

**CITY OF SOUTH MIAMI
PLANNING BOARD
PUBLIC HEARING APPLICATION
FOR VARIANCE**

Dear Applicant:

Please, review the procedures for application on the following pages and comply with all requirements as listed in the summary sheets attached. A complete application must be submitted before noon on the deadline date in order to be included on the agenda for the scheduled Planning Board meeting. An incomplete submission will not be processed.

All requests for VARIANCES shall be initiated by the filing of a complete application with the Planning & Zoning Department, City of South Miami. Applications shall be executed and sworn to by the owners of at least seventy-five (75%) percent of the property described in the application, or their duly authorized agents, which agency shall be evidenced by a written power of attorney properly sworn to. Be advised that separate applications will be required for rezoning and special use requests.

An application for a variance may only be made for the following:

- | | |
|---------------------|---|
| 1. Yard setbacks | 7. Impervious Coverage |
| 2. Lot Size | 8. Off-street parking |
| 3. Lot Coverage | 9. Open Space |
| 4. Building height | 10. Landscaping |
| 5. Signs | 11. Spacing Requirements for
Medical Marijuana Retail
Centers, and requirements for
spacing, drive-in/drive
through, and hours of
operation for Pharmacies |
| 6. Fences and walls | |

The Department, upon submission of a complete application, is required to make a recommendation to the Planning Board. In the case of zoning variances, the Land Development Code only allows for a variance due to a hardship that runs with the nature of the land. Any other presumed "hardship" by the Applicant is unacceptable. The Department will recommend against any variance that does not involve a hardship that runs with the nature of the land. The criteria for judging a variance application in South Miami is set forth in Section 20-5.9(H) Ord. No. 20-08-1955.

As an independent, advisory body, the Planning Board will make a motion to (1) recommend approval, (2) recommend approval with modifications, or (3) recommend denial of the application, to the City Commission. Planning Board review is not final approval or denial. The applicant must appear before the City Commission for final approval or denial of the VARIANCE request. The City Clerk will schedule the item for a Commission meeting approximately three weeks after the Planning Board meeting and will so notify the applicant.

Applicants are required to provide an electronic copy in a PDF format of all surveys, site-plans, landscape plans, or drawings that are submitted as a part of this application.

ATTACHMENTS: Variance Procedure, Hardship definition, Public hearing application, , Planning Board Meeting Schedule, Lobbyist Registration Forms

VARIANCE PROCEDURE

1. A preliminary meeting will occur between the Applicant and the Planning & Zoning Department to analyze the request.
2. The Applicant must file a complete application with the Department. At the time of filing, the Applicant must submit the following:
 - **Letter of intent**
 - **Justification for hardship**
 - **Proof of ownership or letter from owner**
 - **Current, official survey of the property, signed and sealed by a Registered Surveyor**
 - **Site plan, which specifies that the project meets all other code requirements**
 - **Public notice mailing labels, affidavit, and location map as described below (see #3)**
 - **Affidavit of Neighborhood Awareness Notice and mail receipts as described below (see #4)**
 - **Fees as required by the City of South Miami:**
 - Request to reduce standard by 10% or less: \$2,000
 - Request to reduce standard by more than 10% but less than 20%: \$3,000
 - Request to reduce standard by more than 20%: \$4,000
 - Request for non-quantifiable regulations: \$3,000
 - Cost Recovery Fee of \$2,000 will be required for all applications as well
3. The applicant must submit three (3) sets of mailing labels containing the name and addresses of all property owners of record (as listed in the Miami-Dade County Property Appraiser's updated tax roll) within a 500-ft. radius of the property ,which is the subject of the public hearing. The applicant shall provide a sworn affidavit attesting to the validity of the mailing list. A location map showing the proposed site and all properties within the 500 ft. radius must also be submitted.
4. A notarized affidavit shall be presented to the Planning and Zoning Department within five (5) business days of submittal of an accepted application, attesting that the applicant gave notice of the proposed application to all the property owners within the noted five hundred (500) foot radius by regular U.S. mail with the exception of the abutting, or contiguous, property owners, who shall be made aware via Certified Mail. The affidavit shall be accompanied by a copy of the notification letter together with copies of the Certified Mail receipts.
5. The Department will advertise legal notice in a local newspaper at least ten calendar days prior to the Public Hearing by the Planning Board in accordance with the City Code.
6. The Department will post the Applicant's property with a sign ten days prior to the Public Hearing by the Planning Board. **THE APPLICANT MAY REMOVE THIS SIGN ONLY AFTER FINAL CITY COMMISSION PUBLIC HEARING AND DECISION.**
7. The Department will prepare a Notice of Hearing with an accompanying map. The Department will mail a copy of the notice and the accompanying map to the property owners as shown on the submitted list ten days prior to the hearing.
8. The Department will prepare a staff report that reviews the project against the criterion listed in Section 20-5.9(H) of the Land Development Code. The staff report will then be submitted to the Planning Board for their review.

