

NOTE: A three-minute maximum time limit will be imposed on all comments from the public, regardless of the subject matter. A request form is available from the Deputy Town Clerk; fill it in and return it to her prior to the start of the meeting. When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please turn off or mute your cell phone or pager at the start of the meeting.

TOWN OF BAY HARBOR ISLANDS

WORKSHOP MEETING

AGENDA

October 7, 2014

CALL TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

1. Discussion and direction to staff regarding proposed zoning amendments for balconies in the RM3 District.

STAFF RECOMMENDATION: Council Discretion

2. Discussion and direction to staff regarding possible zoning amendments for balconies in the RM1 and RM2 District.

STAFF RECOMMENDATION: Council Discretion

ADJOURNMENT

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

October 7, 2014

ITEM NUMBER: 1.

ITEM: Discussion and direction to staff regarding proposed zoning amendments for balconies in the RM3 District.

DESCRIPTION:

Enclosed is a memorandum with back-up information relating to this issue. Staff's recommendation is to change the ordinance to have balconies not be counted on the building coverage calculations. Additionally, it is felt that the RM-3 Zoning District should be permitted the same balcony encroachments into the setbacks as the RM-1 District.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Marante, Town Clerk

ATTACHMENTS

1.	Memorandum	BHI RM-3 TC Staff Report Workshop Sept 30 2014.pdf
2.	RM 3 Memo backup	RM 3 Memo back-up.pdf

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Council Members
Town of Bay Harbor Islands

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: September 30th, 2014

Subject: Town of Bay Harbor Islands
Land Development Code Analysis
RM-3 (formerly RBA Tract) Zoning District
MMPA Acct. No. 01-0702-0800

ISSUE

At the September 8th, 2014 Town Council meeting a draft Ordinance was debated that would revise the Town's existing Land Development Regulations (LDRs) definition of "building coverage" to remove exterior balconies attached to buildings from being counted in "building coverage". The RM-3 Multiple Family District (formerly RBA Tract District) is the only Town zoning district where this provision would apply. Questions arose from the Town Council, property owners and some residents about what this change would mean. MMPA had prepared illustrations to show the possible extent of the Code change and issued a staff report describing the changes. The Town Council decided to schedule a community workshop meeting (now scheduled for October 7th, 2014) with the Planning and Zoning Board and interested residents to discuss this subject. MMPA was instructed to prepare some backup materials and a brief staff report on this subject to highlight the issue.

PREVIOUS TOWN ACTIONS

Over the past decade the Town Council has methodically studied and updated many of its LDRs. A Town-wide Community Visioning exercise was done in 2002-03 that established community desires for future growth and massing. Also in 2002 the residents of the Town voted for a general 75-foot tall building height limit, except if approved by the residents / Town Council.

One of the last zoning districts to be studied / updated was the former RBA Tract District which covers the northern / southern tips of the East Island. This Code update occurred in 2009-10. The District was renamed as the RM-3 Multiple Family District. There are five (5) platted parcels of land with four (4) existing developments. In 2014 the Town received an inquiry to re-develop one of the sites, which caused staff to note the "building coverage" issue.

**Town of Bay Harbor Islands
Land Development Code Analysis
RM-3 (formerly RBA Tract) Zoning District
September 30th, 2014
Page 2**

In 2009 MMPA prepared a "White Paper" for the RBA Tract Zoning District as was done in past Zoning Code revisions exercises. MMPA studied the former district regulations, compared those regulations to other recent Town re-writes, reviewed the Town Charter as related to allowable building height provisions and analyzed the existing development patterns. Based on the "White Paper" a draft Ordinance was prepared. This matter was presented to the Local Planning Agency (Town Council) on August 25th, 2009 and referred to the Planning and Zoning Board for advisory comments.

On November 3rd, 2009 the matter was presented at the Planning and Zoning Board meeting. The Board desired more time to contemplate the MMPA proposals to re-write the district Code provisions and instructed MMPA to further study the draft regulations and prepare conceptual illustrations / sketches to help depict the new regulation proposals. The purpose of the illustrations were to show the existing platted lot shapes and sizes, what the existing Zoning Code provisions are today and what the initial MMPA proposed revised provisions would allow. Additionally, illustrations were prepared for each Tract to show how the proposed maximum building length criteria may fit on the Tracts, to illustrate the breezeway design guideline and to illustrate what the setbacks would do to building massing.

On December 15th, 2009 the matter was again discussed by the Planning and Zoning Board. The Board reviewed the MMPA illustrations and the proposed Code revisions but again wanted more time to contemplate the suggested proposals and instructed MMPA to further study:

- (1) The percentage of the lot that can be covered by buildings (Building Lot Coverage);
- (2) Minimum side setback requirements due to the size of the RBA Tracts;
- (3) Maximum building length, if any;
- (4) Breezeway requirements, if any.

MMPA was also requested to research what other similar communities utilize for minimum land development criteria. MMPA subsequently examined and cataloged the existing setbacks on the RBA Tracts, and what other surrounding communities utilize for building lot coverage and setbacks criteria. In addition, MMPA performed detailed field inspections of the RBA Tract sites and photographed features of the sites (see attached), and re-examined the Town's Building Department records on the RBA Tracts. Tables were created to illustrate the PZ Board's additional requested data. Based on the new corrected data MMPA suggested changes to our original Code revision recommendations.

On March 16th, 2010 the matter was again discussed by the Planning and Zoning Board. The Board reviewed the MMPA illustrations and the proposed Code revisions again but again wanted more time to contemplate the new information and suggested proposals. MMPA was requested to address the comments made at the meeting and propose possible text amendments to address the PZ Board's concerns. MMPA researched the requested matters and prepared an errata sheet dated April 27th, 2010 with possible revisions to the last Ordinance draft.

On May 4th, 2010 the matter was again discussed by the Planning and Zoning Board. The Board reviewed the latest MMPA illustrations and the proposed Code revisions and approved the latest revised suggested Code amendment proposals (draft Ordinance / errata sheet / additional modifications).

On August 9th, 2010 the Town Commission discussed this matter at the regular monthly meeting and authorized the matter to be moved forward on first reading. Over the next few months the issue was discussed. Following is summary of the current LDRs:

Setbacks

Front	20' for buildings less than 30 feet in height
	25' for buildings less than 45 feet in height
	30' for buildings less than 75 feet in height
	Over 75' setbacks negotiated but not less than above
Rear	20' (all lots on water)
Sides	20' for buildings less than 30 feet in height (was 10' in RBA)
	One additional foot of setback for each three feet in height over 30'
	If accessory business uses are allowed after TC review additional setback width may be required.

Building Height

75' unless otherwise approved at election / 120' maximum
(RBA was 10 stories).

Building Coverage

40% for principal structure(s) / towers (was 37.5%)
60% for parking garages (was 40%)

Off-Street Parking

90% of required parking must be enclosed garage

Balconies Currently not permitted in minimum setbacks

MMPA suggested allowing in setbacks

Allowable Projection (F = 4' / R = 4' / Sides = 2')

SUMMARY / REQUESTED ACTION

Review the attached backup materials, discuss the matter and provide direction to staff on any desired Code amendments.

**TOWN OF BAY HARBOR
ISLANDS**

**ZONING AND PLANNING CODE
EXCERPT**

ARTICLE I. ZONING REGULATIONS

Bay Harbor Islands, Florida, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 23 - ZONING AND PLANNING >> ARTICLE I. ZONING REGULATIONS >>

ARTICLE I. ZONING REGULATIONS

Sec. 23-1. Definitions.
Sec. 23-2. Districts.
Sec. 23-3. Use regulations. RD-Single Family district.
Sec. 23-4. Use regulations. RM-1 and RM-2 Multiple Family districts.
Sec. 23-4.1. Licensed home occupation in residential areas.
Sec. 23-4.2. Permit fees for mobile service occupations in the town.
Sec. 23-5. Use regulations. B-1 Business district.
Sec. 23-5.1. Adult entertainment prohibited.
Sec. 23-6. Use regulations. RM-3 district.
Sec. 23-7. Use regulations. CA-Causeway district.
Sec. 23-7.1. Designated public forum.
Sec. 23-8. Nonconforming uses.
Sec. 23-9. Minimum size of lot or units in all use districts.
Sec. 23-10. Minimum size of building site.
Sec. 23-11. Land development regulations.
Sec. 23-12. General provisions.
Sec. 23-13. Administration.
Sec. 23-14. Certificate of occupancy.
Sec. 23-15. Interpretation, purpose and conflict.
Sec. 23-16. Changes and amendments.
Sec. 23-16.1. Moratorium.
Sec. 23-17. Validity and penalty.
Sec. 23-18. Planned unit development (PUD) zoning overlay district.
Sec. 23-19. Reserved.
Sec. 23-20. Portable storage units.
Sec. 23-21. Gateway (G) zoning district.
Sec. 23-22. Reserved.
Sec. 23-22.1. Density monitoring system (DMS).
Sec. 23-22.2. Transfer of development rights.

Sec. 23-1. Definitions.

For the purposes of this article, certain terms and words are herein defined. Words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used for" include the meaning "designed for"; the word "structure" includes the word "building"; the word "shall" is mandatory and not discretionary; the word "lot" includes the words "plot" and "tract."

Accessory building. A subordinate building, or portion of the main building which is located on the same lot as the main building or on an adjacent lot, the use of which building is clearly incidental to the use of the main building.

Adult congregate living facility: An "adult congregate living facility" shall comprise any dwelling unit, building or buildings, section of a building, or distinct part of a building, residence, private home, home for the aged, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding twenty-four hours, housing, food service, and one or more personal services for 15 or more adults, not related to the owner or administrator by blood or marriage, who require such services; or to provide extended congregate care, limited nursing services, or limited mental health services.

Apartment building. A multiple dwelling designed for occupancy otherwise than as a one-family dwelling, or a two-family dwelling. The term "multiple dwelling" shall be understood to include apartment houses, bungalow courts, and all other family dwellings of similar character, but not to include hotels or apartment hotels.

Apartment hotel: An apartment building, under resident supervision, which furnishes hotel service to tenants or guests.

Balcony: A platform projecting from the exterior walls of an upper story of a building enclosed by a low wall or railing. A balcony is an accessory structure that may extend into a minimum setback area pursuant to the applicable district or supplemental regulations.

Building: Anything constructed or erected, the use of which demands a permanent location on the land; or anything attached to something having a permanent location on the land.

Building coverage: That area of a building plot within the perimeter or perimeters of the main building and accessory building or buildings exclusive of: swimming pools, planting bins, and roof overhangs. The perimeter shall be measured around the maximum plan area inclusive of all floors including balconies and stairways, covered or uncovered.

Bungalow courts (house courts): A "bungalow court" (or "house court") is a group of two or more single-family dwellings on one or more adjoining lots, having a separate outside entrance on the ground floor level for each single-family dwelling.

Club, private: The term "private club" shall pertain to and include those associations and organizations of a fraternal or social character, not operated or maintained for profit. "Private clubs" shall not include casinos, nightclubs or other institutions operated as a business.

ARTICLE I. ZONING REGULATIONS

75 feet in accordance with the Town Charter provisions, the maximum density shall be as determined at the time of Site Development Plan/TDR approval. 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 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 percent 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 redevelopment of an existing RM-3 site after the effective date of Ordinance No. 807, not less than 90 percent 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 berms, planters and adequate landscaping materials shall incorporate the same architectural features and elements on the main building façade to disguise the parking garage structure.

(E) CA-Causeway Area:

(1) No restrictions.

(Ord No 108, § 11 6-10-57; Ord No 112, § 1, 1-13-58; Ord No 115, § 1, 1-13-58; Ord No 125, § 1, 1-12-59; Ord No 183, § 3(1)-(11), 11-9-64; Ord No 227, § 1, 3-9-70; Ord No 224, § 1, 8-9-71; Ord No 268, §§ 3, 4, 7-20-73; Ord No 303, § 1, 8-9-78; Ord No 313, § 1, 12-13-78; Ord No 314, § 1, 2-4-77; Ord No 317, § 1, 6-13-77; Ord No 425, § 1, 4-8-85; Ord No 481, § 1, 8-14-89; Ord No 592, § 3, 7-8-98; Ord No 627, § 1, 1-12-98; Ord No 712, § 1, 2-10-03; Ord No 721, § 1, 6-9-03; Ord No 757, § 1(Exh. A), 12-13-04; Ord No 759, § 1(Exh. A), 12-13-04; Ord No 771, § 1(Exh. A), 6-9-05; Ord No 775, § 1(Exh. A), 6-20-05; Ord No 798, § 1(Exh. A), 7-10-06; Ord No 799, § 1(Exh. A), 7-10-06; Ord No 819, § 1(Exh. A), 7-9-07; Ord No 820, § 1, 7-9-07; Ord No 851, § 1(Exh. A), 12-8-08; Ord No 858, § 1(Exh. A), 12-8-08; Ord No 859, § 1(Exh. A), 12-13-10; Ord No 848, § 1(Exh. A), 3-11-2013; Ord No 848, § 1(Exh. A), 3-11-2013; Ord No 850, § 1(Exh. A), 11-12-13; Ord No 857, § 1(Exh. A), 12-9-13)

Sec. 23-12. General provisions.

