

ORDINANCE NO. 90-6

AN ORDINANCE OF THE CITY OF WEST MIAMI, FLORIDA, ADDING SUBSECTIONS 18.7-2 AND 18.7-3 AND AMENDING SUBSECTIONS 18.8, 18.9, 18.10, 18.10-1 AND 18.10-2, AND REPEALING SUBSECTIONS 18.8-1(a) THROUGH (f), AND 18.9-1 OF SECTION 18 OF ZONING ORDINANCE #282, BY PROVIDING PROCEDURE FOR RE-ZONING BY CITY COMMISSION; PROVIDING NO RE-ZONING UNLESS IN COMPLIANCE WITH COMPREHENSIVE PLAN; PROVIDING INCREASE IN FILING, APPEAL FEES AND ADDING COST AND EXPENSES OF PUBLICATION OF NOTICES AND MAILING AND CHANGING TIME FOR APPEALS; REQUIRING 4/5THS VOTE OF THE COMMISSION TO REVERSE ZONING BOARD DECISIONS; PROVIDING FOR APPROVAL OF EXTENSIONS OF VARIANCES BY CITY MANAGER; PROVIDING SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES OR PARTS THEREOF IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WEST MIAMI, FLORIDA:

Section 1. Subsections 18.7-2 and 18.7-3 are hereby added to Section 18 of the Zoning Ordinance #282 of the City of West Miami, as follows:

18.7-2 The City Commission shall have the sole authority to grant changes of Use Districts or re-zoning of property in Use Districts, hereinafter referred to as "re-zoning".

18.7-3 (a) All applications for re-zoning involving a change in use districts as above provided, shall be filed with the City Clerk, accompanied by a filing fee of \$50.00 and a cash deposit in an amount to be determined by the City Clerk for costs and expenses of Court Reporter's attendance fee and charges for the preparation of transcript, and costs and expenses of publication of notices and mailing of notices to property owners required by the Zoning Ordnances of the City. The City Clerk

shall thereupon give notice of hearing before the Planning and Zoning Board as set forth in Paragraph 18.7 hereof.

(b) At the time and place set forth in the notice of hearing the Board shall conduct a hearing which shall be open to the public. The Board shall receive testimony and evidence of both proponents and opponents of the application. The Board shall not be bound by strict rules of evidence.

(c) All proceedings shall be reported by a competent court reporter who shall thereafter transcribe his/her notes of the proceedings and file the original with the City Clerk under the reporter's certificate. Upon receipt of the transcript the City Clerk shall pay from the deposit of the applicant the charges of the Court Reporter for attendance and transcript and all costs of publications and mailing of notices to property owners as required by this ordinance, and shall remit the balance if any, to the applicant; and if the said charges and expenses shall exceed the deposit the City Clerk shall thereupon obtain the difference from the applicant and the matter shall not be set for hearing before the Commission until such difference is paid by the applicant.

(d) The Board shall promptly render its recommendations upon such application to the City Commission either by dictating same to the Reporter at the close of the hearing, or by separate written report prepared following the meeting. In all events such report of recommendations shall be filed with the City Clerk no later than one week following the date of hearing on the application or last continuance thereof,

and the Clerk shall thereupon furnish a copy to the applicant. The report shall include findings of fact and law made by the Board.

(e) The City Clerk shall place upon the meeting agenda of the City Commission no later than the second meeting following filing of the report of the Board as an item of "old business" consideration of the application in question. Notice in writing of such meeting shall be given the applicant and owners of property within 500' of the property in question, and such notice shall recite whether Board recommends approval or denial of the application.

(f) At such Commission meeting the Commission shall consider the recommendations of the Board and shall hear arguments of both proponents and opponents of the application upon the record of the proceedings before the Planning and Zoning Board. No new evidence or testimony will be permitted or taken at the hearing before the Commission. After all argument has been heard and after continuance to further meetings, if any, the Commission shall render its decision by vote upon resolution to approve or deny the application.

(g) No application for re-zoning shall be granted by the Commission unless such application be in conformity and consistent with the adopted Comprehensive Plan of the City.

Section 2. That Subsections 18.8, 18.9, 18.10, 18.10-1 and 18.10-2, of Section 18 of Zoning Ordinance #282, of the City of West Miami, Florida, be and is hereby amended as follows:

18.8 It shall be the further duty of the board to hear applications for exceptions and variances to any provision of the zoning ordinance of the City of West Miami as from time to time amended, hereinafter referred to as "variances". The board may grant such exceptions and variances from the terms of the zoning ordinances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, provided that as used in this ordinance the term variances shall not include changes or re-zoning of use districts, hereinafter referred to as "re-zoning".

