

ORDINANCE NO. 2019-001A

AN ORDINANCE OF THE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE; UPDATING SECTION NUMBERS, CORRECTING SECTION NUMBER REFERENCES; CORRECTING SCRIVENERS ERRORS; AMENDING SECTION 2.2, CLARIFYING DENSITIES AND ALLOWABLE USES; AMENDING SECTION 8.10, REVISING ALLOWABLE BUILDING HEIGHT IN THE RM-70 DISTRICT, CLARIFYING MULTIFAMILY DWELLINGS MAY ONLY BE BUILT IN CONJUNCTION WITH GROUND FLOOR COMMERCIAL USE, REMOVING MIXED USE STRUCTURES FROM THE LIST OF SPECIAL USES IN THE CG DISTRICT, REVISING REQUIRED SETBACKS IN THE CG DISTRICT, REVISING ALLOWABLE BUILDING HEIGHT IN THE CG DISTRICT, CLARIFYING ALLOWABLE NONRESIDENTIAL FLOOR AREA RATIO IN THE CG DISTRICT, REDUCING THE MINIMUM HOTEL SLEEPING UNIT SIZE, REMOVING REQUIREMENT FOR SPECIAL USE REVIEW IN THE BAY VIEW OVERLAY DISTRICT, ALLOWING GREATER HEIGHT WITH REVISED SETBACKS AND BONUS FEES IN THE BAY VIEW OVERLAY DISTRICT; CREATING NEW SECTION 8.12, ALLOWING BONUS HEIGHT ALLOCATION FOR ALL PROPERTIES IN THE RM-70 AND CG DISTRICTS, REVISING BONUS HEIGHT FEES, ALLOWING ALTERNATE SPENDING OPTIONS FOR COLLECTED BONUS HEIGHT FEES, REQUIRING PAYMENT OF BONUS HEIGHT FEES WITHIN 90 DAYS OF SITE PLAN APPROVAL; CREATING NEW SECTION 8.13, ALLOWING BONUS DENSITY ALLOCATION FOR ALL PROPERTIES IN THE RM-70 AND CG DISTRICTS, ADDING VOGEL PARK AS A DENSITY TRANSFER SENDING SITE, ALLOWING INCREASED BONUS DENSITY ALLOCATION IN THE CG DISTRICT; CREATING NEW SECTION 8.14, REQUIRING BAYFRONT PROPERTIES IN THE RM-70 AND CG DISTRICTS TO PROVIDE A PUBLIC ACCESS BAYWALK AND CONNECTIVE PUBLIC ACCESS FROM THE PUBLIC RIGHT OF WAY; AMENDING SECTION 9.3, REDUCING THE MULTIFAMILY PARKING REQUIREMENTS FOR ALL MULTIFAMILY PROPERTIES EXCEPT HARBOR ISLAND, REVISING HOTEL PARKING REQUIREMENTS; AMENDING SECTION 9.18, REQUIRING BAYFRONT PROPERTIES IN THE RM-70 AND CG DISTRICTS TO PROVIDE A PUBLIC ACCESS BAYWALK; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Florida Statute 166.01 authorizes cities to establish, coordinate and enforce zoning and development laws that are necessary for the protection of the public; and

**WHEREAS**, North Bay Village desires to update its Unified Land Development Code; and

**WHEREAS**, the North Bay Village Unified Land Development Code is intentionally modified to be relevant and to encourage development and redevelopment; and

44       **WHEREAS**, the North Bay Village Unified Land Development Code is wholly consistent with  
45 the Village's Comprehensive Plan and the Florida Community Planning Act; and

46       **NOW, THEREFORE, BE IT ENACTED BY THE VILLAGE COMMISSION OF NORTH**  
47 **BAY VILLAGE, FLORIDA, AS FOLLOWS:**

48       **Section 1. Recitals Adopted.** Each of the above stated recitals is true and correct  
49 and incorporated herein by this reference.

50       **Section 2. Village Code Amended.** North Bay Village Code of Ordinances is hereby  
51 revised according to attached Exhibit A.

52       **Section 3. Repeal.** All ordinances or parts of ordinances, resolutions or parts of  
53 resolutions in conflict herewith are repealed to the extent of such conflict.  
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55       **Section 4. Severability.** The provisions of this Ordinance are declared to be non-  
56 severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be  
57 held to be invalid or unconstitutional, such decision shall render this Ordinance void in its entirety.  
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59       **Section 5. Inclusion in the Code.** It is the intention of the Village Commission, and  
60 it is hereby ordained that the provisions of this Ordinance shall become and be made a part of  
61 the Code of North Bay Village; that the sections of this Ordinance may be renumbered or re-  
62 lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to  
63 "Section" or other appropriate word.

64       **Section 6. Effective Date.** This Ordinance shall be effective immediately upon  
65 adoption on second reading.

66 A motion to approve the foregoing Ordinance on first reading on July 10, 2018, was offered by  
67 Vice Mayor Jackson, seconded by Commissioner Cattabriga.

68 **The Votes were as follows:**  
69

Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Andreana Jackson	<u>Yes</u>
Commissioner Jose R. Alvarez	<u>Yes</u>
Commissioner Laura Cattabriga	<u>Yes</u>
Commissioner Eddie Lim	<u>Yes</u>

70  
71 A motion to approve the foregoing Ordinance on second reading was offered by Vice Mayor  
72 Wilmoth, seconded by Mayor Latham.  
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75 **FINAL VOTE AT ADOPTION:**

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Mayor Brent Latham	<u>Yes</u>
Vice Mayor Marvin Wilmoth	<u>Yes</u>
Commissioner Jose R. Alvarez	<u>Yes</u>
Commissioner Julianna Strout	<u>Yes</u>
Commissioner Andreana Jackson	<u>No</u>

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78 **PASS AND ADOPTED** this 28<sup>th</sup> day of February 2019.

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83 Brent Latham, Mayor

84 Signing on February 28, 2023\*

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86 **ATTEST:**

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88 \_\_\_\_\_

89 Graciela Mariot, Interim Village Clerk

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91 Alba L. Chang, CMC, Village Clerk attesting on February 28, 2023\*

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93


94 **APPROVED AS TO FORM FOR THE USE OF**

95 **NORTH BAY VILLAGE:**

96

97 ~~Law Office of Norman C. Powell~~

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99 

100 By: \_\_\_\_\_

101 ~~Norman C. Powell, Village Attorney~~

102 Weiss Serota Helfman Cole & Bierman, P.L.

103 Village Attorney on February 28, 2023\*

104

105 North Bay Village Ordinance: Amending Unified Land Development Code

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107 \*Please see attached agenda and minutes from February 28, 2019 meeting. This ordinance was

108 adopted on February 28, 2019, but was not executed by the Mayor, Clerk, or Village Attorney at that

109 time. The ordinance is being executed at this time so that it can be codified along with all subsequent

110 amendments.

## EXHIBIT " A "



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# UNIFIED LAND DEVELOPMENT CODE

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Revised: February 2019

Prepared by:

**LaRue**  
**planning**  
1375 Jackson Street, #206, Fort Myers, FL 33901



## **CHAPTER 1, GENERAL**

### **§ 1.1 - Title.**

This code shall be entitled the North Bay Village Unified Land Development Code and may also be herein referred to as the "ULDC."

### **§ 1.2 - Authority.**

The North Bay Village Unified Land Development Code is enacted pursuant to Chapter 163, Part II, and Chapter 125, Florida Statutes.

### **§ 1.3 - Findings.**

- A. According to Chapter 163, Florida Statutes, each local government in Florida must enact a unified land development code which is consistent with the Comprehensive Plan and implements the same.
- B. The Unified Land Development Code must contain all of the Village's land development regulations.
- C. All proposed developments within North Bay Village must be reviewed to ensure compliance with the Village's Comprehensive Plan and requirements of this Unified Land Development Code.

### **§ 1.4 - Intent.**

The primary intent of this code is to achieve the following:

- A. Guiding and accomplishing coordinated, adjusted, and harmonious development in accordance with the Village's existing and future needs.
- B. Protecting, promoting, and improving the public health, safety, comfort, order, convenience, and general welfare.
- C. Protecting the character and maintaining the stability of the residential areas.
- D. Directing and controlling through the establishment of performance standards, the type, density, intensity, and distribution of development.

### **§ 1.5 – Interpretation and conflict.**

#### **A. *Interpretation.***

In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of the health, safety, morals, order, convenience, and general welfare of the Village.

**B. Conflict.**

It is not intended by these regulations to interfere with, abrogate, or annul any easements, covenants, or other agreement between parties; however, where these regulations impose a greater restriction upon the use of buildings or premises or upon the height of buildings, or require larger open spaces, yards, lot areas than are imposed or required by other ordinances, rules, regulations, easements, covenants, or agreements, the provisions of these regulations shall govern.

**§ 1.6 - Validity.**

If any section, paragraph, subdivision, clause, phrase, or provision of these regulations are adjudged invalid or held unconstitutional, this shall not affect the validity of these regulations as a whole, or any part or provisions thereof, other than the part so decided to be invalid or unconstitutional.

**§ 1.7 - Repeal clause.**

All county ordinances, resolutions, or special laws applying only to the Village; any general laws which the Village Commission is authorized by the Charter to supersede, nullify, modify, or amend; or any part of any such ordinance, resolution, or law in conflict with any provision of this ULDC is hereby repealed.

## CHAPTER 2, RELATIONSHIP TO THE COMPREHENSIVE PLAN

### § 2.1 - Purpose and intent.

The Future Land Use Element of the adopted Comprehensive Plan for North Bay Village describes the future land use categories within the Village. These land use categories are illustrated on the future land use map in the Comprehensive Plan. All future development or redevelopment of property within North Bay Village must be consistent with the goals, objectives, and policies expressed in the adopted Comprehensive Plan and with the future land use map. The Unified Land Development Code is intended to implement the Comprehensive Plan. In the event of a conflict between the Comprehensive Plan and the Unified Land Development Code, or any other Village regulation, the provisions of the Comprehensive Plan shall take precedence.

### § 2.2 – Relationship between future land use categories and zoning districts.

The future land use categories defined in the future land use element and delineated on the future land use map in said element shall be the determinants of permissible activities on any parcel of land within the Village. They are established to regulate and restrict the location of commercial, public, and semi-public uses, and residences, and the location of buildings erected or altered for specific uses to regulate or limit population density, and intensity of use of lot areas. The zoning districts and associated regulatory provisions identified in the Unified Land Development Code are intended to implement the goals, objectives and policies and Future Land Use Map in the Comprehensive Plan. In the event of a conflict between a provision in the Comprehensive Plan and any provision regulating development within a zoning district, the provisions of the Comprehensive Plan shall take precedence

#### A. *Residential future land use categories.*

There are three residential future land use categories in the Village's Comprehensive Plan that are applied to lands throughout the Village. Lands located within these categories are to be devoted to dwelling units used or intended to be used for permanent housing.

1. The single-family residential category allows a density of up to six dwelling units per acre. Zoning districts RS-1 and RS-2 fall under this land use category.
2. The medium density multi-family residential category allows for residential density up to 40 dwelling units per acre. RM 40 is the only zoning district consistent with this future land use category.
3. The high density multi-family residential category allows up to 70 dwelling units per acre. RM-70 is the only zoning district consistent with this future land use category.

#### B. *Commercial future land use category.*

This category designates those areas in the Village suitable for commercial **and mixed use** development. Uses permitted include a broad range of general and professional office, retail, banking, hotel, service establishments and high density residential development **in conjunction with commercial.**



C. *Institutional future land use category.*

The purpose of this category is to provide an area for either nonprofit or for profit institutional facilities or quasi-public uses, including, but not limited to religious facilities, nursing homes, community centers, public or private schools or colleges, and hospitals or clinics.

D. *Public buildings/grounds future land use category.*

This category provides sites for public/semi-public uses such as Village hall, police station, public works building, post office, and other agency facilities primarily serving the public. The Government Use zoning district is consistent with this land use category.

E. *Educational future land use category.*

This category provides sites for public schools, associated facilities, and grounds.

F. *Recreation and open space future land use category.*

This category is intended to provide for permanent public parks and open spaces for recreational use, protection of natural resources, and urban buffers.

## CHAPTER 3, DEFINITIONS

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning:

*Accessory building.* A detached subordinate building or a portion thereof, the use of which is incidental to or customary in connection with the main building or use and which is located on the same lot with such main building.

*Accessory use.* A subordinate use, which is incidental to or customary in connection with the main building or use and is located on the same lot with such main building use.

*Acre, gross.* 43,560 square feet.

*Acre, net.* That portion of a gross acre exclusive of dedication for official rights-of-way and other easements.

*Assisted living facility.* Any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator

*Advertising structure.* Any rigid or semi-rigid material, with or without a sign displayed thereon, situated on or attached to real property or mobile objects and vehicles outdoors for the purpose of furnishing a background, base, or support on which a sign may be posted or displayed.

*Aggregate area or aggregate width.* The sum of two or more designated areas or widths to be measured, limited, or determined under these regulations.

*Alcoholic beverage.* As defined by Section 561.01(4), Florida Statutes.

*Alley.* A public or private road which affords only a secondary means of access to abutting property and which is not otherwise designated as a street.

*Amusement center.* Any indoor place or enclosure which contains three or more amusement devices of any description, including but not limited to pinball games, computer games, or games of chance for the public amusement, patronage or recreation.

*Apartment.* A room or group of rooms within a multifamily dwelling arranged or designed to be used as a home or residence for one family, with kitchen or kitchenette and bathroom for the exclusive use of the one family.

*Apartment, efficiency.* A dwelling unit consisting of not more than one habitable room, with kitchen or kitchenette and bathroom.

*Apartment hotel.* A multi-family residential building designed for or containing both apartments and individual guest rooms or rental units under resident supervision, and which maintains an inner lobby through which all tenants must pass to gain access to apartments, rooms, or units.

*Arterial street.* A street designated as a major arterial street on the circulation plan for the Village.

*Auction market.* Any premises on which are held, either regularly or periodically, auction sales of merchandise or personal property.

*Automobile rental agency.* An establishment whose primary purpose is the renting or leasing of passenger vehicles to the public.

**Awning.** A detachable, roof like cloth or metal cover, supported from the walls of a building for protection from sun or weather.

**Bar.** An establishment devoted to selling or dispensing any alcoholic beverages, or any place where a sign is displayed indicating that alcoholic beverages are obtainable for consumption on the premises, and where, if entertainment is provided, it is by no more than one person at a time.

**Barrier.** A fence, dwelling wall or non-dwelling wall or any combination thereof which completely surrounds the swimming pool and obstructs access to the swimming pool, especially access from the residence or from the yard outside the barrier.

**Barrier requirements.** Swimming pools shall comply with all the requirements set forth under the building and zoning requirements as set forth in the Village's ordinances and the Florida Building Code.

**Basement.** That portion of a building between the floor and ceiling which has at least one-half of its height below the grade of the adjoining ground, and the ceiling of which is not more than four feet six inches above grade.

**Beer.** As defined in Section 563.01, Florida Statutes.

**Biscayne Bay.** Encompasses all of Biscayne Bay and all associated tributaries of the Bay within the Village limits of North Bay Village.

**Block.** The length of a street between two street intersections.

**Board.** The Planning and Zoning Board, which is that duly, designated advisory board charged with reviewing Village planning, zoning, and beautification matters.

**Boundary of district.** The centerline of a street or right-of-way; also the centerline of the alleyway between the side or rear property lines, or where no alleyway or passageway exists, the rear or side property lines of all lots bordering on any district limits.

**Breezeway.** A covered passageway or space between the main building and an accessory building open on two sides, and the roof of which is structurally integrated with the buildings it separates.

**Building.** Any structure having a roof supported by columns or walls for the shelter or enclosure of persons on property.

**Building width.** The width of the lot left to be built upon after the required side yards are provided.

**Building.** Any structure having a roof supported by columns or walls for the shelter or enclosure of persons or property.

**Building completely enclosed.** A building having no outside openings other than ordinary doors, windows, and ventilators.

**Building line.** That line between which and the distance on the lot parallel and back from the street line, in which no building or part thereof may be erected, except as provided in these regulations.

**Building Official.** The Village official responsible for building inspection and the issuance of permits in this respect, or a duly authorized person acting in the same capacity.

**Bulk.** A term used in these regulations to describe the size and shape of a building or structure and its relationship to other buildings, to the lot area for a building, and to open spaces and yards.

**Bulkhead.** A wall constructed along the bay to retain or resist lateral displacement of any material back of it. For the purpose of this chapter, the bayside face of the established bulkhead cap shall be regarded as the point of measurement for setback requirements of all structures fronting on the bay.

**Cabana.** An accessory structure, usually in connection with a swimming pool.

**Cabaret.** A bar, which provides entertainment and which may or may not serve food, and which, is accessory to a hotel, motel, or other building as provided in these regulations.

**Cafeteria.** See Restaurant.

**Canopy.** A detachable, roof like cloth or metal cover supported from the ground, deck, or floor of a building, and from the walls of a building, for protection from sun or weather.

**Carwash.** Any building or structure, which uses specialized mechanical devices for the washing of motor vehicles.

**Centerline, street.** A line parallel or nearly parallel to the right-of-way lines of a street and halfway between them as established by the Building and Zoning Official.

**Certified survey.** A survey, sketch, plan, map, or other exhibit is said to be certified when a written statement regarding its accuracy or conformity to specified standards is signed by the specific professional engineer, registered surveyor, architect, or other legally recognized person.

**Child care.** See Day care nursery.

**Clinic.** An establishment where patients are not lodged overnight, but are admitted for examination and treatment by a group of physicians or dentists practicing medicine together. The term does not include a place for the treatment of animals.

**Club, private.** Building and a facilities or premises used or operated by an organization or association for some common purpose, such as but not limited to a fraternal, social, educational, or recreational purpose, but not including clubs organized primarily for profit or to render a service, which is customarily carried on as a business. Such organizations and associations shall be incorporated under the laws as a non-profit corporation and the major purpose of such corporations shall not be for the purpose of serving alcoholic beverages to its members or others.

**Coffee shop, Snack bar, or Sandwich shop.** An establishment where sandwiches, coffee, soft drinks, tea, or similar foods are served, but having no kitchen facilities.

**Commercial school.** A training institution operated on a profit or non-profit basis offering instruction in stenographic, secretarial, bookkeeping, and related business skills; offering training in electronic data a processing techniques, skills, or equipment repair; or offering training leading to proficiency in a vocational skill.

**Concurrency.** State law requiring that infrastructure be in place before development occurs.

**Convalescent home.** A building where regular nursing care is provided for more than one person not a member of the family which resides on the premises.

**Customer service area.** Inside/outside seating areas for restaurants, bars, lounges exclusive of kitchen, office, hallways, storage, and similar building areas.

**Day care nursery.** An establishment providing care of children during the day, but not overnight, including four or more children not members of the resident family; nurseries for children of working mothers; kindergartens; nursery schools for children under the minimum age for admission to public schools, or for after-school care of school children; and other establishments of a similar nature.

**District.** Any section of the Village within which the zoning regulations are uniform.

**Drive-in or Drive-through.** An establishment that, by design, physical facilities, service, or packaging procedures, encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.

**Dwelling.** A building or portion thereof, designed or used exclusively for residential occupancy, but not including mobile homes.

*Dwelling, single-family.* A private residence building used or intended to be used as a home in which all living areas are accessible to each other from within the building, and which shall have sleeping quarters, kitchen facilities, bathroom, ventilation, and lighting under control of and designed for the exclusive use of one family.

*Dwelling, single-family detached.* A single-family dwelling surrounded by yards or other open spaces on the same lot.

*Dwelling, multifamily.* A building designed for or occupied by three or more families.

*Dwelling, efficiency.* A residential unit, which is comprised of a single room for sleeping and cooking, exclusive of a bathroom.

*Dwelling, hotel room.* A residential unit, which is used on a temporary basis by transient guests.

*Dwelling, hotel suite.* A group of hotel rooms connected together.

*Dwelling unit.* A room, or group of rooms, occupied or intended to be occupied as separate living quarters by a single family or other group of persons living together as a household, or by a person living alone.

*Essential services.* The erection, construction, alteration, or maintenance by a public utility or municipal agency of underground or overhead transmission, distribution, or collection systems necessary for the furnishing of adequate service by that utility or agency to the use on the same lot or the surrounding neighborhood of, for the public health, safety, or general welfare.

*Family.* An individual or two or more persons related by blood or marriage, or a group of not more than five persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling.

*Fast order food.* Food which is primarily included for immediate consumption; available upon a short waiting line; packaged or preserved in such a manner that it can be readily eaten outside the premises where it is sold; served on paper plates or in paper or styrofoam containers; and of a self-service nature, that is, no waiters or waitresses are involved. Patrons phone in or place their order at a counter and take it to a table on the premises or leave the premises.

*Fence.* A structure forming a physical barrier which is so constructed that no less than 50% of the vertical surface is open to permit the transmission of light, air, and vision through the surface in a horizontal plane. (For board and other solid barriers, see Wall)

*Floor area.* The sum of the gross horizontal areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the centerline of walls separating two attached buildings. However, for the purposes of those regulations, the Gross floor area of a building shall not include:

- A. Basement space; however, basement space used for retailing shall be included for the purpose of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths.
- B. Accessory water tanks or cooling towers.
- C. Uncovered steps and exterior balconies.
- D. Attic space, whether or not a floor actually has been laid, providing structural headroom of less than seven feet six inches.
- E. Terraces, breezeways, screen enclosures, or open porches.
- F. Floor space used for permitted or required accessory off-street parking, in any building except single-family and two-family dwellings or buildings accessory thereto.

*Frontage, lot.* The distance for which the front lot line and the street line are coincident.

*Garage, parking.* A building or portion thereof used for indoor parking of private passenger vehicles for use of residents in the vicinity.

*Garage, repair.* An establishment or portion thereof used for the equipping, servicing, repairing, hiring, selling, storing, or parking of motor-driven vehicles. The term Repairing shall not include an automotive body repair shop or the rebuilding, dismantling, or storage of wrecked or junked vehicles.

*Garage, storage.* A building or portion thereof, designed or used exclusively for term storage of motor-driven vehicles, as distinguished from daily storage, and at which motor fuels and oils are not sold, and motor-driven vehicles are not equipped, repaired, hired, or sold.

*Grade.* The highest elevation of a paved street in front of any property.

*Grow house.* A grow house is a property, usually located in a residential neighborhood, that is primarily used for the production of marijuana but may also be used as a dwelling. The houses are typically outfitted with equipment to provide water, food, and light to the marijuana plants, and the houses themselves are usually kept in good condition to blend in with the neighborhood. Illegal electrical hookups are a common feature of grow houses, to both save money and to make it harder for authorities to identify them due to their unusually high electrical usage.

*Guest house.* Living quarters within a detached accessory building located on the same lot with the main building for use by temporary guests of the occupants of the premises, such quarters having no kitchen facilities or separate utility meters and not rented or otherwise used as a separate dwelling.

*Hardship, necessary.* Restrictions upon the uses of a particular property which promote the objectives of these regulations, provided such restrictions apply to all land within the same district (e.g. if commercial uses are prohibited in a district, this may result in a hardship to the property owners; but it is a hardship which is necessary to the purpose of this chapter in the first place).

*Hardship, unnecessary.* Arduous restrictions upon the uses of a particular property, which are unique and distinct from that of adjoining property owners. Granting of relief from an unnecessary hardship should not violate sound zoning principles, including considerations that: adjacent properties will not be substantially reduced in value, it is not granting a special privilege not to be enjoyed by others in similar circumstances, and the public interest is maintained, including following the spirit of this chapter and the comprehensive master plan. Invalid and nonjustifiable bases for pleading unnecessary hardship include but are not limited to:

- A. Loss of the "best" use of the land, and business competition.
- B. Self-created hardships by the applicant's own acts.
- C. Neighboring violations and nonconformities.
- D. Claims of inability to sell the property.
- E. General restrictions of this chapter.

*Hedge.* A row of bushes or small trees planted close together in such a manner as to form a boundary or barrier.

*Height of building.* The vertical distance from the grade to: the highest point of a flat roof; the deck line of a mansard roof; the average height between eaves and ridge or gable, hip, and gambrel roofs; or the average height between high and low points of a shed roof.

*Home occupation.* Any activity for which an occupational license of the Village is required by law, which is conducted within a dwelling unit in a residential district.

*Hospital.* A building or group of buildings having room facilities for one or more overnight patients, used for providing services for the in-patient medical or surgical care of sick or injured humans, and which may include related facilities such as laboratories, out-patient departments, and training facilities. A central service facility must be an integral part of the hospital operations.

*Hotel.* A building in which lodging is provided and offered to the public for compensation, and in which ingress and egress to and from all rooms are made through an inside lobby or office supervised by a person in charge at all times.

*House of worship.* A church, synagogue, or other structure used on a permanent basis primarily for the worship of God.

*Kennel.* The keeping of more than three dogs or other animals for breeding, training, sale, or boarding.

*Kitchen facilities.* Any form or mechanical refrigeration or cooking equipment except a portable mini-refrigerator, portable microwave oven and coffee-maker.

*Junkyard or Salvage yard.* Any area or structure used or intended to be used for the conducting and operating of the business of selling, buying, storing, or trading in used or discarded metal, glass, cordage, or any used or disabled fixtures, vehicles, or equipment of any kind.

*Loading space.* A space within the main building or in the same lot providing for the standing, loading, or unloading of trucks.

*Lot.* Land occupied or intended for occupancy by a use permitted in these regulations, including one main building together with its accessory buildings, and the yards, loading, and parking spaces required herein and having its principal frontage upon a street or upon an officially approved place.

*Lot area.* The total horizontal area within the lot lines of the lot.

*Lot, corner.* A lot abutting upon two or more streets at their intersection.

*Lot coverage or Ground coverage.* The area of the lot occupied by the ground floor of all buildings, main and accessory, measured from the exterior faces of exterior walls, or from the exterior faces of supporting exterior columns for any portion of the ground floor not enclosed by exterior walls or from the centerline of walls separating two buildings.

*Lot depth.* The mean horizontal distance between the front and rear lot lines.

*Lot, interior.* A lot, other than a corner lot.

*Lot line.* The boundary line of a lot.

*Lot of record.* A parcel of land shown on a recorded plat or any parcel of land described by a legally recorded deed.

*Lot, through (double frontage).* An interior lot having frontages on two parallel or approximately parallel streets.

*Lot width.* The horizontal distance between the side lot lines measured at the required front yard line and parallel to the front street line.

*Lumen.* A unit of luminous flux equal to the light emitted in a unit solid angle by a uniform point source of one candle.

*Marijuana.* Marijuana is defined as Cannabis, meaning all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

**Marijuana-based product.** A marijuana-based product means a product that contains marijuana or any of its derivatives, including, but not limited to, tonics, tinctures, balms, salves, lotions, sprays, ointments, drinks, foods, and pills.

**Marijuana dispensary.** A marijuana dispensary is a facility where marijuana or marijuana-based products are made available for medical purposes in accordance with Florida law. A marijuana dispensary may also be defined as a “dispensing organization” as provided in Section 381.986(1), Florida Statutes. Any medical marijuana treatment center at which marijuana or marijuana-based products are dispensed as part of a program of medical treatment shall be included within the definition of a marijuana dispensary.

**Marina.** Any area where one or more sites or locations are rented or offered for rent for the location or dockage of boats, vessels, or house boats in water, or to be used for living quarters either temporarily or on a permanent basis.

**Mezzanine.** An intermediate floor in any story or room with a floor area not exceeding one-third the total floor area in that room or story in which the mezzanine occurs and with a clear height above or below the mezzanine floor construction of not less than seven feet.

**Mixed occupancy or use.** Occupancy of a building or land for more than one use.

**Mobile home.** Any unit used for living or sleeping purposes which is equipped with wheels or some device for the purpose of transporting the unit from place to place, whether by motive power or other means, or any unit used for temporary living or sleeping purposes temporarily located in the locality, whether it is on blocks, posts, or any other type of foundation.

**Mobile marijuana dispensary.** A mobile marijuana dispensary is any legal entity, clinic, cooperative, club, business, or group which transports, delivers, or arranges the transportation or delivery, of marijuana or marijuana-based products to any person.

**Motel.** A building in which lodging is provided and offered to the public for compensation. Accommodations are usually designed to serve tourists traveling by automobile. Ingress and egress to rooms need not be through a lobby or office, and parking usually is adjacent to the guest room.

**Nightclub.** An establishment defined by section 111.01 of this Code.

**Nonconforming use.** The lawful use of land or a building or portion thereof, which use does not conform with the use regulations of the district in which it is located.

**Nursing home facility:** Any facility which provides nursing services as defined in part I of Florida Statute chapter 464 and which is licensed according to this part.

**Occupancy.** A condition of an activity or use being upon a lot and/or within a building.

**Official rights-of-way.** A right-of-way established by ordinance.

**Open space.** That portion of a lot which:

- A. Is open and unobstructed from grade upward.
- B. Is accessible without restrictions except as may be required for safety.
- C. Is of a pervious nature.

**Outdoor dining.** A use characterized by outdoor table service of food and beverages prepared for service in an adjacent or attached main restaurant for consumption on the premises. The term also include outdoor bars and outdoor ice cream parlors.

**Parcel.** A piece of land assembled for a single purpose.



**Parking space, off-street.** An all-weather surfaced area, exclusive of streets, alleys, and driveways, permanently reserved for the temporary storage of one vehicle and connected with a street or alley by an all-weather surfaced driveway, which affords ingress and egress for a vehicle without requiring another vehicle to be moved. When developing single lot sites under the PRD regulations found in Section 8.10(D)(9), mechanical parking lifts may be used to create an additional parking space which can be counted towards the total number of required parking spaces.

**Penthouse.** Any structure above the main roof of a building used for residential, professional, or commercial purposes, or for housing elevator machinery and water storage tanks. Each story of a penthouse, except when used for machinery or a storage for water, is considered as an additional story to the height of the building.

**Permit, building.** A certificate issued by the Building Official authorizing the construction, reconstruction, remodeling, alteration, or repair of a building or other structure, upon approval of the submitted application and plans.

**Pervious area.** The surface area of a parcel, which is capable of being penetrated by water.

**Planning and zoning board.** The Planning and Zoning Board of the Village, as established by this chapter.

**Premises.** A lot, together with all buildings and structures thereon.

**Principal building.** The building within which the principal, predominant, or main use or activity upon the lot is conducted. In the event more than one building is upon one lot, the one containing the greatest floor area is the "principal building."

**Principal use.** The predominant activity or use conducted within a particular building or upon a particular lot.

**Public use.** Any public building, structure, or land used primarily for public or quasi-public purposes where the building, structure, or land is not privately owned or operated.

**Regulations.** The whole body of regulations, charts, tables, diagrams, maps, notations, references, and symbols, contained in or referred to in this chapter.

**Restaurant.** An establishment in which food is prepared and served for compensation.

**Right-of-way.** See Street line.

**Screen enclosure.** A frame of metal, wood, or other approved structural material supporting no roof or walls, with only approved insect screening, which screening possesses at least 50 percent open area per square inch.

**Service station.** An establishment devoted to the retail sale of motor vehicle fuels, oils, or accessories or for the servicing or repairing of minor parts and accessories, but not including major repair work such as motor replacement, body and fender repair, or spray painting.

**Setback.** The minimum horizontal distance between the street and the building; the lot bulkhead or water line and the building; or the side lot lines and the building.

**Shopping center.** One or more retail stores, commercial buildings, or an office complex with a unified plan or architectural scheme, on a single parcel of land or on separate parcels contiguously arranged.

**Story.** That portion of a building, other than a basement or mezzanine, included between the surface of any floor and the surface of the floor next above it; or, if there is no floor next above it, then the space between the floor and the ceiling next above it.

*Story, half.* A space under a sloping roof, which has the line of intersection of roof decking and wall face not more than three feet above the top floor level and in which space not more than two-thirds of the floor area is finished for use. A half-story containing independent apartments or living quarters shall be counted as a full story.

*Street.* A public thoroughfare which affords the principal means of access to abutting property.

*Street, collector.* A public thoroughfare which collects traffic from residential areas for distribution to a major arterial, as defined on the North Bay Village Circulation Plan.

*Street or right-of-way line.* A dividing line between a lot and a contiguous street.

*Structural alterations.* Any change, except those required by law or ordinance, which would prolong the life or change the shape or size of any portion of a building or structure or of the supporting members of a building or structure, such as bearing walls, columns, beams, arches, floor or roof joists, or girders, not including openings in bearing walls as permitted by other ordinances.

*Structure.* Anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground; including, but without limiting the generality of the foregoing: signs, backstops for tennis courts, fences, screen enclosures, and pergolas.

*Subdivision.* Shall be interpreted as defined in the subdivision regulations of Dade County or, if not so defined, then a Subdivision shall be the division of land into two or more lots, or other division of land into parcels of five acres or less for the purpose, whether immediate or of transfer of ownership or building development.

*Swimming pool.* Any portable, pool or permanent structure containing a body of water 18 inches or more in depth and 250 square feet or more of water surface area located in a residential area that is intended for swimming or recreational bathing and containing 18 inches or more in depth, including but not limited to in-ground, aboveground, and on-ground swimming pools, hot tubs, and non-portable spas, but not including an ornamental reflecting pool or fish pond, unless it is located and designed so as to create a hazard or be used for swimming or wading.

*Tent.* A canvas or other cloth shelter from sun or weather supported by a wood or metal frame or by poles, stakes, and ropes, or both, and not attached to any building.

*Time-sharing condominiums.* Any structure, service, improvement, or real property, which is made available to purchasers of a time sharing plan.

*Trailer, utility.* A vehicle lacking a means of self-propulsion intended to be towed by another vehicle and designed to be used for the transport or hauling of chattel.

*Trash.* Cuttings from vegetation, refuse, paper, bottles, rags, bulk trash, discarded furniture, etc.

*Utilities.* Structures of public or municipal utility in excess of lines, piping, conduit, transformers, or other essential utilities. A substation, pumping station, storage yard, or similar installation. Normally a significant structure or combination of structures often enclosed within a building.

*Use.* Any purpose for which buildings or other structures or land may be arranged, designed, intended, maintained, or occupied; any occupation, business, activity, or operation to be carried on or intended to be carried on in a building or other structure or on land; or a name of a building or other structure or tract of land which indicates the purpose for which it is arranged, designed, intended, maintained, or occupied.

*Use, commercial.* Any use which is operated as or is accessory to a business.

*Use, residential.* A use, which accommodates persons, not institutional in character, such as a single-family dwelling or multifamily dwelling, including apartments and hotel or motel rooms.

*Variance.* A dispensation permitted on individual parcels of property as a method of relieving an unnecessary hardship, by allowing a reasonable use of the building, structure, or property, which, because of unusual or unique circumstances, is denied by the provisions of this chapter.

*Vehicle, commercial.* Any vehicle designed, intended, or used for the transportation of people, goods, or things, other than private passenger vehicles and trailers for private non-profit transport of goods and/or boats.

*Wall.* A structure forming a physical barrier which is so constructed that less than 50 percent of the vertical surface is open to permit the transmission of light, air, and vision through such surface in a horizontal plane.

*Waterfront.* Any site shall be considered as waterfront premises provided any or all of its lot lines abut on or are contiguous to any body of water.

*Wine.* Shall be as defined in Section 561.01(4), Florida Statutes.

*Yard.* An open area, other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in these regulations.

*Yard, front.* A yard across the full width of the lot extending from the nearest line of any main or accessory building to the front street right-of-way line of the lot.

*Yard, rear.* A yard across the full width of the lot extending from the nearest line of any main or accessory building to the rear line of the lot.

*Yard, side.* A yard extending from the front yard to the rear yard, between the side lot line and the nearest line of any main or accessory building.

## **CHAPTER 4, ADMINISTRATION AND ENFORCEMENT**

### **DIVISION 1, GENERALLY**

#### **§ 4.1 - Purpose and intent.**

The purpose and intent of this chapter is to establish general petition procedures, the process for obtaining an official interpretation of a regulation in the Unified Land Development Code, public hearing and notice requirements, procedures for appealing decisions, enforcement of the code, penalties and remedies for violations, establish appropriate commissions, boards and administrative official, and amending the Unified Land Development Code and Comprehensive Plan, for the effective and equitable implementation and enforcement of the Unified Land Development Code.

#### **§ 4.2 – General petition procedure.**

A petition for an amendment, variance, use exception, or supplement to these regulations, or for an amendment, change, or supplement to the Comprehensive Plan or district boundaries of the Zoning District Map shall be submitted to the Village Clerk by any person who owns the subject property or who has written permission of the present owner, public official, the Planning and Zoning Board, or by the Village Commission's own motion.

#### **§ 4.3 – Procedure for obtaining an official interpretation of the Unified Land Development Code.**

When an individual wants an official interpretation of a regulation contained within the Unified Land Development Code as defined in Chapter 1, Section 1.5, or wants to determine how a regulation may be applicable to specific property within the Village, the following procedures and provisions shall apply.

*Written request.* The individual shall submit, in writing, a completed preapplication conference request (available from the Village Clerk's department), the request shall be accompanied by payment of the fee as established and set forth in Section 5.12, and shall include the following information:

1. Identification of the section or sections of the Unified Land Development Code for which an interpretation is desired.
2. An explanation of what it is that the individual finds unclear and an explanation of what, if anything, the applicant believes the section in question means.
3. If the applicant is interested in determining how the section or sections apply to or affect specific property, the following information shall be provided:
  - a. A clear representation of the specific property(ies) that is/are the subject of the inquiry including the property address.
  - b. The land area encompassed by the property and the specific dimensions of the property including a description, map or survey showing existing improvements on the property.
  - c. If the question involves whether or not a certain improvement or use is allowed on the property, or the extent, size, or number of units that may be allowed on the property, the applicant shall include a plot plan or detailed description of what he/she wishes to do on the property sufficient to allow the Planning and Zoning Official to make a reasoned determination as to how the ULDC affects that specific property. It shall be the planning and zoning official's decision as to what constitutes adequate information for him to make a decision or interpretation.

- d. The Planning and Zoning Official shall accept the written request or inform the applicant of any additional information that may be necessary for him to issue a reasoned interpretation. The Planning and Zoning Official may subsequently request additional information from the applicant, or provide the option of meeting with the applicant  
  
If a meeting is scheduled requiring consultation with, or attendance by, an attorney or professional consultant (e.g., planner or engineer), a deposit in the amount set forth in Section 5.12, shall be paid at least five days prior to said meeting. The final cost of the meeting, calculated as set forth in Section 5.12, shall be the responsibility of the applicant and shall be paid in full prior to the issuance of the written opinion.
- e. Within two weeks of accepting the completed request, or having received any additional information requested of the applicant, the Planning and Zoning Official shall issue, in writing, his opinion, supported by citations of the pertinent sections of the Unified Land Development Code, and shall forward said opinion by email or U.S. Mail to the applicant.
- f. The time for the Planning and Zoning Official's response may be extended to 30 days if, in the opinion of the Planning and Zoning Official, it is necessary for him to confer with the Village attorney, other Village staff, or outside consultant before rendering a decision. All applicable fees shall be paid by the applicant before the Planning and Zoning Official issues his written opinion.
- g. The Planning and Zoning Official's written opinion shall be considered an official interpretation of the subject provisions of the Unified Land Development Code.
- h. Verbal statements, interpretations, or comments made by the Planning and Zoning Official or any other representative of the Village with regard to any interpretation of the Unified Land Development Code shall not be considered official interpretations of the Unified Land Development Code. Interested parties who make development decisions or proceed with development activity based upon such verbal information shall do so at their own risk.

#### **§ 4.4 – Public hearing, public notice, and adoption requirements and procedures.**

##### **A. *Hearings and notices.***

- 1. Table 4.4.A.1 describes the number and type of meetings each application will require. The information in the table is presented for the purpose of assisting the Village, applicants and the public in identifying public meeting and hearing requirements. In the case of conflict between the information presented in the table and the legal requirements of the Unified Land Development Code, the Village Code of Ordinances or Florida Statutes (collectively referred to as legal requirements), the legal requirements and not the table shall control.
- 2. All applications involving the following shall be considered at public hearings before the Planning and Zoning Board and the Village Commission:
  - a. Amendment, change, or supplement to the Comprehensive Plan;
  - b. Amendments to the Unified Land Development Code;
  - c. Amendments to boundaries of the Zoning District Map;
  - d. Variances;
  - e. Use exceptions and other applications for development approval;
  - f. Appeals of an administrative decision

3. Amendments to the Future Land Use Map, Zoning Map, or which change the actual list of permitted uses, conditional uses, use exceptions, or prohibited uses in a zoning district or future land use category shall be adopted by ordinance, and the notice and hearing requirements shall be as required by Section 166.041(3)(a) and (c), Florida Statutes.
4. Amendments to the Future Land Use Map or Zoning Map which change the actual map designation for a parcel or parcels of land containing ten contiguous acres or less notice shall be provided in the following manner:
  - a. Notice of the public hearing on the proposed change shall be given to property owners at least thirty (30) days prior to the date set for the public hearing as required by Section 166.041(3)(c)1 Florida Statutes.
  - b. As a courtesy notice, a written announcement of a public hearing shall be mailed at least ten (10) days prior to the date of the hearing to all property owners and residents abutting the subject property or within 300 feet of the perimeter of the property. Failure to mail this courtesy notice shall not affect the validity of the final action.
  - c. The list of property owners shall be certified by the Village Clerk. The Village Clerk shall certify that the petition file is complete before the hearing is legally advertised.
5. All public hearings held before the Planning and Zoning Board and/or Village Commission shall be noticed by publishing, at least ten (10) days prior to the hearing, an advertisement showing the date, time, place, and nature of the hearing.
6. Notice of the date, time, place and nature of the hearing shall also be posted conspicuously at least ten (10) days prior to the hearing on any property for which a petition for a variance, use exception, zoning district or future land use boundary change has been submitted.
7. For amendments that require two (2) public hearings by the Village Commission, the second public hearing shall be advertised at least ten (10) days before the public hearing.