9. The Applicant must appear before the Planning Board on the night of the Public Hearing. The Planning Board will make a recommendation on the petition to the City Commission. Planning Board review is not final approval or denial. The applicant must appear before the City Commission for final approval or denial.
10. The Department will submit the recommendation of the Planning Board to the City Clerk.
11. The petition will be advertised and scheduled as an item on the agenda of the City Commission by the City Clerk, approximately three weeks after the Planning Board meeting.
12. The applicant must appear before the City Commission on the night of the scheduled commission meeting in order to obtain final approval or denial of the VARIANCE request.

WHAT IS HARDSHIP?

In determining what a hardship is, one criterion is paramount. The "hardship" must be inherent in the land and not based on the people involved or the circumstances in which they find themselves. A classic example of a hardship concerns a lot, which, because of a peculiar shape or an extreme topographical feature, is virtually unbuildable under the yard requirements of the ordinance. This amounts to a defect in the land which deprives the owner of a right enjoyed by all other owners of adjoining lots.

The special conditions which must be found are those which apply uniquely to the property in question and which prevent its being used in the same way as other properties in its vicinity or in the zoning district. Under these conditions, the granting of a variance would not allow a special privilege not enjoyed by other property in the same vicinity or zone. The conditions must be so unusual that the ordinance, as applied to the particular property, would probably be invalid in that a reasonable use of the property is not allowed.

An "unnecessary" hardship is one which is not required in order to accomplish the objectives of the zoning ordinance. Some hardship (or limitation of privilege) is unavoidable. For example, restrictions against commercial use of property in a residential district are not an "unnecessary" hardship, for it is the clear intent of the zoning ordinance to so restrict all property in the district for the benefit of the community. Similarly, mere economic loss is not a valid hardship, particularly if the same loss applies generally to other properties in the district.

Hardship cannot be self-imposed. The owner of a building constructed in violation of the regulations could not claim "hardship" in being required to remove it. Ignorance of the existence or application of zoning regulations does not constitute legally recognizable hardship....

The variance should never be used to correct improper zoning. The hardship may be real and unnecessary, but, it is also general, the proper approach is through a change of zoning by the legislative body, *the City Commission*....

As established by Florida's general municipal zoning enabling act, there must be special conditions in a specific case; the hardship must be unnecessary and the variance, if granted, must not be contrary to the public interest. The latter can be interpreted to mean "not contrary to the comprehensive plan" as outlined in the zoning ordinance.

*Excerpted from Metropolitan Dade County, Florida, ZONING HANDBOOK,
Atlanta: Harland Bartholomew and Associates; September, 1965.*



COST RECOVERY AFFIDAVIT

I hereby acknowledge and consent to the payment of all applicable fees involved as part of my application process. City ordinance 21-14-2199 (attached) requires that the actual costs for reviews of applications to the City will be passed on to the applicant. These fees include but are not limited to: staff time, attorney fees, consultant fees, document preparation, regardless of the outcome of the review.

Please type or print the following:

Date: _____

Relationship to the project: (property owner, architect, developer, attorney)

Full Name: Mr. /Mrs. /Ms. _____

Current Address: _____ City: _____

State: _____ Zip: _____ Telephone Number: _____

Email: _____

I am fully authorized to commit to the expenditures contemplated by this Cost Recovery Affidavit.

Signature

SWORN AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20____

Notary Public, State of Florida at Large

My Commission expires _____, 20____.

ORDINANCE NO. 21-14-2199

An Ordinance of the City of South Miami, Florida, amending Section 2-7, Administrative department; functions and duties; creating a cost recovery administrative program.

WHEREAS, the City Administration has conducted a review of costs incurred by the City for the review of development applications and for other City functions and transactions; and

WHEREAS, the City Administration finds that existing fee schedules do not fully cover the City's costs in the administration and review of applications and requests; and

WHEREAS, the City Administration finds that it is in the best interests of the City for the City to recover the costs for services relating to the review of development applications and other transactions with the City from those persons deriving the benefit of the review and/or of the transaction, as provided herein; and

WHEREAS, the City Administration finds that adoption of these regulations is in the best interest and welfare of the citizens of the City.

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

Section 1. Section 2-7 of the City of South Miami Code of Ordinances is hereby amended to read as follows:

Section 2-7. Administration department; functions and duties.

iii The administration department shall operate directly under the supervision of the city manager and shall consist of the following divisions and duties:

* * * *

iii Cost recovery administrative program.

