

# BAL HARBOUR

- V I L L A G E -

Mayor Jeffrey P. Freimark  
Vice Mayor Seth E. Salver  
Councilman David J. Albaum  
Councilman Buzzy Sklar  
Councilman David Wolf

Village Manager Jorge M. Gonzalez  
Village Clerk Dwight S. Danie  
Village Attorneys Weiss Serota  
Helfman Cole & Bierman, P.L.

## Bal Harbour Village Council

Local Planning Agency Meeting

September 19, 2023

At 630 PM

Bal Harbour Village Hall • 655 - 96th Street • Bal Harbour • Florida 33154

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*This meeting will be conducted in-person. The meeting will also broadcast on the Village's website ([www.balharbourfl.gov](http://www.balharbourfl.gov)). Members of the public are also encouraged to participate by email ([meetings@balharbourfl.gov](mailto:meetings@balharbourfl.gov)) or by telephone at 305-865-6449.*

### 1 Approval of Minutes

11. October 25, 2022 Local Planning Agency Meeting Minutes  
[LocalPlanningAgencyMeetingMinutes\\_October25\\_2022\\_short\\_ADA.pdf](#)

### 2 Hearing

**LPA1** Underground Parking of Ocean Front Zoning District Ordinance - Second Reading

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES, TO REGULATE UNDERGROUND PARKING IN THE VILLAGE; PROVIDING FOR INCLUSION IN THE CODE, CONFLICTS, AND AN EFFECTIVE DATE.

[Item Summary - Underground Parking - Second Reading ADA.pdf](#)

[Council Memo - Underground Parking - Second Reading ADA.pdf](#)

[Ordinance - Underground Parking - Second Reading ADA.pdf](#)

**LPA2** Ocean Front Code Amendment Ordinance - Second Reading

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES TO UPDATE ZONING REGULATIONS THAT AFFECT THE OCEAN FRONT ZONING DISTRICT; PROVIDING FOR INCLUSION IN THE CODE, CONFLICTS, AND AN EFFECTIVE DATE.

[Item Summary - Ocean Front Code Amendment - Second Reading ADA.pdf](#)

[Memo - Ocean Front Code Amendment - Second Reading ADA.pdf](#)

[Ordinance - Ocean Front Code Amendment - Second Reading ADA.pdf](#)

[Attachment - Exhibit 1 Zoning Map\\_ADA.pdf](#)

### 3 Motion to Adjourn

One or more members of any Village Committee/Board may attend this meeting of the Council and may discuss matters which may later come before their respective Boards/Committees.

The New Business and Council Discussion Section includes a section for Public Comment. On public comment matters, any person is entitled to be heard by this Council on any matter; however, no action shall be taken by the Council on a matter of public comment, unless the item is specifically listed on the agenda, or is added to the agenda by Council action.

Any person who acts as a lobbyist, pursuant to Village Code Section 2-301 (Lobbyists), must register with the Village Clerk, prior to engaging in lobbying activities before Village staff, boards, committees, and/or the Village Council. A copy of the Ordinance is available in the Village Clerk's Office at Village Hall.

If a person decides to appeal any decision made by the Village Council with respect to any matter considered at a meeting or hearing, that person will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

All persons who need assistance or special accommodations to participate in virtual meetings please contact the Village Clerk's Office (305-866-4633), not later than two business days prior to such proceeding.

In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Village Clerk's Office (305-866-4633), not later than two business days prior to such proceeding.

All Village Council meeting attendees, including Village staff and consultants, are subject to security screening utilizing a metal detector and/or wand, prior to entering the Council Chamber, Conference Room, or other meeting area located within Village Hall. This is for the safety of everyone. Thanks for your cooperation.

# BAL HARBOUR

- V I L L A G E -

Mayor Gabriel Groisman  
Vice Mayor Seth E. Salver  
Councilman David J. Albaum  
Councilman Jeffrey P. Freimark  
Councilman Buzzy Sklar

Village Manager Jorge M. Gonzalez  
Village Clerk Dwight S. Danie  
Village Attorneys Weiss Serota  
Helfman Cole & Bierman, P.L.

## Local Planning Agency

Regular Meeting Minutes

October 25, 2022

At 6:30 PM

Bal Harbour Village Hall • 655 - 96th Street • Bal Harbour • Florida 33154

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*This meeting was conducted in-person. In order to minimize exposure to the Coronavirus to Councilmembers and members of the public, the meeting was also broadcast on the Village's website ([www.balharbourfl.gov](http://www.balharbourfl.gov)). Members of the public were also encouraged to participate by email ([meetings@balharbourfl.gov](mailto:meetings@balharbourfl.gov)) or by telephone at 305-865-6449.*

### 1 Roll Call / Call to Order

The following were present:

Mayor Gabriel Groisman  
Vice Mayor Seth Salver  
Councilman Jeffrey Freimark  
Councilman Buzzy Sklar  
Councilman David Albaum

Also present:

Jorge M. Gonzalez, Village Manager  
Dwight S. Danie, Village Clerk  
Susan Trevarthen, Village Attorney

### 2 Approval of Minutes

2.1 November 16, 2021 Local Planning Agency Minutes

**MOTION: A motion to approve the minutes was moved by Vice Mayor Seth Salver and seconded by Councilman Buzzy Sklar.**

**VOTE: The Motion passed by unanimous voice vote (5-0).**

### 3 Hearing

3.1 AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 2 "ADMINISTRATION", ARTICLE III "BOARDS, COMMITTEES, AND COMMISSIONS", DIVISION 3 "ARCHITECTURAL REVIEW BOARD" OF

THE VILLAGE CODE OF ORDINANCES BY AMENDING SECTION 2-75, "PROCEDURE FOR CONSIDERATION OF CERTIFICATES OF APPROPRIATENESS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

Mr. Gonzalez introduced saying that currently there is no expiration date on a Certificate of Appropriateness, and that this ordinance would be an incentive a project not to linger, and to ensure a public process on those that do. He added that the Local Planning Agency had recommended that the Village Council approve the item.

**MOTION: A motion to recommend that the Village Council approve the ordinance on second reading was moved by Mayor Gabriel Groisman and seconded by Councilman Jeffrey Freimark.**

There were no comments from the public.

ROLL CALL	VOTE
Mayor Gabriel Groisman	Yes
Vice Mayor Seth E. Salver	Yes
Councilman David J. Albaum	Yes
Councilman Jeffrey P. Freimark	Yes
Councilman Buzzy Sklar	Yes

**VOTE: The Motion passed by unanimous roll-call vote (5-0).**

#### **4 Motion to Adjourn**

One or more members of any Village Committee/Board may attend this meeting of the Council and may discuss matters which may later come before their respective Boards/Committees.

The New Business and Council Discussion Section includes a section for Public Comment. On public comment matters, any person is entitled to be heard by this Council on any matter; however, no action shall be taken by the Council on a matter of public comment, unless the item is specifically listed on the agenda, or is added to the agenda by Council action.

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# BAL HARBOUR

- VILLAGE -

## LOCAL PLANNING AGENCY ITEM SUMMARY

### Condensed Title:

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES, TO REGULATE UNDERGROUND PARKING IN THE VILLAGE.**

### Issue:

Should the Local Planning Agency recommend to the Village Council the approval of an Ordinance amending Chapter 21 "Zoning" to regulate underground parking in the Village?

### The Bal Harbour Experience:

- Beautiful Environment     Safety     Modernized Public Facilities/Infrastructure  
 Destination & Amenities     Unique & Elegant     Resiliency & Sustainable Community  
 Other: \_\_\_\_\_

### Item Summary / Recommendation:

In 2022, the Village Architectural Review Board approved, and the Village Council upheld, the ARB approval of the proposed redevelopment of the Carlton Terrace condominium ("Rivage") in the OF Oceanfront District by a development group led by Related, known as Carlton Terrace Owner, LLC. No other property in the OF district has come forward with a proposal to redevelop at this time (although other buildings are going through the building recertification process, and some are identifying significant and costly issues). The review of the Rivage project highlighted a number of policy questions for future projects, and the Village Council requested an opportunity to consider whether the OF District regulations should be revised to reflect the current circumstances and policy wishes of the Village Council and the community. Some of these issues, including underground parking, were flagged for consideration as they affect the entire Village.

The Village Council considered staff recommendations on these matters at its 2023 Retreat, and provided input to the Administration on the proposed ordinances it wanted to review. As requested, staff reviewed the zoning code to explore potential update amendments on these issues. This proposed Ordinance addresses the issues around underground parking.

At first reading, the Council voted to amend the Ordinance to specify that hotels will be regulated by subsection (b), and the ordinance includes this change. The Council also requested that the ordinance specify its applicability to pending projects, and that change has also been incorporated for approval on second reading: projects that received their process number from the Building Department prior to the effective date of the Ordinance will not be subject to it. For the Council's information, the Rivage already received its process number and will not be subject to these changes.


