



V I L L A G E O F K E Y B I S C A I Y N E

Office of the Village Manager

Village Council

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

DATE: May 27, 2013
TO: Honorable Mayor and Members of the Village Council
FROM: John C. Gilbert, Village Manager
RE: Ordinance amending the Zoning and Land Development Regulations

RECOMMENDATION

It is recommended that the attached Ordinance be approved.

BACKGROUND

On May 13, 2014, the Village Council reviewed an Ordinance that amended the Zoning and Land Development Regulations. During the review, the Council reached a consensus, with the exception of the 15 ft. front and rear yard setback requirements, that the Ordinance be amended with modifications and directed that staff re-draft the Ordinance. These modifications are presented in the attached Ordinance.

At the meeting, staff presented a three (3) dimensional presentation that illustrated the implications of removing one or two stories of a single family home in the rear setback. One of those implications was a reduction in the front yard setback from 15 ft. to 10 ft. In order to provide additional time to study these implications, the Council continued the meeting to May 27, 2014. Based on drawings that will be submitted to the Council at the meeting, we are now recommending that:

1. Only one story in the rear yard be permitted and that access to roof deck is prohibited; and,
2. The 15 ft. front setback be retained. Staff has determined that the square footage that will be lost from the removal of the second floor in the rear yard can be made up in other areas of the site.

The BZP Director has found that the Ordinance is consistent with the review criteria as set forth in the Zoning and Land Development Regulations and recommends that it be approved.

Reviewed by Chad Friedman from Weiss Serota Helfman Pastoriza Cole & Boniske as to form and legal sufficiency.

ORDINANCE NO. 2014 -

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 FOLLOWS¹:

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

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text.

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:

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

* * *

Sec 30-100(b)

VR and PS Districts: Designs that do not receive both bonuses 3 and 11 shall be assigned a minus .10.

VE and IR Districts: Designs that do not receive bonus 11 shall be assigned a minus .10.

Commented [JK1]: Staff recommends keeping this regulation. The regulation is designed to encourage a 15 ft (10 ft. proposed in this ordinance) setback in the front yard for a portion of the house with the remaining portion setback 25 ft. This alternating setback discourages "box like" designs of homes that face a street.

| FAR Bonus Criteria | Base FAR Increase |
|--|---|
| 3. Front yard setback bonus | .006 for every foot the Main Permitted Use is setback less than 20 ft. to a minimum of 15 ft. |
| 11 VR and PS Districts: Structures that provide a front Setback of less than 20 ft. which have a roof at least three ft. lower than the roof of the main Structure | .03 |

Sec. 30-100(b)(10)

| FAR Bonus Criteria | Base FAR Increase |
|-----------------------------|---|
| 10. Rear yard setback bonus | .003 For every foot the Main Permitted Use is setback less than 20 ft. to a minimum of 15 ft. |

Commented [JK2]: This bonus was originally removed as the first and second floor in the rear yard with a 15 ft. setback was proposed to be removed. Since the Council is now considering keeping the 15 ft. rear yard setback for the first floor and removing the second floor, this bonus should be retained.

Sec. 30-100(c)(2)(d)

(2) Maximum exterior Wall height, length, and elevation of the lowest floor.

- d. 25 percent of each entire exterior Wall, shall have a setback that is at least three feet greater than the remaining portion of the Wall. Terraces, Balconies and/or Porches shall not be counted in determining the length of the Wall.

- g. The maximum elevation of the lowest finished floor shall be the Base Flood Elevation. Except for garages which may have a ceiling above the Base Flood Elevation with a height of 7 ft. 6 in. from the finished floor elevation. No more than 50% of the floor may be at that elevation.

(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.

Commented [JK3]: Paragraph (f) below is relocated to paragraph (e).

~~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.~~

Commented [JK4]: Paragraph (f) is relocated to paragraph (e) above.

[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.~~

Commented [JK5]: A retaining wall is required See page 9 paragraph 20.

(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 Width <u>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. **** -</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 Width, <u>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. **** -</p> |

Commented [JK6]: Clarifies the minimum sideyard setback.

| | | | | |
|----------------------|--|-------------------------------|-------------------------------|--|
| | <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 or second floor additions: Lots with a lot width of 100 ft. or more shall have no Sideyard less than 15 ft.</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 or second floor additions: Lots with a lot width of 100 ft. or more shall have no Sideyard less than 15 ft.</p> |
| Side facing a Street | 15 ft. | Same as interior side setback | Same as interior Side setback | 15 ft. |

* Allowable 15-foot Front and Rear Yard Setback subject to the requirements of the table below. The 15-foot rear Setback requires the installation of a dense landscape screen with a height of at least ten feet at time of planting. There shall be no access from the building or the ground to a deck or roof to that portion of the building that is in the required rear yard. The maximum number of stories in the required rear yard is one (1).

