

**ARTICLE 1. GENERAL PROVISIONS****1.1 PURPOSE AND INTENT****1.1.1 Title and Purpose**

- a. This code shall be known as the Miami 21 Code of the City of Miami, Florida. This code is declared to be in accord with the Miami Comprehensive Plan, as required by the Local Government Comprehensive Planning and Land Development Regulation Act, Section 163.3161 et seq., Florida Statutes, as amended (the "comprehensive plan"). A primary purpose of this code is to implement the comprehensive plan.
- b. It is further the purpose of the Miami 21 Code to promote the public health, safety, morals, convenience, comfort, amenities, prosperity, and general welfare of the city and to provide a wholesome, serviceable, and attractive community, including without limitation protection of the environment; conservation of land, energy and natural resources; improve mobility; more efficient use of public funds; greater health benefits of a pedestrian environment; historic preservation; provision of recreational and open spaces; reduction of sprawl; and improvement of the built environment and human habitat.
- c. To further the goals and objectives of the comprehensive plan and the purpose of this code, the city is divided into transect zones ("zones") of such number, characteristics, area, common unity of purpose, adaptability, or use as will accomplish the goals and objectives of the comprehensive plan and this code.

**1.1.2 Intent**

The Miami 21 Code is intended to advance the interests of both conservation and development while responding to the existing conditions of the city, its regional context, and its natural features, infrastructure and buildings.

- a. The conservation goals include:
  - preserving neighborhoods, historical sites and the natural environment
  - improving the relationship between low density residential neighborhoods and adjacent commercial corridors with appropriate transitions of density and height following the theory of the Transect
  - increasing access to the natural environment through the baywalk, the riverwalk, the north-south greenway, and new parks
  - conserving energy through improved street connectedness to encourage walkability and transit use
  - increasing tree canopy
  - encouraging green building

- b. The development goals include:
  - maintaining the future growth capacity of Downtown to ensure its preeminence as the transit-oriented, pedestrian-friendly focus for the region's economic, civic and cultural activities
  - rebuilding the city's commercial corridors to function as mixed-use, transit-oriented, walkable centers for adjacent residential neighborhoods
  - ensuring that private development contributes to increased infrastructure capacity, and through building embellishes a pedestrian-friendly public realm of highest ambient quality
  - establishing a rational process for successional growth in areas identified for density and growth.

### 1.1.3 Transect Principles

The Miami 21 Code is intended to encourage the evolution of a settlement pattern based on the organizational principles of the Transect. The Transect is defined as a geographical cross-section that reveals a sequence of environments. Applied to the human or built environment, the Transect is used to identify and organize a continuum of the physical environment ranging from the least to the most urban.

Transect planning creates coordinated, integrated and harmonious environments, based on the arrangement of all the components to support locational character. Within the range of urban contexts, each different location has development function, intensity and disposition appropriate to the location, and integrates the details of the corresponding public realm. To ensure this integration, the Miami 21 Code controls development on lots as well as establishes guidelines for the detailing of public right-of-way. For example, narrow streets with open swales find their place in neighborhoods of suburban character, while wide streets with tree lined sidewalks accompany commercial development in more intense urban areas.

The Transect encourages the making of places that build on historic character and that evolve over time. This evolution, with the following principles of the Transect guiding growth or reduction in density and intensity, is called succession. These principles, taken together and illustrated in Table 1, provide a vision for successional change, with an emphasis on the larger urban context and appropriate transitions across different zones.

#### 1.1.3.1 The City -- Guiding Principles

- a. The city should retain its natural infrastructure and visual character derived from its location and climate, including topography, landscape and coastline.
- b. Growth strategies should encourage infill and redevelopment.

- c. New development should be structured to reinforce a pattern of neighborhoods and urban centers, focusing growth at transit nodes rather than along corridors.
- d. Transportation corridors should be planned and reserved in coordination with land use.
- e. Green corridors should be encouraged to enhance and connect the urbanized areas.
- f. The city should include a framework of transit, pedestrian, and bicycle systems that provide alternatives to automobile use.
- g. A diversity of land use should be distributed throughout the City to enable a variety of economic activity, workplace, residence, recreation and civic activity.
- h. Affordable and workforce housing should be distributed throughout the city to match job opportunities and to avoid concentrations of poverty.

#### **1.1.3.2 The Community -- Guiding Principles**

- a. Neighborhoods and urban centers should be the preferred pattern of development and transect zones specializing in single-use should be the exception.
- b. Neighborhoods and urban centers should be compact, pedestrian-oriented and mixed-use. Density and intensity of use should relate to degree of transit service.
- c. The ordinary activities of daily living should occur within walking distance of most dwellings, allowing independence to those who do not drive.
- d. Interconnected networks of Thoroughfares should be designed to disperse and reduced the length of automobile trips and to encourage walking. A range of open space, including parks, squares and playgrounds should be distributed within neighborhoods and urban centers.
- e. Appropriate building densities and land uses occur within walking distance of transit stops.
- f. Civic, institutional and commercial activity should be embedded in mixed-use urban centers, not isolated in remote single-use complexes.
- g. Schools should be located to enable children to walk or bicycle to them.
- h. Within neighborhoods, a range of housing types and price levels should accommodate diverse ages and incomes.

### 1.1.3.3 The Block and the Building -- Guiding Principles

- a. Buildings and landscaping should contribute to the physical definition of Thoroughfares as civic places.
- b. Development should adequately accommodate automobiles while respecting the pedestrian and the spatial form of public space.
- c. The design of streets and buildings should reinforce safe environments, but not at the expense of accessibility.
- d. Architecture and landscape design should grow from local climate, topography, history, and building practice.
- e. Buildings should allow their inhabitants to experience the geography and climate through energy efficient design.
- f. Civic buildings and public gathering places should be located to reinforce community identity and support self-government.
- g. Civic building should be distinctive and appropriate to a role more important than the other buildings that constitute the fabric of the city.
- h. Preservation and renewal of historic buildings should be facilitated to affirm the continuity of the community.
- i. Harmonious and orderly change and development of urban areas should be enabled through a form-based zoning code that serves to guide and regulate change.

## 1.2 APPLICABILITY

### 1.2.1 Generally

**1.2.1.1** This code replaces the Zoning Ordinance for the City of Miami, also known as Ordinance 11,000, for that area of the City of Miami shown on the Miami 21 Atlas. Ordinance 11,000 is hereby repealed for that area of the city as shown on the Miami 21 Atlas.

### 1.2.1.2 Miami 21 Atlas

- a. The Miami 21 Atlas is the official zoning atlas for the area regulated by this Miami 21 code. The boundaries of all transect zones and the transect designation are shown on the series of map sheets that compose the Miami 21 Atlas. The Miami 21 Atlas may be supplemented by overlays or separate maps to the Atlas sheets, where the scale generally applicable to the Atlas sheets does not adequately show the details of boundaries or designations necessary to the particular area.
- b. The Miami 21 Atlas, together with all adopted explanatory and supplemental material shown therein, is hereby adopted by reference and shall be part of this code. The Official Zoning Atlas as adopted by Ordinance 11000, as amended, for the same area is hereby repealed.
- c. The Miami 21 Atlas, and any amendments thereto, shall be maintained in the office of the city clerk, and a certified copy of the Miami 21 Atlas shall be maintained at the Planning Department. Each atlas sheet and each overlay or supplemental element thereto shall be authenticated by the signature of the mayor of the city, attested by the signature of the city clerk of the city, and bear the seal of the city.
- d. Any proposed amendment to the Miami 21 Atlas shall be identified by reference to the atlas sheet or supplement involved, in addition to a legal description of the property and such other information as is required to make specific the application of the amendment. Any unauthorized changes to the Miami 21 Atlas shall be considered a violation of this code and punishable as provided by law.

**1.2.1.3** This code affects all lands, water, structures, uses, and occupancies within the area of the City of Miami shown on the Miami 21 Atlas, as may be amended from time to time. No building, structure, land or water shall be used or occupied, no land shall be subdivided and no building, structure, land or part thereof shall developed except in conformity with the transect regulations in which it is located and with all applicable regulations in this Miami 21 code.

### **1.2.2 Conflicts**

Where the requirements of this Miami 21 code are at variance with the applicable requirements of any statute, rule, regulation, ordinance, or code, the most restrictive or that imposing the higher standard shall govern. Notwithstanding, the standards of this Miami 21 code shall prevail where there are conflicts between the City of Miami Engineering Standards for Design and Construction and the standards of this code.

This code does not abrogate or affect any easements, covenants, deed restrictions, property owner association rules, or agreements between private parties. Where the regulations set out in this code are more restrictive than such easements, covenants, deed restrictions, homeowner association agreements between private parties, the restrictions of this code shall govern.

### **1.2.3 Pending Actions and Development Approvals**

The adoption of this Miami 21 code shall not affect nor prevent the prosecution of any action pending at the time of the adoption of this code, which action is to enforce Ordinance 11000 or the conditions of any development order adopted under Ordinance 11000. The conditions of a development approval under Ordinance 11000 shall continue in full force and effect unless a new approval is obtained, at which time the development shall come into conformance with these regulations if required under Section 1.4 "Nonconformities" of this code.

### **1.2.4 Rules of Construction**

**1.2.4.1** In their interpretation and application, the provisions of this Miami 21 code shall be the minimum requirements or maximum limitations, as the case may be, adopted for the promotion of the public health, safety, morals or general welfare.

**1.2.4.2** The following general rules of construction shall apply to the text of this code:

- a. Headings. Section and subsection headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of any provision of the Miami 21 code.
- b. Illustrations. In case of any difference of meaning or implication between the text of any provision and any illustration, the text shall control, unless the intent of the code is clearly otherwise.

- c. Shall, may and should. "Shall" is always mandatory and not permissive. "May" is permissive. "Should" is advisory and identifies guidance provided by the city commission in the implementation of these regulations.
- d. Tenses and numbers. Words used in the present tense include the future, words used in the singular include the plural, and the plural includes the singular, unless the context clearly indicates the contrary.
- e. Conjunctions. Unless the context clearly indicates otherwise, the following conjunctions shall be interpreted as follows:
  - 1. "And" indicates that all connected items or provisions shall apply.
  - 2. "Or" indicates that the connected items or provisions may apply singly or in any combination.
  - 3. "Either . . . or" indicates that the connected items or provisions shall apply singly but not in combination.
- f. Gender. Use of the masculine gender includes the feminine gender and use of the feminine gender includes the masculine.
- g. Any act authorized by this code to be carried out by a specific official or agency of the city is impliedly authorized to be carried out by a designee of that official or agency.
- h. Any reference to federal laws, Florida Statutes, Florida Administrative Code, Miami-Dade County Code, or any other official code shall be construed to be a reference to the most recent enactment of the particular law, and shall include any amendments to it as may be adopted from time to time.
- i. Capitalized terms in Articles 1-6 refer to Article 7 Definitions.

#### **1.2.4.3 Calculations**

- a. Rounding. Where cumulative requirements or limitations are to be computed for purposes of this code, fractions shall be carried forward in the summation, and the total rounded to the nearest whole number, subject to existing minimum lot sizes and maximum densities or intensities of development required by the regulations of this Miami 21 code.
- b. Time. The time within which an act is to be done shall be computed by excluding the first and including the last day, except that if the last day is a Saturday, Sunday or legal holiday, that day shall be excluded.