**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.**

### Financial Information:

	Amount	Account	Account #
	X	X	X

### Sign off:

Director Title	Chief Financial Officer	Village Manager
Director Name	Claudia Dixon	Jorge M. Gonzalez



# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY MEMORANDUM

TO: Honorable Members of the Local Planning Agency

FROM: Jorge M. Gonzalez, Village Manager

DATE: September 19, 2023

SUBJECT: **AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES, TO REGULATE UNDERGROUND PARKING IN THE VILLAGE; PROVIDING FOR INCLUSION IN THE CODE, CONFLICTS, AND AN EFFECTIVE DATE.**

### **ADMINISTRATIVE RECOMMENDATION**

I am recommending that the Local Planning Agency recommend to the Village Council the approval of the ordinance.

### **BACKGROUND**

In 2022, the Village Architectural Review Board approved, and the Village Council upheld, the ARB approval of the proposed redevelopment of the Carlton Terrace condominium in the OF Oceanfront District (the "Rivage") by a development group led by Related, known as Carlton Terrace Owner, LLC. No other property in the OF district has come forward with a proposal to redevelop at this time (although other buildings are going through the building recertification process, and some are identifying significant and costly issues). The review of the Carlton Terrace project highlighted a number of policy questions for future projects, and the Village Council requested an opportunity to consider whether the OF District regulations should be revised to reflect the current circumstances and policy wishes of the Village Council and the community. Some of these issues, including underground parking, were flagged for consideration as they affect the entire Village.

The Village Council considered staff recommendations on these matters at its 2023 Retreat and provided input to the Administration on the proposed ordinances it wanted to review. As requested, staff reviewed the zoning code to explore potential update amendments on these issues. This proposed ordinance addresses the issues around underground parking.

#### *Underground parking*

The Village is located entirely on a barrier island between the bay and the Atlantic Ocean. The underlying soils are sand or other unstable or caustic materials. Construction, therefore, requires the use of pilings driven into the soil to either bedrock or maximum specified pressure resistance with beam foundations. However, there are no proven methods to protect underground structures from eventual settling or saltwater intrusion.

Engineers can inspect what is accessible and visible to provide opinions but, in the final analysis, it is impossible to directly inspect these materials years later and be certain of their continued structural integrity. Only those certifications and inspections that are completed before the structure is complete can assure the integrity of the construction. While periodic inspections are required by the County recertification process, the repairs that are identified can be costly or almost impossible for the current owners of buildings to implement. Newer structural materials are becoming more available that are less subject to corrosion in a marine environment, but these are difficult to add to a building after it is constructed.

FEMA regulations and the Florida Building Code (FBC) currently prohibit underground parking garages under exclusively residential developments, including those residential developments with amenities that only serve the residents of the development. Underground garages are permitted for Mixed-Use Developments (mix of land uses such as hotels, Residential, Commercial, or Offices) and for non-residential development. The amount of non-residential uses required to be considered mixed-use is not well-defined in the FEMA regulations.

The FEMA/FBC rules have changed over the years; in prior years, residential amenities were considered in determining that a building was multi-use. The Village has several examples of existing underground parking garages for solely residential use complexes under the prior rules.

It is unknown why FEMA/FBC differentiates between land uses. Vehicles could be damaged or flooded in an underground parking garage regardless of the principal use of the structure. Moreover, expected sea level rise and potential storm surges from hurricanes and tropical storms, as vividly demonstrated by the October 2022 Southwest Florida Hurricane Ian scenario (10'-12' storm surge) can lead to large amounts of damage and flooding. In light of these possibilities, should the Village consider banning future underground parking garages, in the OF district or more broadly in the Village?

Above-grade parking garages are safer from flooding. However, they are not very visually appealing, unless they are properly designed without large openings, and architecturally designed to match the main building. The current 22' height limit for accessory parking structures in the OF district (Section 21-288(4) of the Code) helps control the massing impact of above-ground parking garages in the Village. This contrasts with, for example, the visual impact in the new Sunny Isles Beach beachfront development with large, multi-story above-ground parking garages.

To address these issues, the Village Council is asked to consider regulating underground parking in the Village. On the positive side, this would address the issues of long term structural integrity. On the potentially negative side, this change would impact the

aesthetics of the community and the amount of development that can occur within the height limit, which can only be changed by the voters.

The proposed Ordinance amends Chapter 21 to address underground parking first by prohibiting properties with principal residential uses in all zoning districts from having the floor or other parts of a parking structure from being located under Grade. "Grade" is already defined in the Village Code as follows:

*Grade.* When used in connection with the elevation of the ground, Grade means the average level of the natural ground adjacent to the exterior walls of a Building and shall be measured in feet above the finished grade of the center of the street on which the Lot fronts, or refers to an elevation above an established benchmark.

This approach will avoid the uncertainty surrounding the FEMA regulations of mixed-use buildings, and make it clear that any development that is predominantly residential may not have underground parking, regardless of whether the development has accessory non-residential uses. Second, the proposed ordinance requires properties with principal nonresidential uses in all zoning districts to assure that the elevation of the lowest finished floor of the lowest level of structured parking is no lower than one foot above the water table, an elevation to be determined by the Building Official based on the best available documentation at the time of development.

At first reading, the Village Council voted to amend the proposed ordinance to specify that hotel uses will fall under subsection (b) and follow the regulations applicable to properties with principal nonresidential uses.

The proposed regulations, with the first reading change, follow:

#### **ARTICLE IV. - SUPPLEMENTARY DISTRICT REGULATIONS**

##### **Sec. 21-365. - Underground Parking**

(a) Properties with Principal Residential Uses. For properties with principal residential uses in every zoning district, the elevation of the lowest finished floor of the lowest level of structured parking shall be no lower than Grade.

(b) Properties with Principal Nonresidential Uses and Properties with Hotels. For properties with principal noncommercial uses in every zoning district, and properties with hotels in every zoning district, the elevation of the lowest finished floor of the lowest level of structured parking shall be no lower than one foot above the water table. The Building Official shall determine whether this standard is met based on the best available documentation.

It is important to note that the overall height limit of development is not proposed for change. By requiring structured parking to be at or near Grade, less height will be available for occupied space. Also, important to note is that the 22-foot height limit for parking



pedestals is not proposed to be changed. A separate ordinance proposes to modify the side setback regulation to assure that parking garage pedestals in OF are less visually impactful, but the impact of this ordinance will very likely be to increase the footprint of buildings. The Village's Appearance Code and ARB review process will also be important tools for managing the visual impact of the proposed change, and assure that the front, side and rear elevations are all up to the Village's standards.

At first reading, the Council also requested that an applicability clause be added to specify exactly how the Ordinance will apply to pending projects and, as discussed at first reading, the Building Department recommended the issuance of a process number as the point beyond which the Ordinance would not apply. Issuance of a process number is when the upfront permit fee is paid to the Village.

Therefore, the following language was added to the effective date clause of the Ordinance: "This Ordinance shall only apply to building permits for which a process number is issued after the effective date of this Ordinance." For the Council's information, the pending Rivage project already paid its upfront fee and received its process number from the Village Building Department, and thus will not be subject to this Ordinance.

#### **THE BAL HARBOUR EXPERIENCE**

By amending the Village Code, the Village would continue to "implement smart policies and strategic solutions to address the challenges of today and to ensure that we remain a Resilient and Sustainable community able to protect our future."

#### **CONCLUSION**

The Administration recommends that the Local Planning Agency recommend to the Village Council the adoption of the Ordinance.

ORDINANCE NO. 2023-\_\_\_\_

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA;  
AMENDING CHAPTER 21 "ZONING" OF THE CODE OF  
ORDINANCES, TO REGULATE UNDERGROUND PARKING IN  
THE VILLAGE; PROVIDING FOR INCLUSION IN THE CODE,  
CONFLICTS, AND AN EFFECTIVE DATE.**

**WHEREAS**, Bal Harbour Village (the "Village") Council finds it periodically necessary to amend its Code of Ordinances (the "Village Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS**, the Village Council now seeks to amend the Village Code to prohibit underground structured parking for principal residential uses in all zoning districts, and to require the elevation of the lowest finished level of underground structured parking for principal nonresidential uses be at least one foot above the water table, as further specified herein; and

**WHEREAS**, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed hearing on September 19, 2023, and recommended approval; and

**WHEREAS**, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

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

**Section 2. Village Code Amended.** That Chapter 21 "Zoning," is hereby amended to read as follows:<sup>1</sup>

**CHAPTER 21. ZONING**

\* \* \*

**ARTICLE IV. - SUPPLEMENTARY DISTRICT REGULATIONS**

\* \* \*

**Sec. 21-365. - Underground Parking**

(a) Properties with Principal Residential Uses. For properties with principal residential uses in every zoning district, the elevation of the lowest finished floor of the lowest level of structured parking shall be no lower than Grade.

