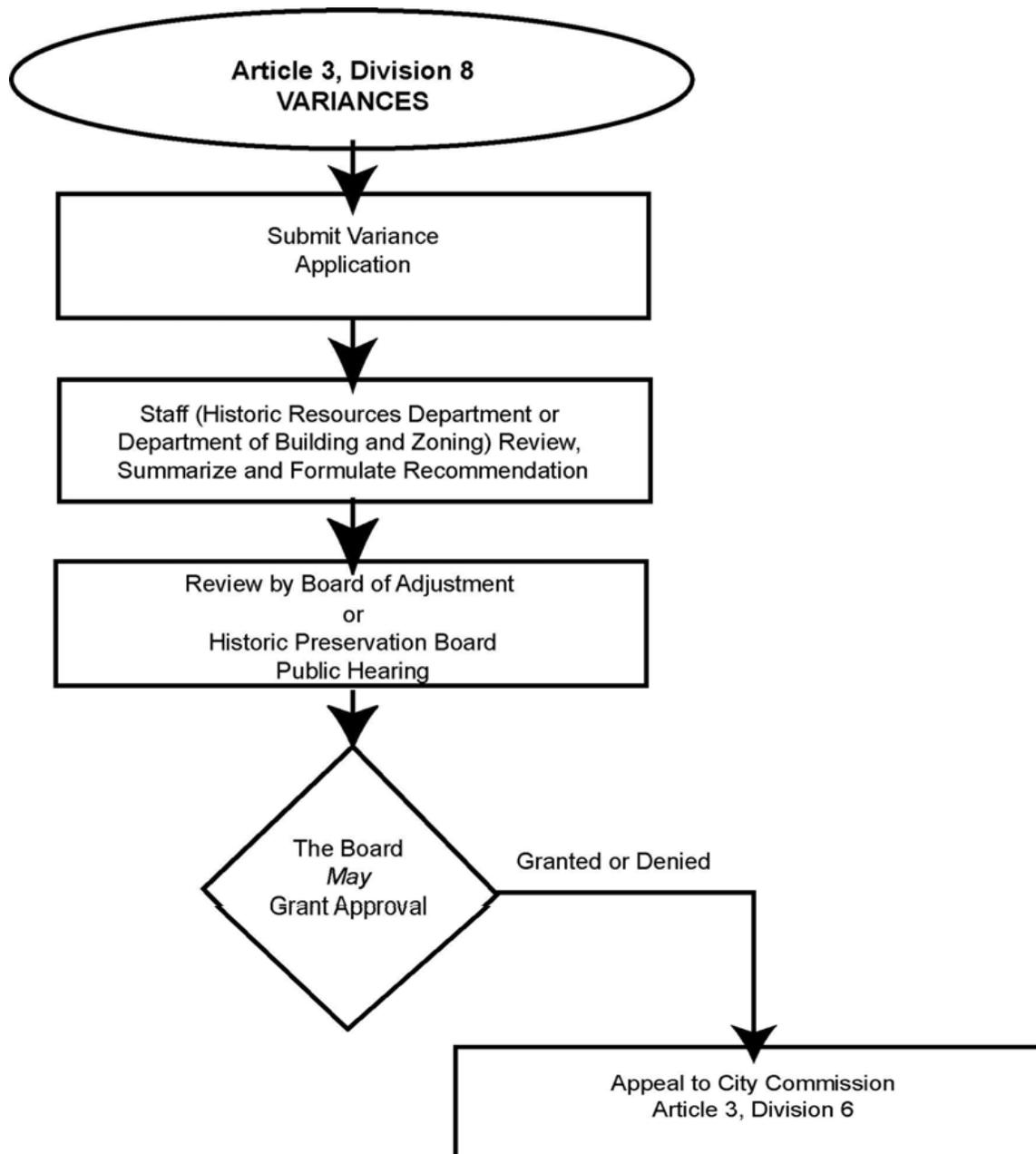


Division 8. Variances

Section 3-801. Purpose and applicability.