#### **1.2.5 Transect Zone Boundaries**

- 1.2.5.1** Except as otherwise specifically provided, a transect symbol or name shown within transect boundaries in the Miami 21 Atlas indicates that regulations pertaining to the transect zone extend throughout the whole area surrounded by the boundary line.
- 1.2.5.2** Except as provided at 1.2.5.3 below, where a transect zone designation is not indicated for an area in the Miami 21 Atlas, the area shall be construed to be zoned as for the most restrictive abutting zone, until corrective action shall be taken by the city commission.
- 1.2.5.3** Where uncertainty exists as to the location of the boundary of a transect zone, or other areas delineated for regulatory purposes in the Miami 21 Atlas, the following rules shall apply:
- a. Boundaries indicated as approximately following the centerlines of streets, alleys, rights-of-way, or easements shall be construed as following such centerlines as they exist on the ground.
  - b. Boundaries indicated as approximately following boundaries of streets, alleys, other public or private property lines, rights-of-way, or easements shall be construed as following such boundaries. Provided, however, that where such boundaries are so located with relation to other opposing boundaries as to leave such areas without apparent zoning designation, such boundaries shall be construed as running to the centerlines of the areas remaining.
  - c. Boundaries indicated as approximately following mean high water lines or centerlines of streams, canals, lakes, bays, or other bodies of water shall be construed as following such mean high water lines or centerlines. In the case of a change in mean high water line, the boundary shall be construed as moving with the change.
  - d. Where variation of the actual location from the mapped location would change the zoning status of a lot or parcel, the boundary shall be interpreted so as to avoid the change.
  - e. In the event of vacation, the boundary shall be construed as remaining in its location, except where ownership of the vacated property is divided other than at the center, in which case the boundary shall be construed as moving with the ownership.
- 1.2.5.4** Boundaries indicated as approximately following city limits shall be construed as following such city limits. Where property previously within the city is removed from its limits, the zoning boundaries involved shall be construed as moving to conform to the change in city limits. Where property previously located outside the city is annexed, zoning boundaries shall not be construed as moving with city limits. In such cases, the city may receive and process permit applications for the property, but no permit shall be issued until the city

commission shall have rezoned the property to establish its zoning status and the permit is found to be in accord with the zoning.

- 1.2.5.5** Boundaries indicated as entering any body of water, but not continuing to intersection with other transect boundaries or with the city limits, shall be construed as extending in the direction in which they enter the body of water to intersection with other zoning boundaries or with the city limits.
- 1.2.5.6** Boundaries indicated as approximately parallel to or extensions of mean high water lines or centerlines of bodies of water shall be construed as being parallel to or extensions of such features.
- 1.2.5.7** Where distances are not specifically indicated on any map in the Miami 21 Atlas, they shall be determined by reference to the scale of the map.
- 1.2.5.8** Where Boundaries occur within a parcel of land comprising more than one lot, the lots shall be developed separately according to the assigned Transect Zone.

### 1.3 PROCEDURES

#### 1.3.1 Authorities

The administration of the Miami 21 code shall include the following authorities: zoning administrator; planning director; coordinated review committee; planning, zoning and appeals board; and city commission.

##### 1.3.1.1 Zoning Administrator

- a. Functions, powers and duties. A zoning administrator, appointed by and responsible to the city manager, shall be responsible for administration and enforcement of the Miami 21 code as provided herein, with such assistance as the city manager may direct. For purposes of this code, the functions, powers and duties of the zoning administrator more specifically include:
1. To determine whether applications for building permits as required by the building code are in accord with the requirements of this zoning ordinance. No building permit shall be issued without approval of zoning compliance by the zoning administrator that plans and applications conform to applicable zoning regulations.
  2. To determine whether the use of any structure and/or premises hereafter created, erected, changed, converted, enlarged or moved, wholly or partly, in use or in structure, is in accordance with this Miami 21 code and to issue a certificate of use if the plans and applications conform to applicable zoning regulations. Certificates of use for home occupations in residential districts shall be issued annually to cover the period from January 1 through December 31 of each year.
  3. To assist the code enforcement department to enforce vigorously the provisions of the Miami 21 code.
  4. To maintain records of all official administrative actions.
  5. To decide questions of zoning interpretation pursuant to section 1.3.2.3 of this code.
  6. To participate in the review of administrative warrants and exceptions.
  7. To serve in an advisory capacity on zoning matters to the planning, zoning and appeals board, the city commission, and other officers or agencies of the city, and to prepare such reports as may be appropriate in that capacity.
- b. It shall be the duty of all employees of the city, and especially of all officers and inspectors of the department of planning, department of

building, department of zoning, the fire rescue department, and the police department, to report to the code enforcement department any suspected violations of the Miami 21 code.

### 1.3.1.2 Planning Director

- a. A planning director, appointed by and responsible to the city manager, shall be responsible for administration of the Miami 21 code, as provided herein, with such assistance as the city manager may direct. For purposes of this code, the functions, powers and duties of the planning director more specifically include:
  1. To make determinations concerning uses where there is substantial doubt as to whether a particular use or uses, or classes of uses, or characteristics of use not specifically identified in the Miami 21 code are of the same general character as those listed as permitted, warranted or exception uses, either upon request from any administrative agency or officer of the city or upon his own initiative.
  2. To approve, deny or approve with conditions any applications for administrative warrant, upon review by members of the coordinated review committee as the director may request, and pursuant to the standards of the Miami 21 code.
  3. To approve, deny or approve with conditions any applications for administrative waiver pursuant to the standards of the Miami 21 code.
  4. To prepare recommendations regarding an application for exception, upon review by members of the coordinated review committee as the director may request, and to cause the application and accompanying recommendations to be placed on the agenda of the planning, zoning and appeals board for consideration.
  5. To prepare recommendations regarding an application for variance and to cause the application and accompanying recommendations to be placed on the agenda of the planning, zoning and appeals board for consideration.
  6. To prepare recommendations regarding an application for amendment to the Miami 21 code, including rezoning, and to cause the application and accompanying recommendations to be placed on the agendas of the planning, zoning and appeals board and the city commission for consideration.
  7. To prepare recommendations regarding an application for a special area plan, and to cause the application and accompanying recommendations to be placed on the agendas of the planning, zoning and appeals board and the city commission for consideration.

8. To coordinate and chair the work of the coordinated review committee.
9. To determine whether changes made to applications are substantial changes pursuant to 1.3.3.5 of this code that require additional review and evaluation by city staff or a new notice prior to a hearing.
10. To serve in an advisory capacity on Miami 21 code matters to the planning, zoning and appeals board, the city commission, and other officers or agencies of the city, and to prepare such reports as may be appropriate in that capacity.

### **1.3.1.3 Coordinated Review Committee**

#### **a. Establishment**

There is hereby established a committee to be known as the coordinated review committee. The coordinated review committee shall consist of the following members: the planning director who shall serve as the chair of the committee, the zoning administrator, the city attorney, the NET director, and the public works director, and other city, county, school board and governmental and utility officials with the necessary expertise that the planning director may require for any particular application review.

#### **b. Functions, powers and duties**

The coordinated review committee shall provide review of applications for administrative warrants and for exceptions pursuant to the review criteria of section 1.3.2. The planning director shall determine to which members of the committee any particular application shall be referred for review and advice. The committee shall meet together only as requested by the planning director. Upon the planning director's request, the review reports of each member shall be provided to the planning director, who shall consider them in making a decision regarding an application for an administrative warrant and in making a recommendation to the planning, zoning and appeals board regarding an application for an exception.

#### **c. Notice**

The applicant shall be given an opportunity upon reasonable notice to attend any meeting, if any, of the coordinated review committee that may be held to review and evaluate its application. Failure of the applicant to appear shall result in the withdrawal of the item from the committee meeting agenda. The applicant shall receive notice of the planning director's preliminary decision or recommendation on its application, as applicable, at least 21 calendar days prior to the director's final decision or recommendation. Within 14 calendar days of receipt of notice, the applicant may request an opportunity to revise its application or provide additional information to address any comments or concerns raised by

the coordinated review committee. If such a request is made, the director's final decision or recommendation shall not be issued until the applicant has had a reasonable opportunity, as determined by the planning director, to make its revisions or to provide additional information. The applicant shall be informed in writing of the final decision on the administrative warrant and the recommendation on the exception, which writing shall consist of findings as to compliance with the applicable criteria. The applicant shall also be provided notice that complete records on the case are available in a location specified, and that the records are public records.

#### **1.3.1.4 Planning, Zoning and Appeals Board**

##### **a. Establishment**

There is hereby established a board to be known as the city planning, zoning and appeals board. The planning, zoning and appeals board shall consist of eleven voting members, one alternate member to be appointed in the manner hereinafter set out in this section, and one ex-officio, non-voting member appointed by the school board. The school board appointee shall be invited to attend such meetings at which comprehensive plan amendments, re-zonings and special area plans are considered which, if granted, increase residential density. The school board appointee shall not be counted in determining whether a quorum is present at any meeting.

##### **b. Functions, Powers and Duties**

The authority of the planning, zoning and appeals board shall extend only to those areas within the city that are regulated by the Miami 21 code. Within that area, and with the assistance of the planning department and all other city departments as necessary, the functions, duties and powers of the planning, zoning and appeals board shall be:

1. To act as the local planning agency only for the area of the city regulated by the Miami 21 code, pursuant to § 163.3174, Florida Statutes, as amended.
2. To serve as the local land development regulation commission pursuant to § 163.3194(2), Florida Statutes, only for the area of the city regulated by the Miami 21 code.
3. To prepare and recommend to the city commission ordinances, regulations and other proposals promoting orderly development for the area of the city regulated by the Miami 21 code.
4. To make or cause to be made any necessary special studies on the location, adequacy and conditions of specific facilities in the area of the city regulated by the Miami 21 code. These may include, but are not limited to, studies on housing, commercial and industrial

conditions and public facilities, recreation, public and private utilities, conservation of natural resources, roads and traffic, transportation, parking and the like.