(b) Properties with Principal Nonresidential Uses and Properties with Hotels. For properties with principal noncommercial uses in every zoning district, and properties with hotels in every zoning district, the elevation of the lowest finished floor of the lowest level of structured parking shall be no lower than one foot above the water table. The Building Official shall determine whether this standard is met based on the best available documentation.

**Secs. 21-365~~6~~–21-380. - Reserved.**

**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 this Ordinance shall become effective and made part of the Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strikethrough~~. Changes between first and second reading are shown in double underline and ~~double-strikethrough~~ font.

**Section 5. Conflict.** That all sections or parts of sections of the Village Code, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6. Effective Date.** That this Ordinance shall become effective upon adoption. This Ordinance shall only apply to building permits for which a process number is issued after the effective date of this Ordinance.

PASSED AND ADOPTED on first reading this 18<sup>th</sup> day of July, 2023

PASSED AND ADOPTED on second reading this 19<sup>th</sup> day of September, 2023.

\_\_\_\_\_  
Mayor Jeffrey P. Freimark



ATTEST:

\_\_\_\_\_  
Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
Village Attorney

# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY ITEM SUMMARY

### Condensed Title:

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES TO UPDATE ZONING REGULATIONS THAT AFFECT THE OCEAN FRONT ZONING DISTRICT.**

### Issue:

Should the Local Planning Agency recommend to the Village Council the approval of an Ordinance amending Chapter 21 "Zoning" regulations that affect the Ocean Front Zoning District?

### The Bal Harbour Experience:

- Beautiful Environment     Safety     Modernized Public Facilities/Infrastructure  
 Destination & Amenities     Unique & Elegant     Resiliency & Sustainable Community  
 Other: \_\_\_\_\_

### Item Summary / Recommendation:

In 2022, the Village Architectural Review Board approved, and the Village Council upheld, the ARB approval of the proposed redevelopment of the Carlton Terrace condominium (the "Rivage") in the OF Oceanfront District by a development group led by Related, known as Carlton Terrace Owner, LLC. No other property in the OF district has come forward with a proposal to redevelop at this time (although other buildings are going through the 40-year recertification process, and some are identifying significant and costly issues). The review of the Rivage highlighted a number of policy questions for future projects, and the Village Council requested an opportunity to consider whether the OF District regulations should be revised to reflect the current circumstances and policy wishes of the Village Council and the community. Some of these issues, including underground parking, were flagged for consideration as they affect the entire Village.

The Village Council considered staff recommendations on the OF district at its 2023 Retreat, and provided input to the Administration on the proposed ordinances it wanted to review. As requested, staff reviewed the zoning code to explore potential amendments on these issues. This proposed ordinance addresses these issues; a separate ordinance is proposed to address underground parking.

At first reading, the Council accepted the staff recommended policy changes included in the Ordinance, and requested that the Ordinance specify its applicability to pending projects. That change has been incorporated for approval on second reading: projects that received their process number from the Building Department prior to the effective date of the Ordinance will not be subject to it. For the Council's information, the Rivage already received its process number and will not be subject to these changes.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.**

### Financial Information:

	Amount	Account	Account #
	X	X	X

### Sign off:

Director Title	Chief Financial Officer	Village Manager
Director Name	Claudia Dixon	Jorge M. Gonzalez



# BAL HARBOUR

- V I L L A G E -

## LOCAL PLANNING AGENCY MEMORANDUM

TO: Honorable Members of the Local Planning Agency

FROM: Jorge M. Gonzalez, Village Manager

DATE: September 19, 2023

SUBJECT: **AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES TO UPDATE ZONING REGULATIONS THAT AFFECT THE OCEAN FRONT ZONING DISTRICT; PROVIDING FOR INCLUSION IN THE CODE, CONFLICTS, AND AN EFFECTIVE DATE.**

### **ADMINISTRATIVE RECOMMENDATION**

I am recommending that the Local Planning Agency recommend to the Village Council the approval of the ordinance.

### **BACKGROUND**

In 2022, the Village Architectural Review Board approved, and the Village Council upheld, the ARB approval of the proposed redevelopment of the Carlton Terrace condominium in the OF Oceanfront District (the "Rivage") by a development group led by Related, known as Carlton Terrace Owner, LLC. No other property in the OF district has come forward with a proposal to redevelop at this time (although other buildings are going through the 40-year recertification process, and some are identifying significant and costly issues). The review of the Carlton Terrace project highlighted a number of policy questions for future projects, and the Village Council requested an opportunity to consider whether the OF District regulations should be revised to reflect the current circumstances and policy wishes of the Village Council and the community. Some of these issues, including underground parking, were flagged for consideration as they affect the entire Village.

The Village Council considered staff recommendations on the OF district at its 2023 Retreat, and provided input to the Administration on the proposed ordinances it wanted to review. As requested, staff reviewed the zoning code to explore potential amendments on these issues. This proposed ordinance addresses these issues; a separate ordinance is proposed to address underground parking. The location of the OF district is depicted on Exhibit 1, which is the zoning map for the Village.

The OF District is mapped on the east side of Collins Avenue. The properties are zoned OF unless they have gone through the process of Planned Development PD review and rezoning, which is only available for larger properties and requires a development agreement. The proposed ordinance does not address the PD standards.

The OF district allows multi-family residential and hotel uses, and specifically provides for and regulates a number of accessory and commercial uses. All Village zoning districts, including the OF District, are also regulated by supplemental regulations and requirements for off-street parking and loading.

Hotels are required to have at least 100 guest rooms, and are generally allowed to have convenience establishments without limitation. Multiple family residences must have at least 24 units and, if they have at least 100 units, they are eligible for convenience establishment uses, as specifically defined and further regulated in Section 21-281. Hotels and multiple family dwellings are also permitted to have medical/dental offices, with limits as to size and impact. Restaurants in multi-family projects may be open to the public only if approved by the Village Council after a public hearing.

### **ANALYSIS**

As requested, staff reviewed the zoning code to explore potential amendments, and the following issues emerged for discussion in the OF Ocean Front District, and are reflected in the proposed ordinance.

#### 1. *Parking Structure setbacks and design standards*

A separate ordinance proposes to prohibit underground parking. If this change is adopted by the Village Council, it increases the importance of how the Code regulates the mass and appearance of above-ground parking garages. Currently, OF Ocean Front parking garages and cabanas must either adjoin the side lot lines (0' setback) or be set back 25' from the lot line. See Section 21-291(6)a. The wording of the Code is not clear if the setback options apply only to above-grade parking garages, to below-grade garages, or both, but it appears that the Village has allowed OF properties to have 0' setbacks for their above-ground parking pedestals.

The rationale for this rule is not clear; why are there two extremes, with no provision for a middle ground where the setback might be wide enough for a beach pedestrian walkway, or to create a view vista or break in building massing, without providing a full 25 feet? If adjoining sites have abutting above-grade 0' setbacks for garages or cabanas, the application of this rule can lead to a massive appearance that blocks views and air. It also might block or channel the flow of winds and storm surge in storm events. If parking garages are instead located underground, the side setbacks do not affect the aesthetics of the development.

One way to address this section would be to clarify that underground parking structures may continue to have a 0' setback, while requiring that new above-ground parking garages provide the 25' side setback. Existing zero-setback above-ground parking garages could be required to comply with the 25' side setback upon redevelopment.

A separate ordinance proposes to remove the ability to have underground parking in the OF District, so there will no longer be a need to regulate the setbacks of underground parking structures. This proposed ordinance changes the side setback regulation for parking garages so that 25' is always required.

The Village has also heard concerns from existing OF Ocean Front properties that there is not enough parking to accommodate those vehicles associated with delivery, repair/maintenance, and construction workers. The current parking standards for multiple family dwellings do not address this aspect of parking demand; they require 1.5 parking spaces for each dwelling unit, plus 1 additional space for each 10 dwelling units, plus the required spaces for any business establishments contained within the complex. See Section 21-384(2).

Should the parking standards applicable to OF be adjusted to prevent such problems with future development in the OF district? A review of similar communities was conducted by the Village Planner and revealed no examples of separate parking ratios for these purposes. The proposed ordinance clarifies that driveways and a portion of the rooftop of the parking structure can be designated for parking for these purposes, while maintaining the current requirement that 75% of the rooftop be devoted to open space, landscaping and recreation. It adds a new process whereby an existing building, upon a showing that it is necessary to preserve safe access and traffic flow, may ask the Village Council for approval to use more than 25% of the rooftop for supplemental parking.

The proposed ordinance also adds to the existing design standards for above grade Parking Structures, as follows:

**Sec. 21-288. Same—Exception for accessory Parking Structures.**

In the OF Ocean Front District, 100 percent of the required off-street parking spaces shall be contained in fully enclosed Parking Structures ~~which may utilize front, side and rear Setback areas~~ subject to the following requirements and design standards:

- (1) The maximum Lot coverage of the Principal Building does not exceed 20 percent of the total Lot.
- (2) ~~No~~ Minimum required parking is not provided on the roof of the Parking Structure. Supplemental parking spaces for guests, deliveries, drop-off and pickup services, and construction, maintenance & repair personnel may be designated:
  - a. along the driveways, and
  - b. on up to 25% of the area of the western end of the Parking Structure rooftop.  
A larger area of an existing Parking Structure rooftop may be devoted to supplemental parking spaces if approved by the Village Council as provided in subsection (3).