Except as provided in Article 3, Division 9 for variances from platting standards, the purpose of this Division is to establish a procedure for granting variances from the literal terms of these regulations where there are practical difficulties or unnecessary and undue hardships so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done.

Section 3-802. General procedures for variances.



Section 3-803. Application.

An application for a variance shall be made in writing upon an application form approved by the City staff, and shall be accompanied by applicable fees.

Section 3-804. City Staff review, report and recommendation.

A. City staff shall review the application in accordance with the provisions of Article 3, Division 2 of these regulations.

B. Upon completion of review of an application, City staff shall:

1. Provide a report that summarizes the application and the effect of the proposed variance, including whether the variance complies with each of the standards for granting variances in Section 3-806.
2. Provide written recommended findings of fact regarding the standards for granting variances as provided for in Section 3-806.
3. Provide a recommendation as to whether the application should be approved, approved with conditions, or denied.
4. Schedule the application for hearing before the Board of Adjustment or the Historic Preservation Board.
5. Provide notice of the hearing in accordance with the provisions of Article 3, Division 3 of these regulations.

Section 3-805. Review, hearing and decision on variances.

The Board of Adjustment or the Historic Preservation Board in the case of variance involving historic properties, shall review the application for a variance, the report, recommendation, and proposed findings prepared by City staff, conduct a quasi-judicial public hearing on the application in accordance with the requirements of Section 3-304 and render a decision, based upon written findings of fact, granting, granting with conditions, or denying the variance.

Section 3-806. Standards for variances.

A. In order to authorize any variance from the terms of these regulations, the Board of Adjustment or Historic Preservation Board, as the case may be, shall find:

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
2. That the special conditions and circumstances do not result from the actions of the applicant.
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by these regulations to other lands, buildings or structures in the same zoning district.
4. That literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of these regulations and would work unnecessary and undue hardship on the applicant.
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
6. That granting the variance will not change the use to one that is not permitted in the zoning district or different from other land in the same district.
7. That the granting of the variance will be in harmony with the general intent and purpose of these regulations, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
8. That the granting of the variance is appropriate for the continued preservation of an historic landmark or historic landmark district.

B. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of land, structures, or buildings in other districts, shall be considered grounds for the issuance of a variance.

C. Under no circumstances shall the Board of Adjustment or the Historic Preservation Board grant a variance to permit the following:

1. A use not permitted in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district; and
2. The reduction or diminishing of a building site upon which a single-family residence or duplex has heretofore been constructed.

D. The Board of Adjustment or the Historic Preservation Board may impose such reasonable conditions on the grant of a variance in order to ensure that the variance will have a minimum impact on surrounding properties.

Section 3-807. Time limit for variances.

Any variance granted under this Code, or in effect on the date that this Code took effect, shall become null and void and of no effect twelve (12) months from and after the date of the approval granting the same, unless within such period of twelve (12) months a building permit for the building or structure involved embodying the substantive matter for which the variance was granted shall have been issued; or if the use or adoption of such variance does not require the issuance of a building permit, unless the requested action permitted by the variance shall have taken place within the said twelve (12) month period. One (1) additional extension of twelve (12) months may be granted by the Development Review Official for good cause shown.

Section 3-808. Effect of decision.

Approval of a variance shall be deemed to authorize only the particular use for which it is issued and shall entitle the recipient to apply for review by the Board of Architects, if applicable, a certificate of use or building permit or any other approval that may be required by these regulations, the City or regional, state or federal agencies.

Section 3-809. Appeals.

An appeal from any decision of the Board of Adjustment or the Historic Preservation Board regarding variances may be taken to the City Commission by an aggrieved party in accordance with the provisions of Article 3, Division 6 of these regulations.

Division 4. Board of Adjustment

Section 2-401. Powers and duties.