- (1) Nothing shall be done or suffered to be done or permitted to exist on any improved or unimproved property which may be or become an annoyance, blight, eyesore, danger or nuisance to the neighborhood, the inhabitants of buildings or the safety and welfare of the general public. Without limiting the foregoing, the following shall constitute a nuisance: deteriorated landscaping, deteriorated fences, deteriorated roofs, deteriorated windows, deteriorated shutters, deteriorated screens, deteriorated exterior paint, deteriorated railings, deteriorated facia boards, deteriorated exterior doors, deteriorated driveways, deteriorated parking areas, deteriorated garbage containers, deteriorated swimming pools and pool areas or any deteriorated part of structures to the extent it causes a blight on the neighborhood or endangers life or property. Deteriorated is defined as degeneration in the substance of the thing such as that arising from decay, corrosion, disintegration, lack of paint, broken parts, holes, or leaking in the case of roofs. No monkeys, apes, reptiles, horses, cattle, swine, goats, poultry, fowl or any other livestock shall be kept on any lot.
- (2) Excepting as is otherwise provided in the "sign ordinance" of the town, which is now chapter 17 of the Code, no sign of any character shall be erected displayed or maintained on any of the vacant land in the town unless the maintenance or erection of such sign shall first have been specifically approved by the town council.
- (3) No weeds, brush or other unsightly growths, shall be permitted to grow or remain upon the land in the town, and no refuse pile or garbage pile or unsightly objects including but not limited to building materials and equipment if no building permit exists for improvement on said land or if a certificate of occupancy has been issued for improvements on said land, shall be allowed to be placed or suffered to remain thereon; and in the event that the owner of any land in the town shall fail or refuse to keep his land free of growths, underbrush or refuse piles or other unsightly growths or objects, including but not limited to building materials and equipment if no building permit exists or if a certificate of occupancy has been issued, then the town may enter upon said land and remove the same at the expense of the owner; and such entry shall not be deemed a trespass. This paragraph includes the requirement that the owner of any land in the town shall empty or secure with a cover, dumpsters containing construction debris and materials, as well as remove or otherwise tie and secure yard debris and other trash, including tree trimmings, within three hours after notice of a Hurricane Watch has been posted for Miami-Dade County, Florida. Said requirements shall remain in full force until notice of an "all clear" has been posted for Miami-Dade County, Florida.

The foregoing paragraph creates a civil liability in addition to the penalty provision of section 23-17. The civil liability of the owner for any expenses of the town in removal of the weeds, brush, refuse, piles, garbage piles, or other unsightly growths or objects, construction debris and materials, yard debris and other trash including tree trimmings, may be enforced in any court of appropriate jurisdiction in the state.

- (4) For the purpose of insuring the development of the town as an area of high standards, the town reserves the right and power to control the type, kind and character of buildings, structures and improvements which may be sought to be placed on any land in the town. Therefore, no building or structure may be commenced or begun until all plans and specifications therefor have been submitted to the town, and shall have been first approved by the town. Refusal of the town to approve any plans or specifications submitted to the town for approval may be based upon any valid reason or concern with the general welfare of the town, including but not limited to aesthetic grounds.
- (5) No tents or temporary accessory buildings or structures shall be erected on any land in the town without the prior written approval of the town.
- (6) (a) No boathouse or dock building shall be created on or adjoining any of the lots in the town, but a dock extending such as distance from the line of the outside face of the seawall cap of the waterfront lots as may be approved by the town manager may be permitted; provided:
- (i) No deck of any dock shall be higher than the existing height of the seawall cap; provided, however, if a property has a deck and/or walkway in the adjacent yard and wishes to carry the same material across the seawall cap onto the dock so that there is an unbroken appearance between the deck and/or walkway and dock with respect to materials, the dock may be higher than the seawall cap, but not to exceed 12 inches, subject to approval of the planning and zoning board;
- (ii)

ARTICLE I. ZONING REGULATIONS

In the "RD"-Single Family district, the area of no lot shall be reduced to less than 10,000 square feet, except the area of Lots 1 to 28, inclusive, and Lots 96 to 104, inclusive, which shall not be reduced to less than 11,250 square feet, and Lots 29 to 95, inclusive which shall not be reduced to less than 13,125 square feet.

- (c) In the "RBA"-Tract district, Lots A, B, C, D, E, or F shall not be subdivided without prior approval by the town council of a subdivision plat. In any event, all lots in such subdivision shall contain a minimum of 11,250 square feet.

(14) No kitchen or cooking facilities may be contained in any accessory building, but may only be contained in the main building on any building site.

(15) Projections into setback areas:

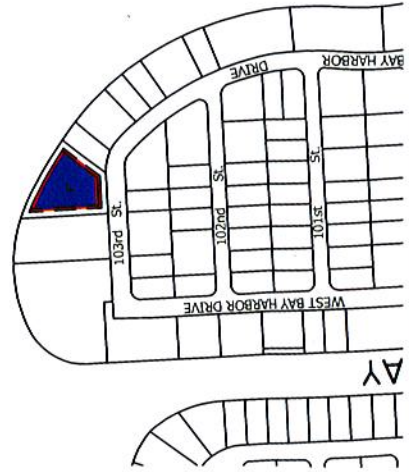
(a) Notwithstanding anything to the contrary set forth in this subsection, the following are permitted:

- i. On the West Island in waterfront homes, balconies having accessibility from within the building may project into the front yard setback areas not more than four feet; provided there shall be not less than eight feet clear headroom under such projection and providing that such balconies shall not be screened, shuttered or enclosed in any fashion.
 - ii. On the West Island in waterfront homes which have a second story with an area of over 1,500 square feet, an exit staircase may project from the second story into the front yard setback area not more than four feet.
 - iii. On homes on the West Island which are on interior lots, which have a second story with an area of over 1,500 square feet, an exit staircase may project from the second story into the rear yard setback area not to exceed four feet.
 - iv. None of the foregoing subsections i., ii. or iii. shall permit any portion of the balconies or staircases to project into any side yard setback.
 - v. On the East Island for RM-1 (waterfront) lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:
Front (street) yards. Balconies may project into the minimum front yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of any balcony shall encroach closer than four feet into the minimum front setback. Notwithstanding the above, no balcony adjoining a front lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.
Side yards. Balconies may project into the minimum side yard area not more than two feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than two feet into a minimum side setback. Notwithstanding the above, no balcony adjoining a side lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.
Rear yards. Balconies may project into the minimum rear yard area not more than six feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than six feet into the minimum rear setback. Notwithstanding the above, no balcony adjoining a rear lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.
 - vi. On the East Island for RM-2 (non-waterfront) lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:
Front (street) yards. Balconies may project into the minimum front yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of any balcony shall encroach closer than four feet into the minimum front setback. Notwithstanding the above, no balcony adjoining a front lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.
Side yards. Balconies may project into the minimum side yard area not more than two feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than two feet into a minimum side setback. Notwithstanding the above, no balcony adjoining a side lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.
Rear yards. Balconies may project into the minimum rear yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than four feet into the minimum rear setback. Notwithstanding the above, no balcony adjoining a rear lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.
- (b) No steps or platforms over three feet in height above the base flood elevation (BFE) shall extend into side, rear or front yard setback areas. Steps or platforms not exceeding three feet in height may be relied, provided that such railing shall not exceed in height above the base flood elevation (BFE), specified for walls in that district, and further, that there shall be clear, unobstructed passage of not less than three feet between such projection and the lot line adjacent. No portion of a sidewalk shall be constructed closer than three feet to a side lot line, five feet to a rear lot line nor closer than 15 feet to a front lot line, except for a public sidewalk parallel to the street and/or swale parking areas as part of a town-wide pedestrian plan. This provision shall not preclude a sidewalk placed perpendicular between the front lot line and building. No sidewalk shall exceed five feet in width.
- (c) Areaways, steps to basements and similar features will be permitted in side and rear yard areas, providing that no part of such feature shall exceed in height, three feet above grade, and further provided that there shall be a clear unobstructed passage of not less than five feet between such features and the lot lines adjacent. On corner lots, steps extending to more than four feet from the main building and not more than three feet in height above grade, leading to the basement or ground floor may be constructed in the front yard setback area parallel to the side yard setback areas.
- (d) Open-type, metal fire escapes may project four feet into side and rear yard setback areas, provided that the bottom run shall be counter-balanced and that when the bottom run is up there shall be at least nine feet of clear headroom below it. The bottom run shall be adjacent to the building and shall be so arranged that when down, there shall be at least three feet of clear unobstructed passage between it and the lot line adjacent. No open type, metal fire escapes shall be permitted in RD or RE districts. In RBA-Tract district that shall be permitted only on buildings designed for business or commercial use and then only on specific permission and approval as to location and design by the town council.
- (e) No main walls of any building shall encroach on setback areas; but eaves may project into setback areas which abut interior lot lines not more than three feet, and into setback areas which abut on street, alleys or waterways not more than four feet. Other architectural features and accessory structures shall be regulated as follows:
- i. Chimneys may project into setback areas a distance not to exceed two feet. The width of the projecting chimney shall not exceed six feet.

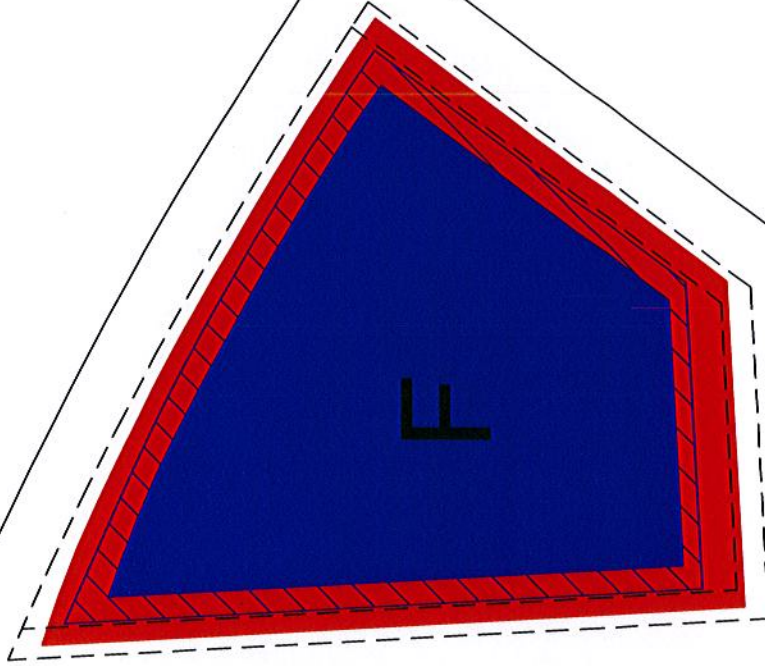
EAST
ISLAND
Balconies



- 60% Lot Coverage
- 40% Lot Coverage
- Max Balcony Depth / Encroachment
- Setbacks
- Property Line

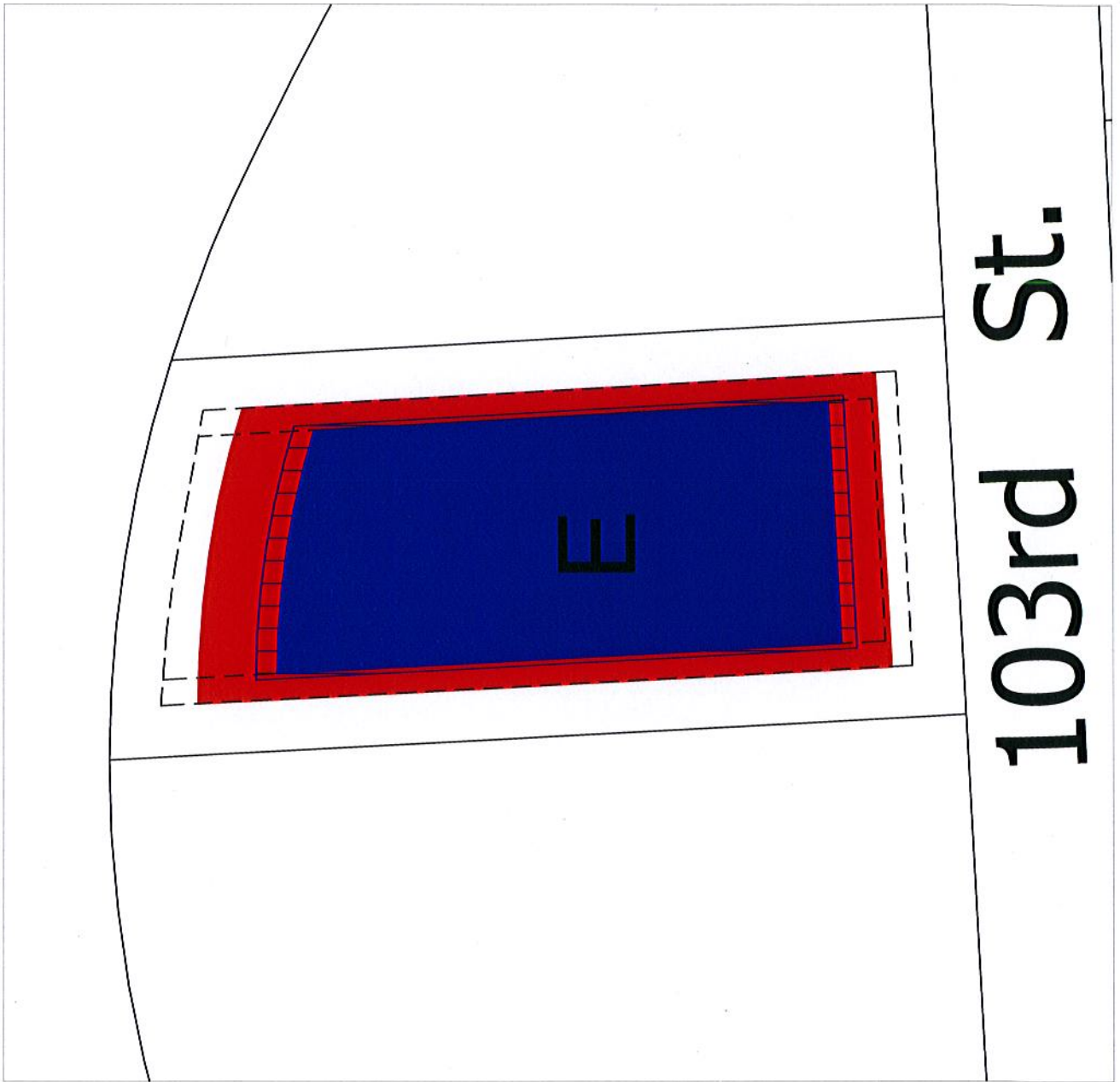
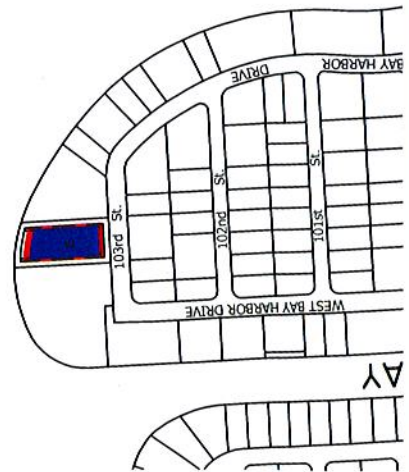


3rd St.



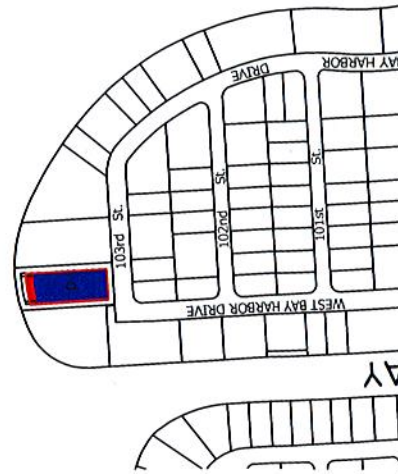
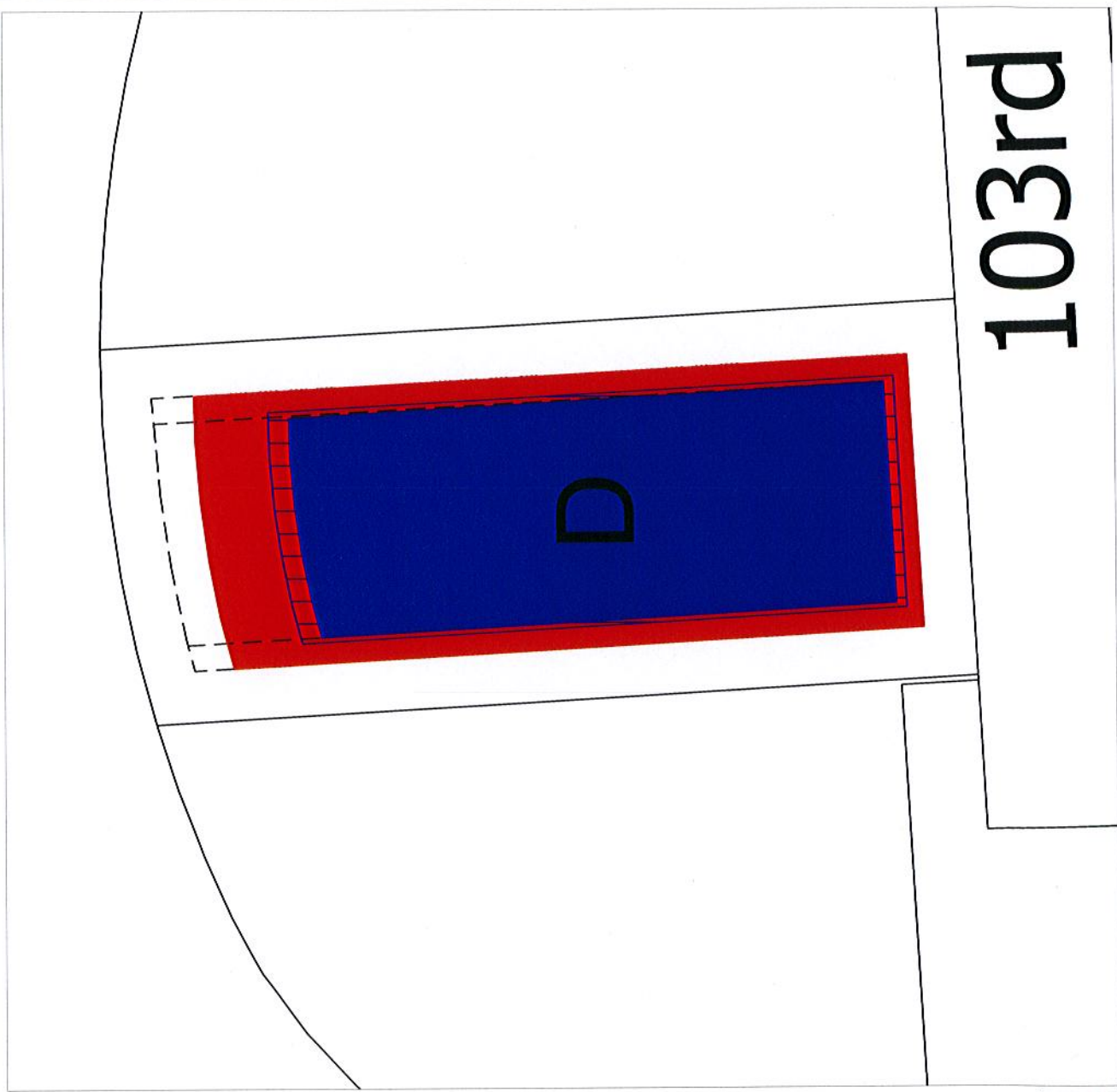
SHEET NO.		1	
Scale: 1:500		DATE: 00	
PREPARED FOR		TOWN OF BAY HARBOR ISLANDS	
MICHAEL MILLER PLANNING ASSOCIATES, INC.		7022 Main Rd. Suite 202 Bay Harbor Islands, FL 33154 Tel: (305) 757-5000 Fax: (305) 757-7000	
Designed	MM	Drawn	MM
Checked	MM	Checked	MM
DATE	00	DATE	00
REVISION			

-  - 60% Lot Coverage
-  - 40% Lot Coverage
-  - Max Balcony Depth / Encroachment
-  - Setbacks
-  - Property Line



103rd St.

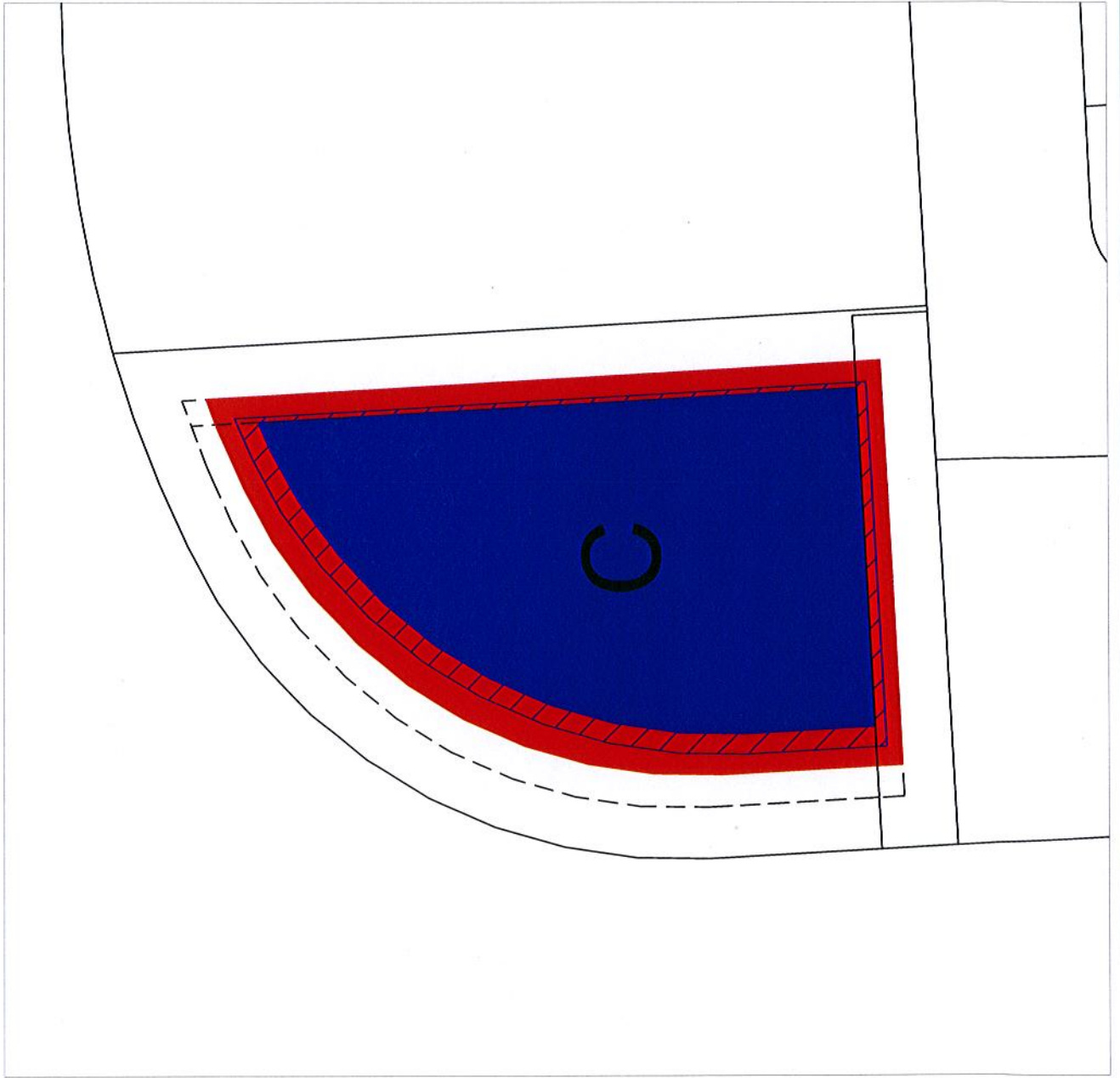
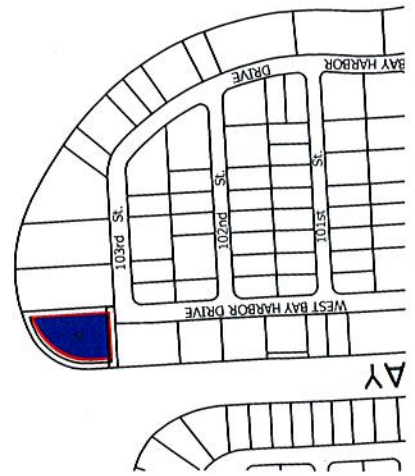
- 60% Lot Coverage
- 40% Lot Coverage
- Max Balcony Depth / Encroachment
- Setbacks
- Property Line