- (3) A minimum of 75 percent of the roof of the Parking Structure, excluding the Principal Structure, shall be utilized for open space, Landscaping, and recreation in accord with a plan approved by the Village. For a Parking Structure constructed prior to January 1, 2023, a request may be submitted to the Village Council to reduce the 75% minimum to allow designation of additional supplemental parking spaces on the rooftop, upon a showing that the additional spaces are necessary to assure safe access to and traffic flow through the site. The Council approval shall specify the alternative minimum percentage and any necessary conditions.
- (4) The maximum Height of the accessory Parking Structure shall not exceed an elevation of 22.00 feet above the average Street Grade (or Bridge Lot Street Grade if applicable) adjoining the Property, and shall conform to the setback regulations contained in section 21-291. ~~For the purpose of this section, the determination of the average Street Grade for those Lots or portions of Lots in proximity to the Haulover Cut Bridge shall be measured as the combined average elevations of the adjoining frontage road and the road surface of the bridge adjoining the subject Property (westerly extension of the Property lines to the bridge). The determination of the average elevation shall be as follows:~~
  - a. ~~Based upon the roadway frontage adjoining the subject Property, establish an imaginary extension of the Property line to the eastern edge of the frontage road right of way and the bridge Structure;~~
  - b. ~~At the intersection of the extension of the Property line and the centerline of the frontage road and bridge roadway surface, determine the elevations of the road surfaces at the north and south Property line extensions and divide by four.~~
- (5) No portion of the Parking Structure shall encroach within the front Building Restriction Line area as shown on the recorded plats of the Ocean Front Section of Bay Harbor and the Bal Harbour Ocean Front Addition.
- (6) Where any portion of a Parking Structures is above Grade, the Parking Structure shall be designed in such a manner so that:
  - a. from the adjoining roadways, the Parking Structure must be substantially screened from view by the use of earthen berms and Landscaping. Driveways should appear to rise to the entrance of the Principal Building. This shall not prohibit the Parking Structure driveway openings from being visible from an adjoining Street.
  - b. from the Atlantic Ocean (east of lots) and abutting side property lines (north / south), the Parking Structure must be substantially enclosed by the use of screening methods to minimize the view of vehicles, mechanical equipment, and any storage areas located within the Parking Structure.

Large open voids in the building facade are prohibited. The exterior facades of all Parking Structures must be architecturally designed to be similar to the architectural design of the Principal Building. If a non-conforming Parking Structure is substantially renovated, the exterior facades shall be modified as required by the ARB. The use of larger or taller landscaping materials such as trees shall also be used where possible to supplement the above screening requirements.

## 2. *Minimum unit/hotel room requirements*

Currently, the OF Ocean Front District requires multiple family residences to contain at least 24 dwelling units, and allows them additional uses if they have at least 100 dwelling units. While the majority of OF properties have more than 100 dwelling units, the redevelopment trend is to reduce the number of units and increase their size as well as increase the area devoted to residential amenities. Moreover, it has been state policy for decades to limit the residential density in the Coastal High Hazard Area (barrier islands), and this rule contradicts that policy. The OF district also requires hotels to have a minimum of 100 guest rooms. Yet the Village has seen, in PD developments, how a mixed-use property such as the Ritz Carlton can prosper with a relatively small number of hotel units.

One alternative would be to remove all minimum unit or room thresholds. Decades ago, these rules likely served to avoid the development of additional low-scale and low-end motels along the ocean typical of the mid-20th century. Current property values and market preferences make such development unlikely.

Another alternative would be to retain some minimums, but reduce them. For example, the minimum of 24 units for a multiple family residence project is consistent with current development trends. The Village could revise the Code so that a property with at least 24 units would not only satisfy the zoning but could also qualify for the additional convenience establishment uses. Similarly, the required minimum number of hotel rooms could be reduced or, in the case of a mixed-use property, removed completely. The Village could also consider whether there are other methods of assuring that hotel development is desirable, such as developing regulatory standards for hotels (requiring a single flag, requiring centralized management, requiring a single BTR, etc.).

The proposed ordinance retains the 24 unit minimum for multiple family residences, and removes the requirement for a minimum of 100 units for a multiple family residence to be eligible for convenience establishment uses. It also removes the requirement for hotels to have at least 100 hotel rooms, and instead requires a minimum of 24 rooms. The approach to approving convenience establishment uses for multiple family residences and hotels is also proposed to be changed, as outlined below.

## 3. *Accessory/Convenience Establishment Uses*

Because the FEMA/FBC rules for underground parking turn on the mixed-use status of the project, the discussion around the Carlton Terrace project shone a spotlight on the current rules for convenience establishments and other uses allowed in a residential project in OF. Ultimately, the applicant in that project incorporated a medical office use that was allowed as of right in the OF Ocean Front District, with limits as to size and impact. The question raised was whether medical/dental office or any of the other currently allowed principal or accessory uses should be removed from OF. Do these uses reflect the Village's current vision of the Bal Harbour Experience?

The current Code links the ability of multiple family residences to have convenience establishments to whether the project has at least 100 units. These convenience establishments include barbershops, beauty salons, cleaners, mini-groceries, travel agencies, health clubs, florists, and other similar uses as may be permitted by the Village Council, after a public hearing, provided that such uses are compatible with and do not adversely affect the residential character of the multi-family development. The section has appropriate regulations to assure the residential nature of the project is not transformed by these uses, such as limiting signage, lighting, and separate entrances. Also, their area is limited to 10% of the aggregate floor area of the principal building in which they are located.

Restaurants are similarly allowed as convenience establishments as part of that 10% of aggregate floor area. The OF regulations further allows a restaurant to be open to the public if approved by the Village Council following a public hearing as not adversely affecting the residents of the building or the character of the Village, with appropriate conditions to assure compatibility.

A question was raised about the meaning of "health club", and its relationship to spa use. It might be appropriate to modernize the terminology applicable to this use, to assure that the typical fitness and spa amenities desired in new projects are allowed regardless of the number of units in the project.

This section also requires that hotels have a minimum of 100 rooms in order to have convenience establishment uses. While those uses are not constrained by the definition applicable to multiple family residences, the Village has seen that hotels with a smaller number of units may be quite viable, particularly when combined with multiple-family units as at the Ritz Carlton.

Based on these discussions and the input from the Council, the proposed ordinance makes the following changes to the OF regulations of convenience establishments.

a. Remove the requirement for 100 units for a multiple family residence to be qualified to seek convenience establishment uses.

b. Remove the requirement for 100 hotel rooms for hotels to be qualified for convenience establishment uses.

c. Define convenience establishments for multiple family residences to include those uses listed in the current Code, with the addition of spas. Remove the medical and dental uses currently allowed.

d. Require Village Council approval before any convenience establishments can be included in a multiple family residence.

e. Continue to provide for approval of other similar uses by the Village Council following a public hearing, but only when they are limited to the exclusive use of the residents, and only after finding that the proposed use is compatible with and does not adversely affect the residential character of the multiple-family development.

f. Retains the existing requirements to limit the size and impact of such uses on neighboring properties. (no signage, no separate entry, maximum floor area, no auto uses)

g. Defines hotel convenience establishment uses as those allowed by the B Business district as permitted or conditional uses.

#### 4. *Floor Area Ratio*

The OF Ocean Front District contains lots that are platted and zoned from decades ago. Later, the state established the erosion control line, which resulted in slivers of land that are outside of the platted lots but available for development. It has previously been determined that these slivers cannot be used as part of the density calculation for a property because of the requirements of the Village comprehensive plan.

The comprehensive plan does not affect the calculation of the FAR for a project. As part of the review of the Carlton Terrace project, the Village Planner ultimately interpreted that the FAR could be based on the combination of the platted lot and the sliver based on evidence of that measurement method having been applied to prior projects in the Village. A small revision to the Code would make it clearer that this is the proper method of calculation of FAR.

The proposed ordinance accomplishes this by creating a definition of a project site that encompasses one or more lots being developed for a single project, including the land east of the platted lot line to the erosion control line, and creating a special definition of FAR for the OF district that allows the FAR to be measured on the basis of the lot or a project site.

#### 5. *Coastal Construction Control Line (CCCL)*

Currently, the Code clearly allows construction in the OF Ocean Front district to be seaward of the CCCL. However, the language of the separate Code sections in Article VII is contradictory, and does not accurately describe state law. The specific governs the general, and therefore the OF language is the applicable language. However, the

apparently contradictory language is confusing, and might benefit from revisions so that readers of Article VII are aware of the treatment of the OF properties.

