MEMORANDUM

LUDC
Agenda Item No. 1(F)2

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: February 13, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance relating to zoning; revising regulations pertaining to administrative modifications and adjustments; amending Sections 33-36.1 and 33-310.1 of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: January 22, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 4(B)

Please note any items checked.

_____	**"3-Day Rule" for committees applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
✓	**Statement of fiscal impact required**
_____	**Ordinance creating a new board requires detailed County Mayor's report for public hearing**
_____	**No committee review**
_____	**Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**
_____	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(B)
1-22-14

ORDINANCE NO. _____

ORDINANCE RELATING TO ZONING; REVISING REGULATIONS PERTAINING TO ADMINISTRATIVE MODIFICATIONS AND ADJUSTMENTS; AMENDING SECTIONS 33-36.1 AND 33-310.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 33-36.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 33-36.1. Administrative adjustment procedure.

(a) *Purpose.* The purpose of this section is to provide a procedure for certain residential property owners to obtain minor administrative adjustments to the setback, lot coverage and building spacing requirements specified in the underlying zoning district regulations, provided that the specified standards of this section are met. These standards provide for substantially the same patterns of site development as the underlying district regulations.

(b) *Applicability.* Notwithstanding any other provisions of this chapter to the contrary, the Director shall, by administrative decision, approve applications for limited adjustments from setback, lot coverage and building spacing requirements for single-family residence, duplex, townhouse and accessory residential uses located in RU

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

and EU districts, and for single-family residential and accessory residential uses in the AU or GU districts.

(c) *Limitations and exclusions.* Applications for administrative adjustment shall be subject to the following limitations and exclusions:

(1) Administrative adjustment approvals shall be limited to those lots within an area where at least seventy-five (75) percent of the lots in the immediate vicinity, as defined in section 33-1(58.1), have already been developed or platted.

(2) A setback shall not be adjusted below [[~~twenty-five (25)~~]]>>fifty (50)<< percent of that required by the underlying district regulations.

(3) Lot coverage for a principal and/or accessory structure shall not be increased by more than ten (10) percent of that required by the underlying district regulations.

(4) Spacing between structures on the same lot may be reduced; provided, however, in no event shall such spacing be less than 5 feet.

(5) Unless specifically permitted by the underlying zoning regulations, no accessory building shall be placed in front of the front building line of the principal building.

(6) Under this section, no application shall be made for nor shall approval be granted for an adjustment to canopy carport regulations.

(d) *Application.*

>>(1) Filing. An application for administration adjustment shall be made by one of the following:<<

>>(a)<<[[~~application for administrative adjustment shall be made by~~]] the owner of the property on a form prescribed by the Department. For the purposes of this section the term "owner" shall mean the person who owns and resides at, or owns

and intends to reside at, the subject premises[[.]]>>; or<<

>>(b)<<[[~~The term "owner" shall also include~~]] qualified developers participating in "The Infill Housing Initiative" pursuant to Article VII, Chapter 17 of this code. A declaration of restrictive covenants in recordable form and approved by the Director shall be submitted by such qualified developer, together with the application for administrative adjustment. Such declaration of restrictive covenants shall certify that the subject property shall be sold in accordance with "The Infill Housing Initiative[[.~~"~~]]>>;" or<<

>>(c) the developer of six (6) or fewer residences within an existing platted subdivision, provided that only one such application may be filed by any developer within the same subdivision.<<

>>(2)<<The application shall include>>:<<

[[~~(i)~~]]>>(a)<< a certified land survey, performed in accordance with Florida Administrative Code, dated within one year proceeding the filing date of the administrative adjustment application, providing such survey reflects all current conditions of the subject property;

[[~~(ii)~~]]>>(b)<< accurately dimensioned plans showing the location of the proposed construction in relation to the existing structure(s) and the general location and use of existing structures on property adjacent to the subject property;

[[~~(iii)~~]]>>(c)<< additional plans as may be required by the Director; and

[[~~(iv)~~]]>>(d)<< a letter of intent explaining the reason and justification for the proposed administrative adjustment. It is provided

however, that such survey shall not be required to depict municipal boundaries as required by Section 33-304(a).

* * *

Section 2. Section 33-310.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-310.1. Administrative modification or elimination of conditions and restrictive covenants.

A. *Standards.* The Director is authorized to consider and approve applications to modify or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution, and to modify or eliminate any restrictive covenant, or part thereof, accepted at public hearing, where the requirements of at least one of the following subsections have been demonstrated. Upon demonstration that such requirements have been met, an application may be approved as to a portion of the property encumbered by the condition or the restrictive covenant where the condition or restrictive covenant is capable of being applied separately and in full force as to the remaining portion of the property that is not a part of the application and both the application portion and the remaining portion of the property will be in compliance with all other applicable requirements of prior zoning actions and of this chapter.

* * *

(V) Modification or Elimination of Conditions and Restrictive Covenants When No New Adverse Impacts Will Result. The Director shall approve an application to modify an approved site plan, or modify or eliminate a condition or part thereof, or a restrictive covenant or part thereof (except where the covenant requires a public hearing), where it is demonstrated by the following that the modification or elimination will not result in a material new

adverse impact on the public health, safety, welfare, or aesthetic values:

(A) The proposed modification or elimination does not contravene or eliminate an express prohibition or timing or phasing requirement contained in the prior zoning action;

[[~~(B) The request does not include a modification or elimination of conditions or restrictive covenants imposed simultaneously with a district boundary change;~~]]

[[~~(C)~~]]>>(B)<< The modification or elimination of the condition, restrictive covenant, or part thereof will not create new adverse impacts. The application will be deemed not to create new adverse impacts upon demonstration of the following:

1. the modification or elimination will result in an increase of not more than 10% in trips generated above that generated by the approved development, except that trips generated in excess of 10% shall be permitted where completely mitigated by increased capacity constructed since the current development was approved. Trip generation shall be calculated based on the most current methodology applied by the County.
2. the modification or elimination will result in an increase in projected demand for local parks of no more than 10% or 1/5 acre, whichever is greater, except that demand in excess of 10% or 1/5 acre shall be permitted if there is sufficient capacity of local parks to accommodate the increase in demand created by the modification;

3. the modification or elimination will result in an increase in demand placed on public stormwater drainage systems of not more than 10%;
4. the modification or elimination will result in a projected increase in the number of school-age children residing on the subject property of not more than ten percent (10%), or not more than three (3) school-age children, whichever is greater;
5. the modification or elimination will not result in any increase in potable water, sanitary sewer, or solid waste disposal demand for which adequate capacity is not available, or any change in existing or planned facilities will not affect the level of service of potable water, sanitary sewer, or solid waste disposal;
6. the modification or elimination will not result in any material increase in the risk of potential for discharge or spillage of pollutants, or generation of carbon monoxide at unsafe levels;
7. the modification or elimination will not result in any material increase in the potential for damage to jurisdictional wetlands;
8. the modification or elimination will not result in a reduction in the area under tree canopy of greater than 10%;
9. the modification or elimination will not result in any material increase in the risk of smoke, fire, odors, gases, excessive noise or vibration;
10. the modification or elimination will result in an increase in building

[[~~cubic content~~]]>>square footage<< on the subject property of no more than 10%[[~~, or no more than 10% of the median building cubic content on similarly zoned parcels in the immediate vicinity, whichever is larger~~]];

>>11. the modification or elimination will result in a building height increase of no more than one story;<<

[[~~11.~~]]>>12.<< the modification or elimination will not result in a decrease in the features or landscaping that buffer the existing use from properties in the immediate vicinity;

[[~~12.~~]]>>13.<< the modification or elimination will not result in any material decrease in the privacy enjoyed by adjoining properties;

[[~~13.~~]]>>14.<< the modification or elimination will not result in any material diminution of an existing view or vista to any landmark, natural area, or waterbody from any window or door in any residential unit on an adjoining parcel of land;

[[~~14.~~]]>>15.<< the modification or elimination will not result in any material increase in the potential for vehicular-pedestrian conflicts;

[[~~15.~~]]>>16.<< the modification or elimination will not result in any material and obvious departure from the aesthetic character of the immediate vicinity, taking into account the architectural design, scale, height, mass and building materials of existing structures,

pattern of development and open space;

[[~~16.~~]]>>17.<< the modification or elimination will not result in any material increase in the area of shadow, or of light from outdoor lighting, cast onto adjacent parcels;

[[~~17.~~]]>>18.<< the modification or elimination will not result in any material change in the manner or hours of operation on the subject property so differing from the similar existing or approved uses in the immediate vicinity that the convenient, safe, peaceful or intended uses of such uses is interrupted or materially diminished;

[[~~18.~~]]>>19.<< the modification or elimination will not result in any material change in the density or intensity of use of the subject property so differing from the density or intensity of other existing or approved uses in the immediate vicinity that the subject property would represent an obvious departure from the established development pattern of the immediate vicinity;

[[~~19.~~]]>>20.<< the modification or elimination will not result in any material change in the type of use of the subject property so differing from the existing or approved uses in the immediate vicinity that the subject property would represent an obvious departure from the established pattern of use in the immediate vicinity;

[[~~20.~~]]>>21.<< the modification or elimination will not result in a use of land that will have a significant adverse impact upon the value of properties in the immediate vicinity; and

[[~~21.~~]]>>22.<< the modification or elimination will not result in a material increase in height or volume of open lot uses or facilities, or a material increase in intensity of allowed open lot uses, including, but not limited to, outdoor storage of products, materials or equipment, fleamarkets, carnivals, telecommunications facilities, concrete and asphalt batching plants, landfills and private playgrounds and recreational facilities.

* * *

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency: GBK for

Prepared by:

Dennis A. Kerbel

Prime Sponsor: Commissioner Jose "Pepe" Diaz