Pursuant to the City Charter, and subject to those provisions, a Board of Adjustment is created to provide relief from hardships and errors in the application of the regulations. In addition to any power or duty delegated by the City Commission or the City Manager, the Board of Adjustment shall have the following powers and duties:

ARTICLE 2 – DECISION MAKING AND ADMINISTRATIVE BODIES

<i>Powers and duties</i>	<i>Applicable Standards/Procedures</i>
Appeals (from staff decisions, including interpretations of this code by the Director of Planning and Zoning, other than the City Architect or Historic Preservation Officer)	Article 3, Division 6
Determinations of Compliance with Distance Requirements	Article 5, Division 7
Variances	Article 3, Division 8
Recommend Amendments to the Zoning Code to the City Commission	Article 3, Division 14

Section 2-402. Membership; Terms; Vacancies; Removal.

A. Membership.

1. The Board of Adjustment shall be composed of seven (7) members, five (5) of whom shall be appointed by the City Commission, one (1) of whom shall be nominated by the City Manager, subject to approval of the City Commission and one (1) of whom shall be nominated by the six (6) members so appointed, subject to approval of the City Commission. In the event that the six (6) members shall fail to agree on the seventh (7th) member, such member shall then be appointed by the City Commission. A member of the staff of the Planning and Zoning Department shall be named by the City Manager to act as a non-voting ex-officio member of the Board.

2. In making appointments to the Board of Adjustment, membership shall be sought from a diverse economic, social and professional representation and shall include members qualified and experienced in the fields of architecture, planning, landscape architecture, engineering, construction, planning and land use law and real estate. Each member of the Board shall also be a citizen and/or an owner, or spouse of an owner, of real property located within the City of Coral Gables during the term of appointment and also for at least five (5) years prior to appointment.

B. Terms. The members of the Board of Adjustment shall serve at the pleasure of the City Commission. All appointments shall be for a two (2) year period commencing June 1, and ending on May 31 of the next odd year or until their successor is appointed. No member of the Board of Adjustment shall serve more than eight (8) consecutive years on the Board.

C. Vacancies. Appointments to fill any vacancy on the Board shall be for the remainder of the unexpired term. Appointments to unexpired terms shall not count as one (1) of the four (4) terms for which a member is eligible for appointment, unless the unexpired term is two (2) years or more.

D. Removal. Any member of the Board of Adjustment may be removed with or without cause by a majority vote of the City Commission. Board members shall be automatically terminated for three (3) unexcused absences in a two (2) year period. Excused absences shall include illness and absence from the City.

Section 2-403. Meetings; Quorum; Required vote.

A. Meetings. The Board of Adjustment shall hold one regular meeting per month, and special meetings at such times as the Board may determine or at the call of the Chairperson or Secretary thereof, for the consideration of business before the Board. All meetings of the Board shall be open to the public. The time and place of the meetings, and the order of business and procedure to be followed at meetings, shall be as prescribed by the Chairperson and the Secretary of the Board.

B. Quorum; Required vote. Four (4) members of the Board shall constitute a quorum and the affirmative vote of four (4) members of the Board present shall be necessary to authorize a variance or grant an appeal. A tie-vote shall result in the automatic continuance of the matter to the next meeting, which shall be continued until a majority vote is achieved. If only four (4) members of the Board are present, an applicant shall be entitled to a postponement to the next regularly scheduled meeting of the Board. If a matter is postponed due to lack of a quorum, the Chairperson or the Secretary of the Board may set a special meeting to consider such matter.

ARTICLE 2 – DECISION MAKING AND ADMINISTRATIVE BODIES Section 2-404. Officers; Staff.

A. Officers. The Board of Adjustment annually shall elect a chairperson and a vice-chairperson from among its members. All officers shall be elected for one (1) year terms and shall be eligible for re-election.

B. Staff/Secretary. The ex-officio member of the Board shall provide such support services to the Board as may be necessary to assist the Board in the performance of its duties and shall serve as the Secretary for the Board.

Section 2-405. Rules and records.

The Board of Adjustment may establish such rules of procedure as it may determine necessary to carry out its duties. Such rules of procedure shall be approved by the City Commission. All meetings shall be conducted in accordance with Florida law and written records of the proceedings shall be a public record maintained and filed with the Secretary of the Board.

