



# VILLAGE OF KEY BISCAYNE



Office of the Village Manager

## MEMORANDUM

*Village Council*  
Franklin H. Caplan, *Mayor*  
Mayra P. Lindsay, *Vice Mayor*  
Michael W. Davey  
Theodore J. Holloway  
Michael E. Kelly  
Ed London  
James S. Taintor

DATE: November 12, 2013  
TO: Honorable Mayor and Members of the Village Council  
FROM: John C. Gilbert, Village Manager  
RE: Discussion of Ordinance amending the Zoning and Land Development Regulations

*Village Manager*  
John C. Gilbert

### RECOMMENDATION

The recommendations are explained in the attached Memorandum from the Building, Zoning and Planning (BZP) Director.

### BACKGROUND

On October 22, 2013, the Village Council scheduled discussion of the attached Ordinance for November 12, 2013. The Council also suggested the BZP Director meet with local Architects to determine how the changes would impact the design of new single-family and duplex buildings. The BZP Director met with five (5) Architects and they have recommended that the Ordinance not receive further consideration.

Furthermore, it was the consensus of Council for Councilmembers to submit their suggestions, comments and/or concerns regarding the Zoning and Development Regulations to the BZP Director. Attached as Exhibit A are the comments received from Council.

Mr. Chad Freidman from Weiss Serota Helfman Pastoriza Cole & Boniske provided Resolution and attests to form and legal sufficiency.

**ORDINANCE NO. 2013 -**

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING SECTION 30-100 "SINGLE-FAMILY AND TWO-FAMILY DISTRICTS" AND SECTION 30-184 "AMOUNT OF REQUIRED OFF-STREET PARKING" OF THE VILLAGE CODE OF ORDINANCES, IN ORDER TO AMEND DEVELOPMENT STANDARDS FOR SINGLE-FAMILY AND TWO-FAMILY HOMES; PROVIDING FOR EFFECTIVENESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne (the "Village") has adopted Zoning and Land Development Regulations in order to promote the health, safety, order, convenience, comfort, and general welfare of the public, and to promote and preserve the character and ecological quality of the Village as articulated in the Village's Comprehensive Plan; and

**WHEREAS**, the Village Council has considered various proposed amendments to the development requirements for single-family and two-family homes; and

**WHEREAS**, the Village Council, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance and recommends approval; and

**WHEREAS**, the Village Council finds that the adoption of this Ordinance is in the best interest of the residents of the Village.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS<sup>1</sup>:**

**Section 1.** The preceding "Whereas" clauses are ratified and incorporated as the legislative intent of this Ordinance.

**Section 2. Section 30-100 of the Village Code Amended.** That Section 30-100 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

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<sup>1</sup> Coding: underlined words are additions to existing text, ~~struck-through~~ words are deletions from existing text.

**Sec. 30-100. Single Family and Two-Family districts.**

\* \* \*

**(d) Maximum Lot elevation and drainage.**

(1) *Generally.* For the purpose of regulating Lot elevations there is hereby established three zones. The "Front Zone" being the area between the Building and any adjacent Street(s) but in no event being less than 15 feet from any Street(s). The "Rear Zone" being the area from the Building to the interior and rear property line(s) (or to the waterfront zone, if applicable) and to the back of the "Front Zone." The "Waterfront Zone" being the entire area within 25 feet from any body of water.

a. *"Front Zone."* When a Lot is filled for Development purposes the area delineated as the front zone may not be filled to an elevation greater than two feet above the average crown of road. However, the driveway grade shall not exceed ten percent above the crown of the road.

b. *"Rear Zone."* When a Lot is filled for Development purposes the area delineated as the "Rear Zone" may not be filled to an elevation greater than 2½ feet below the established B.F.E.

c. *"Waterfront Zone."* When a Lot is filled for Development purposes the area delineated as the "Waterfront Zone" may not be filled to an elevation greater than six inches above the bulkhead; however in no instance shall the height of a bulkhead or Lot be raised to a height that exceeds the maximum elevation as established in the "Rear Zone".

[d.]Reserved.

e. "Pools, pool Decks, Terraces." Pools, pool Decks and Terraces which are located in compliance with the required Setbacks for all Structures and are above the height restrictions established in subsection (2) are included in the Lot Coverage calculation. Pools, pool Decks and Terraces that are located in compliance with the required Setbacks and height restrictions are not included in the Lot Coverage calculation.