5. To determine whether proposed developments of regional impact conform to the requirements of the Miami 21 code, and with § 380.06, Florida Statutes, as amended, and to make recommendations to the city commission in that regard. When acting in this capacity, its work shall be deemed advisory and recommendatory, and only advisory and recommendatory, to the city commission.
6. To determine whether special area plans and rezonings that are regulated by the Miami 21 code conform to the requirements of the Miami 21 code, and to make recommendations to the city commission in that regard. When acting in this capacity, its work shall be deemed advisory and recommendatory, and only advisory and recommendatory, to the city commission.
7. To determine whether specific proposed developments that are regulated by the Miami 21 code and that require an approval of an exception conform to the requirements of the Miami 21 code. In performing its authority to grant, deny or grant with conditions an exception, the board shall serve as a quasi-judicial body and observe the requirements of quasi-judicial procedures as set out in the Miami 21 code and under applicable state law.
8. Rescission: The board, after a quasi-judiciary hearing, may rescind, modify or change any resolution granting an exception if, upon application filed by the director at any time after the grant of special exception, the board finds that there has been a violation of any conditions, restrictions or limitations in the subject resolution. Such a hearing shall not be held until published notice (per section 62-129 of the Miami City Code) has first been given. If the director, upon written request of any aggrieved party, refuses or fails to make such an application, such aggrieved party may request the city commission, through the city manager, to instruct the director to do so. The decision of the board shall be final.
9. To determine whether an application for a variance conforms to the requirements of the Miami 21 code. In performing its authority to grant, deny or grant with conditions a variance, the board shall serve as a quasi-judicial body and observe the requirements of quasi-judicial procedures as set out in the Miami 21 code and under applicable state law.
10. To hear, de novo, and make a ruling on an appeal of the following administrative decisions:
  - (a) An administrative determination by the planning director;
  - (b) The decision of the planning director regarding a waiver;

- (c) The decision of the planning director regarding an administrative warrant;
- (d) A zoning interpretation by the zoning administrator;
- (e) The decision of the zoning administrator regarding zoning approval or a certificate of use.

In performing its appeal authority, the board shall serve as a quasi-judicial body and observe the requirements of quasi-judicial procedures as set out in this code and under applicable state law.

11. The planning, zoning and appeals board shall perform such other functions as may be given it by the city commission.

c. Appointments; qualifications

1. No appointment shall be made by the city commission to membership or alternate membership on the planning, zoning and appeals board until the city clerk has given at least 30 days notice of the vacancies in a newspaper of general circulation in the city of the vacancies. The city commission shall solicit and encourage the public, professional and citizen organizations within the area having interest in and knowledge of the purpose and functions of the board to submit names of persons and their qualifications for consideration as prospective appointees to the board. At least five days prior to the making of any appointment, the city clerk shall publicly notice that the list of names thus submitted and the names of candidates submitted by the city commission, together with a short statement of the qualifications of each person, is prepared and available for public inspection and consideration. No person shall be appointed to the board whose name and qualifications have not been made publicly available in the manner set out herein. In reaching a decision on an appointment, the city commission shall give due consideration to the qualifications thus submitted.
2. Nomination. Each city commissioner shall nominate candidates to serve the terms of two members of the board, taking into consideration the required qualifications for membership as provided herein.
3. Terms of office. The terms of office shall be the later of those terms provided under section 2-885 of the city code.
4. Qualifications. It is intended that members and alternate members of the board be persons of knowledge, experience, mature judgment, and background; having ability and desire to act in the public interest; and representing, insofar as may be possible, the various special professional training, experience, and interests required to make informed and equitable decisions concerning preservation and appropriate development of the physical environment. To that end, qualifications of members and alternate members shall be as follows:

- (a) One member shall be an architect registered in the state.
  - (b) One member shall be a landscape architect registered in the state.
  - (c) One member shall be a historian or architectural historian qualified by means of education or experience and having demonstrated knowledge and interest in county history or architectural history.
  - (d) One member shall be an experienced real estate broker licensed by the state.
  - (e) One member shall be an experienced city planner or developer.
  - (f) One member shall be experienced in engineering.
  - (g) Six members shall be citizens with demonstrated knowledge and interest in the appropriate growth and development of the city, and may also qualify under any of the above categories.
  - (h) One alternate member shall qualify under one of the above categories.
5. The city commission shall appoint the board members from the nominations made by each city commissioner, for ten members of the board. The mayor shall appoint one member and the alternate member. Appointees shall be persons in a position to represent the public interest, and no person shall be appointed having personal or private interests likely to conflict with the public interest. No person shall be appointed who has any interest in the profits or emoluments of any contract, job, work, or service for the city. No person shall be appointed who holds any elective office or is employed in a full-time capacity by any governmental authority in the county or the city. Before making any appointment, the city commission shall determine that the person so appointed satisfies the requirements of sections 2-611 et seq. of the city code, and no person shall be confirmed in appointment who has not filed the statement required by section 2-615 of the city code. In addition, the code of ethics of Miami-Dade County shall apply to members and the alternate member of the planning, zoning and appeals board.
6. Persons appointed shall be electors of the city and otherwise meet the requirements of Chapter 2, Article XI of the city code.
7. No member or alternate member of the planning, zoning and appeals board shall be confirmed in his appointment until he signs a statement agreeing to participate in at least one seminar on planning or zoning to be held in Florida or elsewhere, and approved by the city, during the course of each calendar year he shall remain a member or alternate member of the board. Failure to meet this requirement each and every year after assuming board membership or alternate membership may be grounds for removal.
8. Vacancies
- (a) Vacancies in the membership or alternate membership of the planning, zoning and appeals board shall be filled by the city commission and mayor by appointment in the manner herein set out and for the unexpired term of the member or alternate member

affected, provided the city commission may appoint an alternate member of the board to a vacancy as a full member of the board without resort to the procedural requirements of paragraph 1. above.

- (b) It shall be the duty of the chairman of the planning, zoning and appeals board to notify the city clerk within ten days after a vacancy occurs, and the city clerk shall promptly transmit such information to the city commission for appropriate commission action as set out herein.

9. Removal

- (a) Members and alternate members of the planning board may be removed for cause by the city commission upon the votes of not less than three members of the commission, upon written charges and public hearing, if the member and the alternate member affected requests such public hearing.
- (b) There is hereby established a point system. Each member and the alternate member of the planning, zoning and appeals board who arrives after the beginning of the first agenda item or leaves before the termination of the last agenda item, at a regularly scheduled meeting of the board, shall receive two points. Any member and the alternate member of the board who accumulates more than 15 points in one calendar year shall be brought to the attention of the city commission for its consideration of removal of the member.
- (c) Notwithstanding paragraph (b) above, any member or alternate member of the board who is absent, for whatever reason, from more than five meetings in one calendar year shall be brought to the attention of the city commission for its consideration of removal of the member.

10. Compensation. Members and alternate members of the planning, zoning and appeals board shall receive a remuneration of \$1.00 per year. The city commission shall make provision for the payment of actual and necessary expenses, in accordance with city policy, for the attendance of each member and alternate member of the board at one city-authorized planning or zoning seminar or conference each calendar year to be held in Florida.

d. Proceedings of the board

- 1. Officers and voting. The planning, zoning and appeals board shall select a chairman and vice-chairman from among its members and may create and fill such other offices as it may determine. All members, or the alternate member sitting in the place of a member, shall be required to vote on matters before the planning, zoning and appeals board, subject to the provisions of subsections e. and f. of this section and applicable Florida Statutes. The planning director shall attend all meetings of the board. The Office of Hearing Boards,

or its successor, shall be the executive secretary of the planning, zoning and appeals board.

2. Rules of procedure. The planning, zoning and appeals board shall establish rules of procedure necessary to its governing and the conduct of its affairs, in keeping with the applicable provisions of Florida law, and the city charter, ordinances and resolutions. Such rules of procedure shall be available in written form to persons appearing before the board and to the public upon request. Quasi-judicial procedures as provided in this Miami 21 code and as required by state law shall apply to rezoning, including special area plans; exceptions; variances; and appeal decisions by the board.
3. Meetings. The planning, zoning and appeals board shall hold at least two regularly scheduled meetings each month, except the month of August, on days to be determined by the board. Other regularly scheduled meetings may be set by the board, and additional meetings may be held at the call of the chairman and at such other times as the board may determine. Meetings that are not regularly scheduled shall not be held without at least ten days' written notice to each member and the alternate member, provided that upon concurrence of the chairman of the planning, zoning and appeals board and the city manager, an emergency meeting may be called at any time and with appropriate notice.
4. Quorum; public records. Quorum requirements are governed by the provisions of section 2-887 of the city code. However, no action to recommend adoption of amendments to the city comprehensive plan, or to recommend the amendment of the text of the Miami 21 code, or approve rezoning, special area plan, or exception shall be taken without the concurring votes of at least seven members of the board. The executive secretary of the planning, zoning and appeals board shall keep minutes of board proceedings, showing the vote of each member or alternate member, if sitting for a member, or if absent or failing to vote under paragraphs (5) and (6) below, indicating such fact. It shall be the responsibility of the executive secretary of the planning, zoning and appeals board to handle all procedural activities for all public hearings held by the board, including the preparation of detailed minutes and official records of such hearings. The official records of such public hearings shall be filed with the city clerk.
5. Status of alternate member. In the temporary absence or disability of a member, or in an instance where a member is otherwise disqualified to sit on a particular matter, the chairman of the planning, zoning and appeals board, or the vice-chairman in his absence, shall designate the alternate member to sit as a board member to obtain a full membership of nine or, as nearly as possible, a full membership. When so acting, the alternate member shall have full rights of participation and voting as members; his vote shall be deemed that of a member in reaching a decision on a matter. In instances where the alternate member is not sitting as a member, he shall have the right to

participate in board discussions and to ask questions, but he shall have no right to vote or make motions. Where the alternate member has been duly designated to sit as a member on a particular matter and consideration of that matter has begun, the alternate shall continue to sit as a board member through disposition of the matter; and he shall not be replaced, should the member in whose stead he is sitting later be present.

6. Disqualification of members or alternate. If any member of the planning, zoning and appeals board or the alternate member called on to sit in a particular matter shall find that his private or personal interests are involved in the matter coming before the board, he shall, prior to the opening of the hearing on the matter, disqualify himself from all participation of whatsoever nature in the cause. Alternatively, he may be disqualified by the votes of not less than five members of the board, not including the member or alternate member about whom the question of disqualification has been raised. No member or alternate member of the board may appear before the city commission, planning advisory board, zoning board or planning, zoning and appeals board as agent or attorney for any other person.
- e. All city departments and employees shall, under the direction of city manager and upon request and within a reasonable time, furnish to the planning department such available records or information as may be required in the work of the planning, zoning and appeals board. The city manager shall assign a member of the public works department, planning department, zoning department, neighborhood enhancement team and fire-rescue department, or their successors, to attend public hearings of the board and to advise the board when necessary, and to furnish information, reports and recommendations upon request of the board. The city attorney shall assign a member of the city law department to attend public hearings of the board to advise the board when necessary and to furnish information, reports and recommendations upon request of the board.
  - f. The planning, zoning and appeals board or representatives of the planning department may, in the performance of official duties, enter upon lands and make examinations or surveys in the same manner as other authorized city agents or employees and shall have other powers as are required for the performance of official functions in carrying out the purposes and responsibilities of the board.

### 1.3.1.5 City Commission

The city commission, in addition to its duties and obligations under the city charter, the city code, and other applicable law, shall have the following duties specifically in regard to the Miami 21 code:

- a. To approve, deny or approve with conditions applications for developments of regional impact pursuant to Chapter 380, Florida Statutes.
- b. To consider and act upon proposed amendments, including rezoning, to the Miami 21 code, after consideration of the recommendation by the planning, zoning and appeals board.
- c. To consider and act upon proposed special area plans, after consideration of the recommendation by the planning, zoning and appeals board.
- d. To consider and act upon proposed amendments to the comprehensive plan which relate to the Miami 21 code, after consideration of the recommendation by the planning, zoning and appeals board.
- e. To hear appeals of the ruling of the planning, zoning and appeals board on the appeal of a zoning interpretation, planning determination, or exception.
- f. To consider and adopt ordinances, regulations and other proposals as it deems appropriate for promoting orderly development within the areas of the city that are regulated by the Miami 21 code.
- g. To establish a schedule of fees and charges for the applications made pursuant to the Miami 21 code.
- h. To appoint members to the planning, zoning and appeals board, as set forward in this code.