00 Intent. The intent of this Ordinance is to provide for a procedure for the recovery of costs related to the review required by the City's Land Development Code and/or except as otherwise specified below. Other City Code provisions, so that those persons or entities, who apply for or request the City's review and/or approval. Will be the ones who bear the costs of review and/or approval.

@ Applicability of provisions. The cost recovery required herein shall not apply to applications or transactions that are originally initiated by or on behalf of the City.

iii Cost recovery. The cost recovery administrative program is hereby created as follows:

ill To the extent that any application for review and/or approval by the City under the City's Land Development Code or, except as otherwise specified below, other City Code provisions which require review by City staff, City contractors, agents or consultants, the actual costs for such review shall be passed on to the applicant. Costs for the City Attorney and/or any other outside contractors, agents or consultants of the City shall be charged to the applicant in an amount equal to the actual hourly rate charged to the City.

.(ill Fees charged by Miami-Dade County to process building permits and other development applications on the behalf of the City shall not be affected by this provision.

(iii) Unless prohibited by law, in circumstances in which the City prepares closing papers, deeds, or other documents in conjunction with matters in which the City holds a lien and is requested to subordinate its position, the City shall charge the applicant a reasonable fee, as determined by the City Manager, in an amount equal to the actual costs incurred by the City for the preparation of such documents.

(iv) Application fees for public hearings and other items involving City action or review shall be as set forth in the City's adopted fee schedule, as amended.

Section 2. Codification. The provisions of this ordinance shall become and be made part of the Code of Ordinances of the City of South Miami as amended; that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

Section 3. Severability. If any section, clause, sentence, or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, this holding shall not affect the validity of the remaining portions of this ordinance.

Section 4. Ordinances in conflict. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed.

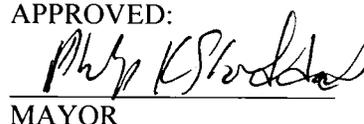
Section 5. Effective Date. This Ordinance shall be effective immediately upon adoption.

PASSED AND ENACTED this 16th day of September 2014.

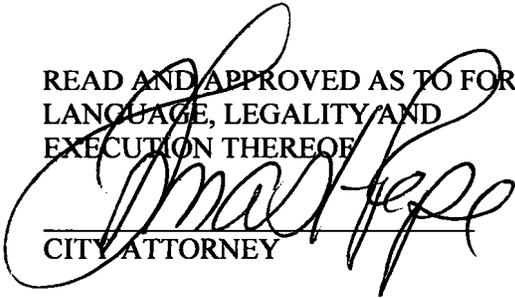
ATTEST:


CITY CLERK

APPROVED:


MAYOR

READ AND APPROVED AS TO FORM
LANGUAGE, LEGALITY AND
EXECUTION THEREOF



CITY ATTORNEY

COMMISSION VOTE: 5-0

Mayor Stoddard: Yea

Vice Mayor: Harris Yea Commissioner Liebman: Yea Commissioner Welsh: Yea Commissioner
Edmond Yea



Office of the City Clerk
6130 Sunset Drive
South Miami, FL 33143

ANNUAL LOBBYIST REGISTRATION

Section 8A-5 – Code of City of South Miami, Florida

All lobbying activity is prohibited unless the registration is filed with the Clerk at least 3:00 p.m. on the day before engaging in lobbying activity

A SEPARATE REGISTRATION IS REQUIRED FOR EACH PRINCIPAL TO BE REPRESENTED

Please Type or Print in Ink

Date: _____/_____/_____

Last Name First Name Middle

Business/Firm Name/Address Street

City State Zip

Note: It is the responsibility of the lobbyist to notify the City Clerk of any changes in address.

Business Phone Fax E-Mail

If you are representing any of the following persons or entities, check the box in front of same: Not-for-Profit Agency, Certified Level 1 C.S.B.E., Certified Micro Enterprise, Certified Tier 1 Community Business Enterprise . If you are the principal of the Principal [see definition in note below], and are only appearing as a representative of the Principal without special compensation or reimbursement for the appearance, whether direct, indirect or contingent check the following box

If you are representing an individual without compensation for your services for non-commercial purposes, check the following box

No registration fee is required for any lobbyist who has checked any of these categories for representation of that person or entity.

