

ORDINANCE NO. 1092 – 2017

AN ORDINANCE OF THE CITY OF MIAMI SPRINGS, FLORIDA, AMENDING SECTION 150-111, “APPEALS FROM ADMINISTRATIVE DECISION AND DENIAL OF REQUEST FOR VARIANCE” OF THE CITY’S CODE OF ORDINANCES; AMENDING SECTION 150-113, “REVIEW OF ZONING AND PLANNING BOARD AND BOARD OF ADJUSTMENT DECISIONS BY CITY COUNCIL; APPEAL PROCEDURES OF BOARD DECISIONS” OF THE CITY’S CODE OF ORDINANCES; CREATING SECTION 150-114.5, “NOTIFICATION OF PUBLIC HEARINGS;” PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Miami Springs (the “City”) seeks to maintain an orderly and efficient land development code; and

WHEREAS, the City Council seeks to clarify the time frame within which an appeal may be made of a recommendation of the Board of Adjustment or a decision of the City Council; and

WHEREAS, the City Council seeks to set forth specific notice requirements for public hearings on variances; and

WHEREAS, the City Council hereby finds that the adoption of this Ordinance is in the best interest and welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, THAT: ¹

Section 1. **Recitals Adopted.** That the above-stated recitals are hereby adopted and confirmed.

Section 2. **Amending Chapter 150-111 of the City Code.** That the Code of Miami Springs, Florida is hereby amended by revising Section 150-111 “Appeals from administrative decision and denial of request for variance,” which section shall read as follows:

Section 150-111. Appeals from administrative decision and
denial of request for variance

¹ Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **yellow highlight**. Changes between second and third reading are indicated with **teal highlight**.

- (C) The Chairman of the Board will advise all applicants that the Board's recommendation will be considered by the City Council, which will make a decision on the application. The Chairman of the Board will instruct all applicants that, if they wish to appeal ~~the decision of the Board~~, they must make a request by letter to file a Notice of Appeal with the City Manager Clerk within ten business days of the Council's decision. All appeals must be accompanied by the payment of an appropriate fee, which shall be established from time to time by City Council Resolution and included within the "Schedule of Charges" maintained and utilized by the City Building Department, and which amount shall pay the cost of all additional notices, posting and other preparations.

Section 3. Amending Section 150-113 of the City Code. That the Code of Miami Springs, Florida is hereby amended by revising Section 150-113 "Review of Zoning and Planning Board and Board of Adjustment decisions by City Council; appeal procedures of Board decisions," which section shall read as follows:

Section 150-113. Review of Zoning and Planning Board and Board of Adjustment decisions recommendations by City Council; appeal procedures of Board decisions

- (B) *Review and appellate procedure.* The following are the procedures to be followed in the review and appeal from decisions recommendations of the Zoning and Planning Board and Board of Adjustment.

(1) Following the meetings of the Zoning and Planning Board and Board of Adjustment conducted on the first Monday of every month, the decisions recommendations of the Boards shall be reviewed and/or appealed in accordance with the following procedures:

- (a) All case decisions recommendations of the Zoning and Planning Board shall be separately reviewed, as a matter of right, by the City Council at a regular or special City Council meeting following the determination of the City planner and City Manager

that any such case is ready for presentation to the City Council for final review.

(b) All case ~~decisions~~ recommendations of the Board of Adjustment shall be reviewed at the next regular City Council meeting following the rendering of any such case ~~decisions~~ recommendations by the Board.

(i) At this time, the City Council shall either affirm the case ~~decisions~~ recommendation of the ~~board~~ Board by motion, or any City Council member may, ~~individually and without the concurrence of any other City Council member,~~ request a further meeting to be conducted on any board ~~decision~~ recommendation before the City Council, sitting as a board of appeals, on the last Wednesday of each month, which request shall be voted upon and may be granted upon an affirmative majority vote of the City Council.

(ii) The motion to affirm the case ~~decisions~~ recommendation of the Board of Adjustment shall constitute final City Council action on each case unless an Appellant, as defined herein, any citizen, property owner, properly aggrieved party, or governmental official files a written "notice of appeal", accompanied by the appropriate appellate administrative fee (which shall be established from time to time by motion of the City Council) with the City planning department Clerk within ten business days following the rendering of any case decision by the Board of Adjustment City Council.

For purposes of appeals before the City Council acting as the Board of Appeals, an "Appellant" shall be defined as:

any property owner of record within a 500-foot radius of a residential property that is the subject of an application;

any property owner of record on the same block as a residential property that is the subject of an application but who is not within the 500-foot radius of the subject property;
or

for appeals of a non-residential property that is the subject of an application, any property owner of record within the City limits.