~~f. Pools, pool Decks and Terraces which do not exceed height limitations as provided in subsection (2) and the required Setbacks for all Structures are not included in the Lot Coverage calculation.~~

[2] Reserved.

(3) *Grading and Drainage.* Within any zone immediately adjacent to the property line, a drainage swale shall be provided to capture the first inch of runoff. The slope to the swale shall not exceed 14 percent. ~~If the grading necessary to provide this swale results in a grade above or below the~~

~~adjacent property grades, a retaining structure shall be provided as determined by the Building Official.~~

(e) *Setback Regulations (minimum).*

Yard	VR Village Residential	VE Village Estate	IR Island Residential	PS Parkside Residential
Front	20 ft. *	25 ft.	25 ft.	20 ft. *
Rear	25 ft. *	25 ft. **	25 ft.	25 ft. *
Side, interior	<p>One Story new construction or one story addition: 7.5 ft.</p> <p>One Story with a second floor addition: sum of the sideyards at the second floor shall be 25% of Lot <u>Width, with no Side Yard less than 7.5 feet.</u></p> <p>7.5 feet for an addition of a second or higher Story which contains less than 50% of the Floor Area of the first floor. <del>****</del> -</p> <p>New construction: Two stories or more: The sum of the Side Yard Setbacks shall not be less than 25% of the width of the Lot with no Side Yard less than 7.5 feet.</p>	<p>New construction: 7.5 minimum setback and sum of sideyards shall be 30% of lot with but no sideyard shall be required to exceed 30 ft.</p> <p>One story additions may follow the existing building wall setback. Second story additions shall have a 15 ft. setback.</p>	<p>New construction: 7.5 minimum setback and sum of sideyards shall not be less than 30% of the width of the Lot; but, no sideyard shall be required to exceed 30 ft.</p> <p>One story additions may follow the existing building wall setback. Second story additions shall have a 15 ft. setback.</p>	<p>One Story new construction or one story addition: 7.5 ft.</p> <p>One Story with a second floor addition: sum of the sideyards at the second floor shall be 25% of Lot <u>Width, with no Side Yard less than 7.5 feet.</u></p> <p>7.5 feet for an addition of a second or higher Story which contains less than 50% of the Floor Area of the first floor. <del>****</del> -</p> <p>New construction: Two stories or more: The sum of the Side Yard Setbacks shall not be less than 25% of the width of the Lot with no Side Yard less than 7.5 feet.</p>



# VILLAGE OF KEY BISCAYNE

## Department of Building, Zoning and Planning

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DT: November 12, 2013

TO: John C. Gilbert, Village Manager

*Director*  
Jud Kurlancheek, AICP

FR: Jud Kurlancheek, *AICP*, Director  
Building, Zoning, and Planning Department

*Chief Building Official*  
Eugenio M. Santiago, P.E., CFM

RE: Summary of the Ordinance amending the Zoning and Land Development Regulations

### RECOMMENDATION

It is recommended that several Sections be approved and the remaining Sections be removed from the Ordinance. These recommendations are explained below.

### BACKGROUND

On October 22, 2013, the Village Council schedule the attached ordinance for first reading on November 12, 2013. The Council also suggested that the Building, Zoning and Planning Director meet with local architects to determine how the changes impact the design of new single family and duplex buildings. After the meeting with the architects and based on MY expertise, I am recommending the following:

PAGE #	SECTION #	ORDINANCE SUMMARY	RECOMMENDATION
2	30-100(d)(1)(e and f)	Re-wording of the regulation dealing with pools, decks, and height restrictions not being part of the lot coverage calculation	Approve: the new wording clarifies the regulation. It does not impact the regulation.
2-3	30-100(d)(3)	Removes the requirement for a retaining wall when grading on the construction site is below neighboring property then a retaining wall is required.	Approve: a change on page 8 paragraph 20 requires a retaining wall for all new construction even if a swale results from the installed grading.

PAGE #	SECTION #	ORDINANCE SUMMARY	RECOMMENDATION
3-4	30-100(e)	Removes the 15 ft. rear yard setback for structures in the single duplex zoning districts which are in the center of the Village.	Partial approval: this proposal removes about 500 sq. ft. or 14% of the permitted air-conditioned space depending on the width of the building. It is recommended the first floor be permitted; however, the wall facing the rear property line cannot have windows and must have architectural elements and landscaping that are approved by the BZP Director.
5-6	30-100(e)(3)	Pool, decks, and screen enclosures – setback increased from 6.5 ft. to 7.5 ft.	Remove: increasing the setback has no impact on the adjacent properties and reduces the available area for these structures on lots that are only 75 ft. x 100 ft.
7-8	30-100(f)(11)	Heating, ventilation and A/C equipment setbacks – setback increased from 4 ft. 7.5 ft.	<p>Remove: increasing the setback has no impact on the adjacent properties and reduces the available area for these structures on lots that are only 75 ft. x 100 ft. In order for this equipment to meet the setback, it will be necessary to indent the building thereby resulting in unusual floor plans and increasing the costs for columns and tie beams. It may force the equipment to be located in the rear or front yards which has a negative impact on the quality of the space.</p> <p>This equipment is already required to be screened which to some extent buffers the noise and views from adjacent properties.</p>
8	30-100(f)20	Requires a retaining wall at the rear of the property and along the sides.	<p>Approve with the condition that the top of the wall be at least 6 inches. above the grade at the lot line. Because CBS walls and foundations are so expensive, in most cases wood fences are constructed.</p> <p>Some architects include retaining walls, other don't. In all cases staff insures the grading plan includes a swale to collect runoff between the lot line and the building. A retaining wall</p>

PAGE #	SECTION #	ORDINANCE SUMMARY	RECOMMENDATION
			will provide a better solution to keeping the water on the property.
8	30-100(f)(27)	Swimming pool pumps, heaters, and similar equipment - setback increased from 2 ft. to 5 ft.	Remove: increasing the setback has no impact on the adjacent properties and reduces the available area for these structures on lots that are only 75 ft. x 100 ft. In order for this equipment to meet the setback, it will be necessary to indent the building thereby resulting in unusual floor plans and increasing the costs for columns and tie beams. It may force the equipment to be located in the rear or front yards which has a negative impact on the quality of the space.
9	30-100(f)(32)	If trash and garbage enclosures are constructed, they have to have 7.5 ft. sideyard setback.	Approve: in most cases garbage enclosures are not constructed. In most cases, garbage cans are placed behind the front yard fence in the sideyard setback.
9	30-184 (a)(5)	Changes the parking requirement for a duplex from 4 spaces to 1 space per bedroom with a minimum of 2 spaces per duplex unit.	Approve: This increases the parking requirement from 4 spaces to 6 spaces for interior lots and as much as 8 spaces per unit for corner lots. There is no room on the property to meet this requirement.
10	30-184(a)(21)	Changes the parking requirement for a single family home from 2 spaces to 1 space per bedroom. Permits tandem parking of cars.	Remove: Most homes have a two car garage and a driveway that allows two more cars for a total of 4. Some homes also include circular driveway that permits 2-3 cars to park. Some homes have a separate paved area in the sideyard for a golf cart.  Carports are required to have a 10 ft. setback except on Mashta Island where 15 ft. is required. Homes with carports will be required to have a circular driveway. This proposal may also result in more garages and fewer carports or more of the front yard will be paved. Since a carport is open on 3 sides and a garage is enclosed, the structure will appear to be larger.

PAGE #	SECTION #	ORDINANCE SUMMARY	RECOMMENDATION
			<p>Nearly all of the homes in the center of the island are 4 or 5 bedrooms. The waterfront and canal front homes are larger because the lots are bigger. Bayfront homes, Smuggler's Cove and Hurricane Harbor homes tend to have more bedrooms that</p>
			<p>would require more of the front yard to be paved.</p> <p>Should the Council wish to proceed with this change, the regulation should permit parking on that portion of the driveway that is on the public right of way if a sidewalk is not present. There should also be a maximum number of required parking spaces.</p>

**EXHIBIT A**

November 4, 2013

To: Jud Kurlancheek

From: Ed London -My Review and Suggested changes to Zoning Code

30-22: Absolves Village of all omissions and errors it makes in reviewing and approving permits.-  
-Residents should be granted preference for variances if they acted in good faith and Village erred in review and issuance of permits that the residents paid for.