As to any business, financial, familial, professional or other relationship with the mayor, any city commissioner, or personnel who is sought to be lobbied, state the name of the person and describe the relationship here: _____

Note: The word "Principal" with a capital "P" is the person seeking to influence a decision, etc. The word "principal" with a lower case "p" is the representative/lobbyist for the Principal who has control over, or authority to act for, the Principal. A "principal" includes the President of a corporation. (RQO 10-09), the Owner, president or chief shareholder of a corporation or an individual who has been designated or who has the apparent authority to make final decisions on behalf of the corporate entity. (RQO 10-09) or a member of the corporate board who has been appointed by the corporation to serve as its representative during negotiations. (RQO 08-41). However, a chief financial officer is not a principal if his normal scope of employment does not include lobbying activities. (RQO 08-41) and if so he is an employee exempt from registering.

THE CLERK SHALL REJECT ANY STATEMENT WHICH DOES NOT DETAIL THE ISSUE ON WHICH THE LOBBYIST HAS BEEN EMPLOYED.

ANNUAL LOBBYIST REGISTRATION

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Please Type or Print in Ink in the column below

What is the Principal's Name	
Who is the Principal's Contact Person	
What is the Principal's Trade Name	
What is the Principal's Mailing Address	
If the Principal is a legal entity, what type of entity is it, i.e., corporation, partnership, trust, LLC, etc.	
Names of all chief officers, managing members, partners and trustees of Principal	
What is the Principal's telephone number	
What is the name of all persons or entities who, directly or indirectly, have a 5% or more ownership interest in the Principal.	

Provide the following information for all of the Principal's Lobbyists who are to be representing the Principal on the issue(s) described in this lobbyist Registration Form. If you need additional space type the information on a separate sheet and attach to this Registration Form.

Type the name and date of employment of each Lobbyist below		Type the address [see note 2 below], phone # and issue for each lobbyist below		
Name	Date	Address	Telephone #	Type the issue to be lobbied below

Note 1 On or before July 1st of each year, every lobbyist must file an expenditure statement with the City Clerk for the preceding calendar year, regardless of the level of activity of the lobbyist, and whether or not the lobbyist has incurred any expenses during the reporting period.

Note 2: It is the responsibility of the lobbyist and the Principal to notify the City Clerk of any changes in address

Legislative Issue Information [] Please check in the foregoing box if the lobbyist is employed for a specific issue and identify, below, the name of each elected or appointed official, city department head, City personnel, member of any agency, board, committee or task forces or anyone else who you will be lobbying and beside each name identify the issue to be lobbied with that person: _____
 If you need additional space, type or print the information on a separate sheet and attach to this Registration Form.

WARNING: Pursuant to Section 2-11.1(s)(9) of the Code of Miami-Dade County, misrepresentation of any facts on this form may subject the person signing this form to be prohibited from lobbying any of the City Personnel, including appointed and elected officials, department heads and members of any agency, board or committee for a period up to five years.

ANNUAL LOBBYIST REGISTRATION

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AFFIDAVIT OF PRINCIPAL

I, _____ as principal of _____,
Name of principal (please print) Entity's Name (please print)

do solemnly swear or affirm under penalty of perjury that all facts contained on this Annual Lobbyist Registration form are true and correct; that I have read and am familiar with the provisions contained in Sec. 8A-5 of Chapter 8A of the City of South Miami's Code of Ordinances, and Sec. 2-11.1(a) of the Miami-Dade County Code and that I have not offered a contingency fee or success fee as defined in Section 2-11.1(s)(7) of the Miami-Dade Code, to any of the lobbyists named below.

Signature of Principal

State of _____ County of _____

Sworn to and subscribed before me this _____ day of _____, 20____.

By _____ who is personally known _____ or produced identification _____ Type of Identification Produced _____.

My Commission expires:
(Notary Seal)

Signature of Notary

AFFIDAVIT OF LOBBYIST

I, _____ as lobbyist for _____,
Name of lobbyist (please print) Principal's Name (please print)

do solemnly swear or affirm under penalty of perjury that all facts contained on this Annual Lobbyist Registration form are true and correct; that I have read and am familiar with the provisions contained in Sec. 8A-5 of Chapter 8A of the City of South Miami's Code of Ordinances, and Sec. 2-11.1(a) of the Miami-Dade County Code and that I have not received or been offered a contingency fee or success fee as defined in Section 2-11.1(s)(7) of the Miami-Dade Code, to any of the lobbyists named below.

Signature of Lobbyist

State of _____ County of _____

Sworn to and subscribed before me this _____ day of _____, 20____.

By _____ who is personally known _____ or produced identification _____ Type of Identification Produced _____.

My Commission expires:
(Notary Seal)

Signature of Notary

For Office Use Only:

Annual Registration Fee: \$500.00 Oct. 1 – Sept 30

Fee Paid: [] Yes [] No [] Cash [] Check [] Visa [] Mastercard [] American Express