**Table 4.4.A.1  
Public Hearings**

<b>Development Approval</b>	<b>Planning and Zoning Board</b>	<b>Village Commission</b>
<b>Amendments to Comprehensive Plan</b>		
Small scale development map amendment	H	H
All other amendments		
Transmittal stage	H	H
Adoption stage		2H
<b>Amendments to the Unified Land Development Code</b>		
Zoning district map	H	2H
Text amendment	H	2H
<b>Others</b>		
Minor Development <sup>(1)</sup>		
Major Development <sup>(2)</sup>	H	H
Variances	H	H
Non-hardship variance for single-family properties	H	H
Use exceptions	H	H
Appeals of an administrative decision	H	H
H = Public hearing <sup>(1)</sup> Three through six dwelling units or from 300 to 10,000 square feet of commercial use <sup>(2)</sup> Seven or more dwelling units or more than 10,000 square feet of commercial use.		

**B. Method of adoption.**

1. The following shall be adopted by ordinance:
  - a. Amendment, change, or supplement to the Comprehensive Plan;
  - b. Amendments to the Unified Land Development Code;
  - c. Amendments to the Zoning Map and to the actual list of permitted, conditions, or prohibited uses within a zoning category.
2. The following shall be adopted by resolution:
  - a. Variances;
  - b. Use exceptions and other applications for development approval;
  - c. Appeals of an administrative decision.

C. *Testimony.*

Witnesses desiring to make a statement of fact at a public hearing shall be sworn and give testimony under oath; otherwise, statements shall be considered a matter of opinion only. The Planning and Zoning Board or Village Commission may require attendance of witnesses at a public hearing.

**§ 4.5 Procedure for appealing an administrative decision.**

- A. Any person aggrieved by an order, requirement, decision, or determination relative to these regulations by an administrative official may petition the Village Commission for relief following a recommendation by the Planning & Zoning Board. The petition shall be in a form approved by the Village Attorney, and all properties described in one application must be contiguous.
- B. A grant of relief on appeals of administration decisions shall avoid spot zoning.
- C. The Village Commission may, after a public hearing, grant relief on appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the interpretation of any portion of these regulations.

**§ 4.6 Exhaustion of remedies; court review.**

- A. No person aggrieved by any zoning resolution order, requirement, decision, or determination of an administrative official or by any decision of the Planning and Zoning Board may apply to the court for relief unless he has first exhausted the remedies provided for herein and taken all available steps provided in this subchapter. It is the intention of the Village Commission that all steps provided by this subchapter shall be taken before any application is made to the court for relief; and no application shall be made to the court for relief except from resolution adopted by the Village Commission pursuant to this subchapter.
- B. Zoning resolutions of the Village Commission shall be reviewed by the filing of a petition for writ of certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in accordance with the procedure and within the time provided by the Florida Appellate Rules for the review of the rulings of any commission or board. Such time shall commence to run from the date the zoning resolution sought to be reviewed is transmitted to the Village Clerk. For the purposes of a certiorari the Village Clerk shall make available for public inspection and copying, the record upon which each final decision of the Village Commission is based; however, the Village Clerk shall make a reasonable charge commensurate with the cost in the event the Village is able to and does furnish copies of all or any portion of the record. Prior to certifying a copy of any record or portion thereof, the Village Clerk or her designee shall make all necessary corrections in order that the copy is a true and correct copy of the record, or those portions requested, and shall make a charge as provided.

**§ 4.7 Enforcement.**

- A. It shall be the duty of the Building Official, Plan Examiner, and Code Enforcement Officer to enforce the provisions of these regulations, and to refuse to issue any permit for any building or for the use of any premises, which would violate any of the provisions of these regulations. It shall also be the



duty of all officers and employees of the Village and especially all members of the Police Department, to assist by reporting to the Village Manager any apparent violation in new construction, reconstruction, or land use.

- B. For the purpose of inspection, the Building Official and Code Enforcement Officer or their authorized representatives shall have free access to materials and work at all times and shall have the power to stop work pending investigation as to materials, work, grades, use, and other provisions of these regulations.
- C. The Building Official, Plan Examiner, and Code Enforcement Officer are authorized, where deemed necessary for enforcement of these regulations, to request the execution of an agreement for recording.
- D. In case any building is erected, constructed, reconstructed, altered, repaired, or converted, or any building or land is used in violation of these regulations, the Building Official and Code Enforcement Officer is authorized and directed to institute any appropriate legal action to put an end to such violation.

#### **§ 4.8 Penalties and remedies for violations.**

Any person or corporation who violates any of the provisions of these regulations or fails to comply therewith or with any of the requirements thereof, or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder, shall be guilty of a misdemeanor and may be punished by the maximum penalty permitted under §10.99. Each day such violation shall be permitted to exist shall constitute a separate offense. The owner or owners of any building or premises, or part thereof, where anything in violation of these regulations shall be placed or shall exist, and any architect, builder, contractor, agent, person, or corporation employed in connection therewith who has assisted in the commission of any such violation shall be guilty of a separate offense, and upon conviction shall be fined as hereinbefore provided and according to a schedule adopted by the Village Commission.

### **DIVISION 2, COMMISSION, BOARD, AND ADMINISTRATIVE OFFICIALS**

#### **§ 4.9 Village Commission.**

##### **A. *Powers and duties.***

In addition to any authority granted to the Village Commissioners by state law or Village ordinance, the Village Commissioners shall have the following powers and duties:

1. Enter into development agreements, as provided by state law.
2. Approve final plats prior to recording.
3. Adopt and/or amend the North Bay Village Comprehensive Plan.
4. Initiate, review, and adopt amendments to the Unified Land Development Code of North Bay Village and the North Bay Village Code of Ordinances.
5. Approve variances to Unified Land Development Code of North Bay Village.

6. Take such other action as the Commissioners may deem necessary to implement the provisions of the Unified Land Development Code and the Comprehensive Plan.

**B. *Action by Village Commission.***

1. Before action is taken by the Village Commission on any petition the Commission shall consider the recommendations and reports of the Planning and Zoning Board and of the Building Official and Plan Examiner.
2. If an application is before the Village Commission pursuant to this section, accompanied by a Planning and Zoning Board recommendation, the Commission shall have authority to consider and take final action upon any and all matters and requests contained in the application.
3. If the Planning and Zoning Board recommends, after a public hearing as described above, that the proposed amendment, supplement, change, variance, or use exception be disapproved by a unanimous vote of the full Planning and Zoning Board, such amendment, supplement, change, variance, or use exception shall not become effective except by a favorable vote of at least 4/5 of all of the members of the Village Commission.
4. In making any final decision, the Commission shall be guided by these regulations and the purposes thereof stated in § 1.5, and by sound comprehensive planning and zoning principles, and may take any action within the confines of such guides and standards.
5. The action of the Commission may impose conditions or be more restrictive than any petition being considered.
6. No further variances may be granted without prior notice and hearing before the Planning and Zoning Board.
7. When any final action has been taken by the Village Commission, its record together with a certified copy of its minutes and the motion pertaining to such action shall be transmitted to the Building Official and Plan Examiner, and shall be open to the public for inspection during the normal hours of business for Village Hall.
8. At maximum intervals of five years, review the recommendations of the Planning & Zoning Board in regard to their review of the provisions of the Unified Land Development Code, the Comprehensive Plan and land use maps and the Zoning District Map, and adopt the necessary revisions.

**C. *Quorum.***

A majority of the members of the Village Commission constitutes a quorum. Except in the case of an emergency ordinance, which requires four affirmative votes, an affirmative vote of a majority of a quorum present shall be necessary to enact the ordinance.

**§ 4.10 Planning and Zoning Board.**

**A. *Establishment and purpose.***

The Planning and Zoning Board has been created to recommend to the Village Commission on all matters within the general purview of planning, zoning and development. This authority and duty includes the following:

1. Consider and recommend to the Village Commission as to all petitions for amendments, changes, or supplements to this code, special exceptions, or variances thereto.
2. Consider and recommend to the Village Commission as to all petitions for changes in the district boundaries of the land use maps in the Comprehensive Plan.
3. Prepare, or recommend, special studies on the location, adequacy, and conditions of specific facilities in North Bay Village, including, for example, studies on recreational facilities, historic buildings, etc.
4. Review and recommend to the Village Commission upon all petitions for development orders. In reviewing site plans for development, the Planning and Zoning Board must consider and abide by the provisions of Chapter 9.
5. Review and recommend whether specified proposed development conforms to the objectives and policies of the North Bay Village Comprehensive Plan.
6. Conduct such hearings as may be required to gather information to render decisions or make recommendations to the Village Commission.
7. At maximum intervals of five years, review the provisions of the Unified Land Development Code, the Comprehensive Plan and land use maps and the Zoning District Map, and forward the results of the review to the Village Commission at a public meeting.

**B. *Officers.***

1. The members of the board shall elect annually, by majority vote, a chair and vice-chair from among its members. The chair shall be the presiding officer; the vice-chair shall preside in the absence or disqualification of the chair.
2. The Village Manager will provide secretarial staff to the board as needed. Professional service advisors may be utilized as determined by the Village Commission.
3. The Mayor and Village Manager shall serve as ex-officio members; however, their participation shall be limited to discussion only. They may not vote or otherwise participate in making recommendations to the Village Commission.

**C. *Board membership.***

1. General requirements for membership and election of office for the Planning and Zoning Board are described below.
2. Membership of the board will consist of five members to be appointed by the Village Commission. Members shall be appointed for a term of two years, coinciding with the term of office of Village Commissioners.
3. The members shall be qualified electors of the Village as defined in the Village Charter.
4. The members shall be, and shall remain during their respective terms of office, residents of the Village. When a seat becomes vacant on the board, a successor shall be appointed by the Commission to fill the unexpired term.
5. The Village Commission can remove any member from the Planning and Zoning Board by majority vote of the Commission.

D. *Meetings.*

The Planning and Zoning Board shall hold regular monthly meetings and may hold special meetings at any other time. Special meetings shall be held on written request of the chairman and notices shall be mailed three days prior to the special meeting. In the event the chairman fails to call a special meeting, upon request of any board member, a special meeting shall be held upon written call of two other members of the board, notices shall be mailed three days prior to the called meeting.

E. *Quorum and voting.*

The presence of three members constitutes a quorum. A majority vote of the board shall be required on all decisions and recommendations to be made to the Village Commission.

F. *Authority, duties and decisions.*

1. The Planning and Zoning Board as established in **Sections** 32.30 through 32.34 shall have the authority and duty to consider, act upon, and recommend to the Village Commission as to all petitions for amendments, changes, or supplements to these regulations; variances or special exceptions thereto; changes in the district boundaries of the Zoning District Map; petitions appealing an administrative decision and amendments to the Comprehensive Plan. The board shall also have the power to study and recommend to the Village Commission on all matters within the general purview of Comprehensive Planning and zoning.

2. Periodic review.

It shall also be the duty of the Planning and Zoning Board, in cooperation with the Village Attorney, to continuously review the provisions of these regulations, the Comprehensive Plan, and the Zoning District Map to offer recommendations for the improvement thereof to the Village Commission. At maximum intervals of five years, these regulations, the Comprehensive Plan, and the Zoning District Map shall also be subject to a comprehensive review and a report thereof, with recommendations submitted jointly by the Planning and Zoning Board and the Village Attorney, and shall be presented to the Village Commission at a public meeting.

3. Decisions.

- a. All recommendations of the Planning and Zoning Board shall be made by motion at a public hearing of the board. Any member who has a special financial interest, direct or indirect, shall make that interest known and shall abstain from participation therein in any manner. Willful violation of this provision shall constitute malfeasance in office and shall render the action voidable by the Village Commission. No action shall be taken without a quorum, and majority vote of those present shall prevail.
- b. The Village Clerk shall forward copies of all petitions to the Planning and Zoning Board, at least two weeks prior to the public hearing called for any such petition. The Planning and Zoning Board, or any of its members, may inspect the premises and area under consideration. Prior to making its recommendation the board shall consider the written recommendations thereon of the Building Official and Plan Examiner.
- c. After the public hearing, the report and recommendation of the Planning and Zoning Board shall be transmitted in writing to the Village Commission as a part of the record. The report of the Planning and Zoning Board shall include a recommendation on each and every request by the petitioner, but shall not be necessarily limited by the scope of the petition.



#### **§ 4.11 Code Enforcement. [REFER TO CHAPTER 153]**

#### **§ 4.12 Village Manager.**

The Village Manager is designated as the appointing manager of each of the Village's departments and serves as an ex-officio member of the Planning and Zoning Board.

#### **§ 4.13 Planning and Zoning Official.**

The Planning and Zoning Official shall serve as head of the planning and zoning department. As such, his duties shall include the following:

1. Oversee the appropriate application of the provisions of this code and county and state laws as they pertain to this code.
2. Receive all applications for development orders and development permits, review them for completeness, and initiate processing procedures.
3. Ensure that a concurrency evaluation, when necessary, is conducted as part of the processing of each request for development permit and that the results of the evaluation are made a part of the application.
4. Assist the Village Commission and Planning and Zoning Board through staff reports and recommendations regarding applications for development orders, permits, and amendments to the Comprehensive Plan and Unified Land Development Code.
5. Ensure appropriate interdepartmental coordination regarding the review and approval of tentative and final plats, final development orders, and final development permits.

#### **§ 4.14 Building Official.**

The building official shall serve as head of the building department. As such, his duties shall include overseeing the appropriate application of the provisions of the building code and county and state laws as they pertain to the building code.

### **DIVISION 3, AMENDMENTS AND CHANGES TO UNIFIED LAND DEVELOPMENT CODE AND COMPREHENSIVE PLAN**

#### **§ 4.15 Amendments in general.**

##### **A. General.**

The Village Commission may, from time to time, after public hearings before the Planning and Zoning Board and the Village Commission, amend or change the Comprehensive Plan, the district boundaries of the Zoning District Map, or the regulations established herein. Such amendments or changes shall be in general accord with sound principles of planning and zoning and with the purpose of these regulations.

##### **B. Process.**

1. Any person may apply to the Village to amend the Comprehensive Plan or this Unified Land Development Code.

2. When an application for an amendment is received, it shall be forwarded to the Planning and Zoning Board for its recommendation at least ten days prior to the public hearing at which it will be heard.
3. The Planning and Zoning Official will forward his comments to the Planning and Zoning Board prior to the hearing.
4. The hearing by the Planning and Zoning Board on an amendment to the Comprehensive Plan shall be held as provided in Sections 4.16(B) or 4.16(C) as applicable and 4.16(D)
5. After the hearing, the report and recommendation of the Planning and Zoning Board will be transmitted to the Village Commission.

#### **§ 4.16 Amendments to the Comprehensive Plan.**

##### **A. *Generally.***

Amendments to the Village's Comprehensive Plan shall be undertaken only in accordance with the provisions for such amendments as set forth in Section 163.3184 Florida Statutes.

##### **B. *Village initiated changes.***

1. The Village Commission may initiate amendments to the Comprehensive Plan pursuant to the provisions of Section 163.3184, Florida Statutes.
2. Approval of any change to the Comprehensive Plan shall require the affirmative vote of a majority of the members of the Village Commission present.

##### **C. *Property owner-initiated changes.***

1. Changes involving land use boundaries or categories.
  - a. A request, by a duly certified property owner or his agent, for a change in land use category or boundaries shall be considered only if owners of at least 51 percent of the property involved in the requested change submit to the Village clerk a duly signed and notarized petition accompanied by the proper fee.
  - b. The Planning and Zoning Official will review the application for the requested change in land use boundary or category and make a determination whether or not the requested change qualifies as a small scale development activity plan amendment under the provisions set forth in Section 163.3187(1), Florida Statutes.
    - (1) If the requested change qualifies as a small scale development activity plan amendment under the provisions of Section 163.3187(1), Florida Statutes the Village Clerk will schedule the first required public hearing before the Planning and Zoning Board, acting as the Local Planning Agency, to be held not more than 60 days after the application submission is found to be complete. The Local Planning Agency shall make a recommendation to the Village Commission. Thereafter, the Village shall conduct the amendment process as provided for under the provisions of the Community Planning Act.
    - (2) If the requested change does not qualify as a small scale development activity plan amendment under the provisions of Section 163.3187(1), Florida Statutes the Planning and Zoning Official will so notify the applicant and the Village Clerk will schedule the first

required public hearing before the Planning and Zoning Board, acting as the Local Planning Agency, to be held not more than 60 days after the application submission is found to be complete. Thereafter, the Village shall conduct the amendment process as provided for under the provisions of the Community Planning Act governing the Expedited State Review Process.

- c. Approval of any change in a land use category or boundary shall require the affirmative vote of a majority of the members of the Village Commission present.
- d. Reapplication.

No property owner application for amendment to the Comprehensive Plan involving changes of land use boundaries or categories shall be filed less than one year after the date of disapproval by the Village Commission or conclusion of an appeal, whichever is later, of an application involving the same land or any portion thereof.

2. *Changes to the Comprehensive Plan not involving land use categories or boundaries.*

- a. Any resident of the Village may request an amendment, not involving land use categories or boundaries, to the Comprehensive Plan.
- b. Such requests shall be submitted, in writing, to the Village Clerk, accompanied by the reasoning and benefits expected to accrue to the Village as a result of the proposed change.
- c. The Village Clerk shall forward the request to the Village Commission for its consideration.
- d. If the Village Commission determines that the proposal warrants further consideration, it will schedule the proposal for consideration.
- e. Approval of any change to the Comprehensive Plan shall require the affirmative vote of a majority of the members of the Village Commission present.

D. *Public hearings.*

Public hearings conducted to consider amendments to the Comprehensive Plan shall, at a minimum:

- 1. Comply with the requirements of state law.
- 2. Permit any person to submit written recommendations and comments before or during the hearing.
- 3. Permit a reasonable opportunity for interested persons to make oral statements.

E. *Expiration of application.*

A property owner initiated application to amend the Comprehensive Plan shall expire 180 days after written notice has been served by the Planning and Zoning Official to the applicant requesting that the applicant provide additional information or that the applicant needs to undertake a specific action(s) before the application can be further considered; provided that the applicant has not supplied the Village with the requested information, has not provided evidence to the Village that he/she has undertaken the specific action(s) set forth in the written notice, or has not requested, in writing, an extension.

**§ 4.17 Amendments to the Unified-Land Development Code.**



A. *Spot zoning.*

1. Prohibited.

Spot zoning shall be prohibited with regard to all amendments or changes in the district boundaries of the Zoning District Map or these regulations.

2. Defined.

Spot zoning, for the purposes of these regulations, is defined as having one or more of the characteristics set forth in subsections a – c.

- a. Individuals seeking to have property rezoned for their private use, with the application showing little or no evidence of one or more of the following:
  - (1) consideration of the general welfare of the public;
  - (2) the effect on the surrounding property (including adequate buffers);
  - (3) whether all uses permitted in the classification sought are appropriate to the location proposed;
  - (4) or conformity to generally accepted Comprehensive Planning and zoning principles (including alterations to the population density patterns and increase of load on utilities, schools, and traffic);
- b. The proposed change is not in conformity with the Comprehensive Plan.
- c. The proposed rezoning would grant privileges not generally extended to property similarly located in the area.

B. *Amendments rezoning property or substantially changing the uses permitted in zoning districts.*

1. Conditions for approval. No proposed zoning amendment shall be approved unless:

- a. The proposed amendment will place all property similarly situated in the area in the same category, or in appropriate complementary categories.
- b. There is a convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest, and not merely in the interest of an individual or small group of people.
- c. There is a convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change. (When a new district designation is assigned, any use permitted in the district is allowable, so long as it meets district requirements, and not merely uses which an applicant states he intends to make of the property involved).
- d. There is convincing evidence that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed change.
- e. The proposed change is in accord with the Comprehensive Plan and sound Comprehensive Planning and zoning principles.

2. Reconsideration of district boundary changes. When a proposed change in district boundaries has been acted upon by the Village Commission and disapproved or failed of passage, such proposed change, in the same or substantially similar form, shall not be reconsidered by the Village Commission for a period of at least six months following the date of such action.

C. *Amendments that do not rezone property or substantially change uses permitted in zoning districts.*

Amendments to the Unified Land Development Code that do not rezone property or substantially change uses permitted in zoning districts shall be in general accord with sound comprehensive planning and zoning principles and consistent with the adopted Comprehensive Plan.

## **CHAPTER 5, PERMITS AND DEVELOPMENT APPROVALS**

### **§ 5.1 - Purpose and intent.**

The purpose of this chapter is to set forth the application and review procedures required to obtain development orders and certain types of permits; to establish regulations, procedures and standards for review and approval of all proposed development in the Village and to adopt a development review process that is efficient in terms of time and expense; effective in addressing the natural resource and public facility implications of proposed development; and, equitable with regard to established regulations and procedures, respect the rights of property owners and consideration of the interest of the citizens of the Village.

### **§ 5.2 - Development permit required.**

No development allowed by this Code, including accessory and temporary uses, shall be established or changed, no structure shall be erected, constructed, reconstructed, altered, or moved and no building used, occupied, or altered with respect to its use after the effective date of adoption of this Unified Land Development Code until there is on file in the Village an approved development order for said action. Nothing herein shall relieve any applicant of the additional responsibility of obtaining any permit(s) required by any applicable statute, ordinance, or regulation in compliance with all of the terms of this Unified Land Development Code or any other applicable laws.

## **DIVISION I, PROCEDURES FOR OBTAINING DEVELOPMENT ORDERS**

### **§ 5.3 – Application required.**

Application for any development order shall be made in writing on the appropriate form obtained from the Village Clerk and shall be made by the owner(s) of the property for which the action is being requested or by his authorized agent.

### **§ 5.4 – Designation as minor or major development.**

At the time the owner or his agent requests an application for development order, the department shall determine whether the proposed project constitutes a minor development 1, minor development 2, or major development.

#### **A. *Minor development 1.***

1. A development will be designated a minor development 1 if it contains two (2) or fewer dwelling units or not more than 299 square feet of commercial use.
2. Minor development 1 projects will be reviewed and approved administratively by the Building Official.

#### **B. *Minor development 2.***

1. A development will be designated a minor development 2 if it contains from three (3) to six (6) dwelling units or from 300 to 10,000 square feet of commercial use.
2. Minor development 2 projects will be heard at public hearings before the Planning and Zoning Board and the Village Commission.

*C. Major development.*

1. A development shall be designated as a major development if it contains seven (7) or more dwelling units or more than 10,000 square feet of commercial use.
2. Major development projects will be heard at public hearings before the Planning and Zoning Board and the Village Commission.

**§ 5.5 – Basic application requirements for all developments.**

Five (5) copies of the following basic materials shall be submitted before any application for a development order shall be considered complete.

- A. The Village's standard application forms, completed, signed by all property owners or their designated agents, and notarized. In case of corporate ownership, the authorized signature shall be accompanied by a notation of the signer's position in the corporation and embossed with the corporate seal.
- B. A survey at a scale of not less than one inch equals 40 feet, prepared by a registered land surveyor and not more than one year old and including the legal description of the property, all easements, and rights-of-way.
- C. Except for a single-family residence, a site plan to include physical features in or adjoining the site, proposed driveways, alleys, off street parking and loading areas, storm drainage, sanitary sewer facilities, and lighting systems.
- D. Preliminary floor plans and elevations of proposed buildings at not less than 1/16 inch scale.
- E. Location, height, and type of all proposed buildings, walls, signs, landscaping, and open space. Tabular project summary including total acreage, project density and floor area ratio (FAR) lot coverage, open space, and number of parking spaces. If variances are being requested, the extent of these variances from requirements shall be noted.
- F. Level of service assessment (See Division 2, Sections 5.17 through 5.20).
- G. Filing fees. See Section 5.12 for copy of fee schedule.

**§ 5.6 –Major development application requirements.**

In addition to the basic application requirements of Section 5.5, five (5) copies of the following may be required to accompany an application for a major development permit:

- A. Development impact study which shall demonstrate whether the impact of the proposed

development is favorable, adverse, or neutral on the economy, public services, environment, and housing supply of the Village.

- B. Description of the relationship of the proposed project to surrounding, existing, and proposed future land uses, and to existing zoning, and the Village's Comprehensive Plan.
- C. Listing of any special permits, variance, or exemptions ~~from the zoning ordinance~~ or any other Village ordinance that may be required.

#### **§ 5.7 – Review of development plan.**

- A. Within fifteen (15) working days of receipt of a petition for development plan approval the building official shall:
  - 1. Determine whether or not the information is complete and if incomplete inform the applicant in writing of the deficiencies. The applicant may submit an amended plan within ten days without payment of a reapplication fee.
  - 2. Determine that the petition is complete.
    - a. If the petition is for a minor development, approve or disapprove the application.
    - b. If for a major development, proceed with the following procedures.
- B. Prepare a written report setting forth the factual conclusions and:
  - 1. Recommend that the petition be approved.
  - 2. Recommend that the proposed development permit be denied; or
  - 3. Recommend that the petition be denied unless specific modifications are made. The modifications shall be described in sufficient detail and exactness to allow the Applicant to amend his request accordingly.

#### **§ 5.8 – Site plan review, site plan and model required.**

- A. *Site plan and model required.*

For any proposed development or redevelopment within the Village other than a single-family residence, a site plan and a computer model, or an architectural model built to scale, shall be furnished to the Village Manager, or his/her designee. Within ten (10) days prior to the Planning and Zoning Board public hearing, the applicant shall make available for view a computer model or an architectural model and photographs depicting same. If an architectural model is provided, said model shall be retrieved by the developer within thirty (30) days following the final public hearing before the Village Commission. The photographs depicting the model and any computer model shall become part of the public records. Any computer or architectural model shall demonstrate the proposed structure as well as existing structures on either side. The applicant shall affirmatively demonstrate that no setback for the new structure shall ~~not~~ conflict with the existing or approved structure on either side of the proposed structure.

**B. *Site plan requirements.***

Approval of the site plan shall meet the requirements of Section 4.2. The site plan shall include but not be necessarily limited to the following material, including conformance with all State laws and those of Dade County.

1. The title of the proposed project and the name of the site planner, engineer, architect, landscape architect, developer, and owner.
2. The north point, scale (1/16 inch to the foot, or larger), and date of preparation of the site plan.
3. Existing and proposed zoning district boundaries.
4. Existing easements (with the ownerships thereof noted on the plan), property lines, streets, buildings, and other physical features in or adjoining the project.
5. Proposed streets, alleys, driveways, walkways, curb cuts, off-street parking spaces, loading areas, outdoor lighting systems, storm drainage, and sanitary sewer facilities.
6. Preliminary floor plans of typical floors and elevations of any proposed building according to a 1/16 inch scale.
7. Location, height, and type of all proposed buildings, structures, uses, signs, fences, walls, landscaping, and open space.
8. Tabular project summary, indicating the total acreage, plot area density, lot coverage, open space, and off-street parking spaces. If variances are being sought, the extent of those variances from the requirements of this chapter shall be included within the tabular summary.
9. Review by Planning and Zoning Board and Village Commission.
  - a. Site plans for a building or buildings which contain more than two (2) dwelling units, or more than 299 square feet of commercial or office space shall be reviewed by the Planning and Zoning Board and the Village Commission.
  - b. In reviewing site plans for development, the Planning and Zoning Board and the Village Commission must consider and abide by the provisions of chapter 9.
  - c. The review by the Planning and Zoning Board and Village Commission shall attempt to establish that the proposed development or redevelopment conforms to all applicable provisions of the building and zoning regulations of the Village and the Florida Building Code; and that the proposed development or redevelopment has a design and arrangement which:
    - (1) Protects against and minimizes any undesirable effects upon contiguous and nearby property.
    - (2) Provides sufficient off-street parking and loading facilities so that it will not be necessary to use the streets in the vicinity for this purpose.
    - (3) Provides a sufficient setbacks, open space, and landscaping in order to protect and enhance the appearance and character of the neighborhood.
    - (4) Can be accommodated by existing community roads, services, and utilities, or the necessary additions are provided by the developer.
  - d. The review of a site plan does not indicate or imply approval of the working drawings (plans) and specifications required for the building permit.
  - e. Requests for variances shall require a separate public hearing.

### **§ 5.9 – Administrative approval of site plan modification.**

- A. An amendment to a site plan that has been approved by the Planning and Zoning Board and the Village Commission pursuant to Sections 4.2 and 5.8 may be approved by the Village Manager upon recommendation of the Village Planning and Zoning Official without further review or approval by any such body, as follows:
1. Any modification to the overall combination of unit types within the building(s) shown on the approved site plan or any increase in the total number of units, provided that the additional total number of units does not exceed five percent of the total number of dwelling units of the approved site plan and the resulting total number of units does not exceed the allowable density under the North Bay Village's Unified Land Development Code.
  2. Any modification to increase the size of any units shown on the approved site plan provided that the modification is consistent and is not in violation of the North Bay Village's Unified Land Development Code. Further, the total floor area for the site plan modification shall not exceed ten percent of the approved site plan after deducting any increase in total floor area directly attributed to bringing unit sizes into compliance with the current minimum unit size set forth in the North Bay Village's Unified Land Development Code. Any increase in the number or in the size of units will be subject to review in order to determine if concurrency requirements are met.
  3. Any modification to increase or decrease the floor-to-ceiling dimensions of any individual floor within the approved site plan, provided that the modification complies with the North Bay Village's Unified Land Development Code and does not result in a modification of the number of floors for the approved site plan.
  4. Any modification to increase or decrease the number of parking spaces within the approved site plan made in order to conform off-street parking of the approved site plan to any modification of a nature described in subparagraphs A.1 or A.2, preceding, provided that the modification shall be substantially consistent with the approved site plan and not in violation of the North Bay Village's Land Development Code or any applicable state or federal law.
  5. Any modification to the footprint of any building shown on the approved site plan provided that the modification does not change the generalized location of the building(s) shown on the approved site plan nor conflict with buffering requirements and is not in violation of the North Bay Village's Code of Ordinances.
- B. Any modifications approved by the Village Manager upon recommendation of the Village Planning and Zoning Official pursuant to Section 5.9 shall be subject to the following limitations:
1. Any modification to an approved site plan not expressly authorized under § 5.9 shall require review and approval in accordance with the requirements and procedures for review and approval of a new site plan, as set forth in Section 5.8.
  2. Modifications to an approved site plan approved pursuant to Section 5.9 shall take effect upon approval by the Village Manager, upon recommendation of the Village Planning and Zoning Official.
- C. Courtesy notification of approved site plan modification review will be given to property owners subject to the requirements of Section 4.4,A, hearing and notices, of the North Bay Village's Unified Land Development Code.

#### **§ 5.10 – Expiration of site plan approval.**

Site plans approved in accordance with these regulations shall expire two (2) years following final approval by the Village Commission unless otherwise approved by development order. Such site plans may be granted no more than two (2) one-year renewals subject to approval by the Village Commission. To avoid expiration of the site plans the applicant must apply for a full building permit within the time frames set forth above.

#### **§ 5.11 – Building permits.**

While both development permits and development orders are considered development orders by state law, building permits are distinguished in this Code as approvals for actual construction or installation.

##### **A. Authority.7.1**

The South Florida Building Code has been adopted by North Bay Village as the "Building Code of North Bay Village." All applications for building permits shall be submitted to and processed by the Building Official.

##### **B. Requirements and conditions.**

The following requirements shall be met prior to the processing of any application for a building permit.

1. All petitions must be accompanied by two sets of plans and specifications prepared in accordance with the requirements of the South Florida Building Code. The plans must include a survey prepared by a registered land surveyor.
2. Petitions must include a level of service assessment (see [Section 5.18](#)).
3. Petitions for development or redevelopment other than for a single-family residence must contain a site plan which contains:
  - a. Existing and proposed future land use and zoning district boundaries.
  - b. Existing easements and all physical features in or adjoining the project.
  - c. Proposed streets, alleys, curb cuts, off-street parking spaces, loading areas, outdoor lighting, storm drainage, and sanitary sewer facilities.
  - d. Tabular project summary indicating lot area, building area, density, and off-street parking spaces.
  - e. Location, type, height of all proposed buildings, signs, fences, landscaping, and open space.
  - f. Petitions must be accompanied by the appropriate filing fee as set forth in [Section 5.12](#).

#### **§ 5.12 – Filing fees, charges for consultant services, and escrow account.**

##### **A. Consultants.**

1. The Village Manager and/or his/her designee as part of the review of any development application presented to the Village, may refer any such application to such engineering, planning, legal, technical, environmental, or other professional(s) consultants employed or retained by the Village ("consultant(s)") as the manager shall deem reasonably necessary to enable him/her to review such application as required by law.



2. Charges made by such consultants shall be made in accordance with the charges customarily made for such services in Miami-Dade County, and pursuant to an existing contractual agreement by and between the Village and the consultant.
3. The consultant's services shall be charged at the hourly rates specified in the particular consultant's agreement with the Village. The Village shall provide the applicant with a copy of the consultant's invoice for any services charged against the applicant's cost recovery deposit.

**B. *Cost recovery established.***

1. The applicant shall reimburse the Village for the actual cost of Consultant or employed professional review services pursuant to the cost recovery procedures and requirements of subsection C below.
2. Payment in full by the applicant to the Village for the Village's actual expenditures for review of the application shall be a written condition of any development order. These cost recovery deposits fees shall be in addition to any and all other fees required by law, rule, or regulation of the Village Code.

**C. *Cost recovery procedure.***

1. At the time of submission of any application for development approval, the applicant shall pay the minimum cost recovery deposit fee outlined in the development approval fee and cost recovery deposit schedule set forth in this section, which funds shall be deposited into a cost recovery escrow account established for this purpose. Withdrawals shall be made to reimburse the Village for the cost of consultant services.
2. The Village shall provide the applicant with a copy of the consultant's invoice for any services charged against the applicant's cost recovery escrow account.
3. When the balance in the Village's cost recovery escrow account is reduced to one-half ( $\frac{1}{2}$ ) of its initial amount, the applicant shall deposit additional funds into such account to bring its balance up to the amount of the initial deposit. If such amount is not replenished within 30 calendar days after the applicant is notified, in writing, of the requirement of such additional deposit, the Village shall suspend its review of the application and the application shall be deemed withdrawn.
4. If an application is suspended due to nonpayment of the additional escrow deposit specified in subsection 3, a resubmission fee shall be paid and the cost recovery deposit shall be replenished to a minimum of one-half of the original deposit amount before the application will be reviewed.
5. Prior to the scheduling or noticing of any board or commission hearing, the Village Manager's review of the application shall be complete and the cost recovery escrow account balance shall be replenished to equal at least one-half of the initial deposit amount.

**D. *Review of consultant's charges.*** Upon a determination by the Village Manager or his/her designee that there has been a miscalculation concerning a consultant's fees, the Village Manager or his/her designee is authorized to review the charges and issue a credit or refund a portion of the cost recovery deposit.

- E. *Schedule of fees and cost recovery deposits.* No new development application shall be accepted and no building permit or certificate of occupancy shall be issued for any property until all application fees, cost recovery deposits and outstanding fees and fines related to the property (including fees related to any previous development proposal applications on the property), have been paid in full. All fees and cost recovery deposits shall be paid according to the development approval fee and cost recovery deposit schedule below:

**Table 5.12(E) - Development Approval Fee and Cost Recovery Deposit Schedule**

Type of Request	Filing Fee	Cost Recovery Deposit*
<b>Amendments</b>		
Comprehensive Plan Text Amendment	\$2,000	\$10,000
Comprehensive Plan Future Land Use Map Amendment	\$2,000	\$10,000
Zoning Map Amendment	\$2,000	\$10,000
Unified Land Development Code Amendment	\$2,000	\$10,000
<b>Site Plan Review</b>		
Single Family Residential and Existing Non-Residential	\$1,000	\$2,000
Multifamily Residential and New Non-Residential - Base Fee**	\$1,000	\$6,000
Multifamily Residential with 2-19 Dwelling Units - Additional Fee	\$900	
Multifamily Residential with 20-100 Dwelling Units - Additional Fee	\$1,500	
Multifamily Residential with 101-199 Dwelling Units - Additional Fee	\$2,500	
Multifamily Residential with 200 or more Dwelling Units - Additional Fee	\$3,500	
Non-Residential 399 Square Feet and Under - Additional Fee	\$700	
Non-Residential 400-19,999 Square Feet - Additional Fee	\$1,100	
Non-Residential 20,000-99,999 Square Feet and Under - Additional Fee	\$2,500	
Non-Residential 100,000 Square Feet and Over - Additional Fee	\$3,500	
<b>Site Plan Modification</b>		
Single Family Residential and Existing Non-Residential	\$1,000	\$2,000
Multifamily Residential and New Non-Residential	\$1,000	\$6,000
<b>Administrative Site Plan Modification (no commission review)</b>		
Single Family Residential and Existing Non-Residential	\$600	\$1,000
Multifamily Residential and New Non-Residential	\$600	\$4,000
<b>Variances (per variance)</b>		
Single Family Residential and Existing Non-Residential	\$200	\$1,000
Multifamily Residential and New Non-Residential	\$600	\$2,000
Sign Variance	\$600	\$2,000
Alcoholic Beverage Sales Variance	\$600	\$2,000
<b>Use Exceptions</b>		
Single Family Residential and Existing Non-Residential	\$600	\$2,000
Multifamily Residential and New Non-Residential	\$600	\$4,000
<b>Renewals of Site Plans, Variances, and Use Exceptions</b>		
Single Family Residential and Existing Non-Residential	50% of original filing fee	\$1,000
Multifamily Residential and New Non-Residential	50% of original filing fee	\$2,000
<b>Other Requests</b>		
Dock Application	\$300	\$2,000
Appeal of Administrative Decision	\$600	\$2,000
Plat	\$1,000	\$10,000

Waiver of Plat	\$1,000	\$4,000
*The applicant is responsible for the actual cost of professional review services including but not limited to: engineering, planning, legal, technical, environmental, etc. These review costs shall be deducted from the cost recovery deposit. Depending on the level of expenses, the applicant shall be required to replenish the cost recovery deposit or if the cost recovery deposit is not entirely expended, the remaining balance will be refunded to the applicant.		
** Add base fee to the appropriate additional fee for the total filing fee.		
Note: In addition to application fees and cost recovery deposits, advertising and mailing costs shall be paid by the applicant separately.		

F. *Additional review fees.* The following fees are required as part of the review process in addition to required filing fees and cost recovery deposits:

1. Advertising; and
2. Mailing costs.

G. *Subsequent review and resubmission fees.*

1. A resubmission fee shall be required to be submitted by the applicant as specified in this section.
2. If an application is deemed incomplete, is withdrawn prior to the hearing by the board or commission, is deemed withdrawn for failure to respond to a request for information necessary for review, or suspended for nonpayment of required additional cost recovery fees within the required timeframe, any subsequent submission shall be accompanied by a resubmission fee of 50 percent of the original application filing fee.
3. Should the project be substantially changed or modified so that, in the opinion of the Village Manager or his/her designee it represents a new project on the same property, the resubmission fee shall be equal to the original filing fee appropriate to the particular project.

H. *Refund.*

1. *Fees.* All fees shall be deemed nonrefundable unless the refund request has been received prior to administrative review or public advertisement.
2. *Cost recovery escrow account.* Upon final approval or denial of an application, expiration of any applicable appeal period, and payment of all consultant charges, the Village shall refund to the applicant any funds remaining in the cost recovery escrow account.

### **§ 5.13 – Fees for copies of records.**

The Village Clerk shall charge and collect fees for furnishing copies of plans, permits, and other records to the public, in accordance with a fee schedule established by the Village Manager.

### **§ 5.14 – Errors, violations, and permits erroneously issued.**

- A. The issuance or granting of a permit or approval of plans or specifications shall not be deemed or construed to be a permit for, or an approval of, any violation of any of the provisions of this ULDC. No permit presuming to give the authority to violate or cancel the provisions of this ULDC shall be valid except insofar as the work or use which it authorizes is lawful.

- B. The issuance of a permit upon plans and specifications shall not prevent the Building Official from thereafter requiring the correction of errors in the plans and specifications or from preventing building operations being carried on there under when in violation of this ULDC, or any ordinance of the Village.
- C. When permits are issued through administrative error, it shall be called to the attention of the permit holder as soon as it is discovered. The situation shall be voluntarily corrected by the permit holder to the satisfaction of the Village Administration. In the event of an unresolved dispute between the permit holder and the Administration, the permit holder shall have the right to an administrative appeal according to the procedures set forth in Section 4.5.

**§ 5.15 – Certificates of occupancy.**

- A. No premises shall be used and no building hereafter erected or structurally altered shall be used, occupied, or changed in use until a certificate of occupancy and compliance has been issued by the Building Official stating that the building or premises complies with the South Florida Building Code and the provisions of these regulations. In the event there is a question as to the nature or legality of a use, the Building Official shall require affidavits and such other information as he may deem appropriate or necessary to establish the nature and legality of the use before issuance of a certificate of occupancy.
- B. No permanent or final electrical service will be permitted until a final certificate of occupancy has been issued.
- C. Whenever a request has been made to the Building Official for the issuance of a certificate of occupancy, it shall be accompanied by a certificate of compliance consisting of affidavits from the building contractor (or owner-builder) responsible for the building and the architect or engineer whose seal appeared on the original and all supplementary plans filed in support of the application. The affidavits by the architect or engineer and the building contractor (or owner-builder), respectively, shall state affirmatively that the plans and specifications and all changes thereto are in compliance with, and that the buildings or structures have been substantially completed in accordance with, the South Florida Building Code and this chapter or any variance thereto lawfully granted by the Village Commission.
- D. Temporary certificates of occupancy may be issued for commercial or multi-family structures for purposes of testing. No temporary certificate of occupancy may be issued for a single-family residence. No occupancy of a single-family residence shall be permitted until a final certificate of occupancy has been issued.
- E. The Building Official shall not issue any certificate of occupancy for any new or remodeled or otherwise structurally altered building without first receiving the certificate of compliance as set forth in subparagraph C, above. Upon the receipt of the certificate of compliance, it shall be examined by the Building Official.

