

**ADMINISTRATIVE MODIFICATION APPLICATION
FOR ZONING HEARING CONDITIONS, AGREEMENTS AND REFORMATIONS
WITH INSTRUCTIONS AND CHECKLIST**

FILING

ADMINISTRATIVE MODIFICATION APPLICATIONS must be filed in person with the Zoning Administrative Review of the Miami-Dade County Department of Planning & Zoning, located on the 11th floor of the Stephen P. Clark Center, 111 N.W. First Street, Miami, Florida. Applications may only be filed with an appointment with a Zoning Hearings Specialist. Applicants should meet with staff prior to filing to ensure applications are complete and in order at the time of filing. Appointments are required. Call (305) 375-2640 to schedule appointments to file applications or arrange for a pre-filing review. Incomplete applications will be rejected.

DOCUMENTS

The attached application form must be completed and executed and must be accompanied by any required documents including affidavits as specified under Standards and Review Criteria below. If the application involves a restrictive covenant, the application shall demonstrate that any procedural or other consent or approval requirements to modify or eliminate the restrictive covenant have been satisfied. (Example: If the text of the covenant requires signatures from neighboring property owners, those signatures are required at time of filing.)

Please see the attached Applicant's Check List for a more detailed list of documents and fees required for submittal.

REVIEWS

Applications accepted by the Zoning Hearings Section will be reviewed for sufficiency and forwarded to the appropriate office for further review. Once approved by the Director, the result will be published in the newspaper of general circulation (the Miami Daily Business Review) and a 30-day appeal period will commence. Additionally, notices will be mailed to the property owners in the area advising them of the decision and the appeal process.

IMPORTANT: Applications to modify or eliminate a Restrictive Covenant or part thereof may not be filed under this Administrative Modification process if the covenant requires a public hearing. Site plans may not be modified under this provision if the modification or elimination of conditions or restrictive covenants were imposed simultaneously with a district boundary zone change.

STANDARDS AND REVIEW CRITERIA

Applicant must give a full, detailed explanation of compliance with the applicable section listed below.

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 has 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.

II. ***Reformation of Resolutions to Correct Clerical or Scrivener's Errors.***

(A) The Director shall approve an application to reform a clerical or scrivener's error in a prior zoning action, including an error in an application or notice, which error causes the zoning action not to accurately reflect the board's intent, and where it is demonstrated that all of the following requirements are met:

1. the reformation shall not include a change of judgment, policy, or prior intent of the board;
2. prior to the conclusion of the public hearing at which the zoning action for which reformation is sought was taken, the current applicant either did not know of the error, or knew of the error and made it known to the adopting board;
3. the reformation of the previous resolution is essential to insure that the zoning action reflects the intent of the adopting board;
4. the record, including but not limited to the staff recommendation, minutes, and motion, evidences the clear intent of the board;
5. the substance of the decision of the board was evident at the time of the adoption of the zoning action, and there was no intent to deceive the public or the board on the part of the current applicant at any time;
6. failure to approve the reformation would lead to an unjust result;
7. the error in the prior zoning action did not mislead anyone in a way that would cause them to be prejudiced by the reformation; and
8. any errors related to public notice did not affect the legal sufficiency of the required notice.

(B) Notwithstanding the foregoing provisions, the Director, within thirty (30) days of the transmittal of a resolution, may reform a clerical or scrivener's error in a zoning action without public notice, if:

1. the error is not related to public notice, and
2. the error causes the resolution as written to inaccurately reflect the clear decision of the board.

III. ***Modification or Elimination of Conditions and Restrictive Covenants Associated with Voluntarily Abandoned Zoning Actions.*** The Director shall approve an application to

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 condition, restrictive covenant or part thereof was imposed to mitigate the adverse impacts of a zoning action which has been entirely and voluntarily abandoned, in that:

- (A) the applicant has provided a **sworn affidavit** stating that the applicant has sufficient title and authority to abandon the development rights under the zoning action for the property for which the modification or elimination is sought, that the applicant intends to abandon the zoning action and all rights there under, and that no material changes to the character or use of the land have ever been undertaken pursuant to the zoning action;
- (B) the development rights granted by the zoning action have been voluntarily abandoned in writing in a form approved by the Director;
- (C) *the zoning action which imposed or accepted the condition or restrictive covenant was **not a district boundary change***; and
- (D) abandonment of the zoning action will not cause the subject property to fail to comply with any applicable provision of this code or the Comprehensive Development Master Plan.

