

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 29, 2024

FROM: Thomas R. Mooney, AICP  for TRM
Planning Director

SUBJECT: **PB24-0662. Conditional Use Regulations for Grocery and Convenience Stores in CD-3 zoning on Lincoln Road.**

RECOMMENDATION

Review and continue the proposed ordinance amendment to a date certain of January 7, 2025.

BACKGROUND

Grocery stores and convenience stores are prohibited uses in the CD-3, commercial, high intensity zoning district, for properties with a lot line on Lincoln Road, between Alton Road and Collins Avenue. The following is a summary of the recent legislative actions regarding the regulation of these uses:

- On March 1, 2017, the City Commission adopted an ordinance creating definitions for check cashing store, **convenience store**, occult science establishment, pharmacy store, souvenir and t-shirt shop, tattoo studio, and T-shirt. The ordinance also expanded the list of the prohibited uses in the CD-3, commercial, high intensity zoning district with a lot line on Lincoln Road **to include the above noted uses as prohibited uses.**
- On June 5, 2019, the City Commission adopted an ordinance which modified the definitions for **convenience store** and **grocery store** and added **grocery stores** to the **list of prohibited uses** for properties with a lot line on Lincoln Road between Alton Road and Collins Avenue. This ordinance also established grocery stores as a prohibited use on Ocean Drive, limited such uses to no more than five (5) within the 'Art Deco / MIMO Commercial Overlay District, and established a distance separation requirement of no less than 2500 feet for grocery stores within the overlay district.
- On October 18, 2023, the City Commission adopted an ordinance providing an exception to the prohibition to convenience stores, by allowing them as a conditional use for properties with a lot line on Lincoln Road, east of Washington Avenue, with a storefront located in the interior of the property and with the entire establishment set back a minimum of 75 feet from Washington Avenue and Collins Avenue. Conditional use approval for a convenience store was also required to be obtained by October 18, 2024. On January 30, 2024, the convenience store 'Five Below', located at 230 Lincoln Road, obtained conditional use approval in accordance with the requirements of the ordinance.

HISTORY:

On September 24, 2024, the subject application was continued to a date certain of October 29, 2024, at the request of the applicant, with no discussion.

PROPOSAL: October 29, 2024 Update

A private application has been filed that proposes to provide an exception to the prohibition on grocery stores, by allowing such use as a conditional use for properties with a lot line on Lincoln Road or 16th Street, east of Drexel Avenue and west of Washington Avenue, with entrances and retail frontage of such uses only permitted on Washington Avenue and Drexel Avenue. After the September 24, 2024 Planning Board meeting, the applicant has revised the application by removing convenience stores.

The following, revised amendment is proposed (underscore denotes new, amended text):

7.2.12.2 Uses (CD-3)**b. Supplemental Conditional Uses Regulations (CD-3)**

The supplemental conditional uses are as follows:

1. Neighborhood Impact Structure (even when divided by a district boundary line);
2. Major cultural dormitory facilities as specified in section [7.5.5.3](#);
3. Storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located, except such storage and/or parking of commercial vehicles shall not be permitted on lots with frontage on Lincoln Road, Collins Avenue, 41st Street and 71st Street ([MAP EXHIBIT-3](#)). Storage and/or parking of commercial vehicles shall be subject to Section [7.5.4.3.c](#);
4. Alcoholic beverage establishments located in the area generally bounded by 40th Street to the south, 42nd Street to the north, Alton Road to the west, and the Indian Creek waterway to the east ([MAP EXHIBIT-4](#)), shall be subject to the additional requirements set forth in section [7.2.12.2.f](#);
5. When located above the ground floor on properties with a lot size greater than 50,000 square feet and with a lot line adjoining Lincoln Road between Collins Avenue and Alton Road: artisanal retail with off-site sales; and
6. Convenience stores, notwithstanding the prohibited uses listed under Section [7.2.12.2.d](#) and Section [7.3.7.2](#), may be permitted as a conditional use of properties with a lot line on Lincoln Road, east of Washington Avenue, with a storefront located in the interior of the property and with the entire establishment set back a minimum of 75 feet from the property line fronting Lincoln Road, as well as set back 75 feet from Washington Avenue and Collins Avenue. Conditional use approval for a convenience store pursuant to this section must be obtained within 12 months of the effective date of this section.
7. Grocery stores, notwithstanding the prohibited uses listed under Section 7.2.12.2.d and additional limitations in Section 7.3.7.2.a., may be permitted as a conditional use of properties with a lot line on Lincoln Road or 16th Street, east of Drexel Avenue, west of

Washington Avenue. Entrance and retail frontage of such use shall be permitted on Washington or Drexel Avenue only.

For reference, the following is a list of prohibited uses in the CD-3 district, for properties with a lot line on Lincoln Road, between Alton Road and Collins Avenue, the following additional uses are prohibited:

1. Check cashing stores;
2. Medical cannabis dispensaries (medical marijuana dispensaries);
3. Convenience stores;
4. Grocery stores;
5. Occult science establishments;
6. Pharmacy stores;
7. Souvenir and t-shirt shops;
8. Tattoo studios.
9. Retail establishments larger than 45,000 square feet (except as otherwise provided in section 7.2.12.2.a-b and Uses Table) (note: no variances shall be granted from the regulations in this section 7.2.12.2.d.3.l)
10. Offices are prohibited on the ground floor on that portion of Lincoln Road which is closed to traffic; notwithstanding the foregoing, this prohibition does not include office uses located in a mezzanine, or set back at least 75 feet back from the storefront.
11. Vitamin Shops.

REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Not Consistent – The proposed ordinance is not consistent with the goals, objectives, and policies of the Comprehensive Plan and LDR's, as the proposed uses was previously determined to be inconsistent with the character and fabric of Lincoln Road.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Not Consistent – The proposed amendment creates an isolated area for currently prohibited uses in a district that is unrelated to adjacent or nearby districts.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

Partially Consistent - The proposed ordinance could result in uses and new development

that is out of scale with the needs of the neighborhood or the city, if not carefully controlled.

4. Whether the proposed change would tax the existing load on public facilities and infrastructure.

Consistent – The proposed ordinance is not expected to affect the load on public facilities and infrastructure as the maximum floor area ratio (FAR) is not modified.

5. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.

Not applicable – The proposed amendment does not modify district boundaries.

6. Whether changed or changing conditions make the passage of the proposed change necessary.

Not Consistent – The desire to occupy existing retail space that has been previously difficult to fill is the rationale for the proposed ordinance provided by the applicant. However, there have not been any changes in conditions along Lincoln Road that would otherwise preclude uses currently permitted.

7. Whether the proposed change will adversely influence living conditions in the neighborhood.

Partially consistent – Improving the caliber of retail in the area could improve living conditions in the surrounding neighborhood, if the proposed grocery store use is appropriately regulated.

8. Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.

Partially Consistent – The proposed change may create or increase traffic congestion from what is currently permitted. A detailed traffic and circulation analysis would be required to confirm any impacts.

9. Whether the proposed change will seriously reduce light and air to adjacent areas.

Consistent – The proposed change will not affect light and air to adjacent areas.

10. Whether the proposed change will adversely affect property values in the adjacent area.

Consistent – The proposed change is not expected to adversely affect property values in the adjacent areas.

11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.

Partially Consistent – The proposed change will likely not be a deterrent to the

improvement or development of properties in the City; however, it may limit the improvement of the caliber of retail in the surrounding area, if not carefully controlled

12. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.

Not Consistent – The applicant has represented that given the existing layout of the space, other uses are not viable. However, similar sized, and larger spaces along Lincoln Road have complied with existing regulations.

13. Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.

Not applicable.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

(1) Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

(2) Whether the proposal will increase the resiliency of the City with respect to sea level rise.

Partially Consistent – The proposal should not impact the resiliency of the City with respect to sea level rise.

(3) Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.

Consistent – The proposal is compatible with the City's sea level rise mitigation and resiliency efforts.

PLANNING ANALYSIS

Since the initial application, the applicant has modified the proposed ordinance by removing the previously proposed expansion of non-permitted uses by removing convenience stores. The applicant is now proposing an expansion of allowable uses, through the conditional use review process, to include only grocery stores.

The existing code provisions pertaining to conditional and prohibited uses along Lincoln Road are intended to foster a higher caliber of uses and promote the long-term viability of the corridor. These prohibited uses include grocery stores and convenience stores, which were previously identified as not being consistent with the long-term vision for Lincoln Road, and they have been regulated accordingly.

As noted herein, the City Commission previously adopted an ordinance providing an exception

for convenience stores on Lincoln Road, east of Washington Avenue, to accommodate 'Five Below'. With the approval of Five Below, located at 230 Lincoln Road, and the existing CVS located at 312 Lincoln Road, there are currently two convenience stores located within one block of the site of the proposed amendment.

The site of the proposed amendment is also located within the 'Art Deco / MIMO Commercial Character Overlay District', which limits the number of both convenience stores and grocery stores to no more than five (5) within the district. Furthermore, to avoid a concentration of such uses, the overlay district requires a minimum distance separation of 2500 feet between both grocery stores and convenience stores.

The following definitions are relevant to the proposal:

Grocery store means a retail store with direct access from the street or sidewalk that primarily sells food, including canned and frozen foods, fresh fruits and vegetables, and fresh (raw) and prepared meats, fish, and poultry.

Convenience store means a retail store with direct access from the street or sidewalk, containing a publicly accessible sales area that comprises at least 70% of the floor area of the store, and that is designed and stocked to sell a mixture of goods such as non-prescription medications, beverages, magazines, food (packaged and/or prepared), school/office supplies, cosmetics, and other household supplies. A store that markets itself as a "pharmacy store" or "pharmacy" in addition to selling the goods described above, but that does not provide pharmacy services, including the dispensing of medicinal drugs by a pharmacist, shall be considered a convenience store and not a pharmacy or pharmacy store.