- (iii) The appellate administrative fee shall, however, not be required when a further meeting is requested by a City Councilmember approved as part of the City Council review process as provided in a subsection (i) above.
- (iv) Upon the receipt of any appropriate "notice of appeal" and appellate administrative fee for any board case, the City ~~planning department~~ Clerk shall notify the City Clerk Planning Department and City Manager of the need to schedule a board of appeals meeting on the last Wednesday of the month. However, if no such "notice of appeal" is received within the required time on any board case which has been previously affirmed by City Council motion, then all such case decisions shall be final.
- (v) Notice of all board of appeals meetings shall be provided in the same manner as other board meetings of the City. However, the City planning department shall

provide the applicant, the appellant, and all attorneys, representatives and other interested parties with adequate notice of the meeting in accord with Section 150-114.5, so that sufficient opportunity is provided to prepare appropriate presentations for the board of appeals meetings.

- (vi) Notwithstanding the foregoing, the City Council retains the sole and exclusive discretion regarding the scheduling of appeals of Board of Adjustment case decisions recommendations before the board of appeals.
- (c) Further appeals from any final decisions of the City Council in regard to any case decisions recommendations of the Zoning and Planning Board or Board of Adjustment shall be maintained in accordance with the applicable appellate rules and procedures established by the laws of the State of Florida.

Section 4. Creating Section 150-114.5, “Notification of Public Hearings” of the City Code. That the Code of Miami Springs, Florida is hereby amended to include a new Section 150-114.5 “Notification of Public Hearings,” which section shall read as follows:

Section 150-114.5. – Notification of Public Hearings.

- (A) Except where modified by specialized procedures elsewhere in the Code, all variance requests shall be considered at public hearings, which shall be noticed as follows:
 - (1) Adjoining owners. At least ten days before the public hearing, The the City shall send notices of the proposed variance to the owners of all adjoining properties to the subject property the property owners of record within a 500-foot radius of the a residential property or a 1,000-foot radius of a non-residential property which is the subject of the application. Such notices shall include the date, time and place of the public hearing before the Board of Adjustment, along with a clear and concise

description of the proposed variance. For the purposes of such notification, adjoining properties shall include those properties separated from the subject property by a road, canal, easement, right-of-way, or similar barrier of 500 feet or less in width. Distances for purposes of mailed notice requirements shall be measured from the perimeter of the property subject to development approval, except that where the owner of the subject property owns contiguous property, the distance shall be measured from the perimeter of the boundary of the contiguous property. This subsection shall not be construed to mean that notice must be provided to property owners located outside of the City's boundaries.

- (2) *Posting of property.* At least ten days before the public hearing, The the City shall post every property that is the subject of a public hearing with signs notifying the public of the proposed variance, date of public hearing, and the department to contact for further information. Signs shall be placed, at a minimum, along all public road frontages, with a minimum of one sign per 500 200 feet along any one frontage. In addition, signs shall be placed no more than 25 feet from the street so that the lettering is visible from the street. Where the land does not have frontage on a street, signs shall be erected on the nearest street, with an attached notation indicating generally the direction and distance to the property subject to the application.
- (3) (2) *Public advertisement.* Notice of public hearing shall be published in a newspaper of general circulation within the City at least 15 days prior to the hearing, with a second publication to be at least five days prior to the hearing. Notice shall also be posted in a conspicuous location at the City hall, and may be posted at other public locations at the discretion of the City.
- (4) (3) *Applicant bears burden of cost.* All costs of publication, mailing and posting shall be borne by the applicant.
- (5) (4) *Re-noticing.* All costs of re-noticing the public hearing shall be borne by the party failing to comply with the applicable notice requirements, requesting the deferral or continuance, or whose actions are responsible for the deferral or continuance which may require re-noticing of the hearing. Continuances to a date certain, announced at the originally noticed meeting, shall not require re-notice of the new public hearing date. Continuances to unspecified dates or substantive changes to an application request during the period an application has been continued, shall require re-noticing for the new public hearing date.

Section 5. **Conflict.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. **Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 7. **Inclusion in Code.** That it is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the City Code, that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 8. **Effective Date.** That this Ordinance shall become effective immediately upon adoption on second reading.

PASSED ON FIRST READING this 12th day of June, 2017, on a motion made by Councilwoman Mitchell and seconded by Councilwoman Zapata.

PASSED AND ADOPTED ON SECOND READING this 14th day of August, 2017, on a motion made by Vice Mayor Best and seconded by Councilman Petralanda.

Vice Mayor Bob Best	<u>YES</u>
Councilwoman Maria Puente Mitchell	<u>NO</u>
Councilwoman Mara Zapata	<u>NO</u>
Councilman Jaime Petralanda	<u>YES</u>
Mayor Billy Bain	<u>YES</u>

BILLY BAIN, MAYOR

ATTEST:

ERIKA GONZALEZ-SANTAMARIA, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:

WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY