

**ORDINANCE NO. 2023-09**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING THE BISCAYNE PARK LAND DEVELOPMENT CODE TO PRESERVE AND ENHANCE PROSPERITY IN THE VILLAGE OF BISCAYNE PARK BY MODIFYING CHAPTER 2, “DEFINITIONS”, CHAPTER 4, “HOUSING”, CHAPTER 10, “DESIGN AND IMPROVEMENT STANDARDS”; CHAPTER 11, “ACCESSORY STRUCTURES”; AND CHAPTER 17, “FEES, BONDS AND CHARGES”; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Biscayne Park (“Village”) has adopted a Land Development Code (the “LDC”) to foster and preserve public health, safety, comfort and welfare, and to aid in the harmonious, orderly, aesthetically pleasing, and socially beneficial development of the Village in accordance with the Village’s Comprehensive Plan; and

**WHEREAS**, following extensive public discussion about future growth and development within the Village, the Village is seeking to update its LDC, guided by principles which originated from common concerns of Village residents about the character, size, height, and positioning of structures being built within the Village, and the desire to preserve the Village’s unique character; and

**WHEREAS**, the Village seeks to amend the LDC to improve livability, and preserve and enhance prosperity within the Village; and

**WHEREAS**, the LDC and the modifications provided herein are wholly consistent with the Village’s Comprehensive Plan, and the Florida Community Planning Act; and

**WHEREAS**, the Village Commission of the Village of Biscayne Park hereby finds and declares that the adoption of this ordinance is in the best interest of the Village; and

**WHEREAS**, on September \_\_\_\_, 2022, the Village Planning and Design Review Board, as the local planning agency for the Village, held its hearing on this proposed Ordinance with due public notice and input; and

**WHEREAS**, on February \_\_\_\_, 2023, the Village Commission held a first reading and public hearing of this proposed Ordinance; and

**WHEREAS**, on March \_\_\_\_, 2023, the Village Commission held a second reading and public reading of this proposed Ordinance with due public notice and input.

**NOW, THEREFORE, BE ORDAINED BY THE VILLAGE OF BISCAYNE PARK, FLORIDA AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Village Commission.

**Section 2. Amendment to Chapter 2 of the Land Development Code.** Chapter 2, "Definitions" of the Land Development Code of Ordinances of the Village of Biscayne Park, Florida is hereby amended to read as follows:

## **CHAPTER 2- DEFINITIONS**

### **2.1. Generally.**

2.1.1 *Establishment of definitions.* In the construction of this code, and of all ordinances, the following are the definitions adopted, unless such definitions would be inconsistent with the manifest intent of the village commission.

### **2.2. Meanings.**

2.2.1 *Accessory building or accessory structure:* A secondary building, structure, or garage on a lot or parcel subordinate to and not forming an integral part of the main or principal building but pertaining to the use of the main building.

2.2.2 ~~*Accessory use: A building or structure, the use of which is incidental to the main building or structure, and is located on the same lot, and the use of which is manifestly incidental to that of the main building.*~~ *A subordinate use which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use.*

2.2.3 *Addition:* An extension or increase in floor area or height of a building.

~~2.2.3 *Adult Congregate Living Facility (ACLF):* A type of residential care facility, defined in F.S. Ch. 400, Pt. 2.~~

2.2.4 *Alley:* A narrow thoroughfare dedicated or used for public passageway up to twenty-five (25) feet in width, upon which usually abut the rear of the premises, or upon which service entrances or buildings abut, and not generally used as a thoroughfare by both pedestrians and vehicles, which is not used for general traffic, and is not otherwise officially designated as a street.

2.2.5 *Alteration:* Any change or modification of construction, space arrangement and/or occupancy of a building, or decreasing or increasing the area thereof.

2.2.6 *Buildable Area:* the lot area of a property minus any required setback areas.

2.2.7 *Building:* Anything constructed or erected, the use of which demands a permanent location on the land or anything attached to a building.

2.2.8 *Business or commercial:* Any use or activity designed or used for gainful purposes.

2.2.9 *Carport:* A covered area for sheltering a motor vehicle.

2.2.10 *Charter:* The word "charter" shall mean the Charter of the Village of Biscayne Park as printed in Part I of the General Code of the village.

2.2.11 *Clerestory window:* A window above eye level designed to allow light and air without compromising privacy.

2.2.12 *Code:* Reference to "this code" shall mean the Land Development Code of Ordinances, Village of Biscayne Park, Florida, as designated in chapter 1, subsection 1.1.

2.2.13 *Commission:* The words "commission," "village commission" or "governing body" shall mean the village commission of the Village of Biscayne Park.

- 2.2.14 *Community residential home*: A community residential home means a dwelling unit licensed to serve clients of the department of health and rehabilitative services, which provides a living environment for seven (7) to fourteen (14) unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.
- 2.2.15 *Comprehensive plan*: A plan that meets the requirements of F.S. §§ 163.3177 and 163.3178.
- 2.2.16 *Computation of time*: In computing any period of time prescribed or allowed by this code the day of the act, event or default from which the designated period of time beginning to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- State law reference(s)—Similar provision, Florida Rules of Civil Procedure, § 1.090(a).
- 2.2.17 *County*: The words "the county" or "this county" shall mean Miami-Dade County, Florida.
- State law reference(s)—Boundaries of Miami-Dade County, F.S. § 7.13.
- 2.2.18 *Delegation of authority*: Whenever a provision appears requiring the head of a department or officer of the village to do some act or make certain inspections, it is to be construed to authorize the head of the department or officer to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designate otherwise.
- 2.2.19 *Developer*: Any person, including a governmental agency, undertaking any development as defined in F.S. § 380.04.
- 2.2.20 *Development*: Any of the following activities: Building, installing, enlarging, replacing or substantially restoring a structure; a minor replat; alteration of a historic property for which authorization is required under this code; tree removal for which authorization is required under this code.
- 2.2.21 *Development order*: Any order granting, denying, or granting with conditions an application for a development permit.
- 2.2.22 *Development permit*: This includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.
- 2.2.23 *Dish antenna*: A dish antenna intended for the purpose of receiving communications from orbiting satellites and other extraterrestrial sources, a low noise amplifier (L.N.A.) which is situated at the focal point of the receiving component for the purpose of magnifying and transferring signals, a coaxial cable for the purpose of carrying signals to the interior of a building.
- 2.2.24 *Domestic and commercial building material waste*: This type of waste includes sand, earth, wood, stone, brick, concrete construction blocks, roofing materials, metals, cardboard products and any other waste material accumulated after construction, renovation, remodeling, repair projects or removal of buildings.
- 2.2.25 *Dwelling, one-family*: A private residence building used or intended to be used as a home or residence in which all living rooms are accessible to each other from within the building and in which the use and management of all sleeping quarters, all appliances for sanitation, cooking, ventilating, heating or lighting are for the use of one (1) family only.