103rd

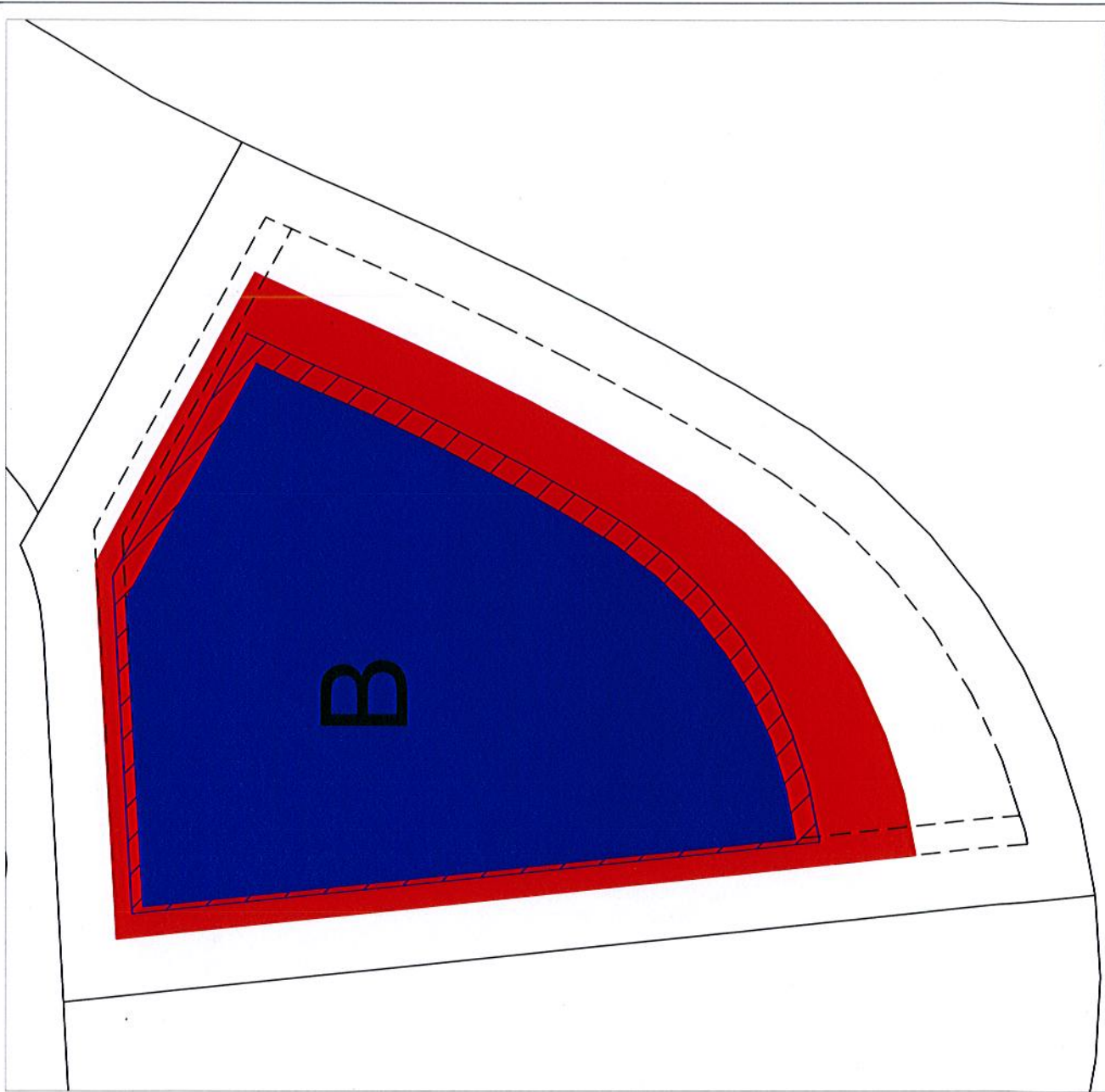
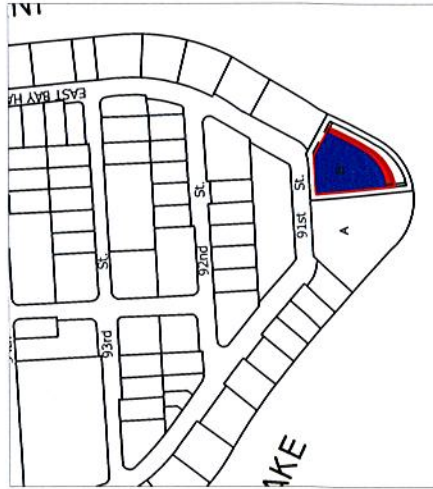
SHEET 1		1	
Scale: 1:500		1	
SCALE		1	
TOWN OF BAY HARBOR ISLANDS		1	
MICHAEL MILLER PLANNING ASSOCIATES, INC.		1	
7522 West Hill, Suite 100		1	
Coral Springs, Florida 33067		1	
Tel: (954) 351-1000 Fax: (954) 351-1000		1	
Designed	MM	Drawn	MM
Checked	MM	MM	MM
DATE	10/1/00	DATE	10/1/00
REVISION		REVISION	

-  - 60% Lot Coverage
-  - 40% Lot Coverage
-  - Max Balcony Depth / Encroachment
-  - Setbacks
-  - Property Line



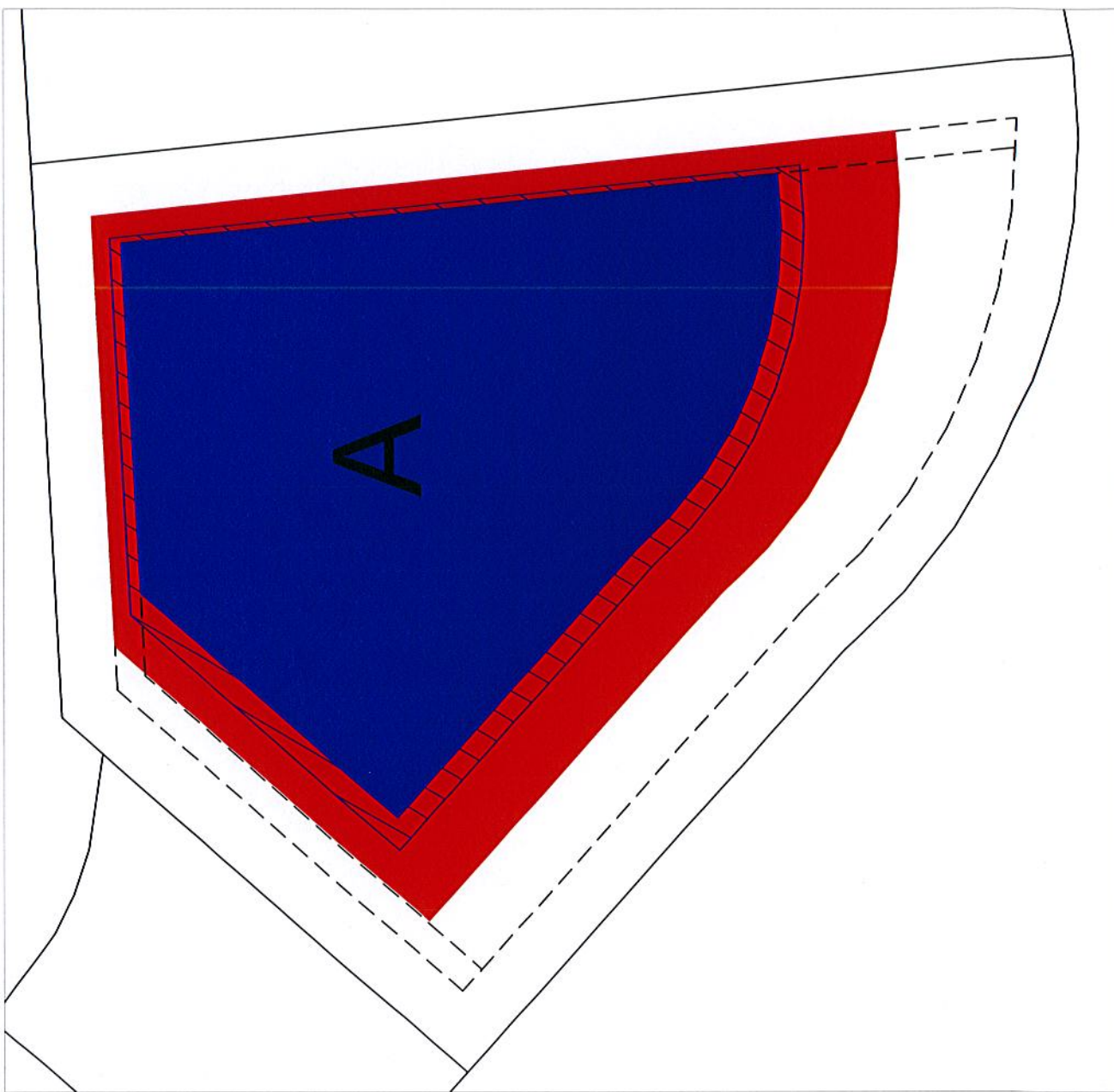
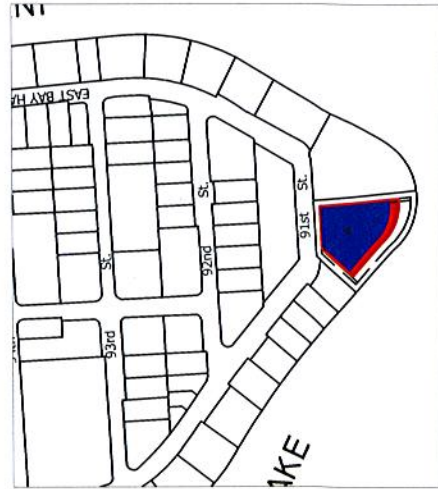
SHEET NO.		1	
Scale: 1:500		PROJECT	
SCALE		00	
PREPARED FOR			
TOWN OF BAY HARBOR ISLANDS			
MICHAEL MILLER PLANNING ASSOCIATES, INC.			
7520 Vines Rd. Suite 10-203 Cape Coral, FL 33914 Tel: (813) 757-0000 Fax: (813) 757-7099			
Designed:	MM	Drawn:	MM
Checked:	MM	Checked:	MM
NO.	DATE	NO.	DATE

- 60% Lot Coverage
- 40% Lot Coverage
- Max Balcony Depth / Encroachment
- Setbacks
- Property Line



SHEET NO.		1	
Scale: 1:500		PROJECT: 00	
SCALE		00	
PREPARED FOR			
TOWN OF BAY HARBOR ISLANDS			
MICHAEL MILLER PLANNING ASSOCIATES, INC.			
7022 Villa Rd. Suite 8-202 Coral Springs, Florida 33067 Tel: (954) 777-9900 Fax: (954) 777-7096			
Designed	MM	Checked	MM
Drawn	MM	Checked	MM
DATE		DATE	

-  - 60% Lot Coverage
-  - 40% Lot Coverage
-  - Max Balcony Depth / Encroachment
-  - Setbacks
-  - Property Line



SHEET NO.		1	
Scale: 1:500		PROJECT	
TOWN OF BAY HARBOR ISLANDS		DATE	
MICHAEL MILLER PLANNING ASSOCIATES, INC.			
7032 W. 92nd St., Suite B-203 Coral Springs, Florida 33067 Tel: (954) 751-4600 Fax: (954) 751-1008			
Designed	MM	Checked	MM
Drawn	MM	Checked	MM
DATE		REVISION	

**TOWN OF BAY HARBOR
ISLANDS**

**2014 RM-3 BUILDING
COVERAGE – BALCONY ISSUE**

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Council Members
Town of Bay Harbor Islands

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: July 28th, 2014

Subject: Town of Bay Harbor Islands
Potential Land Development Code Amendment
Building Coverage – RM-3 Multiple Family Residential District
MMPA Acct. No.: 01-0702-0500A

ISSUE

The Town recently received interest in the re-development of a parcel of land in the RM-3 Zoning District. Through a series of meetings and telephone conversations with the potential developer and their representatives, it was pointed out that "balconies" must be currently included by definition in the building coverage calculations. It is unusual for any external appendages on the exterior of a building, such as balconies / canopies architectural features, to be included in a ground level lot coverage calculation. Lot coverage criterion was removed from all Town Zoning Districts except the RM-3 District (formerly RBA) as those lots are significantly larger than the RM-1 and RM-2 lots and it was felt the basic setbacks / other limits were not sufficient to govern the mass of a building complex. The allowable lot coverage in the RM-3 District was studied / adjusted in 2009-10. The Town's analysis focused on the district regulations – the overall Code definition was not reviewed according to our notes. Initially staff is supportive of the request to not count balconies in the building coverage calculation.

BACKGROUND / ANALYSIS

Building Coverage

Section 23-1 of the Town's Code currently defines building coverage as:

"That area of a building plot within the perimeter or perimeters of the main building and accessory building or buildings exclusive of: swimming pools, planting bins, and roof overhangs. The perimeter shall be measured around the maximum plan area inclusive of all floors including balconies and stairways, covered or uncovered."

Town of Bay Harbor Islands
Potential Land Development Code Amendment
Building Coverage -- RM-3 Multiple Family Residential District
July 28th, 2014
Page 2

This is quite unusual, as similar surrounding municipalities (Bal Harbor Village, Surfside, Miami, Miami Beach, etc.) do not include balconies in their building coverage calculations. Typically this calculation only includes the main walls of the structure.

The definition of building coverage previously applied to all multifamily lots. In 2004, the RM-1 and RM-2 Zoning Districts were created (renamed / regulations modified from previous common RE District). At that time, the maximum building coverage (35%) was removed. This was because upon researching the matter it was found few of the existing developments met the Code. Most older developments average between 50-60%. The Town's Zoning Code was created many years after most of the development occurred.

After the 2004 Code amendment, maximum building coverage only applied to the RBA (now known as RM-3) Zoning District. In 2009-2010, the RM-3 Zoning district was created (renamed / regulations modified from previous RBA District). The building coverage requirement for the lands affected increased slightly from 37.5% to 40% for principal structures (60% for elevated parking structures).

As previously stated, most surrounding municipalities do not include balconies in the building coverage calculation. Including balconies in this calculation affects the size of potential buildings by an increase of approximately 4,000+/- sq. ft. (6-10%) depending on the size of the lot and building design. Balconies can range in size and design greatly. They could be small structures located near a sliding door into a dwelling unit or more expansive surrounding a building. The above square footage assumes a larger surrounding balcony was utilized, as the RM-3 lots are more exclusive dictating higher-end units. It is felt by Town Staff that this criterion may hinder future development, should be discussed and possibly removed. The Town has restrictive setbacks, height limitations and open space requirements. Also, the RM-3 requires that almost all parking spaces be placed in a garage. MMPA has reviewed the text amendment proposal submitted by the prospective purchaser's attorney and suggests the definition of building coverage in Sec. 23-1 of the Code be amended as follows:

Building coverage: That area of a building plot within the perimeter or perimeters of the main building and accessory building or buildings exclusive of: swimming pools, planting bins, balconies, and roof overhangs. The perimeter shall be measured around the maximum plan area inclusive of all floors ~~including balconies~~ and stairways, covered or uncovered.