- F. Following a physical examination by the Building Official, determination of compliance with all applicable codes and ordinances, and conditioned upon his written certification of the accuracy of the information contained in the affidavit supporting the certificate of compliance, the Building Official shall issue a certificate of occupancy.
- G. Any person submitting false information by affidavit in support of a certificate of compliance may receive the maximum punishment as provided by the Village Charter. Any certificate of occupancy issued upon information supplied therein shall be subject to revocation.
- H. No final inspection shall be made nor shall any certificate of occupancy be issued until all fees and charges due to the Village pertaining to the property are fully paid.

## **§ 5.16 –VACATION OF STREETS, ALLEYS, EASEMENTS, AND PUBLIC RIGHTS-OF-WAY**

### **A. *Policy declaration.***

The Village declares the following to be its general policy regarding vacation of streets, alleys, easements, and public rights-of-way. The vacation of streets, alleys, easements, and public rights-of-way shall be considered based primarily, but not exclusively, on the effect on utilities located in said right-of-ways, emergency services access, feasibility of road construction, access to lots abutting the vacation, area traffic patterns and adjacent landowners' input.

### **B. *Vesting of title upon vacation.***

Whenever any property has been conveyed to, or acquired by, the Village for use as a street, alley, easement, or public right-of-way, and thereafter is vacated, title to the lands included within such street, alley, easement, or public right-of-way, or so much thereof as may be vacated, shall vest, subject to the same encumbrances, liens, limitations, restrictions, and estates as the land to which it accrues, as follows:

1. In the event that a street, alley, easement, or public right-of-way, which constitutes the exterior boundary of a subdivision or other tract of land, is vacated, title to vacated property shall vest in the owners of the land abutting the vacated property at the time said property was acquired for public use, was a part of the subdivided land, or was a part of the adjacent land.
2. In the event that less than the entire width of a street, alley, easement, or public right-of-way is vacated, title to the vacated portion shall vest in the owners of the land abutting such vacated portion.
3. In the event that a street, alley, easement, or public right-of-way bounded by straight lines is vacated, title to vacated property shall vest in the owners of the abutting land, with each owner taking to the center of the street, alley, easement or public right-of-way, except as provided in subsections A. and B. of this section. In the event that the boundary lines of abutting lands do not intersect the roadway at a right angle, the land included within such roadway shall vest as provided in subsection D. herein.
4. In all instances not specifically provided for, title to the vacated property shall vest in the owners of the abutting land, with each owner taking that portion of the vacated property to which his land or any part thereof is nearest in proximity.

5. No portion of a roadway, upon vacation, shall accrue to an abutting roadway.

C. *Reservation of land for utility uses.*

In the event of vacation, easements may be reserved for the continued use of existing sewer, gas, water or similar pipelines and appurtenances, for ditches, or drainage and appurtenances, and for electric, telephone, cable and similar lines and appurtenances.

D. *Vacation to be accomplished by ordinance.*

If the Village Commission approves an application for a vacation, the actual vacation of any property within a street, alley, easement, or public right-of-way within the Village shall be accomplished by ordinance.

E. *Recordation of vacation ordinance.*

Any ordinance for vacation of any street, alley, easement or public right-of-way, once duly passed and effective, shall be recorded or caused to be recorded by the Village in the official records of Miami-Dade County. The vacation shall not be effective until such recording has been completed and the applicant who initially requested the vacation has reimbursed the Village for its recording costs and fees. No permits shall be issued until such time as the recordation of the vacation has been completed.

F. *Reapplication.*

No application for a vacation of streets, alleys, easements, or public rights-of-way shall be filed less than one year after the date of disapproval by the Village Commission or conclusion of an appeal, whichever is later, of an application for vacation involving the same land, easement or right-of-way or any portion thereof.

G. *Expiration of application.*

An application for the vacation of a street, alley, easement or public right-of-way shall expire 180 days after written notice has been served by the Building Official to the applicant requesting that the applicant provide additional information or that the applicant needs to undertake a specific action(s) before the application can be further considered; provided that the applicant has not supplied the Village with the requested information; has not provided evidence to the Village that he/she has undertaken the specific action(s) set forth in the written notice; or has not requested, in writing, an extension.

## **DIVISION 2, CONSISTENCY AND CONCURRENCY DETERMINATIONS**

### **§ 5.17 – Consistency with North Bay Village Comprehensive Plan.**

- A. No development activity may be approved unless it is found that the development is consistent with the density and intensity requirements in the Village's Comprehensive Plan; meets the criteria contained in the Comprehensive Plan; and that those public services and facilities addressed in the Comprehensive Plan will be available at the prescribed levels of service (LOS) concurrent with the impact of the development on those services and facilities.

- B. If a development proposal is found to meet all the requirements of the ULDC it shall be presumed to be consistent with the Comprehensive Plan. If a question of consistency is raised, the Building Official shall make a determination of consistency or inconsistency and support the determination with written findings.

#### **§ 5.18 – Level of service compliance requirements.**

All applications for development orders shall be required to demonstrate that the proposed development does not degrade adopted levels of service in North Bay Village. A level of service assessment demonstrating that the proposed development will not degrade the adopted level of service by meeting one of the following general tests, shall accompany each request for development order or development permit approval:

- A. Capacity exists at the time of application to meet the service needs of the proposed development based upon the scheduled completion and occupancy, and based upon the standards described below.
- B. Capacity does not exist at the time of application, but shall exist at the time of completion and occupancy of the proposed development. Existence of capacity shall be ensured through one of the following:
  - 1. Construction is underway to provide additional capacity and is scheduled for completion by or before scheduled occupancy of the development.
  - 2. Contracts are signed for construction to provide additional capacity on a schedule which provides capacity at the time of occupancy of the development.

#### **§ 5.19 – Determining existing capacity.**

For the purposes of these regulations, the available capacity of a facility shall be determined by:

- A. Adding together:
  - 1. The total capacity of existing facilities operating at the required level of service; and
  - 2. The total capacity of new facilities that will come available concurrent with the impact of the development. The capacity of new facilities may be counted only if one or more of the following is shown:
    - a. Construction of the new facilities is under way at the time of application.
    - b. The new facilities are the subject of a binding executed contract for the construction of the facilities or the provision of services at the time the development permit is issued.
    - c. The new facilities have been included in the appropriate capital improvement program annual budget.
    - d. The new facilities are guaranteed in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to Section 163.3220, Florida Statutes or an agreement or development order pursuant to Chapter 380, Florida Statutes.

B. Subtracting from that number the sum of:

1. The demand for the service created by existing development; and
2. The new demand for the service that will be created concurrent with the impacts of the proposed development by the anticipated completion of other presently approved developments.

**§ 5.20 - Burden of showing compliance.**

The burden of showing compliance with level of service requirements shall be upon the developer. In order to be approvable, applications for development approval shall provide sufficient information showing compliance with these standards.

A. *Potable water.*

New development shall not be approved unless there is sufficient available capacity to sustain the following levels of service for potable water as established in the potable water sub-element of the North Bay Village Comprehensive Plan.

1. Minimum design flow: 120 gpd per capita
2. Pressure: To meet Dade County fire flow ordinance

B. *Wastewater.*

New development shall not be approved unless there is sufficient available capacity to sustain the following levels of service for wastewater treatment as established in the Capital Improvements Element of the North Bay Village Comprehensive Plan:

Minimum design flow: 110 gpd per capita

C. *Transportation system.*

1. Level of service.

New development shall not be approved unless there is sufficient available capacity to sustain the following level of service for transportation systems as established in the Transportation Element of the North Bay Village Comprehensive Plan:

Type of Facility	Peak Hour Level of Service
Arterial roadways	D
Collector roadways	D
Limited access roadways	D

2. Determination of impact.

The projected level of service for arterials and collectors within the traffic shed shall be calculated based upon estimated trips to be generated by the project, or where applicable, the first phase of the project, and taking into consideration the impact of other approved but not



completed developments within the projected area of impact. Information on committed development within the traffic shed shall be provided by the Village and/or county.

**D. *Drainage system.***

No new development shall be approved unless there is sufficient available capacity to sustain a five-year frequency storm event including retention or detention with filtration of the first inch of runoff, as established in the drainage subelement of the North Bay Village Comprehensive Plan.

**E. *Solid waste.***

No new development shall be approved unless there is sufficient available capacity to sustain a level of service for solid waste of seven (7) pounds per capita per day as established in the solid waste subelement of the North Bay Village Comprehensive Plan

**DIVISION 3, SUBDIVISION REGULATIONS**

**§ 5.21 –Purpose and intent.**

The public health, safety, comfort, and welfare require the harmonious, orderly, and progressive development of land within the Village. To this end, all lands within the Village must be subdivided and platted before any development approval can be obtained.

**§ 5.22 –Preliminary and final plats.**

**A. Purpose and intent.**

The purpose of requiring and regulating the platting of land within the Village is to ensure compliance with the procedural and substantive requirements of the North Bay Village Comprehensive Plan, the Dade County Subdivision Ordinance, chapter 28 of the Dade County Code of Ordinances, and the requirements of Chapter 177, Florida Statutes.

**B. *Procedures.***

1. Fifteen copies of the tentative plat, prepared in accordance with requirements of chapter 28 and prepared by a licensed surveyor, application for tentative plat approval and accompanied by an opinion of title no older than 30 days, a level of service assessment, and a certified survey of the site shall be submitted to the Building Official.
2. The Building Official shall review the tentative plat as to its compliance with objectives of the Village's Comprehensive Plan, including level of service standards.
3. The Building Official shall place the tentative plat on the Planning and Zoning Board's agenda and submit his recommendations to the board.
4. The Planning and Zoning Board votes to approve or disapprove the tentative plat.
5. The Village Manager places the tentative plat on the agenda of the Village Commission and forwards a copy of the Planning and Zoning Board's recommendations and a copy of the Building Official's report.

6. The Village Commission votes to approve or disapprove the tentative plat. If approved, two copies are signed by the Mayor. One signed copy is returned to the surveyor or subdivider; one copy is filed in the public works department.
7. The surveyor or subdivider delivers the signed tentative plat and 14 copies to Miami-Dade County Subdivision Control for processing.
8. Miami-Dade County shall notify the subdivider or surveyor and the Village of its action (approve, approve with conditions, or disapprove).
9. After the surveyor prepares the final plat in accordance with chapter 20 and incorporates all conditions, if any, into the plat, he submits the final plat accompanied by a paving, grading, and drainage plan to the Building Official who then shall review it for consistency with the recommendations made by the Village Commission and Miami-Dade Subdivision Control before placing it with an accompanying report and resolution on the Village Commission's agenda.
10. The Village Commission receives the final plat and concurrency evaluation report from the Building Official at its first public hearing to discuss the proposed plat.
11. The Village Commission holds the second public hearing approximately two weeks later and votes to approve or disapprove the final plat. If the commission votes to approve the plat, the mayor signs the plat as well as the Resolution accepting the (re)subdivision.

## **CHAPTER 6, NONCONFORMITIES**

### **§ 6.1 –Defined.**

For purposes of this chapter, a nonconforming lot, structure, use, or characteristic of use, is defined as a platted lot, structure, or use, or combination thereof that does not comply with the use or site development standards of the zoning district in which the lot, structure, use, or characteristic of use, or combination thereof is located, but which was legally established and in existence before the effective date of this chapter.

### **6.2. Purpose and intent.**

- A. It is the purpose and intent of this chapter to permit the continuation of those lots, structures, uses, characteristics of use or combination thereof, which were lawful prior to the passage of this chapter or future amendment thereto.
- B. This chapter is designed to provide reasonable and equitable standards and guidelines for the control of nonconforming lots, structures, uses, and characteristics of uses in the regulation of change of use, change in kind or quality of use, change in volume or intensity of use, change in location of use, change of ownership or tenancy of use, accessory or incidental uses to nonconforming lots, structures, uses, or characteristics of uses, enlargement of use, replacement of use, addition or expansion of facilities, new activities, products or services connected with the nonconforming lot, structure, repair of a nonconforming structure, restoration of a nonconforming structure, and abandonment or discontinuance of a nonconforming structure or use, or any combination thereof.
- C. It is the further purpose and intent of this chapter allow lawful nonconforming lots, structures, uses, and characteristics of use and combinations thereof to continue, subject to specific conditions, in order to not interfere with the existing circumstances surrounding land development within North Bay Village, prior to the effective date of this chapter any more than is necessary for the proper exercise of police powers relating to the general public welfare of the residents of North Bay Village.

### **§ 6.3 – Nonconforming classifications.**

- A. Within the zoning districts established by this Code, or amendments that may be later adopted to this Code, there may exist:
  - 1. Nonconforming lots
  - 2. Nonconforming structures;
  - 3. Nonconforming uses;
  - 4. Nonconforming characteristics of use;
  - 5. Combinations of nonconforming lots, nonconforming structures, nonconforming uses and nonconforming characteristics of use.

- B. These nonconforming classifications are declared by this chapter to be incompatible with present permitted uses and all or part of the site development standards regulating permitted uses in the district where the nonconforming classifications are located and, therefore, are the proper subject regulations as provided for herein.

#### **§ 6.4 – Scope.**

- A. In order to avoid undue hardship, nothing in this chapter shall be deemed to require any change in the plans, construction or designated use of any structure on which actual construction was lawfully done prior to the effective date of adoption of this chapter and upon which actual building construction has been carried on diligently.
- B. For the purposes of this chapter, the term "actual construction" is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner according to approved plans for the specific improvement. Where evacuation or demolition or removal of an existing structure has been substantially begun, preparatory to building, such evacuation or demolition or removal shall be deemed to be actual construction; provided, however, that work has been and shall be carried on diligently pursuant to a valid building permit.

#### **§ 6.5 – Nonconforming lots of record.**

- A. *Construction of one single-family dwelling unit.*

In any district in which single-family dwellings are permitted, one (1) single-family dwelling and customary accessory building(s) may be erected on a single lot, tract, or parcel of land of record that is nonconforming with respect to minimum lot area or frontage at the effective date of adoption of this chapter, provided, however:

1. Such lots must be in separate ownership and not be of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or frontage that are applicable in the zoning district in which the lot, parcel, or tract is located.
2. The construction otherwise conforms to all other applicable laws and ordinances including, but not limited to, required minimum setbacks, minimum floor area, maximum building height and FEMA requirements, unless a variance is granted to such other regulations pursuant to Chapter 7 of this Unified Land Development Code.
3. If two or more lots, or combination of lots, or portions of lots with continuous frontage and single ownership are of record at the time of the passage of this chapter, and if all or part of the lots do not meet the requirements established for lot areas or frontage, the lands involved shall be considered to be an undivided parcel and no portion of such parcel shall be used or sold in a manner which diminishes the degree of compliance with established lot area or frontage requirements
4. It shall be the burden of the property owner to demonstrate that the lot is a legal nonconforming lot of record.

**B. *Construction of other than one single-family dwelling unit.***

Notwithstanding limitations imposed by other provisions of this Unified Land Development Code, any lot of record which is nonconforming as to the required minimum frontage requirement the zoning district in which it is located may be used as permitted by the district regulations of the zoning district in which the lot is located, provided:

1. The density or intensity of such use shall not exceed the maximum density or intensity allowable within the zoning district in which the lot of record is located;
2. The construction otherwise conforms to all other applicable laws and ordinances including, but not limited to, required minimum setbacks, minimum pervious area, maximum building height, FEMA requirements, and concurrency requirements, unless a variance is granted to such other regulations pursuant to Chapter 7 of this Unified Land Development Code.
3. It shall be the burden of the property owner to demonstrate that the lot is a legal nonconforming lot of record.

**§ 6.6 – Nonconforming uses.**

**A. *Defined.***

A use of any land or structure, other than a sign, is a nonconforming use if:

1. The use is not listed as a permitted use in the zoning district in which it is located; or
2. The use is not a special use or use exception which was specifically approved by the Village Commission; or
3. The use exists at a density or intensity in excess of that allowable for the zoning district in which it is located.

**B. *Continuation.***

The lawful use of land existing at the time of the passage of this chapter or an amendment thereto, although such uses do not conform to provisions of the Unified Land Development Code may be continued subject to the following limitations and restrictions:

**1. Change in location of use.**

A nonconforming use shall not be moved in whole or in part to any other portion of the lot parcel occupied by such use at the effective date of adoption of this chapter.

**2. Change in ownership or tenancy.**

All rights and obligations associated with a nonconforming use of land run with the land and are not personal to the present owner or tenant of the nonconforming use of land and are not affected by a change in ownership or tenancy, except if abandoned.

**3. Accessory uses.**

Uses accessory to a nonconforming use not in existence at the time of the effective date of adoption of this chapter are not permitted.

**4. Change of use.**

- a. A nonconforming use shall not be changed to another nonconforming use.
- b. A nonconforming use may be changed to a permitted use for the zoning district in which the

property is located upon the obtainment of all necessary permits and approvals and may not thereafter be permitted to revert to a nonconforming use.

5. Expansion or extension of use.

No nonconforming use shall be enlarged, increased, expanded or intensified beyond what existed at the time it became nonconforming.

6. Replacement of use.

a. *Destruction of more than fifty percent (50%).*

In the event that any existing nonconforming use is destroyed by more than fifty percent (50%) of its assessed value at the time of destruction as determined by the official records of the Miami-Dade County Property Appraiser by any means, including fire, flood, wind, explosion, demolition, act of God, or act of a public enemy, such use shall not be replaced.

b. Destruction of fifty percent (50%) or less.

(1) If such nonconforming use is destroyed to a level of fifty percent (50%) or less of its total assessed value at the time of destruction as determined by the official records of the Miami-Dade County Property Appraiser, it may be replaced, except that replacement shall only occur in compliance with those building, plumbing, electrical, gas, fire, and other construction and safety related regulations in effect at the time of application for a permit to allow replacement.

(2) In no event shall the destroyed nonconforming use be replaced such that the replacement structure is higher, contains greater lot coverage or floor area, has greater bulk, or lesser setbacks, than the original structure in which the nonconforming use was located.

7. Abandonment or discontinuance of use.

The abandonment or discontinuance of a nonconforming use for a period of 180 consecutive days or six (6) months shall render the nonconforming use status of the specific nonconforming use null and void. In the factual determination of whether a nonconforming use has been abandoned or discontinued, the following factors shall be used, but not be limited to:

- a. An intent to discontinue the nonconforming use through removal of stock in trade or removal of operating equipment.
- b. Some overt act or failure to act which carries with it a sufficient implication that the owner neither claims nor retains any interest in the use of the abandoned property as it stood before the abandonment occurred. The mere renewal and maintenance of an active occupational license, without further positive action, shall not constitute continuance of a nonconforming use.
- c. Inactive water, sewer, or electrical services at the existing facility.
- d. Attempt to continue use shall include but not be limited to an active listing of the property with a realtor or through posting of a for rent sign.

## **§ 6.7 – Nonconforming structures.**

### **A. Defined**

For the purposes of this chapter, a structure or building, other than a sign, is a nonconforming structure if the structure, or any physical characteristic thereof, is not in full compliance with all regulations of the zoning district in which it is located.

### **B. Continuation.**

Where a lawful structure exists at the effective date of adoption or amendment of this ~~section~~ chapter, and it could not be built under the terms of the Unified Land Development Code by reason of restrictions on area, lot coverage, height, yards, location of the lot, or other site development standards concerning the structure, such structure, except as otherwise specifically provided, may be continued so long as it remains otherwise lawful, subject to the following provisions:

#### **1. Alteration, enlargement, or expansion of nonconforming structure.**

- a. No such alteration, enlargement, or expansion of a nonconforming structure shall be permitted in a way which increases its noncompliance with present property development and use standards of the zoning district in which it is located.
- b. Any nonconforming structure or portion thereof may be altered to decrease its noncompliance with present site development and use standards of the zoning district in which it is located. Nothing herein shall prohibit the Village Manager's designee from ordering the compliance with all applicable building construction and safety related codes.

#### **2. Replacement, restoration and reconstruction of nonconforming structure.**

- a. Destruction of more than fifty percent (50%).

In the event any existing nonconforming structure is destroyed by more than fifty percent (50%) of its assessed value at the time of destruction as determined by the official records of the Miami-Dade County Property Appraiser by any means, including fire, flood, wind, explosion, demolition, act of God, or act of a public enemy, such structure shall not be restored, reconstructed or replaced except in compliance with all applicable provisions of the Unified Land Development Code in effect at the time of its restoration, reconstruction or replacement.

- b. Destruction of fifty percent (50%) or less.

In the event any existing nonconforming structure is destroyed by any means, including fire, flood, wind, explosion, act of God, or act of a public enemy by fifty percent (50%) or less of its total appraised value according to the latest records of the Miami-Dade County Property Appraiser, such structure shall be permitted to be replaced, restored, or reconstructed according to the site development standards in effect at the time of its original construction except that:

- (1) Replacement, restoration and reconstruction shall occur only in compliance with all other applicable building, plumbing, electrical, gas, fire and other construction and safety related regulations in effect at the time of application for permit to allow replacement, restoration, or reconstruction, and

(2) In no event shall the replacement structure have a greater density or intensity, height, or floor area; or, lesser minimum dwelling unit sizes, yard setback, or pervious area than the destroyed nonconforming structure.

c. *Repairs and maintenance of nonconforming structures.*

Routine repairs and maintenance of nonconforming structures on fixtures, wiring or plumbing or on the repair or replacement of walls shall be permitted.

d. *Change in location of nonconforming structure.*

Should any nonconforming structure be moved for any reason to any distance whatever from its original permitted location, it shall then conform to the regulations for the zoning district in which it is located after it is moved.

e. *Accessory structure.*

Structures normally accessory or incidental to a permitted structure or use in the zoning district in which the nonconforming structure is located may be permitted as accessory structures to the nonconforming structure.

f. *Abandonment or discontinuance of nonconforming structure.*

The abandonment or discontinuance of a nonconforming structure for a period of 180 consecutive days shall render the nonconforming status of the specific nonconforming structure null and void.

## **§ 6.8 – Nonconforming characteristics of use.**

### **A. *Defined.***

For the purposes of this chapter, characteristics of use are defined as requirements for off-street parking, off-street loading, and landscaping and buffering.

### **B. *Continuation.***

Where a characteristic of use lawfully exists at the effective date of adoption or amendment of this chapter, and does not conform to the requirements of the Unified Land Development Code such nonconforming characteristic of use may be continued so long as it remains otherwise lawful, provided that, when a use or structure is modified in such a way that the use or structure requires a greater amount of parking, landscaping, or buffering than exists prior to the change, the characteristic(s) of use must be brought into conformance with the requirements associated with the changed use or structure.

## **§ 6.9 – Nonconforming lots, uses, structures, and characteristics of use in combination.**

If on the effective date of this chapter, a lot of record, structure, use or characteristics of use, in any combination thereof, exists that would not be permitted under the terms of this chapter, but was lawful at the time of its original existence, that use may be continued unless otherwise deemed abandoned or terminated or required to be eliminated or brought into conformance by other applicable provisions of this chapter. Sections 6.5 through 6.9 shall apply to all nonconforming lots or record, structures, uses and characteristics of use, and any combination thereof.



## CHAPTER 7, VARIANCES

### § 7.1 – Purpose and intent.

The purpose and intent of this chapter is to provide flexibility in the administration of the Unified Land Development Code when the strict enforcement of the provisions of the Unified Land Development Code would result in an unnecessary hardship.

### § 7.2 – Variance prohibited.

Under no circumstances shall the Village Commission grant a variance to:

- A. Permit a use not generally permitted, or permitted by special exception or use exception, in the district involved, or any use expressly or by implication prohibited by the terms of the Unified Land Development Code in that district, or
- B. Any condition, criteria or site development standard set forth in § 8.10.D.4, pertaining to special exceptions in the high density multiple family residential district, or any condition associated with the approval by the Village Commission of any unusual or new use, special exception, or use exception.

### § 7.3 – Procedure for consideration of a hardship variance.

#### A. *Planning and Zoning Board public hearing.*

The Planning and Zoning Board shall hold a public hearing to consider a request for a hardship variance and shall recommend to the Village Commission, approval, approval with conditions, or denial of the variance.

#### B. *Village Commission public hearing.*

The Village Commission shall have the power, after a public hearing, to vary or adopt the strict application of the requirements of this chapter, and to prescribe appropriate conditions and safeguards associated with the granting of a variance

#### C. *Required findings.*

In order for the Planning and Zoning Board to recommend approval, and for the Village Commission to grant approval, of a variance request, both must make an affirmative finding with respect to all seven (7) of the following criteria:

1. That there are special circumstances and conditions which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings in the same zoning district.
2. That the special circumstances and conditions were not self-created by any person having an interest in the property.
3. That the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the land, structure, or building for which the variance is sought; and would

involve an unnecessary hardship for the applicant.

4. That granting the variance requested will not confer on the applicant any special privilege that is denied by the Unified Land Development Code to other land, structures, or buildings in the same zoning district.
  5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, structure, or building.
  6. That granting the variance will be in harmony with the general intent and purpose of this chapter, and that such variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
  7. The variance request is not based exclusively upon a desire to reduce the cost of development.
- D. The required findings may be made by one (1) motion addressed to all seven (7) findings or, at the request of any member of the Board or Commission as the case may be, a finding or findings shall be considered separately.
- E. The findings shall be made prior to the vote on the application.
- F. The variance application shall be considered as a whole unless any member of the Planning and Zoning Board, or Village Commission, as the case may be, shall request that the application be considered in parts, in which event the application shall be considered in such parts as requested.
- G. In light of the particular circumstances involved with each separate variance request, the grant of any variance shall not constitute or be deemed a precedent for the grant of any other variance.

#### **§ 7.4 – Non-hardship variances for single-family properties.**

- A. Notwithstanding any other provision of this chapter, upon application duly made upon an application form to be provided by the Village the Planning and Zoning Board will hold a public hearing to consider requests by single-family property owners for a non-hardship variance to setback lines, lot size, restrictions and yard requirements for the location and construction of fences, nonpermanent carports, screen enclosures, sheds, awnings, air conditioning compressors, generators, swimming pools, swimming pool pumps and pool heating equipment, and make its recommendation to the Village Commission. After receiving the recommendation from the Planning and Zoning Board, the Village Commission will hold a public hearing to consider the request for the non-hardship variance.
- B. The Planning and Zoning Board may make a recommendation for approval to the Village Commission if the Board finds:
1. The variance will be in harmony with the general appearance and character of the community;
  2. The variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and
  3. The improvement is designed and arranged on the site in a manner that minimizes aerial and visual impact on the adjacent residences.

C. The Commission may grant such variance requests if the Commission finds:

1. The variance will be in harmony with the general appearance and character of the community;
2. The variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and
3. The improvement is designed and arranged on the site in a manner that minimizes aerial and visual impact on the adjacent residences.

**§ 7.5 –Expiration of hardship and non-hardship variance.**

After the Village Commission has granted a hardship or non-hardship variance, the variance so approved or granted shall expire after two years, measured from the date of final Commission action, if no substantial construction or change of use has taken place in accordance with the plans for which the variance was granted.

**§ 7.6 –Reapplication for a hardship and non-hardship variance.**

No application for a hardship or non-hardship variance shall be filed less than one year after the date of disapproval by the Village Commission of an application for a variance involving the same land or any portion thereof.

## **CHAPTER 8, ZONING**

### **DIVISION 1, ZONING DISTRICTS ESTABLISHED; ZONING MAP**

#### **§ 8.1 – Title.**

This chapter shall be known as the “Zoning Regulations for North Bay Village, Florida; 2017 Revision.”

#### **§ 8.2 – Purpose and intent.**

The purpose of this chapter is to encourage and promote, in accordance with present and future needs, the safety, morals, health, order, conveniences, prosperity and general welfare of the citizens of the Village, and to provide for efficiency and economy in the process of development, for the appropriate and best use of land, for preservation, protection, development and conservation of the natural resources of land, water and air, for convenience of traffic and circulation of people and goods, for the use and occupancy of buildings, for healthful and convenient distribution of population, for adequate public utilities and facilities, for promotion and the civic amenities of beauty and visual interest, for promotion of large-scale developments as a means of achieving unified civic design, and for development in accord with the Village’s adopted comprehensive plan, by establishing zoning districts and by regulating the location and use of buildings, signs and other structures, and land and water for trade and residence by regulating and limiting or determining the height, bulk and access to light and air of buildings and structures, the area of yards and other open spaces, and the density of use. To accomplish this intent, the regulations and districts have been designed with reasonable consideration, among other things, to the character of the districts and their suitability for particular uses.

#### **§ 8.3 – Establishment of zoning districts.**

In order to regulate and restrict the location of commercial, public and semi-public uses, and residences, and the location of buildings erected or altered for specific uses, to regulate or limit population density and the intensity of the use of lot areas, and to regulate and determine the areas of yards, courts, and other open spaces within and surrounding such buildings, the following zoning districts are hereby established:

##### **A. *Single-Family Residential Districts.***

1. RS-1 Low Density Single-Family Residential District (See Section 8.10.A).
2. RS-2 Medium Density Single-Family Residential District (See Section 8.10.B)

##### **B. *Multiple Family Residential Districts.***

1. RM-40 Medium Density Multiple Family Residential District (See Section 8.10.C).
2. RM-70 High Density Multiple Family Residential District (See Section 8.10.D).

##### **C. *CG General Commercial District* (See Section 8.10.E).**

##### **D. *Bay View Overlay District* (See Section 8.10F)**

##### **E. *Government Use District* (See Section 8.10G)**

#### **§ 8.4 – Reference to district names.**

For the purpose of reference hereafter in these regulations, unless specifically provided to the contrary, the term *Residential* shall include both single-family and multi-family districts.

#### **§ 8.5 – Identification of district maps.**

Such land and the zoning district classification thereof shall be shown on a map designated as the Zoning District Map of the Village, dated and certified by the Village upon adoption. This Zoning District Map and all notations, dimensions, references, and symbols shown thereon pertaining to such districts, shall be as much a part of these regulations as if fully described herein, and shall be filed as part of these regulations. The map and any later alterations shall be available for public inspection in the offices of the Village Manager or his designee. These regulations shall be similarly dated, filed, and made available for public reference.

#### **§ 8.6 – Publication of district maps.**

- A. The Village Manager or his designee shall cause to be published, or prints made available, no later than March 31 of the year following adoption of these regulations, the Official Zoning District Map, clearly showing the zoning district boundaries and zoning district names and designations for the incorporated area of the Village. In each calendar year thereafter, if there have been any changes in the zoning district boundaries or in reorganization of districts and district classifications in the preceding year, such amended map shall be published no later than March 31, and shall reflect all changes as of December 31 of the preceding year.
- B. Any person desiring a copy of the Official Zoning District Map shall pay a fee for each copy, as set by ordinance.

#### **§ 8.7 – Interpretation of district boundaries**

- A. *Map symbols.* A district name or letter-number combination shown on the Zoning District Map indicates that the regulations pertaining to the district designated by that name or letter-number combination extend throughout the whole incorporated area of the Village, bounded by the district boundary lines within which the name or letter-number combination is shown or indicated, except as otherwise provided by this section.
- B. *Interpretation.* Where uncertainty exists with respect to the boundaries of the various districts as shown on the map accompanying and made a part of these regulations, the following rules shall apply:
  - 1. In cases where a boundary line is given a position within a street, alley, or easement, it shall be deemed to be in the center of the right-of-way of the street, alley, or easement. If the actual location of the street, alley, or easement varies slightly from the location as shown on the Zoning District Map, then the actual location shall control.
  - 2. In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.
  - 3. Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be

the lot lines, and where bounded approximately by lot lines, said lines shall be construed to be the boundary of such districts unless the boundaries are otherwise indicated on the map or by ordinance.

4. In unsubdivided property, unless otherwise indicated, the district boundary line shall be determined by the use of the scale contained on the Zoning District Map.
5. All water areas within the zoning jurisdiction are considered to be within a zoning district and controlled by applicable district regulations. District boundaries over water areas are located by noted or scaled dimensions, by relation to physical features, by coincidence with Village limit lines, or by a straight line projection of the centerlines of streets as indicated on the Zoning District Map. Straight line district boundaries over water areas shall be assumed to continue as straight lines until they intersect with each other, with Village limit lines or county limit lines.

#### **§ 8.8 – New land area.**

Any land hereafter created within or annexed to the corporate area of the Village shall take the classification of "RS-1" - Low Density Single-Family Residential. This shall include the extension of existing bulkhead lines or the creation of islands not contiguous to existing islands.

### **DIVISION 2, APPLICATION OF DISTRICT REGULATIONS**

#### **§ 8.9 – General regulations.**

##### **A. *Compliance with regulations.***

1. No land or water area may be used except for a purpose permitted in the district in which it is located.
2. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, nor shall any building or part thereof be used except for a use permitted in the district in which the building is located.
3. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered to exceed the height limit herein established for the district in which the building is located.
4. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the area regulations of the district in which the building is located.
5. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the off-street parking and loading regulations of the district in which the building is located.
6. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered except in conformity with the floor area, floor area ratio, or open space ratio regulations of the district in which it is located.

##### **B. *Encroachment reduction of lot area.***

The minimum yards, parking space, and open spaces, including lot area per family, required by these regulations for each and every building existing at the time of the passage of these regulations or for any building hereafter erected, shall not be encroached upon or considered as required yard or open space for any other building, except as hereinafter provided, nor shall any lot area be reduced below the requirements of these regulations.

- C. *Accessory buildings; prior construction.* No accessory building, structure, or dock shall be constructed upon a lot until the construction of the main use building has actually commenced. No accessory building shall be used unless the main use building on the lot is also being used.
- D. *Location on a lot required.* Every building or structure hereafter erected, moved, or structurally altered shall be located on a lot as herein defined, and except as hereinafter provided, in no case shall there be more than one principal building on one lot.

## **§ 8.10 – District regulations.**

### **A. *RS-1 Low Density Single-Family Residential District.***

#### **1. Purpose and intent.**

The purpose of this District is to provide for low-density single-family residential development in a spacious setting, together with other principal uses as may be approved as use exceptions and such accessory uses as may be necessary and compatible.

#### **2. Uses permitted.**

Single-family residential dwellings including duly licensed home occupation.

#### **3. *Use exceptions as may be approved under Section 8.11***

#### **4. Prohibited uses.**

- a. All other uses not specifically or provisionally permitted herein.

#### **5. *Site development standards.***

##### **a. Minimum lot size:**

Area—7,000 square feet

Frontage—70 feet

##### **b. Minimum yard setbacks:**

<b>Setback</b>	<b>Distance (Feet)</b>
Front	20
Side (corner)	20
Side (interior)	10
Rear	15
Waterfront	25

The foregoing is applicable except for Lots I through 7 of Block 1 and 1 through 4 of Block 2, respectively, of the subdivision known as North Bay Island, which shall have a minimum waterfront setback of 20 feet.

##### **c. Maximum building height:**

Three stories, not to exceed 35 feet above grade.

- d. Minimum floor area:  
 One story—2,000 square feet  
 Two story—2,600 square feet

**B. *RS-2 Medium Density Single-Family Residential District.***

1. Purpose and intent.

The purpose of this District is to provide for medium-density single-family residential development in a relatively spacious setting, together with other principal uses as may be approved as use exceptions and such accessory uses as may be necessary and compatible.

2. Uses permitted.

Single-family residential dwellings including duly licensed home occupation.

3. *Use exceptions as may be approved under Section 8.11*

4. Prohibited uses.

- a. All other uses not specifically or provisionally permitted herein.

5. *Site development standards.*

a. Minimum lot size:

Area—6,000 square feet

Frontage—60 feet

b. Minimum yard setbacks:

<b>Setback</b>	<b>Distance (Feet)</b>
Front	20
Side (corner)	15
Side (interior)	7½
Rear	15
Waterfront	25

c. Maximum building height:

Three stories, not to exceed 35 feet above grade.

d. Minimum floor area:

One story—1,500 square feet

Two story—2,000 square feet



C. *RM-40 Medium Density Multiple Family Residential District.*

1. Purpose and intent.

The purpose of this District is to provide for medium density multi-family residential development, together with other principal uses as may be approved as use exceptions and such accessory uses as may be necessary and compatible. This district is intended to be utilized as a transitional buffer between single-family residences and high density apartments or commercial uses.

2. Uses permitted.

- a. Multi-family residential dwellings.
- b. Management offices within structures containing eight or more dwelling units.
- c. Duly licensed home occupation.

3. Prohibited uses.

- a. All other uses not specifically or provisionally permitted herein.

4. Site development standards.

a. Minimum lot size.

Area—10,000 square feet

Frontage—100 feet

b. Minimum yard setbacks.

<b>Setback</b>	<b>Distance (Feet)</b>
Front	25
Side (corner)	25
Side (interior)	20
Rear	15
Waterfront	25
Adjacent single family structure	100

c. Maximum density.

Forty (40) efficiency or one-bedroom dwelling units per net acre. The following required amount of lot area per unit shall determine the number of other dwelling unit types permitted.

<b>Unit Type</b>	<b>Required Lot Area (Sq Ft / Unit)</b>	<b>Density (Units/Acre)</b>
Efficiency	1,085	40.1
One-bedroom	1,085	40.1
Two-bedroom	1,200	36.3
Three-bedroom or larger	1,320	33.0

- d. Maximum building height.  
45 feet or four (4) stories, whichever is less
- e. Exclusion of grade level parking from height limitation.
  - (1) A grade level of parking, not exceeding ten (10) feet in height, shall not be included in this height limitation.
  - (2) The grade level parking floor may include other nonresidential uses, including laundry rooms, recreational rooms, storage rooms, and an office for building management.
- f. Minimum pervious area: 25 percent of the total lot area shall be retained as pervious area and shall be landscaped and maintained.
- g. Minimum floor area.

Unit Type	Floor Area (Sq. Ft.)
Efficiency	400
One-bedroom	750
Two-bedroom	1,000
Three-bedroom or larger	1,150

- 5. Single-family homes approved under the provisions of Section 8.11 consistent with the setback provisions of the RS-1 (Low Density Single-Family Residential District).
- 6. Use exceptions as may be approved under Section 8.11.

**D. *RM-70 High Density Multiple Family Residential District.***

**1. Purpose and intent.**

The purpose of this district is to provide for high-density multi-family residential structures together with other principal uses as may be approved as use exceptions and such accessory uses as may be necessary and compatible.

**2. Use permitted.**

- a. Multi-family residential dwellings including duly licensed home occupation.
- b. Management offices within structures containing eight (8) or more dwellings units or guest rooms.
- c. Office retail and service commercial facilities of an ancillary nature within structures containing 100 or more dwelling units or guest rooms subject to the following conditions:
  - (1) Access to such nonresidential facilities shall be only inside the building.
  - (2) There shall be no external advertising signs, display windows or entrances, provided, however, that
  - (3) Within a building containing 400 or more dwelling units, entrances, external signs and display windows are permitted under the following conditions:
    - (a) The signs do not abut or face a public right-of-way and cannot be read from the public right-of-way;

- (b) Such external signs shall be affixed flat against the facade or awning canopy of the commercial facility;
- (c) Such external signs shall not exceed in area ten percent of the area of the facade of the facility;
- (d) Such external signs shall be compatible as to materials, background and style with all adjacent and contiguous commercial facilities, and
- (e) Such external signs shall not be self-illuminated, "activated", "animated", "flashing", or "beacon light" signs as defined in Section 11.2 of the ULDC.

3. Prohibited uses.

- a. All other uses not specifically or provisionally permitted herein.

4. Site development standards.

- a. Minimum lot size.

Area—27,000 square feet;

Frontage—75 feet

- b. Minimum yard setbacks.

<b>Location</b>	<b>Distance (Feet)</b>
Kennedy Causeway (north side)	40
Kennedy Causeway (south side)	60
Other street frontages	25
Rear	25
Adjacent single-family district	100
One side (interior)	15
Second side (interior)	20% of the lot width
Total side setback area free of structures at ground level	60

- c. Maximum **base** density.

Seventy (70) efficiency or one (1) bedroom dwelling units per net acre. The following required amount of lot area per unit shall determine the number of other dwelling unit types permitted.

<b>Unit Type</b>	<b>Required Lot Area (Sq. Ft./Unit)</b>	<b>Density (Units/Acre)</b>
Efficiency	623	70.0
One-bedroom	623	70.0
Two-bedroom	685	63.6
Three-bedroom or larger	750	58.1

- d. Maximum **bonus** density: Bonus density may be approved according to the Transfer of Density Rights program in Section **8.13**.

- e. Maximum **base** building height: 150 feet.
- f. **Maximum bonus building height: Bonus height may be approved according to Section 8.12.**
- g. Minimum pervious area: Twenty percent (20%) of the total parcel. The lot area at grade level shall be retained as pervious area and shall be landscaped.
- h. Minimum floor area:

<b>Unit Type</b>	<b>Floor area (Sq. Ft.)</b>
Efficiency	600
One-bedroom	900
Two-bedroom	1,200
Three-bedroom or larger	1,350

5. Additional required features and requirements.

All properties developed under the RM-70 Zoning requirements shall provide the following:

- a. Public access boardwalk as required by the Miami-Dade County Shoreline Review Committee. (Developer shall dedicate an easement to the Village conveying the boardwalk and a public access corridor).
- b. All exterior paving surfaces, except for covered parking garages, shall be constructed of brick pavers.
- c. A water feature shall be provided in the front of each development.
- d. Developments shall comply with existing landscaping requirements, as well as changes implemented in the future to conform to contiguous developments and landscaping plans implemented for the causeway and interior island areas.
- e. Developments shall provide streetscape benches along the boardwalk areas.
- f. All parking garages shall be constructed with architectural features that hide them from public view (glass, screening, greenery etc.).
- g. Lighting shall be provided in all areas in the front of development where trees are planted.

6. Special exceptions for certain undersized parcels.

a. Purpose and intent.

This section recognizes that certain parcels exist in the RM-70 District which do not meet the minimum lot size requirements set forth in Section 8.10.D.4.a. to permit a building to be erected, converted, enlarged, reconstructed, moved or structurally altered. Some of said parcels are improved and some unimproved. The purpose of this section is to establish criteria whereby undersized parcels may be put to reasonable use, consistent with the Village's Comprehensive Plan for development and in furtherance of a policy which discourages overdevelopment and urban congestion.

b. Uses permitted.