- 2.2.26 *Dwelling, duplex*: A residence building designed for, or used as the separate home or residence of two (2) separate and distinct families, but having the appearance of a single-family dwelling house. Each individual unit in the duplex shall comply with the definition for a one-family dwelling.
- 2.2.27 *Family*: One (1) person, or a group of two (2) or more persons living together and interrelated by blood, marriage or legal adoption, occupying a dwelling unit designed as a single-family use, as a separate housekeeping unit with a single set of kitchen facilities. The persons thus constituting a family may also include gratuitous guests and domestic servants.
- 2.2.28 *Fence*: A constructed barrier erected to enclose, screen or separate an area.
- 2.2.28(a) *Pedestrian gate*: An opening in a wall, fence, or hedge with a swinging door to allow for pedestrian access to the property.
- 2.2.29 *Flood elevation, base (BFE)*: A flood elevation having a one percent chance of being equaled or exceeded in any given year and is determined by the most recent FEMA Flood Insurance Rate Maps (FIRM).
- 2.2.30 *F.S.*: The abbreviation "F.S." shall mean the latest edition or supplement of the Florida Statutes.
- 2.2.31 *Garage, private*: A structure not larger than five hundred (500) square feet in area for the private use solely for the owner or occupant of the principal building on a lot or of his family or domestic employees for the storage of motor vehicles, and which has no public shop or mechanical service in connection therewith.
- 2.2.32 *Gender*: A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.
- 2.2.33 *Grade*: Grade shall be the mean level of the finished lot surface of the ground adjacent to the exterior walls of a building or a base to support a structure.
- 2.2.34 *Gross density*: The total number of dwelling units divided by the total site area plus half the width of the public right-of-way.
- 2.2.35 *Gross floor area*: The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two (2) buildings, but not including interior parking spaces, or any space where the floor-to-ceiling height is less than six (6) feet.
- 2.2.36 *Hedge*: A dense row of shrubs or low trees in excess of eight (8) feet in length which constitutes a barrier.
- 2.2.37 *Height, building*: Measured from the established base flood elevation for the purpose of regulating the number of stories and the height of building.
- 2.2.38 *Highway (street)*: Any public thoroughfare wider than twenty-five (25) feet including streets, which afford primary access to abutting property, and any thoroughfare of less width which is not classed as an alley.
- 2.2.39 *Impervious or impermeable surface*: Site area covered by nonporous structural materials such as buildings, sidewalks, driveways, roofing, decking or structure foundations or supports and which does not allow water to penetrate to the ground.
- 2.2.40 *Keeper and proprietor*: These terms include persons, firms, associations, corporations, clubs and partnerships, whether acting by themselves or through a servant, agent or employee.

- 2.2.41 *Land*: The earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as land.
- 2.2.42 *Land use*: The development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under an adopted comprehensive plan or element or portion thereof, land development regulations, or land development code, as the context may indicate.
- 2.2.43 *Lot*: A parcel of land fronting on a street, place, way or waterway which is or may be occupied by a building and its accessory units including the open spaces required by the terms of this Code and which parcel or land is a matter of record in the public records of Miami-Dade County, Florida. A lot having two (2) such frontages shall be known as a dual frontage. The word "lot" includes the words "plot" and "tract."
- 2.2.44 *Lot, corner*: Any lot situated at the junction of and abutting on two (2) or more intersections or intercepting streets or public highways. If the angle of intersection of the direction lines of two (2) highways is more than one hundred thirty-five (135) degrees, the lot fronting on said intersection is not a corner lot.
- 2.2.4 Lot, interior: A Lot abutting upon only one (1) street with a single frontage.
- 2.2.4 Lot, exterior: A Lot abutting upon two (2) streets with a dual frontage.
- 2.2.45 Lot coverage: The area of a lot which is occupied or covered by all buildings, and accessory structures or uses, driveways, walkways, pools, and patios at or above grade and is impervious (that is, nonporous or, does not absorb water).
- 2.2.46 *Lot lines, front*: In the case of a lot abutting upon only one (1) street, the front line is the line separating such lot from the public right-of-way. In the case of a corner lot not occupied by a building that part of the lot having the narrowest frontage on any street shall be considered the front lot line. In the case of a corner lot occupied by a building the front lot line shall be determined by the location of the front door of the dwelling. In the case of any other lot, one (1) such line shall be elected to be the front line for the purposes of this code, provided it is so designated by the building plans which meet the approval of the planning design and review board.
- 2.2.47 *Lot line, rear*: The rear lot line is that boundary which is opposite and most distant from the front lot line. In the case of a lot pointed at the rear, or any odd-shaped lot, the rear lot line shall be determined by the planning board.
- 2.2.48 *Lot line, side*: A side lot line is any boundary lot line not a front lot line or a rear lot line. A side lot line separating a lot from a street is an exterior side lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.
- 2.2.49 *Manufactured home*: A structure, transportable in one (1) or more sections, which is built on a permanent chassis, designed to be used with or without a permanent foundation, and connected to the required utilities.
- 2.2.50 Market value: The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. Market value shall be determined in the following ways: (1) utilizing Miami-Dade County Property Appraiser's assessment for ad valorem taxation for the (depreciated) market value for the structure only; or (2) two independent appraisals for the structure only prepared and certified by a Florida Licensed Appraiser.
- 2.2.51 *Minor replat*: The subdivision of a single lot or parcel of land into two (2) lots or parcels, or the subdivision of a parcel into two (2) or more lots solely for the purpose of increasing the area of two

(2) or more adjacent lots or parcels of land, where there are no roadway, drainage or other required improvements, and where the resultant lots comply with the standards of this Code.

2.2.52 *Mobile home (trailer)*: A non-self-propelled vehicle or conveyance, permanently equipped to travel upon the public highways, that is used either temporarily or permanently as a residence or living quarters.

2.2.53 *Month*: The word "month" shall mean a calendar month.

2.2.54 *Name of officer, department, board, etc.*: The naming of an officer, department, board, etc., shall be construed as if followed by the words "of the Village of Biscayne Park."

2.2.55 *Nonconforming lot*: A lot of record, which does not meet the area or width requirements of the Land Development Code for the residential sector in which it is located.

2.2.56 *Nonconforming structure*: A structure lawfully established and having satisfied all legal requirements for construction and occupancy prior to and existing on the effective date of the Land Development Code, or any amendment thereto, which renders the structure nonconforming.

2.2.57 *Nonconforming use*: Use of any property or premises in any manner which does not comply with the regulations provided for the residential sector in which the property or premises are situated, if such use was originally legally established.

2.2.58 *Nontechnical and technical words*: Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

2.2.59 *Number*: A word importing the singular number only may extend and be applied to several persons and things as well as to one (1) person and thing.

2.2.60 *Oath*: The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be submitted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

2.2.61 *Open Space*: Areas that are not occupied by buildings, accessory structures, parking areas, streets, driveways or loading areas and which may be equipped or developed with amenities designed to encourage the use and enjoyment of the space either privately or by the general public.

2.2.62 *Owner*: The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

2.2.63 *Person*: The word "person" shall extend and be applied to individuals, children, associations, firms, joint ventures, estates, trusts, business trusts, syndicates fiduciaries, partnerships and bodies politic and corporate, and all other groups and combinations.