Balcony Encroachments

There has been no recent re-development activity in the RM-3 district. However, a prospective developer has contacted the Town about a parcel in the RM-3 district. The Code sections that govern this area (Sec. 23-12(15)) were reviewed in detail in recent years and are felt to be adequate. However, as currently written the Code cites only the RM-1 and RM-2 Districts.

In 2005 the Town amended the Code to allow balconies for the RM-1 and RM-2 districts to project into the minimum setbacks as follows:

RM-1: Front - 4', Side - 2', Rear - 6'

RM-2: Front - 4', Side - 2', Rear - 4'

There are also requirements that limit the overall depth of a balcony, unless the PZ Board approves variations at the time of Site Development Plan approval. At that time the Code was re-written in 2005 the entire study focus was on the former RE District (now RM-1 / RM-2). It was not until 2009-2010 that the RM-3 District (formerly RBA) regulations were studied and modified. Since there is no lot coverage criteria in the RM-1 / RM-2 Districts the above Code criteria applies. It is felt that the RM-3 Zoning district should be allowed the same balcony encroachments as the RM-1 (waterfront) district and not be penalized on lot coverage. In addition to the above referenced definition MMPA believes the following Code section should be amended to allow the same balcony encroachments for all lots on the east island. MMPA suggests Sec. 23-12(15) of the Code be amended as follows:

(15) Projections into setback areas:

(a) Notwithstanding anything to the contrary set forth in this subsection, the following are permitted:

v. On the East Island for **RM-1 (waterfront)** lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:

Front (street) yards. Balconies may project.....

vi. On the East Island for **RM-2 (non-waterfront)** lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:

Front (street) yards. Balconies may project.....

It should be noted that removing balconies from the lot coverage definition and allowing balconies to encroach into the setback will potentially increase the allowable size of buildings in the RM-3 district. However, most of the projects reviewed / approved by the Town in the RM-1 and RM-2 districts in the last few years have 50-60% lot coverage. Again, the lot coverage in the RM-3 district is 40% for the principal structures and 60% for parking structures. While there is no lot coverage restriction in the RM-1 and RM-2 districts, the projects being reviewed / approved by the Town in the last several years have 10%-20% greater lot coverage than the RM-3 currently allows.

Districts

It was also discovered that Section 23-2 of the Town's Code was never updated when the RBA district was changed to the RM-3 district. This section should be amended to reflect the change in name as follows:

**Town of Bay Harbor Islands
Potential Land Development Code Amendment
Building Coverage – RM-3 Multiple Family Residential District
July 28th, 2014
Page 4**

Use districts:

(5) ~~RBA—Tract district~~ RM-3 —Multiple-Family district

Area districts: Area districts are as hereinafter set forth:

The town is hereby divided into area districts for specified uses, and the boundaries of such districts are as follows, to wit:

.....Tracts A, B, C, D, E and F, appearing on the plat of the East Island, are hereby designated as "~~tract district RBA use district~~ RM-3";

SUMMARY

There has been recent interest in re-development of a parcel of land in the RM-3 Zoning District. Through meetings and subsequent conversations with the potential developer's design team and our researching this applicable sections of the Code that would apply to a RM-3 site, it was discovered that balconies are now required to be included in the building coverage calculation. This is not common and it is felt that balconies should not be included in the building coverage calculation. Again, this of course could increase the allowable size of buildings in the RM-3 district; however, most of the projects reviewed / approved by the Town in the RM-1 and RM-2 districts in the last few years have 50%-60% lot coverage. This is 10-20% less than most projects being reviewed / approved by the Town for the RM-1 and RM-2 districts in the last several years. Additionally, it is felt that the RM-3 Zoning District should be permitted the same balcony encroachments into the setbacks as the RM-1 district.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S ZONING AND PLANNING CODE TO MODIFY CERTAIN CODE PROVISIONS RELATED TO THE RM-3 MULTIPLE-FAMILY DISTRICT; AMENDING ARTICLE I, SECTION 23-1 ENTITLED DEFINITIONS TO MODIFY THE DEFINITION OF BUILDING COVERAGE TO DELETE EXTERIOR BALCONIES FROM BEING CALCULATED; AMENDING ARTICLE I, SECTION 23-2 ENTITLED DISTRICTS TO UPDATE CODE REFERENCES TO THE RM-3 DISTRICT (FORMERLY KNOWN AS THE RBA TRACT DISTRICT) AND THE LEGAL DESCRIPTIONS FOR VARIOUS ZONING DISTRICTS; AMENDING ARTICLE I, SECTION 23-12(13) ENTITLED GENERAL PROVISIONS TO UPDATE REFERENCES TO CURRENT ZONING DISTRICT NAMES; AMENDING ARTICLE I, SECTION 23-12(15) ENTITLED PROJECTIONS INTO SETBACK AREAS TO MODIFY VARIOUS PROVISIONS RELATED TO BALCONY ENCROACHMENTS INTO SETBACK AREAS TO INCLUDE THE RM-3 DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; 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 considers strategies and design guidelines to encourage the proper re-development of lands within the Town, and amends the Zoning and Planning Code accordingly; and

WHEREAS, the Town has retained the services of urban planning professionals to study land development activities and land development regulations and to recommend strategies and/or Code modifications to address identified problems; and

WHEREAS, one of the land development issues recently studied is related to what portions of buildings are to be calculated as part of the maximum allowable building coverage for RM-3 zoned properties, as the current Code definition includes balconies attached to the exterior of buildings, and

WHEREAS, after studying of the issue and receiving public input, the Town Council finds that a need exists to modify the existing Code provisions to delete balconies attached to the exterior of buildings from being calculated as part of the allowable building coverage, now only required in the RM-3 Multiple-Family District, and

WHEREAS, the Town Council desires to amend the Town's Zoning and Planning Code to modify various outdated Code references to current Zoning Districts and to modify the existing Code provisions to delete balconies attached to the exterior of buildings from being calculated as part of the allowable building coverage, and

WHEREAS, a public meeting was held before the Local Planning Agency (LPA) for the Town which is charged with reviewing proposed modifications to the Town's Zoning and Planning Code; 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 Article I, Sections 23-1 entitled "Definitions" to modify the definition of building coverage to delete exterior balconies from being calculated; amending Article I, Section 23-2 entitled "Districts" to update various Code references to the RM-3 multiple-Family district (formerly the RBA Tract District) and the legal descriptions for various zoning districts; amending Article I, Section 23-12(13) entitled "General Provisions" to update references to current zoning district names; amending Article I, SECTION 23-12(15) entitled "Projections into Setback Areas" to modify various zoning district provisions related to balcony encroachments into setback yards, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 2: That if 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 ____ day of _____, 2014.

PASSED on Second Reading this ____ day of _____, 2014.

ROBERT H. YAFFE
Mayor

ATTEST:

MARLENE MARANTE
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

ARTICLE I. ZONING REGULATIONS

Sec. 23-1. Definitions.

For the purposes of this article, certain terms and words are herein defined. Words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used for" include the meaning "designed for"; the word "structure" includes the word "building"; the word "shall" is mandatory and not discretionary; the word "lot" includes the words "plot" and tract."

Accessory building: A subordinate building, or portion of the main building which is located on the same lot as the main building or on an adjacent lot, the use of which building is clearly incidental to the use of the main building.

Adult congregate living facility: An "adult congregate living facility" shall comprise any dwelling unit, building or buildings, section of a building, or distinct part of a building, residence, private home, boarding home, home for the aged, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding twenty-four hours, housing, food service, and one or more personal services for 15 or more adults, not related to the owner or administrator by blood or marriage, who require such services; or to provide extended congregate care, limited nursing services, or limited mental health services.

Apartment building: A multiple dwelling designed for occupancy otherwise than as a one-family dwelling, or a two-family dwelling. The term "multiple dwelling" shall be understood to include apartment houses, bungalow courts, and all other family dwellings of similar character, but not to include hotels or apartment hotels.

Apartment hotel: An apartment building, under resident supervision, which furnishes hotel service to tenants or guests.

Balcony: A platform projecting from the exterior walls of an upper story of a building enclosed by a low wall or railing. A balcony is an accessory structure that may extend into a minimum setback area pursuant to the applicable district or supplemental regulations.

Building: Anything constructed or erected, the use of which demands a permanent location on the land; or anything attached to something having a permanent location on the land.

Building coverage: That area of a building plot within the perimeter or perimeters of the main building and accessory building or buildings exclusive of swimming pools, planting bins, balconies, and roof overhangs. The perimeter shall be measured around the maximum plan area inclusive of all floors including balconies and stairways, covered or uncovered.

Bungalow courts (house courts):

Editing Note: Balance of Code definitions not included due to volume.

Sec. 23-2. Districts.

In order to regulate and restrict the erection, construction, reconstruction, alteration, location and use of buildings, structures, land and water, for trade, business, residence or other purposes, and the location thereof, and to regulate the size of buildings and other structures hereafter erected or altered, to regulate and determine the size and dimensions of yards, courts and other open spaces and to regulate and limit the percentage of lot that may be occupied and the density of population, the town is hereby divided into use and area districts as follows:

Use districts:

- (1) RD—Single Family district
- (2) RM-1—Multiple-Family district (waterfront lots)
- (3) RM-2—Multiple-Family district (non waterfront lots)
- (4) B-1—Business district
- (5) RBA—Tract-district RM-3 - Multiple-Family district
- (6) CA—Causeway district.
- (7) PUD district.
- (8) G—Gateway district.

Area districts: Area districts are as hereinafter set forth:

The town is hereby divided into area districts for specified uses, and the boundaries of such districts are as follows, to wit:

All of the lots and tracts appearing on the West Island, except Lots 68, 69, 70 and 71 in Block 23 thereof, are hereby designated as "use district RD"; Lots 3 through 25 in Block 1, Lots 2 through 29 in Block 2, Lots 1 through 31 in Block 3 and Lots 1 through 36 in Block 4 are hereby designated as "use district RM-1"; Lots 1 through 15 in Block 5, Lots 1 through 20 in Block 6, Lots 1 through 20 in Block 7, Lots 1 through 21 in Block 8, Lots 1 through 25 in Block 9, Lots 1 through 12 in Block 10, Lots 1 through 18 in Block 13, Lots 1 through 18 in Block 14, Lots 1 through 18 in Block 15, Lots 1 through 13 in Block 16, Lots 1 through 10 in Block 17, Lots 1 through 16 in Block 18, Lots 1 through 16 in Block 19, and Lots 1 through 16 in Block 22 are hereby designated as "use district RM-2"; all of the lots appearing Blocks 11, 12, 20 and 21, of the East Island are hereby designated as "use district B-1"; Tracts A, B, C, D, E and F, appearing on the plat of the East Island, are hereby designated as ~~"tract district RBA"~~; "use district RM-3"; all lots and tracts located on that portion of the Broad Causeway which comprises Lots 68, 69, 70 and 71 in Block 23 on the West Island, and the land and causeway extending westerly therefrom across Biscayne Bay to the west shore of Biscayne Bay are hereby designated as "use district CA"; Lots 1, 2 and 3 in Block 2 and Lots 35, 36 and 37 in Block 4 are hereby designated as "use district PUD"; and Lots 1 and 2 in Block 1, Lot 1 in Block 2, Lot 32 in Block 3 and Lot 37 in Block 4 are hereby designated as "use district gateway (G)".

No building shall be erected, constructed, reconstructed or structurally altered, nor shall any building or land be used for any purpose other than the use permitted in the use district in which such building or land is located.

No lot area shall be so reduced or diminished that the yards or other spaces shall be smaller than as prescribed by this article, nor shall the density of population be increased in any manner except in conformity with the area regulations established in this article.

Every building hereafter erected, constructed, reconstructed or structurally altered shall be located on a lot as herein defined, and in no case shall there be more than one building on one lot, except as hereinafter provided for.

Sec. 23-12. General provisions.

- (13) The area of any lot, improved or unimproved, shall not be reduced or diminished so that the area of the lot is less than originally platted or as follows:

(a) In the ~~"RE" Multiple-Family district~~ "RM-1" and "RM-2" Multiple-Family districts, the area of no lot shall be reduced to less than 11,250 square feet.

(b) In the "RD"-Single Family district, the area of no lot shall be reduced to less than 10,000 square feet, except the area of Lots 1 to 28, inclusive, and Lots 96 to 104, inclusive, which shall not be reduced to less than 11,250 square feet, and Lots 29 to 95, inclusive which shall not be reduced to less than 13,125 square feet.

(c) In the ~~"RBA" Tract~~ RM-3 Multiple-Family district, Lots Tracts A, B, C, D, E, or F shall not be subdivided without prior approval by the town council of a subdivision plat. In any event, all lots in such subdivision shall contain a minimum of 11,250 square feet.

- (14) No kitchen or cooking facilities may be contained in any accessory building, but may only be contained in the main building on any building site.

- (15) Projections into setback areas:

(a) Notwithstanding anything to the contrary set forth in this subsection, the following are permitted:

i. On the West Island in waterfront homes, balconies having accessibility from within the building may project into the front yard setback areas not more than four feet; provided there shall be not less than eight feet clear headroom under such projection and providing that such balconies shall not be screened, shuttered or enclosed in any fashion.

ii. On the West Island in waterfront homes which have a second story with an area of over 1,500 square feet, an exit staircase may project from the second story into the front yard setback area not more than four feet.

- iii. On homes on the West Island which are on interior lots, which have a second story with an area of over 1,500 square feet, an exit staircase may project from the second story into the rear yard setback area not to exceed four feet.
- iv. None of the foregoing subsections i., ii. or iii. shall permit any portion of the balconies or staircases to project into any side yard setback.
- v. On the East Island for RM-1 (waterfront) lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:
 - Front (street) yards.* Balconies may project into the minimum front yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of any balcony shall encroach closer than four feet into the minimum front setback. Notwithstanding the above, no balcony adjoining a front lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.
 - Side yards.* Balconies may project into the minimum side yard area not more than two feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than two feet to into a minimum side setback. Notwithstanding the above, no balcony adjoining a side lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.
 - Rear yards.* Balconies may project into the minimum rear yard area not more than six feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than six feet into the minimum rear setback. Notwithstanding the above, no balcony adjoining a rear lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.

- vi. On the East Island for RM-2 (non-waterfront) lots, balconies extending from the exterior walls of the main building shall be permitted to encroach into the front, side and rear yard areas as follows:

Front (street) yards. Balconies may project into the minimum front yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of any balcony shall encroach closer than four feet into the minimum front setback. Notwithstanding the above, no balcony adjoining a front lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.

Side yards. Balconies may project into the minimum side yard area not more than two feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than two feet into a minimum side setback. Notwithstanding the above, no balcony adjoining a side lot line shall exceed eight feet in depth, unless otherwise approved by the town as part of a site development plan.

Rear yards. Balconies may project into the minimum rear yard area not more than four feet. However, if a building is set back on a lot more than the minimum setback requirement, a balcony may be deeper, provided no portion of the balcony shall encroach closer than four feet into the minimum rear setback. Notwithstanding the above, no balcony adjoining a rear lot line shall exceed six feet in depth, unless otherwise approved by the town as part of a site development plan.

Editing Note: Balance of Code section not included due to volume.

Samples

BHV

Floor Area Ratio (FAR) means the total gross floor area, including all floors but excluding mezzanines, elevator shafts, emergency stairwells, trash chutes, other vertical mechanical spaces and open balcony areas, measured to the outside of the Structure at each floor, and not including Parking Structures, on a Lot, divided by the Lot area. (For example, a Building containing 20,000 square feet of floor area on a zoning Lot of 10,000 square feet has a Floor Area Ratio of 2.0).

Lot-Coverage means the percentage of Lot area that is covered by surfaces impervious to the penetration of water into the ground. For purposes of making maximum Lot Coverage calculations, brick paver surfaces will be counted as 50 percent of their area being impervious.

Surfside

Building area: The area within the confines of the exterior walls of the main building, accessory buildings, covered porches and terraces.

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. Basement space used for retailing shall be included for the purposes of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths.

- (1) In particular, floor area including (but not limited to):
 - a. Elevator shafts or stairwells at each floor.
 - b. Floor space used for mechanical equipment.
 - c. Floor space in penthouses.
 - d. Attic floor space (whether or not a floor has been laid) providing structural headroom of seven feet six inches or more.
 - e. Floor space in interior balconies or interior mezzanines.
 - f. Floor space in porches and pools enclosed with plastic, glass or permanent type of material.
 - g. Any floor space used for residential use, no matter where located within the building.
 - h. Garages (attached and unattached), sheds and accessory buildings.
- (2) However, the floor area of a building shall not include:
 - a. Basement space when used for parking of vehicles, as provided in the design standards for underground parking in this Code.
 - b. Accessory water tanks or cooling towers.
 - c. Uncovered steps and exterior balconies.
 - d. Interior balconies. The width of an interior balcony shall not be greater than the depth.
 - e. Covered or uncovered terraces, patios, breezeways, or porches which are open on two (2) sides.

**TOWN OF BAY HARBOR
ISLANDS
RM-3 TRACTS
ZONING DISTRICT REVISIONS
2010 ILLUSTRATIONS**

TRACT "A"

915 STARS

205'

REAR

2-Story
Side School

7-8 Story
Side School

10-Story
Side School

2-Story
Side School

7-8 Story
Side School

10-Story
Side School

37.5%
Blk. Coverage
(40% Max. Coverage)

28' ELL P

FRONT
430'

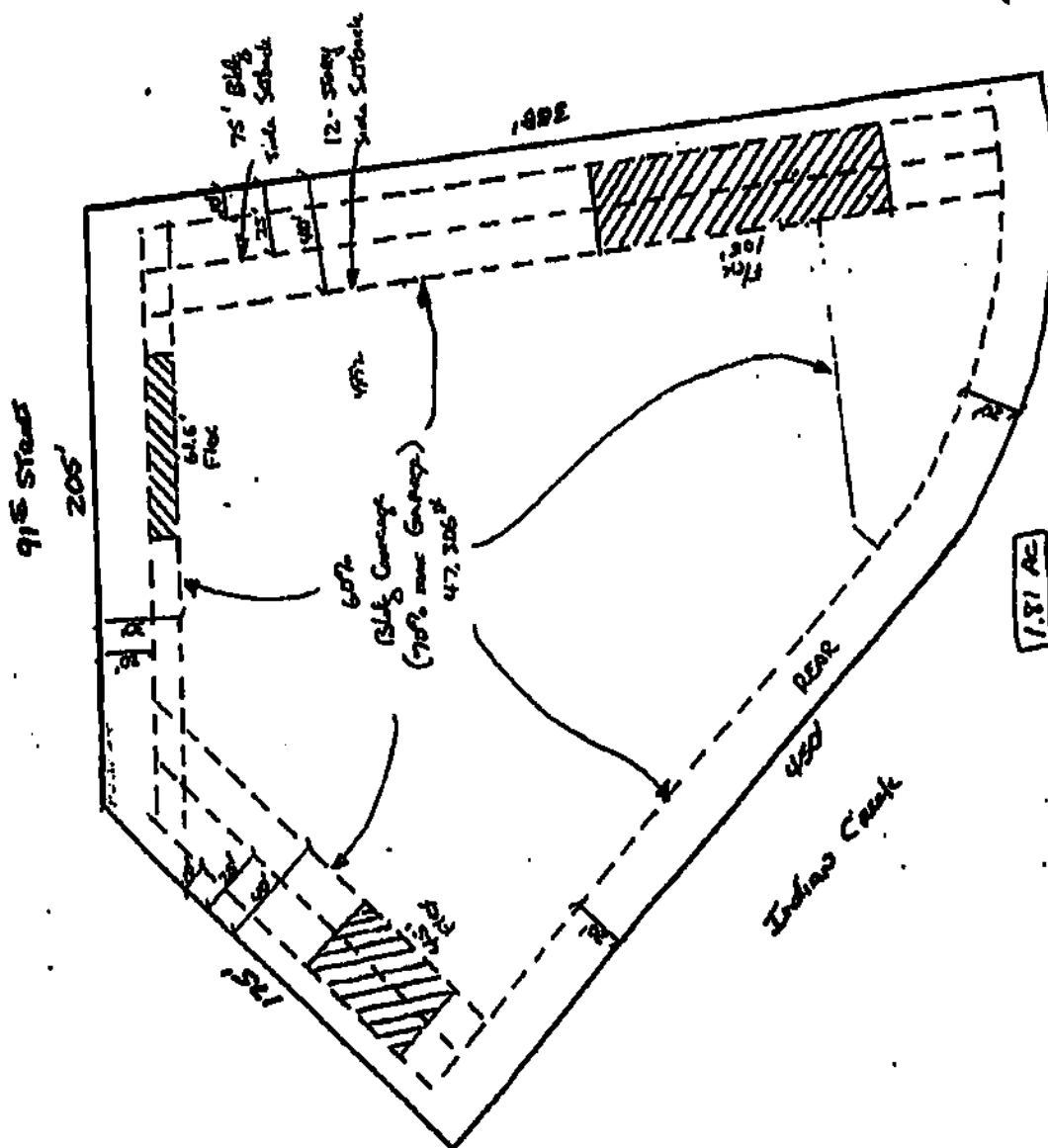
Indian Creek

1.81 AC

Existing Creek
Right of Way
Tract A
1:40 N

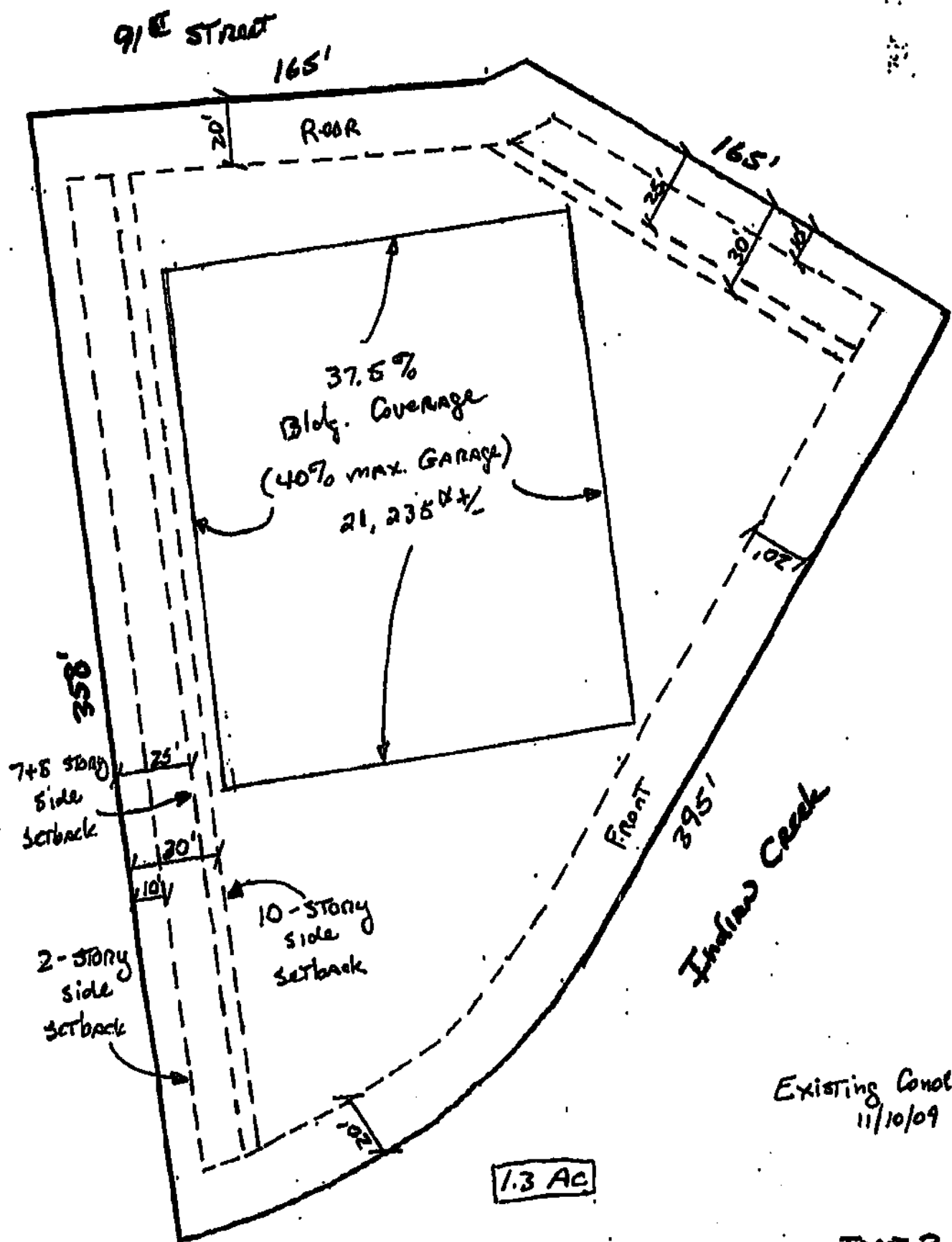
Reduced

ALTERNATIVE 1
(MORIS)
TARGET A
1:40



Reduced

TRACT "B"



