC PRESERVATION BOARD, BOARD OF ADJUSTMENT, PLANNING BOARD, AND DESIGN REVIEW BOARD, BY CREATING THE FOLLOWING SECTION: CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," AT SECTION 118-9, ENTITLED "APPEAL AND REHEARING PROCEDURES"; AND AMENDING ARTICLE II "BOARDS" DIVISION 3 "DESIGN REVIEW BOARD" AT SECTION 118-71; DIVISION 5 "BOARD OF ADJUSTMENT" AT SECTIONS 118-134, 118-136, 118-137, 118-138; ARTICLE IV "CONDITIONAL USE PROCEDURE" AT SECTIONS 118-193, AND 118-197; ARTICLE VI "DESIGN REVIEW PROCEDURES" AT SECTIONS 118-258, 118-260, 118-261, 118-262, 118-263; ARTICLE VIII "PROCEDURES FOR VARIANCES AND ADMINISTRATIVE APPEALS" AT SECTIONS 118-352 and 118-358; ARTICLE IX "NONCONFORMANCES" AT SECTIONS 118-395 AND 118-397; ARTICLE X "HISTORIC PRESERVATION"; DIVISION 2 "HISTORIC PRESERVATION BOARD REVIEW OF PROJECTS" AT SECTIONS 118-532, 118-536, AND 118-537; DIVISION 3 "ISSUANCE OF CERTIFICATE OF APPROPRIATENESS/CERTIFICATE TO DIG/CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION" AT SECTIONS 118-563, 118-564, 118-565; DIVISION 5 "SINGLE-FAMILY AD VALOREM TAX EXEMPTION" AT SECTION 118-609; CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS" AT ARTICLE II "DISTRICT REGULATIONS," DIVISION 2 "RS-1,RS-2, RS-3, RS-4 SINGLE FAMILY RESIDENTIAL DISTRICTS AT SECTION 142-108 IN ORDER TO REMOVE ANY CONFLICTS WITH NEWLY CREATED SECTION 118-9; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, The City of Miami Beach is in the process of updating the City's procedures and on-line capabilities through the use of Energov and NOVUS Agenda, which systems, will allow for an online collaboration in processing board applications and creating agendas for all city commission and quasi-judicial board meetings; and

WHEREAS, As part of this initiative, City departments are in the process of configuring the workflows which include the type of notice need for the type of application being heard – whether there is a public hearing notice requirement, whether mailed notice or posting is required, and the time tables for producing said notice; and

WHEREAS, the notice provisions for each board are located throughout the code, and are not easy to find, and the City is simultaneously proposing to amend Chapter 118 to create 118-8 to consolidate all notice procedures for land use boards in one, easy to read, and utilize section of the Code; and

WHEREAS, the City intends to follow the same process with notice for and process of appeal or rehearing of land use board quasi-judicial proceedings; and

WHEREAS, this consolidation would also facilitate the implementation of the Energov

and NOVUS Agenda software systems and ensure that staff does not err in providing proper notice and provide applicants, as well as the public with an easier to understand appellate process; and

WHEREAS, these regulations will accomplish these goals and ensure that the public health, safety and welfare will be preserved.

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" at Section 118-9, "Rehearing and appeal procedures", is hereby established, as follows:

* * *

Sec. 118-9 Reserved. Rehearing and appeal procedures.

The following requirements shall apply to all rehearings and appeals by land development 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.

(a) Rehearings.

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

- A. Historic preservation board. historic preservation board order relating to the issuance of a Certificate of Appropriateness, dig or demolition. Bert J. Harris rehearing is separately addressed at subsection (a)(6), below.
- B. Design review board. design review board order relating to design review approval, only.
- C. Except as delineated above, rehearings are not available for any other application, or for any other land use board action.
- D. There shall only be allowed one rehearing, per application, although multiple persons may participate in or request the rehearing.

(2) Eligible rehearing applications shall be filed in accordance with the process as outlined in subsections A through D 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 for rehearing are limited to:
 - (i) Original applicant(s)
 - (ii) The city manager on behalf of the city administration

- (iii) An affected person, which for purposes of this section 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, and demonstrate 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. **Notice requirements.** All land use board applications eligible to request a rehearing are subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8. The rehearing applicant shall be responsible for all associated costs and fees.

(3) **Outside Counsel to the Planning Department.** In the event of a rehearing to the applicable land use board, 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 during the rehearing.

(4) **Actions by the applicable land use board.** After the rehearing request is heard, the applicable land use board may take the actions outlined in subsections (i) through (v) below:

- (i) Rehear or not rehear a case,
- (ii) If the decision is to rehear the application, the board may take additional testimony,
- (iii) Reaffirm their previous decision,
- (iv) Issue a new decision, and/or
- (v) Reverse or modify the previous decision,

(5) **Stay of work.** A rehearing application to the applicable land use board stays all work on the premises and all proceedings in furtherance of the board action; 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 tolling provision under (b)(6).

(7) **Rehearings due to Bert J. Harris Claim.** A petition for rehearing pursuant to a Harris Act claim, the petition shall include the following documentation which shall be submitted no later than 15 days after the submission of the petition for rehearing:

- A. A bona fide, valid appraisal supporting the claim of inordinate burden and demonstrating the loss, or expected loss, in fair market value to the real property as a result of the board's action;
- B. All factual data described in subsection 118-564(c); provided, however, in the event all or any portion of the factual data was available to the applicant prior to the conclusion of the public hearing before the historic preservation or joint design review board/historic preservation board and the applicant failed to furnish same to the board's staff as specified in subsection 118-564(c), then, the board may, in its discretion, deny the applicant's request to introduce such factual data;
- C. A report prepared by a licensed architect or engineer analyzing the financial implications of the requirements, conditions or restrictions imposed by the board on the property or development proposed by the applicant with respect to which the applicant is requesting a rehearing;
- D. A report prepared by a licensed architect or engineer analyzing alternative uses for the real property, if any;
- E. A report prepared by a licensed architect or engineer determining whether, as a result of the board action, the owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable; and
- F. A report prepared by a licensed architect or engineer addressing the feasibility, or lack of feasibility, of effectuating the board's requirements, conditions or restrictions and the impact of same on the existing use of the real property or a vested right to a specific use of the real property.

(b) Administrative appeal procedures:

(1) Decisions eligible for administrative appeals:

G. Planning Board Conditional Use Applications. An eligible party may appeal a decision of the planning director to the planning board regarding a decision reached on a conditional use application.

H. Board of Adjustment administrative appeals.

(i) With the exception of those items expressly identified within this section for appeals of administrative decisions specifically delegated to the other land use boards, the board of adjustment shall have the power and duty to hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations.

(ii) An administrative appeal pursuant to subsection 118-397(b)

I. Historic preservation board administrative appeals. An eligible party may appeal a decision of the planning director regarding the following to the historic preservation board:

(i) An administrative appeal pursuant to subsection 118-563(d)(1) or (3).

- (ii) An administrative appeal pursuant to subsection 118-565, or
- (iii) An administrative appeal pursuant to section 118-609.

J. Design review board administrative appeals. An eligible party may appeal a decision of the planning director regarding the following administrative determinations to the design board:

- (i) An administrative appeal pursuant to subsection 118-395.
- (ii) An administrative appeal pursuant to subsection 118-260, or
- (iii) An administrative appeal pursuant to subsection 142-108.