The proposed ordinance clarifies the language in Article VII, Section 21-447, and further updates the language to incorporate the recently revised floodplain regulations in Chapter 8.5.

6. *Other.*

The proposed ordinance also makes some technical changes to the OF Ocean Front District. It creates a defined term ("Bridge Lot Street Grade") for the language used repeatedly throughout the Division to specify the measurement of height for those OF lots in proximity to the bridge.

It also clarifies the requirement in Section 21-296 to provide hurricane shutters to reflect that the Florida Building Code currently requires hurricane windows. The section is preserved because it continues to apply to older existing buildings in the OF district.

**FIRST READING**

At first reading, the Village Council generally accepted the staff-recommended policies listed above and reflected in the Ordinance.

The Council requested that an applicability clause be added to specify exactly how the Ordinance will apply to pending projects and, as discussed at first reading, the Building Department recommended the issuance of a process number as the point beyond which the Ordinance would not apply. Issuance of a process number is when the upfront permit fee is paid to the Village.

Therefore, the following language was added to the effective date clause of the Ordinance: "This Ordinance shall only apply to building permits for which a process number is issued after the effective date of this Ordinance." For the Council's information, the pending Rivage project already paid its upfront fee and received its process number from the Village Building Department, and thus will not be subject to this Ordinance.

**THE BAL HARBOUR EXPERIENCE**

By amending the Village Code, the Village would continue to "implement smart policies and strategic solutions to address the challenges of today and to ensure that we remain a Resilient and Sustainable community able to protect our future."

**CONCLUSION**

The Administration recommends that the Local Planning Agency recommend to the Village Council the adoption of the Ordinance.

Attachments:

1. Exhibit 1: Zoning Map

**ORDINANCE NO. 2023-\_\_\_\_**

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA; AMENDING CHAPTER 21 "ZONING" OF THE CODE OF ORDINANCES TO UPDATE ZONING REGULATIONS THAT AFFECT THE OCEAN FRONT ZONING DISTRICT; PROVIDING FOR INCLUSION IN THE CODE, CONFLICTS, AND AN EFFECTIVE DATE.**

**WHEREAS**, Bal Harbour Village (the "Village") Council finds it periodically necessary to amend its Code of Ordinances (the "Village Code") in order to update regulations and procedures to implement municipal goals and objectives; and

**WHEREAS**, in consideration of recent development activities within the Village, the Village Council asked the Administration to review the Village Code and make recommendations as to whether the Village Code reflects the current circumstances and policy wishes of the Village Council and the community; and

**WHEREAS**, the Administration reviewed Chapter 21, "Zoning" of the Village Code, and proposed amendments to regulations affecting the OF Ocean Front zoning district, including definitions, parking garage setbacks, minimum unit/room requirements, convenience establishment uses, Floor Area Ratio measurements, and to harmonize the current regulations applicable to construction seaward of the coastal construction line; and

**WHEREAS**, the Village Council reviewed these concepts at its 2023 retreat, and provided input that has been reflected in this Ordinance; and

**WHEREAS**, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed hearing on September 19, 2023, and recommended approval; and

**WHEREAS**, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village's Comprehensive Plan and in the best interest of the public health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

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

**Section 2. Village Code Amended.** That Chapter 21 "Zoning," is hereby amended to read as follows:<sup>1</sup>

## CHAPTER 21. ZONING

\* \* \*

### ARTICLE III. - DISTRICT REGULATIONS

\* \* \*

#### DIVISION 10. - OF OCEAN FRONT DISTRICT

##### Sec. 21-279. Purpose of District.

The purpose of the OF Ocean Front District is to provide land development regulations for those lands identified as RH Residential High Density on the Village's adopted Comprehensive Plan Future Land Use Map. Parcels so zoned shall be located between Collins Avenue and the eastern Lot Lines of those parcels of land depicted on the plat entitled "Ocean Front Section of Bay Harbour," recorded in Plat Book 44, at Page 27, of the Public Records of Dade County, Florida and those parcels of land depicted on the plat entitled "Bal Harbour Ocean Front Addition," recorded in Plat Book 57, at Page 68, of the Public Records of Dade County, Florida. The intended development characteristics include primarily high-rise luxury residential development with ancillary commercial and recreational uses, exclusively for the use of the residents of the residential development. Additionally, resort-type development such as Hotels are also intended which may include convention facilities. The recorded subdivision plats contain Building restriction lines that were intended to establish the general position of Buildings on the Lots. Development requests should generally follow the Setback of existing construction, development intensities identified in the Comprehensive Plan and these regulations and Building heights.

##### Sec. 21-280. Definitions of ~~Balcony and Porch Enclosure.~~

The definitions in Section 21-1 apply to all of Chapter 21. For purposes of this division, the ~~phrase~~ following terms are defined:

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<sup>1</sup> Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~strikethrough~~. Changes between first and second reading are shown in double underline and ~~double-strikethrough~~ font.



"Balcony or Porch Enclosure" means exterior enclosures affixed to Balconies and Porches, made of screening, glass, aluminum, CBS block, wood, fabric, or any other material which is affixed to the face of the Principal Building for the purpose of enclosing a Balcony or Porch.

"Bridge Lot Street Grade" means a measurement, for Lots or portions of Lots in proximity to the Haulover Cut Bridge, determined by the combined average elevations of the adjoining frontage road and the road surface of the bridge adjoining the subject Property (westerly extension of the Property lines to the bridge). The determination of the average elevation shall be as follows:

- a. Based upon the roadway frontage adjoining the subject Property, establish an imaginary extension of the Property line to the eastern edge of the frontage road right-of-way and the bridge Structure;
- b. At the intersection of the extension of the Property line and the centerline of the frontage road and bridge roadway surface, determine the elevations of the road surfaces at the north and south Property line extensions and divide by four.

"Convenience Establishments in Multiple-Family Developments" means uses as may be permitted by the Village Council, after a public hearing, provided that such uses are for the exclusive use of the residents, and are compatible with and do not adversely affect the residential character of the multi-family development. These uses may include barbershops, beauty salons, cleaners, mini-groceries, restaurants, health clubs, spas, travel agencies, and florists.

"Floor Area Ratio (FAR)" means the Gross Floor Area, not including Parking Structures, on a Lot or Project Site, divided by the area of the Lot or Project Site. (For example, a Building containing 20,000 square feet of floor area on a Lot or Project Site of 10,000 square feet has a Floor Area Ratio of 2.0).

"Hotel" means a Building or premises where lodging or sleeping accommodations of not less than 24 Guest Rooms are provided.

"Project Site" means a Lot or combination of contiguous Lots or parcels of land fronting on a Street, drive, or waterway, which is proposed to be occupied by a new or redeveloped Building(s) and any accessory Building(s) and/or related facilities, including the open spaces, recreational amenities, parking facilities and other aspects required under this chapter.

### **Sec. 21-281. Permitted uses.**

No Building or land shall be used in the OF Ocean Front District and no Building shall be erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used for any purpose, unless otherwise provided for in this chapter, except for one or more of the following uses:

- (1) Multiple-Family Dwellings or apartment buildings containing not less than 24 dwelling units.

- (2) Hotels ~~containing not less than 100 Guest Rooms.~~
- (3) Public and private beach areas.
- (4) Public parks and playgrounds owned and operated by the Village.
- (5) Off-street parking and loading facilities.
- (6) Cabanas, as accessory structures, constructed concurrently with or subsequent to the construction of the main Building.
- ~~(7) Medical and dental offices including services in such offices related to medical or dental care that are performed under the supervision of medical doctors or dentists. Such medical and dental offices shall be located in buildings as defined in subsections (1) and (2) and must meet the requirements of subsection (8) a through e of this section.~~
- ~~(8)~~(7) Convenience establishments in multiple-family developments ~~containing at least 100 or more dwelling units~~, provided their operations in ~~multiple family developments~~ are for the primary exclusive use of the residents of the multiple-family development Building and are used only as an ancillary and Accessory Use thereto for the day-to-day convenience of the residents. These convenience establishments in multiple-family developments are subject to the following restrictions:
  - a. Such convenience establishments shall be entered only from within the Principal Building.
  - b. Such convenience establishments shall have no outside entrance or storefront.
  - c. Such convenience establishments shall have no sign display, lighting or advertisement matter facing or visible from the western boundary of the district, or which may be facing or visible from a point on Lot 1 in the district west or south of such ~~Hotel or~~ multiple-family building.
  - d. The total amount of floor area devoted to convenience establishments shall not exceed ten percent of the aggregate floor area of the Principal Building in which it is located.
  - e. The sale, dispensing or storage of gasoline, oil, grease or automobile accessories is prohibited in this district.
  - f. Convenience establishment uses must be those defined in this Division. Other similar uses for the exclusive use of the residents may be permitted by the Village Council, after a public hearing, upon finding that the proposed use is compatible with and does not adversely affect the residential character of the multiple-family development.