In granting any variance, the Board of Adjustment shall provide that any permit issued in connection with the variance shall conform to the plans submitted with the application and the Board of Adjustment may also prescribe appropriate conditions and safeguards in conformity with the Zoning Code. Violations of such and/or deviation from such plans, conditions and/or safeguards, shall be deemed a violation of the Zoning Code.

HARDSHIP: The principle issue in reviewing variance requests is whether or not there is an unnecessary hardship. In some cases, people confuse necessary hardships with unnecessary hardships. A variance cannot be granted on the basis of a necessary hardship.

Necessary hardships are arduous restrictions upon the uses of a particular property which promote the objectives of these regulations, providing that such regulations apply to all land within the same district. A necessary hardship is a restriction in the “Zoning Code” which every property in the zoning district must comply with.

Unnecessary hardships are arduous restrictions upon the uses of a particular property which are unique and distinct from that of adjoining property owners in the same zoning district.

WHAT IT MEANS TO SUBMIT AN APPLICATION: Applicants are advised that the mere filing of an application and appearance at the Board of Adjustment hearing in no way assures approval of the application. Completed applications must be turned in to the Development Review Official (DRO), assigned to checking them so that possible discrepancies can be corrected at that time. No hearing will be scheduled or heard on an incomplete or inaccurate application.

Section 2-707. Development Review Official.

The Development Review Official (DRO), who shall be qualified pursuant to the requirements of the position, is responsible for the overall coordination of the administration of these regulations. Specifically, the DRO is responsible for receiving applications for development approval, determining whether they are complete, and coordinating the review of the Development Review Committee. If it is determined appropriate by the City Manager, more than one (1) Development Review Official may be appointed.

LIMIT ON APPLICATIONS: It has been the practice of applicants to withhold submission of applications for hearings until the established deadline date, resulting in the largest percentage of applications being received on that date. Because such practice makes it difficult, if not impossible, to properly process such applications, it has become necessary to limit the number of applications which will be accepted for a meeting. The number of applications accepted for any one meeting may fluctuate, depending upon the number of applications carried over from the previous meeting. Hereafter, under this policy of acceptance of only a limited number of applications for any meeting, applications will be considered on a first come, first served basis.

THE BOARD OF ADJUSTMENT APPLICATION: Applications for public hearings before the Board of Adjustment must be completed and submitted to the Planning and Zoning Department. All supporting documents must be submitted at the time the application is submitted. Supporting documents include the following items:

1. Application

2. Applicant's Proposal: The Applicant's proposal is a statement which specifies what the applicant would like for the Board of Adjustment to grant, what the "Zoning Code" permits and the Section of the "Zoning Code" from which the applicant is requesting a variance. The proposal also includes a brief description of the project and type of property involved in the request for a variance. An applicant's proposal may only include one Section of the "Zoning Code"; therefore a project may include more than one applicant's proposal. The proposal is an example of an Applicant's Proposal.

A. *Grant a variance allowing the proposed front porch for the existing single family residence to have a front setback of 24'6 vs. the proposed front porch for the existing single family residence having a front setback of 25' 0" as required by Section 3-1 (f)1., of the "Zoning Code."*

B. *Grant a variance allowing the single family residence and front porch addition to have a maximum ground area coverage of 36% (1,800 square feet) vs. the single family residence and front porch addition having a maximum ground area coverage of 35% (1,750 square feet) as provided for by Section 3-1 (k) of the "Zoning Code".*

3. Letter of Intent: The letter of intent specifies the reasons why an application should be granted. In variances cases, the letter of intent must justify the granting of the variances using the criteria specified in the Section titled Justification for Granting a Variance. Although all of the reasons for granting a variance must be included in the letter of intent, the key element for the justification of granting a variance will be the issue of an unnecessary hardship. The letter of intent is the Applicant's primary means for conveying to the Board of Adjustment their justification for a variance.