(2) Eligible administrative appeals shall be filed in accordance with the process as outlined in subsections A through D below:

A. Timeframe to file:

- (i) Planning board. A petition for an administrative appeal shall be submitted to the planning director published a decision on the conditional use application on or within 15 days after the date on which the director or designee published a decision reached on a Conditional Use application. For this section of the code, published shall mean the ruling being released, in writing, and distributed by the planning director, or his designee.
- (ii) Board of adjustment. A petition for an administrative appeal shall be submitted to the planning director on or before the 30th day after the date of the publication of a refusal of a permit by, notice of violation, ruling, decision or determination of, the building official or other administrative official.
- (iii) Historic preservation board. A petition for an administrative appeal shall be submitted to the planning director on or before the 15th day after the date on which the director or designee published a decision on applications submitted pursuant to subsection 118-563(d)(1), pertaining to ground level additions to existing structures, and subsection 118-563(d)(3), pertaining to façade and building restoration.
- (iv) Design review board. The following timeframes shall apply for administrative appeals shall be submitted to the planning director on or before the 15th day after the date on which the decision is published pursuant to either subsections 118-395 or 142-108.

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, 118-395, 118-609, and 142-108.
- (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, 118-395, 118-609, and 118-260.

- (iv) Miami Design Preservation League, except for administrative appeals pursuant to sections 118-260, 118-395, 118-260, 118-609 and 142-108.
- (v) Dade Heritage Trust, except for administrative appeals pursuant to sections 118-260, 118-395, 118-260, 118-609, and 142-108.

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) Shall be by or on behalf of an eligible party; and
- (iii) 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 land use board applications eligible to request an appeal are subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8. The rehearing applicant shall be responsible for all associated costs and fees.

(3) **Outside Counsel to the Planning Department.** In the event of an administrative appeal to the applicable land use board, 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 who made the decision that is the subject of the appeal.

(4) **Board Decisions on Administrative Appeals.** The applicable land use board may, upon appeal, reverse or affirm, wholly or partly, the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of five members of the applicable land use board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the applicable land use board is required to pass under these land development regulations.

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 appeal to the applicable board 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 official from whom the appeal was taken shall certify to the applicable land use board 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. If the appeal arises from a quasi-judicial public hearing before a land use board, the hearing before the board to which application was made may proceed, provided any approval does not vest. The final order shall contain appropriate conditions to stay its effectiveness until the final resolution of all administrative and court proceedings. 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. 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. Notice of the final resolution of administrative and court proceedings shall be provided as required for notice of hearings under these land development regulations.

C. Notwithstanding the foregoing, an appeal to the applicable land use board, city commission, historic preservation special master or court, or other challenge to an administrative official's decision, shall neither stay the issuance of any building permit, full building permit or phased building permit nor stay the running of the required time period set by board order or these land development regulations to obtain a full building permit or phased building permit.

(6) Tolling during all appeals. Notwithstanding the provisions of Section 118-193(2), 118-258(c), 118-532(f), or 118-564(11), 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.

(c) Appeals of land use board applications.

(1) Decisions of the following shall be final, and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari:

- A. Planning board.
- B. Board of adjustment.
- C. Design review board, with respect to variance decisions and administrative appeals, only.
- D. Historic preservation board, with respect to variance decisions and administrative appeals, only.
- E. Historic preservation special master.

(2) Decisions from the following may be appealed as noted:

- A. Historic preservation board.
 - (i) Any applicant requesting an appeal of an approved application from the historic preservation board (for a Certificate of Appropriateness only) shall be made to

the historic preservation special master, except that a land use board order granting or denying a request for rehearing shall not be reviewed by the Historic preservation special master.

- (ii) The historic preservation special master shall meet the following requirements:
 - a. Historic preservation special master qualifications. Historic preservation special masters appointed to hear appeals pursuant to this subsection shall be attorneys who are members in good standing of the Florida Bar and have expertise in the area of historic preservation.
 - b. Historic preservation special master terms. Historic preservation special masters shall serve terms of three years, provided however, that they may be removed without cause upon a majority vote of the city commission. Compensation for historic preservation special masters shall be determined by the city commission.

B. Design review board. Any applicant requesting an appeal of an approved application from the design review board (for design review approval only) shall be made to the city commission, except that orders granting or denying a request for rehearing shall not be reviewed by the city commission.

(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) below:

A. **Timeframe to file.** A petition for an appeal shall be submitted to city clerk on or before the 20th 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** to file an application for an appeal are limited to the following:

- (i) Original applicant
- (ii) The city manager on behalf of the city administration
- (iii) An affected person, which for purposes of this section 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 shall be in writing, and include all record evidence, facts, law and arguments necessary for the appeal (this appellate document shall be called the "brief"); and
- (ii) shall include all applicable fees, as provided in appendix A; and
- (iii) shall be 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) a full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition, 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.

D. Notice requirements. All applications for an appeal of the design review board or historic preservation board are subject to the same noticing requirements as an application for a public hearing, in accordance with section 118-8. The appeal applicant shall be responsible for all associated costs and fees.

(4) Action. In order to reverse, amend, modify, or remand amendment, modification, or rehearing the decision of the board, the city commission (for design review board appeals), and the historic preservation special master (for historic preservation board appeals of Certificates of Appropriateness, Dig or Demolition), shall find that the board did not comply with any of the following:

- (i) Provide procedural due process;
- (ii) Observe essential requirements of law; and
- (iii) Based its decision upon substantial competent evidence.

The decision on the appeal shall be set forth in writing, and shall be promptly mailed to all parties to the appeal. In order to reverse, or remand, a five-sevenths vote of the city commission is required for appeals of the design review board to the city commission.

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

- (i) 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; or
- (ii) If the appeal arises from an application for development review board hearing or other approval requiring a hearing before a land use board, the hearing before the board to which application was made may proceed, provided any approval does not vest. The final order shall contain appropriate conditions to stay its effectiveness until the final resolution of all administrative and court proceedings. 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. 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. Notice of the final resolution of administrative and court proceedings shall be provided as required for notice of hearings under these land development regulations. Notwithstanding the foregoing, an appeal to the board or court, or other challenge to an administrative official's decision, shall neither stay the issuance of any building permit, full building permit or phased building permit nor stay the running of the required time period set by board order or these land development regulations to obtain a full building permit or phased building permit.

Section 2. That Chapter 118, "Administration And Review Procedures," Article II "Boards", Division 3 "Design Review Board, at Section 118-71, "Powers and Duties", is hereby amended, as follows:

Sec. 118-71. - Powers and duties.

The design review board shall have the following powers and duties:

* * *

- (5) To hear and decide appeals of the planning director when deciding matters pursuant to section 118-260.

* * *

SECTION 3. That Chapter 118, "Administration And Review Procedures," Article II "Boards," Division 5 "Board of Adjustment" at Section 118-134, "Notification of hearings", is hereby amended, as follows:

Sec. 118-134. - Reserved. Notification of hearings.

~~The board of adjustment shall not vary or modify any regulation or provision of these land development regulations or hear an appeal of an administrative decision until a public hearing has been held. At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) given by mail to the owners of record of land lying within 375 feet of the property. This mailed notification requirement shall be the responsibility of the applicant. Where the application is for an appeal of an administrative decision the preceding information shall be supplemented by an explanation of what is being appealed.~~

SECTION 4. That Chapter 118, "Administration And Review Procedures," Article II "Boards," Division 5 "Board of Adjustment," at Section 118-136, "Powers and duties", is hereby amended, as follows:

Sec. 118-136. - Powers and duties.