IV. Modification or Elimination of Conditions and Restrictive Covenants That Are Satisfied or Moot. The Director shall approve an application to 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 condition, restrictive covenant or part thereof either is satisfied or is moot:

- (A) *Satisfied conditions, covenants, or restrictions.* The requirements imposed by a condition, restrictive covenant or part thereof do not create a continuing obligation, and are fully completed or satisfied; and, in the case of a restrictive covenant, any procedural or approval requirement set forth in the covenant is satisfied. Applications under this paragraph must be accompanied by a **sworn affidavit** that the conditions of this subsection have been satisfied.
- (B) *Moot conditions, covenants, or restrictions.* The condition, restrictive covenant or part thereof is moot in that it can no longer serve the purpose for which it was imposed. A condition, restrictive covenant or part thereof in effect for a period of more than five (5) years shall be determined to be moot upon demonstration of any of the four (4) following:
 - 1. The purpose of the condition, restrictive covenant or part thereof is apparent from the zoning record of the subject property, including record facts pertaining to the character of the subject property and its immediate vicinity, and the impacts that were projected to be generated by the zoning action at the time the condition or covenant was imposed; and either
 - (a) the property subject to the condition or covenant has been developed in a manner or to an extent which does not, and under existing zoning approvals cannot, generate the adverse impacts intended to be prevented or mitigated by the condition or covenant; or
 - (b) since the imposition of the condition or covenant, all abutting parcels and the immediate vicinity have been zoned or developed in a manner or to an extent that the impacts previously anticipated or projected to be prevented or mitigated by the condition or restrictive covenant are not, and cannot be, adverse to the abutting parcels or the immediate vicinity.
 - 2. The purpose of the condition, restrictive covenant or part thereof is not apparent from the zoning record of the subject property, including record

facts pertaining to the character of the subject property and its immediate vicinity, and

- (a) the condition, restrictive covenant or part thereof if imposed under current circumstances, would not and could not mitigate or prevent any describable harm or create any describable benefit to the public or to owners or residents of property in the immediate vicinity to a degree that is greater than *de minimus*; and
 - (b) the condition or restrictive covenant does not include a date of expiration.
3. The condition or restrictive covenant for which modification or elimination is sought involves the timing or phasing of development, and
- (a) the development which is the subject of the condition or restrictive covenant is completed; and
 - (b) no enforcement action regarding the condition or restrictive covenant has been initiated.
4. The condition or restrictive covenant for which modification or elimination is sought involves only the timeliness of filing or recording of a document, and
- (a) the failure to file or record the document was due to circumstances beyond the control of the applicant, or to excusable neglect; and
 - (b) no one is prejudiced by the modification or elimination of the condition or restrictive covenant regarding the timing of the filing or recording; and
 - (c) the document has been recorded or filed subsequent to the deadline set by the original approval, and accepted by the County.

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) 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 storm-water 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 less 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 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 an increase of 10% or greater in the features or landscaping that buffer the existing use from properties in the immediate vicinity;
12. the modification or elimination will not result in any material decrease in the privacy enjoyed by adjoining properties;
13. the modification or elimination will not result in any material diminution of an existing view or vista to any landmark, natural area, or water body from any window or door in any residential unit on an adjoining parcel of land;
14. the modification or elimination will not result in any material increase in the potential for vehicular-pedestrian conflicts;
15. 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. 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. 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. 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. 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. 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. 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.
- (D) The subject property complies with all other applicable requirements of prior zoning actions and this code.

VI. *Modification of Conditions and Restrictive Covenants to Extend Timing or Phasing Deadlines.* The Director shall approve an application to modify a condition or part thereof, or a restrictive covenant or part thereof (except where the covenant requires a public hearing) that is related solely to the timing or phasing of development, where the applicant demonstrates satisfaction of one of the following two requirements:

- (A) The applicant has been reasonably diligent in fulfilling the requirements of the condition or restrictive covenant, but is unable to perform within the time set forth in the condition or restrictive covenant, and
1. No enforcement actions are pending with regard to the timing or phasing condition or covenant; and
 2. The condition or restrictive covenant was not imposed to enforce compliance with an obligation that was imposed or accepted prior to the zoning action in which the condition or restrictive covenant sought to be modified was imposed or accepted; and
 3. The extension of time or modification of phasing is:
 - a. no greater than fifty (50%) of the time frame set forth in the condition or restrictive covenant or six (6) months, whichever is less; or
 - b. no greater than ten percent (10%) of the number of residential units (if the time frame or phasing schedule is set forth in terms of completion of residential units) or twenty-five (25) residential units, whichever is less; or
- (B) Development pursuant to the zoning action has not proceeded because of a pending appeal or pending litigation regarding the zoning action, and the application seeks only an extension of time or modification of phasing for the length of time that development has not proceeded due to such appeal or litigation.

QUESTIONS

Applicants with questions related to filing an application should call the Zoning Hearings Section at (305) 375-2640.