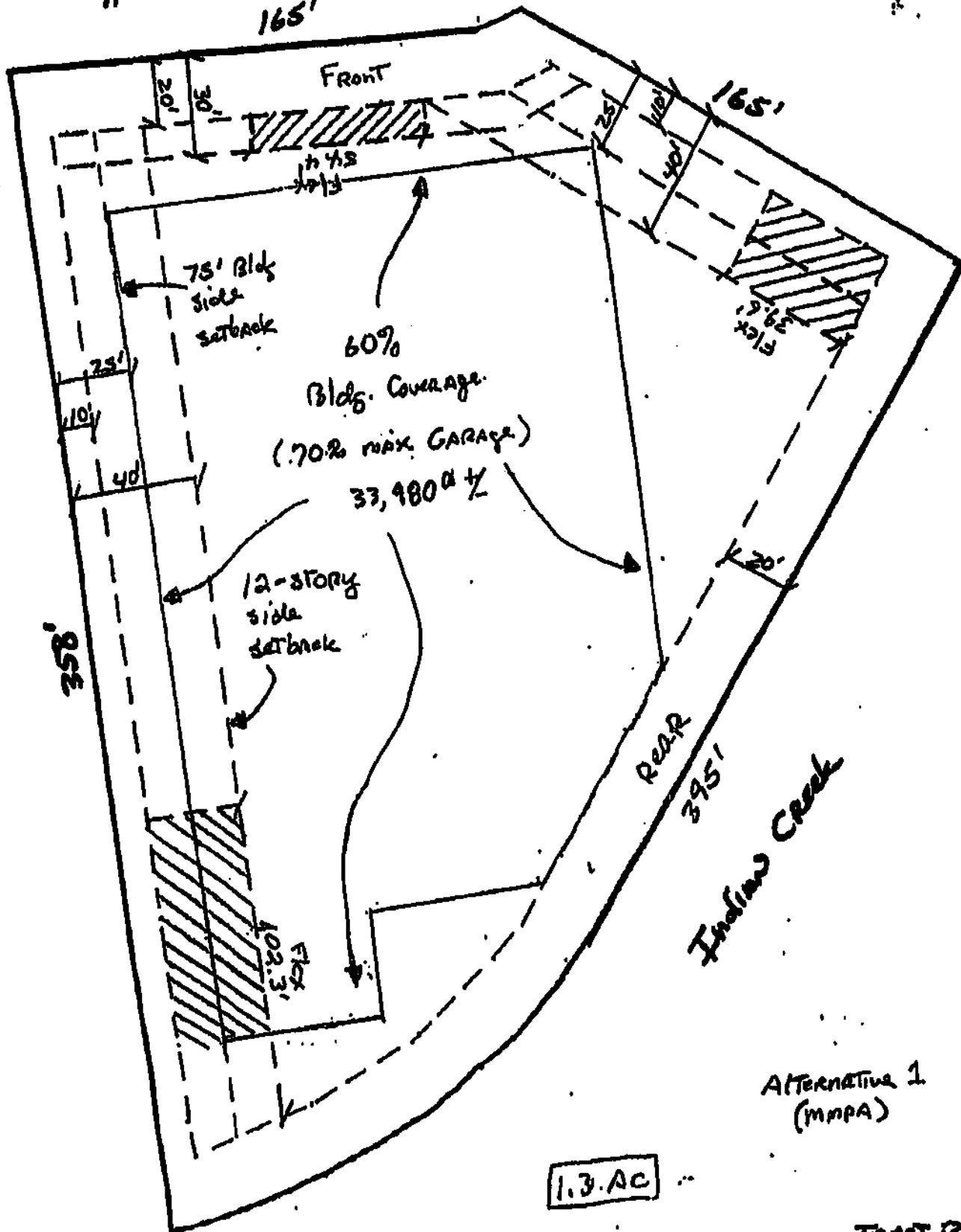
Existing Conditions
11/10/09

TRACT 13
1:40



9th STREET

165'



Alternative 1
(MMPA)

1.3 AC

TRACT 13
1:40



91st STREET

165'

Front

165'

75' Bldg
side
setback

60%
Bldg. Coverage
(33,980 sq. ft.)

1/2-STORY
side
setback

Flt. 38.6'

20'

REAR

395'

Indian Creek

358'

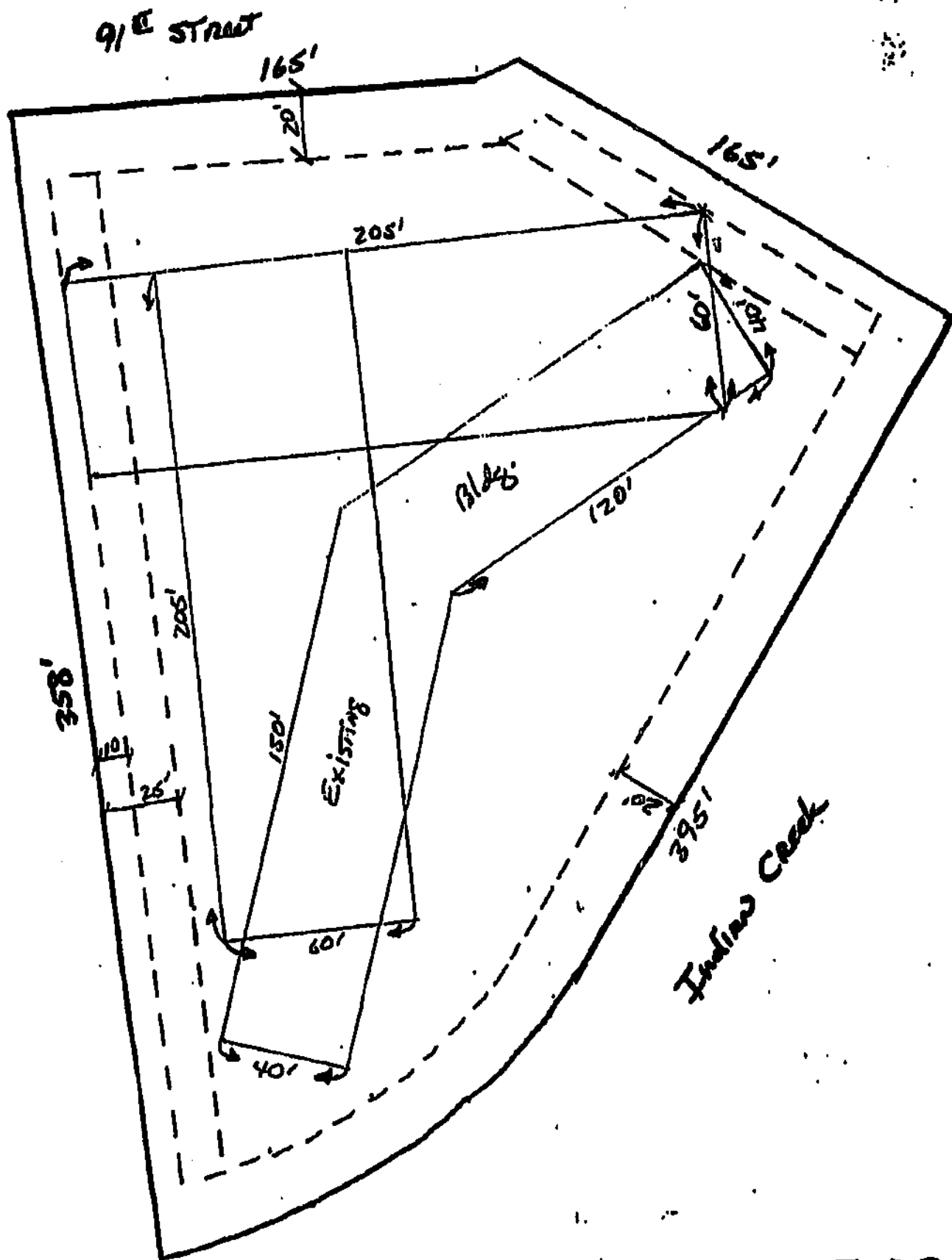
Flt. 101.6'

Alternative 2
(P213 5/4/10)

1.3 AC

TRACT 13
1:40

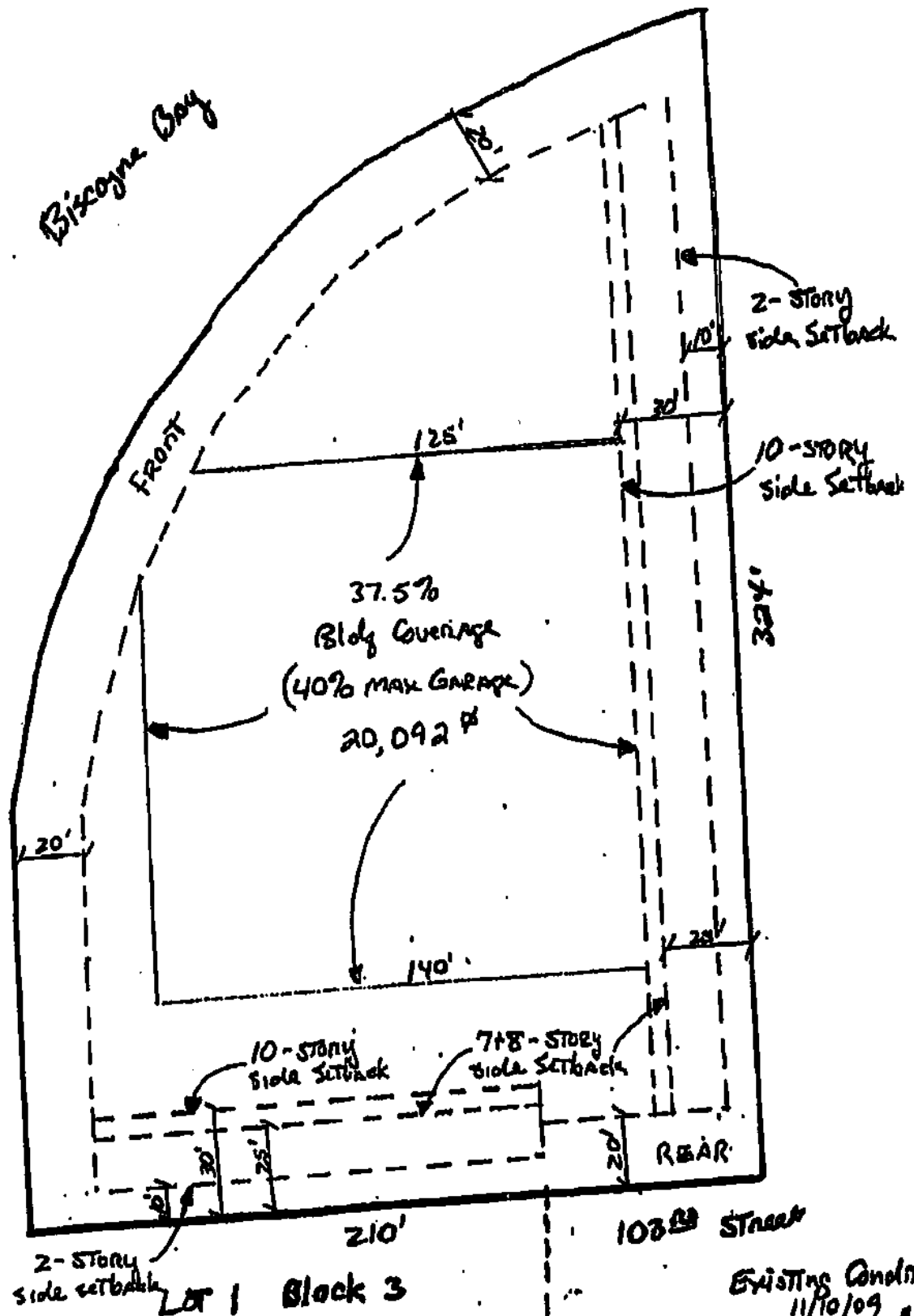




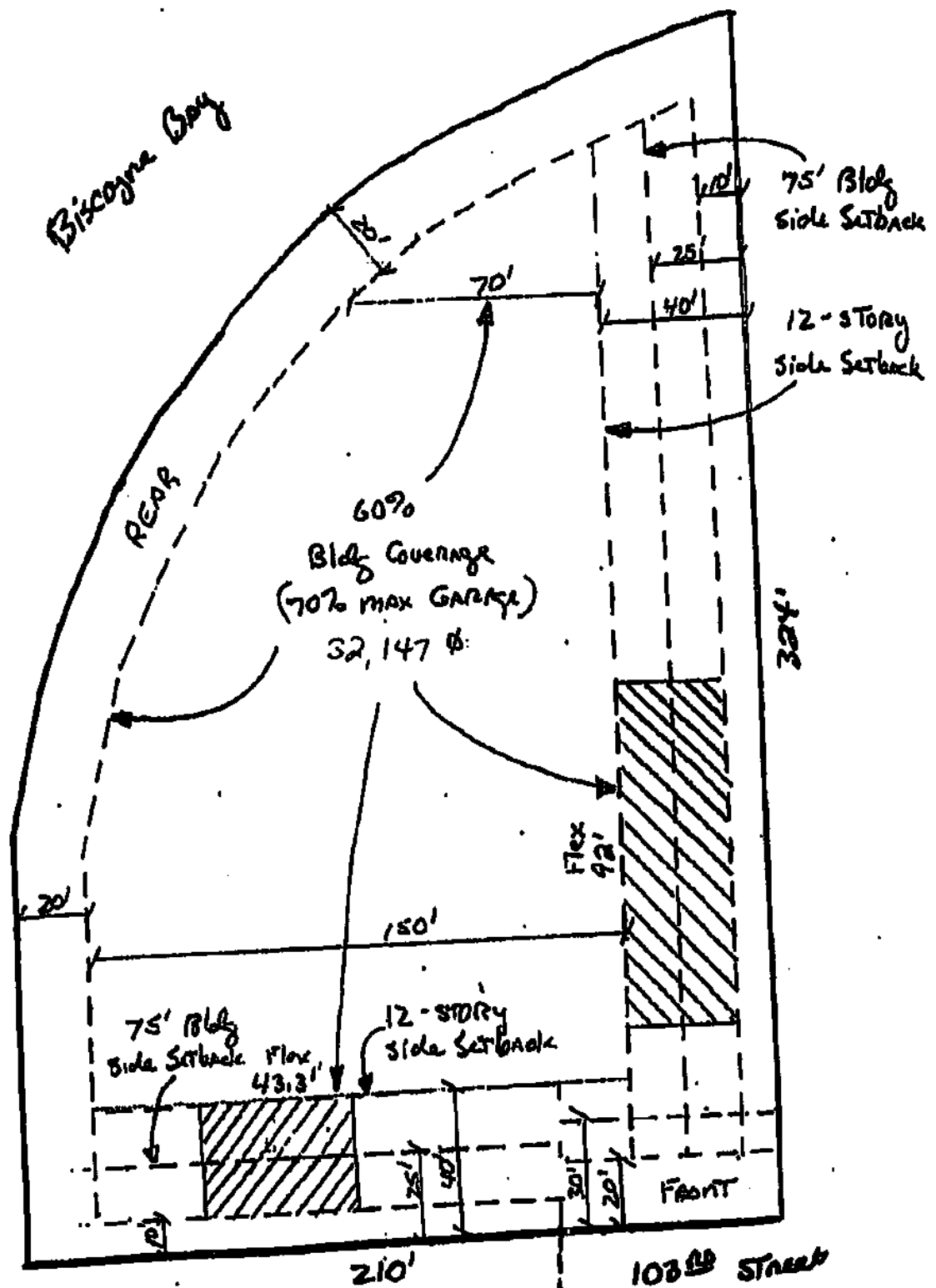
TRACT B
1:40

N

TRACT "C"