4. Standards for Variances: Review Zoning Code Section 3-806 also can be found on page #7 within this packet.

List questions #1 through #7 and indicate why based on these standards the variance should be granted.

5. Owners Affidavit: The Owners affidavit is a document included in the application packet which identifies who the applicant will be, and is an agreement as to the responsibilities of the applicant.

6. Application Fee: Review fee schedule within this packet. Submit all fees as applicable including "Public Hearing Notification Fee" (#18) within fee schedule.

7. Proof of Ownership: If owner of the property has changed in the last year, provide recorded warranty deed.

8. Lobbyist Registration: Register any/all individuals presenting or wishing to speak at the hearing. Complete registration in the City Clerk Office at 405 Biltmore Way, 1st floor. Provide completed form.

9. 1 Original Certified Mailing List: The Applicant must submit a mailing list with the names and mailing addresses of all property owners, according to the latest ad valorem tax records, for all properties within one thousand feet (1000' 0") of the property involved with the variance request. The mailing list must be certified with the following notarized statement:

I hereby certify that I have prepared the attached mailing list, which is a complete list of all property owners who live within (1000'0") one thousand feet of property legally described as Lot(s) _____ Block _____, Section _____, PB/PG _____, which is located at (property address) all of which is according to the latest ad valorem tax record. Property map indicating 1000 radius must be clear and legible.

10. Sets of mailing labels: Three sets of mailing labels which correspond to the certified mailing list must be submitted with the application. Additional copies of mailing labels may be requested for additional hearing if the application involves deferrals, postponements, or appeals.

11. **Survey of property:** Submit current signed and sealed survey (must be less than (5) five years old) and reflect the actual conditions at the site. Survey must indicate if tree disposition will be necessary considering proposed work.

12. **Full size sets of plans** (stamped by the Board of Architects): Two full size sets of plans which have been reviewed and approved by the Board of Architects must be submitted with the application. Following the hearing the plans will be stamped with the variance request and outcome of the hearing. One set of the plans will be retained by the Planning & Zoning Department, and one set will be returned to the Applicant.

13. **13 copies of the plans reduced in size on 11" X 17" paper:** (13) thirteen copies of the plans reduced in size on 11" X 17" paper, which have been reviewed and approved by the Board of Architects, must be submitted with the application.

14. **Photographs of property** (on 8 1/2" X 11" paper): Photographs of the property should show the property in general and the area of the property involved in the application. Where it is appropriate, conditions on neighboring properties should be shown. Photographs can only be accepted if they are labeled and attached on 8 1/2" X 11" paper.

15. **Other** (describe): Other items submitted in connection with a variance application may include letters from neighboring property owners, traffic studies, copies of approvals from other Departments or Agencies, and consultant reports.

