



## **Waiver Recommendations and Reductions**

As a result of the directive by the City Commission on September 4, 2009 to provide recommendations or reductions of waivers in Miami 21, the Planning Department reevaluated Article 7, Section 7.1.2.5: 'Waiver'.

Concerns about the waiver section appear to stem from the thought that waivers allow circumvention of code requirements or are a substitute for exceptions or variances. Waivers are defined as 'minor deviations' from the strict letter of the code, and generally allow only a 10% reduction or increase of any standard. For the most part, these waivers were permissible under ZO 11000 by a Class II special permit, an administrative permit which involves similar notice, review and appeal rights. The waiver process adds staff oversight to ensure there is valid reason for granting such waiver and that it be carried out following the criteria of Table 12.

It is important to understand that unlike ZO 11000, Variances under the Miami 21 Code may ONLY be given for the following: Lot size, Lot coverage, dimensions of side or rear setbacks, parking and loading requirements, and open space requirements. No Variance may be granted except for parameters stated above and only in the rare case of hardship, which is a difficult standard to meet.

Due to limitation on variances and the strict requirements of the form-based code, minor deviations of some standards must be allowed in specific circumstances, in order for the code to function correctly and sensibly. A large city with a long history of regulations requires that a limited and defined amount of deviation be permissible to take into account small lot conditions, irregular shaped parcels, and/or unique uses or building layouts.

While some waivers are included to allow for functionality of the code, others act as additional safeguards for residents by requiring notice, allowing for design review if necessary, and enabling an appeal process. Removing the waiver process will effectively limit notice to residents and reduce the opportunity for appeal.

Staff completely reevaluated all of the waivers throughout the code to determine if they should remain as waivers, or instead, be allowed by right, by exception, or as a variance. The attached chart indicates the waiver, the previous permit required under ZO 11000, the recommendation (whether to retain the waiver or remove it), and the reason for such recommendation.

In conclusion, the waiver section is essential to the function of the code and is best utilized as shown in the attached document to adapt the form-based code to the historical context and needs of the City.



Waivers White Paper

Waiver	Code Section	11000 Permit Requirement	Recommendation	Response
Setbacks Internal to Assembled Lots	3.3.1	By Right	Delete - allow by right	ZO 11000 allows setbacks internal to lots to be waived without a special permit process.
Determination of setbacks for irregular Lots	3.3.3.c	By Right	Remain as Waiver	The Waiver process is intended to provide notice to neighbors when setbacks are determined by the Zoning Administrator. The Code text may need to be modified to retain this waiver.
Parking Reductions for Elderly Housing or for Adaptive Reuses in Community Redevelopment Areas	3.6.1; 3.6.7	Class II	Remain as Waiver	ZO 11000 requires a Class II to receive these reductions, but staff has no objection to requiring a public hearing.
Setbacks for the property to be developed to match the dominant setback in the Block and Context	3.3.5; 5.5.1.g; 5.6.1.g; 5.8.1.g	CBD; SD-14 - By Right	Remain as Waiver	Miami 21 hopes to create streetscapes that are comfortable and interesting for pedestrians to walk along. In some cases, street-front setbacks for new construction need to be adjusted to conform to the existing character of the site and neighboring properties to create a harmonious block.
Shared Access for adjoining Lots	3.6.3.k	Class II	Remain as Waiver	The waiver provision allows for design review to verify that the selected location is best for the street and neighborhood in which it is located.
Deferral of parking	3.6.8	Special Exception	Revise - Allow by Exception	Staff has no objection to reverting the deferral of parking to a public hearing.
Barbed Wire Fences in D1, D2, D3	3.7.2	Class II	Remain as Waiver	Barbed wire should not be permitted without design review to ensure proper placement and treatment.
Review of development within Neighborhood Conservation Districts for compliance with NCD regulations	App. A	Class II	Remain as Waiver	The Waiver requirement for development in the NCD is meant as a safeguard to verify that a valid tree survey is provided and to ensure that no trees are removed without the proper permit and documentation.
The relaxation of setbacks or required off-street parking for preservation of natural features of land	3.13.1.c	Class II	Remain as Waiver	Allows for flexibility to preserve natural features. Will require notice, design review (including Table 12), and enable appeal.
Decrease of required parking by thirty percent (30%) within the half-mile radius of a TOD	Art. 4, Tbl. 4	10% - Class II	Remain as Waiver	The Waiver requirement is intended to act as a safeguard to neighbors by incorporating notice, design review, and enable appeal.
Required parking within one thousand (1,000) feet of the site that it serves	Art. 4, Tbl. 4	Class II	Remain as Waiver	By allowing parking off site, projects can develop on a site without a large parking pedestal. The waiver allows for the city to verify if the off-site lot is in an adequate location. The waiver provides the mechanism for notice, design review, and appeal rights.
Adjustments to setbacks for Principal Buildings	5.3.1.e; 5.4.1.e	Variance	Delete - covered by 10% overall waiver	This specific waiver is unnecessary, as it is covered by the 10% catch-all waiver.
Extensions above maximum Heights for church spires, steeples, belfries, monuments, water towers, flagpoles, vents, ornamental Building features, decorative elements, or similar structures.	3.5.3; 5.3.2.f; 5.4.2.g; 5.5.2.h; 5.6.2.h; 5.9.2.g; 5.10.2.g	By Right	Remain as Waiver	Currently, these extensions above maximum height are permitted without any special permit process. The waiver in Miami 21 requires notice, design review and allows for appeal, which are additional safeguards for affected neighbors.
Service and Parking access from Principal Frontage	5.4.2.e; 5.5.2.e; 5.6.2.f	New	Remain as Waiver	Form requirements of this code are strict and were not requirements under 11000. These strict requirements need to allow some flexibility in certain cases in order to allow development of a parcel. The Waiver will allow a small amount of deviation from these requirements through the design review process.
Vehicular entries spacing less than sixty (60) feet	5.5.4.e; 5.6.4.g	New	Remain as Waiver	This waiver is intended for small lot conditions where the 60' minimum separation would seriously affect vehicular circulation and create inefficiencies in the parking layout. Table 12 will be used to limit the effect on pedestrians and neighboring properties.
Adjustments to Building spacing and to setbacks above the eighth floor for lots having one dimension one hundred (100) feet or less	5.6.1h	New	Remain as Waiver	On small lots, tower setbacks above the 8th story can limit the footprint of the tower severely and cause inefficient floor plates. This waiver allows for smaller lots to provide slightly less tower setbacks in order to lower the building height overall and reduce the cost of construction for small inefficient floor plates.
Adjustments to Building Disposition in CI	5.7.2.4.d	New	Remain as Waiver	In many cases, buildings on Civic Institutional (CI) lots are arranged in a campus or other unique setting and may not fit the urban or suburban form requirements of the code, and thus need to be adjusted through the waiver process. The abutting setbacks will always be considered a minimum and cannot be waived by this provision.