(a) The board of adjustment shall have the following powers and duties:

- (1) To hear and decide appeals pursuant to the procedural requirements of Section 118-9. ~~when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations with the exception of appeals pursuant to section 118-197 and section 118-262. In the event of an administrative appeal to the board of adjustment, the planning director may engage the services of an attorney for the purpose of representing the administrative officer who made the decision that is the subject of the appeal.~~

~~In exercising this power, the board of adjustment, may upon appeal, reverse or affirm, wholly or partly, the order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of five members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under these land development regulations.~~

* * *

(b) The board of adjustment shall serve as the city's floodplain management board in reviewing applications for properties within its jurisdiction and shall have the authority to exercise all powers and perform all duties assigned to such board pursuant to section 54-31 et seq. and Resolution No. 93-20698, and in accordance with the procedures set forth therein as such ordinance and resolution may be amended from time to time. For the purposes of determining jurisdiction, the criteria in section 118-351(a) shall be utilized.

SECTION 5. That Chapter 118, "Administration And Review Procedures," Article II "Boards," Division 5 "Board of Adjustment," at Section 118-137, "Stay of work and proceedings on appeal", is hereby amended, as follows:

Sec. 118-137. Reserved. -- Stay of work and proceedings on appeal.

~~(1) An 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 in subsection (2) applies.~~

~~(2) Exceptions.~~

~~(a) The official from whom the appeal was taken 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 of adjustment 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) If the appeal arises from an application for development review board hearing or other approval requiring a hearing before a land use board, the hearing before the board to which application was made may proceed, provided any approval does not vest. The final order shall contain appropriate conditions to stay its effectiveness until the final resolution of all administrative and court proceedings. 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. 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. Notice of the final resolution of administrative and court proceedings shall be provided as required for notice of hearings under these land development regulations.~~

~~(3) Notwithstanding the foregoing, an appeal to the board of adjustment or court, or other challenge to an administrative official's decision, shall neither stay the issuance of any building permit, full building permit or phased building permit nor stay the running of the required time period set by board order or these land development regulations to obtain a full building permit or phased building permit.~~

SECTION 6. That Chapter 118, "Administration And Review Procedures," Article II "Boards," Division 5 "Board of Adjustment," at Section 118-138, "Appeal of board of adjustment's decision", is hereby amended, as follows:

Sec. 118-138. Reserved. -- Appeal of board of adjustment's decision.

~~The decision of the board of adjustment shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.~~

SECTION 7. That Chapter 118, "Administration And Review Procedures," Article IV "Conditional Use Procedures," at Section 118-193, "Applications for conditional uses", is hereby amended, as follows:

Sec. 118-193. - Applications for conditional uses.

Applications for approval of a conditional use shall be submitted to the planning department, which shall prepare a report and recommendation for consideration by the planning board, and when required, by the city commission.

- (1) Site plan required. Each application for a conditional use permit shall be accompanied by a site plan meeting the requirements of section 118-1, and such other information as may be required for a determination of the nature of the proposed use and its effect on the comprehensive plan, the neighborhood and surrounding properties.
- (2) Expiration of Orders of Planning Board Time limitations.
 - a. An applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which a conditional use was granted to obtain a full building permit, a certificate of occupancy, a certificate of use or a certificate of completion, whichever occurs first. The foregoing 18-month time period, or lesser time period, includes the time period during which an appeal of the decision of the planning board may be filed. If the applicant fails to obtain a full building permit within 18 months, or such lesser time period as is specified, of the board meeting date at which a conditional use was granted and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the conditional use shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the planning board, provided the applicant submits a request in writing to the planning and zoning director no later than 90 calendar days after the expiration of the original approval, showing good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments. ~~Notwithstanding the foregoing, in the event the original decision of the planning board, with respect to a conditional use request, 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.~~

Please refer to 118-9 relating to appealed orders, and tolling.

b. ~~Time limitations for adult congregate living facilities:~~

- ~~1. Approval of an adult congregate living facility under the conditional use procedures shall become null and void if a building permit has not been issued within one year after the date of approval. Such conditional use shall become null and void if a certificate of occupancy, certificate of completion or an occupational license is not issued within one year after the building permit is issued.~~
- ~~2. When extenuating circumstances or compelling reasons prevent the applicant from complying with conditions of approval within the above stated time periods, the applicant may submit a request to the planning board which may approve one extension of time of up to three months to obtain a building permit, or one extension of time of up to six months to complete all construction work and obtain a certificate of occupancy, certificate of completion or occupational license.~~
- ~~3. The public notice requirements shall be satisfied by placing the request on the board's agenda. Appeal of the board's decision shall be to the city commission. A five-sevenths vote of the commission shall be required to overrule a decision of the planning board relating to an extension of time requested. The appeal shall be filed within 30 days of the date on which the board's decision is reached.~~

~~* * *~~

SECTION 8. That Chapter 118, "Administration And Review Procedures," Article IV "Conditional Use Procedures," at Section 118-197, "Review of conditional use decisions", is hereby amended, as follows:

Sec. 118-197. – Reserved. ~~Review of conditional use decisions.~~

- ~~(a) An applicant may appeal a decision of the planning and zoning director to the planning board within 15 days of the date on which the director reached a decision on the conditional use application. The appeal shall be placed on the planning board agenda within 45 days of receipt of the appeal.~~
- ~~(b) In order to reverse, amend, or modify a conditional use decision of the planning and zoning director, the board shall find that the director did not do one of the following:
 - ~~(1) Provide procedural due process;~~
 - ~~(2) Observe essential requirements of law; or~~
 - ~~(3) Base his/her decision upon substantial competent evidence.~~~~

~~The board shall issue a written order setting forth its decision, which shall be promptly mailed to all parties to the appeal.~~

- ~~(c) An applicant, the city manager, on behalf of the administration, the owner of property located within 375 feet of the subject property, and in the case of a historic site or property located within a historic district, Miami Design Preservation League and Dade Heritage Trust may seek review of a conditional use decision of the planning board. Review of a~~

~~conditional use decision of the planning board shall be to a court of competent jurisdiction by petition for writ of certiorari.~~

~~(d) Any review stays all work on the premises and all proceedings including a request for a building permit, certificate of completion or occupational license.~~

SECTION 9. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-258, "Building permit application", is hereby amended, as follows:

Sec. 118-258. - Building permit application.

* * *

(c) Expiration of orders of the Design Review Board. No building permit, full building permit or phased development permit shall be issued for any plan subject to design review except in conformity with the approved plans. The applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which design review approval was granted to obtain a full building permit or a phased development permit. The foregoing 18-month time period includes the 20-day time period during which an appeal of the decision of the design review board may be filed, pursuant to the requirements of Section 118-9. If the applicant fails to obtain a full building permit or a phased development permit within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which design review approval was granted, and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, all staff and board approvals shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the board, at its sole discretion, provided the applicant submits a request in writing to the planning director no later than 90 calendar days after the expiration of the original approval, showing good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments. ~~Notwithstanding the foregoing, in the event the original decision of the design review board is timely appealed, or there is an appeal of an approval from the board of adjustment and/or the planning board that is a requirement of the original decision of the design review board, and such appeal is filed within 20 days of the decision of the board of adjustment and/or the planning board, the applicant shall have 18 months, or such lesser time as may be specified by the design review board, from the date of final resolution of all administrative and/or court proceedings to obtain a full building permit or phased development permit. 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.~~

Please refer to 118-9 relating to appealed orders, and tolling.