Uses permitted shall be the same as permitted in Section 8.10.D.2

c. Site development standards:

(1) Minimum lot size:

Area —10,800 square feet

Frontage—30 feet

(2) Minimum yard setbacks shall be the same as specified in Section 8.10.D.4.b provided that existing buildings, which were completed prior to April 1, 1983, (existing structures) and were lawfully constructed so that any existing setback encroaches into the setback

area prescribed by current law but not in excess of 33 1/3 percent of the current setback requirements (nonconforming setback) shall be subject to the provisions of subsection (c.(4) hereafter.

- (3) Maximum density shall be as prescribed in Section 8.10.D.4.c except that
  - (a) on minimum undersized parcels of 10,800 square feet in area and frontage of 30 feet, there shall be a maximum of six (6) residential units;
  - (b) in the case of undersized parcels which exceed the minimum required lot area of 10,800 square feet and the minimum required frontage of 30 feet, in addition to six (6) units there shall be allowed one (1) unit for each whole 750 square feet of land area in excess of the minimum required lot area of 10,800 square feet
- (4) Maximum building height on undersized parcels.
  - (a) The maximum building height on minimum undersized parcels shall be three (3) stories or 36 feet above code-approved grade, whichever is less.

Except-, in the event an existing structure is the subject of a nonconforming setback, the new covered or roofed area of the third floor (if there is one) shall be reduced in area on the basis of one and five-tenths percent (1.5%) of the area of the second floor for each foot of nonconforming encroachment into the setback area.
  - (b) The maximum building height on undersized parcels which exceed the minimum required lot area of 10,800 square feet and minimum frontage of 30 feet shall be one (1) floor for each whole 1,750 square feet of land area in excess of the minimum required lot area of 10,800 square feet, not to exceed six (6) stories or 72 feet above code approved grade, whichever is less.
  - (c) Provided further, as to buildings newly constructed under the provisions of this ULDC, grade level beneath the building parking not exceeding ten (10) feet in height shall not be included in the height limitation herein imposed.
- (5) Minimum pervious area: 25 percent of the total lot area shall be retained as pervious area and shall be landscaped and maintained.
- (6) Minimum floor area shall be as prescribed in Section 8.10.D.4.5
- (7) Offstreet parking: The offstreet parking requirements as set forth in Sections 9.1 through 9.3 shall apply to buildings under this section except that every dwelling unit, regardless of size, shall require two (2) parking spaces.
- (8) All Village and County landscaping requirements shall be fully applicable to buildings under this section.

## **7. Planned Residential Development (PRD) Zoning Overlay.**

### **a. Purpose and intent.**

The purpose and intent of the Planned Residential Development (PRD) Overlay Zoning District to create a living environment that is responsive to the needs of its residents; to provide flexibility in planning, design, and development consistent with the Village's Comprehensive Plan; to encourage innovative approaches for the design of community environments; to provide for an efficient use of land, to provide an environment compatible with surrounding land use; to adapt the zoning process to changes in development and construction technology; to encourage infill and the redevelopment of the Village's multi-family areas; and to promote the public health, safety and general welfare of North Bay

Village. The PRD shall be deemed an Overlay Zoning District and shall be approved only after public hearings for a specific site.

b. Compatibility with existing zoning and existing development.

When applying the terms and conditions imposed by this section, the Planning and Zoning Board and the Village Commission shall determine compatibility with already existing zoning for the property subject to the application and shall require applicants for PRD approval to demonstrate compatibility with already existing or approved developments adjacent to the property for which the PRD approval is being sought.

c. Ownership requirements.

The applicant for approval of a PRD shall be either the owner(s) or the contract purchaser or lessee of the entire property encompassed by the PRD application. If the applicant is the contract purchaser or a lessee, then the owner of the entire property shall execute a notarized consent to the filing of the application. The application for approval of a PRD shall not be assignable or transferable to other parties.

d. Development parameters.

All applications for PRD shall comply with the following applicable development parameters:

- (1) The subject property shall be zoned for RM-70 multi-family use;
- (2) The subject property shall contain a minimum of one legally platted lot for the construction of no less than ten (10) residential units and twenty (20) off-street parking spaces, or two (2), but not more than three (3), platted lots contiguous, as of the effective date of this section [Jan. 22, 2002];
- (3) The subject property shall be deemed one (1) parcel of land and in the event that two (2) or more platted lots shall constitute a PRD, the applicant shall submit a Unity of Title in a form acceptable to the Village Attorney;
- (4) The following definitions shall apply to this section:
  - (a) *Floor area ratio (FAR)*. Total gross area of a building or buildings, excluding parking garage structure, on any lot divided by the area of the lots.
  - (b) *Gross floor area*. Total area of all floors of a building that are enclosed including common areas such as elevators (area of shafts at ground floor only), stairs (except open stairways and enclosed stairways which are means of egress required by the fire department), corridors, interior recreation areas, storage, cabana, lobby, restrooms, etc. All these items are excluded: The garage structure with any required means of egress, and any open but covered walkways, exterior balconies, open decks, and terraces at the recreational area.
  - (c) *Pedestal*. Portion of a building that contains the parking level entry lobby, office, manager's unit, storage, mechanical room, recreational facilities, and parking structures.
  - (d) *Tower*. Portion of the building that contains residential units, parking structures, and may also include recreational facilities.
- (5) *Restrictions on floor area*.
  - (a) No structure shall contain a FAR of greater than 3.0 for one lot; 3.75 for two lots; and 4.00 for three lots.

- (b) No more than one-half of a floor area used for amenities can be allocated for dwelling units.
- e. Permitted uses. Multifamily residential and recreational facilities ancillary thereto.
- f. Site development standards.
- (1) Standard Building Setbacks.
- (a) Setbacks for a new building without pedestal and tower design shall be as set forth in the following table:

<b>Location</b>	<b>Distance (Feet)</b>
Kennedy Causeway (north side)	40
Kennedy Causeway (south side)	60
Other street frontages	25
Rear	25
Adjacent single-family district	100
One side (interior)	15
Second side (interior)	20% of the lot width
Total side setback area free of structures at ground level	60

(b) For buildings with pedestal and tower design, the following setbacks shall apply:

- i. Front pedestal—20 feet
- ii. Front tower—25 feet
- iii. Rear pedestal/tower—25 feet
- iv. Sides pedestal—Ten feet
  - Tower—One side—15 feet
  - Tower—Other side—20 percent of frontage

(2) *Flex setback.*

Designer has the option to offer creative design solutions to the building configurations and the Village will allow the tower (and pedestal for sites involving only one lot) to encroach into the setbacks as per the following "flex box" criteria.

- i. The aggregate square footage of the floor area encroaching into the setback must be adjusted by deducting it from the buildable "box" allowed under the preceding standard setback regulations
- ii. Up to 25 percent (25%) of the square footage of all balconies shown on the plan as encroaching into the setback may be excluded from the calculation of the total square footage of the encroachment.
- iii. ~~and~~ In no instance is the designer allowed to build more area per floor than what is permitted under ~~this~~ the standard buildable "box".
- iv. In no instance may any wall length, which encroaches into any side yard setback, be longer than one-third of the length of a wall which is permitted under the buildable "box" and the standard setback regulations. Balconies with railings or



other physical containment, which do not exceed 42 inches in height are not included in the measurement of the wall length.

- v. The length of wall measurement shall be made at the point of maximum encroachment into the flex setback area.

(3) *Building height.*

- (a) No structure shall exceed 170 feet in overall height above base flood elevation (BFE) including all structures for stairways, storage, mechanical, elevator, recreational uses, et cetera.
  - i. The total area of ~~these uses~~ stairways, storage, mechanical, elevator, recreational uses, et cetera shall not exceed 30 percent of the footprint of the last residential floor.
- (b) No structure shall exceed 150 feet from base flood elevation to the roof of the last residential floor and 160 feet for the overall height of the structure except that an elevator shaft may exceed 160 feet in height based on evidence of necessity as a result of requirements for elevator construction.
- (c) No Pedestal shall exceed 30 feet in height from grade.

(4) *Off-street parking for multiple lot sites.*

- (a) Off-street parking shall be required as set forth for residential uses under Section 9.3.C.
- (b) All parking spaces must be screened from ground level view.
- (c) All parking spaces must be designed to meet the requirements of Section 9.3.E.
- (d) The driveway required in 90-degree parking shall be a minimum of 22 feet zero inches wide.

(5) *Off-street parking for single lot sites only*

- (a) Driveways and maneuvering areas shall be designed in order to ensure safe travel in and out of the garage structure. Drives and access ramps are permitted to be smaller than twenty-two (22) feet in width if they are either limited to one-way traffic or designed so that gates or other barriers prevent the entry of more than one vehicle at a time. No drive aisle may be less than 10.5 feet in width.
- (b) Notwithstanding the above or the requirements of Section 9.3(E), mechanical parking lifts may be permitted in an enclosed garage structure if approved by the Village Commission through the PRD site plan review process, during which time, the Village Commission shall have the right to determine whether a valet parking program will be required for any new development utilizing mechanical parking lifts. A mechanical parking lift is an automated mechanism that lifts vehicles to make space available to park other vehicles below it in a vertical tandem fashion. Both parking spaces created by a mechanical parking lift may be counted towards the total number of required parking spaces. A mechanical parking structure may be permitted if it meets the following standards:
  - i. The mechanical parking lifts and the garage structure shall be designed so that the noise or vibration from the operation of the lifts shall not be plainly audible to, or felt by, any individual standing outside on property adjacent to the garage structure. Noise and vibration barriers shall be utilized to ensure that surrounding walls decrease sound and vibration emissions.

- ii. All mechanical parking lifts must be installed by the manufacturer or a manufacturer approved installer.
- iii. All lifts must be maintained and kept in good working order and must be inspected by a licensed mechanical engineer at least once every six months. A copy of the inspection report must be provided to the Village.
- iv. All free-standing mechanical parking lifts must be designed so that power is required to lift the car, but that no power is required to lower the car, in order to ensure that the lift can be lowered and the top vehicle can be accessed in the event of a power outage.
- v. All mechanical lifts must be designed to prevent lowering of the lift when a vehicle is parked below the lift.
- vi. All mechanical lift components shall be Underwriters Laboratories (UL) approved.
- vii. All non-mechanical parking spaces in the garage structure must measure at least nine (9) feet in width by eighteen (18) feet in depth.
- viii. The building owner or condominium association must maintain a service contract with the manufacturer or manufacturer-approved service company at all times to ensure continued operation of lifts. Proof of the service contract must be provided to the Village annually.
- ix. The ceiling height of any parking level with parking lifts within a garage shall be a minimum of 11 feet 6 inches.
- x. The parking lift platform must be sealed and of a sufficient width and length to completely cover the bottom of the vehicle on the platform to prevent dripping liquids or debris onto the vehicle below.

**(6) *Entrance feature/porte cochere.***

- (a) A covered/sheltered entrance feature with a vertical clearance of at least fourteen (14) feet shall be permitted to be located up to the front property line.
- (b) If loading spaces are provided at this location, 14½ feet of vertical clearance shall be provided.
- (c) Columns may be provided to support a porte cochere.

**(7) *Balconies.***

- (a) Exterior balconies/terraces and covered walkways, excluding rooftops and other non-covered areas, may extend into setbacks a maximum of 25 percent of the allowable setback measurement but may not extend beyond the pedestal setback.
- (b) Balconies projecting into setbacks shall be deemed as encroachments herein, but shall not be calculated as part of the floor area ratio.
- (c) Notwithstanding anything herein to the contrary, in no event shall the total square footage of balconies exceed more than 25 percent of the total square footage of the buildable box.

**(8) *Landscape requirements.* (Refer also to Ch. 18, Miami-Dade Landscape Code.)**

- (a) A minimum of 30 percent of the exposed roof deck of the pedestal and any open areas with amenities shall be landscaped,

- (b) In addition "hardscape" (pavers, fountains, awnings, etc.) may be permitted if approved by the Village.
  - (c) An applicant shall be required to submit a detailed landscape plan to the Village. The landscape plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.
- (9) *Minimum Unit size.* All units shall comply with the minimum size requirements as follows:

Unit Type	Floor Area (Sq. Ft.)
Efficiency	600
One-bedroom	900
Two-bedroom	1,200
Three-bedroom or larger	1,350

- g. Application procedure. The applicant shall submit an application to the Village Manager, or his/her designee, on a form(s) prescribed by the Village Manager. The Village Manager shall require at least the following information which shall be considered the PRD application:
- (1) *Letter of intent;*
  - (2) *Payment of \$5,000.00 development review application fee for each application submitted. Fees incurred by the Village for special planning and/or legal consultant services during the development plan approval process shall be reimbursed to the Village by the applicant;*
  - (3) A detailed site plan showing dimensions of building(s), structure(s), setback(s), open space(s), landscaping and off-street parking. The landscaping plan shall provide buffering and/or masking of all parking facilities;
  - (4) Proposed floor plans and elevations (including signage) for all buildings and structures encompassing the size, placement and number of units;
  - (5) A complete list of uses and the square footage for each use;
  - (6) A certified copy of a land survey;
  - (7) Detailed calculations of water consumption increase and calculation of wastewater;
  - (8) Any other documentation as the Village Manager, or his/her designee, reasonably determines is necessary to properly review the proposed project; and
  - (9) Within ten days prior to the Planning and Zoning Board public hearing, the applicant shall furnish to the Village Manager, or his/her designee to make available for viewing
    - (a) an architectural model built to scale and photographs depicting same or a
    - (b) digital model on DVD depicting the proposed lot and structure including elevations all in relation to adjoining properties and structures thereon.
    - (c) Said model shall be retrieved by the developer within thirty (30) calendar days following the final public hearing before the Village Commission, and the DVD and photographs depicting the model shall become a part of the public records.
    - (d) Said model shall demonstrate the proposed structure as well as existing structures on either side. The applicant shall affirmatively demonstrate that all setbacks for the

new structure shall not conflict with the existing or approved structure on either side of the proposed structure.

- h. Public hearing procedure. At a public hearing, the applicant shall have the burden of proof in demonstrating that the PRD application complies with the purpose and intent of the PRD ordinance. In determining whether to grant approval of the PRD application, with or without appropriate and necessary conditions and safeguards, the Planning and Zoning Board and Village Commission shall determine whether the application complies with the purpose and intent of this section and shall make the following findings:

- (1) Whether the application is consistent with the Village's Comprehensive Plan.
- (2) Whether the proposed development will have a favorable effect on the economy of the Village.
- (3) Whether the proposed development application will generate or result in excessive noise or traffic.
- (4) Whether the proposed development will cause an undue or excessive burden on public facilities and services, including water, sewer, solid waste disposal, recreation, transportation, streets, roads, highways or other such facilities, which have been constructed, or which are planned or budgeted for construction.
- (5) Whether the proposed development will tend to create a fire hazard or other dangerous conditions.
- (6) Whether the proposed development will cause excessive overcrowding or concentration of people or population that would create evacuation concerns.
- (7) Whether the proposed development will be compatible with the surrounding area and its development, and will demonstrate innovative design in order to minimize impact on surrounding properties.
- (8) Whether the proposed development is a reasonable use of the property and results in a public benefit including, but not limited to, the enhancement of the subject real property and/or the redevelopment of structures in deteriorated or poor condition.

- i. Legal effect of PRD.

- (1) Notwithstanding anything in the Code to the contrary, the approval of a PRD application shall be deemed an Overlay Zoning District to the existing zoning of the property.
- (2) The approved PRD application shall encompass the approved development and the development regulations applicable to the property, and shall not be subject to any variances as may be required by other sections of this Code.
- (3) However, the Village Commission shall be prohibited from approving a PRD application that would increase the intensity, density or height above that which is permitted in these PRD regulations.
- (4) In the event that the owner wishes to modify an approved PRD application in any fashion which would increase the amount of square footage of the building(s) or lessen landscaping or open space, or create an undue burden on any public facilities, a new PRD application shall be filed and shall be subject to the terms and conditions of this section.
- (5) In the further event that the owner shall not begin development pursuant to the approved PRD application for a period exceeding 12 months, the PRD designation shall lapse and the Overlay Zoning District for the subject property shall terminate.

- (6) The Village Commission shall have full authority to approve, approve with modifications, or deny a PRD application based upon its legislative determination that the application, as proposed or modified, serves and protects or does not serve and protect the public health, safety and welfare to at least an equivalent degree as the underlying zoning. Likewise, the Village Commission shall have authority to impose reasonable conditions and safeguards necessary to protect the public health, safety and welfare upon the approval of any PRD application.
- (7) Nothing contained in this section shall supersede or abrogate the express provisions of the Village's Comprehensive Plan, and all development orders issued by the Village shall not exceed the density limitations imposed by the Village's Comprehensive Plan. It shall be the duty of the Village Manager, or his/her designee, to advise the Village Commission whether any individual application will cause the density to exceed any density restrictions imposed by the Village's Comprehensive Plan.

#### E. *CG General Commercial District*

1. *Purpose and intent.* The purpose of this district is to encourage the development of general office, retail, service commercial, tourist accommodations, and commercial-residential mixed use.
2. *Uses permitted:*
  - (a) Bank or financial institution.
  - (b) Clinic, urgent care, or hospital.
  - (c) Dry cleaning substation or laundromat.
  - (d) Lounge or nightclub (subject to the provisions of Chapter 111 of the Village Code).
  - (e) Medical or dental office/laboratory.
  - (f) Personal services establishments, including but not limited to shoe repair, barber and beauty shop, stock brokerage, employment agency, travel bureau, and messenger service.
  - (g) Post office.
  - (h) Professional offices, including but not limited to architecture, accounting, engineering, investigative, investment and tax counseling law, medicine, and real estate.
  - (i) Multi-family residential dwellings, **in conjunction with ground floor commercial.**
  - (j) Tourist accommodations including hotels, motels, vacation rentals, and time sharing units.
  - (k) Restaurants, coffee shops, delicatessens and fast order food establishments (excluding any form of drive-in or drive-thru service regardless of the type of establishment; see subsection E.3.a).
  - (l) Outdoor seating/dining shall be subject to the following requirements and conditions:
    - (1) An application must be filed with the Village Manager, or his/her designee, for administrative review and approval, which shall include layout of all tables, chairs, benches, and other furniture; pedestrian ingress and egress; location of refuse containers; and other elements necessary to illustrate the proposed outdoor seating/ dining use and area (all drawings must be titled, indicate orientation, and be at an acceptable scale).
    - (2) Outdoor seating/dining areas and uses of the public right-of-way and/or any private

property may be approved, denied, or approved with conditions, modifications, safeguards, or stipulations appropriately and reasonably related to the intent, purposes, standards, and requirements of the related regulations by the Village Manager. Such permit shall not be transferable in any manner and is strictly a conditional use permit, issued for a period of one year, renewable annually via payment of the annual occupational license fee for such outdoor seating/dining uses.

- (3) The fee for outdoor dining/seating use and area will be charged annually in the amount of \$250.00; the permit fee shall be added to the occupational license fee for the main business.
- (4) The applicant shall provide an indemnity agreement that is acceptable to the Village Manager. This agreement will include specification of liability insurance provided.
- (5) The conditional use permitting of outdoor seating/dining use and area may be revoked by the Village Manager or his/her designee, upon finding that one or more conditions of these regulations have been violated, or that the outdoor seating/dining area and use are being operated in a manner that constitutes a public nuisance, or in any way that constitutes a reasonable risk of potential liability to the Village.
- (6) Outdoor seating/dining use and area may be temporarily suspended by the Village for public use/purpose, utility, sidewalk or road repairs, emergency situations, or violations of provisions contained herein. The length of suspension shall be determined by the Village Manager as necessary. Removal of all street furniture and related obstructions shall be the responsibility of the owner/operator of the outdoor seating/dining.
- (7) Outdoor seating/dining area shall be kept in a neat and orderly appearance and shall be kept free from refuse and debris. The applicant shall be responsible for daily cleaning and sweeping of the outdoor seating/dining area and for the cleanliness and maintenance of any outdoor planters immediately adjacent to the outdoor seating/dining area. Use of Village sidewalks for trash and garbage removal shall be prohibited.
- (8) Outdoor seating/dining use and area shall not interfere with the free and unobstructed pedestrian or vehicular circulation of traffic, public access to any street intersections, crosswalks, public seating areas and conveniences, bus stops, alleys, service easements, handicap facilities, or access to any other commercial establishments. The width and location of the sidewalk pedestrian passage shall be as follows:

If there is seating on one side of the sidewalk, a minimum of five feet of sidewalk must remain clear and unobstructed for pedestrian passage;
- (9) Outdoor seating/dining area on the public rights-of-way shall be open and unenclosed. No building structures of any kind shall be allowed in and over any portion of the outdoor seating/dining area located on public property.
- (10) Tables, chairs and all other furniture used in the operation of an outdoor seating/dining area shall not be anchored or restrained in any manner. Individual table umbrellas, planters, or other such non-stationary elements may be permitted within the outdoor seating/dining area and where applicable, shall have a minimum clearance height of seven feet above grade.
- (11) Outdoor seating/dining use and area shall be restricted to the length of the sidewalk or public right-of-way immediately fronting the cafe or other establishment
- (12) Outdoor seating/dining area shall be at the same elevation as the adjoining sidewalk or public right-of-way.

- (13) Carts and trays for serving food are permitted in the outdoor seating/dining area.
- (14) Outdoor seating/dining use and area shall not be provided with amplified sound of any kind.
- (15) Outdoor seating/dining areas may serve alcoholic beverages where such service is strictly incidental to the service of food and from a service bar only; provided no entertainment of any kind is furnished. No sign of any type or character shall be exhibited or displayed to the outside denoting that alcoholic beverages are obtainable within.
- (16) Any administrative decision may be appealed to the Village Commission in accordance with the requirements of this Code.
- (17) The hours of operation shall coincide with that of the primary restaurant.
- (m) Retail sales establishments, including but not limited to the sale of appliances, books, stationery, drugs, hardware, liquor, groceries, meats, produce and fish; however, such retail sales shall be restricted to merchandise stored and displayed within the main structure.
- (n) Radio and television transmitting station and studio.
- (o) Storage facilities in connection with permitted uses or non-industrial mini-storage facilities in conjunction with other retail, commercial or mixed uses, including the rental of motor vehicles and trailers consistent with off-street parking restrictions (Section 9.6(A)) for self-hauling purposes and the storage of said vehicles on premises, subject to site plan approval by the Village Commission; provided, however, that all such material, including waste and cooling systems and the above described motor vehicles and trailers shall be stored or erected entirely within the walls of a building. Such rental vehicles shall not be over 30 feet in length. Parking shall be provided for the storage facility portion of any mixed use facility at the rate of one space for every 8,000 square feet of storage area.
- (p) Studios for artists, photographers, sculptors, or musicians, including: the teaching of art, music, dancing, or artistic instruction.
- (q) Daycare or nursery
- (r) Repair service establishments (shoes, watches, appliances, and other similar uses)
- (s) Gym or fitness center
- (t) Commercial parking lot
- (u) Business, vocational, and trade schools
- (v) Pharmacy
- (w) Animal hospital, grooming, and/or kennel
- (x) Funeral home or mortuary
- (y) Art gallery
- (z) Religious institution
- (aa) Lodges, fraternal organizations, and union halls
- 3. *Special uses permitted.* Uses permitted upon approval of the Village Commission in accordance with the provisions pertaining to use exceptions (See Section 8.11).
  - a. Drive-thru or drive-in service.

b. Marinas, provided that the following provisions are adhered to:

- (1) No docks or piers, including mooring piles, catwalks, and other appurtenances, shall be constructed closer than 7.5 feet to any adjacent property line.
- (2) In no case shall a dock or pier project more than ten percent into the width of any waterway.
- (3) Fire prevention and fire control equipment shall be provided as required by the South Florida Building Code.
- (4) In conjunction with the dockage of moorage of vessels, the following water-related activities, vessels and structures are prohibited:
  - (a) Commercial vessels.
  - (b) Haul-out facilities for major boat repair or overhaul work.
  - (c) Unscreened storage of boating supplies or accessories in the required front yard setback area.
  - (d) Permanent live-aboard vessels except as required for work or security purposes.






- (d) Printing and publishing establishments, including blueprinting and photostating, provided that no such use shall occupy more than 1,500 square feet of gross floor area.
- (e) Service stations, provided that the following provisions are adhered to:
  - (1) All structures shall be designed in a manner that is compatible with the overall environmental and architectural design goals of the community.
  - (2) All properties shall have at least 150 feet of frontage.
  - (3) All new and used merchandise shall be stored and displayed within the main structure

except tires, accessories, and lubrication items, which may be maintained in movable or enclosed cabinets.

- (4) No used or discarded automotive parts or equipment or permanently disabled or wrecked vehicles shall be located outside the main structure except within an enclosed trash storage area.
  - (5) Major repairs or engine overhauling or transmission repair, painting, body and fender repair, and tire recapping is not permitted.
  - (6) The rental of heavy equipment and the sale or rental of merchandise not related to the motoring public, other than as specified herein, is excluded.
  - (7) The storage of up to ten rental trailers or automobiles is permitted, provided that the trailers or automobiles are backed up against a six-foot high wall, and located not less than 20 feet from any sidewalk, street, or driveway.
  - (8) Car washes are permitted as an ancillary use subject to being located 200 feet from residential uses and subject to hours of operation.
  - (9) Trash shall be stored in areas shielded from public view. Storage trash containers shall be enclosed and covered.
  - (10) Any lights provided to illuminate or advertise the service station, shall be installed and maintained in a manner so as not to create an undue glare on adjacent properties.
  - (11) Structures shall not occupy more than 30 percent of the total lot area.
  - (12) Driveways shall be permitted at the intersections of primary and secondary arterials, provided the construction of driveway entrances is within the curb return, but shall be at least five feet beyond the end of the curb return. At all intersections, whenever possible, combine driveways servicing both service station and adjacent uses, shall be designated and provided.
  - (13) Planter areas and tree wells shall be constructed and equipped with irrigation and drainage facilities and landscaped prior to final building inspection.
  - (14) Whenever the use abuts a residential district, a wall shall be erected along the property line eight feet in height.
  - (15) Service stations shall not be permitted within 300 feet of the property line of any church, synagogue, hospital, and school.
  - (16) No more than four service stations shall be permitted within the Village at any one time.
  - (f) Theaters for the showing of motion pictures shall provide no less than 400 fixed seats. When the theater is to be used solely for activities of a performing art, or an event of a cultural or civic nature, a lesser number of seats may be required by the Commission.
  - (g) Yacht clubs, provided they have a minimum of 150 feet of water frontage and no main building is less than 4,000 square feet in gross floor area.
4. *Prohibited uses.* Boat storage facilities utilized for the purpose of storing boats shall be prohibited in the CG (General Commercial) District.
  5. *Site development standards.*
    - a. Minimum lot size:  
Area—10,000 sf

Frontage—75 feet

- b. Minimum yard setbacks:

Location	Distance (Feet)
Kennedy Causeway (north side)	40
Kennedy Causeway (south side)	60
Other street frontages	25
Rear	25
One Side (interior)	15
Second Side (interior)	20% of the lot width

- c. Maximum base building height: 150 feet.
- d. Maximum bonus building height: Bonus height may be approved according to Section 8.12.
- e. Maximum FAR: The maximum floor area ratio for all non-residential uses is 3.0. Areas used for parking shall not be counted towards maximum FAR. Hotels and motels are considered commercial uses.
- f. Maximum base density: Seventy (70) efficiency or one (1) bedroom dwelling units per net acre. The following required amount of lot area per unit shall determine the number of other dwelling unit types permitted:

Unit Type	Required Lot Area (Sq. Ft./Unit)	Density (Units/Acre)
Efficiency	623	70.0
One-bedroom	623	70.0
Two-bedroom	685	63.6
Three-bedroom or larger	750	58.1

- g. Maximum bonus density: Bonus density may be approved according to the Transfer of Density Rights program in Section 8.13.
- h. Minimum pervious area: 20 percent of the total parcel. The lot area at grade level shall be retained as pervious area and shall be landscaped.
- i. Landscaping: Shall be provided according to Miami-Dade Landscaping Chapter 18A.
- j. Minimum unit floor area:

Unit Type	Floor area (Sq. Ft.)
Hotel or Motel	200
Efficiency	600
One-bedroom	900
Two-bedroom	1,200

Three-bedroom or larger	1,350
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F. Bay View Overlay (BVO) District.

1. General requirements.

- a. Purpose and intent. The BVO District is intended to encourage taller, narrower, mixed use buildings on commercial lots on the north side of Kennedy Causeway where such lots front directly on, and provide unimpeded views north to Biscayne Bay. As such, this district provides the opportunity for development and redevelopment of mixed use residential buildings at greater heights than are otherwise permitted in the CG Zoning District if certain requirements are met. In order to provide incentives for re-development and streamline the development approval process, the BVO District has been pre-designated on the official zoning map. Application of the development incentives available in the BVO District to individual properties will be reviewed and approved by the Planning and Zoning Board and Village Commission concurrently with the site plan approval process.
- b. Applicability.
  - (1) The BVO District provides for an optional set of development regulations that may be voluntarily employed in the mixed use development of lands located within geographic limits of the BVO District shown on the official zoning map.
  - (2) All regulations of the underlying zoning district that are not otherwise addressed in these regulations shall apply. Where the underlying zoning district and the BVO District both apply, the BVO District shall govern.
  - (3) If a property owner should elect not to develop under these optional regulations, only the regulations of the underlying zoning district shall apply.
- c. Procedure.
  - (1) BVO standards review. Applications to use the development standards provided in the BVO District shall be processed concurrently with all other required development applications. At a minimum, the following applications are necessary and shall be considered in the following order:
    - (b) Building height bonus review to 240 feet pursuant to Section 8.12;
    - (c) Bay View Overlay District standards review; and
    - (d.) Site plan review required.

- (2) Approval. Applications require approval by the Village Commission following a single public hearing and a recommendation from the Planning and Zoning Board. In order to approve an application, the Village Commission shall find that the development proposed:
    - (a) Is compatible with surrounding intensities and densities of development;
    - (b) Provides access to adequate light and air for surrounding properties; and
    - (c) Preserves views of, and view corridors to, Biscayne Bay consistent with the Village's 2007 Master Charrette Plan.
2. Allowable uses. All uses listed as permitted or special exception uses in the underlying zoning district shall be permitted equally in the BVO District, and such use shall be subject to all conditions, requirements or limitations applicable to the use in the underlying zoning district, except as may otherwise be set forth in this section.
3. **Additional Building height. Front Setback Bonus:** A building height of up to a maximum of 300 feet may be proposed under the following conditions:
  - a. Lots over 500 feet in depth. For parcels where the lot depth is more than 500 feet, the following conditions shall apply:
    - (1) The property is approved for a building height of 240 feet under the building height bonus provisions of Section 8.12.
    - (2) The portion of any building that is more than 240 feet in height must be set back from the front property line by a distance that is not less than half the height of said portion of the building, with a maximum required front setback of 340 feet.
  - b. Lots under 500 feet in depth. For parcels where the lot depth is less than 500 feet, the following conditions shall apply:
    - (1) The property is approved for a building height of 240 feet under the building height bonus provisions of Section 8.12.
    - (2) The entire portion of a building that is more than 240 feet in height must be set back from the front property line by a distance that is at least 60 feet.
  - c. **Fees for Front Setback Bonus.**
    - (1) Bayview Overlay bonus height community contribution fees shall be paid to North Bay Village within 90 days of site plan approval by the Village Commission.
    - (2) The community contribution fee shall be:
      - (a) \$750 per residential dwelling unit in the building, and
      - (b) \$500 per hotel/motel sleeping unit in the building, and
      - (c) \$10 per square foot of commercial/office floor area for any commercial/office floor area that exceeds 240 feet in height, excluding uncovered steps and exterior balconies
    - (3) Community contribution fees collected according to the Bayview Overlay bonus height program shall be utilized for the purchase of future Village parks, land for additional public open space, other public amenities, or infrastructure projects.

4. Additional Building height - Side Setback Bonus: A building height of up to a maximum of 400 feet may be proposed under the following conditions:
  - a. Lots over 500 feet in depth. For parcels where the lot depth is more than 500 feet, the following conditions shall apply:
    - (1) The property is approved for a building height of 300 feet under the building height bonus provisions of Section 8.12 and the Bayview Overlay Front Setback Bonus.
    - (2) If any portion of a building on the site exceeds 300 feet in height, no part of any building on the site may be closer to either side property line than a distance equal to 20 percent of the width of the lot.
  - b. Lots under 500 feet in depth. For parcels where the lot depth is less than 500 feet, the following conditions shall apply:
    - (1) The property is approved for a building height of 300 feet under the building height bonus provisions of Section 8.12 and the Bayview Overlay Front Setback Bonus.
    - (2) If any portion of a building on the site exceeds 300 feet in height, no part of any building on the site may be closer to either side property line than a distance equal to 30 percent of the width of the lot.

G. Government Use District

1. *Purpose and intent.* The Government Use Zoning District is intended for federal, state and local government activities, transportation facilities, public facilities and utilities and other similar facilities owned or operated by government that generally serve and benefit the community.
2. Uses permitted:
  - a. Government owned facilities
  - b. Government operated facilities
3. *Special uses permitted.* Uses permitted upon approval of the Village Commission in accordance with the provisions pertaining to use exceptions.
4. Site development standards
  - a. Minimum lot size
    - (1) Area: no minimum lot size
    - (2) Frontage: no minimum frontage
  - b. Minimum yard setbacks
    - (1) Kennedy Causeway: 20 feet
    - (2) Other street frontages: 10 feet
    - (3) Rear: 10 feet
    - (4) Abutting commercial zoning district: 5 feet
    - (5) Abutting multi-family zoning district: 7 feet
    - (6) Abutting single-family zoning district: 15 feet
  - c. Maximum building height: 150 feet
  - d. Minimum pervious area: Fifteen percent of the total parcel

## **§ 8.11 – Use exceptions**

### **A. *Purpose and intent.***

In order to provide for adjustment in the relative locations of uses and buildings of the same or of different classifications; to promote the usefulness of these regulations as instruments for fact-finding, interpretation, application, and adjustment; and to supply the necessary flexibility to their efficient operation, use exceptions are permitted by these regulations.

### **B. *Use exceptions permitted.***

The Village Commission may permit the following buildings and uses as use exceptions, provided there are clear indications that such exceptions will not substantially affect adversely the uses permitted in these regulations of adjacent property.

1. Structural alterations to special uses, after these uses are approved by the Village Commission.
2. Other special uses as may be enumerated in specific zoning districts.
3. Assisted living facility or nursing facility.
4. Temporary sales/marketing office approval for no more than 12 months.
5. Farmers' market

### **C. *Expiration of use exception.***

After the Village Commission has approved a use exception, the use exception shall expire after two years, measured from the date of final Commission action, if no substantial construction or change of use has taken place in accordance with the plans for which the use exception was granted.

### **D. *Reapplication for use exception.***

No application for a use exception shall be filed less than one year after the date of disapproval by the Village Commission of an application for a use exception involving the same land or any portion thereof.

## **§ 8.12 – Bonus Height.**

Properties in the RM-70 and CG districts may request to purchase additional height from North Bay Village as follows:

### **A. *Approval of bonus height***

Requests for bonus height shall be made concurrent with site plan review. The Village Planning and Zoning Board shall review the request and provide a recommendation to the Village Commission. The Village Commission shall have the authority to approve or deny any bonus height request at a site plan review public hearing.

### **B. *Maximum bonus height***

1. The maximum building height (with bonus) that may be approved according to this section is 240 feet.
2. Properties located within the Bay View Overlay District may be approved for additional height according to the provisions of Section 8.10(F).

#### C. Fees

1. Bonus height community contribution fees shall be paid to North Bay Village within 90 days of site plan approval by the Village Commission
2. The Community contribution fee shall be:
  - (a) For every 10 feet of bonus building height approved by the Village Commission, the community contribution fee shall be \$750 per residential dwelling unit in the building and \$250 per hotel/motel sleeping unit in the building; and
  - (b) \$10 per square foot for any office, retail or restaurant floor area that exceeds maximum base height, excluding uncovered steps and exterior balconies.
3. Community contribution fees collected according to the bonus height program shall be utilized for the purchase of future Village parks, land for additional public open space, other public amenities, or infrastructure projects.

### § 8.13 – Transfer of Density Rights (TDR) Program

Properties in the RM-70 and CG districts may request to purchase additional dwelling units from North Bay Village as follows:

#### A. Sending Sites

The sending sites shall be land currently owned by the Village, formerly designated Multi-family High Density Residential Future Land Use, which will not be developed into residential buildings in the future; the Village Hall site on Harbor Island, Vogel Park on Harbor Island, and the public works property on Treasure Island. Total bonus density allocation within the Village shall not exceed the total developable potential of the sending sites. The total land area of these properties is 2.35 acres. The total number of dwelling units available for transfer is as follows:

1. 164 efficiencies, or
2. 164 one-bedroom units, or
3. 149 two-bedroom units, or
4. 136 three-bedroom (or larger) units, or
5. Any combination thereof according to the following table:

Unit Type	Required Lot Area (Sq. Ft./Unit)	Density (Units/Acre)
Efficiency	623	70.0
One-bedroom	623	70.0
Two-bedroom	685	63.6



Three-bedroom or larger	750	58.1
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#### B. Maximum Density

1. Total density, including bonus, shall not be approved exceeding 70 dwelling units per acre for any property in the RM-70 district.
2. Total density, including bonus, shall not be approved exceeding 70 dwelling units per acre for properties without direct access to Kennedy Causeway in the CG district.
3. Total density, including bonus, shall not be approved exceeding 100 dwelling units per acre for properties with direct access to Kennedy Causeway in the CG district.

#### C. Approval of Transfer of Density Rights

Requests for transfer of density rights shall be made concurrent with site plan review. The Village Planning and Zoning Board shall review the request and provide a recommendation to the Village Commission. The Village Commission shall have the authority to approve or deny any TDR request at a site plan review public hearing.

#### D. Fees

1. A community contribution fee of \$40,000 per transferred dwelling unit shall be paid to North Bay Village within 90 days of site plan approval by the Village Commission.
2. Community contribution fees collected according to the TDR program shall be utilized for the purchase of future Village parks, land for additional public open space, other public amenities, or infrastructure projects.
3. The number of dwelling units that the applicant must purchase to achieve the desired density shall be derived from the following calculation:  

$$\begin{aligned} &(\text{number of dwelling units at total density including TDR allocation}) \text{ minus} \\ &(\text{number of dwelling units allowed according to base density}) \text{ equals} \\ &(\text{number of units that must be purchased}) \end{aligned}$$

### § 8.14 – Shoreline accessibility

All properties in the RM-70 and CG districts contiguous to Biscayne Bay and its natural tributaries shall provide and maintain a shoreline walkway adjacent to and parallel to the riparian right-of-way. The shoreline walkway shall be provided continuously along the water for the full width of the property and shall be at least 10 feet wide. In addition:

- A. Prior to, or concurrent with, site plan approval, the Village Commission shall have the authority to allow the shoreline walkway to be provided in the riparian right-of-way in lieu of providing the shoreline walkway upland on the subject property.
- B. A 5 foot wide public access connection walkway shall be provided and maintained between the shoreline walkway and the public right-of-way.
- C. Easements for both the shoreline walkway and public access connection walkway shall be dedicated and recorded prior to issuance of a building permit. The easement for the shoreline

walkway shall provide connection to the shoreline walkways of contiguous properties.

- D. The shoreline walkway and public access walkway shall be open to the public daily, during hours determined by the Village.
- E. Walkway lighting shall be provided and maintained. Lighting shall remain on during any nighttime hours that the walkways are open to the public.
- F. All shoreline accessibility facilities constructed according to this section shall be ADA compliant.

## **DIVISION 3, SUPPLEMENTAL USE REGULATIONS**

### **§ 8.15 – Supplemental Use Regulations**

#### **A. Accessory uses and structures.**

The following accessory uses and structures shall be permitted when such uses or structures are ancillary, in connection with, and incidental to, the principal use or structure allowed within the zoning district in which the principal use or structure is located.

##### **1. Permitted accessory uses by zoning district**

###### **a. In all residential districts:**

###### **(1) Private garages or carports provided:**

- (a) No solid wall exterior facades or enclosures are allowed;
- (b) Enclosures must create window facades proportional to the existing windows at the front of the home;
- (c) A landscaped area is created in front of the enclosed garage to a depth of 24" inches and covering the width of the original garage opening; and
- (d) Such greenspace shall be cut out from any existing driveway material that may run up to the new enclosure, or enclosure may maintain a garage door facade.

###### **(2) Private swimming pools, cabanas, whirlpools, saunas, spas and hot tubs.**

###### **(3) Private tennis, basketball or volleyball courts or other similar outdoor recreational uses.**

###### **b. In all zoning districts**

###### **(1) Television and radio antenna structures, except for those of a microwave relay or transmission nature, subject to the provisions of Section 8.13(N).**

###### **(2) Caretaker or watchman quarters when such quarters are associated with an active construction project.**

###### **(3) Storage structures, provided no structure exceeds 150 square feet in gross floor area and is not more than 12 feet high from grade.**

###### **(4) Doghouse, pens, and other similar structures for the keeping of commonly accepted household pets, provided, however, the requirements of Sections 91.03 and 91.10 through 91.12 of the Village Code of Ordinances are complied with.**

###### **(5) Disaster Shelters**

##### **2. Special Regulations. The following regulations shall apply to all accessory uses and structures:**

- a. No accessory structure shall be occupied or utilized unless the principal structure to which it is accessory is occupied or utilized.

- b. All accessory uses and structures shall comply with the use limitations applicable in the zoning district in which they are located
- c. All accessory uses and structures shall comply with the site development standards applicable in the zoning district in which they are located, unless specifically authorized otherwise herein.
- d. All accessory uses shall be arranged and maintained so as not to encroach into any required yard setback area, unless specifically authorized otherwise within the provisions of this chapter.
- e. All accessory structures shall comply with all provisions of the South Florida Building Code, as amended.