30-23: Can you combine lots? Or only unity of title. Why can't you have 3 or more contiguous lots? Jealousy?

30-26: Why can't you use one of your 2 or more lots for access to your main residence?

30-63 (b) You should be able to get a sign variance like any other variance

30-73(b) Site plan review – No mention of access and egress? Does that equal roads?

FAR Regulations: The island is changing. The only reason for the continual downsizing of homes is enviousness. This is not a middle class island anymore. Year after year it has become a haven for the rich and it will continue to be a haven for the rich in the future.

By the end of this year there will be probably less than 400 of the original 1300+ Mackle homes left, and probably within 5 to 7 years there probably will be less than 50 original Mackle homes at the current rate of demolition.

The penalty we impose on our Mackle home neighbors by restricting the FAR is equal to \$60,000 per .01 of FAR restricted.

FAR increase of .01 x 7500 sq ft lot equals 75sq ft. of home

Additional construction cost of interior dry space equals \$100 per sq ft

Increased sale price equals \$900+/- per sq ft

Net gain to land per Increased FAR of .01 equals 75 times \$800 = \$60,000 to each Mackle homeowner per .01 increase in FAR

Increase in Village tax revenue = \$67,500 times 3 mills times 400 homes = \$81,000 per year

We should increase the FAR for 1 story homes to .50 from .36

We should increase the FAR for 2 story homes to .60 from .47

Create a category of 3 story homes with an FAR of .65, with 3<sup>rd</sup> floor of 1,000 sq ft.

We can do this with increased back yards and almost the same lot coverage.

Assuming most new homes will be 2 story we have increased our neighbors assets by \$60,000 times 13 equals \$780,000 per Mackle home and the Village's tax revenue would increase by \$81,000 times 13 equals \$1,053,000 per year.

For many of the Mackle owners this is their main asset and the funds from the eventual sale is important to their lifestyle and retirement. By increasing the tax roll we can reduce the millage for everyone. After the Mackle's are demolished the extended Mackle's will follow

If we are interested in making the Village more livable we should start by mandating a 25' rear setback.

**Our FAR bonuses should be changed:**

**#4: eliminate- Garage/Carport separation- restricts use.**

**#3: Giving bonuses for reducing the minimum front setback to 10', removing the restrictions on a third story, reduce the side yard setback to 15',**

**#6: eliminate- 2<sup>nd</sup> floor less than 50 of first floor- results in greater lot coverage**

**#8: make mandatory**

**#9: Change- from 25% to 7.5' minimum each side- results in house can be moved to front**

**#10: eliminate- Rear Yard minimum 25' to give privacy from home to the rear**

**#11: Change: decrease minimum front yard setback to 10' from 15' and increase bonus.**

**Bonus amounts changed to come up to increased FAR's**

**Building and wall height:(c)(1)(a) remove 3<sup>rd</sup> story restrictions. Doing so could reduce lot coverage**

**Tie beam elevation 27'? bottom or top?**

**1 story height to 16' from 15'**

**Wall height bonus based on 4/12 increase side yard instead of 8/12**

**Remove setback requirement for sidewalls**

**Remove architectural features in sidewalls**

**Remove 10% penalty for 1st floor above BFE if raised to permit 7' clear headroom for underground parking.**

**Soundproof mechanical and pool equipment in side yard or roof to ??? decibels.**

**Change parapet height to 42" from 36"**

**Front zone fill to 3' above crown from 2' above crown**

**Rear zone fill to -1.5' below finished floor from 2.5' below BFE**

**Grading and drainage: add disposal wells and piping to contain water on lot.**

**Fence and Walls**

**Front 6' front from 4' height**

**Rear 8' from 6' measured from max lot elevation.**

**Remove 75% open in front for privacy.**

**Don't permit chain link fences**

**Change height bonus based on 4/12 instead of 8/12**

**Change Minimum front setback for steps to 4.5' from 5' for shorter front yard setback**

**Reduce roof pitch to 2.5/12 in order to maintain 35' height from BFE**

**Permit multiple car parking under entire house and require 1 off street parking space for each bedroom.**

**Sign Ordinance needs complete rewrite for non-residential areas.**