CITY OF MIAMI
OFFICE OF ZONING
MEMORANDUM

TO: John S. Pérez, AIA, NCARB, CGC

FROM: Daniel S. Goldberg, Esq., Zoning Director //Administrator

DATE: September 19, 2023

RE: Zoning Interpretation 2023-0001 – Measurement of Height in Nonspecial Flood Hazard Areas Subject to MDC's Flood Criteria Map

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You have asked for an interpretation that your project and others similarly situated have the Height of Buildings and other Structures calculated differently than prescribed by Miami 21 owing to unique circumstances related to floodplain management, the need for required elevation of the finished first floor, and the ensuing loss of significant usable height. Particularly you have asked that your project, lying in a Nonspecial Flood Hazard Area ("NSFHA"), commonly known as FEMA Zone "X", and adjacent to a roadway below the Miami-Dade County flood criteria map ("Flood Criteria Map") use the Flood Criteria Map minimum elevation in lieu of the typical existing Average Sidewalk Elevation. For the reasons set forth below, the answer is in the affirmative as to Buildings and in the negative as to all other structures.

A brief explanation of the two methods of Height calculation in Miami 21 is necessary to explain this interpretation and demonstrate how your property, and others like it, do not fall squarely into either category. Per Section 3.5.1, in an NSFHA, "The Height of Buildings, Fences and walls shall be measured from the Average Sidewalk Elevation or, where no sidewalk exists, the average of the record profile grade elevation of the street Abutting the Principal Frontage of the Building, as determined by the Public Works Department." Conversely, for those properties within a Special Flood Hazard Area ("SFHA"), "[where] the Base Flood Elevation, as established by FEMA, plus Freeboard, is higher than the sidewalk or grade elevations, the total Height of the Building but not the height of Fences and walls shall be measured from the Base Flood Elevation plus Freeboard."

In other words, in a NSFHA, all Height is measured from Average Sidewalk Elevation, which generally equates to the crown of road or back of sidewalk. In an SFHA, Height of Buildings is calculated from Base Flood Elevation ("BFE") plus Freeboard, which is anywhere from 1 to 5 feet above BFE but fences and walls continue to have Height measured from the Average Sidewalk Elevation ("ASE"). These regulations for SFHAs ensure compatibility to the maximum extent feasible of new construction by ensuring that those elements like fences and walls that are not required to be elevated above BFE remain at the existing road elevation while also requiring that the Building, though elevated, calculates its maximum Height from the fixed start point of BFE +

Freeboard to ensure that the Building continues to have some connection to the street below and retain some semblance of pedestrian friendliness.

Your property exists in a gap between these two rules. It is in an NSFHA but it is required to be elevated per the Floodplain section of the Building Department as it enforces the Flood Criteria Map. Its treatment is similar to that of a property located in an SFHA. The Flood Criteria Map has recently been amended and prescribes higher heights for "base elevation" (not to be confused with BFE), defined in Sec. 20-3(11) of the City Code as "the elevation established by the Miami-Dade County flood criteria map, or the elevation of the crown of road or street abutting such building site, whichever is higher." The floodplain regulations further require that "for uses other than residential requiring a floor, the floor elevation shall be a minimum of four inches above the base elevation. For all residential use, the floor elevation shall be a minimum of eight inches above the base elevation." The enforcement of the floodplain regulations, necessary to preserve life and property, in combination with the increased base elevations from the newest version of the Flood Criteria Map, results in the significant loss of height in NSFHAs. Had your project been located in an SFHA and had FEMA issued a new Flood Insurance Rate Map prescribing higher BFEs, no conflict would exist as Miami 21's calculation of height would increase commensurate with the BFE increase.

Section 2.2.2 of Miami 21 provides that "Where the requirements of this Miami 21 Code vary with the applicable requirements of any law, statute, rule, regulation, ordinance, or code, the most restrictive or that imposing the higher standard shall govern." Because this significant loss of height and the requirement of elevating buildings per the Flood Criteria Map were not contemplated by Miami 21, I find that there is at a minimum, a conflict between Miami 21's calculation of height and the applicable floodplain regulations related to base elevation in NSFHAs. While Miami 21 makes reference to the inability of achieving maximum Height as not being a valid ground for the issuance of a Variance or Waiver (see Article 7), in this case it's not an inability but rather an impossibility to make reasonable use of the Height normally afforded to these properties.

In conclusion, where a Building is to be sited on a property in an NSFHA, it is permitted to use the greater of the base elevation as defined in Sec. 20-3(11) of the Code or the present Average Sidewalk Elevation as its Average Sidewalk elevation for Height calculation purposes so long as the slab or lowest finished floor is placed at that minimum Height as required by the Floodplain section of the Building Department. Any additional elevation of the finished floor above such minimum will count towards 1st Story and overall Height. Structures such as fences and walls with are required to use the Average Sidewalk Elevation for Height calculation when in an SFHA continue to use the present Average Sidewalk Elevation to ensure compatibility with the neighborhood. Below grade parking continues to be required to be fully below the present Average Sidewalk Grade for such area not to count towards FLR or Height.

cc: Arthur Noriega, V, City Manager
Dr. Nzeribe Ihekwaba, Deputy City Manager
Tamara Allen Frost, AICP, Assistant Director, Office of Zoning
Jacob Keirn, Zoning Manager, Office of Zoning
Lakisha Hull, AICP, LEED AP BD+C, Planning Director, Planning Department
David Snow, Assistant Director, Planning Department
Sevanne Steiner, Assistant Director, Planning Department
Kenneth Kalmis, Preservation Officer, Planning Department
Vickie Toranzo, Chief of Land Development, Planning Department
Asael Marrero, Director, Building Department
Jose Regalado, Assistant Director, Building Department
Guari Mascaro, Floodplain Manager, Building Department
Juvenal Santana, Jr., P.E., Director, Department of Resilience and Public Works
Charles Alfaro, Assistant Director, Department of Resilience and Public Works