## **DIVISION 4, SUPPLEMENTAL DEVELOPMENT STANDARDS**

### **§ 8.16 – Supplemental Development Standards**

#### **A. *Awnings and canopies.***

1. Pedestrian related concerns are a priority in the creation of a successful development. Overhead protection from rain and sun should be provided for pedestrians. Awnings have an impact on the appearance of the storefront and building and tend to bring pedestrians closer to shop windows and entrances. Consideration shall be given to the following where applicable:
  - a. Buildings/storefronts should have awnings or other means to provide pedestrians with sun/rain protection unless physically unsuited.
  - b. Continuous awnings over several stores are prohibited.
  - c. Individual awnings should be distinct from its adjacent neighbor. When multiple awnings are attached to one building, awnings shall be of identical height and depth.
  - d. High gloss vinyl (plastic) awnings, backlit, and metal awnings are prohibited. These awnings, because of their high visibility, become attention getting devices - such as a sign, rather than means to provide comfort and protection for the pedestrian. Such awnings overwhelm the appearance of the buildings they are attached to, detracting from architectural qualities. Awnings that incorporate subtle down-lighting in a manner which creates a discreet peripheral washing of the awning, may be appropriate in some instances.
  - e. Metal awnings should be contemporary in design and shall be subject to the same restrictions and guidelines as other awning materials.
  - f. Awnings shall be maintained in good repair, free from tears, fading or peeling.
  - g. Awnings may be supported by poles and connected to the building underneath.
  - h. Awnings needing vertical support columns are prohibited in the setback area.
  - i. The awnings on corner buildings shall continue around the corner for compatibility with building form and pedestrian patterns, wherever possible.
  - j. Awnings shall not to be used where there is an existing projecting concrete sunscreen, except that a vertical awning valance may be suspended below the sunscreen with a clear height of eight feet above the sidewalk.
  - k. Awnings should utilize color schemes that blend with those of neighboring developments as well as consistency in color schemes for the site. Accent colors should be chosen to enhance architectural details. Solid color and broad striped fabric patterns are preferred.

B. *Boats, docks and piers.* Dockage space and facilities for the mooring of pleasure boats, yachts and other noncommercial watercraft may be permitted in any residential district on any waterway as an accessory use, provided that:

1. No boat may be used or maintained for overnight sleeping or living purposes or as a place of residence.
2. No boat may be used for any commercial purpose.
3. Docks shall be constructed and permitted according to Section 9.12.
4. Temporary piers, floating docks, or similar temporary moorings are prohibited.
5. All the regulations, standards, and requirements of Chapter 150 and Section 9.12 of the Village Code shall be complied with.
6. Barges and vessels shall be permitted in residential districts only for loading, unloading and on-site construction, in compliance with Chapter 150 and Section 9.12.

C. *Clotheslines.*

No clotheslines, drying racks, poles, railings, or other similar devices for hanging clothes, rags, or other fabrics shall be erected or maintained in a front or corner side yard.

D. *Construction materials on premises before permit issued; removal of materials.*

1. Construction materials and equipment shall not be deposited on any premises, lot, or proposed building site in any district prior to the obtaining of a building permit as required herein.
2. Surplus materials and construction equipment shall be removed from the premises if the job is abandoned, and before occupancy of the completed structure will be permitted.

E. *Dumpster enclosures.*

1. Mechanical equipment is necessary to the function of the buildings, which comprise a successful development. Unfortunately, space must be found for components that are sometimes large, noisy and unsightly. Mechanical equipment, particularly when added after the building is in use, can interrupt the streetscape and public views, decreasing the comfort and livability throughout the area. Enclosures and mechanical rooms shall conform to the following criteria:
  - a. When associated with new construction or rehabilitation valued at more than 30 percent of the building value as determined by the building official:
    - (1) Restaurant and/or drinking uses, trash and garbage facilities shall be within an enclosed, air-conditioned garbage room; and
    - (2) Commercial, office or multifamily uses, trash and garbage facilities shall be within an enclosed, cross-ventilated garbage room.
  - b. When located outside of the building, the trash and garbage facilities shall be enclosed within a decorative CBS, wood, metal or recycled products material, opaque structure. The structure (including opaque gates) shall be painted or finished to match the building appearance. No such containers shall be kept, utilized, left stored or maintained in front of any principal structure, except on collection day.
  - c. Dumpster enclosures shall be located in visually obscure areas of the site and shall be designed in a manner as to visually screen the dumpster from adjacent view, and shall include a dumpster locking device on containers that include food waste to prevent access

to the dumpster by birds or rodents.

- d. Dumpster enclosures shall be placed in such a manner as to allow sanitation trucks to pick up garbage in a manner they are designed for.
- e. Roof-mounted mechanical equipment and elevator shafts shall be screened by a parapet wall or grilles, and shall be painted in muted colors or match the building, and shall not be visible from the street.
- f. All service bays, mechanical (HVAC) equipment and delivery areas should be located away from and not visible from the streets, waterways, sidewalks, and adjacent properties.
- g. Service bays, ground-mounted air conditioning units, and other mechanical equipment shall be screened from public and on-site pedestrian view, and buffered.
- h. Exterior service bays and delivery areas should not be used for the storage of vehicles or materials.

F. *Fences, walls and hedges.*

1. When required

- a. An eight-foot high wall, hedge, or fence shall be required along all side and rear commercial property lines which are contiguous to a residential zoned property, subject to vision clearance requirements established elsewhere in this section.
- b. All permitted outdoor storage areas in multifamily residential and commercial zones shall be visually screened from public view by an eight-foot high solid wood or masonry fence or wall.
- c. Fences or walls to be built in connection with other permitted recreational uses such as baseball backstops, tennis courts, handball courts, and the like shall be permitted at the height necessary for the particular use.
- d. All vacant lots adjacent to Kennedy Causeway shall be hedged along that portion of the lot which is adjacent to Kennedy Causeway.
  - (1) The hedge shall not exceed four feet in height and not be lower than two feet in height and shall be of sufficient thickness and density so as to provide a physical barrier similar in effect to a fence.
  - (2) The hedges shall be continuously and regularly trimmed, and any dead plants, or plants which fail to bear leaves, shall be regularly and timely replaced.
  - (3) The remainder of the lots shall be fenced or hedged so as to prevent the unauthorized entry of motor vehicles thereon.
- e. Concrete Block Walls. No fence, solid contiguous wall or ledge consisting of blocks or concrete shall be erected, constructed, installed or maintained in any manner parallel to the 79th Street Causeway.

2. Prohibitions

- a. No fence, wall, or hedge may be constructed, installed, or maintained within six feet of any fire hydrant or other emergency apparatus.
- b. No fence, wall, or hedge may be constructed, installed, or maintained which in any manner creates a visual obstruction to vehicular traffic. In no event shall any fence which obstructs or obscures vision, or any wall or hedge exceed four feet in height within 30 feet of the intersection of official right-of-way lines.
- c. No wall or fence shall exceed five feet in height within any required front yard setback,

provided such fence or wall does not create a visual obstruction to pedestrian or vehicular traffic. Additionally:

- (1) Landscaping shall be required on the street side of any such wall or fence;
  - (2) Any concrete wall or concrete block wall shall be sustained in a finished condition.
- d. Hedge heights shall not exceed twelve (12) feet in height in the front, rear and side setbacks in the RS-1 and RS-2 Districts, provided that:
- (1) Such hedges do not interfere with vehicular traffic or visibility on public rights-of-way;
  - (2) Such hedges are neatly trimmed;
  - (3) The property owner responsible for planting the hedge shall maintain the entire hedge, including the sides facing the neighboring properties in order avoid any hindrance to said neighboring property.
  - (4) Hedge planting is strictly prohibited within the Village right-of-way or easement area.
- e. Walls and fences in the rear and side setbacks shall not exceed a height of six feet.
- f. No chain link, wire or cable fencing or fences similar in appearance to any of the foregoing, will be permitted within front setbacks. (This includes all areas past the front edge of the house running towards the street.)
- g. Ornamental entrances, fountains, plant containers, and similar architectural features exceeding the wall height restriction will be permitted, provided that:
- (1) No such feature shall exceed in height the wall height restriction for that district plus three feet; and
  - (2) There shall be only one such feature in any front, side or rear yard, except that there may be two entrance gates.
- h. Planting of vegetation in easement areas shall conform to the following:
- (1) No trees may be planted within any easement or public right-of-way area as shown on the recorded plats of the various subdivisions of the Village ("easement areas").
    - (a) Nothing in this section shall be construed to prohibit the planting of low growth landscaping in the easement or right-of-way areas ("easement landscaping").
    - (b) Easement or right-of-way landscaping is subject to removal by the Village without notice in the event that this landscaping impedes access to these areas. The Village shall not be responsible for damage to the removed landscaping;
    - (c) Prior to planting such easement landscaping in easement areas, the property owner shall execute a permission for removal, release and indemnification agreement, in a form acceptable to the Village, pertaining to such easement.
- i. For single family properties on North Bay Island. The linear footage of any property's street front Village easement or right-of-way area must maintain a greenspace (pervious) area whereby the permissible paved area is to be limited to only 40 percent of that total linear footage.
- (1) The protected greenspace shall be restricted from any paving materials including but not limited to asphalt, concrete, brick, pavers, gravel or solid cover of mulch.
  - (2) The depth of that protected pervious area must be maintained at full easement depth from the street to the property boundaries.

- (3) Any paving of the property frontage beyond the easement area (within front yard), and greater than 40 percent of the permitted linear footage must create a green landscape facade to decrease the sight line of that paved surface from the street view.
  - j. For single family properties on all islands.
    - (1) Front yard area may be paved up to 40 percent of the total linear footage.
    - (2) The balance of footage may only be paved if a greenspace is created between the Village's sidewalk and the paved area, for a depth of no less than 48 inches, and heavily landscaped to create green landscape facade to decrease the sight line of that paved surface from the street.
  - k. Nonconforming uses of land. The lawful use of land existing at the time of the passage of this ordinance or an amendment thereto, although such uses do not conform to the provisions of this ordinance, may be continued subject to the following provisions:
    - (1) Front yard areas may not be increased in paved areas.
    - (2) All rights and obligations subject to the nonconforming use of the land run with the land and are not personal to the present owner or tenant of the nonconforming use of land and are not affected by a change in ownership or tenancy.
3. General requirements
- a. Construction and materials.
    - (1) No fence or wall may be constructed of materials which will be hazardous to the health, safety, or welfare of persons or animals.
    - (2) Fences which are erected with sheathing, pickets or slats on one side only shall have such materials placed on the side of the fence facing the adjacent property in such a manner as to conceal the structural elements of the fence from off premises view.
    - (3) Walls or fences constructed of concrete block shall be constructed so that the side facing away from the property on which the wall or fence is located shall be finished with stucco or some other approved material.
  - b. Maintenance. All fences, walls, and hedges shall be maintained in a safe, attractive, and non-hazardous condition.
    - (1) Hedges shall not extend over or into the public right-of-way for the full height of the hedge.
    - (2) Maximum height.
      - (a) No fence or wall shall exceed six feet in height and no hedge shall exceed six feet except as may be permitted or further restricted elsewhere in this section.
      - (b) The height of a wall, fence, or hedge shall be the vertical distance measured from the average elevation of the finished building site to the top of the wall, fence, or hedge.
      - (c) The average elevation shall be measured along the wall, fence, or hedge line that the same is to be placed.
      - (d) The land within the area which the wall, fence, or hedge is to be placed may not be increased or decreased to effect the permitted height unless the entire building site is to be graded to level off this area.
4. Temporary fence around construction site. Nothing in this section shall be deemed to prohibit

the erection and maintenance of a temporary fence around construction sites on which actual construction activity is taking place pursuant to a valid active building permit.

- a. The fence may exceed the height limitations in this zoning code if the fence is constructed of solid wood (or plywood) and is decorated in an attractive and artful design as shall be determined by the Village Commission or appropriately designated board.
- b. In no event shall the fence exceed eight feet in height.
- c. Chain link fences shall not be the permitted around construction sites unless screening is used with the chain link to conceal construction materials from outside view.

5. Existing nonconforming fences and/or walls; removal.

- a. Intent. It is the intent of this division to recognize that the eventual elimination of existing fences, that do not conform with the provisions of this chapter, in as expeditious a manner as is reasonable, is as much a subject of the health, safety, and welfare of the citizens of the Village as is the prohibition of new fences that would violate the provisions of these regulations. It is also the intent of this division that there shall not be any unreasonable burden upon established private property rights.
- b. Continuance. Subject to the amortization schedule below, a nonconforming fence may be continued and shall be maintained in good condition, but shall not be:
  - (1) Enlarged or changed to another nonconforming fence.
  - (2) Reestablished after its removal.
  - (3) Reestablished after being damaged or deteriorated whereby the estimated expense of reconstruction exceeds 50 percent of the appraised replacement cost.
- c. It shall be the responsibility of the Code Enforcement Officer to make an inventory and a record of all nonconforming fences and to serve notice on the owners or users of such fences within 30 days after the adoption of these regulations. The period of nonconformity shall nonetheless begin as of the date of the passing of this division. The inventory shall include the following:
  - (1) Owner.
  - (2) Type of fence
  - (3) Location.
  - (4) Reason for classification as nonconforming.
  - 5) Date fence was erected.

G. *Height exceptions.*

Church steeples, bell towers, chimneys, tanks, decorative features, elevator lift housing, air conditioning units, or other mechanical or functional features may exceed zoning district height requirements, except as may be otherwise stipulated herein.

H. *Outdoor dining and sidewalk cafes.*

1. Café tables in the right-of-way can bring activity to the street. They can provide a wonderful means of people-watching for diners and pedestrians. Consideration should be given to unification of these elements within a block from street to street.
2. Restaurants and bars are also encouraged to provide outdoor service in courtyards or arcades.
3. Sidewalk cafés on the public right-of-way may be allowed upon approval by the Village



Commission.

4. Outdoor restaurants, bars or sidewalk cafés must be associated with an adjacent licensed restaurant and comply with all other zoning regulations and conform to the following criteria:
  - a. An application must be filed with the Village Manager, or his/her designee, for administrative review and approval, which shall include:
    - (1) Layout of all tables, chairs, benches, and other furniture;
    - (2) Pedestrian ingress and egress;
    - (3) Location of refuse containers; and other elements necessary to illustrate the proposed outdoor seating/dining use and area (all drawings must be titled, indicate orientation, and be at an acceptable scale).
  - b. Outdoor seating/dining areas and uses of the public right-of-way and/or any private property may be approved, denied, or approved with conditions, modifications, safeguards, or stipulations appropriately and reasonably related to the intent, purposes, standards, and requirements of the related regulations by the Village Manager.
    - (1) Such permit shall not be transferable in any manner and is strictly a conditional use permit, issued for a period of one year, renewable annually via payment of the annual occupational license fee for such outdoor seating/dining uses.
    - (2) The fee for outdoor dining/seating use and area will be charged annually in the amount of \$250.00; the permit fee shall be added to the occupational license fee for the main business.
  - c. The applicant shall provide an indemnity agreement that is acceptable to the Village Manager. This agreement will include specification of liability insurance to be provided.
  - d. The conditional use permitting of outdoor seating/dining use and area may be revoked by the Village Manager or his/her designee, upon finding that:
    - (1) One or more conditions of these regulations have been violated, or
    - (2) That the outdoor seating/dining area and use are being operated in a manner that constitutes a public nuisance, or in any way that constitutes a reasonable risk of potential liability to the Village.
  - e. Outdoor seating/dining use and area may be temporarily suspended by the Village for public use/purpose, utility, sidewalk or road repairs, emergency situations, or violations of provisions contained herein.
  - f. The length of suspension shall be determined by the Village Manager as necessary.
  - g. Removal of all street furniture and related obstructions shall be the responsibility of the owner/operator of the outdoor seating/dining.
  - h. Outdoor seating/dining area shall be kept in a neat and orderly appearance and shall be kept free from refuse and debris. The applicant shall be responsible for daily cleaning and sweeping of the outdoor seating/dining area and for the cleanliness and maintenance of any outdoor planters immediately adjacent to the outdoor seating/dining area.
  - i. Use of Village sidewalks for trash and garbage removal shall be prohibited.
  - j. Outdoor seating/dining use and area shall not interfere with the free and unobstructed pedestrian or vehicular circulation of traffic, public access to any street intersections, crosswalks, public seating areas and conveniences, bus stops, alleys, service easements,

handicap facilities, or access to any other commercial establishments.

- k. If there is seating on one side of the sidewalk, a minimum of five feet of sidewalk must remain clear and unobstructed for pedestrian passage;
- l. Outdoor seating/dining area on the public rights-of-way shall be open and unenclosed. No building structures of any kind shall be allowed in and over any portion of the outdoor seating/dining area located on public property.
- m. Tables, chairs and all other furniture used in the operation of an outdoor seating/dining area shall not be anchored or restrained in any manner.
- n. Individual table umbrellas, planters, or other such non-stationary elements may be permitted within the outdoor seating/dining area and where applicable, shall have a minimum clearance height of seven feet above grade.
- o. Outdoor seating/dining use and area shall be restricted to the length of the sidewalk or public right-of-way immediately fronting the cafe or other establishment
- p. Outdoor seating/dining area shall be at the same elevation as the adjoining sidewalk or public right-of-way.
- q. Carts and trays for serving food are permitted in the outdoor seating/dining area.
- r. Outdoor seating/dining use and area shall not be provided with amplified sound of any kind.
- s. Outdoor seating/dining areas may serve alcoholic beverages where such service is strictly incidental to the service of food and from a service bar only; provided:
  - (1) No entertainment of any kind is furnished.
  - (2) No sign of any type or character shall be exhibited or displayed to the outside denoting that alcoholic beverages are obtainable within.
- t. Any administrative decision may be appealed to the Village Commission in accordance with the requirements of this Code.
- u. The hours of operation shall coincide with that of the primary restaurant.
- v. Placement of tables, chairs and related equipment shall be situated to ensure that a minimum of five feet straight pathway on the sidewalk is maintained at all times as an unobstructed pedestrian path.
- w. Serving through windows is not permitted.
- x. Food preparation shall only occur in the enclosed restaurant.
- y. Because tables provide sufficient advertisement, no additional signs for sidewalk café are permitted.
- z. Outdoor furniture shall be substantial enough not to blow over with normal winds.
- aa. All outdoor furniture and fixtures shall be tastefully compatible and approved by the Planning and Zoning Official.
- bb. All disposable table materials such as plates, glasses, and napkins shall be imprinted with the name of the café (stickers may be used). This regulation is to control litter.
- cc. Sidewalk cafés shall receive a revocable permit subject to the procedures established by the Village.

I. *Recreational and camping equipment.*

Recreational and camping equipment in the form of travel and camping trailers, truck trailers, and motor travel homes, designed and used as temporary living quarters for recreation, camping, or travel use may be parked in the open on sites containing single-family residences, subject to the following conditions:

- a. No more than one piece of recreation or camping equipment shall be parked on the site.
- b. Such parking shall be limited to the equipment owned or leased by the owner-occupant or occupant-lessee of the site concerned, or owned or leased by a bona fide out-of-Dade County house guest of the occupant of the site concerned, with the parking of such equipment by the guest not to exceed 14 days.
- c. The location for such parked equipment shall be to the rear of the front building line and behind the side street building line, in each case the building line referred to being that portion furthest from the street.
- d. Such equipment and the area of parking shall be maintained in a clean, neat, and presentable manner and the equipment shall be in a usable condition at all times.
- e. Such equipment shall, at all times, have attached a current vehicle registration license tag.
- f. No major repairs or overhaul work on such equipment shall be made or performed on the site or any other work performed thereon which would constitute a nuisance under existing ordinances.
- g. When parked on the site, such equipment shall not:
  - (1) Be used for living or sleeping quarters, or
  - (2) Be used for housekeeping or storage purposes and
  - (3) Shall not have attached thereto any service connection lines, except as may periodically be required to maintain the equipment.
- h. The maximum length permitted for such equipment shall not exceed 30 feet and the maximum height shall not exceed ten feet.
- i. Such equipment shall be so secured that it will not be a hazard or menace during high winds or a hurricane.

J. *Safe and sanitary dwelling unit standards.*

The following shall be the minimum standards to be enforced in North Bay Village relative to the safe and sanitary maintenance of dwellings and dwelling units:

1. All foundation walls shall be structurally sound, reasonably rodent-proof, and maintained in good repair.
2. Foundation walls shall be considered to be sound if they are capable of bearing imposed loads and are not deteriorated.
3. Every dwelling unit shall be reasonably weathertight, watertight, and rodent-proof.
  - a. Floors, walls, ceilings, and roofs shall be capable of affording adequate shelter and privacy and shall be kept in good repair.
  - b. Windows and exterior doors shall be reasonably weathertight, watertight and rodent proof, and shall be maintained in good working condition.
  - c. All parts of the structure that show evidence of rot or other deterioration shall be repaired or replaced.

4. Every inside and outside stairway, porch, and every appurtenance thereto, shall be maintained in a safe condition and be capable of supporting loads which normal use may impose.
5. Every chimney and smoke pipe, and all flue and vent attachments thereto, shall be maintained in such condition that there will be no leakage or backing up of smoke and noxious gases into the dwelling.
6. All exterior surfaces subject to deterioration shall be properly maintained and protected from the elements by paint or other approved protective coating applied in a workmanlike fashion.
7. Every plumbing fixture, water pipe, waste pipe, and drain shall be maintained in good sanitary working condition, free from defects, leaks, and obstructions.
8. The floor surface of every water closet compartment, bathroom, and shower room shall be maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
9. Every supplied facility, piece of equipment, or utility shall be maintained in a safe and satisfactory working condition.
10. No owner or occupant shall cause any service, facility, equipment, or utility required to be removed from or discontinued for any occupied dwelling or dwelling unit except for such temporary interruption as may be necessary while actual repairs, replacement, or alterations are in process.
11. For these purposes, every owner of a building containing three or more dwelling units, shall provide the continuing service of a person or persons solely to assure that the minimum requirements of maintenance and sanitation, as provided herein are maintained on the premises at all times.
12. The provisions of the Dade County Minimum Housing Code shall apply as a minimum standard for Village enforcement.

**K. *Security guards.***

1. Definitions: The term security guards shall be synonymous with burglar guards and shall refer to steel bars commonly installed on the exterior or interior of doors or entryways and windows or breezeways or private residences, including free standing as well as multifamily residences and commercial and industrial buildings.
2. No security guards may be installed on the exterior of doors and entryways, windows and breezeways on front and side elevations of buildings which face a street or public right-of-way.
3. Continuance and removal of nonconforming security guards.
  - a. A nonconforming security guard (one which is in existence at the effective date of this section) may be maintained and continued in use as a legal nonconforming use.
  - b. However, no such security guard may be enlarged or replaced by another nonconforming device.
  - c. At such time as title to the property changes, all nonconforming security guards shall be removed.
  - d. Title change shall be defined to mean any change of record ownership, other than by survival or by inheritance of a tenant by the entreaties.

**L. *Setback encroachments.***

Every part of every required front, side, and rear yard setback shall be open and unobstructed from

the ground to the sky except as herein provided.

1. Cornices, roof overhangs, window air conditioning units, awnings, chimneys, and sills may extend into a required side or rear yard, provided any such extension does not exceed 36 inches into the required yard.
2. Balconies shall be permitted to project to a distance of 48 inches into the required yard, provided there is a seven-foot clear span.
3. Fences and privacy walls as provided in Section 8.13(F).
4. Swimming pool and pool decks as provided in Section 8.13(M).
5. Signs as provided in Chapter 11.
6. Landscaping retaining walls, parking curbs/bumpers, and other similar features less than 6 inches in height.
7. Light poles and flag poles as provided in Section 8.13(N)
8. In single family districts only, the following setback encroachments are allowed:
  - a. Ground mounted mechanical equipment, including air conditioning equipment, pool equipment, heat pumps, water heaters, generators and other similar equipment, may be placed in a side yard setback area; provided the unobstructed side setback area is not reduced by more than 50 percent of what is required in the zoning district regulations and provided the equipment placed in the setback area does not operate above 70 decibels.
  - b. A garden window for the cultivation of small plants may extend into the setback area not more than 24 inches
9. In all zoning districts other than single family, the following setback encroachments are allowed:
  - a. A canopy shall be permitted to extend from the entrance door to the front property line provided:
    - i. The canopy does not exceed 12 feet in height or be screened or enclosed in any manner; and
    - ii. The canopy shall be required to be removed during hurricane warning periods.
    - iii. A clear space is provided between the grade and the bottom of the valance of at least six and one-half feet.
    - iv. Additional awning/canopy requirements of section 8.13(A) shall be complied with.
  - b. An entrance feature/port cochere may extend from the entrance door into the front setback area provided:
    - i. Support columns may not be placed closer than 7 feet to the property line.
    - ii. At least 14.5 feet of vertical clearance shall be provided.
    - ii. The width of the entry feature/port cochere shall not exceed 25 feet or 20% of the subject property frontage width, whichever is greater.
    - ii. The entrance feature/port cochere may extend from the entrance door to

the front property line, or a distance of 35 feet, whichever is more restrictive.

**M. *Swimming pools.***

1. Purpose and intent. The Legislature finds that drowning is the leading cause of death of young children in this state and is also a significant cause of death for medically frail elderly persons in this state, that constant adult supervision is the key to accomplishing the objective of reducing the number of submersion incidents, and that when lapses in supervision occur a pool safety feature designed to deny, delay, or detect unsupervised entry to the swimming pool, spa or hot tub will reduce drowning and near-drowning incident.

In addition to the incalculable human cost of the submersion incidents, the health care costs, loss of lifetime productivity and legal and administrative expenses associated with drowning of young children and medically frail elderly persons in this state each year and the lifetime costs for the care and treatment of young children who have suffered brain disability due to near-drowning incident each year is enormous.

2. Standards and requirements.

- a. Any swimming pool operated by a residential homeowner, or condominium association, or by the resident of a single-family dwelling shall be permitted as an accessory use and shall exist only in conjunction with the principal use on the same lot, subject to the regulations stated herein.
- b. A swimming pool may be permitted in any rear yard; however, in no instance shall it be located nearer than the following distances from any property line or structure:

Setback	Distance (Feet)
Front	25
Side (interior)	7.5
Rear or Easement	7.5
Structure	5
Side (corner)	15

- c. Access. Exterior access to a swimming pool shall be through a self-closing and self-latching gate with latches placed at least four feet above grade and operable from the pool area only.
  - d. Drainage. If a patio is provided adjacent to or surrounding a swimming pool, it shall be designed so as to be self-draining away from the pool.
  - e. Lighting. Artificial lighting used to illuminate the premises shall be shielded and directed away from adjacent properties and streets, shining only on the subject site.
  - f. Height. Swimming pools and appurtenances shall not exceed a height of two feet above grade.
  - g. Additional requirements. In addition to the foregoing requirements, all regulations and standards of Sections 151.01 through 151.18 of the Village's Code of Ordinances, and the Florida Building Code shall be complied with.
3. Barriers for swimming pools, spas and hot tubs required.

Barriers must be placed around the perimeter of the pool, spa or hot tub and must be separate from any fence, wall, or other enclosure surrounding the yard unless the fence, wall, or other enclosure or portion thereof is situated on the perimeter of the pool, spa or hot tub that is being

used as part of the barrier, and meets the barrier requirements of this chapter, chapter 151 of this Code, and the Florida Building Code.

a. Barrier construction

- (1) A wall of a dwelling may serve as part of the barrier if it does not contain any door or window that opens to provide direct access from the home to the swimming pool, spa or hot tub.
- (2) Where a wall of a dwelling serves as part of the barrier, one of the following shall apply:
  - (a) All doors and windows providing direct access from the home to the pool, spa or hot tub shall be equipped with an exit alarm complying with this chapter and chapter 151 of this Village's Code, as well as the Florida Building Code that has a minimum sound pressure rating of 85 dB.
  - (b) At 10 feet the exit alarm shall produce a continuous audible warning when the door and its screen are opened.
    - i. The alarm shall sound immediately after the door is opened and be capable of being heard throughout the house during normal household activities.
    - ii. The alarm shall be equipped with a manual means to temporarily deactivate the alarm for a single opening. Such deactivation shall last no more than 15 seconds.
    - iii. The deactivation switch shall be located at least 54 inches above the threshold of the door.
    - iv. Separate alarms are not required for each door or window if sensors wired to a central alarm sound when contact is broken at any opening.
  - (c) All doors providing direct access from the home to the pool, spa or hot tub must be equipped with a self-closing, self-latching device with positive mechanical latching/locking installed a minimum of 54 inches above the threshold, which is approved by the authority having jurisdiction.
  - (d) Exceptions:
    - i. Screened or protected windows having a bottom sill height of 48 inches or more measured from the interior finished floor at the pool, spa or hot tub access level.
    - ii. Windows facing the pool, spa or hot tub on floor above the first story. Screened or protected pass-through kitchen windows 42 inches or higher with a counter beneath.
- (3) The top of the barrier shall be at least 48 inches above grade measured on the side of the barrier which faces away from the swimming pool, spa and/or hot tub.
- (4) The maximum vertical clearance between grade and the bottom of the barrier shall be 2 inches measured on the side of the barrier which faces away from the swimming pool, spa and/or hot tub.
- (5) Where the top of the pool, spa or hot tub structure is above grade the barrier may be at ground level or mounted on top of the pool, spa or hot tub structure.
- (6) Where the barrier is mounted on top of the pool, spa or hot tub structure, the maximum vertical clearance between the top of the pool, spa or hot tub structure and the bottom of the barrier shall be 4 inches.
- (7) Maximum mesh size for chain link fences shall be a 2¼ inch square unless the fence is

provided with slats fastened at the top or bottom which reduce the openings to no more than 1¾ inches. A mesh safety barrier meeting the following minimum requirements shall be considered a barrier as defined in this section:

- (a) Individual component vertical support posts shall be capable of resisting a minimum of 52 pounds (229 N) of horizontal force prior to breakage when measured at a 36-inch height above grade.
  - (b) Vertical posts of the child mesh safety barrier shall extend a minimum of 3 inches below deck level and shall be spaced no greater than 36 inches apart.
  - (c) The mesh utilized in the barrier shall have a minimum tensile strength according to ASTM D 5034 of 100 lbf., and a minimum ball burst strength according to ASTM D 3787 of 150 lbf. The mesh shall not be capable of deformation such that a ¼ inch round object could pass through the mesh. The mesh shall receive a descriptive performance rating of no less than "trace discoloration" or "slight discoloration" when tested according to ASTM G 53 (Weatherability, 1,200 hours).
  - (d) When using a molding strip to attach the mesh to the vertical posts, this strip shall contain, at a minimum, #8 by percent-inch screws with a minimum of two screws at the top and two at the bottom with the remaining screws spaced a maximum of 6 inches apart on center.
  - (e) Patio deck sleeves (vertical post receptacles) placed inside the patio surface shall be of a nonconductive material.
  - (f) A latching device shall attach each barrier section at a height no lower than 45 inches above grade. Common latching devices which include, but are not limited to, devices that provide the security equal to or greater than that of a hook and eye type latch incorporating a spring actuated retaining level (commonly referred to as a safety gate hook).
  - (g) The bottom of the child mesh safety barrier shall not be more than 1 inch above the deck or installed surface (grade).
- (8) The barrier may not have any gaps, openings, indentations, protrusions, or structural components that could allow a young child to crawl under, squeeze through, or climb over the barrier as herein described below.
  - (9) One end of a removable child barrier shall not be removable without the aid of tools. Openings in any barrier shall not allow passage of a 4-inch-diameter sphere.
  - (10) Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on the swimming pool, spa or hot tub side of the fence.
  - (11) Spacing between vertical members shall not exceed 1¾ inches in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1¾ inches in width.
  - (12) Where the barrier is composed of diagonal members, the maximum opening formed by the diagonal members shall be no more than 1¾ inches.
  - (13) Solid barriers which do not have openings shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.
  - (14) Where an aboveground pool, spa or hot tub structure is used as a barrier or where the barrier is mounted on top of the pool, spa or hot tub structure, and the means of access



is a ladder or steps;

- (a) The ladder or steps either shall be capable of being secured, locked or removed to prevent access, or
    - (b) The ladder or steps shall be surrounded by a barrier which meets the requirements of this chapter and chapter 151 of this Village's Code, as well as the Florida Building Code.
    - (c) When the ladder or steps are secured, locked or removed, any opening created shall not allow the passage of a 4-inch-diameter sphere.
  - (15) Any permitted swimming pool may be enclosed by a screen enclosure, provided the enclosure is constructed of material which is 90 percent screening.
  - (16) Screen enclosures shall have the same minimum side setbacks as those stated above for swimming pools.
  - (17) Standard screen enclosures which meet the requirements of the Florida Building Code, may be utilized as part of or all of the "barrier" and shall be considered a "non-dwelling" wall.
  - (18) Removable child barriers shall have one end of the barrier non-removable without the aid of tools.
  - (19) Removable child barriers must be placed sufficiently away from the water's edge to prevent a young child or medically frail elderly person who may manage to penetrate the barrier from immediately falling into the water.
    - (a) Sufficiently away from the water's edge shall mean no less than 20 inches from the barrier to the water's edge.
    - (b) Dwelling or non-dwelling walls including screen enclosures, when used as part or all of the "barrier" and meeting the other barrier requirements, may be as close to the water's edge as permitted by this Code.
  - (20) A barrier may not be located in a way that allows any permanent structure, equipment, or window that opens to provide access from the home to the swimming pool, spa and/or hot tub.
- b. Access to swimming pools, spas and hot tubs.
- Access gates, when provided, shall be self-closing and shall be equipped with a self-latching locking device located on the pool, spa or hot tub side of the gate.
- (1) Where the device release is located no less than 54 inches from the bottom of the gate, the device release mechanism may be located on either side of the gate and so placed that it cannot be reached by a young child over the top or through any opening or gap from the outside.
  - (2) Gates that provide access to the swimming pool, spa or hot tub must open outward away from the pool, spa or hot tub.
  - (3) The gates and barrier shall have no opening greater than ½ inch within 18 inches of the release mechanism.
- c. Adjacent waterways as barriers.
- (1) Permanent natural or permanent man-made features such as bulkheads, canals, lakes, navigable waterways, etc., adjacent to a public or private swimming pool, spa or hot tub

may be permitted as a barrier when approved by the authority having jurisdiction.

- (2) When evaluating such barrier features, the authority may perform on-site inspections and review evidence such as surveys, aerial photographs, water management agency standards and specifications, and any other similar documentation to verify, at a minimum, the following:
  - (a) The barrier feature is not subject to natural changes, deviations, or alterations and is capable of providing an equivalent level of protection as provided by the code.
  - (b) The barrier feature clearly impedes, prohibits or restricts access to the swimming pool, spa or hot tub.

d. Schedule of penalties.

Failure to comply with the requirements of any section of this chapter may result in a penalty as provided in Section 153 of the North Bay Village Code.

N. *Towers, antennas, poles and masts.*

1. Generally.

Prior to the erection of a water tower, standpipe, windmill, tower, aerial, antenna, pole, mast, or other vertical structure over ten feet in height above the roof of a permitted structure, or over 20 feet in height if erected at grade, the requirements of this section and the South Florida Building Code shall be observed.

a. Plans and specification required.

Plans and specifications for the structures listed above shall be submitted to the Building Official showing:

- (1) All dimensions, size, and kind of members, footings, and guy wires;
- (2) The location, depth, and type of guy anchors and footings;
- (3) The type and weight of the antenna, apparatus, or structure to be attached to or supported by the structure; and
- (4) An application made for a permit.

b. Maximum height.

- (1) The vertical height of any of the above structures shall not be greater than 90 percent of the horizontal distance from its base to the nearest property line.
- (2) Radio towers, where incidental to a business use in the commercial district, may extend to a height of 150 feet measured from ground elevation.
- (3) Poles, masts, and towers for supporting antenna used in the operation of amateur radio stations, citizen band radio stations, and citizen band radio stations licensed by the Federal Communications Commission shall be excepted from the above regulations and shall be governed by the following requirements:
  - (a) All poles, masts, towers, and beam array antennas shall be placed not less than five feet from a public right-of-way line or adjacent property line, or nearer than one foot from any easement.
  - (b) All such installations shall conform to the requirements of the National Electrical Code and applicable FCC regulations, and be located not less than eight feet from any power line over 250 volts, including the beam elements or any part thereof.

- (c) Permits shall be required for the installation of any poles, masts, or towers over 20 feet above the roof of any structure to which they may be attached, and for any installation over 35 feet in height when erected from grade. Applications for permits shall be accompanied by three copies of plans and specifications showing:
- (1) All dimensions, size and kind of members, f
  - (2) Footings and guy wires;
  - (3) The location, depth and type of guy anchors and footings; and
  - (4) The type and weight of the antenna, apparatus or structure to be attached to or supported by the structure.
- (d) Poles shall be of an approved creosoted type or treated or painted with a chemical preservative and an outer coat of oil base paint before installation. The color shall match the surrounding development.
- (e) The recommended depth of holes for various type poles shall be subject to acceptable engineering standards:

<b>Pole Height Above-ground (feet)</b>	<b>Hole Depth in Firm Ground (feet)</b>	<b>Hole Depth in Rock Ground (feet)</b>
16	3.5	3
20	4	3
25	5	3
35	6	4
50	7	5

- (f) If the earth is damp or soggy, the depth of hole is to be increased by one foot.
- (g) If carrying a beam, poles must be properly guyed, as is the case where the pulling effect of the wire antenna or weight of other installations will require guying.
- (h) Wood masts shall be chemically treated, painted with an outside coat of oil base paint, and suitably guyed at the top and middle in at least three different directions.
- (i) Masts to support a beam, whether of wood or metal pipe, shall comply with all the applicable regulations in regard to the location, guying and the like, and the maximum allowable weight of antenna, rotator and components shall not exceed 150 pounds.
- (j) Towers of steel, iron or aluminum, whether of the rigid non-demountable type or the rigid, demountable type with the crank-up, crank-down and either the hinged base or swivel crank-over features shall carry no more weight on the top than specified by the manufacturers specifications.
- (k) In calculating the height of demountable type towers, the top of the lower rigid section shall be considered the top for the purpose of this section.
- (l) Beam array antennas shall be mounted so as to provide easy servicing and easy access for the removal at approach of hurricanes, or provide for the lowering of such beam.

## 2. Dish antennas.

- a. Application. This section shall apply only to private noncommercial dish antennas as defined in subsection (B)(2) below. This section shall supplement and not repeal or modify the requirements of Section 8.10(E)(5).
- b. Definitions:
  - (1) Dish antenna means 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) A private noncommercial dish antenna is a dish antenna for a single-family residence which is erected solely for the use of its owners. Said antenna shall not be used for the purpose of obtaining revenue.
- c. Placement. Private noncommercial dish antennae may be permitted in North Bay Village provided:
  - (1) They are located in the rear yard.
  - (2) They are placed no closer to any property boundary line than a distance equal to their height as measured from ground level to the top of the antenna but in no event closer than ten feet to said property lines.
  - (3) On corner properties, no portion of the apparatus may extend beyond the imaginary extension of the line of the house structure.
  - (4) Roof-mounted dish antennae shall not be permitted except on two-story buildings with a flat roof, provided the antenna cannot be viewed from ground level, and in no instance is to exceed in height 15 [feet] above the roof.
- d. Dimensions. The height of dish antennas, on the ground, shall not exceed 15 feet from ground level nor shall their diameter exceed 12 feet.
- e. Number allowed; color. Only one dish antenna shall be allowed per single-family house, and antennas shall be neutral in color, and one color only.
- f. Anchorage. All dish antennae shall be anchored securely to the ground or structure in compliance with the requirements of the South Florida Building Code relative to structures.
- g. Permit required. No dish antenna shall be erected until a permit has been issued by North Bay Village. All applications for a permit shall be accompanied by a site plan showing the proposed location of the antenna, the type, color, height and diameter of the antenna and the proposed landscaping.
- h. Screening. A private noncommercial dish antenna shall be screened by landscaping on its sides so as to obscure its visibility from the abutting properties' ground view.
- i. Once installed, dish antennas and related appurtenances must be maintained in good and operable condition, and the surrounding landscaping shall likewise be continuously maintained for the intended screening purpose.
- j. Nonconforming uses. All dish antennas that are legally existing on October 23, 1990, shall be allowed to remain until such time that they may be replaced, or the cost of repairs exceeds 50 percent of the replacement at which time they shall conform in all respects to this section.

### 3. Screening of mechanical equipment.

Lack of, or inadequate screening of, mechanical equipment can have negative visual impacts on the Village's streetscape, ambient landscape, and community image. Such impacts shall be minimized through compliance with the following requirements:

- a. Mechanical equipment located on the ground, such as air conditioning units, heating units, satellite dishes, irrigation pumps, propane tank displays and refilling areas, utilities lift stations and the like shall be screened from public view. Screening shall, at a minimum be at the same height as the equipment. Structural screening shall be architecturally integrated into the overall project design and shall be compatible, in terms of style, construction materials, colors, and finish, with the principle structure(s). Landscaping may be substituted for structural screening if plantings are compatible with the landscape plan for the project and are of such size and maturity as to be able to provide a fully opaque screen at time of planting.
- b. Equipment and appurtenances mounted on roof tops shall be kept to a minimum. All exposed roof top mounted equipment and appurtenances shall be fully screened from view from any public right-of-way. All screening shall, at a minimum be at the same height as the equipment and appurtenances. Screening shall be an integral part of the design of the building(s) and shall be architecturally consistent with the style, colors, construction materials and finish of the building(s).
- c. Painting of exposed appurtenances to blend with the color of adjacent materials of the building may be approved where utilization of approved roof designs precludes full screening of exposed surfaces.