~~The Village Council may grant an exemption to a restaurant from the requirement that convenience establishments in multifamily developments be primarily for the use of residents of the building as an ancillary and accessory use after a public hearing and upon finding that:~~

1. ~~Such an exemption will not adversely affect the residents of the building;~~
2. ~~Such an exemption will not adversely affect the character of the Village;  
and~~
3. ~~The nature of the restaurant for which an exemption is sought is compatible with other development in the Village.~~

~~In granting such an exemption, the Council may impose such conditions as it deems appropriate.~~

~~(9)(8) Convenience establishments in Hotels containing 100 or more Guest Rooms.~~

~~(10) Convenience establishments in multiple family developments shall be defined as follows:~~

- a. ~~Barbershops.~~
- b. ~~Beauty salons.~~
- c. ~~Cleaners.~~
- d. ~~Mini-groceries.~~
- e. ~~Restaurants.~~
- f. ~~Health clubs.~~
- g. ~~Travel agencies.~~
- h. ~~Florists.~~
- i. ~~Other similar uses as may be permitted by the Village Council, after a public hearing, provided that such uses are compatible with and do not adversely affect the residential character of the multi-family development.~~

~~The definition of convenience establishments in Hotels may include any of the uses listed as permitted or conditional uses in the Village's B Business District (Section 21-316), and shall not be restricted except as otherwise provided in this Code or under Florida other applicable law.~~

~~(11)(9) Vacation Rentals in accordance with section 21-363.~~

\* \* \*

**Sec. 21-286. Maximum Floor Area Ratio.**

The Floor Area Ratio in the OF Ocean Front District shall not exceed 2.8 to one, exclusive of floor area within enclosed Parking Structures devoted entirely to off-street parking and those floor areas listed in section 21-1 that are excluded in the definition of Floor Area Ratio. The Floor Area Ratio calculation in the OF Ocean Front district may include the area of the Project Site located east of the platted Lot and west of the erosion control line.

**Sec. 21-287. - Maximum Lot coverage—Generally.**

Principal Buildings and Structures in the OF Ocean Front District having 17 Stories or less shall not exceed 20 percent of the total Lot area. For each Story in excess of 17 Stories, the maximum percentage of Building coverage permitted for Principal Buildings and Structures shall decrease by one percent; i.e., 18 Stories, 19 percent Lot coverage; 19 Stories, 18 percent Lot coverage; etc.

**Sec. 21-288. Same—Exception for accessory Parking Structures.**

In the OF Ocean Front District, 100 percent of the required off-street parking spaces shall be contained in fully enclosed Parking Structures ~~which may utilize front, side and rear Setback areas~~ subject to the following requirements and design standards:

- (1) The maximum Lot coverage of the Principal Building does not exceed 20 percent of the total Lot.
- (2) ~~No~~Minimum required parking is not provided on the roof of the Parking Structure. Supplemental parking spaces for guests, deliveries, drop-off and pickup services, and construction, maintenance & repair personnel may be designated:
  - a. along the driveways, and
  - b. on up to 25% of the area of the western end of the Parking Structure rooftop. A larger area of an existing Parking Structure rooftop may be devoted to supplemental parking spaces if approved by the Village Council as provided in subsection (3).
- (3) A minimum of 75 percent of the roof of the Parking Structure, excluding the Principal Structure, shall be utilized for open space, Landscaping, and recreation in accord with a plan approved by the Village. For a Parking Structure constructed prior to January 1, 2023, a request may be submitted to the Village Council to reduce the 75% minimum to allow designation of additional supplemental parking spaces on the rooftop, upon a showing that the additional spaces are necessary to assure safe access to and traffic flow through the site. The Council approval shall specify the alternative minimum percentage and any necessary conditions.
- (4) The maximum Height of the accessory Parking Structure shall not exceed an elevation of 22.00 feet above the average Street Grade (or Bridge Lot Street Grade if applicable) adjoining the Property, and shall conform to the setback regulations contained in section 21-291. ~~For the purpose of this section, the determination of the average Street Grade for those Lots or portions of Lots in proximity to the Haulover Cut Bridge shall be measured as the combined average elevations of the adjoining frontage road and the road surface of the bridge adjoining the subject Property (westerly extension of the Property lines to the bridge). The determination of the average elevation shall be as follows:~~
  - a. ~~Based upon the roadway frontage adjoining the subject Property, establish an imaginary extension of the Property line to the eastern edge of the frontage road right of way and the bridge Structure;~~

- ~~b. At the intersection of the extension of the Property line and the centerline of the frontage road and bridge roadway surface, determine the elevations of the road surfaces at the north and south Property line extensions and divide by four.~~
- (5) No portion of the Parking Structure shall encroach within the front Building Restriction Line area as shown on the recorded plats of the Ocean Front Section of Bay Harbor and the Bal Harbour Ocean Front Addition.
- (6) ~~Accessory Parking Structures shall be designed in such a manner so that from the adjoining roadways, the Structure must be substantially screened from view by the use of earthen berms and Landscaping. Driveways should appear to rise to the entrance of the Principal Building. This shall not prohibit the Parking Structure driveway openings from being visible from an adjoining Street.~~

Where any portion of a Parking Structure is above Grade, the Parking Structure shall be designed in such a manner so that:

a. from the adjoining roadways, the Parking Structure must be substantially screened from view by the use of earthen berms and Landscaping. Driveways should appear to rise to the entrance of the Principal Building. This shall not prohibit the Parking Structure driveway openings from being visible from an adjoining Street.

b. from the Atlantic Ocean (east of lots) and abutting side property lines (north / south), the Parking Structure must be substantially enclosed by the use of screening methods to minimize the view of vehicles, mechanical equipment, and any storage areas located within the Parking Structure.

Large open voids in the exterior facade are prohibited. The exterior facades of all Parking Structures must be architecturally designed to be similar to the architectural design of the Principal Building. If a non-conforming Parking Structure is substantially renovated, the exterior facades shall be modified as required by the ARB. The use of larger or taller landscaping materials such as trees shall also be used where possible to supplement the above screening requirements.

### **Sec. 21-289. - Minimum floor areas.**

The following shall be considered minimum habitable floor areas in the OF Ocean Front District:

- (1) Efficiency dwelling units: 600 square feet.

- (2) One-bedroom dwelling units: 900 square feet.
- (3) Two-bedroom dwelling units: 1,150 square feet.
- (4) Three-bedroom dwelling units: 1,500 square feet.
- (5) For each additional bedroom over three, an additional 200 square feet of floor area shall be required.
- (6) Hotel Guest Rooms: 400 square feet.

Spaces which are convertible to additional bedrooms shall be considered as bedrooms for purposes of determining minimum habitable floor areas.

**Sec. 21-290. - Open space.**

- (a) Not less than 60 percent of the total Lot area of Lots in the OF Ocean Front District shall be maintained as open space. For purposes of this chapter, the roofs of off-street Parking Structures shall be considered open space.
- (b) Further, not less than 50 percent of the total required open space shall be exclusively maintained as usable recreation areas. This space shall be in such dimensions as to be usable for active and passive recreation.

**Sec. 21-291. Setbacks.**

The following Setbacks apply in the OF Ocean Front District:

- (1) *Front.* All Buildings and Structures, except for fully enclosed Parking Structures as allowed in section 21-288 of this article, of 17 Stories or less shall be set back a minimum of 150 feet from the right-of-way of Collins Avenue. Each Story above the 17th Story shall be set back an additional 25 feet from the Story below; i.e., 18 Stories, 175-foot Setback; 19 Stories, 200-foot Setback; etc. This would allow a "stepped" effect for those portions of a Building over 17 Stories. This provision shall not be interpreted to require a "stepped" Building above the 17th Story; rather, if the entire Building is set back to include the base Setback and supplemental Setback for each additional Story over 17, the Building shall be deemed in compliance with this paragraph.
- (2) *Rear.* No Building or Structure of any kind, except Cabanas not greater in Height than ten feet above the finished Grade, shall be erected or maintained on any Lot beyond the east Setback line as shown on the recorded plats of the Ocean Front Section of Bay Harbor and the Bal Harbour Ocean Front Addition.
- (3) *Bulkhead:* No Building or Structure of any kind, except those necessary for the control of beach erosion, shall be built east of the existing Bulkhead.
- (4) *Erosion Control Line:* No Building or Structure of any kind shall be erected or constructed within 55 feet west of the Erosion Control Line.
- (5) *Side.*