Commented [JK7]: Prevents the roof from being used as a deck. Limits the number of stories to one (1).

Commented [JK8R7]:

Commented [JK9]: Provides a clarification that regulations relates to a wall of a building.

| Number of Stories | Height of Building Wall | Building Wall Length |
|-------------------|--|-----------------------------|
| 1 | 15 ft. *** | 40% of the width of the Lot |
| 2 or more | 22.5 ft. | 34% of the width of the Lot |
| Garages | Shall provide a 20 ft. Setback if the entrance faces a Street; The elevation facing the Street shall appear as an integral residential part of the Structure including windows and finishes. | |

*That portion of the building in the required yard with a 15 ft. setback is limited to one story. There shall be no access to roof deck from the building or from the ground.

** Within the Village Estate District the following properties shall provide a rear Setback of 50 feet: 200—290 Harbor Drive.

*** However, nothing herein shall prevent vaulted or clearstory Walls with a maximum height of 22.5 feet.

~~**** For a tri-level home, the portion of the floor area associated with the half level shall not count as part of the second story floor area.~~

Commented [JK10]: The definition of Floor Area addresses this regulation.

(f) *Permitted encroachments in Required Yards.*

(1) *Balcony Regulations.*

- a. Railings or Walls shall be at least 50 percent open.
- b. When facing a street, the minimum projection (depth) shall be four feet and minimum length eight feet.

(2) *Boat storage.*

- a. The term "boat" as used herein includes vessels and other watercraft, as defined in F.S. § 327.02(36).
- b. Boats less than 26 feet in length, not more than ~~8 feet~~96 inches in width and 13 feet six inches in height (bottom of hull to the highest point on the boat including Towers and T tops), may be stored in the VR, VE, IR, and PS zoning districts subject to all the following conditions:

1. No more than one boat may be stored on any one Lot unless stored in an enclosed garage; and
2. Boats and place of boat storage shall be kept in a clean, neat and presentable condition; and
3. No major repairs or overhaul Work on or for a boat shall be made or performed on the Lot; and
4. The boats shall not be used for living quarters, and shall be placed on and secured to a transporting Trailer, however, nothing herein shall authorize the Parking of a Trailer on any Lot without a boat. Personalized watercraft (jet ski, waverunner or similar watercraft) as defined in F.S. § 327.39 are required to be placed on a Trailer pursuant to this section (canoes as defined in F.S. § 327.02(3) are not required to be placed on a Trailer); and
5. Boats stored in a Yard that faces a Street shall comply with the following: The Trailer wheels shall be placed on a hard paved surface and the boat shall be perpendicular to the house.

(3) *Decks, pools, and screen enclosures.*

- a. Decks shall provide a minimum five-foot Setback to any Lot line; Zero feet Rear Yard Setback for waterfront properties.

Commented [JK11]: Clarifies the text.

b. Decks and swimming pools shall not exceed a height greater than that allowed for the Maximum Lot Elevation. If located outside of the required yard area, the height shall not exceed finished floor elevation.
 c. Pools. Swimming pools shall be subject to the following Setback limitations and shall not exceed a height greater than that allowed for the Maximum Lot Elevation (see subsection (27) for swimming pool equipment setbacks):

Commented [JK12]: Clarifies the text.

| Yard | VR Village Residential | VE Village Estate | IR Island Residential (interior) | IR Island Residential (waterfront) | PS Parkside Residential |
|----------------|------------------------------|-------------------------|---|---|-------------------------------|
| Front | 6.5 ft. | 10 ft. | 25 ft. | 25 ft. | 6.5 ft. |
| Rear | 6.5 ft. | 6.5 ft. * | 6.5 ft. | 6.5 ft. * | 6.5 ft. |
| Side, interior | 6.5 ft. | 6.5 ft. | 7.5 ft. | 6.5 ft. | 6.5 ft. |
| Side, Street | 6.5 ft. | 6.5 ft. | 15 ft. | 15 ft. | 6.5 ft. |

Commented [JK13]: Council determined these setbacks should remain subject to changes presented in Section 32 that addresses the maximum 60 decibel reading at the property line, installation of a sound barrier enclosure and vegetation.

* Waterfront Lots shall provide a ~~four-foot~~ zero Setback. The foregoing Setbacks shall be measured from the water's edge.

Commented [JK14]: A zero setback is provided for in paragraph 3a above.

d. Screen enclosures. Where a screen enclosure is used to enclose a pool or other area of a residence, it shall be limited in height to 22.5 feet and subject to the following Setback limitations:

| Yard | VR Village Residential | VE Village Estate | IR Island Residential (interior) | IR Island Residential (waterfront) | PS Parkside Residential |
|----------------|----------------------------------|----------------------------------|---|---|----------------------------------|
| Front | Not permitted except for Porches | Not permitted except for Porches | Not permitted except for Porches | Not permitted except for Porches | Not permitted except for Porches |
| Rear | 5 ft. | 25 ft. | 5 ft. | 25 ft. | 5 ft. |
| Side, interior | 5 ft. | 5 ft. | 7.5 ft. | 15 ft. | 7.5 ft. |
| Side, Street | 15 ft. | 15 ft. | 15 ft. | 15 ft. | 15 ft. |

Commented [JK15]: Council determined these setbacks should remain subject to changes presented in Section 32 that addresses the maximum 60 decibel reading at the property line, installation of a sound barrier enclosure and vegetation.

* * *

(5) *Driveway and Parking criteria.* The following provisions shall apply to all single Family and Two-Family Developments:

* * *

c. *Setbacks.* All driveways shall be set back at least five feet from any side property line. All circular driveways shall be set back at least two feet from any front and/or property side Street property line. On Corner Lots, driveways shall be set back 15 feet from the extended Right-of-Way Intersection.

d. *Width.* A maximum width of 24 feet is permitted for single Family and 36 feet for Two-Family Homes for a Lot with 75 feet or less of frontage at the property line. For all other Lots the width of a driveway or combination of driveways at the point of intersection with the Right-of-Way shall not exceed the lesser of 36 feet or 32 percent of the Lot's frontage, including side Street frontage on Corner Lots.

No Commercial Vehicle shall be parked or stored overnight except in a garage or Carport; however one vehicle that is used for commercial purposes may be placed on the property. A Sign measuring no more than three square feet may be placed on either side of such vehicle.

* * *

(9) *Gazebos and accessory Structures.*

- a. Maximum height: Ten feet Wall height above the Maximum Lot Elevation.
- b. Location: Not permitted in the Front Yard.
- c. Setbacks, Side Yard: Same as the Main Permitted Use. However, the required Rear Yard Setback is ten feet.
- d. Size: 200 square feet.
- e. Construction materials: Limited to concrete, block, stucco, wood, and brick or similar materials. Aluminum, sheet metal, fiberglass are prohibited.
- f. Roof top Access: Prohibited.
- g. Number: One.
- h. Waterfront view corridor: No Structure shall be permitted within an isosceles triangle with each side measuring 25 feet at the intersection of the rear and side Lot lines.

(10) *Generator Regulations.*

- a. Temporary or portable generators are not permitted on any multi-family, condominium or townhome property.
- b. Generators are not permitted in any yard that faces a Street.
- c. Maximum decibel level for any generator is 60 db measured at the property line as measured with a calibrated Sound Level Meter.
- d. All generators shall be setback a minimum of ~~five~~ 7.5 feet from any property line and must be completely screened on all sides by the use

of walls, fences, landscaping, or other material which extends a minimum of six inches above the top of the generator.

* * *

(11) *Heating, ventilation, and air conditioning equipment Setback Regulations.* The use and location of heating, ventilation, and air conditioning compressors and equipment (HVAC) are subject to the following Setback limitations:

| Yard | VR Village Residential | VE Village Estate | IR Island Residential (interior) | IR Island Residential (waterfront) | PS Parkside Residential |
|----------------|------------------------------|-------------------------|---|---|-------------------------------|
| Front | Not Permitted | Not Permitted | Not Permitted | Not Permitted | Not Permitted |
| Rear | 10 ft. | 20 ft. | 20 ft. | 20 ft. | 20 ft. |
| Side, interior | 4 ft. | 4 ft. | 4 ft. | 10 ft. | 4 ft. |
| Side, Street | Not Permitted | Not Permitted | Not Permitted | Not Permitted | Not Permitted |

Commented [JK16]: Council determined these setbacks should remain subject to changes presented in Section 32 that addresses the maximum 60 decibel reading at the property line, installation of a sound barrier enclosure and vegetation.