## **CHAPTER 9, GENERAL SITE DESIGN STANDARDS**

### **DIVISION 1, GENERALLY**

#### **§ 9.1 – Purpose and intent**

- A. Design guidelines are intended to implement and provide guidance on site and building design. The purpose of these guidelines is to provide direction to private property owners in preparing plans for review concerning property development or redevelopment. It is important to remember that all projects are also subject to the required reviews of North Bay Village. The primary intent of these guidelines is to establish and promote standards for development planning and urban design.
- B. The standards and guidelines provide direction as to how private development should relate to framework of public amenities in a way that will serve the long term vision as well as accommodate immediate opportunities. They have been created to allow flexibility within the parameters of a clearly defined and supported vision that will provide lasting benefit to the citizens of North Bay Village.
- C. The intent of the design standards are to utilize developed public spaces, such as streets, park and parkways, and bay-walks to organize and coordinate development, as well as to accommodate a broad mix of development types and alternate transportation, such as walking.
- D. The general requirements outlined in this chapter shall serve to supplement the minimum aesthetic and design standards for all site development, buildings, structures, alterations or additions. All site development or redevelopment shall, where reasonable and practicable, show proper design concepts consistent with the standards outlined in these guidelines. Buildings or structures, which are a part of an existing or future group of buildings, shall have a unity of character and design. The relationship of forms and the use, texture, and color of materials shall be such as to create a harmonious whole site. Harmony can be achieved through the proper consideration of scale, proportions, site planning, landscaping, materials, and color.

### **DIVISION 2, OFF-STREET PARKING AND LOADING**

#### **§ 9.2 – Purpose and intent**

It is the purpose and intent of this subchapter to establish minimum space and design requirements for off-street parking and loading facilities to accommodate both public and private uses. The ever-increasing number of vehicles generated from and attracted to residential, commercial and public activities requires that adequate parking and loading facilities, which permit safe and efficient vehicle and pedestrian movement, be provided in order to protect the health, safety and welfare of the residents of the Village.

#### **§ 9.3 – Off-street parking requirements**

- A. General requirements
  - 1. Every use or structure shall provide off-street parking facilities for the use of occupants, employees, visitors or patrons. The provision of off-street parking spaces in conjunction with all land or building uses shall be completed prior to the issuance of a certificate of occupancy and such parking facilities shall be maintained as long as the use is continued.

2. No owner or operator of any use or structure shall discontinue or cause a discontinuance or reduction in required off-street parking facilities required by the applicable code provisions existing at the time of construction, use or occupancy without establishing alternate parking facilities which meet the requirements of this subchapter.
3. When any use or structure is altered or enlarged, with a resultant increase in floor area capacity, or space occupied, whatever necessary additional off-street parking that may be required shall be provided, and a revised site plan shall be submitted for review and approval.
4. Where a use or structure which existed at the effective date of this subchapter is changed in use or occupancy to a category of use or occupancy that requires more off-street parking facilities, the increased amount of those facilities shall be provided.

**B. Plan required**

1. All proposed off-street parking facilities shall be subject to site plan review and approval. Whenever site plan review is otherwise required in conjunction with a specific use, that review shall satisfy the requirements of this section.
2. Site plans shall include the following:
  - a. All off-street parking facilities shall be designed with consideration given to surrounding street patterns, adjacent properties, and other neighborhood improvements. Consideration shall be given to the number of vehicles to be accommodated, hours of operation, and types of uses served.
  - b. All site plans shall show the location, size, dimensions, and design of:
    - (1) On-site buildings and structures.
    - (2) Parking spaces, loading spaces, driveways, and accessways.
    - (3) Directional markings, traffic-control devices, and signs.
    - (4) Walls, fences, pervious areas, berms, changes of grade, and planting materials.
    - (5) Number of parking spaces required and number provided, amount of landscaping required, and amount of landscaping provided.
    - (6) Any other related information that may be reasonably required by the Village.
  - c. When off-street parking facilities are located within an enclosed structure or upon the roof of a building, the site plan shall also include interior circulation patterns, slope of ramps, and location of interior structural columns.

**C. Minimum number of off-street parking spaces required**

1. Fractions of a space: All uses shall be subject to the following minimum space requirements unless additional spaces may be required as the condition for securing a permitted conditional use. All fractional space requirements shall be rounded off to the next highest number.
2. Residential uses
  - a. Single-family: Two spaces for each dwelling unit.

- b. Multifamily on Treasure Island Commercially zoned lots on the north side of Kennedy Causeway:
  - (1) One and one-half (1.5) space for each efficiency unit, two parking spaces for one bedroom and larger units, plus an additional ten percent of the total number of required spaces for guest parking, which shall be identified as such.
  - (2) All of the required minimum number of parking spaces pursuant to these provisions, shall be conveyed for use by the developer to the condominium association, and then made available for use by the unit owners at no charge. Where spaces are indicated by a fraction, at least the whole number must be conveyed. This provision shall apply to development under the PRD Ordinance.
- c. Multifamily in all areas except Treasure Island Commercially zoned lots on the north side of Kennedy Causeway:
  - (1) One and one-half (1.5) space for each efficiency unit, two parking spaces for one and two-bedroom units, and three parking spaces for three-bedroom units or larger and two-bedroom units, which contain an enclosed den or other space convertible to a bedroom plus an additional ten percent of the total number of required spaces for guest parking, which shall be identified as such.
  - (2) All of the required minimum number of parking spaces pursuant to these provisions, shall be conveyed for use by the developer to the condominium association, and then made available for use by the unit owners at no charge. Where spaces are indicated by a fraction, at least the whole number must be conveyed. This provision shall apply to development under the PRD Ordinance.

### 3. Commercial uses

- a. Banks and financial institutions: One space for each 300 feet of gross floor area, plus sufficient area for eight stacking spaces for each drive-thru window. Drive-thru lanes shall be designed so as to be totally separated from required off-street parking spaces and driveways.
- b. Business, vocational, and trade schools: One space for each 100 square feet of gross floor area.
- c. Lodges, fraternal organizations, and union halls: One space for each 100 square feet of gross floor area.
- d. Offices (business, professional): One space for each 300 square feet of gross floor area.
- e. Personal service establishments (dry cleaners, laundromats, gym, fitness center, and other similar uses): One space for each 200 square feet of gross floor area.
- f. Repair service establishments (shoes, watches, appliances, and other similar uses): One space for each 200 square feet of gross floor area.
- g. Restaurants, lounges, and nightclubs: One space for each 75 square feet of customer service area.
- h. Retail sales establishments: One space for each 200 square feet of gross floor area, plus sufficient area for four stacking spaces for every drive-thru window. Drive-thru lanes shall be designed so as to be totally separated from required off-street parking spaces and driveways.



- i. Service stations: Three spaces, plus three spaces for every service bay.
  - j. Theaters/Auditoriums: One space for each three seats or other accommodations provided. For benches, pews, or other similar seating arrangements, each 18 lineal inches of such seating facilities shall be counted as one seat for the purpose of computing off-street parking requirements.
  - k. Vehicle sales, rental, repair, and service operations: One space for every 400 square feet of enclosed floor area for sales or rental display, plus two spaces for each service bay.
  - l. Offices (medical, dental, clinic): One space per 150 square feet of gross floor area.
  - m. Barber shops, hair salon, nail salon, spa, therapeutic massage center: Two spaces per station (chair, bed, etc).
  - n. Drugstores and pharmacies: One space for each 200 square feet of gross floor area.
  - o. Funeral home or mortuary: One space for each four seats in the principal assembly area. For benches, pews, or other similar seating arrangements, each 18 lineal inches of such seating facilities shall be counted as one seat for the purpose of computing off-street parking requirements.
  - p. Animal hospital, grooming, and/or kennel: One space per 300 square feet of gross floor area.
  - q. Hotels, motels, and other tourist accommodations:
    - (1) One space for each rental sleeping unit, plus an additional ten percent of the total number of required spaces **except as follows:**
      - 1 space per sleeping unit, for the first 100 units, and 0.5 spaces per sleeping unit for all units in excess of 100; if the developer agrees in writing that a hotel shuttle service is provided and maintained in perpetuity, and a hotel employee parking plan is provided, which shall be subject to the review by the Village Planning Department. The hotel parking plan shall include measures to address employee parking, including, but not limited to, provision of transit passes, carpool or vanpool programs, off-site parking when available and/or other measures intended to limit the impact of employee parking on surrounding neighborhoods.**
    - (2) **For hotel establishments with at least 100 sleeping units, parking space requirements for restaurants, retail and other service uses within the hotel may be reduced by 25% if such uses are ancillary to the hotel.**
4. Community facilities
- a. Assisted living facilities: Three-quarter space per living unit.
  - b. Churches, synagogues, and other houses for worship: One space for each four seats in the principal assembly area. For benches, pews, or other similar seating arrangements, each 18 lineal inches of such seating facilities shall be counted as one seat for the purpose of computing off-street parking requirements.
  - c. Government offices and facilities: One space for every 300 square feet of gross floor area, plus one space for every four seats in any public assembly area.
  - d. Hospitals: One space for each patient bed.
  - e. Marinas: One space for every boat slip or berth, plus such additional spaces as may be required for permitted uses such as retail stores and restaurants.

- f. Museums, art galleries, and libraries: One space for every 400 square feet of gross floor area.
- g. Nursing home facility: One-half (½) space for each bed.
- h. Tennis, handball, and racquetball facilities (indoor or outdoor): Five spaces for every court, plus such additional spaces as may be required for permitted uses such as retail stores and restaurants.

#### 5. Educational

- a. Nursery, Daycare, Preschool, Elementary, and Middle School: 1 space/classroom plus one space per employee (excluding teachers), plus 1 space/100 students), plus 10 spaces for stacking/queuing, (student drop-off/pick-up).
- b. High School: 1 space/classroom plus one space per 10 seats plus 5 spaces for auto stacking/queuing.
- c. College/University: 1 space /classroom plus 3 spaces/100 sq. ft. of classroom. 3 spaces/4 beds for dormitories, fraternities, and sororities.

#### 6. Uses not listed

Off-street parking requirements for those uses not enumerated but which are closely related and similar to the uses listed above shall be determined by the Planning and Zoning Board in accordance with the requirements for the listed similar use. Requirements for all nonsimilar uses shall be set by the Village Commission after a recommendation by the Planning and Zoning Board.

#### D. Exceptions to parking requirements

- 1. Off-site parking areas adjacent to or within a reasonable distance (the reasonableness of the distance to be determined by the Village Commission) from the premises on which parking areas are required by the parking regulations of this subchapter, where practical difficulties or unnecessary hardships are encountered in locating such parking area on the premises and where the purpose of these regulations to relieve congestion in the streets would be best served by permitting such parking off the premises.
- 2. Waiver or reduction of parking requirements: To waive or reduce the parking and loading requirements in any district whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities.

#### E. Design standards

- 1. Definition: For the purpose of this subchapter an "off-street parking space" is an all-weather surfaced area, at grade or above, permanently reserved for the temporary storage of one automobile and connected with a street or alley by an all-weather surfaced driveway which affords ingress and egress for an automobile without requiring another automobile to be moved. On single lot sites only, mechanical parking lifts, which may require another automobile to be moved, may be approved within enclosed garage structures in the PRD Overlay district, if they meet the standards of Section 8.10(D)(10)(f)(5). When developing under the PRD regulations found in Section 8.10(D)(10), mechanical parking lifts may be used to create an additional parking space which can be counted towards the total number of required parking spaces.
- 2. Paving and drainage:
  - a. All off-street parking facilities shall be surfaced with a minimum of a rolled six-inch rock base and one-inch durable weatherproof asphaltic pavement. The occupancy or use of a given structure or premises shall be prohibited until the required off-street

parking area has been improved, inspected and approved.

- b. All required off-street parking facilities shall be properly drained so that no nuisance will be caused to adjacent or nearby properties. All construction shall comply with design standards as established by all applicable laws, ordinances, and regulations.
3. Traffic control. Traffic control signs and pavement marking shall be used as necessary to ensure safe and efficient circulation within off-street parking areas. All traffic control measures located on private property shall be approved by the Village.
4. Parking space dimensions. Required and permitted off-street parking spaces shall be clear of columns or other obstructions and have the following minimum dimensions:

Type of Space	Length	Width
Standard	18	9
Handicapped	18	13
Compact	16	8

5. Compact parking spaces
  - a. Upon special approval by the Village Commission in accordance with the provisions on use exceptions, up to 20 percent of all required parking spaces may be designed specifically for small vehicles of the compact or foreign type, provided such spaces are clearly marked "for compact cars only" and collectively located in a defined area.
  - b. Applicants seeking approval for the use of compact parking spaces shall provide valet parking services in perpetuity; and a Business Tax Receipt for valet parking services shall be required annually to ensure compliance with this requirement.

6. Handicapped accessible parking spaces

All required off-street parking facilities shall be developed in accordance with all applicable provisions of the most recent version of the Florida Accessibility Code.

7. Markings

All off-street parking spaces shall be marked by solid stripes of at least four inches in width along each side of the space, except those sides which permit vehicle entry or abut curbs.

8. Wheel stops

Wheel stops or continuous curbing shall be placed two feet from the front of all parking spaces, except those in a parallel configuration. Wheel stops shall be at least six feet in width and be of a design and material approved by the Village.

9. Illumination

All off-street parking facilities, except those which serve single-family residential dwellings, shall be illuminated according to the standards contained herein.

- a. For the purpose of this section, open off-street parking facilities shall include the surface of open-to-the-sky parking spaces, driveways, and accessways. Enclosed off-street parking facilities shall include multi-level parking garages and covered grade-level parking facilities.

- b. Intensity of illumination.

(1) Open parking facilities shall provide an average illumination intensity of one foot-candle equal to one lumen per square foot, and shall be well distributed

on the pavement areas; however, at no point shall illumination be less than one-third foot-candles.

(2) Enclosed parking facilities shall provide an average illumination intensity of 50 foot-candles at the entrance, ten foot-candles in traffic lanes, and five foot-candles in vehicle storage areas.

(3) The most current edition of the IES Lighting Handbook, published by the Illumination Engineers Society, shall be used as a standard for the design and testing of parking facility lighting.

c. All site plans shall include a parking facility illumination plan. That plan shall be certified by a registered architect or engineer as providing illumination in accordance with the applicable minimum standards set forth above. Subsequent construction must comply with that lighting plan. If there exists a question concerning whether the work was done in accordance with specifications, the Village may require as a prerequisite to the issuance of a certificate of occupancy that the architect or engineer who prepared the plans certify that all work was done in accordance with specifications.

d. All required illumination shall be controlled by automatic devices.

(1) For commercial uses with open or enclosed parking facilities, the required illumination shall be provided at least 30 minutes after the closing time of any establishment served by the parking facility.

(2) Any parking facility that serves a multifamily residential use must maintain the minimum levels of illumination established by this subchapter through the use of natural or artificial light 24 hours per day.

e. All lighting shall be shaded or screened and positioned in such a manner as to minimize offensiveness to any neighboring property.

f. All property owners and lessees shall be responsible for the replacement or repair of any light that becomes nonfunctional and reduces the illumination below the required standard.

g. All additional regulations, standards, and requirements stated in section 151.26 of the Village Code shall be complied with.

#### 10. Landscaping

All parking areas shall be properly landscaped according to the provisions of the current Dade County landscaping ordinance.

#### 11. Right-of-way setback

A minimum setback of 20 feet shall be required between a public street right-of-way line, exclusive of alleys, and the entrance to the nearest parking space.

#### 12. Maintenance

a. Off-street parking areas shall be maintained in a clean, orderly, and dust-free condition at the expense of the owner or lessee and not used for the sale, repair, dismantling, or servicing of any vehicles, equipment, materials, or supplies.

b. The surface shall be maintained in a structurally sound condition and free of potholes. A pothole is defined as crack, hole, aperture or opening in the surface which penetrates beneath the asphalt layer to any depth and is of any diameter.

#### 13. Separation from walkways and streets

Off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys by an approved wall, fence, curbing, or other protective device.

14. Entrances and exits

Location and design of entrances and exits shall be in accordance with the requirements of the Village, based upon reasonable requirements for safety traffic regulations and standards. Landscaping, curbing, or approved barriers shall be provided along lot boundaries to control entrance and exit of vehicles or pedestrians.

15. Interior drives

Interior drives shall be of adequate width to serve a particular design arrangement of parking spaces, as prescribed by the Village.

16. Back-out parking prohibited

All off-street parking spaces, except those relating to single-family residential dwellings, shall be designed so that no vehicle shall be required to back into a public street right-of-way to obtain egress.

17. Minimum aisle widths

- a. Parallel parking maneuvering areas shall be at least
  - (1) 13 feet wide for one-way
  - (2) 23 feet wide for two-way
- b. 90 degree parking maneuvering areas shall be at least
  - (1) 23 feet wide for one-way
  - (2) 23 feet wide for two way
- c. 30 degree parking maneuvering areas shall be at least
  - (1) 11 feet wide for one-way
  - (2) 23 feet wide for two way
- d. 45 degree parking maneuvering areas shall be at least
  - (1) 13 feet wide for one-way
  - (2) 23 feet wide for two way
- e. 60 degree parking maneuvering areas shall be at least
  - (1) 18 feet wide for one-way
  - (2) 23 feet wide for two way
- f. Accessway aisles shall be at least
  - (1) 13 feet wide for one-way
  - (2) 23 feet wide for two way

18. Additional design criteria

Minimum off-street parking and loading requirements shall conform to the Village Code relating to parking and loading requirements. Except for one-way drives and access ramps on single lot sites developed under ~~in~~ the PRD standards in Section 8.10(D)(10), the following criteria shall also be considered:

- a. Pedestrian circulation facilities, roadways, driveways, and off-street parking and loading areas shall be designed to be safe and convenient.
- b. Parking and loading areas, aisles, pedestrian walks, landscaping, and open space shall be designed as integral parts of an overall development plan and shall be properly related to existing and proposed buildings.
- c. Buildings, parking and loading areas, landscaping, and open spaces shall be designed so that pedestrians moving from parking areas to buildings and between buildings are not unreasonably exposed to vehicular traffic.
- d. Landscaped, paved and gradually inclined or flat pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas, and adjacent buildings. Pedestrian walks should be designed to discourage incursions into landscaped areas except at designate crossings.
- e. Except for single-family and two-family residences, each off-street parking space shall open directly onto an aisle or driveway that is not a public street.
- f. Aisles and driveways shall not be used for parking vehicles, (except that the driveway of a single-family or two-family residence shall be counted as a parking space for the dwelling unit) or as a number of parking spaces as determined by the Planning and Zoning Official, based on the size and accessibility of the driveway.
- g. The design shall be based on a definite logical system of drive lanes to serve the parking and loading spaces.
- h. Parking spaces for all uses, except single-family and two-family residences, shall be designed to permit entry and exit without moving any other motor vehicle.
- i. No parking space shall be located as to block access by emergency vehicles
- j. Compact car spaces should be located no more and no less conveniently than full-size car spaces and shall be grouped in identifiable clusters.
- k. Parking lots and other vehicular use areas are to be designed to be functional and aesthetically enhance neighborhood building, group of buildings, or facility they serve.
- l. Off-street loading areas shall be located where they will not disturb adjacent uses and should not be the visual focal point of a driveway, parking area, adjacent properties, or the right-of-way. This may be accomplished by providing any or a combination of the following: Masonry wall extensions of the building line, opaque landscape screening, berming, and through selective placement or orientation of the loading area.
- m. Developments which include out-parcels shall be designed to provide safe and efficient vehicular and pedestrian circulation within the out-parcel, between the out-parcel and the principle development and off-site. All pedestrian connections should be well marked and lighted.
- n. Sites requiring large areas of surface parking should attempt to distribute parking into smaller areas broken up by intervening areas of landscaping, open space and buildings where ever possible rather than aggregating parking into continuous street facing strips.
- o. Parking areas must provide adequate drainage.
- p. With the exception of temporary parking lots, the landscaped areas of an at-grade

parking lot should be defined with a six-inch curb.

- q. Parking garages and structures shall contain commercial use on the ground floor and architectural detailing so not to appear as a garage on elevations facing the street.
- r. Multiple levels of parking structures should be parallel to grade on waterfront elevations.
- s. Stairways and elevators should be glass enclosed or open clearly visible to the street or other populated areas to prevent vandalism.
- t. Ramps, stairwells and any other portion of the garage should be buffered with the use of decorative grilles and screens.

F. Joint use of required off-street parking spaces

1. Location of spaces

All parking spaces required herein shall be located on the same parcel with the building or use served, except that where an increase in the number of spaces are provided collectively or used jointly by two or more buildings or establishments, the required spaces may be located and maintained not to exceed 300 feet from the use being served.

2. Joint use for theaters, auditoriums, nightclubs, and churches

Up to 50 percent of the parking spaces required for theaters, auditoriums and nightclubs, and up to 100 percent of the parking spaces required for churches may be provided and used jointly by banks, offices, retail stores, repair shops, service establishments and similar uses not normally open, used or operated during the same hours as theaters, auditoriums, nightclubs or churches; however, a written agreement thereto shall be properly executed and filed as specified below.

3. In any case where the required parking spaces are not located on the same lot with the building or use served, or where such spaces are collectively or jointly provided and used, a written agreement thereby assuring their retention for such purposes, approved as to form by the Village Attorney, shall be filed and recorded in the public records of Dade County, Florida.

G. Mechanical parking lifts with valet parking serving legal nonconforming residential development in the RM-70 District. Notwithstanding the above, mechanical parking lifts may be permitted to serve development in the RM-70 district, existing as of January 1, 2017, which is nonconforming to the minimum number of parking space requirements. The lifts serving the development may be located on sites in the RM-70 or RM-40 districts, subject to the distance requirements of this code. A mechanical parking lift is an automated mechanism that lifts vehicles to make space available to park other vehicles below it in a vertical tandem fashion. Parking spaces created by a mechanical parking lift may be counted towards the total number of required parking spaces. Access to both standard and mechanical parking may be provided through the use of vehicle elevators. Mechanical parking may be permitted if it meets the following standards:

1. Mechanical lifts shall be permitted only when operated by an attendant or a licensed and insured valet parking company on a 24-hour/seven-days-a-week basis, to be confirmed by restrictive covenant to be recorded by the owner/applicant prior to establishment of the use. Proof of the valet service contract must be provided to the Village annually. Between the hours of 5:00 am to 1:00 am, a minimum of two valet parking attendants shall be on duty for each parking lot which utilizes mechanical parking lifts. Between the hours of 1:00 am to 5:00 am, a minimum of one valet parking attendant shall be on duty for each parking lot which utilizes mechanical parking lifts.

2. Mechanical lifts must be shielded from view from adjacent properties, either by enclosing the parking with a decorative fence or wall or enclosing the parking in a garage structure. If a decorative fence or wall is employed, it may be located on the perimeter of the property and may exceed the height limits of Section 8.13.F.2 in order to hide the parking lifts from view, to a maximum of 14 feet. Decorative fencing material may not include wood, chain link, wire or cable fencing or fences similar in appearance to any of the foregoing, or any vinyl clad fencing.
3. The mechanical parking lifts, decorative fencing, and any garage structure shall be designed so that the noise or vibration from the operation of the lifts or car elevators shall not be plainly audible to, or felt by, any individual standing outside on property adjacent to the garage structure. Noise and vibration barriers shall be utilized to ensure that surrounding walls or fencing decrease sound and vibration emissions.
4. All mechanical parking lifts and/or car elevators providing access to levels within a garage must be maintained and kept in good working order and must be inspected by a licensed mechanical engineer at least once annually.
5. All free-standing mechanical parking lifts must be designed so that power is required to lift the car, but that no power is required to lower the car, in order to ensure that the lift can be lowered and the top vehicle can be accessed in the event of a power outage.
6. Any building utilizing car elevators to access parking must include an emergency electric generator consistent with the requirements of Section 151.25 of the Village Code, regardless of the height of the building.
7. All mechanical lifts must be designed to prevent lowering of the lift when a vehicle is parked or objects are located below the lift.
8. All mechanical lift components, car elevators, and emergency generators shall be Underwriters Laboratories (UL) approved.
9. All non-mechanical parking spaces in a garage structure must measure at least nine feet in width by 18 feet in depth.
10. The building owner or condominium association must maintain a service contract with the manufacturer or manufacturer-approved service company at all times to ensure continued operation of the lifts and car elevator(s). Proof of the service contract must be provided to the Village annually.
11. The ceiling heights of any garage parking level with parking lifts within a garage shall be a minimum of 11 feet six inches.
12. The parking lift platform must be sealed and of a sufficient width and length to completely cover the bottom of the vehicle on the platform to prevent dripping liquids or debris onto the vehicle below.
13. Either the owner or lessee of a parking lot which utilizes mechanical parking lifts shall carry liability insurance which covers any damage, injury, or accident that could occur within the parking lot.
14. The condominium association shall not lease or sell parking spaces and shall not charge for guest parking.

## **§ 9.4 – Off-street loading and unloading requirements**

### **A. General requirements**



1. Off-street loading facilities required

At the time of the erection of any multifamily residential or nonresidential use or at the time any such use is altered, enlarged, or increased in capacity by adding dwelling units or floor area, there shall be space provided and maintained for the loading and unloading of materials, goods, or supplies, and for delivery and shipping so that vehicles for these services may use this space without encroaching on or interfering with the public use of streets, parking facilities, and alleys by pedestrians and other vehicles.

2. Continued provision of required loading facilities

No owner or operator of any such structure or use shall discontinue, dispense with, or cause a discontinuance or reduction in required loading facilities required herein and existing at the time of construction, use, or occupancy without establishing alternate loading facilities which meet the requirements of this subchapter.

3. Modernization, alteration, conversion, or enlargement of structure or use

When any such structure or use is modernized, altered, converted, or enlarged with a resultant increase in floor area, additional off-street loading spaces that may be required shall be provided, and a revised site plan shall be submitted for review and approval.

4. Restrictions

No areas supplied to meet required off-street parking facilities shall be utilized for or deemed to meet the requirements for off-street loading facilities.

B. Number of loading spaces required

1. Retail, personal service, restaurant or wholesale operation

<b>Gross Floor Area (sq ft)</b>	<b>Spaces Required</b>
Under 10,000	0
10,000-20,000	1
20,000-40,000	2
40,000-60,000	3
Over 60,000	4

2. Multifamily residential, hotel/motel, office, hospital, spa, place of public assembly or similar use

<b>Gross Floor Area (sq ft)</b>	<b>Spaces Required</b>
Under 25,000	0
25,000-50,000	1
50,000-100,000	2
Over 100,000	3

C. Design standards

1. Space Dimensions

An off-street loading space shall include an area of at least 12-feet wide by 30-feet long with 14½ feet vertical clearance. Each off-street loading space shall be easily accessible and arranged for convenient and safe ingress and egress by motor truck or trailer combination.

2. Paving and drainage

Proposed grading and drainage for off-street loading facilities shall be approved by the Village. All loading areas shall be surfaced with a minimum of a rolled six-inch rock base and a one-inch durable weatherproof asphaltic pavement. Loading areas shall be maintained in a manner so as to not create a hazard or nuisance.

D. Joint usage

Combined or joint off-street loading spaces for two or more uses may be collectively provided if off-street loading facilities are equal in size and capacity to the combined requirements of the several uses and are so located and arranged as to be usable by all.

### **DIVISION 3, LIMITATIONS OF THE USE OF ON-STREET AND OFF-STREET PARKING AREAS**

#### **§ 9.5 – In residential zoning districts**

A. Storage, sales or repair of merchandise or vehicles; display of signs or advertising devices; and storage or parking of commercial vehicles prohibited

The storage, sale or repair of merchandise or vehicles or the display of signs or advertising devices on vehicles, structures or land, and the storage and parking of commercial vehicles as defined in subparagraph (2)(a), shall not be permitted in any off-street residential parking areas. This provision shall not prohibit persons from parking vehicles in such areas that contain information that is required by any applicable laws, ordinances or regulations, if such information is provided only to the extent and in the manner required by such laws, ordinances or regulations, nor shall it prohibit the storage or parking of such commercial vehicles in such areas when such vehicles are owned or controlled by a resident of the appurtenant building and where such vehicles nor any part of them are not visible from the public right-of-way.

B. Limits on duration and time of parking of commercial vehicles

Except as herein provided, in any residential district, it shall be unlawful to park any commercial vehicle for a period of time in excess of two hours between 7:00 a.m. and 6:00 p.m. or at any time between 6:00 p.m. and 7:00 a.m.

The term "commercial vehicle," as herein used, shall mean a motor vehicle of one-ton capacity or more or a motor vehicle or trailer of any size or capacity which is used in commerce. A motor vehicle shall be conclusively presumed to be used in commerce if the vehicle bears a sign, insignia, trademark, tradename or business designation of any nature, wherever the same may be located on the vehicle; or the vehicle is used for the transportation of persons or property for compensation. A motor vehicle will be presumed to be used in commerce if, upon visual inspection, it contains equipment and other personal property regularly, normally and ordinarily used in commerce business or trade, such as, for example, construction tools and equipment, commercial lawn mowers, tractors, ladders, paint, auto mechanics' tools, such as hydraulic jacks, tire changing equipment and towing equipment. Such presumption shall be subject to rebuttal by competent evidence.

C. Exceptions to Section 9.5B

The fact that a motor vehicle used in commerce as above-described is designed for private use or is only used commercially on a part-time basis shall not abrogate or reduce the presumption of use

in commerce. Provided, however, that the placement of a temporary (magnetic or otherwise) cover over the sign, insignia, trademark, trade name or business designation shall cause the vehicle to be in compliance.

The foregoing prohibition shall not apply to vehicles used by licensed contractors or service establishments actually doing work on the premises reasonably proximate to the location where parked, nor to vehicles of less than one ton capacity containing federal, state or local government insignia.

#### **§ 9.6 – In all zoning districts**

##### **A. Limitations on parking truck tractors, semitrailers, tandem trailer trucks and special mobile equipment**

No truck tractor, semitrailer, tandem trailer truck or special mobile equipment as hereafter defined shall be parked or permitted on any parcel of land in any district zoned Parks or General Commercial ("GC") except for purposes of loading or unloading and except as provided elsewhere in this ULDC..

##### **B. Definitions**

The following terms shall have the following respective meanings:

1. Truck tractor. Any motor vehicle designed and used primarily for drawing other vehicles and not so constructed to carry a load other than a part of the weight of the vehicle and load so drawn.
2. Semitrailer. Any vehicle with or without motive power other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its rests upon or is carried by another vehicle.
3. Tandem trailer truck. Any combination of a truck tractor, semitrailer and trailer coupled together so as to operate as a complete unit.
4. Special mobile equipment. Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditch digging apparatus, well boring apparatus and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels or other vehicles designed for the transportation of persons or property to which machinery has been attached.

##### **C. Violations**

Any person who parks, or permits parking of a truck tractor, semitrailer, tandem trailer truck or special mobile equipment in violation of **this** section shall be guilty of a civil infraction and subject to the procedures and penalties prescribed in **Chapter 153**.

#### **DIVISION 4, LANDSCAPING (Refer to Ch. 18A, Miami-Dade Landscaping Code)**

#### **§ 9.7 – Landscaping guidelines**

##### **A. Landscaping should compliment the old Florida/Maritime theme, using native plant materials and**

street furnishings that carry the theme, and provide continuity throughout the district. In addition, public safety will be a priority using the principles of CPTED (crime prevention through environmental design) to create high visibility areas and natural access control.

- B. With regards to landscape design for both new construction and existing buildings, the following should apply:
1. Landscaping should compliment and enhance the overall architectural and design theme of the property, but not overpower it.
  2. Rhythm should be maintained along public streets through the uniform placement of trees.
  3. Blank walls greater than 25 feet in length and other unattractive areas of a site or building should be heavily screened with landscaping. Rooflines or storefronts of 25 feet or greater shall be broken by vertical landscaping materials. Shade and accent trees planted at 20-foot intervals shall be required to achieve this screening.
  4. Large parking areas and driveways shall be heavily landscaped along the perimeter and with interior and terminal islands.
  5. Landscape design should utilize the CPTED principles of natural surveillance, natural access control and territorial reinforcement.
  6. The use of native trees, shrubs and ground covers is encouraged to be incorporated into the landscaping around proposed developments. Local flora will be maintained as part of the built environment and the demand on our local water resources will be minimized.
  7. The placement and design of landscaping shall maximize visibility to provide natural surveillance.
  8. Landscape design shall incorporate with design of other physical features, such as sidewalk, pavements, lighting and fences; to emphasize public entrances, define and reinforce ownership of property.
  9. Tree and palm heights and spread shall allow sufficient visibility, not completely block views of/from doors, windows, and streets.
  10. Shrubs and ground cover shall be planted along public rights-of-way or around parking, and public open areas.
  11. Landscape design will utilize principles of xeriscape landscaping, while retaining the tropical beach resort atmosphere.
  12. Landscape plans must be drawn, signed and sealed by a Florida registered architect or landscape architect.
  13. In addition to the design standards, all landscaping shall meet the standards of the Miami-Dade Landscape Code (Ch. 18A).
  14. Landscaping in 15-foot line of site triangle at intersections of rights-of-way and at driveways shall conform to height clearances of bushes and trees, and maximum tree calipers in accordance with the Village Code.
- C. Ornamental trees or palms should be placed in front of buildings in such a manner as to provide visual transparency. Shade trees and palms shall be used adjacent to open spaces, parking lots, and residential streets. Planting areas shall be designed with multi-layers of plant material including shrubs and ground covers.

## **§ 9.8 – Landscaping and open space in commercial districts**

Trees improve air quality, reduce storm water runoff, provide cooling effects for the urban heat island, increase property values, and create urban wildlife habitat. They can greatly increase the quality of life in a community. For the purposes of developing a consistent landscape theme within the Village, designated street trees and recommended landscape technique are provided in this section.

- A. Trees shall be provided along streets.
- B. Provide a minimum of five-foot by five-foot by three and one-half-foot deep tree wells in existing or new sidewalks, provided there is a minimum 36-inch clear area in front of the tree to permit passing in compliance with ADA requirements. Trees may also be located in islands created in the parking zone.
- C. Consider the use of continuous street tree trenches to provide maximum soil area for roots to spread, and water and air to penetrate.
- D. Allow sufficient room for tree canopies to grow and develop without conflict to other building elements and overhead utilities.
- E. Install irrigation systems to provide adequate water to establish and maintain trees.
- F. In high pedestrian areas, install tree guards to protect the trunks from damage.
- G. Select trees that are adapted to the harsh conditions of a dense urban environment.
- H. Trees shall not be placed near overhead utility lines and shall conform to FPL requirements in terms of clearance and recommended tree species.

## § 9.9 – Plant categories

Proposed landscape plans for development or redevelopment shall incorporate the following information into the plant list and summary:

<b>Salt Tolerance</b>	
High	Plants are highly resistant to salt drift and can be used in exposed environments.
Moderate	Plants tolerate some salt spray, but grow best when protected by buildings, fences, or plantings of salt tolerant species.
Low	Plants have poor salt tolerance and always should be used well back of exposed areas and be protected by buildings, fences, or more salt tolerant species.
None	Plants have extremely low to no salt tolerance and should not be used near exposed areas even if protected.
<b>Light Requirements:</b>	
FS	Full Sun; these conditions are generally required for maximum growth and flowering and are met in southern locations in the landscape.
FS-PS	Full Sun - Partial Shade; plants within this category are adaptable to a range of light conditions. Full sun should be provided, but filtered sun through overhead canopy trees is adequate. Eastern, western and southern locations provide these conditions.
FS-DS	Full Sun - Dense Shade; plants that are quite adaptable to varied light conditions and will grow well in any location in the landscape.

PS-DS	Partial Shade - Dense Shade; plants that require shaded conditions for best growth. These conditions are provided under overhead canopy trees and in northern locations of the landscape.
<b>Foliage</b>	
E	Evergreen
D	Deciduous
SEV	Semi-Evergreen

#### **§ 9.10 – Tree removal and relocation**

- A. Before the Village issues a tree removal permit that allows the replacement of any tree, the applicant must demonstrate that relocation is not a viable alternative. Relocation shall occur either within the site or off-site with the concurrence of the Village where the site is public property. If any tree is to be relocated either on-site or off-site, a relocation plan shall be submitted in accordance with chapter 100 of the Village Code.
- B. Methods for relocation. The following guidelines shall be utilized to ensure successful transplanting of trees:
  1. Any tree being relocated shall not be unnecessarily damaged during removal, transport or replanting of that tree.
  2. If the trees have a dormant period, they should be transplanted during that time. Trees should not be transplanted during periods of strong, dry winter winds or during droughts.
  3. Provide adequate space for root and crown development.
  4. Trees shall be root and canopy pruned according to sound arboricultural standards prior to transplanting.
  5. During and following transplanting, the root ball and trunk shall be protected. The root ball must be kept moist at all times.

### **DIVISION 5, DESIGN STANDARDS FOR COASTAL SITES**

#### **§ 9.11 – Dade County Shoreline Development Review**

- A. All development directly abutting North Bay Village's shoreline, except single-family and duplex development, is subject to the requirements of the Miami-Dade County Shoreline Development Review (Ordinance 85-14) which includes standards for setbacks and visual corridors.
- B. An applicant requesting development within the shoreline development review boundary shall obtain approval from the Miami-Dade County Shoreline Development Review Committee, prior to issuance of a building permit by North Bay Village.
- C. Applications for shoreline development review are obtained from and submitted to the Miami-Dade County Development Impact Committee Department by the applicant. Prior to applying for shoreline development review, approval for construction or structural alteration of any dock, pier, piling, seawall, or any similar structure in or over the waters in the corporate limits of the Village, Village Commission approval shall be required. Prior to applying for shoreline development review for construction of any marina, approval from both the planning and zoning board and Village Commission shall be required.

## **§ 9.12 – Coastal Construction within Biscayne Bay (North Bay Village Approval)**

### **A. Definitions**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning. These definitions shall be in addition to the definitions contained in Section 327.02, Florida Statutes.

*Dock.* Any fixed or floating structure for securing boats, loading or unloading persons or property, or providing access to the water, and includes the term "pier," "wharf," "float" or any other landing facility.

*Docking site.* Any "slip," "berth," or space to accommodate a single boat, vessel, or houseboat.

*Dolphin or mooring.* Any appliance used to secure a boat or other vessel, other than to a pier, which is not carried aboard the boat or vessel as regular equipment when underway.

*Houseboat or floating home.* Any vessel in fact used or designed primarily to be occupied as living quarters and for any business or occupation whatsoever, or for any private or social club of whatsoever nature, including the use thereof for the entertainment or recreation of guests or tenants while same is moored or docked within the corporate limits of the Village, whether the vessel is self-propelled or not.

*Marina.* Any area within the Village where one or more sites or locations are rented or offered for rent for the location or dockage of boats, vessels, or houseboats on land or in water, or to be used for living quarters either permanently or on a temporary basis.

*Riparian right-of-way.* The water immediately adjacent to any real property located within the Village limits.

*Utility hook-up.* Any connection between the waterfront property or docks and piers appurtenant thereto located within the riparian right-of-way and any boat, vessel, or houseboat provided to conduct water, electricity, cable, telephone service, gas, or other utility or sewerage to or from the boat, vessel, or houseboat.

*Village Manager.* For purposes of this chapter, "Village Manager" means the Village Manager or authorized designee.

*Waters of the Village.* All waters within the corporate limits of North Bay Village, whether immediately tangent to one of the islands or a part of Biscayne Bay.

### **B. Construction and Structural Alteration**

1. No person, firm, or corporation shall construct any docks, piers, dolphins, wharfs, pilings, boat lifts, or similar structures of any kind more than 25 feet perpendicular from the seawall or shoreline into any waterway within the corporate limits of the Village without first-obtaining a waiver from the Village Commission after a public hearing. However, the furthestmost distance seaward from the seawall or shoreline shall not exceed 75 feet including all dolphins or pilings installed beyond the seaward most line of the dock or pier but not including required rip-rap.
2. No dock, pier, wharf, dolphin, piling, or similar structure shall be erected in the Village unless the structure is set back at least 7½ feet from the lot line on each side.
3. No person, firm, or corporation shall build, extend, or make any structural alteration on any building, dock, pier, dolphin, wharf, piling, bulkhead, seawall, or similar structure within the corporate limits of the Village, or do any filling, excavating, or dredging in the waters without

first obtaining a building permit to do so from the Village Building Department.

4. Application for any permit or the transfer of any permit required by this section shall be made to the Village Building Department in writing on forms provided therefore. The permit shall constitute an agreement by the applicant to comply with all conditions imposed upon granting of the permit. The application shall be accompanied by plans and specifications setting forth in detail the work to be done.
5. Permits for seawalls and dock structures can be approved administratively and do not require a hearing or approval of the Village Commission if:
  - a. All proposed dock structures, including but not limited to boat lifts and mooring piles, are not placed more than 25 feet measured perpendicular from the seawall.
  - b. All proposed dock structures, including but not limited to boat lifts and mooring piles, are entirely within the D-5 triangle as described in Section D5 of the Miami-Dade Public Works Manual.
6. Applications for docks, boat lift, mooring piles or other similar structures that do not meet the administrative approval criteria of Section 6 above shall be heard by the Village Commission at a public hearing. If an applicant seeks a dock or pier length greater than 25 feet measured perpendicular from the seawall (including boat lifts, mooring piles or other structures), the Village Commission shall consider the following criteria to determine if a distance waiver shall be granted:
  - a. If the Applicant has provided to the Village notarized letter(s) of consent from adjoining riparian property owners, and
  - b. If the Village has received any letter(s) of objection from adjoining riparian property owners; and
  - c. Any other factors relevant to the specific site.
7. The Village Commission may deny, approve, or modify the request and/or impose conditions in the permit, or granting of a distance waiver, which it deems necessary to protect the waterways of the Village in accordance with the public safety and the general welfare. The requirement of approval by the Village Commission shall not include applications for repair of existing structures.
8. A public hearing held pursuant to this Section shall be quasi-judicial.
9. Repair or reconstruction of existing structures shall not require approval of the Village Commission but may be approved administratively. However, the provisions of subsections 4 and 5 above shall be complied with.
10. A safety light shall be placed on the part of the structure (either dock, mooring pile, or boat lift) which is furthest from the seawall. The light shall be illuminated from one half hour prior to sunset to one half hour after sunrise.

