

ORDINANCE NO. 907

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S ZONING AND PLANNING CODE BY AMENDING SECTION 23-6 OF THE CODE OF ORDINANCES ENTITLED USE REGULATIONS TO RENAME THE RBA-TRACT DISTRICT TO THE RM-3 MULTIPLE FAMILY RESIDENTIAL DISTRICT, TO PROVIDE UPDATED REFERENCES TO OTHER ZONING DISTRICTS AND TO SPECIFICALLY DEFINE CERTAIN PERMITTED USES; AMENDING SECTION 23-11(D) OF THE CODE OF ORDINANCES CURRENTLY ENTITLED RBA-TRACT AREA TO RENAME THE DISTRICT, DELETE THE EXISTING LAND DEVELOPMENT REGULATIONS AND CREATE NEW LAND DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Bay Harbor Islands adopted the first Zoning and Planning Code for the community in June 1957; and

**WHEREAS**, the Town Council periodically studies various land development trends and issues and amends the Zoning and Planning Code accordingly; and

**WHEREAS**, the Town retains the services of an urban planning professional to study land development activities and land development regulations and recommend strategies and Code modifications to address identified problems; and

**WHEREAS**, one of the issues identified by the Town Council to study and recommend new and/or updated land development regulations is the so-called RBA-Tract District; and

**WHEREAS**, the Town Council desires to amend the Town's Zoning and Planning Code to modernize and update the applicable land development regulations; and

**WHEREAS**, several public meetings were held before the Planning and Zoning Board of the Town of Bay Harbor Islands to obtain input and recommendations; and

**WHEREAS**, the Town Council held duly advertised public hearings to consider the proposed modifications to the Town's Zoning and Planning Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:**

**Section 1:** That the Town of Bay Harbor Islands Zoning and Planning Code is hereby amended to modify Section 23-6 of the Town's Code of Ordinances entitled Use Regulations to rename the RBA-Tract District to the RM-3 Multiple Family Residential District, to provide updated references to other zoning districts and to specifically define certain permitted uses; amending Section 23-11(D) of the Code of Ordinances currently entitled RBA-Tract District to rename the district to the RM-3 Multiple Family Residential District, to delete the existing land

development regulations and to create new land development regulations as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

**Section 2:** That is any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

**Section 3:** That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 4:** That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

**Section 5:** That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

**PASSED** on First Reading this 11th day of October 2010.

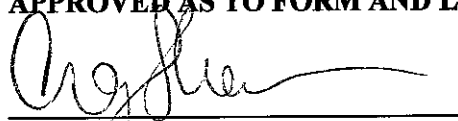
**PASSED and ADOPTED** on Second Reading this 13th day of December 2010.

  
\_\_\_\_\_  
**KENNETH WEINSTEIN**  
Mayor

**ATTEST:**

  
\_\_\_\_\_  
**MARLENE MARANTE, CMC**  
Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY:**

  
\_\_\_\_\_  
**CRAIG SHERMAN, ESQ.**  
Town Attorney

**EXHIBIT A**  
**Amendments to the Town of Bay Harbor Islands**  
**Zoning and Planning Code – Chapter 23**

**Sec. 23-6. Use regulations, ~~RBA-Tract district~~ RM-3 District.**

In the ~~RBA-Tract~~ RM-3 Multiple Family Residential district, no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used or occupied for any purpose, excepting for one or more of the following uses:

- (1) Any use permitted in the ~~RE-RM-1 or RM-2~~ Multiple Family districts.
- (2) Such business or commercial uses as may be approved by the town council upon specific application therefore and upon the giving of specific permission therefore by the town council. Such accessory business uses shall not be construed to include hotels, motels, condo-hotels, interval ownership (timeshare) units, bars or nightclubs open to the general public. The Town reserves the right to regulate the types of business uses, the hours of operation, screening, off-street parking provisions, signage and the location of such uses within the site / structure.