- a. All Principal Buildings and Structures shall maintain a minimum side Setback from each side Lot Line equal to 25 percent of the Street frontage of the Lot.
  - b. The maximum width of any Principal Building shall be 50 percent of the width of the Lot.
  - c. Where two or more Principal Buildings are erected on the same or multiple Lots, their combined width shall not exceed 50 percent of the width of the Lot.
  - d. Side Setbacks shall be equal, except that Lots over 250 feet in width may have unequal side Setbacks, provided, however, that not less than a 50 foot side Setback shall be provided for Lots equal to or more than 250 feet in width.
  - e. Notwithstanding subsection (5)d. above, for any parcel of land more than 250 feet in width, if any combination of access easements and beach access improvements are provided on said parcel for the public, all as may be approved by the Village Council, the width of a side Setback shall be measured from the exterior Lot Line, as opposed to any public access easement or land parcel. The purpose of this section is to not penalize a Property Owner for providing public beach access by deducting the width of the public access land from the overall Lot Width. A side Setback for a Principal Building shall not be less than 50 feet in width.
- (6) *Cabanas, Parking Structures and Porte-Cocheres.* Only Cabanas and enclosed Parking Structures shall be permitted in the Setback areas, subject to the following:
- a. Cabanas and Parking Structures shall ~~either abut the side Lot Lines or~~ maintain a minimum twenty-five (25) foot side Setback from each side Lot Line.
  - b. No Parking Structure shall exceed an elevation of 22.00 feet above the average Street Grade (or Bridge Lot Street Grade if applicable) adjoining the Property, where such Structure abuts a side Lot Line.
  - c. No Parking Structure shall exceed an elevation of 22.00 feet above the average Street Grade (or Bridge Lot Street Grade if applicable) adjoining the Property, within the rear Setback as shown on the recorded plats of the Ocean Front Section of Bay Harbor and the Bal Harbour Ocean Front Addition, as of May 1, 2002.
  - d. Cabanas may be erected in the rear Setback area provided they do not exceed an elevation of 31.00 feet above the average Street Grade (or Bridge Lot Street Grade if applicable) adjoining the Property.
  - e. Cabanas erected in the side Setback portions of the rear Setback areas shall not exceed an elevation of 22.00 feet above the average Street Grade (or Bridge Lot Street Grade if applicable) adjoining the Property.

- f. No Buildings or Structures of any kind shall be erected or constructed within the front Setback area, except as follows:
    - (i) A Porte-Cochere may be constructed in the front Setback area so long as it is cantilevered, and does not exceed a length along the front entrance in reasonable proportion to the entrance, and projects no more than 20 feet into the front Setback area. Notwithstanding the above, for Buildings that are located as of May 1, 2002 in the front Setback area, the Porte-Cochere may project no more than 20 feet from the face of the existing tower Structure area. Such Porte-Cochere must be reviewed by the Architectural Review Board.
    - (ii) A fully enclosed Parking Structure may be erected within the front Setback area but shall not encroach within the Building Restriction Line areas adjacent to Collins Avenue as shown on the recorded plats of the Ocean Front Section of Bay Harbor and the Bal Harbour Ocean Front Addition.
- (7) *Coastal Construction Control Line.* Notwithstanding anything to the contrary in the Code, Building construction seaward of the coastal construction control line may be permitted provided that all State and local permits required for such Building construction are obtained by the applicant.

**Sec. 21-292. - Landscaping.**

The following Landscaping provisions shall apply in the OF Ocean Front District.

(1) *Minimum Landscaping required.* A minimum of 25 percent of the total Lot area shall be maintained as landscaped areas.

(2) *Area to be landscaped.* All Lot areas not occupied by a principal and accessory Structures, required off-street parking and loading, access and circulation facilities or other required areas, including roof surface of enclosed Parking Structures, shall be landscaped by lawns, trees, shrubs, ground cover and other appropriate materials.

(3) *Buffer zones.*

a. Within the front Setback areas, there shall be a fully landscaped buffer zone along the front Lot Line for a depth of at least 40 feet as measured from the Street right-of-way line, and a fully landscaped buffer zone along the north and south side Lot Lines for a depth of ten feet, as measured from the side Lot Line.

b. Landscaping within these buffer zones shall be designed and planned to protect the view of adjoining Properties and screen surface parking facilities from the adjacent Streets and Properties.

(4) *Front Setback area.* A minimum of 50 percent of the required front Setback area shall be fully landscaped.



(5) *Beach Landscaping.* The beach area between the existing Bulkheads and the Erosion Control Line shall be landscaped with plant materials intended to beautify the area and to aid in the control of beach erosion.

(6) *Landscape plan required.* A landscape plan, indicating size, type, and location of all plant and other materials, shall be submitted for review and approval to the Village.

### **Sec. 21-293. Building Height.**

(a) The maximum Height of a flat roof deck or the midpoint of a sloped roof of any Principal Building or Structure, other than decorative architectural roof features, Mechanical Equipment or Rooms, elevator equipment Rooms, water storage facilities, air conditioning equipment, accessory recreational facilities, fences, wall and similar facilities (non-habitable roof features) shall be 275 feet above the average Street Grade (or Bridge Lot Street Grade if applicable) adjoining the Property. Non-habitable roof features may extend above the height of the Building by no more than 25 feet.

(b) In the OF Ocean Front District, for the purposes of calculating maximum Building coverage pursuant to section 21-287, and Setbacks pursuant to section 21-291, a Story shall not exceed 11 feet. The 11-foot Story Height referenced herein shall not be interpreted to restrict the Height of an individual Story to 11 feet or any other dimension, but shall only serve as a means to measure and restrict Building coverage and Setbacks.

(c) Roof Structures designed and utilized for the housing of Mechanical Equipment such as elevators, water storage, air conditioning and similar facilities shall not be considered in calculating the number of Stories, provided:

- (1) The Structure is fully enclosed or screened and does not exceed 25 feet in Height.
- (2) The outside walls of the roof Structure are set back a minimum of 20 feet from the exterior walls of the principal Structure.
- (3) No Guest Rooms, dwelling units, business establishments or other accommodations or public spaces, are contained within this Structure.

(d) Rooftop accessory recreational facilities shall be visually screened from neighboring oceanfront Lots by fences, walls or other screening materials or features that are no shorter in height than the object to be screened, all as approved by the Architectural Review Board.

~~(e) For the purpose of this section, the determination of the average Lot Street Grade for those Lots or portions of Lots in proximity to the Haulover Cut Bridge shall be measured as the combined average elevations of the adjoining frontage road and the road surface of the bridge adjoining the subject Property (westerly extension of the Property lines to the bridge). The determination of the average elevation shall be as follows:~~

- ~~(1) Based upon the roadway frontage adjoining the subject Property, establish an imaginary extension of the Property line to the eastern edge of the frontage road right-of-way and the bridge Structure;~~

- ~~(2) At the intersection of the extension of the Property line and the centerline of the frontage road and bridge roadway surface, determine the elevations of the road surfaces at the north and south Property line extensions and divide by four.~~

### **Sec. 21-294. - Model Buildings.**

Model Buildings designed and utilized for advertising, promotional or display purposes may be constructed in the OF Ocean Front District subject to the following requirements:

- (1) Model Buildings shall not exceed a height of 12 feet above finished Grade, shall be set back a minimum of 50 feet from the front Property line, and shall be set back a minimum of 20 feet from side Lot Lines.
- (2) Model Buildings shall not be erected prior to the issuance of all required building permits for the principal structure.
- (3) Model Buildings shall be removed prior to the issuance of certificates of occupancy for the Principal Building.

### **Sec. 21-295. - Balcony or Porch Enclosures.**

(a) Balcony or Porch Enclosures shall be permitted in any Principal Building in the OF Ocean front District constructed after the effective date of this section, provided:

- (1) Such enclosures are uniform in color, material, design, configuration and type.
- (2) Such enclosures are installed and constructed contemporaneously with the construction of the Principal Building.
- (3) Individual enclosed Balconies or Porches may not be utilized as a bedroom.
- (4) Applications for Building permits for all Balcony or Porch Enclosures shall be accompanied by a statement from a professional engineer or architect in active structural practice, registered in the State of Florida, certifying the capability of the Principal Building to support the proposed enclosure.

(b) Except as otherwise provided in this section, Ordinance No. 228 shall apply to Principal Buildings constructed after the effective date of Ordinance No. 228, May 26, 1981. Balcony or Porch Enclosures to be constructed in any existing Building shall be governed by regulations in effect prior to the adoption of Ordinance No. 228; provided, however, that Ordinance No. 228 shall also apply to Principal Buildings constructed prior to the adoption of that ordinance where no Balcony or Porch Enclosures have been installed or constructed on such Principal Buildings as of the effective date of Ordinance No. 239.