2.2.64 *Pervious or permeable surface*: Allowing water to pass, or percolate, through to the ground. Areas such as grass, gravel, mulch and landscaped areas are considered pervious.

2.2.65 *Planning board or Planning and design review board*: The Village of Biscayne Park Planning and Design Review Board.

2.2.66 *Preceding, following*: The words "preceding" and "following" means next before and next after, respectively.

- 2.2.67 *Primary frontage*: Shall mean the main façade of a building which faces the primary street (See lot line, front).
- 2.2.68 *Real property*: Land, and generally whatever is erected or growing upon or affixed to land. Also rights issuing out of, annexed to, and exercisable with or about land.
- 2.2.69 *Recreation vehicle*: A vehicular-type portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreation, camping, and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motorhomes.
- 2.2.70 *Setback*: The minimum horizontal distance between the street, rear or side lines of a lot and the front, rear or side lines of the building. When two (2) or more lots under one (1) ownership are used, the exterior property line so grouped shall be used in determining setbacks.
- 2.2.71 *Shall*: the word "shall" is mandatory and not directory [discretionary].
- 2.2.72 *Sidewalks*: Any portion of a street between the curbline and the adjacent property line, intended for the use of pedestrians, excluding parkways.
- 2.2.73 *Singular*: The singular includes the plural, and the plural includes the singular.
- 2.2.74 *Solid waste management*: The process by which solid waste is collected, transported, stored, separated, processed, or disposed of in any other way, according to an orderly purposeful, and planned program.
- (a) *Solid waste* includes garbage, refuse, yard trash, clean debris, white goods, special waste, ashes, sludge, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic or governmental operations.
  - (b) *Yard trash* means vegetative matter resulting from landscaping maintenance and land-clearing operations.
  - (c) *Clean debris* means any solid waste which is virtually inert and which is not a pollution threat to groundwater or surface waters and is not a fire hazard, and which is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes uncontaminated concrete, including embedded pipe or steel, brick, glass, ceramics, and other wastes designated by the department of environmental regulation.
  - (d) *White goods* includes inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.
  - (e) *Special wastes* means solid wastes that require special handling and management, including but not limited to, white goods, whole tires, used oil, mattresses, furniture, lead-acid batteries, and biological wastes.
  - (f) *Sludge* includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility; and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.
- 2.2.75 *State*: The words "the state" or "this state" shall mean the State of Florida.
- 2.2.76 *Stormproof*: Requires compliance with the latest adopted methods or codes.
- 2.2.77 *Structural alterations*: Any change in the shape, size of any portion of a building or of the supporting members of a building or structure such as walls, columns, beams, arches, girders, floor joists or roof joists.

- 2.2.78 *Structure*: Anything constructed or erected the use of which requires rigid location on the ground, or attachment to something having a permanent location on the ground, including buildings, walls, fences, signs, light standards, towers, tanks, etc.
- 2.2.79 *Tenant*: The word "tenant" or "occupant," applied to a building or land, shall include any person holding a written or oral lease of or who occupies, the whole or part of such a building or land, either along or with others.
- 2.2.80 *Tense*: Words used in the past or present tense include the future as well as the past and present.
- 2.2.81 *Village*: The words "the village" or "this village" shall mean the municipal corporation of Biscayne Park, Florida, or any of its officers, agents or departments, as the sense shall require or admit.
- 2.2.82 *Written or in writing*: This shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.
- 2.2.83 *Yard*: An open space on the same lot with a building, said space being unoccupied and unobstructed from the ground upward, except as otherwise permitted herein. A front, rear or side yard shall be defined as that open space adjoining a front, rear, or side lot line respectively.
- 2.2.84 *Yard, corner side*: The open space between the closest point of the principal building and the side property line of the lot which abuts a street and extending from the front corner of the building closest to the side property line. The beginning of the corner side yard shall be the line created from that front corner point of intersection to the rear property line.
- 2.2.85 *Year*: The word "year" shall mean a calendar year, unless otherwise specified.

**Section 3. Amendment to Chapter 4 of the Land Development Code.** Chapter 4, "Housing" of the Land Development Code of Ordinances of the Village of Biscayne Park, Florida is hereby amended to read as follows:

## **CHAPTER 4- HOUSING**

### **4.3. Dwelling types.**

4.3.1 Dwelling types allowed. Dwelling types allowed in each residential sector of the village shall be only as described in Table A, Residential Sectors.

4.3.2 Dwelling types prohibited. Mobile homes are prohibited.

#### **4.3.3.**

(a) Presumption of illegal multiple family use or subdivision. It shall be presumed that a prohibited, illegal, and violative multi-family use of a one-family dwelling has been established when one or more of the following conditions are observed:

- (1) There are two or more electrical, water gas or other types of utility meters, or mailboxes on the premises.
- (2) There is evidence of a liquid propane (LP) gas tank installed in an unauthorized detached structure on the premises.
- (3) There is more than one cooking area in the primary structure or an accessory building has a cooking area. Notwithstanding the foregoing, an unenclosed outdoor cooking area

located under a pergola or similar accessory structure shall not be considered a condition that establishes a presumption of illegal multiple family use or subdivision.

- (4) All living areas in the dwelling unit are not interconnected.
  - (5) Multiple numbered, lettered, or otherwise labelled parking spaces.
  - (6) An unauthorized detached building with air conditioning, interior cooking areas or utility meters.
  - (7) There is more than one different house address unit number posted on the premises.
  - (8) An advertisement or sign indicating the availability of more than one dwelling unit on the premises.
  - (9) An unpermitted exterior door.
  - (10) Disproportionately high utility bill or bills in comparison to similarly-sized residences in the area, or disproportionately high utility bill or bills in relation to the number of bedrooms.
  - (11) Disproportionate number of vehicles parked overnight at or registered to the property in relation to the number of bedrooms.
- (b) Presumption of illegal rooming house. As used herein, rooming house shall mean any dwelling, or part of any dwelling, containing one (1) or more rooming units in which space is let by the owner or operator on a predominantly permanent basis to three (3) or more persons who are not husband or wife, son or daughter, mother or father, sister or brother of the owner or operator. For the purpose of the Biscayne Park Land Development Code, boardinghouses are included in this category. It shall be presumed that a rooming house has been established when one or more of the following conditions are observed:
- (1) An advertisement or sign indicating the availability of rooms, beds, or living spaces for rent.
  - (2) Interior locks, partitions, or hasps.
  - (3) Provision of cooking or kitchen appliances, such as electric fry pans, toaster ovens, or refrigerators, in individual rooms.
  - (4) Individual storage of food in bedrooms.
  - (5) Alphabetical, numeric, or other labeling of bedrooms or living areas.
  - (6) Multiple numbered, lettered, or otherwise labelled parking spaces.
  - (7) Alterations to structures which enhance or facilitate its use as a rooming house.
  - (8) Disproportionately high utility bill or bills in comparison to similarly sized residences in the area, or disproportionately high utility bill or bills in relation to the number of bedrooms.
  - (9) Disproportionate number of vehicles parked overnight at or registered to the property in relation to the number of bedrooms.
- (c) Rebutting the presumption.

The presumption may be rebutted by the submission of a notarized affidavit in a form acceptable to the Village Manager from the property owner attesting that the entire dwelling unit and

accessory structures are being maintained for one-family dwelling use only, and one of the following:

(i) The property owner submits a current as-built floor plan prepared by a licensed engineer or architect, surveying the entire dwelling unit and accessory structures and showing all rooms are interconnected as a single-family dwelling and attesting that no conditions on the property show an illegal subdivision of the residence or illegal multi-family or rooming house use; or

(ii) A code compliance officer is able to enter the property, inspect the interior of the dwelling unit and accessory structures and verify its use as a single-family dwelling.

(d) Enforcement and Penalties.

(i) The Village may enforce the provisions contained in Section 4.3 in accordance with Chapter 14 of the Biscayne Park Land Development Code. In addition to any code compliance action taken by the Village, the Village may take any other appropriate legal action, including but not limited to, injunctive action, to enforce the provisions of this Section. Nothing contained in this section shall prevent the enforcement actions authorized by the Village of Biscayne Park's Code, Miami-Dade County Code of Ordinances, Florida Statutes, and any other governmental agency.

(ii) Penalties. Any person or entity who violates the provisions contained in Section 4.3 shall be subject to a fine of \$250 per day for a first violation and \$500 per day for a repeat violation, to be issued in accordance with Chapter 14 of the Biscayne Park Land Development Code. Each day any violation of this Section continues shall constitute a separate offense.

**Section 4. Amendment to Chapter 10 of the Land Development Code.** Chapter 10, "Design and Improvement Standards" of the Land Development Code of Ordinances of the Village of Biscayne Park, Florida is hereby amended to read as follows:

## **CHAPTER 10 - DESIGN AND IMPROVEMENT STANDARDS**

### **10.1. Subdivision.**

10.1.1 *Minor plat.* As the village is completely platted and builtout, only minor plats, for which a development order is required, are possible.

### **10.2. Site design.**

10.2.1 *Residential sector regulations.* No residential building or land shall be used and no residential building shall be erected, constructed, reconstructed or structurally altered for any specific use except according to the regulations contained in Table A, Residential Sectors.

10.2.2 *Lot areas and dimensions.* Lot areas or dimensions shall not be reduced or diminished so that the yards or open spaces, also called setbacks herein, shall be smaller than those provided by this code, nor shall the lot area per family be reduced in any manner except in conformity with the regulations hereby established for the sector in which the building is located.

10.2.3 *Nonconforming lots.* ~~This code shall not be construed to prevent the construction of a building on any lot of record by an owner of record at the time of the passage of the ordinance from which this~~

~~code was derived notwithstanding the fact that such lot may have a lesser area than is required in the particular sector; in which case yards may be made to conform to existing yards on the same street in the same block. Hereafter every building erected or structurally altered shall provide a lot of not less than seventy five (75) feet front or width. An existing lot of record that is nonconforming to Table A, Residential Sectors, in area and/or width shall not be a building site unless the proposed structure is constructed in accordance with the other regulations contained in Table A, Residential Sectors, subject to the approval of the Village Planning and Design Review Board.~~

10.2.4 *Site location of buildings for public gatherings.* No building or land where public gatherings are to be held, such as schools, churches and playgrounds shall be located nearer than fifty (50) feet to adjacent property line.

10.2.5 Zoning Map.

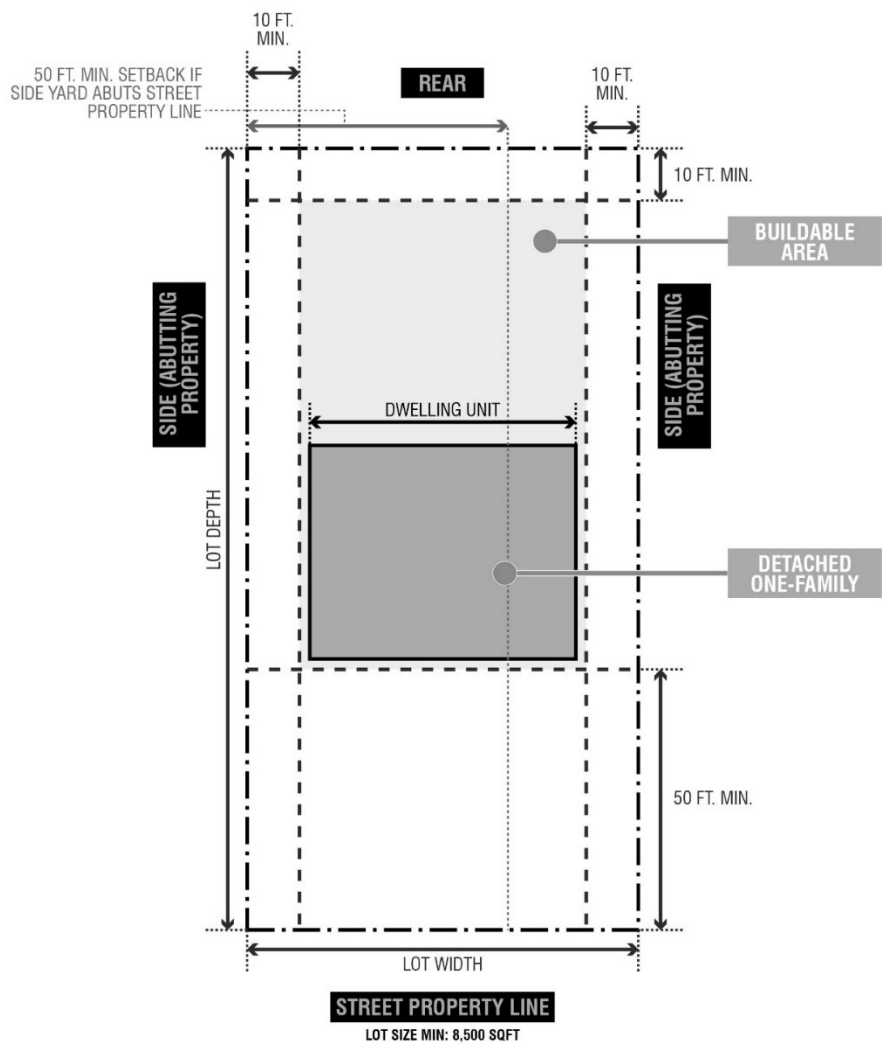
- a. In accordance with this land development code, the Village is hereby divided into Sectors as shown on the official village zoning sector map.
- b. In determining the locations of sectors, the Village Planning and Design Review Board has given due and careful consideration to the peculiar suitability of each and every such Sector for the particular regulations applied thereto.
- c. The boundaries of the Sectors shown on the map are hereby adopted and approved and the regulations of this chapter governing the use of land and buildings, the height of buildings, building site areas, the sizes of yards and other matters as hereinafter set forth, are hereby established and declared for all land included within the boundaries of each and every sector shown upon the map.
- d. Where uncertainty exists as to boundaries of any Sector shown on the map, the following rules apply:
  1. Where such Sector boundaries are indicated as approximately following street lines, alley lines or lot lines, such lines shall be construed to be such boundaries.
  2. Where a Sector boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions, shall be determined by use of the scale appearing on the map.
  3. In case any further uncertainty exists, the Village Planning and Design Review Board shall interpret the intent of the map as to location of such boundaries.
  4. Where any public street, alley or other public way is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply thereto by virtue of each vacation or abandonment.



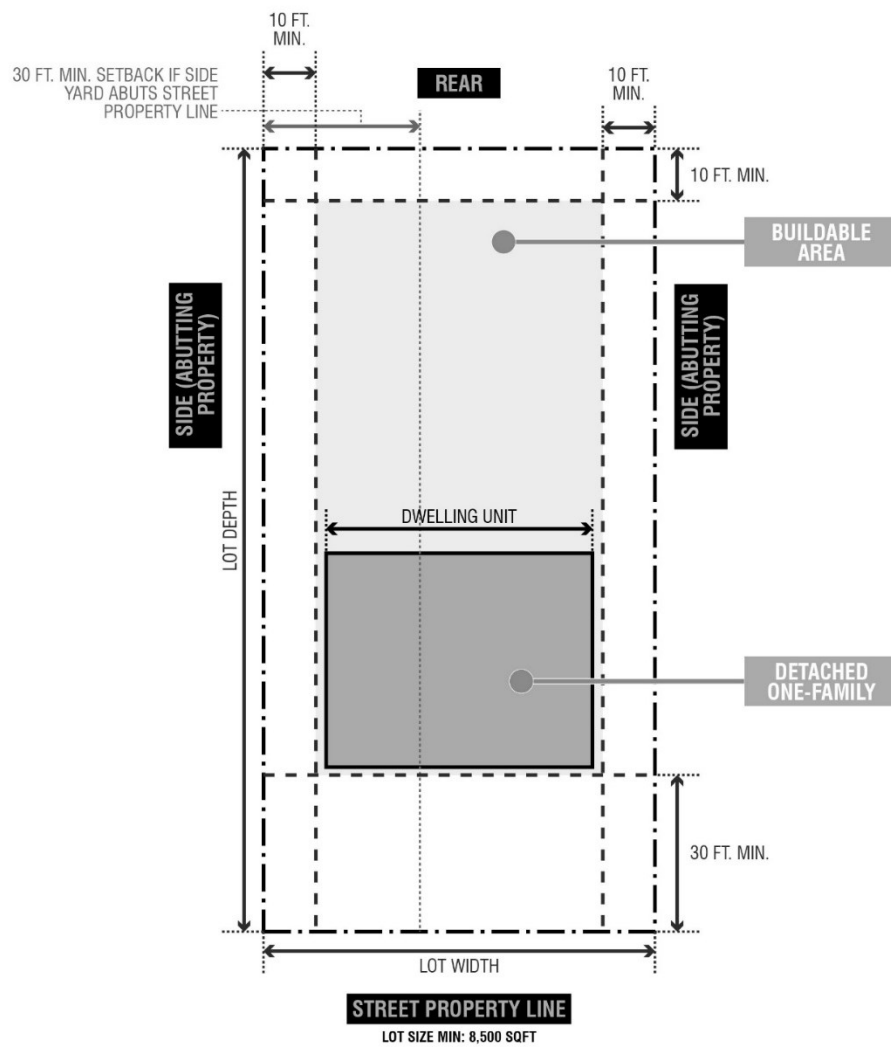
<u>Maximum building height measuring from Base Flood Elevation plus 1 foot:</u>				
<u>Number of stories</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>
<u>Number of feet</u>	<u>28</u>	<u>28</u>	<u>28</u>	<u>28</u>
<u>Maximum Accessory Building number of stories</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<u>Maximum story height:</u>	<u>18</u>	<u>18</u>	<u>18</u>	<u>18</u>
<u>Minimum setbacks (feet)*:</u>				
<u>Front and Side Street property line</u>	<u>50</u>	<u>30</u>	<u>30</u>	<u>30</u>
<u>Rear</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>
<u>Sides</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>
<u>Parking Surfaces (Side)</u>	<u>2.5</u>	<u>2.5</u>	<u>2.5</u>	<u>2.5</u>
<u>Landscape Requirements</u>	<u>Chapter 18A, Miami-Dade County Landscaping Ordinance</u>			

Notes:

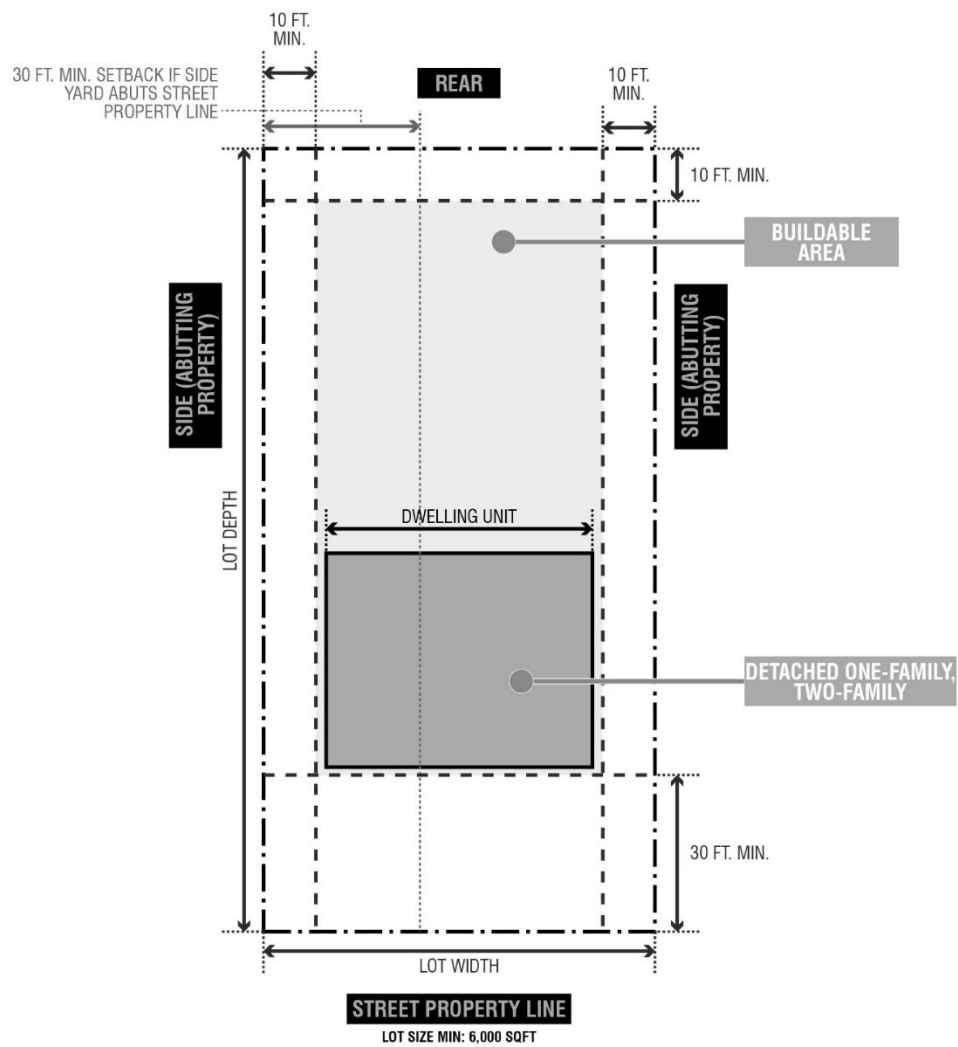
- 1) Gross acre is the lot area plus half the width of the adjacent road.
- 2) Minimum Lot size as above or not less than the area of any lot of record (platted lot).
- 3) Sector B front set back shall be 30 feet except for the north side of 116th Street between 6th Avenue to 8th Avenue where the present setback shall be maintained; except on all 60-foot lots facing NE 9th Avenue between 118th Street and 120th Street where the setback shall be 20 feet from the NE 9th Avenue property line and said lots shall be subject to existing setback requirements of the streets on which they abut.
- 4) Two-family or duplex dwellings are prohibited on lots with a frontage of fifty (50) feet or less.
- 5) Height is measured from the base flood elevation.
- 6) Alterations exceeding 50% of the market value of the existing structure, or new development, shall require compliance with Chapter 18A, Miami-Dade County Landscaping Ordinance.



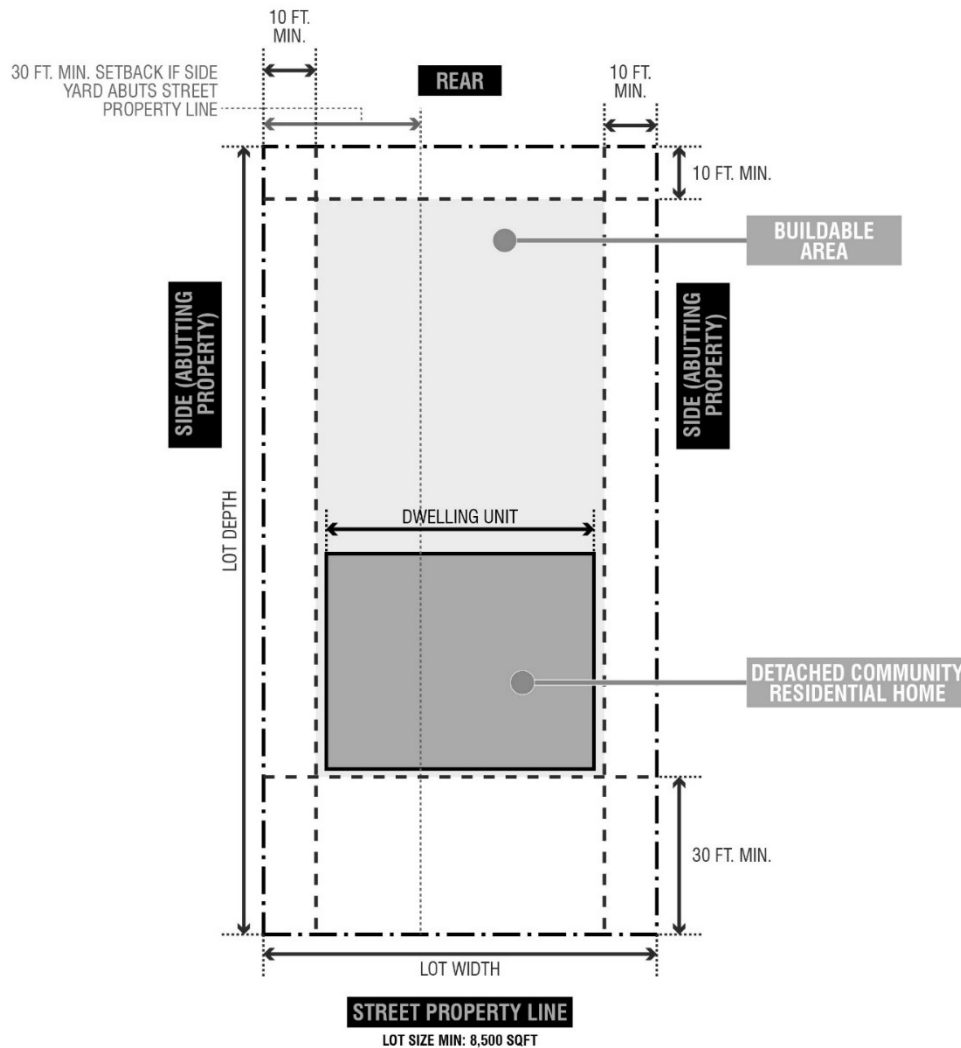
## SITE DEVELOPMENT STANDARDS | RESIDENTIAL SECTOR 'A'



## SITE DEVELOPMENT STANDARDS | RESIDENTIAL SECTOR 'B'



## SITE DEVELOPMENT STANDARDS | RESIDENTIAL SECTOR 'C'



## SITE DEVELOPMENT STANDARDS | RESIDENTIAL SECTOR 'D'

### 10.3. Architectural design.

10.3.1 *Style and color of buildings.* All principal and accessory buildings shall be of an architectural style, character and appearance, including exterior color, ~~which that~~ which that will harmonize and blend in with the other buildings in the area. Creativity in design shall be encouraged to allow for a variety of building types, styles, heights, scales and roof elevations.

Cross reference(s)—Exterior painting permit, § 16.13.

#### 10.3.2. *Roof design.*

- There shall be no houses constructed in the village with a single level roof known as a flat top roof.
- There must be two (2) or more roof levels with at least one (1) foot minimum difference in roof elevation when flat top roof construction is used.
- No air conditioning or other duct work, nor the screening enclosing the same, shall be visible on any roof ~~from ground level.~~

### 10.3.3. Orientation, Placement, Frontages, Massing, Articulation and Openings Locations

#### (a) Orientation

- (1) Buildings shall be oriented so that the front façade faces a primary or secondary street frontage.

#### (b) Second Story Placement.

- (1) The total Interior Side facing Buildable Area of the second floor may be allowed to be placed on the Interior Side Lot Line to a maximum of thirty (30) feet in length. The remaining Buildable Area shall be set back a minimum of five (5) feet.
- (2) On Lots, Interior, Primary Structures to have a twenty (20) foot rear setback for the second story. When facing an alley, the second story setback shall be the same as the first floor.

#### (c) Articulation.

- (1) Wall planes shall be designed in such a manner as to provide movement and articulation to prevent extensive blank walls.

#### (d) Opening Locations

- (1) All portions of the side of the building on the second floor within the rear two-thirds depth of the buildable area shall be designed in such a manner as to diminish visibility into abutting properties.
- (2) Roof decks shall be designed in such a manner as to diminish visibility into abutting properties.

### 10.3.4. Exterior doors and windows design.

(a) All exterior doors on a street-facing façade shall be of a consistent style, type and color.

(b) All windows on any street-facing façade shall be of a consistent style, type and color.

(c) Window types shall be limited to fixed, horizontal roller, casement, and single hung. Horizontal rollers and single-hung window types shall not be combined on any street-facing façade.

(d) Exterior doors and all window frames shall have received product control approval (i.e., “Notice of Acceptance”) from Miami-Dade County.

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## **10.4 - Building construction.**

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### 10.4.6 Roof material.

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- (f) Asphalt shingles ~~or metal~~ may be used in reroofing to replace an existing asphalt shingle roof if an engineer's evaluation is provided to the village certifying that the roof is not structurally adequate to utilize tile roofing materials; subject to the following conditions:

- (1) The engineer must be a Structural Engineer licensed in the State of Florida;
- (2) The engineer's opinion shall be based upon a visual in-person inspection of the structure;
- (3) The engineer's report shall be signed and sealed by the engineer of record, and shall include photographs of the structure; and
- (4) The engineer's report must be presented to the Planning and Design Review Board by the engineer of record, so that the Planning and Design Review Board may ask questions of the engineer.

10.4.8 ~~Reserved.~~ Nonconforming Uses and Structures.

10.4.8.1 Purpose and scope.

(a) Nothing contained in this Section 10.4.8 shall be deemed or construed to prohibit the continuation of a legally established nonconforming structure or use. The intent of this Section is to encourage nonconformities to ultimately be brought into compliance with current regulations.

(b) For the purpose of this Section, the term "expansion" shall mean an improvement, addition, enlargement, extension, or modification to a structure that increases the square footage of the structure.

10.4.98.2 ~~Improvements~~ Expansion to a nonconforming use.

(a) Where a ~~improvement structure~~ being used for nonconforming use comes within the terms of subsection 3.4.2, no structural ~~alterations~~ expansions shall be made except such as are required by ordinance, law or are ordered by an authorized officer to assure the safety of the building.

~~(b) Nothing in this code shall be constructed to prohibit the restoration and repair of a building destroyed or damaged to the extent of not more than fifty (50) percent of its reasonable value by fire, explosion, act of God or public enemy nor the continued use and occupancy of such building after such restoration. Any building damaged to the extent of more than fifty (50) percent of its reasonable value shall not be restored, but shall be demolished and removed.~~

10.4.8.3 Nonconforming Structures.

(a) To prevent changes in regulation from unduly burdening property owners, legally-established, nonconforming structures may continue to be used and maintained. Expansions, repairs, alterations, and improvements to nonconforming structures shall be permitted only in accordance with the following provisions:

(i) Internal and external repairs, alterations, and improvements that do not increase the square footage of the nonconforming structure shall be permitted.

(ii) Expansions to a nonconforming structure shall be permitted as follows:

A. If the total square footage of the proposed improvement is less than fifty (50) percent of the structure's net square footage at the time it became nonconforming, the improvement shall comply with current regulations.

B. If the total square footage of the proposed improvement is equal to or exceeds fifty (50) percent of the structure's net square footage at the time it became nonconforming, the entire structure and site improvements shall be brought into compliance with current regulations.

C. Once the cumulative total of additional square footage of improvements equals to fifty (50) percent of the structure's net square footage at the time it became nonconforming, no additional expansions shall be permitted and the entire structure and site improvements shall be brought into compliance with current regulations.

D. For the purposes of this Section, net square footage shall refer to the square footage indicated on the building permit or determined through equivalent evidence such as aerial photographs, tax roll information, certificates of use or occupancy, or design professional certifications.

- (b) If a nonconforming structure is damaged by fire, flood, explosion, wind, war, riot or any other act of force majeure, repairs shall be subject to the following provisions:
- (i) If the repair/replacement cost is less than fifty (50) percent of the market value of the structure, the structure may be reconstructed up to the same building height and within the same building footprint existing prior to the damage, provided that an application for final building permit has been submitted within twelve (12) months of the date of such damage unless extended by the Village Commission.
  - (ii) If the repair/replacement cost is equal to or exceeds fifty (50) percent of the building's market value, the building and site improvements shall be brought into compliance with current regulations.
  - (iii) Routine internal and external maintenance, repairs and material replacement such as re-roofing, painting, window or door replacement, mechanical equipment repair and replacement, plumbing and electrical maintenance, and similar repair, maintenance, and replacements shall be permitted.
- (c) If a nonconforming building is deemed to be unsafe by the Village's Building Official, and demolition is required, the building shall be rebuilt in accordance with current regulations.
- (d) In addition to the requirements of this Section, all repairs, improvements, and expansions to a nonconforming building shall comply with the Florida Building Code.

10.4.10 Reserved.

## **10.5. Landscape design.**

10.5.1 *Landscaping of public areas.* All landscaping of public areas should conform to the following general design principles:

- (a) Drainage systems and circulation systems for vehicles and pedestrians should be integrated into the landscaping plan.
- (b) Landscaping should be used to minimize potential erosion through the use of ground covers or any other type of landscape material that aids in soil stabilization.
- (c) Native vegetation should be preserved and used to meet landscaping requirements.
- (d) Landscaping should enhance the visual environment through the use of materials that achieve variety with respect to species of living material selected textures, colors and size at maturity.
- (e) Landscaping should consider the aesthetic and functional changes of vegetation, both when initially installed and when the vegetation has reached maturity.
- (f) Landscaping should enhance public safety and minimize nuisances.
- (g) Landscaping should maximize the shading of streets and vehicle use areas.

10.5.2 *Landscaping of residential lots.* All landscaping of residential lots shall conform to the minimum requirements of Chapter 18A, Code of Miami-Dade County Landscaping Ordinance, as may be amended from time to time.

Cross reference(s)—Landscaping, § 8.3.

**Section 5. Amendment to Chapter 11 of the Land Development Code.** Chapter 11 of the Land Development Code of Ordinances of the Village of Biscayne Park, Florida, is hereby amended to read as follows:

## **CHAPTER 11. – ACCESSORY STRUCTURES**

### **11.2. Accessory buildings.**

11.2.1 Permitted accessory buildings, which include private garages, storage buildings, private workshops, utility buildings, and greenhouses, shall:

- (a) Maintain the same setbacks as the principal building.
- (b) Comply with the general standards and requirements of subsection 11.1.2 above.
- (c) Not be used as a place of abode.
- (d) Not occupy in the aggregate more than thirty percent (30%) of the area between the rear line of the main building and the rear property line except that a lot having a dual frontage shall have the same setback on each street property line.
- (e) Shall be limited to one (1) story.

**Section 6. Amendment to Chapter 17 of the Land Development Code.** Chapter 17, “Fees, Bonds and Charges” of the Land Development Code of Ordinances of the Village of Biscayne Park, Florida is hereby amended to read as follows:

## **CHAPTER 17. - FEES, BONDS AND CHARGES**

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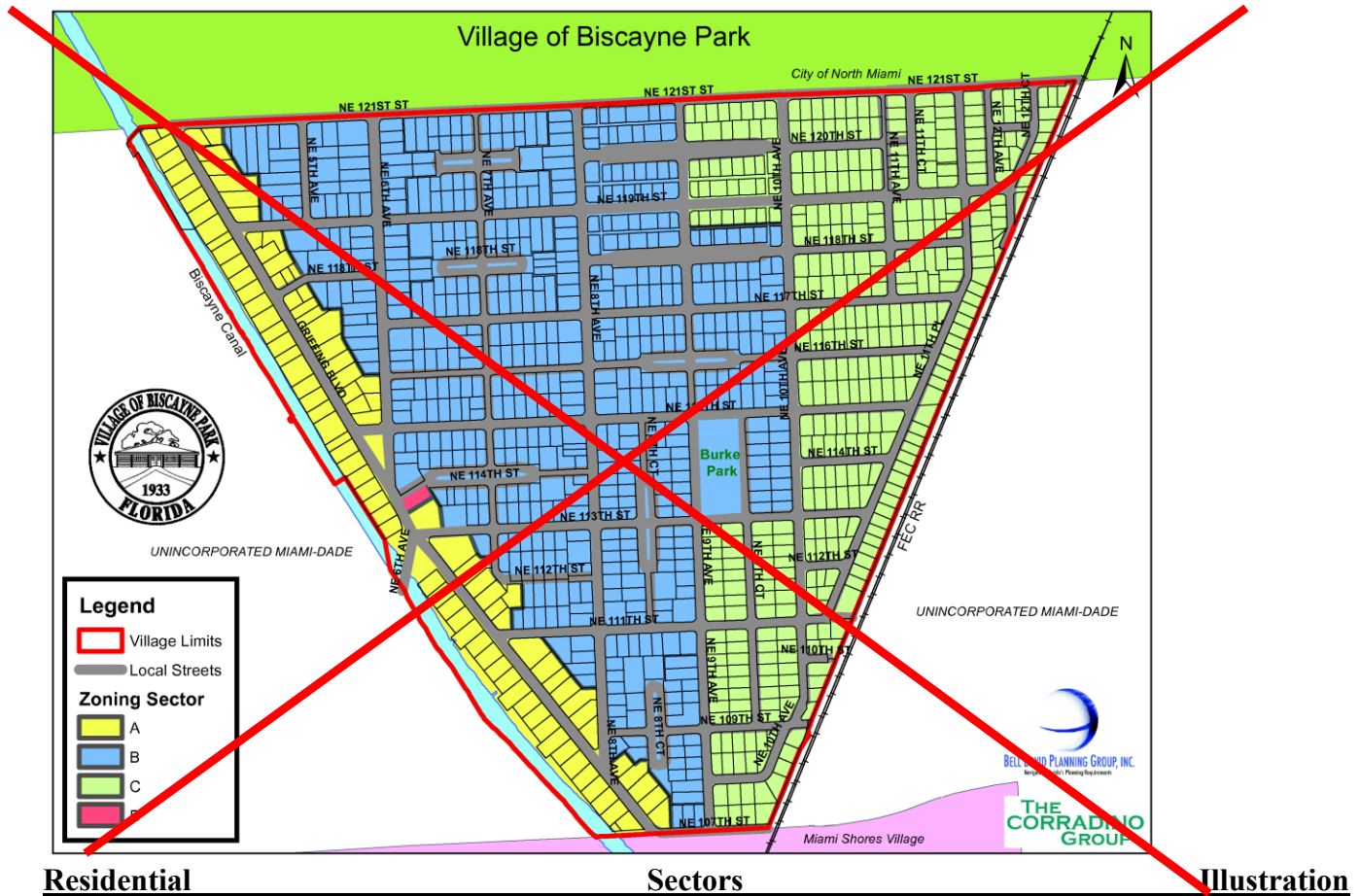
**TABLE A RESIDENTIAL SECTORS**

<b>Regulations</b>	<b>RESIDENTIAL SECTORS</b>			
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Density (Dwelling units per gross acre <sup>1</sup> )	= <2.0	2.1—6.0	2.1—6.0	2.1—6.0
Minimum lot size (square feet <sup>2</sup> )	8,500	8,500	6,000	8,500
Dwelling type allowed	Detached one family	Detached one family	Detached one family; two family <sup>4</sup>	Detached community res. home
Minimum dwelling size (gross horizontal floor area, square feet)	1,900	1,400	(a) 1,400 (b) 2,000	1,400
Maximum lot coverage (percent)	50	50	50	50
Maximum dwelling units per single lot	1	1	1	1
Maximum building height (stories)	2	2	2	2
Minimum setbacks (feet):				
—Street property line	50	30 <sup>3</sup>	30	30
—Rear	10	10	10	10

Sides	10	10	10	10
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**Notes:**

- <sup>1</sup>—Gross acre is the lot area plus half the width of the adjacent road.
- <sup>2</sup>—And in any case not less than the area of any lot of record.
- <sup>3</sup>—Except north side of 116th Street between 6th Avenue to 8th Avenue where the present setback shall be maintained; except on all 60 foot lots facing NE 9th Avenue between 118th Street and 120th Street where the setback shall be 20 feet from the NE 9th Avenue property line and said lots shall be subject to existing setback requirements of the streets on which they abut.
- <sup>4</sup>—Two family or duplex dwellings are prohibited on lots with a frontage of fifty (50) feet or less.



**Section 7. Repealer.** All ordinances, or parts of ordinances in conflict herewith, be, and the same, are hereby repealed.

**Section 8. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

**Section 9.**        **Conflicts.** Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

**Section 10.**        **Inclusion in the Code & Scrivener's Errors.** The Village Commission intends that the provisions of this Ordinance be made a part of the Village of Biscayne Park Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Village Manager without further process.

**Section 11.**        **Effective Date.** This Ordinance shall become effective upon adoption by the Village Commission.

PASSED AND ADOPTED upon first reading this \_\_\_\_ day of \_\_\_\_\_, 202\_.

PASSED AND ADOPTED upon second reading this \_\_\_\_ day of \_\_\_\_\_, 202\_.

The foregoing Ordinance was offered by \_\_\_\_\_, who moved its adoption. The motion was seconded by \_\_\_\_\_, and upon being put to a vote the vote was as follows:

Commissioner Amsler:	_____
Commissioner Gonzalez:	_____
Commissioner Groth:	_____
Commissioner Kennedy:	_____
Commissioner Olivera :	_____

VILLAGE OF BISCAYNE PARK

\_\_\_\_\_  
Jonathan E. Groth, Mayor

ATTEST:

\_\_\_\_\_  
Shantay J. Bingham, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE  
USE AND RELIANCE OF THE VILLAGE OF BISCAYNE PARK ONLY:

\_\_\_\_\_  
Valerie Vicente, Village Attorney