

Give Us Five More Feet

Written by Shane M. Graber, BT Contributor
June 2016 - Last Updated June 2016



Height restrictions are bringing in the strip malls

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May 20 marked the sixth anniversary of the controversial 35-foot height limit in the MiMo Biscayne Boulevard Historic District.

While the policy has had a positive impact in some ways, it has also had dire unintended consequences that have hampered our ability to realize our full potential.

It's time to put egos aside and do what's best for the community: Repeal the 35-foot height limit as it stands now.

The height limit was initially passed with the support of then Miami District 2 Commissioner

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Marc Sarnoff and his confidante, Morningside activist Elvis Cruz.

It was opposed by Biscayne Boulevard property owners, urban planners, and neighborhood advocates, who argued that a blanket 35-foot height limit was contrary to the residents' vision as established in Upper Eastside charrettes as part of the Miami 21 zoning plan.

Property owners argued that their property rights were being taken illegally by the city -- and a group has since sued.

In order to compensate property owners, the city established a transfer of development rights (TDR) exchange, which allows property owners to sell air rights above their land to developers looking to increase their building heights and density in the urban core, such as in Brickell or downtown.

In theory, affected property owners are made whole by this exchange, while residents are "protected" from overbearing commercial development.

The TDR component was also touted as a way to provide financial incentives for property owners in the MiMo Historic District to finance renovations, instead of falling back on demolition.

Cruz, who staunchly defends the 35-foot restriction, states in a recent e-mail: "The 35 foot height limit is the best thing I've seen happen to Biscayne Boulevard." The plan has been a "win-win" for residents and business owners, he says, and the law "has protected the character and scale of the MiMo Historic District while also stimulating it economically and protecting the residential neighborhoods." [**Editor's note:** Elvis Cruz's comments are included in the [Letters](#) section. They were publicly circulated prior to publication.]

What is true is that the TDR component has allowed property owners to cash in on their air rights. In some cases, developers have used that money to renovate our MiMo gems -- and this is a good thing!

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The Vagabond Motel is the poster child for the TDR exchange. Owner Avra Jain has heralded TDRs as the saving grace to finance the award-winning renovations of the once-decrepit motel.

TDRs also helped fund renovations for the South Pacific Motel (reopening soon as the South Pacific Wotel); the former Stephens Motel (now the site of a Starbucks); the Sir William Motel (former home of Moonchine restaurant); the 5555 Biscayne Blvd. office building across from Soyka restaurant; and the Sunshine Motel (new headquarters for the Fifty Eggs restaurant group).

These successful historic renovations show how TDRs can provide incentives for developers to adaptively reuse historic properties.

But nobody anticipated that the Cruz-Sarnoff 35-foot TDR exchange would be used to finance *new* construction.

The rule, according to Cruz, has helped build the Milebella building at 61st Street, the new Panther Coffee building at 64th Street, and others coming online soon.

While these new MiMo-inspired buildings are arguably sexy, they are not delivering on what the community asked for. They're single-story, single-use properties -- dressed-up strip malls -- and as the saying goes, you can put lipstick on a pig, but....

We constantly push developers to create smart MiMo-inspired mixed-use buildings, with retail or restaurants lining the sidewalks, and offices or residential units above, with hidden parking.

This is exactly what residents asked for -- a new, dynamic Boulevard.

Developers respond that they cannot create these smart mixed-use buildings because they are handcuffed by the 35-foot rule, which stifles their ability to provide ample parking and mixed

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uses.

So developers do what's legal: They cash in on TDRs and build single-story, single-use buildings.

This was not the intention of the TDR exchange. The intention was to preserve historic structures and compensate property owners for the city having usurped a portion of their property rights.

Single-story strip malls increase traffic compared to mixed-use buildings, which encourage walking and help build a true neighborhood.

Case in point: the Balans building at 67th Street. With ground-floor restaurant and office/retail space, and ten apartments above, the Balans building is a good example of a simple mixed-use structure that adds to the vitality of the Boulevard. (My family's Graber Realty Group recently moved into a ground-floor office space.)

Every day I see the residents who live above walking to shops, restaurants, or Legion Park, thereby reducing their need to drive everywhere.

The irony is that under the 35-foot rule, the Balans building would be illegal today. It's only a three story building, but it's 46 feet tall at the top of the parapet and 57 feet to the top of the elevator head, according to Palm Grove architect Ilija Moss crop, who designed the building.

Granted, adequate parking is sorely lacking, but this is an issue plaguing all MiMo businesses.

Lifting the 35-foot ban doesn't mean we'll be faced with 20-story towers. Lifting the height limit would mean that any of the T4-zoned vacant lands next to Morningside could then be 40 feet high. We're only talking about five feet!

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Yet even this shouldn't be a concern, as all the vacant land abutting Morningside is in permitting now, so the neighborhood is protected.

For the remaining vacant T6 lots on the west side of the Boulevard, which could in theory be built 8 to 12 stories, these lots are located in the MiMo Historic District, meaning that any new buildings must be within acceptable scale and compatibility with the surrounding area, so height protection is already in place.

The maximum I foresee being built there would be five- or six-story structures, and they would need to be tapered down in the rear abutting Palm Grove, which is what the community asked for in the first place.

These buildings could help provide parking, housing, and a better variety of amenities for residents.

The height limit as it stands is destroying our potential by encouraging single-story, car-centric strip malls being financed by a TDR mechanism that was meant to help preserve historic structures.

We need to help bring about the plan we envisioned -- for our residents, not for absentee landowners and automobiles.

The time is right to abolish the 35-foot height limit and unbundle it from the TDR program, which should remain.

Feedback: letters@biscaynetimes.com