### **Sec. 21-296. Storm and hurricane shutters.**

- (a) Current Florida Building Code requires impact resistant doors and windows for new multistory multiple family development and hotel construction. If allowed by Florida Building Code, sStorm or hurricane shutters or similar protective devices must meet

~~the following standards shall be permitted in any Principal Building in the OF Ocean Front District constructed after the effect of this section, provided:~~

- (1) Such storm or hurricane shutters or impact resistant windows are uniform in color, material, design, configuration and type for each Principal Building.
  - (2) Storm or hurricane shutters of whatever type, when installed, shall be installed immediately facing the structural wall plane of the Principal Building, as close as practical to sliding glass doors, doors, windows or other wall openings.
  - (3) Storm or hurricane shutters of whatever type shall not be installed on the exterior face or railings of Balconies or Porches where such Balconies or Porches are located above the first floor level.
- (b) Except as otherwise provided in this section, Ordinance No. 239 shall apply to storm or hurricane shutters installed on Principal Buildings constructed after the effective date of Ordinance No. 239. Storm or hurricane shutters already installed, or to be installed, on Principal Buildings in existence as of the effective date of Ordinance No. 239 shall be governed by regulations in effect prior to the adoption of Ordinance No. 228 on May 26, 1981; provided, however, that Ordinance No. 228 shall apply to storm or hurricane shutters installed on Principal Buildings constructed prior to the effective date of Ordinance No. 228 on May 26, 1981 where no such storm or hurricane shutters have been installed or constructed on such Principal Buildings as of the effective date of Ordinance No. 239.

**Sec. 21-297. - Protection of sea turtles during nesting season.**

The disturbance of sea turtles nests is prohibited, unless conducted by authorized persons in the duty of sea turtle protection. During nesting seasons, beach cleaning activities are not to come within a distance which will disturb the function of the nests. Where feasible, the source of emission of outside light from structures will not be directly visible from turtle nesting areas.

**Sec. 21-298. - Protection of sea turtles during beach renourishment.**

Beach renourishment projects shall protect sea turtle nesting areas by limiting construction in such areas to fall, winter and spring months, or by permitting the collection of eggs from identified nests by authorized personnel for incubation, hatching and subsequent release of hatchlings.

**Sec. 21-299. - PD Planned Development District.**

\* \* \*

**ARTICLE VII. - BOATS, WATERWAYS, BEACHES AND DOCKING FACILITIES**

\* \* \*

**DIVISION 3. - BEACH AND COASTAL CONSTRUCTION CONTROL LINE**

\* \* \*

~~**Sec. 21-446. Prohibition of habitable structures.** Construction of new habitable structures seaward of the coastal construction control [line] shall be prohibited.~~

**Sec. 21-447. - Structures allowed seaward of the coastal construction control line.** Construction of ancillary nonhabitable structures such as pools, cabanas, tennis courts, etc., shall be allowed seaward of the coastal construction control line provided such structures are designed pursuant to Chapter 8.5 of this Code and all State and local permits required for such Building construction are obtained by the applicant. ~~either to be sacrificed to intense storms or constructed withstand wave forces on the order of 1,000 psi and provided all necessary permits are obtained from agencies having jurisdiction over that area.~~

\* \* \*

**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 this Ordinance shall become effective and made part of the Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 5. Conflict.** That all sections or parts of sections of the Village Code, all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6. Effective Date.** That this Ordinance shall become effective upon adoption. This Ordinance shall only apply to building permits for which a process number is issued after the effective date of this Ordinance

PASSED AND ADOPTED on first reading this 18<sup>th</sup> day of July, 2023.

PASSED AND ADOPTED on second reading this 19<sup>th</sup> day of September, 2023.

\_\_\_\_\_  
Mayor Jeffrey P. Freimark



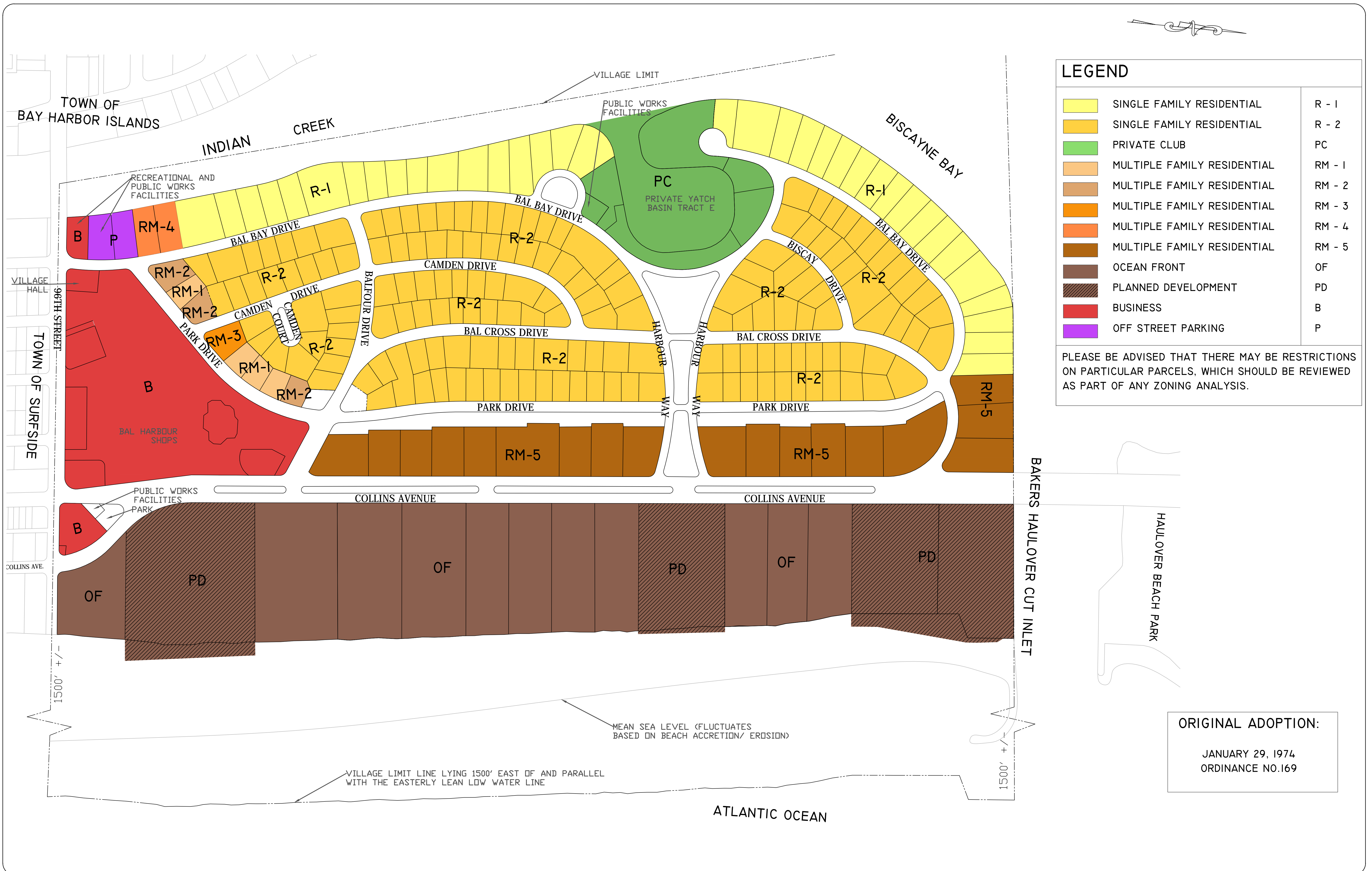
ATTEST:

\_\_\_\_\_  
Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.





### LEGEND

	SINGLE FAMILY RESIDENTIAL	R - 1
	SINGLE FAMILY RESIDENTIAL	R - 2
	PRIVATE CLUB	PC
	MULTIPLE FAMILY RESIDENTIAL	RM - 1
	MULTIPLE FAMILY RESIDENTIAL	RM - 2
	MULTIPLE FAMILY RESIDENTIAL	RM - 3
	MULTIPLE FAMILY RESIDENTIAL	RM - 4
	MULTIPLE FAMILY RESIDENTIAL	RM - 5
	OCEAN FRONT	OF
	PLANNED DEVELOPMENT	PD
	BUSINESS	B
	OFF STREET PARKING	P

PLEASE BE ADVISED THAT THERE MAY BE RESTRICTIONS ON PARTICULAR PARCELS, WHICH SHOULD BE REVIEWED AS PART OF ANY ZONING ANALYSIS.

**ORIGINAL ADOPTION:**  
 JANUARY 29, 1974  
 ORDINANCE NO.169

DATE	ORD. NO.	REVISION	BY
8/13/2019		ADDED LOTS PC	ACR
3/19/2013	567	REZONE TRACTS A FROM OF OCEAN FRONT TO PD	ACR
2/21/2008	504	REZONE TRACTS A FROM PC PRIVATE CLUB TO OF OCEAN FRONT	
6/17/2003	484	REZONE TRACTS C, D AND E FROM OF TO PD	
8/17/2000	437	REZONE LOTS 2, 3 AND 4 FROM OF TO PD	

Designed: MJM  
 Drawn: ACR  
 Checked: MJM

**MICHAEL MILLER PLANNING ASSOCIATES, INC.**  
 7522 Wiles Rd, Suite B-203  
 Coral Springs, Florida 33067  
 Tel. (954) 757-9909 Fax: (954) 757-7089

PREPARED FOR  
**BAL HARBOUR VILLAGE**

**ZONING DISTRICT MAP**

SCALE: 1"=200'  
 PROJECT: 00-1103-0400  
 SHEET NO.