### 1.3.2 Permits

The permits necessary to develop property under the Miami 21 code include the following: zoning approval (by right); planning determination; zoning interpretation; administrative warrant; waiver; exception; variance; and amendment to the code (including text amendments, rezoning and special area plans). The Permits are illustrated in Diagram 12.

#### 1.3.2.1 Permitted Uses

A building permit for those permitted uses as set forth in Table 3 of this code shall be approved as a matter of right when it meets all of the applicable

standards of the Miami 21 code, and the other specific requirements that may be enumerated elsewhere in the city code.

a. Zoning approval

A building permit shall be issued only after a zoning approval from the zoning administrator has been obtained indicating that the proposal is consistent with the Miami 21 code. Upon an affirmative finding by the zoning administrator that plans and application submitted are complete and in compliance with the requirements of the Miami 21 code, an approval shall be entered on the application and on the applicable building permit and, if otherwise lawful, the permit shall be issued to the applicant, together with one copy of the approved plan. If the application and plan are not in full in compliance with the requirements of the Miami 21 code, the application shall not be approved and the applicant notified in writing of the reasons for such decision.

b. Certificate of use

1. For new or altered structures and uses.

No person shall use or permit the use of any structure and/or premises hereafter created, erected, changed, converted, enlarged or moved, wholly or partly, in use or in structure, until a certificate of use reflecting use, extent, location, and other matters related to Miami 21 code shall have been issued to the owner or tenant. Application shall be made to the zoning administrator on forms provided therefore. The zoning administrator shall issue the certificate of use (or to approve its issuance where final responsibility for issuance lies with other officers or agencies) if he finds that all the requirements of the Miami 21 code have been met, and to withhold such certificate (or to prohibit its issuance) unless he finds that all of the requirements of the Miami 21 code have been met. No certificate of use is necessary for fewer than three (3) single family structures, attached or detached, on a lot or for fewer than two (2) duplex structures on a lot.

2. Certificates of use for other existing uses.

Any owner or tenant engaged in existing use of structures or premises, other than nonconforming use at the time of the adoption of this Miami 21 code, may apply for a certificate of use certifying that such use is lawful under this code. The zoning administrator if necessary shall inspect to determine the facts in the case and to either issue the certificate if the administrator finds the use lawful, or to withhold the certificate and take such remedial action as is appropriate if the administrator finds otherwise.

3. No certificate of use shall be issued for buildings for which code compliance proceedings are pending.

- c. Building permits or certificates of use issued by the zoning administrator on the basis of plans and applications authorize only the use, arrangement, and construction set forth in the approved plans and applications, subject to any conditions or safeguards attached thereto, and no other. Use, arrangement, or construction at variance with that authorized, or failure to observe conditions and safeguards, shall be deemed a violation of this Miami 21 code.

### 1.3.2.2 City Request for Planning Determination of Use

Where there is substantial doubt as to whether a particular use or uses, or classes of uses or characteristics of use not specifically identified in the Miami 21 code are of the same general character as those listed as permitted, warranted or exception, the planning director shall make a determination in the matter. The planning director shall give due consideration to the intent of this code concerning the zone involved and the character of the use or uses in question.

Requests for such determinations shall be made only by officers or agencies of the city and may originate during the permit process. However, such requests shall not involve those circumstances where the zoning administrator has made a negative finding on a zoning interpretation, in which case appeal may be taken to the planning, zoning and appeals board and then to the city commission, as set forth in section 1.3.2.3.

- a. Notifications concerning determinations.

Upon making his determination, the planning director shall notify any other officer or agency of the city likely to be affected by such ruling. Additionally, notice of the determination shall be published to the public on the official city website.

- b. Effect of findings.

If, in making the determination, the planning director finds that the particular use or class of use or characteristics of use are of unusual or transitory nature, or are unlikely to recur frequently, and unless his determination is reversed on grounds of error on appeal to the planning, zoning and appeals board or the city commission, the determination shall thereafter be binding on all officers and agencies of the city as an administrative ruling, and without further action on or amendment to the Miami 21 code.

Where the planning director finds, in making the determination, that the particular use or class of use or characteristics of use are likely to be common or recurrent, and that omission of specific reference in the Miami 21 code is likely to lead to public uncertainty and confusion, the director shall initiate a proposed amendment to the Miami 21 code to rectify the omission. Until final action has been taken on such proposed

amendment, the determination of the director shall be binding on all officers and agencies of the city as an interim administrative ruling.

c. Appeal to Planning, Zoning and Appeals Board

An appeal of a planning determination, if sought, shall be taken to the planning, zoning and appeal board, and must be initiated within fifteen calendar days of the publication of the determination on the city's official website. The board shall determine whether the administrative determination is upheld or rescinded. The ruling of the planning, zoning and appeals board may be further appealed to the city commission, and must be initiated within fifteen calendar days of the board's issuance of its ruling.

### 1.3.2.3 Zoning Interpretation

Except where the Miami 21 code specifically places responsibility in other officers or agencies, questions of interpretation of this code shall first be presented to the zoning administrator.

a. Notifications concerning interpretations.

Upon making his interpretation, the zoning administrator shall notify the party requesting the interpretation, as well as any other officer or agency of the city likely to be affected by such ruling, and shall post the interpretation on the city's official website.

b. Appeal to planning, zoning and appeals board.

An appeal of a zoning interpretation, if sought, shall be presented to the planning, zoning and appeals board within fifteen calendar days of the publication of the interpretation on the city's official website. The planning, zoning and appeals board shall determine whether the administrative interpretation is upheld or rescinded. The ruling of the planning, zoning and appeals board may be further appealed to the city commission, and must be initiated within fifteen calendar days of the board's issuance of its ruling.

### 1.3.2.4 Administrative Warrant

The administrative warrant permits those uses listed in Table 3 as requiring a warrant, upon review by the Planning Director or with the additional review of the Coordinated Review Committee.

- a. Prior to submitting an application for an administrative warrant, the prospective applicant shall meet with the zoning administrator and the planning director to obtain information and guidance as to matters related to the proposed application.

b. Informal notice and hearing.

No formal public notice and hearing shall be required in connection with administrative warrant applications. However, at the time of initial application, the applicant shall notify all abutting property owners, including those across a street or alley, by certified mail. In the case of adjacent condominiums, only one notice to the condominium association need be sent.

Additionally, at the time of initial application, the applicant shall obtain from the department of planning the list of all registered neighborhood and/or homeowner associations pertaining to the abutting properties and shall notify the official representatives of all the registered associations, by certified mail, of the application. Neighborhood and homeowner associations who wish to receive such notice must register on an annual basis at their local NET offices.

The applicant shall submit the certified receipts from all notices to the department of planning at the time of application.

c. Review and approval process.

1. The planning director shall review each application for an administrative warrant for completeness. If the administrative warrant application involves a project in excess of two hundred thousand (200,000) square feet of floor area, it shall be referred to the coordinated review committee, which shall review the application and provide its comments and recommendations to the planning director.
2. Applications for projects equal to or less than two hundred thousand (200,000) square feet of floor area shall be reviewed by the planning director and the zoning administrator without need for review by the coordinated review committee, unless the planning director determines that review by the coordinated review committee is necessary. In either case, the planning director shall issue written findings and determinations regarding the applicable criteria set forth in this section and any other applicable regulations. The findings and determinations shall be used to approve, approve with conditions or deny the administrative warrant application.
3. Approvals shall be granted when the application complies with all applicable regulations; conditional approvals shall be issued when the applications require conditions in order to be found in compliance with all applicable regulations; denials of applications shall be issued if after conditions and safeguards have been considered, the application still fails to comply with all applicable regulations.

d. Review criteria.

As appropriate to the nature of the administrative warrant involved and the particular circumstances of the case, the following criteria shall apply

to an administrative warrant application. In addition, the application shall be reviewed for compliance with the regulations of Article 2, the transect zone regulations of Article 3 and the supplemental use standards of Article 6. The review shall consider the intent of the transect, the intent of the Miami 21 code, and the manner in which the proposed use will operate given its specific location and proximity to less intense uses. Particular consideration shall be given to protecting residential areas from excessive noise, fumes, odors, commercial vehicle intrusion, traffic conflicts and the spillover effect of light.

- e. Appeal to the Planning, Zoning and Appeals Board.

Appeal of the determination of the planning director shall be taken to the planning, zoning and appeals board, within thirty calendar days of the decision by the planning director.

#### **1.3.2.5 Administrative Waiver**

The Administrative Waiver permits specified deviations from the Miami 21 Code consistent with the intent of this code. An administrative waiver may not be granted if it conflicts with the code of the City of Miami or the Florida Building Code.

- a. Applications for Waivers shall be allowed only for:

- (1) The appropriateness and the configuration of vehicular entries, service areas and loading docks at the Principal Frontage Line or in the Second Layer;
- (2) Replacement of a Streetscreen by a hedge or a fence;
- (3) Extensions above the maximum height up to 5 % for stair, elevator and mechanical enclosures or decorative purposes as per zone regulations in Article 3;
- (4) Modification of nonconformities as provided in section 1.4;
- (5) Adjustments to setbacks above the eighth floor for T6 lots having one dimension less than 100 feet, not to exceed 15% of the setback;
- (6) Extensions above the maximum height in zone D-2, according to an acceptable operational plan demonstrating consistency with industry standards for the proposed use;
- (7) As appropriate to the nature of the waiver involved and the particular circumstances of the case, waivers may be granted when doing so promotes the intent of the particular transect zone where the proposal is located and or when doing so promotes energy conservation and building sustainability. The inability to achieve maximum density, height, or floorplate for the transect shall not be considered grounds for the granting of a waiver.

- b. Prior to submitting an application for an administrative waiver, the prospective applicant shall meet with the zoning administrator and the planning director to obtain information and guidance as to matters related to the proposed application.

c. Informal notice and hearing.

No formal public notice and hearing shall be required in connection with review of a waiver. However, at the time of initial application, the applicant shall notify all abutting property owners, including those across a street or alley, by certified mail. In the case of adjacent condominiums, only one notice, by certified mail, to the condominium association shall be sent.

Additionally, at the time of initial application, the applicant shall obtain from the department of planning the list of all registered neighborhood homeowner associations pertaining to the abutting properties and shall notify the official representatives of all such registered associations, by certified mail, of the application. Neighborhood and homeowner associations who wish to receive such notice must register on an annual basis at their local NET offices.

The applicant shall submit the certified receipt(s) from all notices to the department of planning at the time of the application.

d. Review and approval.

The planning director shall review the waiver application and proposed project associated with the application and shall issue written findings and determinations in regard to the standards of the Miami 21 code. The planning director shall approve, approve with conditions or deny the administrative waiver application.