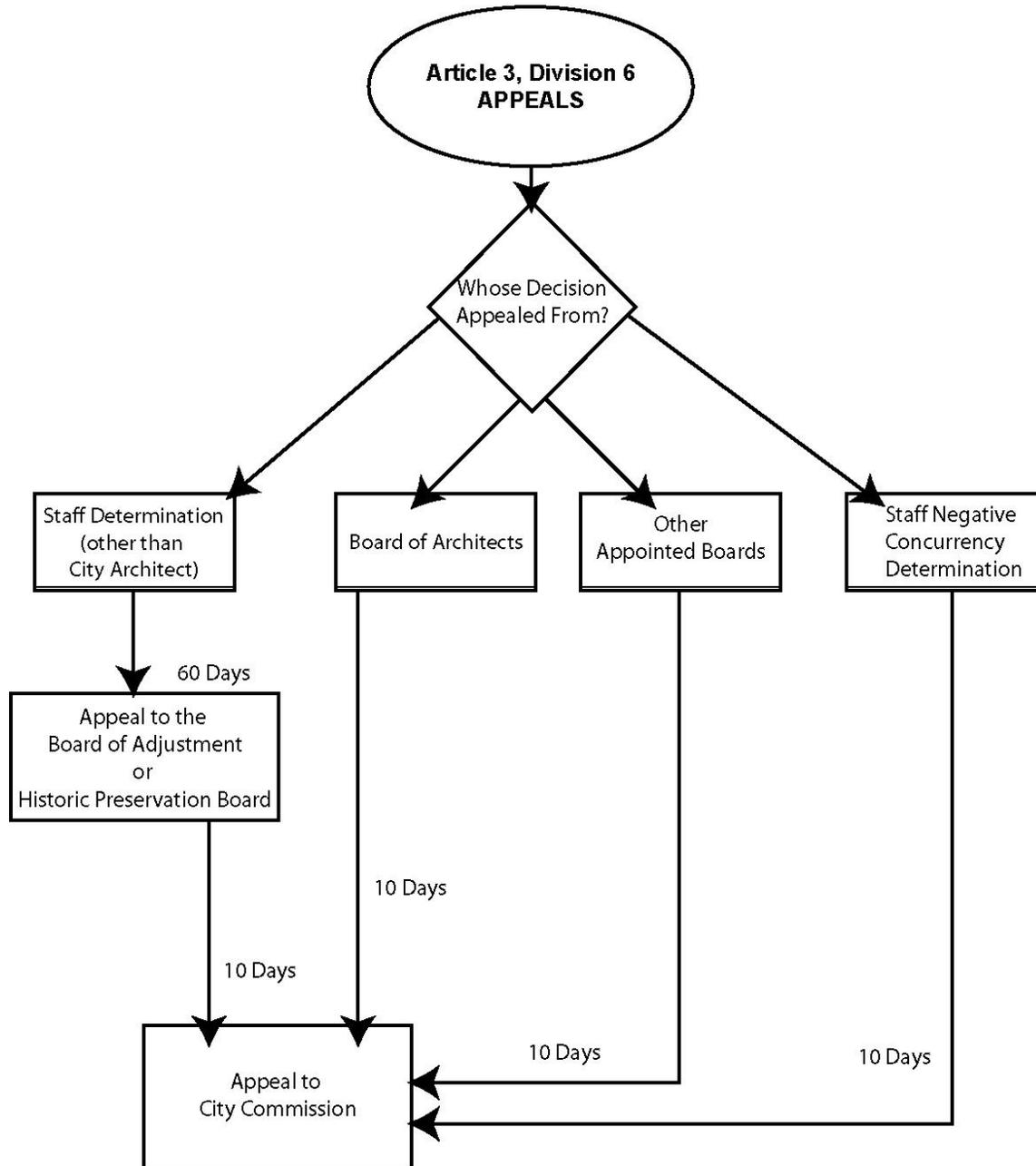
16. **Compact Disc (CD)** including all of the above items excluding # 9 and #10

Division 6. Appeals

Section 3-601. Purpose and applicability.

The purpose of this Division is to set forth procedures for appealing the decisions of City staff where it is alleged that there is an error in any order, requirement, decision or interpretation made in the enforcement or interpretation of these regulations and to set forth standard procedures for appealing the decisions of the City's decision making bodies.

Section 3-602. General procedures for appeals.



Section 3-603. Appeals from negative concurrency determinations.

An appeal from a negative concurrency determination shall be taken to the City Commission by any aggrieved party in accordance with the procedures of Section 3-606.

Section 3-604. Appeals from decisions of City Staff.

Other than a request for reconsideration of a decision of the City Architect, where it is alleged that there is an error in any order, requirement, decision or interpretation made in the enforcement or interpretation of these regulations by City Staff, an appeal shall be taken by an aggrieved party to the Board of Adjustment or the Historic Preservation Board, in the case of an appeal from a decision of the Historic Preservation Officer, no later than sixty (60) days after the decision has been made. Application for postponement of the public hearing of an appeal shall be considered according to the provisions stated in Sections 3-606 and 608(A). See Section 3-303 for City Architect reconsideration provisions.