**Sec. 23-11. Land development regulations.**

**(D) ~~RBA-Tract Area~~ RM-3 Multiple Family Residential District:**

~~(1) Waterfront lots in the RBA-Tract Area shall have a front yard setback of not less than 20 feet measured from the outside bulkhead wall, the front yard being on the waterfront side. There shall be a rear yard setback of not less than 20 feet, the rear yard being on the street side. The side yard setback requirements on each side of the building shall be as follows:~~

- ~~(a) One through two story building – Ten feet.~~
- ~~(b) Three through four story building – 15 feet.~~
- ~~(c) Five through six story building – 20 feet.~~
- ~~(d) Seven through eight story building – 25 feet.~~
- ~~(e) Nine through ten story building – 30 feet.~~

~~(2) The maximum building coverage of any lot shall not exceed 37.5 percent of the lot area. See section 23-1 for the definition of building coverage.~~

~~(3) No building in the RBA-Tract area shall exceed ten stories in height.~~

~~(4) If a building is raised to the minimum height necessary to provide vehicular parking, utilities and other services under a part of the building area, and provided that no living quarters exist in any part of this basement area, the maximum building coverage may be increased to 40 percent of the lot area, and said basement shall not be counted as a story.~~

Purpose - The purpose of the district is to provide appropriate land development regulations for the large waterfront properties (Tracts A-F) located on the northern and southern tips of the eastern island of the Town. As the platted lots are considerably larger than other multi-family sites in the Town and abut wide waterways surrounding the island where no adjacent development occurs, the regulations reflect appropriate development criteria.

(1) Front Yard Setback (Street Frontage) - All lots shall have a minimum Front Yard (Street) setback as follows:

- (a) Buildings up to thirty (30) feet in height - twenty (20) feet.
- (b) Buildings up to forty-five (45) feet in height – twenty-five (25) feet.
- (c) Buildings up to seventy-five (75) feet in height - thirty (30) feet.

- (d) For buildings over seventy-five (75) feet in height as approved under subsection (11) below the front setback dimension shall be negotiated during the site plan process, but shall not be less than thirty (30) feet.
- (2) Rear Yard (Waterfront) Setback - All lots shall have a minimum Rear Yard (Waterfront) setback of twenty (20) feet.
- (3) Side Yard Setbacks - All lots shall have minimum Side Yard setbacks as follows:
- (a) Buildings up to thirty (30) feet in height - twenty (20) feet.
- (b) For each additional three (3) feet of building height above 30 feet, there shall be one (1) additional foot of building setback for that portion of the structure over 30 feet in height. Notwithstanding the above provision, the maximum required setback shall be thirty (30) feet.
- (4) Supplemental Business and Commercial Setbacks - ~~Provided, however, that in~~ In the event application shall be made to the town council for permission to ~~make~~ provide a business or commercial use of a ~~Tract~~, pursuant to the provisions contained in section 23-6, then, in such event, the town council may require an increase of the side yard setbacks as it shall deem fit and proper under the circumstances to ensure adequate separation and buffering of incompatible land uses occurs. In no event shall an increased side setback required by the Town be greater than twice the normal required side setback.
- (5) Flex Setbacks - A project designer has the option to offer creative design solutions to the building configurations and the Planning and Zoning Board may allow portions of the building structure to encroach into the setback requirements stated above. The total amount of encroachment shall not exceed one-third of the allowable width or length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district. In no case shall any portion of a building encroach into the base building setbacks set forth above for portions of the building below 30 feet in height.
- (6) Maximum Building Length - The maximum over-all length of any single building in a linear shape with no breaks or angles greater than 15 degrees facing parallel to a street frontage shall not exceed two hundred sixty (260) feet, except as hereinafter provided.
- (7) Breezeways - A building may exceed one hundred and twenty (120) feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding one hundred and twenty (120) feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of twenty (20) feet. Notwithstanding the above, this provision shall not apply to buildings less than forty-five (45) feet in height. The Town Council may modify the application of this requirement for townhouse development or in instances where enhanced architectural articulation and detailing is provided on the building façade to break the massing of the building. A breezeway is not required on a building constructed on a single platted lot. For the purpose of this section platted lots are those depicted on the subdivision plat of Bay Harbor Island recorded in Plat Book 46, at Page 5 of the public records of Miami-Dade County, Florida
- (8) Minimum Distance between Structures - The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be twenty (20) feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.
- (9) Maximum Building Coverage - The maximum building coverage of any lot shall not exceed 40 percent of the plot area for all principal structures. If an elevated parking garage structure is provided the combined total of all building coverage shall not exceed 60 percent of the plot. An elevated parking garage shall not include any living quarters, meeting rooms or recreational facilities. See section 23-1 for the definition of building coverage.
- (10) Maximum Building Height - No building shall exceed seventy-five (75) feet in height, unless otherwise approved by the Town residents and Town Council in accordance with Section 86 of the Town Charter, but in no case more than 120 feet in height, which includes the primary building, parking garage or any other accessory structure, but does not include rooftop mounted structures as defined in subsection 23-12(11). The Town Commission reserves the right, as part of any consideration to allow a building to exceed 75 feet in height, to require site plan modifications, project mitigation and/or

tradeoffs (including but not limited to off-site improvements / on-site improvements / pedestrian walkways / enhanced view vistas to adjoining waterways / etc.)

- (11) Building Roof Design - All rooftops of buildings with flat roof decks, including parking garage roof decks, shall be designed to minimize negative appearances by screening mechanical equipment, minimizing the ponding of stormwater and maintaining the roof surface in an attractive manner. The use of flat roof decks for onsite recreational facilities is encouraged, including the use of landscape materials for aesthetic and environmental "greenhouse gas reduction" purposes. If a flat roof deck is utilized for parking or recreational purposes, a minimum of fifteen (15) percent of the area used for such purposes shall be landscaped. For the purposes of this section the term landscaping shall not include swimming pools, decks, patios or other impervious surfaces.
- (12) Landscape requirements – Each plot shall provide for a minimum of twenty (20) percent landscaped "green" open space at ground level. An applicant shall be required to submit a detailed landscape plan to the Town for consideration at the time of site plan approval. Trees shall be provided to provided shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.
- (13) Maximum Allowable Density - The maximum allowable base density is 34 dwelling units per acre. Partial units below one-half are rounded down to the nearest whole number. Individual project density may be increased on a case-by-case basis only through the process described in chapter 23.
- (14) Interpretation of Side Lot Lines - Side setbacks shall be regarded as those setbacks other than ones abutting streets and water.
- (15) Vested Rights - Notwithstanding the above regulations, for those developments existing as of December 10, 2002 when Section 86 of the Town Charter was approved by the Town voters that established a maximum building height for any new building of seventy-five (75) feet, the existing residential density, building height, lot coverage, building setbacks and other land development regulations are vested and may continue so long the owners elect to maintain the development as originally approved. If the existing development is damaged by a natural disaster, fire or flooding to the extent of 50% or more of the assessed value of the building improvements when the damage occurs, and the owners voluntarily elect to demolish and rebuild the project, the subsequent new development shall comply with all current land development regulations, except existing building height and residential density, which shall continue to be vested without the need to acquire TDR units. However, in no event shall the new development be greater in density or height than the development being replaced, unless TDR units are acquired or pursuant to Section 86(1) of the Town Charter.
- (16) Parking Garage Structures – For any re-development of an existing RM-3 site after the effective date of this ordinance, not less than 90% of the required parking spaces shall be contained within a fully enclosed parking garage structure. The portion of a parking garage structure above finished grade shall be substantially screened from view from adjoining roads and adjacent properties. This shall not prohibit the parking garage structure driveway openings from being visible from an adjoining street. The exterior building façade of any parking garage structure not substantially screened by earthen berming, planters and adequate landscaping materials shall incorporate the same architectural features and elements on the main building façade to disguise the parking garage structure.