Additionally, HVAC compressors shall be installed on an acoustically soundproofed base or ledge with a structural visual screen around all open vertical sides of the unit(s). The screen shall extend at least one foot above the top of the compressor and shall be painted the color of the house or duplex.

* * *

(18) *Projections.* The following Structures are permitted to project into a Required Yard for a distance not to exceed 25 percent of said Yard with a maximum projection of six feet: Awnings, balconies, bay windows (maximum width of ten feet), canopies, chimneys, cornices, sills, walkways and other architectural features that the Building, Zoning, and Planning Director has determined are consistent with this subsection.

(19) *Railing Required.* Whenever the Florida Building Code requires a railing, it shall be at least 50 percent open.

(20) *Retaining Wall, required.* A retaining Wall shall be provided ~~where any portion of a Lot that has an elevation of two feet or more above the crown of the road and is adjacent to a non-elevated Building on the sides and rear of all yards of new Single-Family and Two-Family homes. (See Drainage section 30-100[(d)(3)].~~

Commented [JK17]: The retaining wall shall have a minimum height of 2 ft. above the maximum permitted lot elevation.

* * *

(27) *Swimming pool pumps, heaters, and similar equipment.* ~~These uses~~ Swimming pool pumps, heaters, and similar equipment are permitted to encroach into Required Yards subject to the following Setbacks for ~~Side Required Yards measured from the swimming pool water's edge:~~

Commented [JK18]: Clarifies the text.

| Yard | VR Village Residential | VE Village Estate | IR Island Residential (interior) | IR Island Residential (waterfront) | PS Parkside Residential |
|---------------------|---|---|---|---|---|
| Front | Not permitted ** |
| Rear | 52 ft. | 52 ft. [0 ft.] if waterfront | 52 ft. | 52 ft. [0 ft.] if waterfront | 52 ft. |
| Side, interior * | 2 ft. |
| Side, Street * | 2 ft. if behind an opaque Wall, otherwise not permitted | 2 ft. if behind an opaque Wall, otherwise not permitted | 2 ft. if behind an opaque Wall, otherwise not permitted | 2 ft. if behind an opaque Wall, otherwise not permitted | 2 ft. if behind an opaque Wall, otherwise not permitted |

Commented [JK19]: Council determined these setbacks should remain subject to changes presented in Section 32 that addresses the maximum 60 decibel reading at the property line, installation of a sound barrier enclosure and vegetation.

* If the equipment is located in a Side Yard, landscaping shall be planted which obscures views of said equipment. Additionally, where said equipment is located along any Street frontage it must be visually screened from the public Right-of-Way.

** If a pool is permitted pursuant to section 30-100(f)(3), the equipment shall be at least ~~two~~ 7.5 feet from the ~~any~~ side property line, but in no instance shall it be placed in a location that allows it to be seen from the Street.

* * *

(32) *Buffering of equipment in any Yard.* All equipment in a Yard shall meet the following standards:

- a. A sound measurement of 60 decibels measured at the property line at a height of six (6) ft.
- b. Shall be enclosed with a sound barrier that is consistent with the Florida Building Code.
- c. Landscaping around the equipment.

Section 3. Section 30-184 of the Village Code Amended. That Section 30-184 of

the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-184. Amount of required off-street Parking.

(a) The required off-street Parking spaces shall be provided and maintained on the basis of the minimum requirements listed in this article.

| Use | Required Number of Spaces | Special Conditions Additional Required Spaces |
|--|---|--|
| (1) Apartment Building | 1.75 per Unit | Developments with more than 10 Units, then 1 additional per 5 Units, marked as guest Parking. |
| (2) Cabana Clubs | 0.5 per cabana | |
| (3) Churches and other places of worship | See special conditions | 1 per 60 sq. ft. of Floor Area available for seating and per 4 fixed seats. Parking only required for main sanctuary or largest meeting room whichever is greater. |
| (4) Community Residential Facility | 1 space per live in employee plus spaces listed in special conditions | 1 space for every 5 residents or any fraction thereof |
| (5) Duplex | 4 spaces (2 per unit) | If in a Development with ≥ 5 Units, then 1 additional per 5 Units, marked guest Parking |
| | | * * * |
| (21) Single Family Residence | 2 4 spaces <u>Tandem spaces are permitted and may extend over the right of way if a sidewalk is not present.</u> | |

* * *

Section 4. 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 5. Conflicts. All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2014.

PASSED AND ADOPTED on second reading this _____ day of _____, 2014.

MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY