Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.

Memo

To: Village of Key Biscayne Mayor and Council Members

From: Stephen J. Helfman

Date: January 6, 2009

Re: Harbor Drive Dock Regulations

BACKGROUND

As you may recall, on July 23, 2007, the property owners of 210, 230, and 310 Harbor Drive submitted variance applications to the Village seeking to vary the Village's dock regulations to permit proposed piers/docks to extend up to 40 feet into Biscayne Bay where the regulations currently provide for a maximum of 25 feet. The variances were requested by the owners to allow for the mooring of vessels in water depth of at least 4 feet as required by Miami-Dade County Ordinance. One month later, 300 Harbor Drive submitted a similar variance application. On November 27, 2007, the Village Council held quasi judicial hearings on all four applications. After discussion, the Village Council denied all four variances based upon the criteria set forth in the Village Code and the owners filed judicial appeals as well as requests for mediation under Section 70.51 of the Florida Statutes.

MEDIATION

On or about May 21, 2008, mediation was held and a proposed resolution was agreed upon. The agreement was that the Village Administration bring forward to the Village Council a proposed amendment to the Village dock regulations specific to the Harbor Drive issue, which would allow for docks to extend out into Biscayne Bay a distance of up to 40 feet (at which there exists 4 feet of depth). In addition to this amendment, the Village Administration has prepared other proposed amendments to the Village dock regulations specific to Harbor Drive issue. These amendments include, but are not limited to, docks being required to be within a triangle with 60 degree angles along the base of the triangle with the baseline of the triangle not exceeding 100 feet; mooring piles being permitted outside of the 60 degree triangle, but not permitted to extend more than 20 feet from a dock and/or 60 feet from the property line into Biscayne Bay; and the maximum height for a watercraft on a boat lift is such that the bottom of the watercraft may be no more than five (5) inches above the Mean High Water Level.

CHANGES BETWEEN FIRST AND SECOND READING

On December 9, 2008, the Village Council held first reading on the proposed Ordinance. After review and discussion, the Village Council proposed several changes to the proposed Ordinance. In addition, the Village Administration has also proposed some additional minor changes to the Ordinance. The Village Council as well as the Village Administration's changes include, but are not limited to: (1) the provisions of the proposed Ordinance would be limited to properties located along Biscayne Bay from 200 Harbor Drive through 398 Harbor Drive; (2) mooring piles as well as a watercraft will permitted outside of the 60 degree triangle; (3) only one slip shall be permitted per residence; (4) docks are prohibited from extending 100 feet from a breakwater; (5) the maximum height for a watercraft on a boat lift is such that the bottom of the watercraft may be no more than six (6) inches above the Mean High Water Level; (6) the maximum weight of the watercraft shall not exceed 10,000 pounds; (7) the maximum length of a watercraft shall not exceed 50 feet in length; and (8) the maximum distance between mooring piles shall not exceed 55 feet.

DECISION

While the proposed amendments are supported by the Administration and lot owners, the enactment of the changes is subject to your approval as both the Local Planning Agency (LPA) and as the legislative governing body for the Village.

If the proposed amendment is enacted in a form and content acceptable to the owners, they have agreed to withdraw all appeals and abandon the mediation process. If the amendments are not adopted, the appeals will continue and we will continue to defend the Council's decisions.

ORDINANCE NO. 2009-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING SECTION 30-100 "SINGLE FAMILY AND TWO-FAMILY DISTRICTS" RELATING TO DOCKS AND MOORING PILES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the "Village") has adopted provisions regulating docks and mooring piles in order to provide for the safety of boaters, protect the environment, and preserve aesthetic visual corridors within the Village; and

WHEREAS, because of Miami-Dade County's regulations governing the construction of docks and mooring piles, several of the Village's residents have been unable to construct new docks and mooring piles along Biscayne Bay; and

WHEREAS, the Village Council desires to modify the Village's regulations, so that the residents along Biscayne Bay will be able to construct docks and mooring piles in accordance with Miami-Dade County's regulations; and

WHEREAS, the Village staff recommends approval of the proposed modifications to the Village's regulations and finds that these regulations are consistent with the Village's Comprehensive Plan; and

WHEREAS, the Village Council finds that the proposed modifications will continue to provide for boater safety, protect the environment, and preserve the aesthetic visual corridors within the Village; and

WHEREAS, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance and has recommended approval; and

WHEREAS, the Village Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS[1]:

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

Section 2. Amendment to Section 30-100 of the Village Code. Section 30-100 "Single Family and Two-Family districts" of the Village Code of Ordinances is hereby amended to read as follows:

ARTICLE V. SCHEDULE OF DISTRICT, USE, AND SETBACK REGULATIONS

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

(a) Purpose and Uses.

