

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

# Memo

To: Village of Key Biscayne Mayor and Council  
From: Stephen J. Helfman, Village Attorney's Office  
Date: May 20, 2009  
Re: Clarifications of Land Development Regulations

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## **I. Background**

Attached to this Memorandum is a proposed Ordinance which is intended to clarify two separate provisions of the Village's Land Development Regulations. The first clarification addresses the method of determining the rear setback for waterfront properties and the second clarification addresses the code provision used to identify a location of zoning district boundaries.

While we believe that these provisions are unambiguous, each is the subject of a challenge in ongoing litigation between the Village and two individual lot owners. The first involves the helicopter flights from the United Real Estate Ventures property at 490 West Matheson Drive. The other involves a determination of the rear setback on the property at 7 Harbor Drive.

## **II. Recommendation**

Our office, together with the Village administration, recommends that the Ordinance be adopted for the purpose of conclusively establishing the purpose of zoning code provisions and specifically, to offer these amendments to the respective courts in the ongoing litigation with a hope of concluding each matter on a summary basis without the need for further trials or appeals.

**ORDINANCE NO. 2009 - \_\_\_\_\_**

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA AMENDING SECTION 30-3 (“METHOD”) OF ARTICLE I (“TITLE, INTENT, PURPOSE, METHOD, AND FEES”) OF CHAPTER 30 (“ZONING AND LAND DEVELOPMENT REGULATIONS”) OF THE CODE OF KEY BISCAYNE, FLORIDA, REPEALING SECTION 30-3(d)(4) AND PROVIDING CLARIFICATION ON INTERPRETATION OF CODE SECTION 30-3(D); AMENDING CODE SECTION 30-109 (“SUPPLEMENTAL SETBACK REGULATIONS”) TO ADD SECTION 30-109(4) CLARIFYING THE DETERMINATION OF CERTAIN PROPERTY LINES FOR SETBACK PURPOSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR EFFECTIVE DATE.**

**WHEREAS**, Section 30-3(d) of the Code of Key Biscayne, Florida (the “Code”) describes how to interpret the Official Zoning Map of the Village and, in some cases, locate zoning district boundaries within the Village; and

**WHEREAS**, an issue has arisen regarding the applicability of section 30-3(d) to the determination of setback and other requirements of the Land Development Regulations of the Village of Key Biscayne, Florida; and

**WHEREAS**, the Village Council finds and affirms that the application of section 30-3(d) was and is intended solely for interpreting zoning district boundaries; and

**WHEREAS**, the Village Council wishes to clarify and reaffirm the purpose and applicability of section 30-3(d) of the Code;

**WHEREAS**, the Village Council further wishes to clarify the method for determination of setbacks for certain waterfront properties by establishing supplemental regulations;

**WHEREAS**, the Village Council finds that amending the Village Code in accordance with this ordinance is in the best interest of the Village and its residents.

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

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended.** That section 30-3 of the Code is hereby amended to read as follows:

\* \* \*

**Sec. 30-3. Method.**

(a) *Listing of zoning districts.* The Village shall be divided into zoning districts of such number, shape and area as may be deemed best suited to carry out the purpose of these Regulations. Such districts shall be represented on the Official Zoning Map adopted, and from time to time amended, by the Village Council. The table below explains the symbols used for each designation:

TABLE INSET:

<p><i>Single Family Districts</i></p> <p>IR Island Residential VE Village Estate VR Village Residential</p>	<p><i>Specialized Use Districts</i></p> <p>PC Private Club GU Government Use PROS Public Recreation and Open Space PUD-1 Ocean Club PUD-2 Grand Bay PUD-3 Key Colony</p>
<p><i>Single Family and Two-Family District(s)</i></p> <p>PS Parkside Residential</p>	<p><i>Office District</i></p> <p>0-1 Low Intensity Office</p>
<p><i>Multiple Family Districts</i></p> <p>RM-10 Low Density Multiple Family RM-16 Medium Density Multiple Family RM-30 High Density Multiple Family</p>	<p><i>Commercial Districts</i></p> <p>C-1 Low Intensity Commercial</p>
<p><i>Hotel Districts</i></p>	<p><i>Other Districts</i></p>

<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown as ~~strikethrough~~.

HR Hotel Resort	I Institutional
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Note: District Regulations may be found in Article V.

(b) *Zoning district designation of government owned property.* All government owned or ground leased properties shall be deemed zoned GU, Governmental Use, although they may not be so designated on the Official Zoning Map.

(c) *Repository of the Official Zoning Map.* The Official Zoning Map shall be on file and available to the public in the Building, Zoning, and Planning Department.

(d) *Interpretation of district boundaries.*

(1) A district name or symbol shown on the Official Zoning Map indicates that the Regulations pertaining to the district designated by that name or letter-number combination extend throughout the whole area in the municipality bounded by the district boundary lines within which such name or symbol is shown or indicated, except as otherwise provided by this section.

(2) In cases where a boundary line is given a position within a Street or alley, Easement, canal, navigable or non-navigable Waterway, it shall be deemed to be in the center of the Right-of-Way of the Street, alley, Easement, or Waterway.

(3) If a site is crossed by a zoning district boundary and thus lies in more than one district, the district boundary shall be treated as if it were a Lot line separating the two separately zoned parcels.

~~(4) The boundary line for properties having a Lot line adjacent to the bay or a canal is the bulkhead. If a bulkhead does not exist, the property line shall be as shown on a survey that is signed and sealed by a registered surveyor in the State of Florida.~~

~~(5)~~ (4) The boundary line adjacent to the Atlantic Ocean is the erosion control line as determined in accordance with Florida Statutes.

(6) (5) This subsection 30-3(d) is intended and shall be used solely for the purpose of interpreting and locating zoning district boundaries within the Village. It shall not be used in any other manner or for any other purpose, directly or indirectly, including, without limitation, the determination of the dimension of any setback requirements under any other term, provision, or definition of these Zoning and Land Development Regulations of the Village of Key Biscayne, Florida and shall be retroactive to the date of the original adoption of section 30-3(d) of the these Zoning and Land Development Regulations of the Village of Key Biscayne.

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## Section 30-109. Supplemental Setback Regulations

### General Provisions

(1) *Determination of Yard.* When the definition of Yards do not clearly determine the Front, Side or Rear Yard, the Building, Zoning and Planning Director shall be guided by the pattern of Development in the vicinity of the Lot and the platting of the Lots in question in determining what is applicable Yard.

(2) *Double Frontage Lots.* The required Front Yard shall be provided on each Street frontage. Unless, provided for in these Regulations, Accessory Structures shall not be provided in either yard.

(3) *Private roads.* The Setback shall be measured from the centerline of a private road.

(4) *Determination of Certain Property Lines for Setback Purposes.* Notwithstanding any other provisions of this Code, when any land abuts submerged lands owned by the State of Florida in its sovereign capacity, the property line for purposes of determining setbacks shall be the mean high water line as defined and construed pursuant to the Coastal Mapping Act (F.S. 177.25 to 177.40), except where such land abuts the Atlantic Ocean, in which case the property line shall be the Erosion Control Line.

**Section 3. Severability.** That 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. Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Village of Key Biscayne; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 5. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading and shall be retroactive to the date of the original adoption of Section 30-3(d) and Section 30-109 of the Village's Zoning and Land Development Regulations and specifically, the repeal of Section 30-3(d)(4) shall be as of the original date of its adoption and the establishment of Section 30-109(4) shall be as of the original date of adoption of Section 30-109.

**PASSED** on first reading this \_\_\_\_\_ day of May, 2009.

**PASSED AND ADOPTED** on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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MAYOR ROBERT L. VERNON

ATTEST:

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CONCHITA ALVAREZ, CMC VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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VILLAGE ATTORNEY