18.9 All applications for such variances shall be filed with the City Clerk, accompanied by a filing fee of \$50.00. In addition, the applicant shall pay all expenses and costs for publication of notices and mailing of notices required by the Zoning Ordinances of the City. The City Clerk shall thereupon give notice to the applicant of the date of the hearing thereon and post a copy thereof in the City Hall, which hearing shall be had within thirty (30) days of the filing of the application, and transmit said application to the board. The City Clerk shall mail timely all notices required under any applicable Zoning Ordinances of the City. All hearings will be conducted by the board pursuant to rules and regulations adopted by the board and will be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall

be filed with the City Clerk and shall be a public record. Within ten (10) days after the hearing the board must render a written decision to the applicant, by Certified or Registered Mail, with copies to the City Manager and Commission and a copy thereof be posted in a public place within the City Hall; said decision to contain a comprehensive summary of the facts, the reasons for the application, the findings of fact made by the board based on the applicable zoning ordinances and their decision. In the event, however, the board refuses or fails to render any decision within thirty (30) days after the public hearing, the applicant may bring the matter directly to the attention of the Commission at a regular meeting and request that the Commission investigate the failure or refusal of the Zoning Board to render a decision. Decisions of the Zoning Board by a majority vote thereof shall be final ten (10) days after rendered unless appealed to the City Commission within ten (10) days of date of mailing of decision by Certified or Registered Mail to applicant. The receipt of decision by the City Clerk shall constitute due notice to the City.

18.10 An appeal to the City Commission from any adverse decision may be filed by an interested party by filing a notice of appeal with the City Clerk and paying an appeal fee of \$50.00, and agreeing to pay all costs and expenses of publication and notices of public hearing; only one appeal fee to be paid in connection with each appeal regardless of the number of persons participating therein. Within forty-five (45) days after the filing of the appeal, it will be heard at a regular meeting of the Commission,

who shall hear arguments solely on the basis of the evidence produced before the Zoning Board as shown by the decision of the board. Upon the conclusion of the arguments, the Commission will render its decision in open meeting. A four-fifths (4/5ths) majority of the entire Commission shall be required to reverse the decision of the Zoning Board on all applications for a variance.

18.10-1 Any decision or action of the Zoning Board provided for by this ordinance shall be appealable to the City Commission as provided for in Section 18.10. hereof by any interested party including the City Manager and other officials of the City of West Miami. All appeals authorized by this section shall conform to the procedures set forth in Section 18.10. hereof; provided, however, that the appeal fee of \$50.00 and costs and expenses for publication and mailing shall not be required when appeals are brought by the City Manager or other officials of the City.

18.10-2 Whenever a variance is granted to an applicant as provided in this ordinance, said variance shall expire and become null and void unless the applicant shall made application for a building permit within 90 days from the effective date of the variance as determined by the terms of this ordinance. If the applicant can show the enforcement of the 90 day limitation will cause a hardship not the fault of the applicant, the City Manager, in his sole discretion, may extend the time up to but not exceeding 15 days and that thereafter during said 15 day period, the Commission may grant an extension for an additional 30 days beyond the 15 days if granted by the City Manager.

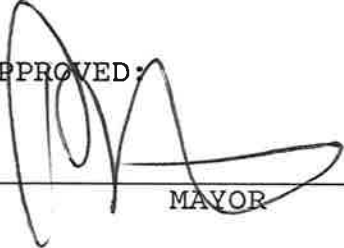
Section 3. Subsections 18.8-1(a) through (f) and Subsection 18.9-1 of Section 18 of Zoning Ordinance #282 of the City of West Miami, Florida, are hereby repealed.

Section 4. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 5. If any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

Section 5. This Ordinance shall take effect immediately upon passage.

PASSED AND ADOPTED this 18 day of April, 1990.

APPROVED: 
MAYOR

ATTEST:


CITY CLERK

Approved as to form and sufficiency

1 s/ Gus Opthimou
CITY ATTORNEY

Roll Call Vote:

Mayor Reboredo Y

Vice Mayor Sosa Y

Commissioner Busse Y

Commissioner Hickey-Patton Y

Commissioner Trigo Y

Date of 1st reading 3/21/90

Date of publication 2/23/90

Date of 2nd reading 4/18/90

I, Yolanda Aguilar, City Clerk of the City of West Miami, Florida, hereby certify that the attached is a true and correct copy of Ordinance 90-6 passed and adopted by the City Council at their meeting held 4-18-90.

IN WITNESS THEREOF: I have hereunto set my hand and affixed the seal of the City of West Miami, Florida, on this 18th day of April, 1990.

SEAL:


Yolanda Aguilar, City Clerk