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(f) Permitted encroachments in Required Yards.

(1) *Boat storage.*

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(3) *Docks and mooring piles.*

a. General Regulations. No docking facility within the single family districts in the Village of Key Biscayne shall be constructed without prior written approval by the Village of Key Biscayne Building, Zoning and Planning Department. The Village reserves the right to deny such permit for any docking facility which is determined, under the criteria provided herein

[1] Coding: underlined words are additions to existing text, struck through words are deletions from existing text, shaded text reflects changes made from First Reading.

and by applicable law, to be detrimental to the equitable, safe, and adequate navigation of all Waterways in the Village.

1. All docks, davits, fenders, watercraft and mooring piles ~~must~~ shall be set back a minimum of ten feet from each side property line extended.

2. No mooring pile shall have a height exceeding 13 feet above NGVD (National Geodetic Vertical Datum) nor extend into the waterway a distance more than 25 feet or 20 percent of the Waterway width at the point of extension, whichever is less.

3. All docks and mooring piles shall be constructed in accordance with Section D-5.03(2)(a) of the Dade County Public Works Manual (see diagram below). All watercraft or any portion thereof shall be docked or moored inside an area as depicted in the triangle diagramed below, and must be docked parallel to the bulkhead.

GRAPHIC LINK: Click here for graphic

4. Mooring piles and Dolphins may not extend more than 20 feet from a dock. Mooring piles and Dolphins on Biscayne Bay shall not extend more than 25 feet from the bulkhead.

5. No dock shall extend from a bulkhead into any canal, lake, or waterway a distance greater than ten feet, or ten percent of the width of the waterway, whichever is less. Notwithstanding the foregoing, no dock or mooring pile shall extend into Biscayne Bay a distance of more than 25 feet from the bulkhead.

6. Where the width of a waterway does not permit the placement of a dock or outer mooring pile, fender mooring piles may be placed at a distance not to exceed 18 inches from the bulkhead.

b. Specific Regulations. The following provisions shall apply only to those properties located along Biscayne Bay at: 200 through and including 398 ~~452~~ Harbor Drive~~; 468, 478, 490, and 500 Bay Lane; 485 W. Matheson Drive; 490 W. Matheson Drive; and 1, 3 ,5 ,7 ,9, 11, 15, and 22 Harbor Point Drive.~~

1. No dock shall extend from a property line into Biscayne Bay a distance greater than 40 feet. The dock shall fit within a triangle with 60 degree angles along the base of the triangle as depicted below. The baseline of the triangle shall not exceed 100 feet.

[CODIFIER TO INSERT BISCAYNE BAY 60 DEGREE TRIANGLE GRAPHIC]

2. No mooring pile shall extend more than 20 feet from a dock and may not extend more than 60 feet from the property line into Biscayne Bay. Mooring piles and watercraft are permitted outside of the 60 degree triangle.

3. If the property line is a concave or convex arc, the projection of one side of the dock may exceed the 40 ft. maximum by no more than 6 ft.

4. No more than one ~~two~~ slip~~s~~ shall be permitted per residence. ~~Slip(s) which are occupied by a~~ A watercraft owned by a guest may be moored no longer than 24 hours within a slip.

5. No dock shall project within 100 ~~50~~ ft. of a breakwater ~~jetty~~.

~~6. No dock shall be within 25 ft. of a marked channel.~~

6.~~7~~. A boat lift shall not encroach into the required 10 foot side yard setbacks. Lift arms may extend beyond the 60 degree triangle, but shall not extend beyond the mooring piles.

7.~~8~~. The maximum height for a watercraft on a boat lift is such that the bottom of the watercraft may be no more than six ~~five~~ (6~~5~~) inches above the Mean High Water Level. The maximum weight of a watercraft and its engines on a boat lift shall not exceed more than 10,000 pounds.

8. A watercraft shall not exceed a maximum of 50 ft. in length, which shall be measured from one end (stern or bow) of the hull to the other end along the center line of the hull.

9. The maximum distance between mooring piles shall be 55 ft.

Except as modified by this subsection b all other provisions in Section 30-100 shall apply.

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Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Conflicts. All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 5. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 9th day of December, 2008.

PASSED AND ADOPTED on second reading this ___ day of January, 2009.

_____
MAYOR ROBERT L. VERNON

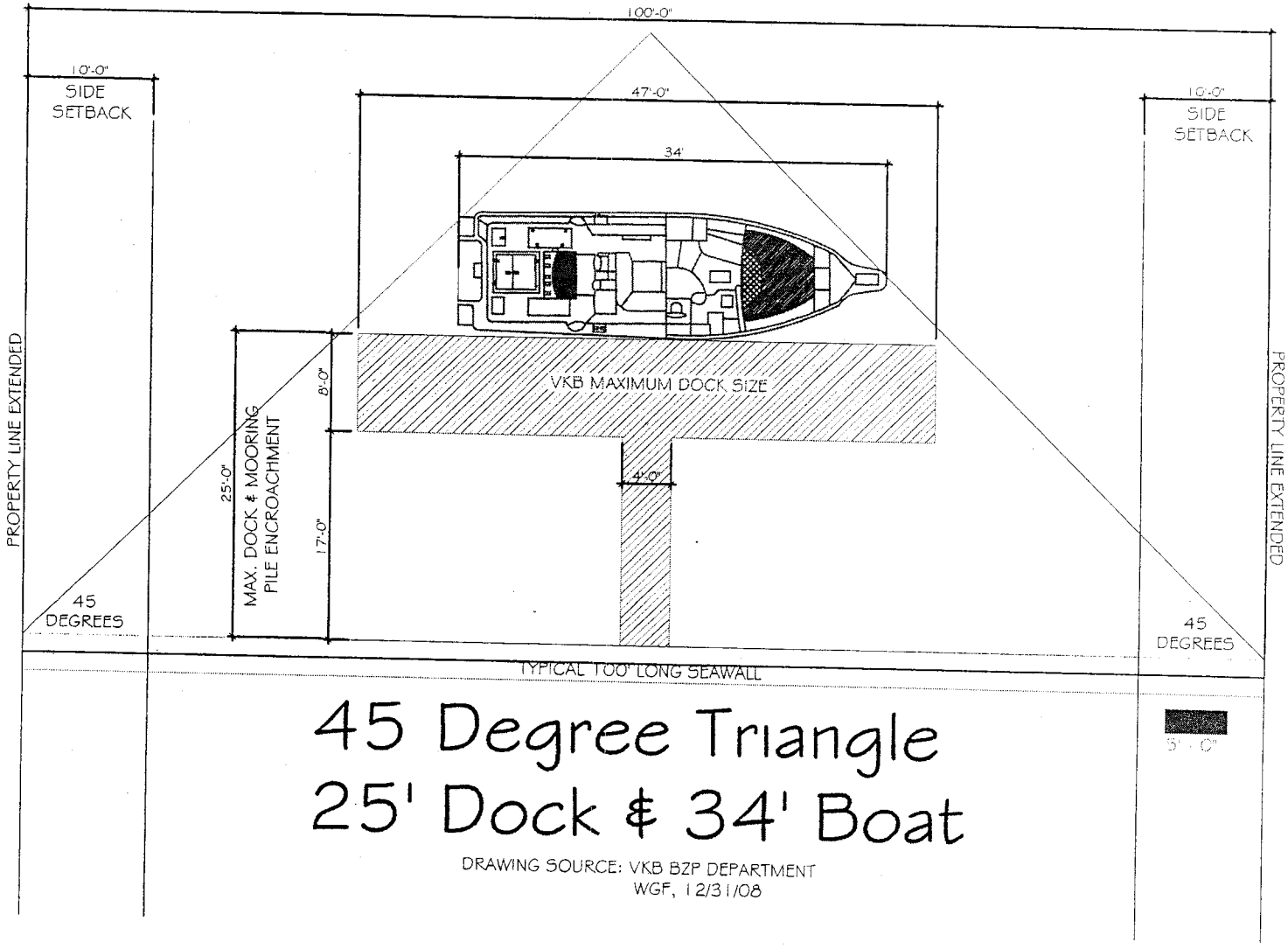
ATTEST:

_____
CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
VILLAGE ATTORNEY

100' WIDE LOT
Current Regulations

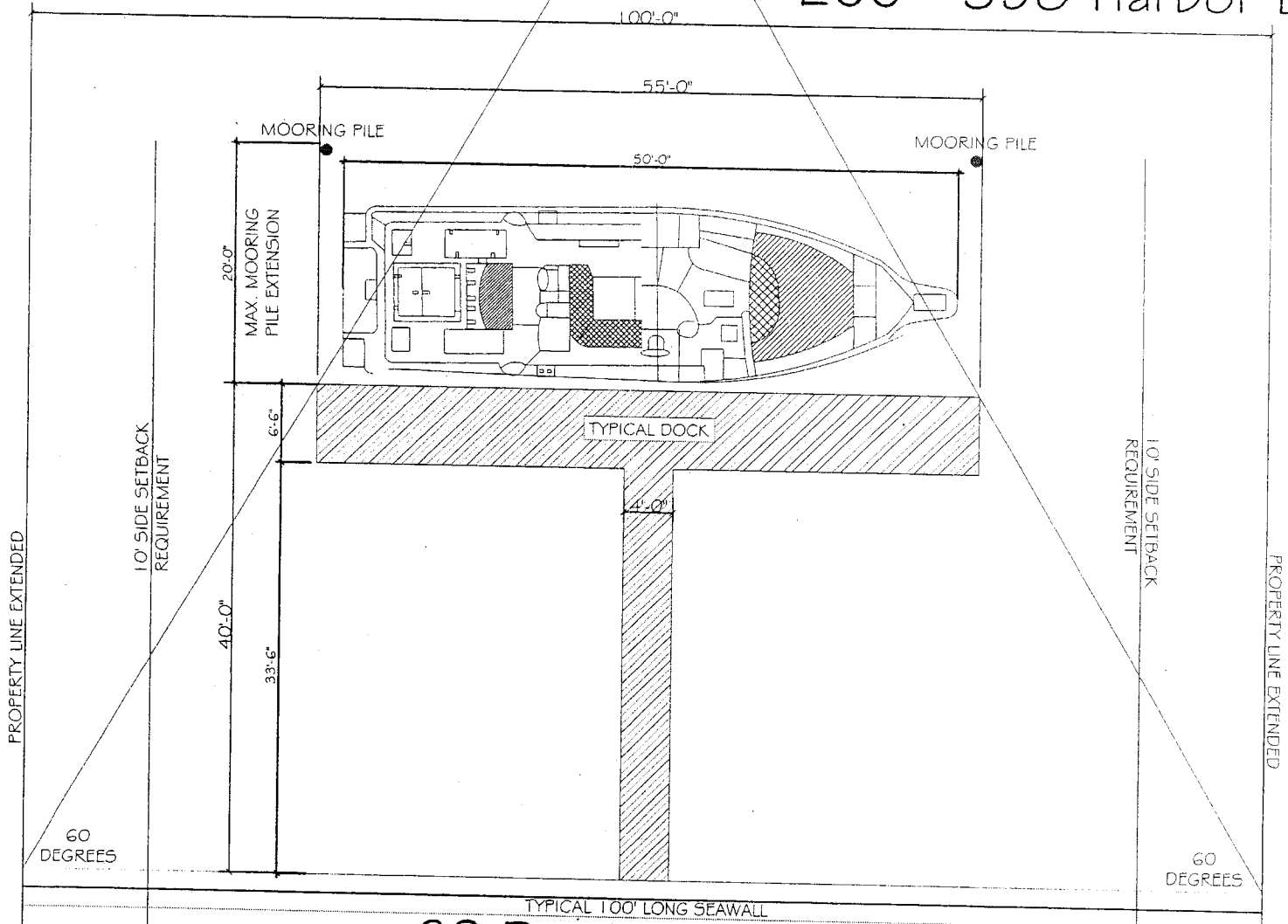


45 Degree Triangle
25' Dock & 34' Boat

DRAWING SOURCE: VKB BZP DEPARTMENT
WGF, 12/31/08

100' WIDE LOT

Proposed Regulations for 200 - 398 Harbor Drive

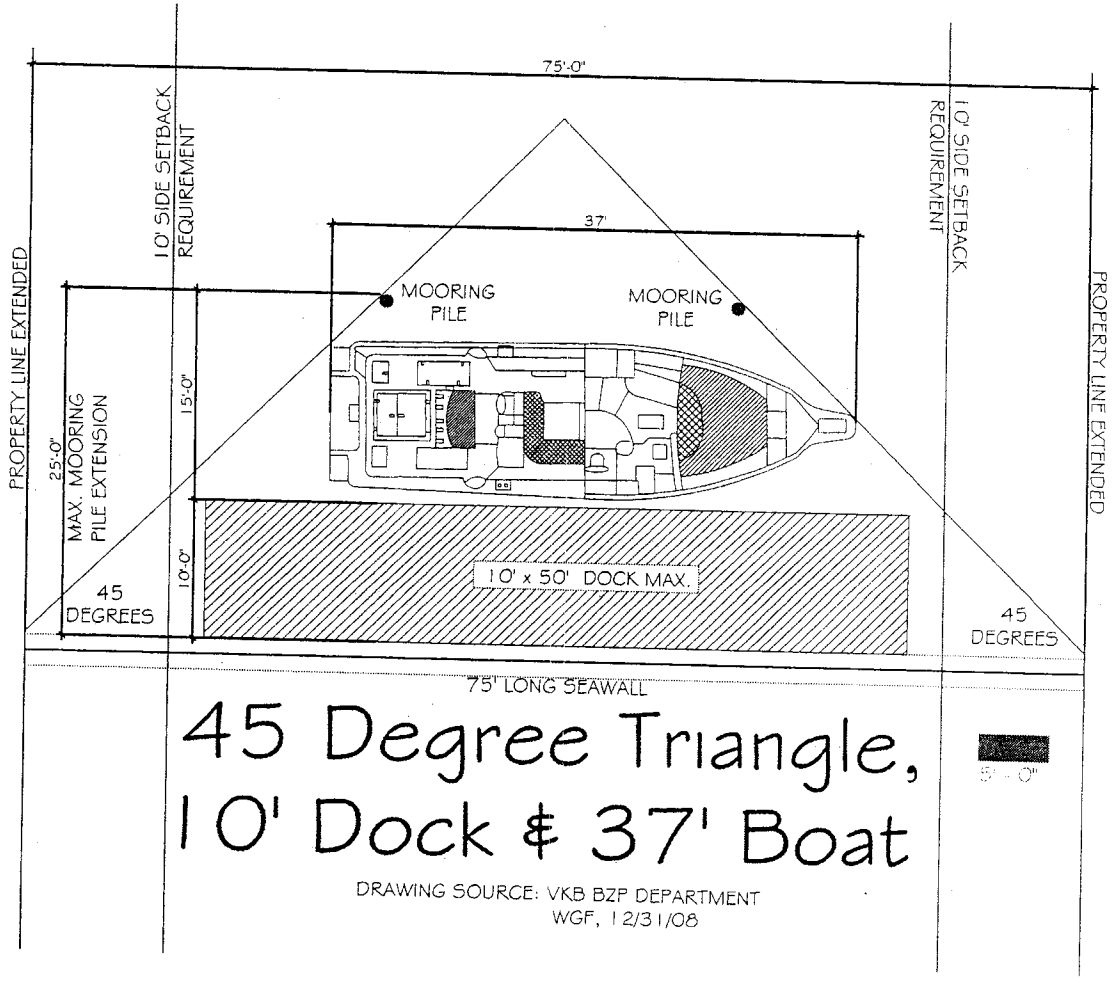


60 Degree Triangle, 40' Dock & 50' Boat

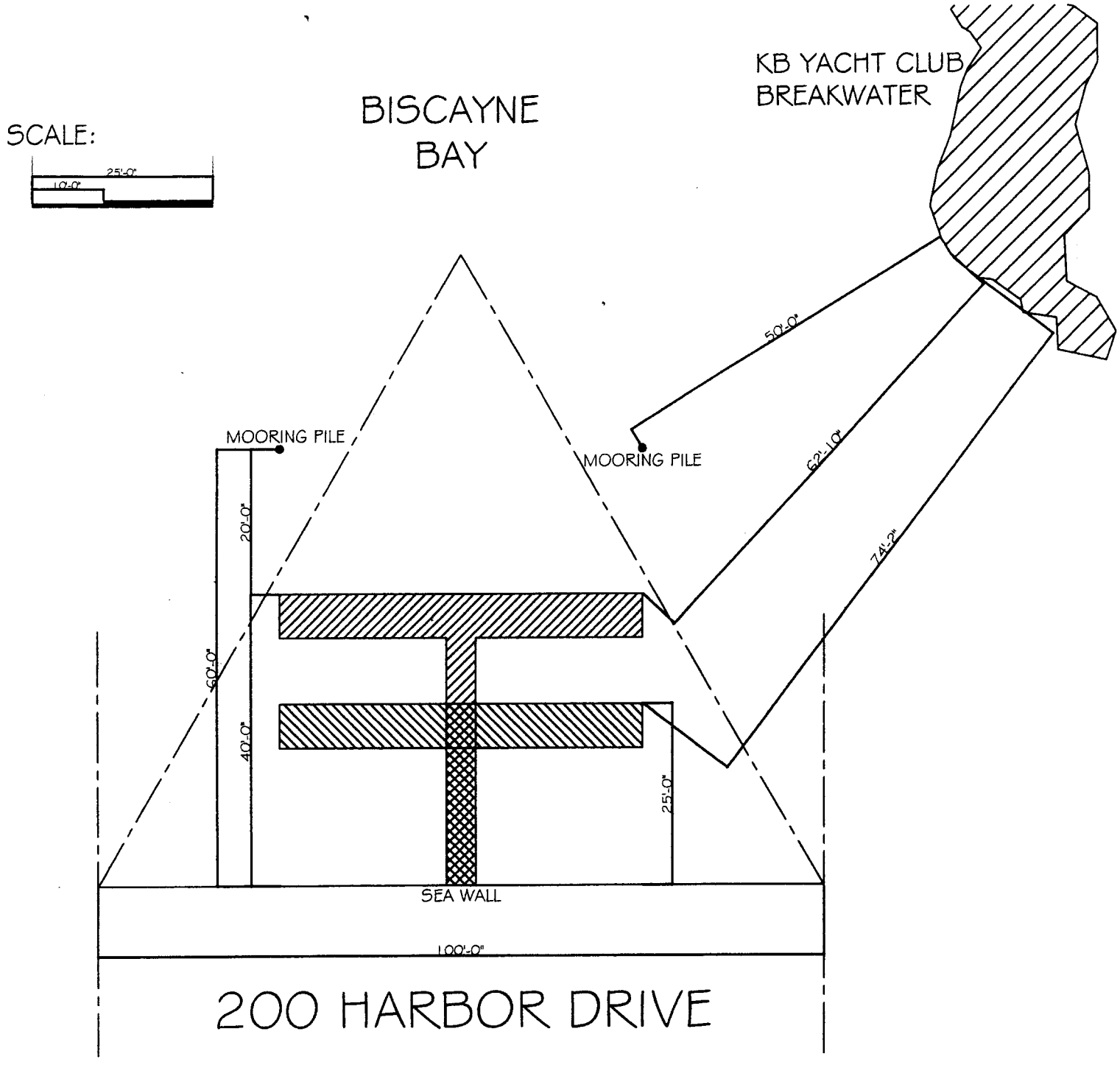
DRAWING SOURCE: VKB BZP DEPARTMENT
WGF, 12/31/08

75' WIDE LOT

Current Regulations for Canals, Smuggler's Cove, & Hurricane Harbor Properties



45 Degree Triangle, 10' Dock & 37' Boat

DRAWING SOURCE: VKB BZP DEPARTMENT
WGF, 12/31/08

200 Harbor Drive / KB Yacht Club