Approvals shall be granted when the application complies with all applicable regulations; conditional approvals, shall be issued when such applications require conditions in order to be found in compliance with all applicable regulations; denials of applications shall be issued if, after conditions and safeguards have been considered, the application still fails to comply with all applicable regulations.

e. Appeal to the Planning, Zoning and Appeals Board.

Appeal of the determination of the planning director shall be taken to the planning, zoning and appeals board, pursuant to section 1.3.5 of this code.

### 1.3.2.6 Exception

As identified in Table 3 of this article, a use may be permitted by exception in specific transect zones if it conforms to criteria of this Miami 21 code. Exceptions may also be permitted as provided in this code, such as for adjustments to nonconformities as provided in section 1.4. The planning, zoning and appeals board shall determine whether an exception may be granted.

- a. Prior to submitting an application for an exception under this code, the prospective applicant shall meet with the zoning administrator and the planning director to obtain information and guidance as to matters related to the proposed application.
- b. Review by planning director and coordinated review committee.
  1. The planning director shall review each application for an exception for completeness. If the exception application meets or exceeds two hundred thousand (200,000) square feet of floor area it shall be referred to the coordinated review committee, which shall review the application and provide its comments and recommendations to the planning director:
  2. Applications for projects equal to or less than two hundred thousand (200,000) square feet of floor area shall be reviewed by the planning director and the zoning administrator without need for review by the coordinated review committee, unless the planning director and zoning administrator determine that review by the coordinated review committee is necessary.
  3. As appropriate to the nature of the exception involved and the particular circumstances of the case, the following criteria shall apply to an application for an exception. In addition, the application shall be reviewed for compliance with the regulations of Article 2, the transect zone regulations of Article 3, and the supplemental use standards of Article 6. The review shall consider the manner in which the proposed use will operate given its specific location and proximity to less intense uses. Particular consideration shall be given to protecting residential areas from excessive noise, fumes, odors, commercial vehicle intrusion, traffic conflicts and the spillover effect of light. The director shall prepare recommendations and present them to the planning, zoning and appeals board.
- c. Decision by the planning, zoning and appeals board.
  1. Notice and hearing.

A quasi-judicial hearing shall be held on the application for exception. Notice of the hearing shall be issued in the manner set forth in the Chapter 62 of the city code.
  2. Review and findings.

The planning, zoning and appeals board shall give full consideration to the planning director's recommendations, and shall determine whether to grant an application for exception, to grant with conditions and safeguards or to deny the application. The planning, zoning and appeals board shall issue written findings that the applicable requirements of the Miami 21 code have or have not been met.

- d. Appeal to the City Commission.

Appeal of the determination of the planning, zoning and appeals board shall be taken to the city commission, pursuant to section 1.3.5 of this code.

### 1.3.2.7 Variance

- a. Variance defined; limitations.

A variance is a relaxation of the terms of the Miami 21 code, and is permitted only in those exceptional circumstances when such action will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of the Miami 21 code would result in unnecessary and undue hardship on the property. A variance shall be authorized only for lot size, lot coverage, dimensions of side or rear setbacks, and open space requirements. Variances shall be prohibited for anything not included in the listing above. A variance from the terms of the Miami 21 code shall not be granted unless and until every mitigating measure to offset the impact of the relaxed requirement can be shown to have been taken.

Regulations of this Miami 21 code that are not eligible for adjustment by variance may be eligible for administrative waiver. See section 1.3.2.5.

Unachievable maximum density, height, or floorplate, nonconforming use of neighboring lands, structures or buildings in the same transect, and permitted use of lands, structures or buildings in any other transect, shall not be considered grounds for the granting of a variance.

- b. Criteria for approval.

An application for a variance shall be approved only if it demonstrates all of the following:

1. Special conditions and circumstances exist that are peculiar to the land, structure or building involved and that are not applicable to other lands, structures, or buildings in the same transect;
2. The special conditions and circumstances do not result from the actions of the applicant;
3. Literal interpretation of the provisions of the Miami 21 code deprives the applicant of rights commonly enjoyed by other properties in the same transect zone and results in unnecessary and undue hardship on the applicant;
4. Granting the variance requested conveys the same treatment to the individual owner as to the owner of other lands, buildings or structures in the same transect zone;

5. The variance, if granted, is the minimum variance that makes possible the reasonable use of the land, building, or structure; and
  6. The grant of the variance is in harmony with the general intent and purpose of the Miami 21 code, and is not injurious to the neighborhood, or otherwise detrimental to the public.
- c. Prior to submitting an application for a variance under this code, the prospective applicant shall meet with the zoning administrator and the planning director to obtain information and guidance as to matters related to the proposed application.
  - d. Review by planning director.

The planning director shall review each application for a variance for completeness, and prepare recommendations for consideration by the planning, zoning and appeals board.

- e. Review by the planning, zoning and appeals board.
  1. Notice.

A quasi judicial hearing shall be conducted by the planning, zoning and appeals board on the variance applications. Formal public notice of hearing by the planning, zoning and appeals board of the application shall be issued in the manner set forth in chapter 62 of the city code.
  2. Decision by the planning, zoning and appeals board.

The planning, zoning and appeals board shall consider the recommendations of the planning director, conduct a quasi-judicial hearing, and shall issue written findings that the application meets or does not meet the applicable criteria allowing for a variance from the regulations of the Miami 21 code.
  3. Conditions and safeguards.

In any variance, the planning, zoning and appeals board may prescribe appropriate mitigating conditions and safeguards in conformity with the Miami 21 code. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the Miami 21 code and grounds for revocation of the variance.
- f. Appeal of decisions.

Appeal of the decision of the planning, zoning and appeals board shall be made to the circuit court for Miami-Dade County, as set forth in section 1.3.5 of this code.

### **1.3.2.8 Amendment to Miami 21 Code**

- a. Successional Zoning. The City's growth and evolution over time will inevitably require changes to the boundaries of certain Transect Zones. These changes shall occur successionaly, in which the zoning change may be made only to the next intensity Transect Zone or to a Special Area Plan, and in a manner which maintains the goals of this Code to preserve neighborhoods and to provide transitions in intensity and building height. Except that a modification to the CI transect may only be to the highest intensity abutting transect. For a property of ten (10) acres or more, such a change shall involve a Special Area Plan as described in Article 2. Successional changes to zoning shall be made by amending the Miami 21 Atlas.
- b. The Miami 21 code may be amended by amending the text of the code, amending the Miami 21 Atlas, or both. Transect zone map amendments (rezoning, including special area plans) may only be approved at two times of the year, which times shall be set yearly by the city commission. The planning, zoning and appeals board shall make recommendations to the city commission for such amendments to the Miami 21 code. Every two years, the city shall conduct a review of Miami 21 Atlas amendments that have been approved in the prior two years..
- c. Amendments to the text of the Miami 21 code (including tables and diagrams) may be only be made upon application of a city official, and shall be considered at the times as determined by the city commission.
- d. Applications for rezoning (Miami 21 Atlas amendment).
  1. Except as otherwise limited by the Miami 21 code, applications for rezoning may be made by:
    - (a) The city commission;
    - (b) The planning, zoning and appeals board;
    - (c) Any other department, board or agency of the city;
    - (d) Any person or entity other than those listed in (1) through (3), above, provided that only the owner(s) or their agent(s) may apply for the rezoning of property.
  2. Applications for rezoning shall be made on an application form as provided by the city which shall require, at a minimum, the following information:
    - (a) Location of the property, including address and legal description
    - (b) Survey of the property prepared by a State of Florida registered land surveyor within six (6) months from the date of the application, including acreage.
    - (c) Affidavit and disclosure of ownership of all owners and contract purchasers of the property, including recorded warranty deed and tax forms of the most current year. For corporations and partnerships, include articles of incorporation, certificate of good standing, and authority of the person signing the application. Non-

profit organizations shall list members of the Board of Directors for the past year.

- (d) Certified list of owners of real estate within 500 feet of the subject property.
- (e) Present zoning of the property and Future Land Use designation of the property
- (f) At least two photographs that show the entire property.
- (g) An analysis of the properties within a one-half mile radius of the subject property regarding the existing condition of the radius properties and the current zoning and Future Land Use designations of the radius properties. The analysis shall include photos of building elevations of both sides of the street extending 300 feet beyond all boundaries of the site. An aerial photo of the site and the radius properties shall be included. The analysis shall explain why the zoning change is appropriate and why the existing zoning is inappropriate, in light of the intent of the Miami 21 code and particularly in relation to effects on adjoining properties.

- e Review of application for code amendments by planning director.

The planning director shall review each application for a code amendment. In addition, the director shall review each rezoning application for completeness. The director shall review the application in regard to whether the land use densities and intensities are compatible with and further the objectives, policies and land uses in the comprehensive plan, and whether the criteria in 1.3.2.8.(e) are met. The planning director shall prepare a recommendation on all code amendments to the planning, zoning and appeals board, with a statement regarding how each of the criteria of this code are met.

- f. Review by the Planning, Zoning and Appeals Board.

1. Notice

Formal public notice of hearing by the planning, zoning and appeals board of an application for a code amendment shall be issued in the manner set forth in chapter 62 of the city code.

2. Review, findings and recommendation.

- (a) The planning, zoning and appeals board shall give full consideration to the director's recommendations, and shall evaluate whether an application for a code amendment should be granted, granted with modifications or denied.
- (b) The board shall conduct a hearing on text amendments and make its recommendations based on whether the criteria in 1.3.2.8(e)(1) are met.
- (c) The planning, zoning and appeals board shall conduct a quasi-judicial public hearing on rezoning applications, and make its

recommendations based on whether the criteria in 1.3.2.8.(e) (2) are met.

g. Criteria.

The recommendations of the planning, zoning and appeals board shall show that the board has considered and studied the application in regard to the following criteria:

1. For all amendments:

- (a) The relationship of the proposed rezoning to the purposes and objectives of the Miami Comprehensive Plan, with appropriate consideration as to whether the proposed change will further the purposes of the comprehensive plan; the Miami 21 code; and other city regulations.
- (b) The need and justification for the proposed change, including changed or changing conditions that make the passage of the proposed change necessary.

2. For rezonings:

A change may be made only to the next intensity Transect Zone or by a Special Area Plan, and in a manner which maintains the goals of this Miami 21 Code to preserve neighborhoods and to provide transitions in intensity and building height. Except that a modification to the CI transect may only be to the highest intensity abutting transect. For a property of ten (10) acres or more, such a change shall involve a Special Area Plan as described in Article 2.

3. For Special Area Plan rezonings:

Special Area Plans shall be adopted by rezoning pursuant to the provisions of Section 2.7, except as allowed administratively under section 2.7.2.

h. Commission action on board recommendations.

1. Notice and hearings.

Upon receipt of the findings and recommendations regarding code amendments by the planning, zoning and appeals board, the city commission shall hold at least two advertised public hearings on the proposed code amendments. Notice shall be published pursuant to chapter 62 of the city code.

2. Adoption.

In the case of all proposed Miami 21 text or Atlas amendments, if the recommendation of the planning, zoning and appeals board is

adverse to the proposal, such rezoning shall not be adopted except by the vote of at least three members of the city commission.

The city commission may, by a vote of not less than three members, approve the rezoning of property to a less intense transect zone than that applied for in situations where, in the opinion of the commission and upon the recommendation of the planning director, the specific rezoning applied for would work to the detriment of the health, safety or welfare of the surrounding neighborhood, whereas a rezoning to a less intense transect zone would not.

3. Failure of city commission to act.

If a recommendation of the planning, zoning and appeals board is not legislatively decided within twelve months from first reading by the city commission, the application upon which the report and recommendation are based shall be deemed to have been denied. However, for amendments to the comprehensive plan and its corresponding Miami 21 Atlas amendment, the time period will be extended an additional twelve months. In both instances, the provisions of sections 62-54 and 62-55 of the city code will not apply unless otherwise required by the city commission. No day of the month of August shall be counted in the administration of this section.

4. Limitation on further consideration after denial.

Whenever the city commission has denied an application for the rezoning of property, the planning, zoning and appeals board shall not thereafter:

- (a) Consider any further application for the same rezoning of any part or all of the same property for a period of eighteen months from the date of such action;
- (b) Consider an application for any other kind of rezoning on any part or all of the same property for a period of twelve months from the date of such action;
- (c) Consider an application for rezoning that involves the same owner's property within two hundred feet of property granted a change within a period of twelve months.

5. Limitation on further consideration after rezoning.

Whenever the city commission has rezoned property, the planning, zoning and appeals board shall not thereafter consider any petition for rezoning of all or any part of the same property for a period of eighteen months from the date of such action.

6. Limitation on further consideration after voluntary withdrawal of application.

Whenever an applicant has voluntarily withdrawn an application for rezoning of property during either first or second reading before the city commission, the planning, zoning and appeals board shall not thereafter consider an application for the same property for eighteen months from the date of such action, nor consider an application for any kind of rezoning of any part or all of the same property for twelve months from the date of such action.

7. Waiver of time limits.

The time limits set forth in this subsection h. may be waived by a vote of at least three members of the city commission when such action is deemed necessary to prevent injustice or to facilitate development of the city in the context of the adopted comprehensive plan, or any portion thereof.

### **1.3.3 Application and Review Process**

Generally, the application and review process for as-of-right permits, administrative warrants and waivers, and exceptions and variances are as illustrated in Diagram 12.

#### **1.3.3.1 Informal Consultation**

Prior to submitting any application for a permit under this code, the prospective applicant may informally consult with the zoning administrator and the planning director to obtain information and guidance concerning the proposed application, the general application requirements and the plan review process. The prospective applicant for plan review under section 1.3.3.2 may request informal consultation regarding the proposed plan prior to the required pre-application process. No statement made or information exchanged during the informal consultation shall be binding on the city or the applicant.

#### **1.3.3.2 Generally**

- a. The building department shall direct an applicant for a permit under this code to the appropriate office for the review of the permit application. Application forms for specific permits shall be provided by the city administration to assist the applicant in the review and approval process. For all applications, the following information shall be required.
  1. Names and addresses of the record owners, the applicant, and the person preparing the application, and the signatures of each. Statement of ownership or control of the property, executed and sworn to by the owner or owners of one hundred percent of the property described in the application, or by tenant or tenants, with owner's written sworn-to-consent, or by duly authorized agents,

evidenced by a written power of attorney if the agent is not a member of the Florida Bar.

2. Evidence of authority by the record owners for submission of the application, and identification of the applicant's relationship to the owner if the applicant is not the record owner.
  3. Legal description and a certified land survey of the proposed site boundaries. The survey shall be performed in accordance with Florida Administrative Code, and dated within one year preceding the filing date of the application, providing such survey reflects all current conditions of the subject property.
  4. Any information required for notice of a hearing or administrative decision pursuant to this Miami 21 code.
  5. Proof of any pending code enforcement action or municipal liens on the property.
  6. Payment of required fees and charges.
- b. The zoning administrator, or the planning director, as appropriate, shall make a determination as to the completeness of the application prior to its further review.

**1.3.3.3** For as-of-right permits, the applicant shall also provide a complete set of plans, signed and sealed as required by the Florida Building Code, which should include:

- a. Location plan at minimum scale of 1:200, of project within neighborhood structure as shown in Zoning Atlas, including plat plan of neighborhood and building footprints of neighborhood or superimposition of project on aerial photograph.
- b. Dimensioned site plan(s) including:
  1. Lot lines and setbacks.
  2. Location, shape, size and height of existing and proposed building construction and landscaping.
  3. Location of off-street parking, loading facilities, waste collection areas, and all above ground utilities.
  4. Location and design of any signage.
  5. Indication of any site or building design methods used to conserve energy.

6. Abutting area extending 300 feet beyond property lines including street design from project building façade to building façade across the street, including sidewalk, swale if any, street trees, and on-street parking pavement.
- c. Landscape plans including specification of plant material, location and size.
- d. Floor plans and elevations of all structures, including total gross square foot area of each floor and all dimensions relating to the requirements of this Code.
- e. Figures indicating the following:
  1. Lot area.
  2. Amount of green space, trees, and pervious and impervious pavement in square feet and percentage required and provided.
  3. Amount of building coverage at ground level in square feet and percentage required and provided.
  4. Total square footage of all built areas, categorized by use.
  5. Parking required and provided.
  6. Total number of dwelling units.
  7. Other design data as may be needed to evaluate the project.

**1.3.3.4 Plan Approval Required for Administrative Warrants, Waivers, Exceptions and Variances.**

- a. Requirements.

Plan approval is required for any structure and/or premises to be constructed, changed, converted, enlarged or moved, wholly or partly, by administrative warrant,, waiver, exception or variance. The plan shall be reviewed as part of the application for the administrative warrant, waiver, exception, or variance. If plan approval is required, the plan shall show that the structure or use, or both, or the affected part thereof, are in conformity with the provisions of this Miami 21 code.

- b. Pre-application Meeting.

Prior to submitting an application for an administrative warrant, waiver, exception, or variance under this code, the prospective applicant shall meet with the zoning administrator and the planning director to obtain information and guidance as to matters related to the proposed application. No statement made or information exchanged during the pre-

application meeting shall be binding on the city or the applicant. The planning director shall ensure that representatives of potentially affected city departments or agencies are present at the meeting and shall, if deemed necessary, extend invitations to attend and participate in the meeting to potentially affected agencies or officers of Miami-Dade County, the state or the federal government.

Insofar as possible, the applicant shall be given guidelines at the pre-application meeting in regard to:

1. Any referral to other governmental officers or agencies that may be necessary either before or after filing application for permit requested.
  2. Any required comprehensive plan amendments and/or zoning changes.
  3. Any waivers which may be required for the proposed project.
  4. Information regarding the plan process and information that the administrator of director deem pertinent to the application.
  5. Any other matters that are deemed pertinent to the application.
- c. Upon completion of the pre-application meeting, the applicant if required shall file an application for plan approval with the planning or zoning department, as applicable, on forms provided by the city. The planning or zoning department, as applicable, shall initiate review of the plan application upon determination that the application is complete.
- d. Materials to be submitted with the application shall include maps, plans, surveys, studies and reports that may reasonably be required to make the necessary determinations called for in the particular case, in sufficient copies for referrals and records, including those materials listed in section 1.3.3.3, and may include other materials as deemed necessary by the planning director.

#### **1.3.3.5** Modifications to Applications Requiring Public Hearing.

- a. Modifications to applications after processing begins.

An applicant may modify an application after processing begins and prior to the public hearing if the modifications are not substantial. Otherwise, a new application must be made and fee paid. Whether a proposed modification is substantial shall be determined by the zoning administrator, using the following criteria:

1. Does the requested change require a variance to this Miami 21 code; and
2. Does the change have a serious effect on operation of the project as originally proposed by the application?

b. Modifications subsequent to notice of hearing.

1. After notice has been given of a public hearing before the planning, zoning and appeals board, or city commission, as the case may be, no change shall be made in the original application which would have the effect of creating substantial differences between the matter advertised and the matter upon which the hearing is actually held.
2. Upon completion of the public hearing by the planning, zoning and appeals board, or city commission, as the case may be, no proposed amendment shall be recommended or adopted which is substantially different from the proposal for which the public hearing was held.

c. Modifications to an approved plan.

Minor modifications may be made to an approved plan upon the applicant's submission of a letter explaining the need for corrections, payment of the fee established by the adopted fee schedule, and written approval of the planning director. Minor modifications include those changes that do not change the manner of operation of the approved site, or can be approved by waiver. All applications for minor modifications to an approved plan shall be reviewed in light of their cumulative effect on the original approved plan. Except for minor modifications, the plan may be amended only pursuant to the procedures and standards established for its original approval.

**1.3.3.6** Approvals granted in error do not authorize violation of this code; corrections required.

- a. An approval issued in error shall not confer any rights to construction or occupancy, and upon a finding that a permit has been so issued, it shall be revoked.
- b. No approval shall be construed to authorize violation of any provisions of this zoning ordinance, and such approval shall be valid only to the extent that the work authorized is lawful.
- c. Issuance of a building permit based upon a site plan shall not prevent the zoning administrator from thereafter requiring correction of errors in the plan.

**1.3.3.7** No Approval Available if Code Enforcement Violations.

No approval may be issued if the business, enterprise, occupation, trade, profession, property or activity is the subject of an ongoing city enforcement procedure, or is the subject of a notice of violation of a state law or county ordinance where the business enterprise is located or is to be located.

**1.3.3.8 Resubmission and Withdrawal of Applications Requiring Public Hearing.**

- a. Whenever an application has been denied, the city shall not thereafter consider the same application for any part or all of the same property for a period of eighteen (18) months from the date of the denial.
- b. Whenever an applicant has voluntarily withdrawn an application after the application has been scheduled for a public hearing, the city shall not thereafter consider the same application for the same property for eighteen (18) months from the date of the withdrawal.
- c. The time limits set by paragraphs a. and b. above may be waived by a vote of not less than three (3) members of the decision making body when such action is deemed necessary to prevent injustice or to facilitate development of the city in the context of the adopted comprehensive plan, or portion or portions thereof.
- d. If an application is on file for more than six (6) months without activity by the applicant, it shall be deemed withdrawn.

**1.3.4 Quasi-Judicial Procedures****1.3.4.1 Intent**

The intent of this article is to establish procedures to ensure procedural due process and maintain citizen access to the local government decision-making process for the review of certain applications that require quasi-judicial hearings. These procedures shall be applied and interpreted in a manner recognizing both the legislative and judicial aspects of the local government decision-making process in quasi-judicial hearings. Failure to observe the procedures set out herein shall not provide a separate cause of action to challenge the decision of the decision-making board.

**1.3.4.2 Applicability**

These procedures shall apply to all applications in which the city commission or planning, zoning and appeals board acts in a quasi-judicial capacity for recommendations or final decisions as to exceptions, variances and rezoning; and to appeals to the city commission or planning, zoning and appeals board on administrative warrants, waivers, zoning approvals and certificates of use.

These procedures do not apply to administrative decisions made by city staff on administrative warrants or waivers, zoning approvals or certificates of use, except upon the appeal of the administrative decision to the planning, zoning and appeals board.

### 1.3.4.3 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- a. Applicant shall mean the owner of record, the owner's agent, or any person with a legal or equitable interest in the property for which an application or appeal thereof has been made and which is subject to quasi-judicial proceedings, and shall mean the staff when the application is initiated by the city.
- b. Competent substantial evidence shall mean testimony or other evidence based on personal observation, or fact or opinion evidence offered by an expert on a matter that requires specialized knowledge and that is relevant to the issue to be decided. Competent substantial evidence is evidence a reasonable mind could accept as adequate to support a conclusion.
- c. Decision-making body shall mean the city commission or the planning, zoning and appeals board, as the case may be, that makes a recommendation or decision on an application or decides the appeal.
- d. Expert shall mean a person who is qualified in a subject matter by knowledge, skill, experience, training, or education.
- e. Intervener shall mean a person whose interests in the proceeding are adversely affected in a manner greater than those of the general public.
- f. Material fact shall mean a fact that bears a logical relationship to one or more issues raised by the application or the laws and regulations pertaining to the matter requested by the application.
- g. Participants shall mean members of the general public, other than the applicant, including experts and representatives of local governments and governmental agencies, who offer testimony at a quasi-judicial hearing for the purpose of being heard on an application.
- h. Party shall mean the applicant, the city staff, and any person recognized by the c decision-making body as a qualified intervener.
- i. Relevant evidence shall mean evidence which tends to prove or disprove a fact that is material to the determination of the application.

### 1.3.4.4 General procedures

- a. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any relevant matter (subject to the rules contained herein), and to rebut evidence.

- b. Staff shall have the responsibility of presenting the case on behalf of the city. The staff report on the application shall be made available to the applicant and the decision-making body no later than five days prior to the quasi-judicial hearing on the application.
- c. Official file. All written communication received by decision-making body or staff concerning an application, the staff report on the application, any petitions or other submissions from the public, and all other documents pertaining to the application upon receipt shall be filed in the official file for the application, which shall be maintained by staff. The comprehensive plan and the city code of ordinances shall be deemed to be part of the official file. The official file shall be available for inspection during normal business hours.
- d. The printed agenda for the meeting at which the quasi-judicial hearing is scheduled to take place shall identify the hearing as quasi-judicial and indicate where copies of the procedures that apply may be obtained.

#### **1.3.4.5 Hearing procedures**

- a. The hearing shall, to the extent possible, be conducted as follows:
  - 1. The chair or city attorney shall read a statement at the beginning of the quasi-judicial hearing portion of the agenda, which shall outline the procedure to be followed. A copy of the procedures shall be made available at the hearing.
  - 2. The members of the board shall disclose any ex parte communications regarding the application.
  - 3. The applicant, staff, and all participants requesting to speak shall be collectively sworn by oath or affirmation.
  - 4. The applicant may waive its right to an evidentiary hearing if it agrees with the staff recommendation and no one from the audience wishes to speak for or against the application. The decision-making body may then vote on the item, based upon the staff report and any other materials entered by staff from the official file into the record of the hearing.
  - 5. If there is an evidentiary hearing, the order of the presentation shall be as follows, unless the chair agrees to a different order, taking proper consideration of fairness and due process:
- b. Staff shall present a brief synopsis of the application; introduce any appropriate additional exhibits from the official file which have not already been transmitted to the decision-making body with the agenda materials, as staff desires; summarize issues; and make a recommendation on the application. Staff shall also introduce any witnesses that it wishes to provide testimony at the hearing.

- c. The applicant shall make its presentation, including offering any documentary evidence, and introduce any witnesses as it desires.
- d. Participants in support of the application shall make their presentations.
- e. Participants in opposition to the application shall make their presentations.
- f. Staff may cross-examine any witnesses and respond to any testimony presented.
- g. The applicant may cross-examine any witnesses and respond to any testimony presented.
- h. The chair may choose to allow participants to respond to any testimony if the chair deems the response to be necessary to ensure fairness and due process.
- i. Members of the decision-making body, through the chair, may ask any questions of the staff, applicant and participants.
- j. Final argument may be made by the staff, related solely to the evidence in the record.
- k. Final argument may be made by the applicant, related solely to evidence in the record.
- l. A qualified intervener may make a presentation, conduct cross-examination and make final arguments in the order as decided by the chair.
  - 1. The chair shall keep order, and without requiring an objection, may direct a party conducting the cross-examination to stop a particular line of questioning that merely harasses, intimidates or embarrasses the individual being cross-examined; is unduly repetitious is not relevant; or is beyond the scope of the testimony by the individual being cross-examined. If the party conducting the cross-examination continuously violates directions from the chair to end a line of questioning deemed irrelevant and merely designed to harass, intimidate or embarrass the individual, the chair may terminate the cross-examination.
  - 2. After the presentations, and at the conclusion of any continuances, the decision-making body shall deliberate on the application or appeal, as the case may be. Once the decision-making body begins its deliberations, no further presentations or testimony shall be permitted except in the sole discretion of the decision-making body. The decision-making body's decisions must be based upon competent substantial evidence in the record.

- m. The decision-making body may, on its own motion or at the request of any person, continue the hearing to a fixed date, time, and place. The applicant shall have the right to one continuance; however, all subsequent continuances shall be granted at the sole discretion of the decision-making body.

#### **1.3.4.6 Rules of evidence**

- a. The decision-making body shall not be bound by the strict rules of evidence, or limited only to consideration of evidence which would be admissible in a court of law.
- b. The chair may exclude evidence or testimony which is not relevant, material, or competent, or testimony which is unduly repetitious or defamatory.
- c. The chair will determine the relevancy of evidence.
- d. Matters relating to an application's consistency with the city comprehensive plan or Miami 21 code will be presumed to be relevant and material.
- e. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in a court.
- f. Documentary evidence may be presented in the form of a copy of the original, if available. A copy shall be made available to the decision-making body and to the staff no later than two business days prior to the hearing on the application. Upon request, the applicant and staff shall be given an opportunity to compare the copy with the original. Oversized exhibits shall be copied and reduced for convenient record storage.
- g. Only the applicant, qualified intervener, staff and the decision-making body shall be entitled to conduct cross-examination when testimony is given or documents are made a part of the record.
- h. The city attorney shall represent the decision-making body and advise it as to the procedures to be followed and the propriety, relevancy and admissibility of evidence presented at the hearing.
- i. The decision-making body shall take judicial notice of all state and local laws, ordinances and regulations and may take judicial notice of such other matters as are generally recognized by the courts of the State of Florida.
- j. Supplementing the record after the quasi-judicial hearing is prohibited, unless specifically authorized by an affirmative vote of the decision-making body under the following conditions:

1. The supplementation occurs after a quasi-judicial hearing is continued but prior to final action being taken on the application or the appeal.
2. If a question is raised by the decision-making body at the hearing which cannot be answered at the hearing, the party to whom the question is directed may submit the requested information in writing to the decision-making body after the quasi-judicial hearing, with copies to the other parties, provided the hearing has been continued or another hearing has been scheduled for a future date and no final action has been taken by the decision-making body. The information requested will be presented to the decision-making body at the time of the continued hearing.
3. All parties and participants shall have the same right with respect to the additional information as they had for evidence presented at the hearing.

#### **1.3.4.7 Final decision by the decision-making body**

The decision-making body shall reach a decision without unreasonable or unnecessary delay, which it shall adopt in writing. The written decision shall note the date issued and shall indicate the date filed in the city clerk's office. The planning director shall provide the applicant notification of the decision by certified mail.

#### **1.3.4.8 The record**

All evidence admitted into the record at the hearing, and the adopted development order of the decision-making body shall be maintained by the city clerk in a hearing file for a period of at least forty-five days from issuance of the decision.

#### **1.3.5 Appeals**

Appeals to the appropriate appellate body from the following decisions shall be made within thirty days of the date issued as follows:

- a. From the decision of the zoning administrator on an application for zoning approval, certificate of use, or zoning interpretation: to the planning, zoning and appeals board.
- b. From the decision of the planning director on a waiver, administrative warrant, or planning determination: to the planning, zoning and appeals board.
- c. From the decision of the planning, zoning, and appeals board on an exception: to the city commission.

- d. From the appellate decision of the planning, zoning and appeals board on a zoning approval, certificate of use, waiver, or administrative warrant: to the circuit court of the eleventh judicial circuit in the manner set forth in the rules of the court.
- e. From the decision of the planning, zoning and appeals board on a variance: to the circuit court of the eleventh judicial circuit in the manner set forth in the rules of the court.
- f. From the decision of the planning, zoning and appeals board on a zoning interpretation appeal or planning determination appeal: to the city commission.
- g. From the appellate decision of the city commission on a zoning interpretation appeal, planning determination appeal, exception appeal: to the circuit court of the eleventh judicial circuit in the manner set forth in the rules of the court.
- h. From the decision of the city commission on a rezoning: to the circuit court of the eleventh judicial circuit in the manner set forth in the rules of the court.

#### **1.3.6 Notice of hearings**

Notice of hearings shall be as set forth in chapter 62 of the code of ordinances of the city of Miami or as set forth in the Miami 21 code.

### **1.4 NONCONFORMITIES**

#### **1.4.1 Generally**

- a. The following which exist within transect zones established by this code or later amendments, and which were lawful before passage or amendment of this code but which would be prohibited, regulated, or restricted under the terms of this code or its future amendment, shall be defined as nonconforming for the purpose of this code:
  - 1. Lots;
  - 2. Uses of lands, water or structures, or lands or waters in combination with structures;
  - 3. Structures; and
  - 4. Characteristics of use.
- b. Nonconformities created by public taking or court order.

The term "nonconforming" shall also be construed to apply where lawful public taking has the effect of creating what would be violations of this code if actions were taken privately, or where such actions are pursuant to the order of a court of competent jurisdiction.

c. Intent concerning nonconformities generally.

It is the intent of this code that:

1. Removal or cessation of certain of these nonconformities shall be required, and other nonconformities may continue subject to the terms of this code until they are otherwise removed, or cease, but their survival is not encouraged.
2. Nonconformities shall not be used as grounds for adding other structures or uses prohibited elsewhere in the same transect zone.
3. Nonconformities shall not be enlarged upon, extended, or expanded except as provided herein.
4. Nothing herein contained shall be construed as prohibiting change in tenancy, ownership, testamentary disposition or devise, gift, or management of a nonconforming lot, use, or structure, provided such change is otherwise lawful.

d. Exceptions to nonconforming status.

It is hereby intended that the following shall not be deemed to have nonconforming status: Legitimate alcoholic beverage establishments, with a valid certificate of use and/or occupancy, which precede the establishment of a church or school, within the distance limitations required for such by chapter 4, entitled "Alcoholic Beverages," of the Code of the City of Miami, as amended.

e. Repairs and maintenance.

On any nonconforming building or structure, or any building or structure containing a nonconforming use, the following work may be done in any period of twelve consecutive months: 1) ordinary repairs, or 2) repair or replacement of load-bearing walls (or of bearing walls where necessary for structural safety), fixtures, wiring, or plumbing to an extent involving up to twenty percent of the gross square footage of the portion of a building or structure that is nonconforming.

f. Unsafe nonconforming structures.