#### C. Seawall Maintenance and Enforcement

1. It shall be unlawful for any person or entity owning real property abutting the waterways to allow the seawall to be or remain in a state of disrepair.
2. Upon learning that any seawall is in a defective or dangerous condition or is in a state of disrepair, the Village Manager shall so notify the property owner or other person(s) having charge of the seawall to immediately repair the seawalls in whatever manner necessary to ensure it meets all applicable regulations governing the same. If such person(s) or entity fail(s) or neglect(s) to make such repairs, the Village Manager shall take whatever action is



necessary for the protection of the public, including the hiring of contractors to repair the seawall; charging the cost of such repairs to the property owner or other person(s) having charge of the property; and it shall be a violation of this chapter for any person to interfere with such actions.

3. If any seawall, or any portion thereof, or any material from such seawall, shall fall into the waters of North Bay Village, it shall be the duty of the owner or other person(s) or entity having charge of the property, to forthwith remove the same from the waters of the Village. If they shall fail to do so, the Village Manager may do so or hire the appropriate individual or entity to do so; and the cost thereof shall be recovered from the property owner or other person(s) or entity having charge of the seawall as provided in this chapter.
4. All costs for services, charges, work or fines incurred by North Bay Village in connection with its action to ensure the protection of the public through repair of any seawall or as a result of violations of this chapter shall constitute and are hereby imposed as liens against the real property aforesaid and, until fully paid and discharged, shall be imposed as special assessment liens against the subject real property. Such liens shall remain equal in rank and dignity with the lien of ad valorem taxes and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved. The maximum rate of interest allowable by law shall accrue to such costs for services, charges, work or fines incurred by North Bay Village. Unpaid costs for services, charges, work or fines incurred by North Bay Village, together with all penalties imposed thereon, shall remain and shall constitute liens against the real property involved. Such liens for costs for services, charges, work or fines incurred by North Bay Village shall be enforced by any of the methods provided in North Bay Village Code of Ordinances; or in the alternative foreclosure proceedings may be instituted and prosecuted under the provisions applicable to practice, pleading and procedure for the foreclosure of mortgages on real estate set forth in state law, or may be foreclosed per Chapter 173, Florida Statutes or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The property owner and/or operator shall pay all costs of collection of fees, including attorney fees and court costs, service charges, penalties and liens imposed by virtue of this chapter.

#### D. Operation of docks in single family zoning districts

1. No person, firm, or corporation shall be permitted to lease or use any boat, vessel, or houseboat for living quarters, or to otherwise occupy same, on a permanent basis in any area of the Village zoned RS-1, and RS-2. Owners of private docks in those zoned areas will be permitted "utility hook-ups" to one boat from any dock which may be erected upon the riparian right-of-way abutting their property.
2. The renting of such docks or dock bases, moorings, dolphins or seawalls, and the rental of boats or any portion thereof, for any purpose whatsoever, shall be specifically prohibited in areas of the Village zoned RS-1 and RS-2 and, further, residing on boats within the Village limits is prohibited, except where the docks constitute a part of a marina, a yacht club, hotel, or motel.
3. No docks, dockheads, moorings, dolphins, seawalls or other docking facility shall be used for the docking or storage of any vessel, barge or similar boat used for transport or storage of goods, materials, or debris of any kind unless such vessel, barge or boat has a Boat Mooring Permit pursuant to [Section 150.16\(A\)](#) and such goods and materials: 1) are being utilized for construction on the adjacent upland property, or 2) are being loaded or unloaded to the adjacent upland property.

#### E. Application procedure for Marinas

All marina plans shall be approved by the U.S. Corps of Engineers, state internal improvement board, Village Engineer, building official, Village Manager, the planning and zoning board, and Dade County DERM, prior to being submitted to the Village Commission for its approval. Marina is defined as any area within the Village where one or more sites or locations are rented or offered for rent for the location or dockage of boats, or vessels, or houseboats on land or on water. There are two classifications for marinas:

1. Ancillary. A secondary operation to the primary function of a hotel, apartment, condominium, or club which permits the use of the facilities exclusively to the tenants residents, or guests of the hotel or club
2. Business. Any marina not included in the foregoing definition of "ancillary."

F. Design guidelines for Marinas

1. Each space intended for a vessel must be provided with an anti-backflow valve, a sewer connection and proper equipment to reach the Village sewer line, and a permanent supply of electricity.
2. Each boat berth or docking site must provide one automobile parking space.
3. Before any license shall be issued or renewed for any line or pipe carrying inflammable fuel or other fluid, the Village Engineer must examine and approve the facilities.

## **DIVISION 6, OTHER DESIGN GUIDELINES**

### **§ 9.13 – Building and site design relationships shall conform to the following standards.**

- A. Buildings or structures located along strips of land or on single sites and not part of a unified multi-building complex shall strive to achieve visual harmony with the surroundings.
- B. Retail or office establishments, which are located on corners, are recommended to place windows on each wall that faces a street, parking area or driveways.
- C. In the case of buildings with multiple storefronts and shopping centers with out-parcel development, facade treatment shall be coordinated. Such facade treatments include: building colors, windows, storefronts, signage and awnings.
- D. All vending machines, any facility dispensing merchandise, or a service on private property shall be confined to a space built into the building or buildings, or enclosed in a separate structure compatible with the main building.
- E. When garage structures are provided, such shall be designed to incorporate a decorative grid treatment into the structure's facade at ground level.
- F. Storefronts shall have easily identifiable entrances.
- G. Window displays shall be done in such a manner as to capture the pedestrian's attention, establishing a positive and professional image for the business, and informing the potential customers of the merchandise.
- H. "Take out" or "pick up" windows for retail or other establishments shall not be located on a building facade that faces a public right-of-way, unless they are designed in such a manner as to be an aesthetic asset to the building and neighborhood.
- I. Roof-mounted mechanical equipment and elevator shafts shall be screened by a parapet wall or grills and shall be painted in muted colors or match the building and shall not be visible from the street.

- J. All service bays, mechanical (HVAC) equipment and delivery areas shall be located away from and not visible from the streets, waterways, sidewalks and adjacent properties.
- K. Service bays, ground-mounted air conditioning units and other mechanical equipment shall be buffered and completely screened from public and on-site pedestrian view.
- L. Exterior service bays and delivery areas shall not be used for the storage of vehicles or materials.
- M. The sale, dismantling or servicing of any vehicles, equipment, materials, or supplies shall not take place within the service area or delivery area.
- N. Driveways and loading spaces associated with exterior service bays shall be so that vehicles using the space do not hinder the use of traffic lanes, streets, or adjacent properties.
- O. Pre-fabricated homes are prohibited in new construction.
- P. Fences shall be made of wrought iron or aluminum bars with intermittent posts. Masonry walls are also permitted, with 40 percent of the wall opaque. Chain link fences and privacy wood fences are prohibited along the Corridors. Sharp projections, barbed wire or other hazardous materials are not permitted as any part of a fence or wall. Wrought iron and aluminum bar fences shall be either black, white or match the color of the building. Masonry walls shall match the building color or reflect Florida coastal themes. Color shall be muted tones.
- Q. Temporary construction shall be enclosed by black vinyl coated chain-link fences. Construction walls/fences are encouraged to contain art work and graphics. Commercial advertisements are prohibited.
- R. Reflective/mirrored glass shall be discouraged.
- S. Buildings shall not have unfinished surfaces visible to the public.

#### **§ 9.14 – New construction.**

Buildings should have a recognizable entrance facing the public street.

- A. Design and location of balconies should reinforce the building form.
- B. All projects should consider the overall form, and detail of the building. Box buildings are discouraged.

#### **§ 9.15 – Site design relationships.**

The coordination of facade components establish an identity for an office building, industrial building or shopping plaza. Therefore, for all unified developments and shopping centers including principal buildings and out parcel development, all buildings and signage shall demonstrate compatibility in materials and consistency in style throughout all exterior elevations. The following standards shall apply to all new and substantial development. Buildings and signage shall demonstrate the following:

- A. Compatibility with adjacent land uses in terms of scale and lot coverage.
- B. Utilize color schemes that blend with those of neighboring developments, as well as consistency in color schemes for the site. Accent colors and materials shall be chosen to enhance architectural detail.
- C. In the case of buildings with multiple storefronts and shopping centers with out-parcel development, facade treatment shall be coordinated and have like details. Such facade treatments include: building colors, building, floors, storefront, signage, awnings, roof materials, and roof pitch.
- D. Building signs shall be designed as integral architectural elements with proportions related to the

surfaces to which they are attached.

#### **§ 9.16 – Balcony enclosures.**

This section refers to the prohibition of the enclosure of a balcony on a residential building as follows:

- A. The enclosure substantially alters the architectural pattern of the building.
- B. The enclosure does not match wall and window designs.
- C. The enclosure may result in serious structural and/or water damage.
- D. The enclosure does not front on a public street.
- E. Reserved.
- F. The enclosure may not alter the Floor Area Ratio (FAR).
- G. Applications for enclosures shall meet all Building and Village Code standards.

#### **§ 9.17 – Shutters.**

- A. Roll up or accordion shutters are permitted on ground floor fronting a public street when constructed of a see through, non-solid grate material. The casing for the grilles should be painted to match the building.
- B. Roll up or accordion shutters are permitted on upper floors if all match in building.
- C. Shutters shall not be used to enclose balconies.

#### **§ 9.18 – Bayview.**

- A. Buildings should provide view/light/breeze corridors to the bay.
- B. Building pedestal should not form continuous sheer wall along the bay. Decorative surfaces, multi-level decks, berming and sufficient setbacks shall reduce the impact of the pedestal.
- C. Buildings should be designed with distinctive form. Stepped form and distinctive roof lines create a more interesting skyline and increase building recognition.
- D. Pool decks should include landscaping to provide shade and tropical image.
- E. All **bayfront** projects **in the RM-70 and CG districts** shall provide bay walkways along the rear of the property, which can be connected to other properties.

#### **§ 9.19 – Color palette.**

- A. The Village supports a building color criteria for all buildings and accessory structures. The design of these guidelines is to enhance the appearance of development within the Village, which will improve and/or maintain property values for all Village residents and property owners.
- B. Colors for buildings should be expressed as follows:
  - 1. Base building colors - Primary building walls. This color category relates to the main area of walls on the building. Recommended colors include whites through soft pastel colors such as grays, pinks, yellows, greens and blues. Other colors may include deeper but muted indigenous earthen or indigenous colors such as beiges, clays, light gold, and terracotta.

2. Secondary building colors - Larger "trim" areas such as a lower building base, building design details, or accent trim around windows and doors. These colors are used for larger trim areas of the building and are limited to mid-range intensity of the base building or complementary color. Secondary colors shall be limited to 25 percent of the major surface plane they are used upon.
3. Trim colors - Small area of color such as decorative trim along rooflines, and areas around windows, doors, frames, and signage. Trim colors are used for accent purposes and are the most intensive group of colors allowed. They shall be limited to not more than five percent of the building surface. These trim colors are usually darker and more intense than other colors. Dark blues, greens and even reds are appropriate. Light colors for trim, including whites and beiges are encouraged.

## **§ 9.20 – Commercial specific color palette.**

Color should be chosen to add to the retail environment of these buildings. More latitude will be given to retail color use than is given to other buildings within the Village (residential neighborhoods). The use of color to attract attention to a business (using the building or wall colors as a sign) from a distance is prohibited.

This color category relates to the main area of walls on the building. Recommended colors include whites through soft pastel colors such as grays, pinks, yellows, greens, and blues. Other colors may include deeper but muted indigenous earthen or indigenous colors such as beiges, clays, light gold, and terra cotta.

- A. Secondary building colors. These colors are used for larger trim areas of the building and are limited to mid-range intensity of the base building or complementary color. Secondary colors shall be limited to 50 percent of the major surface plane they are used upon. Colors that are associated with a business identity also fall into this category provided they are not overly intensive. Base and secondary colors are interchangeable in proportion and hue.
- B. Trim colors. Trim colors are used for accent purposes and are the most intensive group of colors allowed. In addition to business identifying colors, it is encouraged that trim colors be chosen from the "natural palette" of South Florida. These colors include greens, blues, yellows and others that are found in the regions lush landscape, and natural features. These colors shall be limited to five percent of any single wall area.

## **§ 9.21 – Exterior Lighting.**

- A. Parking lot fixtures are to be selected not only for their functional value, but also for their aesthetic qualities. They are to be considered furniture of the parking lot visible both day and night. Light fixtures used in the district shall be decorative for new development or redevelopment within public view and are encouraged throughout the development. The decorative fixtures shall be of a style that compliments the development. Cobra heads are prohibited within a development. Shoe box units may be used but are discouraged at entrances and exits.
- B. Parking area lighting should compliment the lighting of adjacent streets and properties, and should use consistent fixtures, source colors and illumination levels.
- C. Light fixtures in parking lots must be a maximum height of 20 feet.
- D. Poles should be placed to provide a unified, organized appearance throughout the parking area or development and should provide even and uniform light distribution. The use of a greater number of low fixtures in a well-organized pattern is preferred over the use of a minimum number of tall fixtures.

- E. Outdoor storage areas including auto and truck parking and storage should be illuminated from poles similar to those used for parking lot lighting, but at lower illumination levels.
- F. Parking lot and security lighting shall be designed to direct light into the property.
- G. Security lighting should be limited to low-intensity specialty fixtures. The light source should not be visible from the street or adjoining properties. Other wall mounted security lighting is discouraged.
- H. Building lighting should be used to highlight specific architectural features. Lighting of architectural features should be designed with the intent of providing accent and interest or to help identify entry and not to exhibit or advertise buildings or their lots.
- I. Neon is discouraged to border windows or create a false sense of architecture.
- J. The use of neon as an architectural accent is discouraged.
- K. When pedestrian lighting is used in conjunction with street lighting, the pedestrian lighting should be clearly distinguishable from the ambient street lighting to clearly define the pedestrian path of travel.
- L. When adjacent to pedestrian circulation and gathering areas, parking area lighting should not overpower the quality of pedestrian area lighting.
- M. Lighting should be designed to provide even and uniform light distribution without hot spots dark spots or glare. Lighting should be designed to minimize dark areas that could pose a security concern near pedestrian areas. Pedestrian circulation systems should be highlighted by visible light sources that clearly indicate the path of travel ahead.
- N. Placement of fixtures should provide a coordinated and organized appearance that facilitates uniform light levels and works with the placement of sidewalks, landscaping, signage, building entries and other features to contribute to the overall continuity of the streetscape and development.
- O. Accent lighting of landscape areas should be low level and background in appearance.
- P. The color of the light sources shall be consistent throughout the project. High pressure sodium lamps are not permitted.
- Q. Decorative accent lighting of landscape features, at entrances and exits is recommended.

## **§ 9.22 – Access, public rights of way, and utilities.**

Off-site improvements associated with new development or redevelopment shall be subject to the following:

- A. Public use of existing and future rights-of-way should be enhanced through thoughtful vehicular and pedestrian improvements, and good maintenance. Existing public rights-of-way should be used directly to benefit the public.
- B. Off-site improvements shall be consistent with the Village's established specifications for such improvements or be subject to Village Commission approval.
- C. Drainage and disposition of natural and storm water shall be designed to be compatible with existing systems.
- D. New, replacement, or upgraded on-site utilities and other services shall be provided underground. If at all possible, new, replacement or upgraded utilities and other services provided within public right-of-ways must also be placed underground. Where an approved master plan of improvements calls for underground utilities and other services in the right-of-way, the improvements should be consistent with and implement the master plan.

- E. Off-site improvements associated with new development or redevelopment shall be subject to the following:
1. Public use of existing and future rights-of-way should be enhanced through thoughtful vehicular and pedestrian improvements, and good maintenance. Existing public rights-of-way should be used directly to benefit the public.
  2. Off-site improvements shall be consistent with the Village's established specifications for such improvements or be subject to Village Commission approval.
  3. Drainage and disposition of natural and storm water shall be designed to be compatible with existing systems.
  4. New, replacement, or upgraded on-site utilities and other services shall be provided underground. If at all possible, new, replacement or upgraded utilities and other services provided within public right-of-ways must also be placed underground. Where an approved master plan of improvements calls for underground utilities and other services in the right-of-way, the improvements should be consistent with and implement the master plan.

#### **§ 9.23 – Crime prevention through environmental design (CPTED).**

The U.S. Government "Crime Prevention Through Environmental Design Program" (CPTED) incorporates architectural solutions to reduce the opportunity of crime. Elimination of recessed entryways, provision of adequate lighting and proper design of spaces will reduce the possibility of criminal activity.

- A. Building mounted lighting shall be installed on alley frontage and side yards. This is particularly recommended at service/delivery entrances.
- B. Windows in the alleys or sides provide the appearance of natural surveillance and may discourage break-ins. Such windows shall not be blocked up.
- C. See through fences and gates of metal pickets shall be located to discourage uncontrolled access to service/delivery areas.
- D. Hiding places and blind corners shall be eliminated from site/building, where possible.
- E. The concept of natural surveillance, visibility by the public (shoppers, pedestrians, motorists, and/or personnel) shall be incorporated into the design where possible.
- F. Landscaping shall be designed to discourage crime. Tree heights/spread shall allow sufficient visibility, not completely block views of/from doors and windows. Shrubs shall not be planted where they may become hiding places.

### **DIVISION 7, STORMWATER MANAGEMENT**

#### **§ 9.24 – Standards**

The design and performance of all stormwater management systems in North Bay Village at a minimum shall comply with Florida Department of Environmental Protection (FDEP) stormwater rules which requires removal of 80 to 95 percent of stormwater pollutants prior to their discharge into receiving waters. Furthermore, this rule requires treatment by retention or by detention with filtration of the first inch of runoff for sites containing less than 100 acres.

#### **§ 9.25 – Permit Authority and Delegation**

FDEP has delegated the authority to permit stormwater management in South Florida to the South Florida Water Management District which, in turn, has delegated its authority in Dade County to DERM with its more stringent criteria.

#### **§ 9.26 – Design Requirements**

All new development and redevelopment within the Village, and any future repair, maintenance, or rebuilding of the existing system shall at minimum, conform to Dade County DERM regulations. In North Bay Village, DERM requirements to be met are:

- A. Rainfall frequency – Five-year
- B. Flood limit - To crown of street or to within 15 feet of a dwelling or other occupied building, whichever is lower.



## **CHAPTER 10, FLOOD DAMAGE PROTECTION**

### **§ 10.1 – Statutory Authorization, Findings of Fact, Purpose, and Objectives**

#### **A. Statutory authorization**

The legislature of the State of Florida has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Village Commission of North Bay Village, Florida has passed the above-named ordinance.

#### **B. Findings of fact**

1. The flood areas of North Bay Village are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effects of obstructions in flood hazard areas causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damage.

#### **C. Statement of purpose**

Statement of purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural water flows and natural protective barriers which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging and other development which may increase erosion or flood damage; and
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

#### **D. Objectives**

The objectives of this ordinance are:

1. To protect human life and health;
2. To minimize expenditure of public money for flood control;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in floodprone areas;

6. To help maintain a stable tax base by providing for sound use and development of floodprone areas and;
7. To ensure that potential homebuyers are notified that property is in a floodprone area.

## **§ 10.2 – Definitions**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

*Addition (to an existing building)* means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls in new construction.

*Appeal* means a request for a review of the building official's interpretation of any provision of this ordinance or a request for a variance.

*Area of special flood hazard* is the land in the floodprone area within a community subject to a one per cent chance of flooding in any given year.

*Base flood* means the flooding having a one percent chance of being equaled or exceeded in any given year.

*Building* means any structure built for support, shelter, or enclosure for any occupancy or storage.

*Coastal high hazard areas* means the area subject to velocity waters caused by, but not limited to, hurricane wave wash. The area is designated on a FIRM as Zone V1-30, VE or V.

*Development* means any man-made changes to improved or unimproved real estate, including, but not limited to: building or other structure, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.

*Elevated building* means a non-basement building built to have the lowest floor elevated above ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

*Existing construction* means any structure for which the "start of construction" commenced before June 18, 1984 [2].

*Flood hazard boundary map (FHBM)* means an official map of a community, issued by the Federal Emergency Management Agency (FEMA), where the boundaries of the areas of special flood hazard have been defined as Zone A.

*Flood insurance rate map (FIRM)* means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

*Flood insurance study* means the official report provided by FEMA. The report contains flood profiles, as well as the flood boundary map and the water surface elevation of the base flood.

*Floor* means the top surface of an enclosed area in a building, i.e., top of slab in concrete construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking of vehicles.

*Functionally dependent facility* means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking for loading and unloading of

cargo or passengers, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

*Highest adjacent grade* means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the building.

*Historic structure* means any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of the interior;
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - 1. By an approved state program as determined by the Interior, or
  - 2. Directly by the secretary of the interior in states without approved programs.

*Mean sea level* means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For the purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD).

*National Geodetic Vertical Datum (NGVD)* as corrected in 1929, is a vertical control used as a reference for establishing elevations within the floodplain.

*New construction* means any structure for which the "start of construction" commenced after June 18, 1984. The term also includes any subsequent improvements to such structure.

*Start of construction* includes substantial improvement, and means the date the building permit was issued, provided the start of construction, repair, reconstruction, or improvement, including any additions, and means the date the building permit was issued, provided the start of construction, repair, reconstruction, or improvement, including any additions, was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building on a site such as the pouring of slabs or footings, installation of pilings, construction of columns, or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Structure* means a walled and roofed building that is partly above ground.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of market value of the structure before the damage occurred.

*Substantial improvement* means any combination of repairs, construction, alteration, or improvements including any additions to a building taking place during a minimum five-year period in which the cumulative cost equals or exceeds 50 percent of the market value of the building. The market value of

the building should be (1) the appraised value of the building at the start of the initial repair or improvement, or (2) in case of damage, the value of the building prior to the damage occurring. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been identified by the code enforcement official and which are solely necessary to assure safe living conditions.

### **§ 10.3 – General Provisions**

- A. Lands to which this ordinance applies. This ordinance shall apply to all areas within the jurisdiction of North Bay Village.
- B. Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Study, dated November 4, 1987 with accompanying maps and other supporting data, and any revision thereto, are adopted by reference and declared to be a part of this ordinance.
- C. Establishment of development permit. A development permit shall be required in conformance with provisions of this ordinance prior to the commencement of any development activities.
- D. Compliance. No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.
- E. Abrogation and greater restrictions. This ordinance shall not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions.
- F. Interpretation. In the interpretation and application of this ordinance all provisions shall be:
  - 1. Considered as minimum requirements;
  - 2. Liberally construed in favor of the officers and agents of the Village; and
  - 3. Deemed neither to limit nor repeal any other powers granted under state statutes.
- G. Warning and disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Flood heights may be increased by man-made or natural causes. This ordinance shall not create liability on the part of North Bay Village or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully thereunder.
- H. Penalties for violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than 60 days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violations continue shall be considered a separate offense. Nothing herein contained shall prevent North Bay Village from taking such other lawful actions as is necessary to prevent or remedy any violation.

## § 10.4 – Administration

- A. Designation of building official. The building official is hereby appointed to administer and implement the provisions of this ordinance.
- B. Permit procedures. Application for a development permit shall be made to the building official on forms furnished by him or her prior to any development activities, and may include, but not be limited to: the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed earthen fill; storage of materials or equipment; drainage facilities; and the location of the foregoing. Specifically, the following information is required:
  - 1. Application stage
    - a. Elevation in relation to mean sea level of the proposed lowest floor of all buildings.
    - b. Elevation in relation to mean sea level to which any nonresidential building will be flood-proofed.
    - c. Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in Section 10.5(B)(2).
  - 2. Construction stage.
    - a. Provide a floor elevation or flood-proofing certification after the lowest floor is completed, or instances where the building is subject to the regulations applicable to coastal high hazard areas, after placement of the horizontal structural members of the lowest floor. Upon placement of the lowest floor, or flood-proofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the building official a certification of the elevation of the lowest floor, floodproofed elevation, or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level.
    - b. Said certification shall be prepared by or under the supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk.
    - c. The building official shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections hereby, shall be cause to issue a stop-work order for the project.
- C. Duties and responsibilities of the building official. Duties of the building official shall include, but not be limited to:
  - 1. Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
  - 2. Advise permittee that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit.

3. Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved buildings, in accordance with Section 10.4(B)(2).
4. Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved buildings have been flood-proofed, in accordance with Section 10.4(B)(2).
5. When flood-proofing is utilized for a particular building, the building official shall obtain certification from a registered engineer or architect, in accordance with Section 10.5(B)(2).
6. Where interpretations as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the building official shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
7. When base flood elevation data have not been provided in accordance with Section 10.3(B)(2), then the building official shall obtain, review, and reasonably utilize any base flood elevation available from a federal, state, or other source, in order to administer the provisions of Section 10.5.
8. In coastal high hazard areas, certification shall be obtained from registered professional engineer or architect that the building is designed and securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.
9. In coastal high hazard areas, the building official shall review plans for adequacy of break-away walls in accordance with Section 10.5(B)(4)(h).

#### D. Variance requirements

1. The planning and zoning board, as established by North Bay Village, shall hear requests for variances from the requirements of this ordinance, in accordance with the procedures prescribed for requests for amendment, variance, special use exception, or supplement to the regulations in the **Village Code of Ordinances**. The planning and zoning board shall submit its recommendations to the Village Commission for final action on such requests pursuant to procedures therein prescribed, provided, however, that the criteria for granting variances from this ordinance shall be those set forth hereinafter.
2. Conditions and criteria of granting of variances. In considering such applications, the planning and zoning board and Village Commission shall consider all technical evaluations, all relevant factors, all standards specified in other sections of the North Bay Village Land Development Code, and:
  - a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger to life and property due to flooding or erosion damage;
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. The importance of the services provided by the proposed facility to the community;
  - e. The necessity of the facility to a waterfront location, in the case of a functionally dependent facility;
  - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

- g. The compatibility of the proposed use with existing and anticipated development;
  - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, and the effects of wave action, if applicable, expected at the site;
  - k. The costs of providing governmental services during and after the flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges;
  - l. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building;
  - m. Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship, and; (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing laws or ordinance.
  - n. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the building is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
  - o. The building official shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency.
- 3. Variances for historic structures. Variances may be issued for the repair or rehabilitation of historic structures (see definition) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.
  - 4. Upon consideration of the factors listed above, and the purposes of this ordinance, the planning and zoning board and Village Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- E. Appeals. The Village Commission may, after a public hearing, grant relief on appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the interpretation of any portion of these regulations.

## **§ 10.5 – Provisions for flood hazard reduction**

- A. General standards. In all areas of special flood hazard the following provisions are required:
  - 1. New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

2. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  3. New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
  4. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  5. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
  6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
  7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
  8. Any alteration, repair, reconstruction, or improvements to a building which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
  9. Any alteration, repair, reconstruction, or improvements to a building which is not in compliance with the provisions of this ordinance, shall be undertaken only if said nonconformity is not furthered, extended, or replaced.
- B. Specific standards. In all areas of special flood hazard where base flood elevation data have been provided, as set forth in Section 10.3(B), the following provisions are required:
1. Residential construction. New construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with the standards of Section 10.5(B)(3).
  2. Nonresidential construction.
    - a. New construction or substantial improvement of any commercial, industrial, or nonresidential building shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation.
    - b. Buildings located in all A-Zones may be flood-proofed in lieu of being elevated provided that all areas of the building below the required elevation are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 10.4.
  3. Elevated buildings. New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finishing living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.



- a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
    - (1) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - (2) The bottom of all openings shall be no higher than one foot above grade; and
    - (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
  - b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and
  - c. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
4. Coastal high hazard areas (V Zones). Located within the areas of special flood hazard established in Section 10.3(B), are areas designated as coastal high hazard areas. These areas have special flood hazards associated with wave wash, therefore, the following provisions shall apply:
- a. All buildings shall be located five feet landward of the reach of the mean high tide;
  - b. All buildings shall be elevated so that the bottom of the lowest supporting horizontal member (excluding pilings or columns) is located no lower than five feet above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with Section 10.5(B)(4)(h).
  - c. All buildings or structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. Water loading values shall equal or exceed the base flood. Wind loading values shall be in accordance with the South Florida Building Code.
  - d. A registered professional engineer or architect shall certify that the design, specifications, and plans for construction are in compliance with the provisions contained in Section 10.5(B)(4)(b) and 10.4(B)(4)(c).
  - e. There shall be no fill used as structural support. Noncompacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, (thereby rendering the building free from obstruction) prior to generating excessive loading forces, ramping effects, or wave deflection. The building official shall approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist, which demonstrates that the following factors have been fully considered:
    - (1) Particle composition of fill material does not have a tendency for excessive natural compaction;
    - (2) Volume and distribution of fill will not cause wave deflection to adjacent properties; and

(3) Slope of fill will not cause wave run-up or ramping.

- f. There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage;
- g. Lattice work or decorative screening shall be allowed below the base flood elevation provided they are not part of the structural support of the building and are designed so as to breakaway under abnormally high tides or wave action, without damage to structural integrity of the building on which they are to be used and provided the following design specifications are met:
  - (1) No solid walls shall be allowed, and;
  - (2) Material shall consist of lattice or mesh screening only.
- h. If aesthetic lattice work or screening is utilized, such enclosed space shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.
- i. Prior to construction, plans for any buildings that will have lattice work or decorative screening must be submitted to the building official for approval;
- j. Any alteration, repair, reconstruction, or improvement to a structure shall not enclose the space below the lowest floor except with lattice work or decorative screening, as provided for in Section 10.5(B)(4)(h) and 10.5(B)(4)(i).

C. Standards for subdivision proposals.

- 1. All subdivision proposals shall be consistent with the need to minimize flood damage;
- 2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- 3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- 4. Base flood elevation data shall be provided for subdivision proposals and other proposed development.

## CHAPTER 11, SIGNS

### § 11.1 – Purpose

The purpose of these regulations is to create a legal framework for a comprehensive and balanced system of street graphics and signs and thereby to facilitate an easy and aesthetically pleasing communication between the public and their environment. With this purpose in mind, it is the intention of these regulations to authorize the use of street graphics and signs which are compatible with their surroundings; appropriate to the type of activity to which they pertain; expressive of the identity of individual proprietors or of the community as a whole; and legible in the environment in which they are seen.

### § 11.2 – Definitions

For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Sign.* An identification, description, illustration, or device which is affixed to or represented directly or indirectly upon a building, structure, or land and which directs attention to a product, place, activity, person, institution, or business.

*Sign, accessory.* A supplemental sign relating to products or services sold, affiliations, or uses of the premises on which the sign is located (e.g.: credit card affiliations, brand symbols).

*Sign area.* The area of the surface of the sign upon, against, or through which the message is displayed or illustrated on the sign. Such area shall be that total surface of one common sign structure which may be viewed from one direction of approach. Such surface area is exclusive of frame embellishment considered as border and not for the purpose of transmission of message, which additional frame surface shall not be greater than 30 percent of the total gross area. Any symbol, mural background, pole decoration, or illustrative material contributing to the meaning or promotional effect of the message shall be considered as sign surface area. The sign area shall extend to the perimeter of the area of all letters, figures, characters, clocks, thermometers, and temperature or time data devices.

*Sign area, multi-faced.* On any sign with more than one face, the maximum number of advertising surfaces visible from any location will be counted; provided, however, that all advertising surfaces of multi-faced signs shall be equal in size and height on all sides. If faces are different in size and height, each face is counted individually.

*Sign, detached.* A sign not attached to or painted on a building, but which is affixed to the ground. A sign attached to a flat surface such as a fence or wall, not a part of a building, shall be considered a detached sign.

*Sign, directional.* A sign indicating the direction or allocation of some service or facility to use, or indicating an instruction (e.g., "no trespassing").

*Sign, flat.* A sign erected parallel to the face of or erected or painted on the outside wall of any building, and supported throughout its length by wall, cantilever, or marquee projections extending from the wall. The outer edge of a flat sign shall not be further than 18 inches, measured horizontally, from the building wall or extend further than the outside edge of a supporting marquee or cantilever, whichever distance is the larger; nor may the highest point of a flat sign extend more than 12 inches above the highest flat roof, parapet, or eave line.

*Sign, identification.* A sign which indicates the name of a use, owner, activity, business, or enterprise.

*Sign, outdoor advertising display (character).*

*Activated sign.* Any sign which contains or uses for illumination any light, lighting device, or lights which change color, flash or alternate, or change the appearance of the sign or any part thereof automatically (for the purpose of these regulations, a slowly rotating sign, not exceeding ten revolutions per minute, illuminated but not flashing, shall not be considered an "activated sign").

*Animated sign.* Any sign upon which a character, letter, figure, or group or combination thereof, show movement or motion to such an extent as to be readily detected.

*Banner sign.* Any sign possessing characters, letters, illustrations, or ornamentations applied to cloth, paper, or fabric of any kind, either with or without frames.

*Banners, streamers, spinners, and pennants.* Any device, with or without letters or symbols, erected for the purpose of attracting attention to an area or point.

*Beacon light.* Any light with one or more beams capable of being directed in any direction, capable of being revolved automatically, or capable of having any part thereof revolve automatically.

*Double-faced sign.* Any sign which has two display surfaces backed against each other or against the same background, one face of which is designed to be seen from one direction, and the other from the opposite direction.

*Flashing sign.* Any sign in which the electrical lighting device or devices go on and off alternately, either all of such lights or lighting devices or part thereof, or are designed to cause a deliberate intensity change for the purpose of effecting attraction. Signs that alternately display only time and temperature are excluded from this definition.

*Sign, outdoor advertising display (type).* A sign which contains any letter, figure, character, mark, plane, point, marquee, poster, pictorial picture, stroke, stripe, line, trademark, reading matter, or illuminated surface, which shall be so constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever, that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine, or merchandise whatsoever which is displayed in any manner out-of-doors. These shall include, but are not necessarily limited to, the following:

*Combination sign.* Any sign incorporating any combination of the features of ground, projecting, or roof signs.

*Fluorescent painted sign.* Any sign which is wholly or partially composed of letters, symbols, or characters, or the background of which is of fluorescent qualities causing a reflective light to illuminate.

*Ground sign.* Any sign which is supported by uprights or braces in or upon the ground (also referred to as a "pole sign").

*Illuminated sign.* Any sign which has characters, letters, figures, designs, or an outline illuminated by electric lights, LEDs (light emitting diodes) or luminous tubes, whether or not the lights or tubes are a part of the sign proper.

*Marquee sign.* Any sign attached to or hung from a marquee. A "marquee" shall be known to mean a canopy or covered structure projecting from and supported by a building, when such canopy or covered structure extends beyond the building, building line, or property line.

*Nonilluminated sign.* Any sign which is not illuminated by internal or external lights which are designed for such illumination, nor is designed with any special light-reflective surfaces.

*Projection sign.* Any sign other than a wall sign which projects from and is supported by a wall, building, or overhang.

*Projected sign.* Any sign which is affixed to any building wall or structure and extends beyond the building wall, structure, building line, or property line more than 18 inches.

*Real estate sign.* Any structure, device display board, screen, surface, or wall with characters, letters, or illustrations placed thereto, thereon, or thereunder, by any method or means whatsoever, where the matter displayed thereon shall be used solely for the purpose of offering for sale, lease, or rent the exact property on which the sign is placed.

*Roof sign.* Any sign which is fastened to and supported by or on the roof of a building, or which extends more than 12 inches above the highest flat roof, parapet, or eave line of a building.

*Sandwich sign.* Any sign which is either single- or double-faced, is portable, and may readily be moved from place to place.

*Shingle sign.* Any projection or wall sign not more than six square feet in area, constructed of metal or other noncombustible material attached securely to a building.

*Snipe sign.* Any small sign of any material including paper, cardboard, wood, or metal, which is tacked, nailed, or attached in any way to trees or other objects; such sign may or may not apply to the premises.

*Window sign.* Any sign located on or within one foot of the street window surface and which is intended to be viewed from the outside.

*Sign, outdoor advertising display (usage).*

*Changeable copy sign.* Any sign with a permanent, framed surface area principally devoted to and designed for changeable text information pertaining to entertainment, menu, prices, and the like.

*Directory sign.* Any sign which gives the name and/or occupation of the occupants of the building or gives the use of the building including office building directories, church directories, and apartment building directories. When an identification of an entity is placed on a common directory board with identical uniform style and size of letter, such entity shall not be defined as a separate sign, but rather shall be considered as a part of a directory board sign.

*Identification; individual entity.* Any person who is the lessee, owner, or who has a proprietary interest in the business for which the sign is proposed. Each business shall be considered to be an individual entity. Eligibility for identification as an individual entity shall not exist when the lessee is under the same roof and with the same entrance or access or the same lessor or owner; in such case of leased floor space the occupant is not defined as an individual entity. However, eligibility for identification as an individual entity may apply to the lessee if the owner or the lessor makes of record to the Building and Zoning Official a transfer (assignment) of all parts of his computed eligibility to the lessee.

*Informational sign.* Any sign which contains any combination of directory, directional, and/or explanatory information.

*Sign information item.* Any syllable, group of numbers, initial, abbreviation, logo, or pictograph larger than three inches in height, with the official name of an establishment counting a maximum of four items towards the ten permitted information items.

*Outdoor advertising display: off-premises* (commercial advertising). Any sign upon which advertising matter may be painted or upon which posters may be pasted or otherwise secured to the face thereof, advertising goods, services, or other things not sold or available upon the premises upon which the sign is located.

*Outdoor advertising display: premises*. Any sign advertising a product for sale or service to be rendered on the immediate premises where the sign is located.

*Point of purchase sign*. Any structure, device, display board, screen, surface, or wall with characters, letters, or illustrations placed thereto, thereon, or thereunder by any means whatsoever, where the matter displayed is used for advertising a product actually or actively offered for sale thereon or therein.

*Facade*. Any separate face of a building, including parapet walls or any part of a building which encloses or covers usable space.

*Frontage*. That part of the building that faces a public thoroughfare.

*Sign, temporary*. Any sign that is not a permanent sign, and shall include a sign formerly or commonly known as a temporary election sign, a temporary political sign, a temporary free expression sign, a temporary real estate sign, a temporary directional sign, a temporary construction sign, a temporary grand opening sign, or any other temporary sign unless otherwise provided herein. The term "temporary sign" shall not include any substitution of message on an existing lawful sign or sign structure.

*Window sign—permanent*. Any sign visible from the exterior of a building or structure and which is painted, attached, glued or otherwise affixed to a window or depicted upon a card, paper, or other material and placed on, taped on or displayed on a window for the specific purpose of identifying the proprietor or the name of the business to the passerby.

*Window sign—temporary*. Any sign visible from the exterior of a building or structure and which is painted, attached, glued, or otherwise affixed to a window or door or depicted upon a card, paper, or other material and placed on, taped on, or displayed on a window for the specific purpose of attracting attention of the passerby to a sale or to promotional items or other products or services, other than the identity of the proprietor or the name of the business.

### **§ 11.3 – Existing Nonconforming Signs, Removal**

- A. It is the intent of this section to recognize that the eventual elimination of existing signs that are not in conformity with the provisions of these regulations, in as expeditious a manner as is reasonable, is as much a subject of the health, safety, and welfare of the citizens of the Village as is the prohibition of new signs that would violate the provisions of these regulations. It is also the intent of this section that there shall not be any unreasonable invasion of established private property rights.
- B. Any sign which is nonconforming shall adhere to these regulations within five years from [insert date of adoption of this ordinance] or be removed. However, the Village Commission may grant reprieve from this provision if the Village Commission determines that a particular sign has been in existence for at least 20 years and provides historical character to the community.
- C. Any sign, including the supporting structure, now or hereafter existing, which advertises a business no longer conducted, or a product no longer sold, shall be taken down and removed by the owner, agent, or person having the beneficial use of the building, structure, or land upon which the sign may be found. Such removal shall be within 30 days after notification by the Building Official or other official as designated by the Village Manager.
- D. Snipe signs shall be removed immediately.

- E. A nonconforming sign once removed, either voluntarily or involuntarily, shall not be replaced except in conformity with all applicable provision of this ULDC.

## **§ 11.4 – Regulations and Specifications**

### **A. General regulations governing signs**

Signs erected or maintained under the provisions of these regulations are subject to the following requirements:

1. Interference with public.
  - a. The sign must not create a traffic or fire hazard, be dangerous to the general welfare, or interfere with the free use of public streets or sidewalks.
  - b. Safety requirements.
    - (1) No sign shall be erected or maintained at any location in such a manner as to obstruct free and clear vision at the intersection of any streets or other public ways. No sign shall be erected or maintained at any location where, by reason of the position, illumination, shape, or color it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device, nor shall it make use of the words, "STOP," "LOOK," "DANGER," or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse the motoring public.
    - (2) Intensely lighted areas created for the purpose of sales attraction, may be considered to be distractive displays. Such displays may be a hazard to the safe passage of vehicular traffic and divert attention from certain necessary traffic controls or pedestrian crossing zones. Such intensely lighted areas may be prohibited at certain locations by the Police Department and confirmed by the Village Commission.
2. Repair and maintenance. All signs must be kept in good condition, neat appearance, and good state of repair. Any sign more than 50 percent destroyed must be immediately removed at the owner's expense and a new permit secured before the sign is replaced. If a damaged sign is not repaired within 90 days, the sign shall be deemed to constitute a public nuisance and shall be removed at the owner's expense.
3. Avoidance of fire hazard. Weeds shall be kept cut and debris shall be kept clear within a ten-foot area of any sign.
4. Imprint of owner's name. All signs requiring permits shall be marked with the owner's name, date, and number of the permit.
5. Obstruction of doors, windows, and fire escapes. No sign shall be attached to or be placed against a building in such a manner as to prevent ingress or egress through any door or window of any building, nor shall any sign obstruct or be attached to a fire escape.
6. Posting or tacking notices and signs. No person shall paint, paste, print, nail, or fasten in any manner whatsoever, any banner, sign, paper, or any advertisement or notice of any kind, or cause the same to be done, on any curbs tone, pavement, or any other portion or part of any sidewalk or street, or upon any trees, lampposts, parking meter posts, telephone or telegraph poles, hydrants, or workshops, or upon any structure within the limits of any streets within the Village.

7. Removal of signs for right-of-way acquisitions. All signs shall be removed by the owner, at no expense to the Village, when such signs are found to be within the right-of-way of present or future roads. This exception to relocation and permit limitations shall cover only lateral (right angle) relocations to the road right-of-way and shall require a building permit. This statement shall not supersede federal or state statutes and regulations.

**B. Regulations governing specific type signage**

Prohibited sign situations:

1. Signs within or upon public property and rights-of-way.
2. Pole (ground) signs projecting over rights-of-way.
3. Flashing, activated, and animated signs.
4. Pennants, streamers, spinners, advertising balloons and all other fluttering, spinning, or similar type signs and advertising devices.
5. Roof signs.
6. Snipe and sandwich signs.

**§ 11.5 – Sign Permits and Fees**

- A. No sign shall be erected, constructed, posted, painted, altered, maintained, or relocated, except as provided in this subchapter and in these regulations, until a permit has been issued by the Building Official or other official as designated by the Village Manager.
  1. Before any permit is issued, an application, including written approval of the owner of the property, shall be filed, together with five sets of drawings or specifications (one set to be returned to the applicant upon disposition of the application) as may be necessary to fully advise and acquaint the Building Official or other official as designated by the Village Manager with the location, construction materials, manner of illuminating and securing or fastening, number of signs applied for, and the wording of the sign or advertisement to be carried on the sign. For buildings over three stories, the scale shall be  $1/8" = 1' 0"$ . A separate scaled drawing shall be prepared at  $1/2" = 1' 0"$  showing dimensions, sizes, colors, materials, and method of installation.
  2. All signs which are electrically illuminated shall require a separate electrical permit and inspection. All signs shall be erected on or before the expiration of 60 days from the date of issuance of the permit; otherwise, the permit shall become null and void and a new permit shall be required.
- B. The owner and/or tenant of the premises and the owner and/or erector of the sign shall be held responsible for any violation of these regulations. Where a sign has been erected in accordance with these regulations, the sign company shall be relieved of further responsibility under these regulations after final approval of the sign by the Building Official or other official as designated by the Village Manager.
- C. The Building Official or other official as designated by the Village Manager shall remove or cause to be removed any sign erected or maintained in conflict with these regulations if the owner or lessee of either the site or the sign fails to correct the violation within ten days after receiving written notice of the violation. Removal of a sign by the Building Official or other official as designated by the Village Manager shall not affect any proceedings instituted prior to the removal of the sign.



- D. Fees for sign permits shall be in accordance with the schedule adopted by ordinance, a copy of which is maintained in the office of the Building Official or other official as designated by the Village Manager.

### **§ 11.6 – Exempted Signs**

The following signs are exempted from the provisions of these regulations and may be erected or constructed without a permit but in accordance with the structural and safety requirements of the South Florida Building Code and in accordance with Section 11.9.

- A. Official traffic signs or sign structures, and provisional warning signs or sign structures, when erected or required by a government agency.
- B. Changing of the copy of a bulletin board, poster board, display encasement, or marquee.
- C. Temporary signs which meet the criteria of Section 11.7
- D. National flags and flags of political subdivisions of the United States, provided that mounting of the flag adheres to Section 8.13(N).
- E. Signs on a truck, bus, or other vehicle while in use in the normal course of business, provided that no such vehicle with attached signs shall be parked on public or private property for the purpose of advertising a business or firm or calling attention to the location of a business or firm.
- F. In the commercial districts, nonilluminated signs not exceeding 15 square feet in area with letters not exceeding six inches in height which are painted, stamped, perforated, or stitched on the valance area of an awning, canopy or roller curtain. Signs shall be limited to the name of the owner or trade name of the business and the street number of the business.
- G. Signs posted by the Village.

### **§ 11.7 – Temporary Sign Permits**

- A. Scope. Notwithstanding anything to the contrary in the Village's Unified Land Development Code or in any other ordinance or code provision of the Village, the provisions of this section shall govern the regulation of temporary signs, and take precedence over any other provisions that pertain to temporary signs unless specifically exempted or excepted herein.
- B. Purpose and intent. It is the purpose of these sign regulations to promote the public health, safety and general welfare through reasonable, consistent and non-discriminatory standards for temporary signs. The temporary sign regulations are not intended to censor speech or to regulate viewpoints, but instead are intended to regulate the secondary effects of speech, and especially insofar as those secondary effects may adversely affect aesthetics and traffic and pedestrian safety. It is the intent of the Village Commission that the temporary sign regulations shall provide uniform sign criteria which regulate the size, height, number and placement of signs in a manner that is compatible with the character of the Village, and which place the fewest possible restrictions on personal liberties, property rights, commerce, and the free exercise of Constitutional rights while achieving the Village's goal of creating a healthy, safe and attractive environment that does not contain excessive clutter and visual distraction in rights-of-way and adjacent properties, the surrounding natural coastal environment, and residential neighborhoods. These sign regulations have been prepared with the intent of enhancing the visual environment of the Village and promoting its continued well-being, consistent with the most recent pronouncements by the United States Supreme Court regarding the regulation of temporary signage, and are further intended to:

- (1) Encourage the effective use of signs as a means of communication in the Village;
- (2) Maintain and enhance the aesthetic environment and the Village's ability to attract sources of economic development and growth;
- (3) Improve pedestrian and traffic safety;
- (4) Minimize the possible adverse impact of temporary signs on nearby public and private property;
- (5) Lessen the visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, animation, excessive height, and excessive size (area) of temporary signs which compete for the attention of pedestrian and vehicular traffic;
- (6) Allow temporary signs that are compatible with their surroundings, while precluding the placement of temporary signs that contribute to sign clutter or that conceal or obstruct adjacent land uses or signs;
- (7) Encourage and allow temporary signs that are appropriate to the zoning district in which they are located;
- (8) Regulate temporary signs in a manner so as to not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians;
- (9) Preserve, conserve, protect, and enhance the aesthetic quality and scenic beauty of all zoning districts of the Village;
- (10) Protect property values by precluding, to the maximum extent possible, temporary signs that create a nuisance to the occupancy or use of other properties as a result of their size, height, illumination, brightness, or movement; and
- (11) Enable the fair and consistent enforcement of these temporary sign regulations.
- (12) Duration for temporary signs. If a temporary sign pertains to an event, the temporary sign shall be removed no later than seven days after the event is concluded. Political primaries or elections, for the purpose of these sign regulations, shall be treated as an event. If a temporary sign does not pertain to an event, the temporary sign shall be removed within and by no later than thirty (30) days after being erected.
- (13) Permission of owners. A temporary sign shall not be placed on any property without the permission of the property owner.
- (14) Prohibition of lighting. A temporary sign may not display any lighting or illuminations that flash, move, rotate, scintillate, blink, flicker, or vary in intensity or color.
- (15) Exemptions from permitting. A temporary sign does not require a permit from the Village.
- (16) Within each Village zoning district, temporary signs shall conform to the following criteria:

	<b>Single Family Residential RS-1, RS-2</b>	<b>Multi-Family RM-40, RM-70</b>	<b>Commercial CG, CL</b>
Maximum Number of Signs Allowed Per Parcel	3	3	4
Maximum Sign Area	3 sf	12 sf (RM-40) 20 sf (RM-70)	40 sf
Sign Height Maximum for a Freestanding Sign	4 ft	24 ft	24 ft
Sign Height Maximum for a Wall Sign (inclusive of a Window Sign)	15 ft	24 ft	24 ft
Minimum Sign Setback for Ground Signs	2 ft	2 ft	2 ft
Minimum Spacing from any Other Sign (Temporary Sign or a Permanent Sign)	15 ft	15 ft	15 ft
Aggregate Maximum of Surface Area Allocated for All Sign Messages	12 sf	120 sf	160 sf

### **§ 11.8 – Removal of Signs**

Any sign previously associated with a vacated premises shall be removed from the premises by either the owner or lessee not later than 30 days from the time such activity ceases to exist.

### **§ 11.9 – District Sign Regulations**

- A. Single-Family Residential (RS-1, RS-2) Districts. No sign will be allowed in these districts except the following and temporary signs meeting the criteria of Section 11.7 or the exemptions allowed in Section 11.6:

A nameplate (identification sign), not to exceed one square foot in area, nonilluminated, to identify the owner or occupant of the dwelling or building.

- B. Multifamily Residential (RM-40, RM-70) Districts. No sign will be allowed in these districts except the following and temporary signs meeting the criteria of Section 11.7 or the exemptions allowed in Section 11.6:
1. Accessory signs and directional signs, all nonilluminated, and, individually, not to exceed an area of one square foot, except that illuminated fire exit signs, as required by the South Florida Building Code, shall also be permitted.
  2. A nonilluminated, flat or detached identification sign, not to exceed 24 square feet, identifying the name and/or address of a multifamily dwelling, group of multifamily dwellings, or the name of the motel or hotel. In the case of a detached sign, it shall not be located in any required rear or side yard setback area, nor closer than ten feet from the front property line, nor shall any part of the sign be more than ten feet above the ground.

3. Nonilluminated signs not exceeding 15 square feet in area with letters not exceeding six inches in height which are painted, stamped, perforated, or stitched on the valance area of an awning, canopy, roller curtain. Signs shall be limited to the name of the owner and the street number of the building.

C. Commercial (CG) District. No sign will be allowed in this district except the following and temporary signs meeting the criteria of Section 11.7 or the exemptions allowed in Section 11.6:

1. Accessory signs and directional signs, all nonilluminated, and, individually, not to exceed an area of one square foot, except that illuminated fire exit signs, as required by the South Florida Building Code, shall also be permitted.
2. A flat illuminated or nonilluminated sign may be erected on one facade of a building or each portion of a building occupied by a separate commercial or office use, provided the sign does not exceed an area equal to ten percent of the area of the facade upon which it is erected, and for any single establishment user, contains no more than ten sign information items. For calculation purposes, the maximum single building storefront is limited to 75 feet, the maximum storefront 15 feet. In the case of a commercial or office use located on the ground floor of a multistory building, only the first floor facade area shall be used for the purpose of calculating the permissible sign area. Where an establishment fronts on more than one street, the above area of signs may be permitted on each street frontage; however, signs on side frontages will not be permitted if they face a residential area. .
  - a. All adjacent contiguous retail and service establishments located in premises under the same ownership shall be required in lease agreements to maintain all permanent sign lettering and background in the same style and color.
  - b. For existing commercial establishments, facade signage may be increased to 11 percent of the total building facade and a total of 11 sign "items" per establishment may be used when all the lettering and background is uniform in style and color for signs in a shopping center or for any three consecutive separate establishments. Uniform agreements must be made a part of any lease or deed restriction.
3. For properties with bay frontage, an additional attached sign is allowed on the bayside façade not to exceed 10% of the façade area, with lettering not to exceed 100 square feet.
4. A projection sign, placed at an angle of 90 degrees from the building and clearing the sidewalk by eight feet. It shall project no more than four feet from the building or one-third of the sidewalk width, whichever is less, and be spaced no less than 50 feet apart unless displaying symbols only, in which case there is no restriction on proximity.

All adjacent contiguous, retail and service establishments located in premises under the same ownership shall be required in lease agreements to maintain all projection signs, materials, lettering and background in the same style and color.

5. A detached illuminated or non-illuminated sign may be permitted, not to exceed a total area of 100 square feet per side. When a single building on the property consists of two or more different commercial or office occupancies, an additional one square foot of sign area shall be permitted for each six lineal feet of street frontage in excess of 50 feet; however, the total sign area for a building with multiple occupancy shall not exceed 160 square feet in any case, nor may there be more than one detached sign on the property. No part of such detached signs shall be located in the side or rear yards, nor shall any detached sign be located closer than ten feet from the front property line. No detached sign shall exceed a height of 24 feet above the ground.

#### **§ 11.10 – Variances to sign regulations**

There might be instances in which relief from the strict requirements of the sign ordinance would result in improved planning or zoning, and would benefit the community. The standards for granting the planning variance are:

- A. The sign variance must relate to a particular piece of land;
- B. The sign variance can be granted without substantial detriment to the public good;
- C. The benefits of the deviation would outweigh any detriment; and,
- D. The variance would not substantially impair the intent or purpose of the Village's Comprehensive Plan and/or Zoning Ordinance.

## CHAPTER 12, ADULT ENTERTAINMENT

### § 12.1 – Purpose

#### A. Purpose

In the development and enforcement of this section, it is recognized that there are adult entertainment uses, which because of their very nature are recognized as having serious objectionable characteristics, particularly when several of them are concentrated in any given locations thereby having a deleterious effect upon the adjacent business and residential areas. It is desirable, therefore, to protect the well-being of the youth of the Village from objectionable operational characteristics of these adult entertainment uses by to locating adult oriented activities away from residential areas and public facilities used frequently by minors such as schools, religious facilities, parks, libraries, playgrounds and day care centers. The Village finds that, just as advertising is designed to stimulate one's appetite for desired goods and services, an overabundance or preoccupation with sexual displays or materials arouses the appetites of those so preoccupied, and encourages criminal sexual behavior.

In recognition of the protections afforded to the citizens of the United States under the First and Fourteenth Amendments to the Constitution of the United States, it is neither the intent nor the effect of this section to:

1. Inhibit freedom of speech or the press; or
2. Impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials; or
3. Restrict or deny access by adults to sexually oriented materials protected by the First Amendment; or
4. Deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

This section balances the legitimate governmental purposes of the Village against the above-described constitutional rights, by imposing incidental, content-neutral place, time, and manner regulations of adult entertainment establishments without limiting alternative avenues of communication. The special regulations deemed necessary to control the undesirable effects arising from these enterprises are set forth in this section.

#### B. Findings

Based on the evidence and testimony presented before the Village Commission and on the findings incorporated in (i) "Survey of Texas Appraisers - Secondary Effects of Sexually-Oriented Businesses on Market Values" study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas); (ii) "Crime-Related Secondary Effects - Secondary Effects of "Off-Site" Sexually Oriented Businesses" study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008)(Texas); (iii) "Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney" by Richard McCleary, Ph.D. (2007)(Los Angeles, California); (iv) "Survey of Findings and Recommendations of Sexually Oriented Businesses" by Eric Damian Kelly, Ph.D. FAICP and Connie B. Cooper, FAICP (August 2002)(Toledo, Ohio); (v) "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver," by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor's Office, and in consultation with the City Attorney's Office, Denver, Colorado (January 1998); (vi) "Sexually Oriented Business Ordinance Revision Committee

Legislative Report, Houston, Texas (January 7, 1997); (vii) "Adult Use Study," by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996); (viii) "Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996); (ix) "Adult Entertainment Study" by Department of City Planning, City of New York (November 1994); (x) The "Adams County Nude Entertainment Study" by the Adam's County Sheriffs Department (1991)(Colorado); (xi) "Effects of Adult Entertainment Businesses on Residential Neighborhoods," by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986); (xii) "NLC Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses," National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005; the Village Commission finds as follows:

1. Establishments exist or may exist within the Village where books, magazines, motion pictures, videos, prints, photographs, periodicals, records, novelties, and devices that depict, illustrate, describe, or relate to specified sexual activities are possessed, displayed, exhibited, distributed, and sold.
2. Establishments exist or may exist within the Village where:
  - a. The superficial tissues of one person are manipulated, rubbed, stroked, kneaded, or tapped by a second person, accompanied by the display or exposure of specified anatomical areas:
  - b. Dancers, entertainers, performers, or other individuals, who, for forms of commercial gain, perform or are presented while displaying or exposing specified anatomical areas: or
  - c. Lap dancing occurs.
3. The activities described in subsections (1) and (2) occur at establishments for the purpose of making a profit and, as such, are subject to regulation by the Village in the interest of the health, safety, and general welfare of Village residents.
4. The competitive commercial exploitation of such nudity and seminudity is adverse to the public's interest, quality of life, tone of commerce, and total community environment.
5. The commercial exploitation of nudity and seminudity consists of the use of nude and seminude entertainment in connection with or for the promotion of the sale of goods or services, and the receipt of money by the person engaging in nude or seminude entertainment in exchange for or as consideration for nude or seminude performance by such individuals.
6. The commercial exploitation of nude and seminude acts, exhibitions, and nude entertainment occurs frequently at commercial establishments either selling or allowing consumption of alcoholic beverages on the premises.
7. There is a direct relationship between the consumption of alcoholic beverages and the nude and seminude activities mentioned above, and an increase in criminal activities, disturbances of the peace and good order of the community. The occurrence of these activities is hazardous to the health and the safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole.
8. The combination of the sale and consumption of alcoholic beverages with the performance of nude and seminude acts, exhibitions and entertainment is adverse to the public's interest and the quality of life, tone of commerce, and total community environment in the Village.

9. To promote and preserve the public peace and good order and to safeguard the health, safety, and welfare of the community and its citizens, it is necessary and advisable for the Village to prohibit nude and seminude acts, exhibitions, and entertainment establishments at which alcoholic beverages are, or are available to be sold or consumed.
10. There is a direct relationship between the display or depiction of specified anatomical areas as defined in this chapter and an increase in criminal activities and disturbances of the peace and good order of the community, and the occurrence of these activities is hazardous to the health and safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole. These secondary effects are adverse to the public's interest and quality of life, tone of commerce, and total community environment in the Village.
11. When the activities described in subsections (1) and (2) take place in establishments within the Village, other activities that are illegal or unhealthy tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, solicitation for prostitution, lewd and lascivious behavior, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property.
12. When the activities described in subsections (1) and (2) are present in establishments within the Village, they tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that promotes crime, and ultimately lead residents and businesses to move to other locations.
13. The establishments used for the activities described in subsections (1) and (2) are frequently used for unlawful and unhealthy sexual activities, including prostitution and sexual liaisons of a casual nature.
14. To preserve and safeguard the health, safety, and general welfare of the people of the Village, it is necessary and advisable for the Village to obtain sufficient information regarding the owners of establishments where the activities described in subsections (1) and (2) occur in order to preclude the involvement of organized crime.

#### C. Authority

This section is enacted pursuant to the Village's home rule power to enact regulations to protect the public health, safety, and general welfare of the residents of the Village; and the Village's authority to regulate the sale and consumption of alcoholic beverages under the Twenty-First Amendment of the Constitution of the United States.

### § 12.2 – Definitions

For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. These definitions shall be in addition to the terms relevant to this section provided in Chapter 119 Code of Ordinances.

*Adult entertainment establishment* shall mean:

- A. Any adult arcade, adult theater, adult bookstore/adult video store, adult modeling establishment, adult motel, encounter studio, or adult dancing establishment as these uses are defined in Chapter 119 Code of Ordinances; or any other establishment or business operated for commercial gain where any employee, operator or owner exposes his or her specified anatomical area for viewing by patrons, including but not limited to massage establishments, whether or not licensed pursuant to Chapter 480, Florida Statutes, tanning salons, modeling



studios, or lingerie studios.

- B. Any establishment where an action is taken which is intended to amuse and which is distinguished or characterized by an emphasis on material depicting, describing or relating to specified sexual activities or specified anatomical areas or which features topless dancers, exotic dancers, strippers, male or female impersonators, the modeling of clothing revealing, or less than completely and opaquely covering, specified anatomical areas, or similar activities.
- C. An adult entertainment establishment shall include the entire site on which the adult entertainment establishment is located, including the exterior and interior of the establishment, or any portion thereof, upon which the activities or operations described in subsection (1) and (2) above are being conducted for commercial gain.
- D. Excluded from this definition are any educational institutions, as defined in Chapter 119 Code of Ordinances, where the exposure of specified anatomical areas is associated with a curriculum or program.
- E. An establishment that possesses an adult entertainment license is presumed to be an adult entertainment establishment.

*Adult material* shall mean any one or more of the following, regardless of whether it is new or used:

- A. Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, slides, or other visual representations; recordings, other audio matter; and novelties or devices which have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or
- B. Instruments, novelties, devices or paraphernalia that are designed for use in connection with specified sexual activities.

*Massage establishment* shall mean:

- A. Any shop, parlor, establishment or place of business wherein all of any one or more of the following named subjects and methods of treatments are administered or practiced: body massage either by hand or by any mechanical or electrical apparatus or device (excluding fever therapy), apply such movements as stroking, friction, rolling, vibration, kneading, cupping, petrissage, rubbing, effleurage, or tapotement.
- B. Provided, however, that, for the purpose of this section, the terms "massage establishment" shall not include any massage establishment wherein at least one state licensed massage therapist is employed and on duty full time during the hours opened for business.
- C. Nothing in this section shall be construed as applying to state licensed massage therapist, barbers, cosmetologists, manicurists, pedicurists, physical therapists' assistants, midwives, practical nurses, agents, servants of employees in licensed hospitals or nursing home or other licensed medical institutions, licensed physicians, osteopaths, chiropractors, podiatrists, naturopathic physicians or other licensed medical practitioners, or their agents, or employee acting in the course of such agency, service or employment under the supervision of the licensee.

### **§ 12.3 – Permitted Use Schedule**

Adult entertainment establishments are permitted in the General Commercial (CG) Zoning district, subject to distance requirements set forth below.

## § 12.4 – Regulations

### A. Required approval

An application for an adult entertainment establishment requires the approval of the Village Commission after a public hearing. No application for an adult entertainment establishment shall be presented to the Village Commission unless it satisfies the following requirements:

1. The adult entertainment establishment must be located on a parcel of land located in the CG zoning district.
2. The adult entertainment establishment must be located:
  - a. At least 500 feet from any residentially zoned district as designated on the Village's official zoning district map, and at least 500 feet from any property on which over 25 percent of the floor area is devoted to residential use; and
  - b. At least 500 feet from any area of land upon which a religious facility, public school, private school, public park, public playground, library, daycare center or nursery for children is located; and
  - c. At least 500 feet from any hotel or motel; and
  - d. At least 1,000 feet of from any parcel of land upon which another adult entertainment establishment is located; and
  - e. At least 350 feet from a building that contains a business that sells or dispenses alcohol.
3. No variance shall be granted to the spacing requirements of subsection (2) above.
4. The minimum distance separation shall be measured by following a straight line from any portion of the building used for such purpose, or any building located on the property, of the adult entertainment establishment to:
  - a. The nearest point of the property designated as residential on the Village's official zoning district map; or
  - b. The nearest point of the residential area of any property on which over 25 percent of the floor area is devoted to residential use; or
  - c. The nearest point of any area used for a religious facility, public school, private school, public park, playground, library, daycare center or nursery for children, hotel or motel.
5. In cases where a minimum distance is required between an adult entertainment establishment and another adult entertainment establishment, or an establishment licensed to sell or serve alcohol, the distance under this section shall be measured from the building line of the existing licensee to the building line of the proposed licensee and shall be the airline distance between the two buildings.
6. The applicant must show a possessory interest in the property (ownership, leasehold, or contract to purchase/lease) by sufficient documentation.

## B. Expiration of approval

Approval of an adult entertainment establishment shall lapse after 24 months unless:

1. A business tax receipt or building permit has been issued, or
2. The next phase of development has been initiated, or
3. The Village Commission has specified a longer approval period.

## C. Application requirements

An application for approval of an adult entertainment establishment shall, in addition to the requirements of **Chapter 5 of the Village Code of Ordinances**, include:

1. A property survey by a registered surveyor;
2. A letter of intent;
3. Certified distance survey from a registered land surveyor in the state showing that such use meets the distance requirements as set forth in this section. Such sketch shall indicate the distance between the proposed adult entertainment establishment and:
  - a. Any other adult entertainment establishment; and
  - b. Any establishment licensed to sell or serve alcohol; and
  - c. Any area used for a religious facility, public school, private school, public park, public library, playgrounds, day care center or nursery for children, hotel or motel; and
  - d. Any residential zoning district; and
  - e. The residential area of any property on which over 25 percent of the floor area is devoted to residential use.

Each sketch shall indicate all such distances and routes. In case of a dispute, the measurement scaled by the Village shall govern.

4. Where the use includes a vehicular use area or landscaped buffer, a proposed landscape plan and information regarding permanent maintenance arrangements;
5. A neighborhood location map showing all surrounding zoning, land use designations and existing uses located within 500 feet of the proposed site;
6. Documents establishing ownership of the property, valid leasehold, or a contractual interest in a future ownership or leasehold.
7. The proposed activities and specific type of adult entertainment establishment proposed.
8. For adult entertainment establishments to be established in new construction, a sketch and description showing all new and existing structures on the property, interior layouts and proposed parking areas.
9. For adult entertainment establishments to be established in redeveloped sites, a sketch and description or building plan that details all proposed interior and exterior changes to any existing building or structure.

#### D. Review of applications

Applications shall be reviewed and be approved or denied by the Village Commission within 60 days of the applicant filing a complete application with the Village, as follows:

1. No application shall be accepted until it is deemed complete by the Village Planner.
2. The Village Planner shall review all of the information submitted to determine conformity with this section.
3. The submitted application will be reviewed for completeness within 20 business days, and any corrections, revisions or deficiencies provided to the applicant within that 20-day period.
4. Upon each re-submittal of corrected plans, the Village Planner shall have ten business days to review the application and provide any corrections, revisions or deficiencies to the applicant. This process shall continue until the applicant has submitted a complete application, or demands that the application be reviewed as is, without further revisions.
5. If an applicant fails to provide additional information as requested by the Village Planner within two months of the request or respond to the Village Planner with a time when the information will be submitted, the application shall be deemed to be withdrawn by the applicant. The applicant shall be entitled to one 60-day extension upon request, providing the request for extension is granted prior to the expiration of the two-month period.
6. The Village Commission shall approve or deny the permit within 60 days of the Village's receipt of the complete application, or the applicant's demand for review as submitted, based on whether it complies with the requirements of this section. A written notice of the Village Commission's decision shall be provided to the applicant, either in the form of an approved permit or written notice of denial. Such notice shall describe the applicant's appeal rights, and be provided to the applicant within ten) business days of the decision.

#### E. Minimum space requirements

An adult dancing establishment shall be subject to the minimum space requirements (for parking) as provided for "Restaurants, Lounges and Nightclubs," in Section 9.3(C)(3) of this Code.

#### F. Regulation of obscenity subject to state law

It is not the intent of the Village Commission to legislate with respect to matters of obscenity. These matters are regulated and preempted by general law.

#### G. Regulation of massage establishments subject to state law

It is not the intent of the Village Commission to legislate, limit, or conflict with respect to matters pertaining to massage establishments that are regulated by state agency, the department of business and professional regulation, board of massage, and by general law, Chapter 480, Florida Statutes.

#### H. Appeal

The applicant may appeal the decision of the Village Commission by filing a timely notice of appeal with any court of competent jurisdiction in Miami-Dade County in accordance with applicable law and court rules.

## CHAPTER 13, VACATION RENTAL LICENSE PROGRAM

### DIVISION 1, GENERAL PROVISIONS

#### § 13.1 – Purpose

The purpose of this chapter is to promote public health, safety, welfare and convenience through regulations and standards for short-term vacation rental properties by providing:

- A. For a vacation rental license;
- B. For safety and operational requirements;
- C. For parking standards
- D. For solid waste handling and containment;
- E. For licensure requiring posting of vacation rental information;
- F. For administration, penalties and enforcement.

#### § 13.2 – Definitions

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Village.* North Bay Village, Florida, as geographically described in its Charter.

*Habitable room.* A room or enclosed floor space used or intended to be used for living or sleeping purposes, excluding kitchens, bathrooms, shower rooms, water closet compartments, laundries, pantries, foyers, connecting corridors, closets and storage space.

*Occupant.* Any person who occupies, either during the day or overnight, a Vacation Rental.

*Transient public lodging establishment.* Any unit, group of units, dwelling, building or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

*Vacation rental.* Any individually or collectively owned single- or multi-family house or dwelling unit that is also a transient public lodging establishment, and is located in an area zoned RS-1, RS-2, RM-40, or RM-70.

*Vacation rental representative.* A Vacation Rental property owner, or his/her authorized designee, as identified in the application for a Village Vacation Rental license.

### DIVISION 2, VACATION RENTAL LICENSE REQUIRED

#### § 13.3 – License Required.

- A. After July 1, 2016, an active Vacation Rental license shall be required to operate a Vacation Rental within the Village, except that Vacation Rental's in Village areas zoned RM-40 and RM-70 require a Vacation license only after January 9, 2017. After July 1, 2016, only Vacation Rentals in Village areas zoned RS-1 and RS-2 must holding an active Vacation Rental license issued by North Bay Village to operate within the Village; and after January 9, 2017 all Vacation Rentals must hold an active Vacation Rental license issued by North Bay Village to operate within the Village. A separate Vacation Rental license shall be required for each Vacation Rental, as defined in Section 13.2.

- B. The advertising or advertisement for the rental of an unlicensed single-family or multi-family house or dwelling unit, or of a residential condominium, apartment, or building dwelling unit located in a residential building or community that has not adopted rules regulating the use of transient public lodging establishments, for periods of time less than thirty (30) days or one (1) calendar month is direct evidence of offering a property for rent as a vacation rental in violation of subsection 13.3(A) and the advertising or advertisement is admissible in any enforcement proceeding. The advertising or advertisement evidence raises rebuttable presumption that the residential property named in the notice of violation or any other report or as identified in the advertising or advertisement was used in violation of subsection 13.3(A).

### **§ 13.3 - APPLICATION FOR VACATION RENTAL LICENSE.**

- A. A property owner seeking initial issuance of a Vacation Rental license, or the renewal, or modification of a Vacation Rental license, shall submit to the Village a completed Vacation Rental license application in a form promulgated by the Village, together with an application fee in an amount set by resolution of the Village Commission.
- B. A complete application for the initial issuance, or renewal, or modification, of a Vacation Rental license shall demonstrate compliance with the standards and requirements set forth in this subchapter through the following submittals:
1. A completed Vacation Rental license application form, which must identify; the property owner, address of the Vacation Rental, Vacation Rental Representative, and as well as the phone number of the Vacation Rental Representative.
  2. Payment of applicable fees.
  3. A copy of the Vacation Rental's current and active license as a Transient Public Lodging Establishment with the Florida Department of Business and Professional Regulation.
  4. A copy of the Vacation Rental's current and active certificate of registration with the Florida Department of Revenue for the purposes of collecting and remitting sales surtaxes, transient rental taxes, and any other taxes required by law to be remitted to the Florida Department of Revenue.
  5. Evidence of the Vacation Rental's current and active account with the Miami-Dade County Tax Collector for the purposes of collecting and remitting tourist and convention development taxes and any other taxes required by law to be remitted to the Miami-Dade County Tax Collector.
  6. A copy of the current Local Business Tax Receipt.
  7. Interior building sketch by floor. A building sketch (may be hand drawn) by floor shall be provided, showing a floor layout and demonstrating compliance with the standards and requirements set forth in this subchapter. The sketch provided shall be drawn to scale, and shall show and identify all bedrooms, other rooms, exits, hallways, stairways, smoke and carbon monoxide detectors, swimming pools, fire extinguishers and exit signage/lighting.
  8. A sketch showing the number and the location of all on-site parking spaces for the Vacation Rental.
  9. Acknowledgement that each guest room shall be equipped with an approved listed single-station smoke detector meeting the minimum requirements of the NFPA.
  10. A section indicating whether the Vacation Rental will have 10 or fewer occupants or more than 10 occupants.

11. A copy of the generic form vacation rental/lease agreement to be used when contracting with transient Occupants and guests.
- C. Incomplete applications will not be accepted, but will be returned with any fees submitted to the property owner with a notation of what items are missing.
- D. Vacation Rental license applications shall be sworn to under penalty of perjury. Any false statements in an application shall be a basis for the revocation of any license issued pursuant to such application.

#### **§ 13.4 - MODIFICATION OF VACATION RENTAL LICENSE.**

An application for modification of a Vacation Rental license shall be required in the event that any of the following changes to the Vacation Rental are proposed:

- A. An increase in the gross square footage.
- B. An increase in the number of bedrooms.
- C. An increase in the maximum occupancy.
- D. An increase in the number of parking spaces, or a change in the location of parking spaces.
- E. An increase in the number of bathrooms.
- F. Any other material modifications that would increase the intensity of use.

#### **§ 13.5 DURATION OF VACATION RENTAL LICENSE.**

The Vacation Rental license shall expire each September 30, and may be annually renewed thereafter if the property is in compliance with this chapter. Vacation Rental licenses acquired before September 30, 2016 will be valid until September 30, 2017.

#### **§ 13.6 - RENEWAL OF VACATION RENTAL LICENSE.**

A property owner must apply annually for a renewal of the Vacation Rental license no later than 60 days prior to its expiration.

#### **§ 13.7 - LICENSES NON-TRANSFERABLE, NON-ASSIGNABLE.**

Vacation Rental licenses are non-transferable and non-assignable. If the ownership of any Vacation Rental is sold or otherwise transferred, any outstanding Vacation Rental license as to that Vacation Rental shall be null and void upon the sale or transfer.

### **DIVISION 3, VACATION RENTAL REPRESENTATIVE**

#### **§ 13.8 - DUTIES OF VACATION RENTAL REPRESENTATIVE.**

Every Vacation Rental Representative shall:

- A. Be available by landline or mobile telephone answered by the Vacation Rental Representative at the listed phone number 24-hours a day, 7 days a week to handle any problems arising from the

Vacation Rental; and

- B. Be willing and able to be physically present at the Vacation Rental within 60 minutes following notification from a Vacation Rental Occupant, law enforcement officer, emergency personnel, or the Village for issues related to the Vacation Rental, and shall actually be physically present at that location in that time frame when requested; and
- C. Conduct an on-site inspection of the Vacation Rental at the end of each rental period to assure continued compliance with the requirements of this subchapter.

## **DIVISION 4, STANDARDS AND REQUIREMENTS FOR VACATION RENTALS**

### **§ 13.9 - GENERAL**

The standards and requirements set forth in this section shall apply to the rental, use, and occupancy of Vacation Rentals in the Village.

### **§ 13.10 - LOCAL PHONE SERVICE REQUIRED.**

Local phone service. At least one landline telephone with the ability to call 911 shall be available in the main level common area in the Vacation Rental.

### **§ 13.11 - PARKING STANDARDS.**

Occupants and visitors to the Vacation Rental shall comply with all relevant parking codes as found in the Village Code of Ordinances.

### **§ 13.12 - SOLID WASTE HANDLING AND CONTAINMENT.**

Notice of the location of the trash storage containers and rules for collection shall be posted inside the Vacation Rental.

### **§ 13.13 - MAXIMUM OCCUPANCY.**

Requirements for space shall be as follows:

- A. Each Vacation Rental shall have a minimum gross floor area of not less than 150 square feet for the first occupant and not less than 100 square feet for each additional occupant.
- B. Every room in a Vacation Rental occupied for sleeping purposes shall:
  - 1. Have a gross floor area of not less than 70 square feet; and when occupied by more than one occupant, it shall have a gross floor area of not less than 50 square feet for each occupant. The maximum number of occupants for each room used for sleeping purposes shall be four.
  - 2. Have a minimum width of 8 feet.
- C. Gross area shall be calculated on the basis of total habitable room area. and those exclusions appearing in the definition of "habitable room" shall not be considered in calculation of such floor areas.



- D. Every habitable room in a Vacation Rental shall have a ceiling height of not less than 7 feet for at least half the floor area of the room. Any portion of a habitable room having a ceiling height of 5 feet or less shall not be included in calculating the total floor area of such room.

#### **§ 13.14 - POSTING OF VACATION RENTAL INFORMATION.**

- A. In each Vacation Rental, located outside on the back or next to the main entrance door there shall be posted as a single page the following information:
1. The name, address and phone number of the Vacation Rental Representative;
  2. The maximum occupancy of the Vacation Rental;
  3. A statement advising the Occupant that any sound which crosses a property line at a volume which is unreasonably loud is unlawful within the Village; as per the Village Noise Ordinance.
  4. A sketch of the location of the off-street parking spaces;
  5. The days and times of trash pickup;
  6. The location of the nearest hospital; and
  7. The local non-emergency police phone number.
- B. A copy of the building evacuation map – Minimum 8-1/2" by 11" shall be provided to the renter upon the start of each vacation rental.

### **DIVISION 5, ADMINISTRATION, PENALTIES, AND ENFORCEMENT**

#### **§ 13.15 - ADMINISTRATION OF VACATION RENTAL LICENSE PROGRAM.**

The ultimate responsibility for the administration of this subchapter is vested in the Village Manager, or his/her authorized designee, who is responsible for granting, denying, revoking, renewing, suspending and canceling Vacation Rental licenses for proposed and existing Vacation Rentals as set forth in this subchapter.

#### **§ 13.16 - APPEALS.**

Any decision of the Village Manager, or his/her authorized designee, relating to the granting, denial, renewal, modification, or suspension of a Vacation Rental license under this subchapter shall be rendered in writing, and reviewed by the Village Commission if a notice by the applicant is filed with the Village Clerk within 10 days after the action to be reviewed. The Village Clerk shall place the matter on the agenda of an upcoming meeting of the Village Commission, at which the matter will be reviewed. The decision of the Village Commission shall be final. Such final decision may be reviewed as permitted under Florida law.

#### **§ 13.17 - NOTICE.**

Any notice required under this subchapter shall be accomplished by sending a written notification by U.S. Mail, postage paid, to the mailing address of the Vacation Rental Representative set forth on documents filed with the Village under this subchapter, which shall be considered for all purposes as

the correct address for service, or by personal service or delivery to the Vacation Rental Representative.

#### **§ 13.18 - PENALTIES AND ENFORCEMENT.**

- A. *By citation.* Any violation of this Chapter 13, or any rule adopted under this chapter, may be punished by citation, as specifically described in Chapter 153 – Code Enforcement of the Code of Ordinances of North Bay Village, including but not limited to the requirements of a reasonable warning prior to issuance of a citation; provided, however, such violation shall be subject to a fine in the amount of \$250.00, for the first offense, \$500.00 for the second and subsequent offenses, plus a suspension of the Vacation Rental license or a refusal to issue a Vacation Rental license as provided hereinafter, for the third offense. Each day a violation exists shall constitute a separate and distinct violation.
- B. Other enforcement methods and penalties. Notwithstanding anything otherwise provided herein, violations of this subchapter shall also be subject to all the enforcement methods and penalties that may be imposed for the violation of ordinances of the Village as provided in the Village Code of Ordinances. Nothing contained herein shall prevent the Village from seeking all other available remedies which may include, but not be limited to, injunctive relief, abatement of public nuisance, liens, fines, imprisonment, and other penalties as provided by law.
- C. Suspension of license.
  - 1. In addition to any fines and any other remedies described herein or provided for by law, the Village Manager shall suspend a Vacation Rental license upon a third violation of this subchapter in any continuous 12 month period. Such suspension of a Vacation Rental license shall be for a period of 1 year, and shall begin following notice, commencing either at the end of the current Vacation Rental lease period, or after 30 calendar days, whichever is less.
  - 2. For violations of the Florida Building Code, or Florida Fire Prevention Code, a Vacation Rental license shall be subject to temporary suspension starting immediately 3 working days after citation for such violation if it is not corrected, re-inspected, and found in compliance.
  - 3. The Village Manager may refuse to issue a Vacation Rental license upon a third violation of this subchapter in any continuous 12 month period, including but not limited to, if the property has operated an unlicensed Vacation Rental in violation of subsection 13.3(A) or advertised an unlicensed Vacation Rental in violation of subsection 13.3(B). Such refusal to issue a Vacation Rental license shall be for a period of 1 year.
- D. Revocation of license.
  - 1. The Village Manager may refuse to issue or renew a license or may revoke a Vacation Rental license issued under this subchapter if the property owner has willfully withheld or falsified any information required for a Vacation Rental license.
  - 2. The Village Manager shall revoke a Vacation Rental license issued under this subchapter upon the fifth adjudication of either a noise violation where such noise emanated from the Vacation Rental or receipt of a parking violation where such parking violation occurred on the Vacation Rental property within any continuous 12 month period, or any combination thereof.

3. The property owner shall not be entitled to any refund of the annual fee paid for a license for any portion of the unexpired term of a license, because of revocation or suspension of the Vacation Rental license.
- E. For all purposes under this subchapter, service of notice on the Vacation Rental Representative shall be deemed service of notice on the property owner and Occupant.
- F. No Occupant shall occupy a Vacation Rental, and no advertisement for the Vacation Rental shall occur during any period of suspension of a Vacation Rental's Vacation Rental license.

## **DIVISION 6, VESTING**

### **§ 13.19 - RENTAL AGREEMENT VESTING.**

It is recognized that there are likely existing rental/lease agreements for Vacation Rentals as the time of passage of this ordinance which may not be in compliance with the regulations herein. Rental agreements that were entered into prior to the date of adoption, shall be considered vested. No special vesting process or fee shall be required to obtain this vesting benefit.

## CHAPTER 14, PROHIBITION ON MEDICAL MARIJUANA DISPENSING FACILITIES

### § 14.1 – Purpose

- A. Prohibition. Medical Marijuana Treatment Center Dispensing Facilities are prohibited and shall not be located within the boundaries of the Village. The Village shall not accept, process or approve any request or application for a development order, building permit or other approval associated with a proposed Medical Marijuana Treatment Center Dispensing Facility
- B. Definition. For the purposes of this section, the term “Medical Marijuana Treatment Center Dispensing Facility” means any facility where medical marijuana or any product derived therefrom is dispensed at retail.
- C. Interpretation/Intent. This section and the terms used herein shall be interpreted in accordance with **Florida Statute Section** 381.986 and Ch. 64-4 of the Florida Administrative Code. The intent of this section is to ban medical marijuana treatment center dispensing facilities from being located within the boundaries of the Village as authorized by **Florida Statute Section** 381.986(11).