

**CITY OF MIAMI
OFFICE OF ZONING
MEMORANDUM**

TO: Lourdes Slazyk
FROM: Barnaby L. Min, Zoning Administrator
DATE: November 7, 2012
RE: Zoning Interpretation
12-0003

This Zoning Interpretation is issued to clarify the dominant setback provisions as delineated in Article 3, Section 3.3.5 and the relevant provisions found in Article 5 of Miami 21.

Article 3, Section 3.3.5 states “where the property to be developed abuts a structure other than a sign, a waiver may be granted so that the proposed structure matches the ground level dominant setback of the block and its context.”

You argue that the setback for a proposed structure must meet the ground level dominant setback of other structures. You further argue that the applicable section of the ordinance does not state that the dominant setback is limited to the ground level of the new structure and thus can be applied to higher stories. Accordingly, you propose to add a second story to an existing building encroaching into the setback as it matches the ground level setback of the block and its context pursuant to the strict provisions of the ordinance. For the reasons stated herein, I concur with your argument with the limitations stated below.

On or about February 23, 2012, the relevant portions of the ordinance related to dominant setbacks were amended. Prior to the amendment, the ordinance stated “where the property to be developed abuts an existing building, a waiver may be granted so that the proposed building matches the dominant setback of the block and its context.”

The regulation was substantively modified in two significant manners. The first modification was to change the regulation from buildings to structures. This was modified in order to allow fences, parking lots, and structures other than signs to either encroach into the setback to match the dominant setback of the block and its context or to allow proposed structures to consider other structures and not just buildings in order to determine the dominant setback. Because of the specific definitions of building and structure, this amendment was proposed by staff; recommended for approval by the Planning, Zoning, and Appeals Board; and approved by the City Commission.

The second modification was to add the language concerning ground level. This specific regulation was added because of the requirement of Article 5, Section 5.6.1(h) that above the eighth floor, additional setback requirements are required. Applicants were proposing to deviate from this requirement based on the then existing dominant setback language. Allowing the provision of dominant setbacks above the eighth floor contradicts the intent and guiding principles of Miami 21. As a result and in order to specifically regulate that the additional setbacks above the eighth floor must be established, the dominant setback language was modified in order to limit it to the ground level.

D:\Miami\12-0003\12-0003 (5) (2) (4)

As stated above, the specific intent of the ground level amendment was to prohibit the dominant setback provision from being utilized for the additional setbacks above the eighth floor. Admittedly, there was a failure to consider whether the dominant setback should apply to the second through eighth floors.

The requirement of the additional setback above the eighth floor was originally created in order to allow more light into the streets encouraging pedestrian traffic. In drafting Miami 21, studies determined that the applicable floor in order to accomplish this goal was the eighth floor. The same requirement does not apply to floors two through eight because the sunlight is not affected as much and thus, encroachments in floors two through eight do not violate the intent or guiding principles of Miami 21.

Further, the requirement of allowing a ground floor level to meet the dominant setback but floors two through eight having to meet the required setback of the transect zone do not necessarily meet the intent and guiding principles of Miami 21. Such a structure would not meet the natural infrastructure and visual character of the block and context, would discourage redevelopment, would not reinforce patterns of neighborhoods, would not contribute to the physical definition of the thoroughfare, and very simply, would not look aesthetically pleasing.

Accordingly, for the reasons stated herein, applicants may apply for a Waiver to establish the dominant setback for floors one through eight.¹ Dominant setbacks are strictly prohibited above the eighth floor and the additional setback requirement as delineated in Article 5, Section 5.6.1(h) will be required for any new development.

This interpretation shall be final unless appealed to the Planning, Zoning, and Appeals Board within 15 days of the date of its issuance.

cc: Francisco Garcia, Director of Planning
Haydee Wheeler, Director of NET
Jessica Angel-Capo, Interim Director of Code Compliance
Victoria Mendez, Assistant City Attorney
Office of Zoning

¹ This Zoning Interpretation is not meant to indicate that Waivers will always be granted to establish dominant setbacks for floors one through eight. Rather, the criteria established in Article 3, Section 3.3.5 as well as Article 7, Section 7.1.2.5 must be established in order to grant the Waiver. Additionally, the intent and guiding principles will be considered in determining whether a Waiver for a dominant setback will be granted. Pursuant to Article 7, Section 7.1.2.5, Waivers, including those granting dominant setbacks, are appealable to the Planning, Zoning, and Appeals Board.