* * *

SECTION 10. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-260, "Special review procedure", is hereby amended, as follows:

Sec. 118-260. – Administrative Review Procedures~~Special review procedure.~~

- (a) The planning director or designated representative, shall have the authority to approve, approve with conditions or deny an application on behalf of the board, for 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, any waterfront or public park. For those lots which are greater than 10,000 square feet, the floor area of the proposed addition may not exceed ten 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 alterations, renovations and restorations which are minor in nature.
 - (4) Minor demolition and alterations to address accessibility, life safety, mechanical and other applicable code requirements.
 - (5) Minor demolition and alterations to rear and secondary facades to accommodate utilities, refuse disposal and storage.
 - (6) Minor work associated with the public interiors of buildings and those interior portions of commercial structures which front a street or sidewalk.
 - (7) Minor work involving public improvements upon public rights-of-way and easements.
 - (8) Minor work which is associated with rehabilitations and additions to existing buildings, or the construction, repair, or rehabilitation of new or existing walls, at-grade parking lots, fences.

The director's decision shall be based upon the criteria listed in this article. The applicant may appeal a decision of the planning director to the design review board, pursuant to the procedural requirements of Section 118-9. ~~pursuant to all application and notice requirements. The applicant shall be responsible for providing and effectuating all noticing requirements, according to planning department procedures, as well as the duplication of all pertinent plans and exhibits for distribution to the board.~~

SECTION 11. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-261, "Rehearings", is hereby amended, as follows:

Sec. 118-261. Reserved.~~Rehearings.~~

~~The design review board may hear a petition for rehearing by any person identified in section 118-262. The board may rehear a case, take additional testimony and either reaffirm their previous decision or issue a new decision reversing or modifying their previous decision. The petition for rehearing must demonstrate to the board that (i) there is newly discovered evidence which will probably change the result if a rehearing is granted, or (ii) the board has overlooked or failed to consider something which renders the decision issued erroneous. A petition for rehearing must be filed on or before the fifteenth day after the date of rendition of the~~

~~board's order. For purposes of this article, the "date of rendition" shall be the date upon which a signed, written order is filed with the board's clerk, and an order shall be deemed "filed" when a fully executed order is returned to, and is in the possession of, the clerk. An order will issue on any petition for rehearing. Notice of the rehearing shall be according to section 118-254 herein and shall be the responsibility of the person requesting the rehearing.~~

SECTION 12. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-262, "Review of design review decisions", is hereby amended, as follows:

Sec. 118-262. Reserved. - Review of design review decisions.

~~(a) The applicant, or the city manager on behalf of the city administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust may seek review of any order of the design review board by the city commission, except that orders granting or denying a request for rehearing shall not be reviewed by the commission. For purposes of this section, "affected person" shall mean either (i) a person owning property within 375 feet of the applicant's project reviewed by the board, or (ii) a person that appeared before the design review board (directly or represented by counsel), and whose appearance is confirmed in the record of the design review board's public hearing(s) for such project. The review shall be based on the record of the hearing before the design review board, shall not be a de novo hearing, and no new, additional testimony shall be taken. The request shall be in writing, include all applicable fees, shall be by or on behalf of a named appellant(s), shall state the factual bases and legal argument in support of the appeal, and shall be submitted to the city clerk on or before the 20th day after the date of rendition of the board's order. However, in the event that a petition for rehearing is filed pursuant to section 118-261, the time for filing a request shall be on or before the 20th day after the date of rendition of the board's order on the petition. Upon receipt of the request, the city clerk shall place the request for review on the city commission agenda. The city commission shall set a date and time for a hearing. Notice of the review shall be according to section 118-254, except that there shall be no requirement for mailed notification regarding the subject review. A full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition, 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, or if represented by legal counsel, appropriate legal briefs, shall be filed no later than two weeks prior to the first scheduled public hearing to consider the appeal.~~

~~(b) In order to reverse, or remand for amendment, modification or rehearing, any decision of the design review board, the city commission shall find that the design review board did not do one of the following:~~

- ~~(1) Provide procedural due process;~~
- ~~(2) Observe essential requirements of law; or~~
- ~~(3) Base its decision upon substantial competent evidence.~~

~~In order to reverse, or remand a five-sevenths vote of the city commission is required. The city commission's decision shall be set forth in a written order which shall be promptly mailed to all parties to the review.~~

~~(c) Appeal from a decision of the city commission shall be to a court of competent jurisdiction by petition for writ of certiorari in accordance with the Florida Rules of Appellate Procedure.~~

SECTION 13. That Chapter 118, "Administration And Review Procedures," Article VI "Design Review Board Procedures," at Section 118-263, "Stay during rehearings/reviews/appeals", is hereby amended, as follows:

Sec. 118-263. Reserved -- Stay during rehearings/reviews/appeals.

- ~~(a) The filing of a request for rehearing pursuant to section 118-261 or for review pursuant to section 118-262 and/or the initiation of court proceedings challenging or appealing a design review board decision pertaining to a project shall stay the issuance of any full building permit or phased development permit and the running of the required time period to obtain a full building permit or phased development permit for the project in question until the final resolution of all administrative and/or court proceedings.~~
- ~~(b) Notwithstanding subsection (a) of this section, 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.~~

SECTION 14. That Chapter 118, "Administration And Review Procedures," Article VII "Procedures for Variances," at Section 118-352, "Procedure", is hereby amended, as follows:

Sec. 118-352. - Reserved. Procedure.

- ~~(a) Filing period. Every application for a variance, an after-the-fact variance or an appeal from an administrative decision shall be filed within 30 days from the date of the refusal of a permit by, notice of violation, ruling, decision or determination of, the building official or other administrative official. If the applicant or appellant receives notice of the above by mail, then the applicant or appellant shall have an additional five days in which to apply for an appeal or after-the-fact variance.~~

* * *

SECTION 15. That Chapter 118, "Administration And Review Procedures," Article VII "Procedures for Variances," at Section 118-358, "Appeal of variance decision", is hereby amended, as follows:

Sec. 118-358. Reserved. - Appeal of variance decision.

~~The decision of the board of adjustment, historic preservation board, or design review board, solely, with respect to variances shall be final. There shall be no further review of the variance except by resort to a court of competent jurisdiction by petition for writ of certiorari.~~

SECTION 16. That Chapter 118, "Administration And Review Procedures," Article IX "Nonconformances," at Section 118-395, "Repair and/or rehabilitation of nonconforming buildings and uses", is hereby amended, as follows:

Sec. 118-395. - Repair and/or rehabilitation of nonconforming buildings and uses.

* * *

(b) Nonconforming buildings.

* * *

(2) Nonconforming buildings which are repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official, shall be subject to the following conditions:

* * *

e. Development regulations for buildings not located within a designated historic district and not an historic site.

* * *

3. For purposes of this subsection, the planning director, or designee shall make a determination as to whether a building is architecturally significant according to the following criteria:

- i. The subject structure is characteristic of a specific architectural style constructed in the city prior to 1965, including, but not limited to, vernacular, Mediterranean revival, art deco, streamline moderne, post-war modern, or variations thereof;
- ii. The exterior of the structure is recognizable as an example of its style and/or period, and its architectural design integrity has not been modified in an irreversible manner; and
- iii. Exterior architectural characteristics, features, or details of the subject structure remain intact.

A property owner may appeal any determination of the planning director, or designee relative to the architectural significance of a building constructed prior to 1965 to the design review board, in accordance with the requirements and procedures pursuant to the requirements of Section 118-9. ~~article VI~~ herein.

* * *

SECTION 17. That Chapter 118, "Administration And Review Procedures," Article IX "Nonconformances," at Section 118-397, "Existence of a nonconforming building or use", is hereby amended, as follows:

Sec. 118-397. - Existence of a nonconforming building or use.

- (a) The planning and zoning director shall make a determination as to the existence of a nonconforming use or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
- (b) The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment pursuant to the requirements of Section 118-9. ~~after public notice and hearing and in accordance with the procedures set forth in section 118-134.~~ In making the determination

the board may require certain improvements that are necessary to insure that the nonconforming use or building will not have a negative impact on the neighborhood.

SECTION 18. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," at Section 118-532, "Proceedings before the historic preservation board", is hereby amended, as follows:

Sec. 118-532. - Proceedings before the historic preservation board.

* * *

- (f) Timeframes to obtain a building permit. The applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which a certificate of appropriateness was issued to obtain a full building permit or a phased development permit. The foregoing 18-month time period, or such lesser time as may be specified by the board, includes the time period during which an appeal of the decision of the historic preservation board may be filed. If the applicant fails to obtain a full building permit or a phased development permit within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which a certificate of appropriateness was granted and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the certificate of appropriateness shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the historic preservation board, at its sole discretion, provided the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the original approval, setting forth good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments. ~~Notwithstanding the foregoing, in the event the original decision of the historic preservation board is timely appealed, or there is an appeal of an approval from the board of adjustment and/or the planning board that is a requirement of the original decision of the historic preservation board, and such appeal is filed within 20 days of the decision of the board of adjustment and/or the planning board, the applicant shall have 18 months, or such lesser time as may be specified by the historic preservation board, from the date of final resolution of all administrative and/or court proceedings to obtain a full building permit or phased development permit. 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.~~

Please refer to 118-9 relating to appealed orders, and tolling.

* * *

SECTION 19. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," at Section 118-536, "Variances prohibited", is hereby amended, as follows:

Sec. 118-536. - Variances prohibited.

No variances shall be granted by the zoning board of adjustment from any of the provisions or requirements of this section; provided, however, the foregoing prohibition shall not limit or restrict an applicant's right to a rehearing or to appeal decisions of the historic preservation board, as provided in this article.

SECTION 20. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," at Section 118-537, "Rehearings and appeals", is hereby amended, as follows:

Sec. 118-537. ~~Reserved. - Rehearings and appeals.~~

~~(a) Rehearings.~~

~~(1) The historic preservation board may consider a petition for rehearing by the applicant, the owner(s) of the subject property, the city manager, an affected person, Miami Design Preservation League, or Dade Heritage Trust. For purposes of this section, "affected person" 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. The petition for rehearing must demonstrate to the board that:~~

~~a. There is newly discovered evidence which is likely to be relevant to the decision of the board;~~

~~b. The board has overlooked or failed to consider something which renders the decision issued erroneous; or~~

~~c. The board's action or order:~~

~~1. Took place after May 11, 1995 and is actionable under the Bert J. Harris, Jr. Private Property Rights Protection Act, F.S. § 70.001 et seq., (referred to herein as the "Harris Act"); and~~

~~2. Inordinately burdens an existing use of the applicant's real property or a vested right to a specific use of the applicant's real property (referred to herein as a "Harris Act claim").~~

~~As used herein, the phrases "inordinate burden" or "inordinately burden," "existing use" and "vested right to a specific use" shall have same meanings ascribed to such phrases within the Harris Act.~~

~~(2) A petition for rehearing shall be in writing, shall be by or on behalf of a named appellant(s), and shall be submitted to the planning director on or before the fifteenth day after the date of rendition of the board's order; however, in cases where a condition imposed by the board is not followed by the applicant or is incapable of being done within this 15-day time frame, a petition for rehearing may be filed within 60 days of the date of rendition of the order imposing the condition. For purposes of this article, the "date of rendition" shall be the date upon which a signed, written order is filed with the board's clerk, and an order shall be deemed "filed" when a fully executed order is returned to, and in the possession of, the clerk. In the event the petition is based on a Harris Act claim, the petition shall include the following documentation which shall be submitted no later than 15 days after the submission of the petition for rehearing:~~

- a. ~~A bona fide, valid appraisal supporting the claim of inordinate burden and demonstrating the loss, or expected loss, in fair market value to the real property as a result of the board's action;~~
- b. ~~All factual data described in subsection 118-564(c); provided, however, in the event all or any portion of the factual data was available to the applicant prior to the conclusion of the public hearing before the historic preservation or joint design review board/historic preservation board and the applicant failed to furnish same to the board's staff as specified in subsection 118-564(c), then, the board may, in its discretion, deny the applicant's request to introduce such factual data;~~
- c. ~~A report prepared by a licensed architect or engineer analyzing the financial implications of the requirements, conditions or restrictions imposed by the board on the property or development proposed by the applicant with respect to which the applicant is requesting a rehearing;~~
- d. ~~A report prepared by a licensed architect or engineer analyzing alternative uses for the real property, if any;~~
- e. ~~A report prepared by a licensed architect or engineer determining whether, as a result of the board action, the owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable; and~~
- f. ~~A report prepared by a licensed architect or engineer addressing the feasibility, or lack of feasibility, of effectuating the board's requirements, conditions or restrictions and the impact of same on the existing use of the real property or a vested right to a specific use of the real property.~~

~~(3) In the event that any of the documentation required in subsection (a)(2) of this section is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file an affidavit stating the information which cannot be obtained and describing the reasons why such information cannot be obtained: provided, however, neither failure to retain a professional to prepare the required documentation nor the requirement to pay a fee for the preparation of such required documentation shall be sufficient to excuse an applicant from the requirements listed in subsection (a)(2) of this section. Evidence, testimony and information establishing, and/or disproving, the inordinate burden may be introduced by the applicant, the board's staff and city staff, the public, or any other party, and considered by the board.~~

~~(4) Notice requirements for a rehearing shall be identical to the notice requirements for the original hearing and shall be the responsibility of the party filing the petition. The board may rehear a case, take additional testimony and either reaffirm its previous decision or issue a new decision reversing or modifying the previous decision. If the petition is based on a Harris Act claim and the board concludes that the action or order inordinately burdens an existing use of the applicant's real property or a vested right to a specific use of the applicant's real property, then the board shall amend or modify the action or order, in whole or in part, to eliminate the inordinate burden.~~

~~(b) Appeals:~~

~~(1) The applicant, the owner(s) of the subject property, the city manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the~~

~~board's decision to a special master appointed by the city commission. For purposes of this section, "affected person" 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. The appeal shall be based on the record of the hearing before the board, shall not be a de novo hearing, and no new, additional testimony shall be taken. The appeal shall be in writing, shall be by or on behalf of a named appellant(s), and shall be submitted to the city clerk on or before the twentieth day after the date of rendition of the board's order. However, in the event that a petition for rehearing is filed pursuant to subsection (a), above, the time for filing an appeal to the special master shall be on or before the twentieth day after the date of rendition of the board's order regarding the petition. Within 30 days of receipt of the appeal, the city clerk shall submit the appeal to the special master who shall set a date and time for hearing the appeal. Notice requirements for the hearing shall be identical to the notice requirements for the original decision upon which the appeal is based, except that there shall be no requirement for mailed notification regarding the subject appeal. A full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition; said verbatim transcripts shall be filed no later than two weeks prior to the first scheduled public hearing to consider the appeal. The appeal shall require a fee as provided in appendix A.~~

- ~~(2) In order to reverse, amend, or modify any decision of the board, the special master shall find that the board did not do one of the following:~~
- ~~a. Provide procedural due process;~~
 - ~~b. Observe essential requirements of law; or~~
 - ~~c. Base its decision upon substantial competent evidence.~~

~~Within ten days of the date of the hearing the special master shall issue a written order setting forth his/her decision, which shall be promptly mailed to all parties to the appeal.~~

- ~~(3) Special masters appointed to hear appeals pursuant to this subsection (b) shall be attorneys who are members in good standing of the Florida Bar and have expertise in the area of historic preservation. Special masters shall serve terms of three years, provided however, that they may be removed without cause upon a majority vote of the city commission. Compensation for special masters shall be determined by the city commission.~~
- ~~(4) An applicant, the owner(s) of the subject property, the city manager, Miami Design Preservation League, Dade Heritage Trust or an affected person may appeal the decision to a court of competent jurisdiction by petition for writ of certiorari.~~

SECTION 21. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," Division 3 "Certificate of Appropriateness/Certificate of Dig/Certificate of Appropriateness for Demolition," at Section 118-563, "Review procedure", is hereby amended, as follows:

Sec. 118-563. - Review procedure.

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~~(e) The applicant, the owner(s) of the subject property, Miami Design Preservation League, Dade Heritage Trust or an aggrieved party may appeal a~~Any decision of the staff regarding subsections 118-563(d)(1) and subsection 118-563(d)(3), may be appealed to the historic preservation board pursuant to the requirements of Section 118-9. ~~by filing a notice of appeal with the planning director within five business days of the date of posting of the staff decision. No permit shall be issued for work prior to expiration of the appeal period or final disposition of any appeal. For purposes of this subsection, any individual or group referred to in subsection 118-503(a) shall be considered an aggrieved party. All appeals shall be considered by the historic preservation board at the next available meeting date, pursuant to all application and notice requirements. The party filing the appeal shall be responsible for providing and effectuating all noticing requirements, subject to planning department procedures, as well as the duplication of all pertinent plans and exhibits.~~

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SECTION 22. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," Division 3 "Certificate of Appropriateness/Certificate of Dig/Certificate of Appropriateness for Demolition," at Section 118-564, "Decisions on certificates of appropriateness", is hereby amended, as follows:

Sec. 118-564. - Decisions on certificates of appropriateness.

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(11) Expiration of order of Board. The applicant shall have up to 18 months, or such lesser time as may be specified by the board, from the date of the board meeting at which a certificate of appropriateness for demolition was granted to obtain a full building permit or a phased development permit. The foregoing 18-month time period or such lesser time as may be specified by the board, includes the time period during which an appeal of the decision of the historic preservation board may be filed. If the applicant fails to obtain a full building permit or a phased development permit within 18 months, or such lesser time as may be specified by the board, of the board meeting date at which a certificate of appropriateness for demolition was granted and/or construction does not commence and proceed in accordance with said permit and the requirements of the applicable Florida Building Code, the certificate of appropriateness for demolition shall be deemed null and void. Extensions for good cause, not to exceed a total of one year for all extensions, may be granted by the historic preservation board, at its sole discretion, provided the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the original approval, setting forth good cause for such an extension. At the discretion of the planning director, an applicant may have up to 30 days (not to extend beyond 30 months from the date of original approval) to complete the building permit review process and obtain a full building permit, provided that within the time provided by the board to obtain a full building permit a valid full building permit application and plans have been filed with the building department, a building permit process number has been issued and the planning department has reviewed the plans and provided initial comments. ~~Notwithstanding the foregoing, in the event the original decision of the historic preservation board with respect to a certificate of appropriateness for demolition is timely appealed, or there is an appeal of an approval from the board of adjustment and/or the planning board that is a requirement of the original decision of the historic preservation board, and such appeal is filed within 20 days of the decision of the board~~

~~of adjustment and/or the planning board, 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. 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.~~

Please refer to 118-9 relating to appealed orders, and tolling.

SECTION 23. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," Division 3 "Certificate of Appropriateness/Certificate of Dig/Certificate of Appropriateness for Demolition," at Section 118-565, "Special review procedure", is hereby amended, as follows:

* * *

Sec. 118-565. - Special review procedure.

For minor exterior structural repairs, alterations and improvements, associated with single-family homes located within designated historic districts, that are visible from a public way, or work that affects the exterior of the building associated with rehabilitations and additions to existing buildings, the planning director, or designee, shall have the authority to approve, approve with conditions or deny an application on behalf of the board. The director's decision shall be based upon the criteria listed in this article. Any appeal of the decision of the planning director shall be filed pursuant to the requirements of Section 118-9. - Rehearing and appeal procedures. ~~considered by the board at the next available regular meeting date.~~

SECTION 24. That Chapter 118, "Administration And Review Procedures," Article X "Historic Preservation," Division 5 "Single Family Ad Valorem Tax Exemption," at Section 118-609, "Completion of work", is hereby amended, as follows:

Sec. 118-609. - Completion of work.

* * *

- (e) If the planning director, or designee determines that the work as complete is not in compliance with the plans approved pursuant to city commission approval of the tax exemption, the applicant shall be advised that the final request for review of completed work has been denied. Such denial shall be in writing and provide a written summary of the reasons for the determination, including recommendations to the applicant concerning the changes to the proposed work necessary to bring it into compliance with the approved plans. The applicant may file an appeal of the decision of the planning director, or designee, pursuant to the requirements of Section 118-9. ~~within 15 days of such decision. The appeal shall be in writing and shall be to the historic preservation board and shall set forth the factual and legal bases for the appeal.~~

SECTION 25. That Chapter 142 "Zoning Districts and Regulations." Article II "District Regulations, Division 2 "RS-1, RS-2, RS-3, RS-4 Single Family Residential Districts" at Section 142-108, "Provisions for the demolition of single-family homes located outside of historic districts," is hereby amended, as follows:

* * *

(b) Appeals. ~~The applicant or any property owner within 375 feet of the subject single-family home may appeal. The decision of the planning director, or designee, which shall bear the presumption of correctness, pertaining to the architectural significance of a single-family home, may be appealed to the design review board, pursuant to the requirements of Section 118-9, within ten days of the rendering of such decision. No demolition permit may be issued within any appeal period, and if an appeal is filed, while the appeal is pending. The appeal shall be in writing, shall set forth the factual, technical, architectural, historic and legal bases for the appeal, and shall be to the design review board (DRB).~~

* * *

SECTION 26. CODIFICATION.

It is the intention of the Mayor and city commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 27. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 28. SEVERABILITY.

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

SECTION 29. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this ____ day of _____, 2015.

MAYOR

ATTEST:

CITY CLERK

**APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION**

City Attorney

Date

First Reading:
Second Reading:

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

Underscore denotes new language
~~Strikethrough~~ denotes removed language

**CONSOLIDATION OF NOTIFICATION PROCEDURES FOR SINGLE FAMILY HOME
DETERMINATION OF ARCHITECTURAL SIGNIFICANCE**

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, BY AMENDING AND/OR STRIKING THE VARIOUS NOTICE PROVISIONS OF CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS", AT SECTION 142-108; AND ADOPTING PORTIONS OF THE CONSOLIDATED AND STANDARDIZED "NOTIFICATIONS PROCEDURES" WITHIN THE NEWLY CREATED SECTION 118-8, ENTITLED "NOTICE PROCEDURES" OF CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES"; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach is in the process of updating the City's procedures and on-line capabilities through the use of Energov and NOVUS Agenda, which systems, will allow for an online collaboration in processing board applications and creating agendas for all City Commission and quasi-judicial board meetings; and

WHEREAS, as part of this initiative, City departments are in the process of configuring the workflows which include the type of notice need for the type of application being heard – whether there is a public hearing notice requirement, whether mailed notice or posting is required, and the time tables for producing said notice; and,

WHEREAS, Currently, the notice provisions for each board are located throughout the code, and are not easy to find. Often, the notice provision is subsumed within a larger ordinance, making it very difficult for the general public to understand the type of notice they can expect.

WHEREAS, in an effort to foster transparency and facilitate ease of use, the City Planning Department has requested that the various notice provisions contained in the Land Development Code, for each type of application is consolidated in one ordinance, in one section of the Code, and be uniform for the various land use board applications; and

WHEREAS, consolidation would also facilitate the implementation of the Energov and NOVUS Agenda software systems and ensure that staff does not err in providing proper notice.

WHEREAS, the amendment set forth below is necessary to accomplish the objectives identified above.

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

SECTION 1. That Chapter 142 "Zoning Districts and Regulations." Article II "District Regulations", Division 2 "RS-1, RS-2, RS-3, RS-4 Single Family Residential Districts" at Section

142-108, "Provisions for the demolition of single-family homes located outside of historic districts," is hereby amended, as follows:

Sec. 142-108. - Provisions for the demolition of single-family homes located outside of historic districts.

* * *

All requests for a determination as to the architectural significance of any single-family home constructed prior to 1942 shall be in writing, signed by the property owner, stating specifically the reasons asserted for the requested determination and shall include a copy of the building card, current color photos of the home, and any microfilm on record, and public notice shall be required in accordance with section 118-8, subsections (b) *Mail Notice*, and (c) *Posting*, except that no public hearing shall be required, and two sets of mailing labels, with the names and addresses of all property owners of land located within 375 feet of the exterior boundary of the subject property, and an original certified letter stating that the ownership list and mailing labels are a complete and accurate representation of the real property and property owners within 375 feet of the subject property; such letter must be dated and give the address of the subject property and its legal description, subdivision and plat book number and page and state the source for this information. Within five days of the receipt of a request, the planning department shall post a notice on the subject site and notice shall be given by mail to the owners of record of land lying within 375 feet of the property; the mail notification requirement shall be the responsibility of the applicant and must be completed within three days of the receipt of the notice.

Within ten days of posting the notice, interested persons may submit information to the planning director to take into consideration in evaluating the request. The director shall file the decision with the city clerk.

* * *

SECTION 2. That Chapter 118, "Administrative and Review Procedures", Article I "In General", Section 118-8 "Notice Procedures for Quasi-Judicial, Public Hearing Land Use Board Actions" hereby amended as follows:

118-8 Notice Procedures for Quasi-Judicial, Public Hearing Quasi-Judicial Land Use Board Actions, and for Administrative Decisions Requiring Notice.

Quasi-judicial, public hearing, applications for land use board actions (Board of Adjustment, Design Review Board, Historic Preservation Board, and Planning Board) that require notice, and Administrative Decisions that require notice shall be noticed in accordance with the following provisions, unless otherwise more specifically provided for in these Land Development Regulations, and shall pay a fee pursuant to Section 118-7, and Appendix A:

- (a) *Advertisement.* At least 30 days prior to the quasi-judicial, public hearing date, a description of the request, and the date, start time of the meeting and location of the hearing shall be noticed in a newspaper of general circulation. Applicant shall be required to pay all associated costs relating to the advertisement.

- (b) *Mail Notice.* At least 30 days prior to the quasi-judicial, public hearing date, or in the case of an administrative decision requiring a mail notice, 30 days prior to the decision, a description of the request, and the date, start time of the meeting, and location of the hearing shall be given by mail to the owners of record of land lying within 375 feet of the property subject to the application. Applicants shall submit all information and certifications necessary to meet this requirement, as determined by the department. Additionally, courtesy notice shall also be given to any Florida nonprofit community organization which has requested of the director in writing to be notified of board hearings. Applicant shall be required to pay all associated costs relating to the mailed notice.
- (c) *Posting.* At least 30 days prior to the quasi-judicial, public hearing date, or in the case of an administrative decision, 30 days prior to the decision, a description of the request, and the date, time and place of such hearing shall be posted on the property. Such posting shall be a minimum dimension of 11 inches by 17 inches, and located in a visible location at the front of the property, and shall not be posted on a fence or wall that would be obstructed by the operation of a gate. Applicant shall be required to pay all associated costs relating to the posting.

SECTION 3. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 4. REPEALER.

All ordinances or part of ordinances in conflict herewith be and the same are hereby repealed.

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 _____, _____.

Mayor

ATTEST:

Rafael E. Granado, City Clerk

First Reading:
Second Reading:

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

Underscore denotes new language
~~Strikethrough~~ denotes deleted language

[Sponsored by Commissioner Deede Weithorn]

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Notification Procedures - ORD Oct 27 2015.docx

CONSOLIDATION AND STANDARDIZING OF NOTIFICATION PROCEDURES

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CREATING SECTION 118-8 ENTITLED "NOTICE PROCEDURES" AT CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," IN ORDER TO CONSOLIDATE AND STANDARDIZE THE NOTICE PROVISIONS FROM THE VARIOUS SUBSECTIONS OF THE LAND DEVELOPMENT CODE IN ONE SECTION; AMENDING AND/OR STRIKING THE VARIOUS NOTICE PROVISIONS FROM ARTICLE II "BOARDS," DIVISION 5 "BOARD OF ADJUSTMENT" AT SECTION 118-134; ARTICLE IV "CONDITIONAL USE PROCEDURE" AT SECTION 118-193; ARTICLE VI "DESIGN REVIEW PROCEDURES" AT SECTION 118-254; ARTICLE X "HISTORIC PRESERVATION" DIVISION 3 "ISSUANCE OF CERTIFICATE OF APPROPRIATENESS/CERTIFICATE TO DIG/CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION" AT SECTION 118-563; AND DIVISION 4 "DESIGNATION" AT SECTION 118-591; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach is in the process of updating the City's procedures and on-line capabilities through the use of Energov and NOVUS Agenda, which systems, will allow for an online collaboration in processing board applications and creating agendas for all City Commission and quasi-judicial board meetings; and

WHEREAS, as part of this initiative, City departments are in the process of configuring the workflows which include the type of notice need for the type of application being heard – whether there is a public hearing notice requirement, whether mailed notice or posting is required, and the time tables for producing said notice; and,

WHEREAS, currently, the notice provisions for each board are located throughout the code, and are not easy to find. Often, the notice provision is subsumed within a larger ordinance, and differ from board to board making it very difficult for the general public to understand the type of notice they can expect.

WHEREAS, in an effort to foster transparency and facilitate ease of use, the City Planning Department has requested that the various notice provisions contained in the Land Development Code, for each type of application is consolidated in one ordinance, in one section of the Code, and be uniform for the various land use board applications; and

WHEREAS, consolidation would also facilitate the implementation of the Energov and NOVUS Agenda software systems and ensure that staff does not err in providing proper notice.

WHEREAS, the notice requirements have not changed in the draft **Consolidation and Standardizing of Notification Procedures Ordinance**, with the exception of the inclusion of

additional language regarding requirements for posting, which language ensures that the posting is clearly visible from the street.

WHEREAS, the amendment set forth below is necessary to accomplish the objectives identified above.

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

SECTION 1. That Chapter 118, "Administrative and Review Procedures", Article I "In General", Section 118-8 "Notice Procedures for Quasi-Judicial, Public Hearing Land Use Board Actions" hereby established as follows:

118-8 Notice Procedures For Quasi-Judicial, Public Hearing Quasi-Judicial Land Use Board Actions.

Quasi-judicial, public hearing, applications for land use board actions (Board of Adjustment, Design Review Board, Historic Preservation Board, and Planning Board) that require notice shall be noticed in accordance with the following provisions, unless otherwise more specifically provided for in these Land Development Regulations, and shall pay a fee pursuant to Section 118-7, and Appendix A:

- (a) *Advertisement.* At least 30 days prior to the quasi-judicial, public hearing date, a description of the request, and the date, start time of the meeting and location of the hearing shall be noticed in a newspaper of general circulation. Applicant shall be required to pay all associated costs relating to the advertisement.
- (b) *Mail Notice.* At least 30 days prior to the quasi-judicial, public hearing date, a description of the request, and the date, start time of the meeting, and location of the hearing shall be given by mail to the owners of record of land lying within 375 feet of the property subject to the application. Applicants shall submit all information and certifications necessary to meet this requirement, as determined by the department. Additionally, courtesy notice shall also be given to any Florida nonprofit community organization which has requested of the director in writing to be notified of board hearings. Applicant shall be required to pay all associated costs relating to the mailed notice.
- (c) *Posting.* At least 30 days prior to the quasi-judicial, public hearing date, a description of the request, and the date, time and place of such hearing shall be posted on the property. Such posting shall be a minimum dimension of 11 inches by 17 inches, and located in a visible location at the front of the property, and shall not be posted on a fence or wall that would be obstructed by the operation of a gate. Applicant shall be required to pay all associated costs relating to the posting.

SECTION 2. That Chapter 118, "Administrative and Review Procedures", Article II "Boards", Division 5 "Board of Adjustment" at Sec. 118-134, "Applications", is hereby amended as follows:

Sec. 118-134. – Applications, Notification of hearings.

~~Quasi-judicial public hearing applications shall be submitted to the planning department, which shall prepare a report and recommendation for consideration by the board of adjustment. The board of adjustment shall not vary or modify any regulation or provision of these land development regulations or hear an appeal of an administrative decision until a public hearing has been held. At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) given by mail to the owners of record of land lying within 375 feet of the property. This mailed notification requirement shall be the responsibility of the applicant. Where the application is for an appeal of an administrative decision the preceding information shall be supplemented by an explanation of what is being appealed.~~

SECTION 3. That Chapter 118, "Administrative and Review Procedures", Article IV "Conditional Use Procedures," at Section 118-193, "Applications for conditional uses", is hereby amended as follows:

Sec. 118-193. - Applications for conditional uses.

~~Quasi-judicial public hearing a~~Applications for approval of a conditional use shall be submitted to the planning department, which shall prepare a report and recommendation for consideration by the planning board, and when required, by the city commission. ~~Within a reasonable time, but in no instance less than 30 days after receipt of a completed application, the board shall hold a public hearing, at which parties in interest and citizens shall have an opportunity to be heard. At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) given by mail to the owners of record of land lying within 375 feet of the property. This mailed notification requirement shall be the responsibility of the applicant.~~

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SECTION 4. That Chapter 118, "Administrative and Review Procedures", Article VI "Design Review Procedures" at Section 118-254, "Decision of design review board", is hereby amended as follows:

Sec. 118-254. - Decision of design review board.

- (a) The design review board shall consider each application at a quasi-judicial, public hearing, at which the applicant and interested persons shall have an opportunity to express their opinions, present evidence and rebut all evidence presented. The planning department, shall provide the applicant with advance notice of the hearing date and time, including a copy of the agenda and the recommendation of the planning department.
- (b) ~~At least 30 days prior to the public hearing date, a description of the request, and the date, time and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) given by mail to the owners of record~~

~~of land lying within 375 feet of property. The mail notification requirement shall be the responsibility of the applicant. Additionally, courtesy notice shall also be given to any state nonprofit community organization which has requested of the director in writing to be notified of board hearings. The board shall approve, approve with conditions or deny applications.~~

~~* * *~~

SECTION 5. That Chapter 118, "Administrative and Review Procedures", Article X "Historic Preservation", Division 3 " Issuance of Certificate of Appropriateness/Certificate to Dig/Certificate of Appropriateness for Demolition" at Section 118-563, "Review procedure", is hereby amended as follows:

Sec. 118-563. - Review procedure.

- (a) All quasi-judicial public hearing applications involving demolition, new construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, significant 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 placed on the next available agenda of the historic preservation board for its review and consideration after the date of receipt of a completed application.
- ~~(b) The board shall hold a public hearing regarding each application in accordance with the notice and hearing procedures set forth in subsection (c) of this section. The board shall approve, deny, approve with conditions or continue action on all applications for a certificate of appropriateness.~~
- ~~(c) All applications for a certificate of appropriateness for the demolition or partial demolition of any building, structure, improvement, significant 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 and all applications for a certificate of appropriateness for new building construction, alteration, rehabilitation, renovation, restoration or any other physical modification of any building, structure, improvement, significant 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 only be considered by the board following a public hearing. At least 30 days prior to the public hearing date, a description of the request with the date, time, and place of such hearing shall be (i) posted on the property, (ii) advertised in a paper of general paid circulation in the community, and (iii) be given by mail to the owners of record of land lying within 375 feet of the property. The mail notification requirement shall be the responsibility of the applicant.~~
- (b) The historic preservation board shall decide, based upon the criteria set forth in subsection 118-564(f)(4), whether or not to issue a certificate of appropriateness for demolition. A demolition permit shall not be issued until all of the following criteria are satisfied, except as permitted under subsection 118-564(f)(6):

~~* * *~~

SECTION 6. That Chapter 118, "Administrative and Review Procedures", Article X "Historic Preservation", Division 4, "Designation" at Section 118-591, "Historic designation procedure", is hereby amended as follows:

Sec. 118-591. - Historic designation procedure.

* * *

- (f) ~~Public hearing; notification.~~ A quasi-judicial public hearing on a proposed historic preservation designation shall be conducted by the historic preservation board after the date a designation report has been filed. ~~The property owners of record within 375 feet of the property proposed for designation shall be notified by mail of the public hearing at least 30 days in advance of the hearing. This notification requirement shall be the responsibility of the applicant.~~
- (g) Designation procedures initiated by owners of single-family homes in single-family districts. Notwithstanding the above, the following shall apply to any request by property owners for the individual designation of their single-family homes as historic structures:

* * *

- (2) ~~Reserved. Public notice requirements.~~ At least 30 days prior to the public hearing date for the subject designation, a description of the request with the time and place of the public hearing, shall be advertised in a paper of general paid circulation in the community.

* * *

SECTION 7. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 8. REPEALER.

All ordinances or part of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 9. SEVERABILITY.

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

SECTION 10. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this ____ day of _____, 2015.

Philip Levine, Mayor

ATTEST:

Rafael E. Granado, City Clerk

First Reading:
Second Reading:

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

Underscore denotes new language
~~Strikethrough~~ denotes deleted language

[Sponsored by Commissioner Deede Weithorn]