Section 3-605. Appeals from decisions of the Board of Adjustment, Board of Architects, Historic Preservation Board, and Planning and Zoning Board.

An appeal from any decision of the Board of Adjustment, Board of Architects or Historic Preservation Board, and an appeal of a tentative plat decision of the Planning and Zoning Board, may be taken to the City Commission by any aggrieved party in accordance with the provisions of Section 3-606.

Section 3-606. Procedures for appeals.

The following procedures shall govern the filing of appeals:

A. Appeals from City Staff other than the City Architect. An aggrieved party may file a written Notice of Appeal to the Board of Adjustment or the Historic Preservation Board with the Development Review Official or Historic Preservation Officer, as provided in Section 3-604, within sixty (60) days of the administrative decision being appealed from. The appeal should be accompanied by any relevant documents related to the appeal. The appeal shall be considered by the Board of Adjustment or Historic Preservation Board within fourteen (14) days after receipt of the notice. The Board of Adjustment, the Planning and Zoning Board or Historic Preservation Board shall grant the appeal, with or without conditions, deny the appeal, or respond for further proceedings.

B. Appeals of Board of Adjustment, Board of Architects, Historic Preservation Board, and Planning and Zoning Board. Any aggrieved party desiring to appeal a decision of the Board of Adjustment, Board of Architects or Historic Preservation Board, or a tentative plat decision of the Planning and Zoning Board, shall, within ten (10) days from the date of such decision, file a written Notice of Appeal with the City Clerk, whose duty it shall then become to send a written notice of such appeal to all persons previously notified by the Board in the underlying matter. The appeal shall then be heard by the City Commission at its next meeting, provided at least ten (10) days has intervened between the time of the filing of the Notice of Appeal and the date of such meeting; if ten (10) days shall not intervene between the time of the filing of the notice and the date of the next meeting, then the appeal shall be heard at the next regular meeting of the City Commission and the City Commission shall render a decision, without any unnecessary or undue delay, unless application for deferral has been made as permitted in Section 3-608 of this Division.

C. Stay of proceedings. An appeal shall stay all proceedings in the matter appealed from until the final disposition of the appeal by the City Commission or other Board with jurisdiction. The tendency of an appeal shall toll all time periods applicable to the decision which is subject to appeal until final disposition of the appeal by the Commission or other Board with regard to the appeal.

D. City Commission decision. The City Commission shall conduct a review of the decision of the Board of Adjustment, Board of Architects, Historic Preservation Board, or the Planning and Zoning Board. The appeal shall be based on the record of the hearing before the board, shall not be a de novo hearing, and no new, additional testimony shall be taken. A full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition. The transcript shall be provided seven (7) days prior to the City Commission meeting at which the appeal will be heard with a sufficient number of copies for the City Commission, the City Attorney, the City Manager and the affected departments. The City Commission is authorized to affirm, affirm with conditions, override the decision of the Board of Adjustment, Board of Architects or the Historic Preservation Board, or remand for further proceedings to the applicable Board. Any decision by the Board of Adjustment, Board of Architects or Historic Preservation Board can only be reversed by a majority vote of the City Commission. The granting of any appeal by the City Commission shall be by resolution.

LOBBYIST REGISTRATION AND DISCLOSURE

In accordance with the “Miami-Dade County Code,” Section 2-11.1 (s) all lobbyists are required to register with the City Clerk’s office.

No lobbyists will be permitted to appear before the Board of Architects, Board of Adjustment, Code Enforcement Board, Construction Regulation Board, University of Miami Community Relations Committee, Preliminary Review Committee, and the Ticket Hearing without being registered.

Lobbyist is defined as “all persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the County Commission; (2) any action, decision, recommendation of any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision making process on such action, decision or recommendation which foresee ably will be heard or reviewed by the County Commission, or a County board or committee. “Lobbyist” specifically includes the principal, as described above, as well as any agent, officer or employee of a principal, regardless of whichever such lobbying activities fall within the normal scope of employment of such agent, officer or employee.”