APPLICANT'S CHECKLIST

The following items must be submitted:

- Letter of Intent**, explaining in detail the portion(s) of Section 33-310.2 **Administrative Modification or Elimination of Conditions and Restrictive Covenants** (Ordinance #03-93) that the Applicant feels would justify the request. (The applicant may discuss details during the pre-filing appointment with the Zoning Hearing Specialist or the Zoning Evaluation Section).
- Application** completely filled out and properly executed. (A Folio Number is mandatory).
- Copy of the **Resolution or Recorded Declaration** of Restrictions for which modification or elimination is being sought. Note: Unrecorded Declaration of Restrictions cannot be released administratively and must go to public hearing.
- Ownership Affidavit(s)**.
- Disclosure of Interest**, if the owner, applicant or contract purchaser is a corporation, partnership, trustee.
- Copy of executed **lease** for one year or more, if applicant is a lessee.
- Owner's Sworn-to-Consent** form signed by the owner-of-record of the property, giving lessee permission to file the application, if applicant is a lessee.
- Photographs** of the property, including structures that may be the subject of the application.
- Survey** of the property, including any municipal boundaries within or adjacent to the subject site
- If the application involves a Restrictive Covenant, the application shall demonstrate that any **procedural or other consent or approval requirements** to modify or eliminate the restrictive covenant have been satisfied.
- If the application is being filed pursuant to Section 33-310.1A (III), **Modification or Elimination of Conditions and Restrictive Covenants Associated with Voluntarily Abandoned Zoning Actions**, or (IV) **Modification or Elimination of Conditions and Restrictive Covenants that are Satisfied or Moot**, the applicant must provide a **Sworn Affidavit** attesting to the provisions of that section.
- If the application is being filed pursuant to Section 33-310.1A (V), **Modification or Elimination of Conditions and Restrictive Covenants When No New Adverse Impacts Will Result**, the applicant must provide Documentation to demonstrate compliance with applicable provisions of that section, and compliance with applicable zoning regulations: Example: Revised School Check List.
- Fees** and additional radius fees – the fees paid at time of filing may not be the total cost of the Administrative Modification. Additional radius fees for mailing notices to property owners within a certain radius of the subject property may be assessed. The number of actual property owners is determined by computer and you will receive a bill for the additional radius fees approximately one month after filing. The initial filing fees will be calculated by the Zoning Hearing Specialist at the pre-filing appointment.
- Plans** Site, Landscaping, Elevation & Floor with Zoning & Landscaping Legends

Some requests may require additional documents or information. Contact the Zoning Hearings Section for a pre-filing appointment for information on additional required documents.

**REQUEST FOR LEGAL DESCRIPTION CHECK
FOR ADMINISTRATIVE MODIFICATION APPLICATION FOR ZONING HEARING
CONDITIONS, AGREEMENTS AND REFORMATIONS
(GEOMATICS SECTION)**

Appl. No.: _____ Sec: _____ Twp: _____ Rge: _____

Notice. No.: **Z** _____

Processor: _____ Reformation no yes, # _____

TYPE OR PRINT ALL INFORMATION – ALL FOLIO NUMBERS REQUIRED

1. FOLIO NUMBER(S) OF SUBJECT PROPERTY (List all folio numbers comprising the subject property)

2. NAME OF APPLICANT (Property Owner or Lessee with Owner's Sworn-to-Consent)

3. LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION

Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, range. If application contains requests for multiple zone changes, provide the legal description for each area. Attach separate sheet(s), as needed.

4. ADDRESS OR LOCATION OF PROPERTY (For location, use description such as NE corner of, etc.)

5. SIZE OF PROPERTY _____' x _____' (in acres): _____

(divide total sq. ft. by 43,560 to obtain acreage)

6. IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S), provide complete legal description of said contiguous property. (If attaching separate sheet, clearly label as contiguous property)

**ADMINISTRATIVE MODIFICATION APPLICATION FOR ZONING HEARING CONDITIONS,
AGREEMENTS AND REFORMATIONS
MIAMI-DADE COUNTY DEPARTMENT OF PLANNING & ZONING**

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Sec Twp Rge

LIST ALL FOLIO'S: _____

Stamp Date Received

1. NAME OF APPLICANT (Provide complete name of applicant, exactly as recorded on deed, if applicable. If applicant is a lessee, an executed 'Owner's Sworn-to-Consent' and copy of a valid lease for 1 year or more is required. If the applicant is a corporation, trust, partnership, or like entity, a 'Disclosure of Interest' is required).

2. APPLICANT'S MAILING ADDRESS, TELEPHONE NUMBER:

Mailing Address: _____

City: _____ State: _____ Zip: _____ Phone#: _____

3. OWNER'S NAME, MAILING ADDRESS, TELEPHONE NUMBER:

Owner's Name (Provide name of ALL owners): _____

Mailing Address: _____

City: _____ State: _____ Zip: _____ Phone#: _____

4. CONTACT PERSON'S INFORMATION:

Name: _____ Company: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone#: _____ Fax#: _____ E-mail: _____

5. LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION

(Provide complete legal description. In addition to paper version (attach separately if necessary), it is requested that lengthy metes and bounds description be provided on disquette or compact disc in Microsoft Word or compatible software.)

6. ADDRESS OR LOCATION OF PROPERTY (For location, use description such as NE corner of, etc.)

7. SIZE OF PROPERTY _____ ' x _____ ' sq. ft. _____ (acreage): _____
(divide total sq. ft. by 43,560 to obtain acreage)

8. DATE property acquired leased: _____ 9. Lease term: _____ years
(month & year)

9. IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S), provide complete legal description of said contiguous property. (attach separately, if necessary)

10. Is there an option to purchase or lease the subject property or property contiguous thereto?
 no yes (If yes, identify potential purchaser or lessee and complete 'Disclosure of Interest' form)

11. PRESENT ZONING CLASSIFICATION: _____

12. TYPE OF ZONING ACTION FOR WHICH THE MODIFICATION OR ELIMINATION IS BEING SOUGHT: Zoning Hearing Condition Declaration of Restrictions

13. List the public hearing for which the Modification or Reformation is being sought.

Resolution Number _____ Process Number (if known) _____

Applicant's Name _____

Hearing Date _____ Board _____

Purpose and result of hearing, _____

14. List the Declaration of Restrictive Covenant for which the Modification or Elimination is being sought: Titled: _____

Declaration of Restrictions Official Record Book Number: _____ Pages _____ - _____

Date Recorded: _____

Nature and purpose of Declaration: _____

15. APPLICATION REQUESTS (Check all that apply and describe nature of the request in the attached Letter of Intent)

- Reformation of Resolution (To Correct Clerical or Scrivener Error)
- Modification or Elimination of Conditions Associated with Voluntarily Abandoned Zoning Actions
- Modification or Elimination of Restrictive Covenants Associated with Voluntarily Abandoned Zoning Actions
- Modification or Elimination of Conditions that are Satisfied or Moot
- Modification or Elimination of Restrictive Covenants that are Satisfied or Moot
- Modification or Elimination of Conditions When No New Adverse Impacts Will Result
- Modification or Elimination of Restrictive Covenants When No New Adverse Impacts Will Result
- Modification of Conditions to Extend Timing or Phasing Deadlines
- Modification of Restrictive Covenants to Extend Timing or Phasing Deadlines

16. Provide the general nature of the request. (A thorough and more detailed description is required in the Letter of Intent.) _____

17. Is this application as a result of a violation notice? no yes. If yes, give name to whom the violation notice was served and describe the violation: _____

18. Is the property vacant? no yes. **Describe structures on the property:** _____

19. Is there any existing use on the property? no yes. If yes, what use and when established?

Use: _____ Year: _____

APPLICANT'S AFFIDAVIT

The Undersigned, first being duly sworn depose that all answers to the questions in this application, and all supplementary documents made a part of the application are honest and true to the best of (my)(our) knowledge and belief.

OWNER OR TENANT AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(we are) the owner tenant of the property described and which is the subject matter of the proposed Modification Determination.

Signature

Signature

Sworn to and subscribed to before me
this ____ day of _____, _____.

Notary Public: _____
Commission Expires: _____

CORPORATION AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(we are) the President Vice-President Secretary Asst. Secretary of the aforesaid corporation, and as such, have been authorized by the corporation to file this application Modification Determination; and that said corporation is the owner tenant of the property described herein and which is the subject matter of the proposed Modification Determination.

Attest: _____

Authorized Signature

Office Held

(Corp. Seal)

Sworn to and subscribed to before me
this ____ day of _____, _____.

Notary Public: _____
Commission Expires: _____

PARTNERSHIP AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(we are) partners of the hereinafter named partnership, and as such, have been authorized to file this application for Modification Determination; and that said partnership is the owner tenant of the property described herein which is the subject matter of the proposed Modification Determination.

(Name of Partnership)

By _____ %

By _____ %

By _____ %

By _____ %

Sworn to and subscribed to before me
this ____ day of _____, _____.

Notary Public: _____
Commission Expires: _____

ATTORNEY AFFIDAVIT

I, _____, being first duly sworn, depose and say that I am a State of Florida Attorney at Law, and I am the Attorney for the Owner of the property described and which is the subject matter of the proposed Modification Determination.

Sworn to and subscribed to before me
this ____ day of _____, _____.
Signature

Notary Public: _____
Commission Expires: _____

PHOTOGRAPHS

FRONT ELEVATION

SIDE ELEVATION

REAR ELEVATION