Waivers White Paper

Waiver	Code Section	11000 Permit Requirement	Recommendation	Response
Industrial Uses requiring additional Height in D2 and D3	5.9.2.f; 5.10.2.f	Variance	Remain as Waiver	As a response to strict height limits imposed by the Miami 21 Code, this waiver was intended to allow Industrial land owners a mechanism to demonstrate if extra height was necessary for the specific industry, such as a crane for a shipping yard, etc. Under the Miami 21 code, variances are not permitted for height. This provision is necessary to ensure the viability of the City's industrial base.
Primary and Secondary Frontage Parking Placement	5.6.4.d; 5.6.4.e	New	Remain as Waiver	In cases where unique lot conditions create inefficiencies in the parking layout, this waiver is intended to relieve these inefficiencies and lower the overall height of the pedestal by reducing the liner requirement. This also adds design review to ensure proper treatment.
Reduction of reservoir parking space	Article 6	Class II	Remain as Waiver	This waiver allows for a one reservoir space reduction in small lot conditions or for less intense uses that will not require additional reservoir spaces.
Gas Station Building Frontage requirement	Article 6	New	Remain as Waiver	Miami 21 imposes strict building form requirements that are not consistent with standard gas station building practices. This waiver relaxes frontage requirements in order to make gas stations viable within the context of the form based code.
Extension of Docks and Piers by up to 10% of waterfront width.	Article 6	Class II	Revise - Allow by Exception	Staff has no objection to requiring a public hearing for all extensions of docks or piers into Biscayne Bay or other water bodies.
Modifications in Setbacks up to 50% when liners are provided along parking Structures in Major Sports Facility	Article 6	Class II	Remain as Waiver	This reduction in setback is intended to prevent exposed parking structures from facing lower scale residential properties. The liner requirement will provide a more attractive and safer street frontage.
Replacement or reconstruction of a nonconforming structure (other than single-family, duplex, or multi-family) destroyed by a natural disaster, explosion, fire, act of god, or the public enemy	7.2.2.b	Class II	Remain as Waiver	This waiver is intended to aid property owners in the event of a disaster. There are no objections to this waiver.
Alterations to nonconforming single-family or duplex structures to enlarge a nonconformity affecting the exterior of the Building or premises	7.2.3	Variance	Remain as Waiver	While the current code would require a variance for an enlargement of a nonconformity beyond 50%, additional flexibility has been given to accommodate the concerns with the nonconformities.
Moving a Nonconforming structure on its own lot	7.2.4	Special Exception	Revise - Allow by Exception	Staff has no objection to require a public hearing to move a nonconforming structure.
Development of Single-Family or Duplex structures on certain nonconforming lots in T-3 zones	7.2.7	Zoning Administrator Decision	Remain as Waiver	Currently, setbacks are determined by the Zoning Administrator and such action does not require notice or appeal rights. The waiver is intended to provide this mechanism, with possible design review if necessary.
Modification to nonconforming off-street Parking facilities involving restoration or rehabilitation of an existing Building or an adaptive Use	7.2.8	Variance	Remain as Waiver	In order to allow the adaptive reuse of existing structures, some relaxation of new code standards may be necessary to make such reuse viable. Through design review, applying Table 12, additional mitigation strategies can be requested if necessary.
Modification of landscaping of nonconforming signs	7.2.9.5	Class II	Remain as Waiver	This waiver is intended to improve the landscape conditions of nonconforming signs by making the site more visually attractive.
Waiver of up to 10% of any standard except Density, Intensity or Height		New	Remain as Waiver	There is no objection to this waiver.