If a nonconforming building or structure, or any building or structure containing a nonconforming use, becomes unsafe or unlawful and is declared by the City of Miami, Miami- Dade County Unsafe Structures Board, or other government agency having jurisdiction to be unsafe or unlawful by reason of physical condition, it shall not thereafter be

restored, repaired, or rebuilt except in conformity with the regulations of the transect zone in which it is located.

- g. The casual, temporary, or illegal use of land or water or structures, or land or water or structures in combination, shall not be sufficient to establish the existence of a nonconforming use or to create rights in the continuance of such use.

#### 1.4.2 Nonconforming lots.

- a. Use of nonconforming lots.

Except as limited or provided for below, nonconforming lots platted or having legal status prior to the effective date of this Miami 21 code are considered legal building sites. All buildings proposed for such sites shall meet all requirements and limitations of the transect zone in which they are located.

When a legally platted nonconforming lot requires replatting due to a street or alley vacation or closure, the lot may be modified pursuant to an approval by the Director of the Public Works Department as long as the degree of nonconformity is reduced or remains the same, even if the proposed lot still remains nonconforming.

- b. Rules concerning combinations of contiguous lots in the same ownership and with common frontage for T-3 Transects only.

1. Combinations required.

- (a) Except as provided below in paragraphs b.2. and b.3, if two or more lots, or combinations of lots and portions of lots, with continuous frontage in the same ownership exist at the time of passage or amendment of this code, and if all or part of the lots do not meet the requirements for lot width and area, the lands involved shall be considered an undivided parcel for the purposes of these regulations. No portion of such parcel shall be used or sold in a manner diminishing compliance with general transect requirements on lot width and area. "Undivided parcel" shall mean a parcel of land made up of two or more nonconforming lots.

- (b) The undivided parcel shall be considered one lot for which only one single family residence or duplex may be constructed regardless of how many nonconforming platted lots make up the parcel.

- (c) A unity of title or covenant in lieu of unity of title which comply with all applicable of the Miami 21 code requirements, as applicable, shall be required on all undivided parcels prior to the issuance of any building permits, including demolition permits.

- (d) Two or more adjoining nonconforming duplex lots shall not be deemed an "undivided parcel" when the owner of such lots by covenant (in a form acceptable to the city attorney) and pursuant to an administrative waiver, restricts the use of the lots to the development of no more than two single-family detached homes (one home per lot) which comply with all other Miami 21 code requirements except for minimum lot width.
2. Exceptions for nonconforming lots with continuous frontage in the same ownership that comply with a eighty-five percent rule.
- (a) Notwithstanding paragraph b.1, where nonconforming lots with continuous frontage in the same ownership exist at the time of passage or amendment of this code, such lots may be developed individually, in accordance with the applicable code requirements and pursuant to an administrative waiver, if such lots individually comply with eight-five percent of the requirements for lot width, area, and Principal Front Setback under the Miami 21 code regulations.
  - (b) In addition to the administrative waiver criteria above, development is allowable only if the width or size of such nonconforming lots are equal to or larger than the majority of the existing individually built upon lots (i.e. building sites) of the same transect zones within a minimum one thousand (1,000) foot radius of the nonconforming lot perimeter, or extending no further than the immediate vicinity, whichever is less. "Building site" shall mean a lot, group of lots or parcel upon which a single family home or duplex is located. "Immediate vicinity" shall mean an area in which a parcel of land is located that is physically, functionally or geographically identifiable as a distinct realm, place or neighborhood, or an area within a radius of one-half mile from the nonconforming lot, whichever is smaller.

**1.4.3 Nonconforming uses of lands, water or structures, or lands or waters in combination with structures**

- a. Nonconforming uses specifically declared to be incompatible with permitted uses.

Nonconforming uses are declared by this code to be incompatible with permitted uses in the transects involved. Except as otherwise provided in this code, nonconforming uses of land or water, structures, or land or water and structures in combination, shall not be extended or enlarged after passage of this code by addition of the same or other uses of a nature generally prohibited in the transect involved, or by attachment on a structure or premises of signs intended to be seen from off the premises.

- b. Where, at the effective date of adoption or amendment of this code, lawful use of structures, or of structures in combination, exists which would not

be permitted under the newly effective code regulations, such use may be continued for twenty years. An extension for continuance of the use for an additional term of up to twenty years may be granted by an Exception only.

- c. Enlargement, extension, alteration, replacement, etc., of structure.

Except as otherwise specifically provided below, an existing structure devoted to a nonconforming use shall not be enlarged, extended, constructed, reconstructed, replaced, structurally altered, or moved except to change the use of the structure to a conforming use.

- d. Extension of use in building manifestly designed for such use.  
Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time the use became nonconforming. Any nonconforming use which occupied a portion of a building not originally designed or intended for such use shall not be extended to any other part of the same building. No nonconforming use shall be extended to occupy any additional building on the same lot or parcel which was not used for such nonconforming use at the time the use became nonconforming.
- e. Nonconforming use outside buildings; Exception for movement; criteria.  
No nonconforming use outside a building shall be enlarged, increased, or extended to occupy more area than was occupied at the time such use became nonconforming, except as approved by exception. The planning, zoning and appeals board may by exception allow such movement upon a finding that the exception criteria are met and, because of the new location, buffering or screening to be supplied, or other reasons, such movement would create substantial public advantages. In this case, the occupancy of the new location shall be construed as remaining nonconforming.
- f. Discontinuance.

If any nonconforming use of a structure or any portion thereof, or structure and premises in combination, is discontinued for any reason (except where governmental action impedes access to the premises) for a period of more than one hundred eighty (180) consecutive days, any subsequent use shall conform to the regulations of this code.

- g. Subdivision or structural additions.

Structures used for nonconforming uses shall not be subdivided, nor shall any structures be added on the premises, except for conforming uses and structures.

- h. Destruction of structure or structures.
  - 1. Where nonconforming use status applies to a structure or structures in combination, removal or destruction of the structure shall eliminate

the nonconforming status of the land except as set out in paragraph (3) below, and any new structure shall comply with all of the regulations of this code. "Destruction" of the structure means damage or removal to an extent of fifty percent or more of the gross square footage of the building at the time of destruction, except in historic overlay districts or sites, where the historic and environmental preservation board may allow reconstruction of historically designated buildings.

2. Where destruction is less than fifty (50) percent of the gross square footage of the building, the structure may be restored to the same or lesser size and in the same location, subject to approval by administrative waiver. In addition to the administrative warrant criteria, application for restoration shall be filed within six months of destruction and be diligently carried to completion, and the nonconforming use may resume and continue as before, or on a lesser scale, but in any case shall not be enlarged or intensified. Unless restoration is so initiated and completed, the use shall terminate and not be resumed.
3. Where a structure containing a nonconforming use is destroyed to an extent of fifty percent or more of the gross square footage at time of destruction by explosion, fire, act of God, or the public enemy, the planning, zoning and appeals board may, by exception, allow its replacement or reconstruction in whole or in part upon finding all of the following:
  - (a) That the cause of destruction was not the deliberate action of the owner or occupant of the structure or his agents; and
  - (b) That nothing contained in the provisions of this code required termination of such nonconforming use; and
  - (c) That the board finds substantial public advantage in continuance of the nonconforming use; and
  - (d) That the primary purpose of continuing the nonconforming use is not to continue an economic monopoly; and
  - (e) That replacement or reconstruction in the manner proposed, with related actions imposed in conditions and safeguards by the board, would reduce any previous adverse effects of the use on neighboring properties.
  - (f) The criteria for an exception are satisfied.

#### **1.4.4 Nonconforming structures**

- a. Structural change, extension, or expansion; criteria.

No portion of a building or structure which is nonconforming shall be enlarged, extended, or altered in any way which increases its nonconformity.

Existing nonconforming structures may, however, be enlarged, extended or altered as follows:

1. Alterations to principal or accessory structures which do not involve an enlargement or expansion may be permitted pursuant to an administrative waiver. In addition to satisfying the administrative waiver criteria, the structure's nonconformity must remain the same or decreased in degree, and at least fifty percent of the square footage of the original building must remain. Alterations for interior work such as repairs or interior remodeling shall be allowed pursuant to the Florida Building Code and shall not require a waiver.
  2. Alterations which involve an enlargement or extension of a nonconforming principal structure may be permitted pursuant to a waiver by the planning director, after recommendation by the zoning administrator. In addition to satisfying the exception criteria, the structure's nonconformity must remain the same or decrease in degree; at least fifty percent of the square footage of the original building must remain; and the proposed enlargement shall not exceed a height or length of fifty percent of the horizontal or vertical linear footage of the wall(s) of the nonconforming portion of the structure to remain.
  3. No alterations which involve an enlargement and/or extension of a nonconforming accessory structure shall be permitted.
- b. Damage. Should a nonconforming structure or portion thereof be destroyed to an extent of more than fifty percent of its assessed valuation at the time such destruction occurs, it shall not thereafter be reconstructed except in conformity with the provisions of this code. If reconstruction is essential to the reasonable conforming use of the building or structure, the planning director, after recommendation by the zoning administrator, may, by waiver, allow reconstruction to the extent reasonably necessary to allow such reasonable conforming use. In addition to satisfying the waiver criteria, an application for the reconstruction or repair shall be filed within a period of six (6) months of the date of destruction. If reconstruction or repair is not applied for within the six-month period, the structure shall not be constructed or repaired except in conformity with this code.
- c. Moving; criteria. A nonconforming structure may be moved on its own lot only pursuant to approval by the planning director, after recommendation by the zoning administrator, by waiver. In addition to satisfying the waiver criteria, the following criteria apply:

1. The proposed movement must reduce the degree of nonconformity to the maximum extent reasonably feasible, or eliminate the nonconformity;
2. The structure shall in no case be moved on its own lot in such a manner as to increase the degree of nonconformity; and
3. Where a nonconforming structure is moved off its lot, the structure and all new construction shall thereafter conform to the regulations for the transect to which it is moved.

#### **1.4.5 Nonconforming characteristics of use**

Where nonconforming characteristics of use exist, such as signs, off-street parking and loading, lighting, landscaping, or similar characteristics, such nonconforming characteristics of use may continue except as provided below.

- a. No change shall be made in any nonconforming characteristics of use which increases nonconformity under this code or any other city standards. Changes may be approved by administrative waiver, if the changes result in the same or a reduced degree of nonconformity. Alterations for interior work such as repairs of interior remodeling shall be allowed pursuant to the Florida Building Code and shall not require a waiver.
- b. Where existing off-street parking facilities are nonconforming to the requirements of this code or any other city standards, the restoration or rehabilitation of an existing building shall not require the provision of additional parking or on-site storm water retention/detention except to the extent required by applicable state or federal law. No modifications may be permitted which increase the degree of the existing nonconformity. Modifications to the facilities may be approved by administrative waiver, and the administrative waiver may be conditioned on safeguards that reduce the degree of nonconformity as is reasonably feasible in the circumstances of the case.

#### **1.4.6 Nonconforming signs**

See article 6 for regulations and limitations concerning signs as a nonconforming characteristic of use, including regulations regarding repairs and maintenance of nonconforming signs and unsafe nonconforming structures.