The current definition for grocery store is very broad and could apply to a wide variety of merchants that sell food products. As this could, potentially, apply to uses that are more akin to a convenience store, the proposed ordinance amendment, as currently drafted, may not be beneficial to the area. In this regard, it is suggested that the applicant explore a separate definition for a 'specialty grocery store', to include measurable criteria ensuring the type of grocery anticipated cannot double as a convenience store or small food mart. This could include a minimum square footage requirement, as well as a minimum percentage of fresh food products, such as fruits and vegetables, as well as a maximum percentage for items such as frozen foods and beverages. Additionally, limitations on non-food and accessory items, should be considered.

Staff would note that once a use is approved, the Board has no authority to approve a change of owner/operator, nor deny a future change in owner/operator, as long as the use complies with the requirements of the City Code. Having clearly defined requirements will help ensure that as operators or owners change, the use remains consistent with the intent of the code.

As the area of Lincoln Road east of Drexel Avenue still lacks the same level of tenant caliber that exists west of Drexel Avenue, relaxing standards for allowable uses could have unintended consequences regarding the upgrading of tenants within the larger area east of Drexel Avenue. While understanding of the constraints associated with large spaces setback from Lincoln Road and Washington Avenue, additional development of the subject proposal would be in order. As such, staff recommends the Board provide feedback and continue the application to a date certain of January 7, 2025, with direction to the applicant to further develop the ordinance as recommended herein.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board continue the application to a date certain of January 7, 2025.

Conditional Use Regulations for Grocery Stores in the CD-3 District

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE RESILIENCY CODE OF THE CITY OF MIAMI BEACH CHAPTER 7, ENTITLED "ZONING DISTRICTS AND REGULATION," ARTICLE II, "DISTRICT REGULATIONS," SECTION 7.2.12. "CD-3 COMMERCIAL HIGH INTENSITY DISTRICT," BY AMENDING SECTION 7.2.12.2. "USES (CD-3)," TO LIST GROCERY STORES AS A CONDITIONAL USE ON PROPERTIES WITH A LOT LINE ON LINCOLN ROAD OR 16th STREET EAST OF DREXEL AVENUE AND WEST OF WASHINGTON AVENUE SUBJECT TO STRICT CRITERIA; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City") has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, the City's Land Development Regulations ("LDRs") provide for the regulation of land development within the City; and

WHEREAS, in order to incentivize compatible retail development and address retail vacancies, the City desires to facilitate as a conditional use in limited circumstances grocery stores.

WHEREAS, this Ordinance provides for grocery stores as a conditional use in the CD-3 district, for properties with a lot line on Lincoln Road or 16th Street east of Drexel Avenue and west of Washington Avenue.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Chapter 7, entitled "Zoning Districts and Regulations," Article II, entitled "General to All Zoning Districts," at Section 7.2.12, "CD-3 Commercial, High Intensity District," is hereby amended as follows:

CHAPTER 7 ZONING DISTRICTS AND REGULATIONS

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ARTICLE II. - DISTRICT REGULATIONS

* * *

7.2.12. CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT

* * *

7.2.12.2 Uses (CD-3)

	*	*	*		
b.	Supplemental	Conditional	Uses	Regulations	(CD-3)
The supplemental conditional uses are as follows:					
1. Neighborhood Impact Structure (even when divided by a district boundary line);					
2. Major cultural dormitory facilities as specified in section 7.5.5.3,					
3. Storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located, except such storage and/or parking of commercial vehicles shall not be permitted on lots with frontage on Lincoln Road, Collins Avenue, 41 st Street and 71 st Street (MAP EXHIBIT-3). Storage and/or parking of commercial vehicles shall be subject to Section 7.5.4.3.c.					
4. Alcoholic beverage establishments located in the area generally bounded by 40 th Street to the south, 42 nd Street to the north, Alton Road to the west, and the Indian Creek waterway to the east (MAP EXHIBIT-4), shall be subject to the additional requirements set forth in section 7.2.12.2.f, and					
5. When located above the ground floor on properties with a lot size greater than 50,000 square feet and with a lot line adjoining Lincoln Road between Collins Avenue and Alton Road: artisanal retail with off-site sales; and					
6. Convenience stores, notwithstanding the prohibited uses listed under Section 7.2.12.2.d and Section 7.3.7.2, may be permitted as a conditional use of properties with a lot line on Lincoln Road, east of Washington Avenue, with a storefront located in the interior of the property and with the entire establishment set back a minimum of 75 feet from the property line fronting Lincoln Road, as well as setback 75 feet from Washington Avenue and Collins Avenue. Conditional use approval for a convenience store pursuant to this section must be obtained within 12 months of the effective date of this section.					
7. <u>Grocery stores, notwithstanding the prohibited uses listed under Section 7.2.12.2.d and additional limitations in Section 7.3.7.2.a., may be permitted as a conditional use of properties with a lot line on Lincoln Road or 16th Street, east of Drexel Avenue, west of Washington Avenue. Entrance and retail frontage of such use shall be permitted on Washington or Drexel Avenue only.</u>					

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Resiliency Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 4. SEVERABILITY.

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

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 2024.

Steven Meiner, Mayor

ATTEST:

Rafael E. Granado
City Clerk

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

City Attorney

Date

First Reading:
Second Reading:

Verified by: _____
Thomas R. Mooney, AICP
Planning Director