EXISTING Condition
11/10/09
TRACT C 1
1:40 N

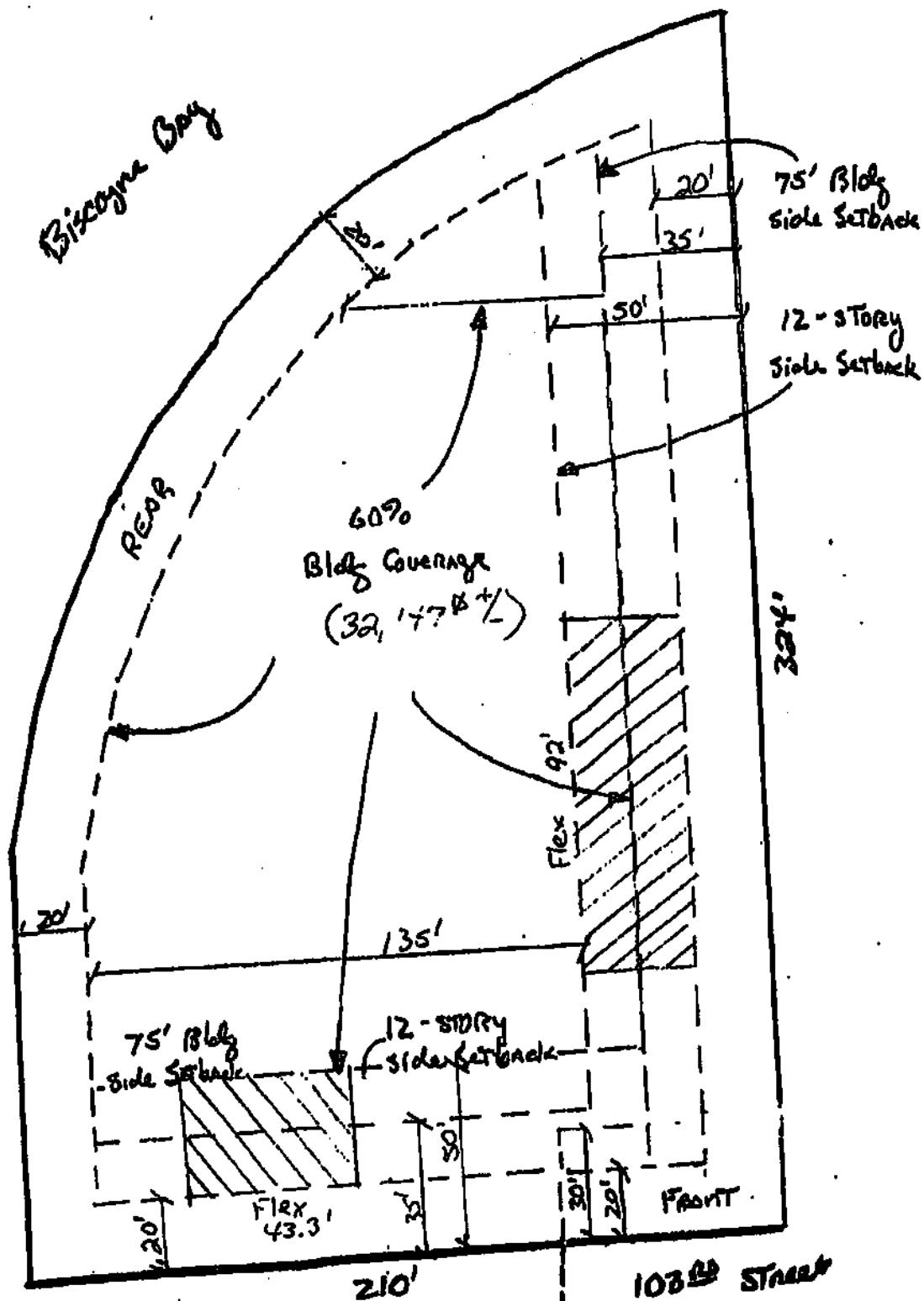


LOT 1 Block 3

1.23 Ac

ALTERNATIVE 1
(MMPA)

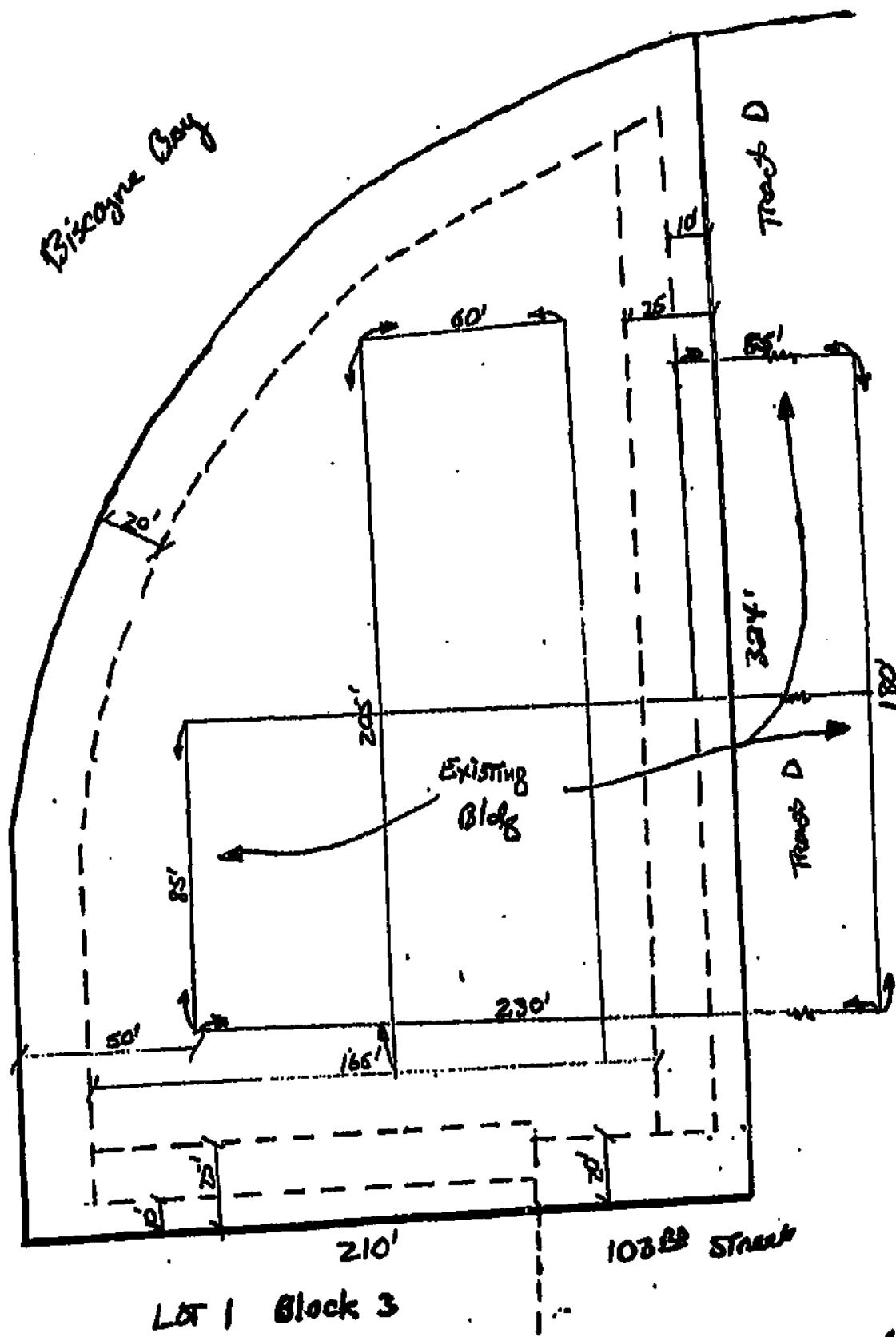
TRACT C 4
1:40 N



LOT 1 Block 3

1.23 AC

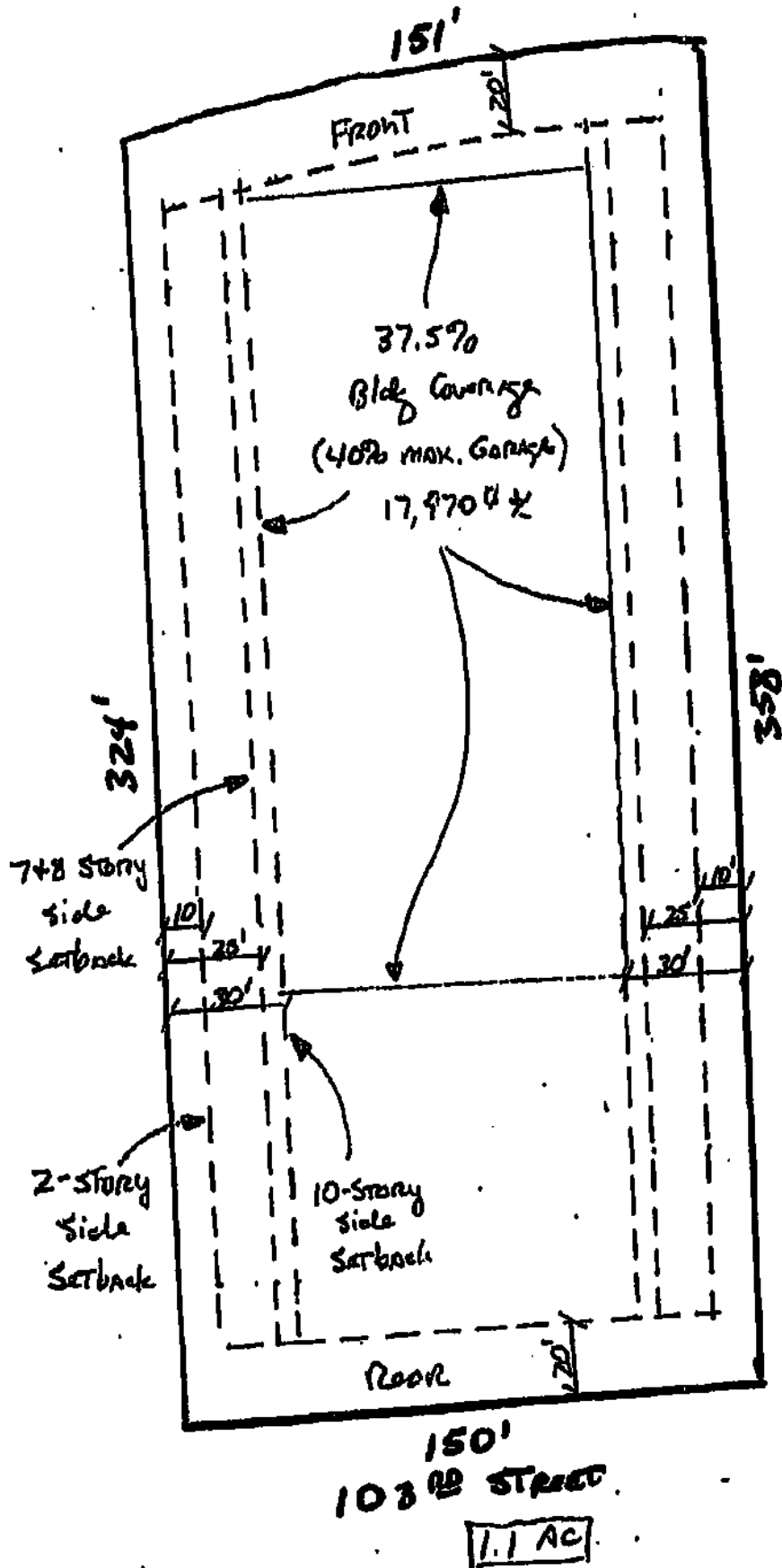
ALTERNATIVE 2
P2B 5/4/10
TRACT C
1:40 N



TRACT C 4
1:40 N

TRACT "D"

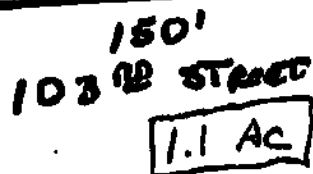
Biscayne way



EXISTING CONDITIONS
11/10/09

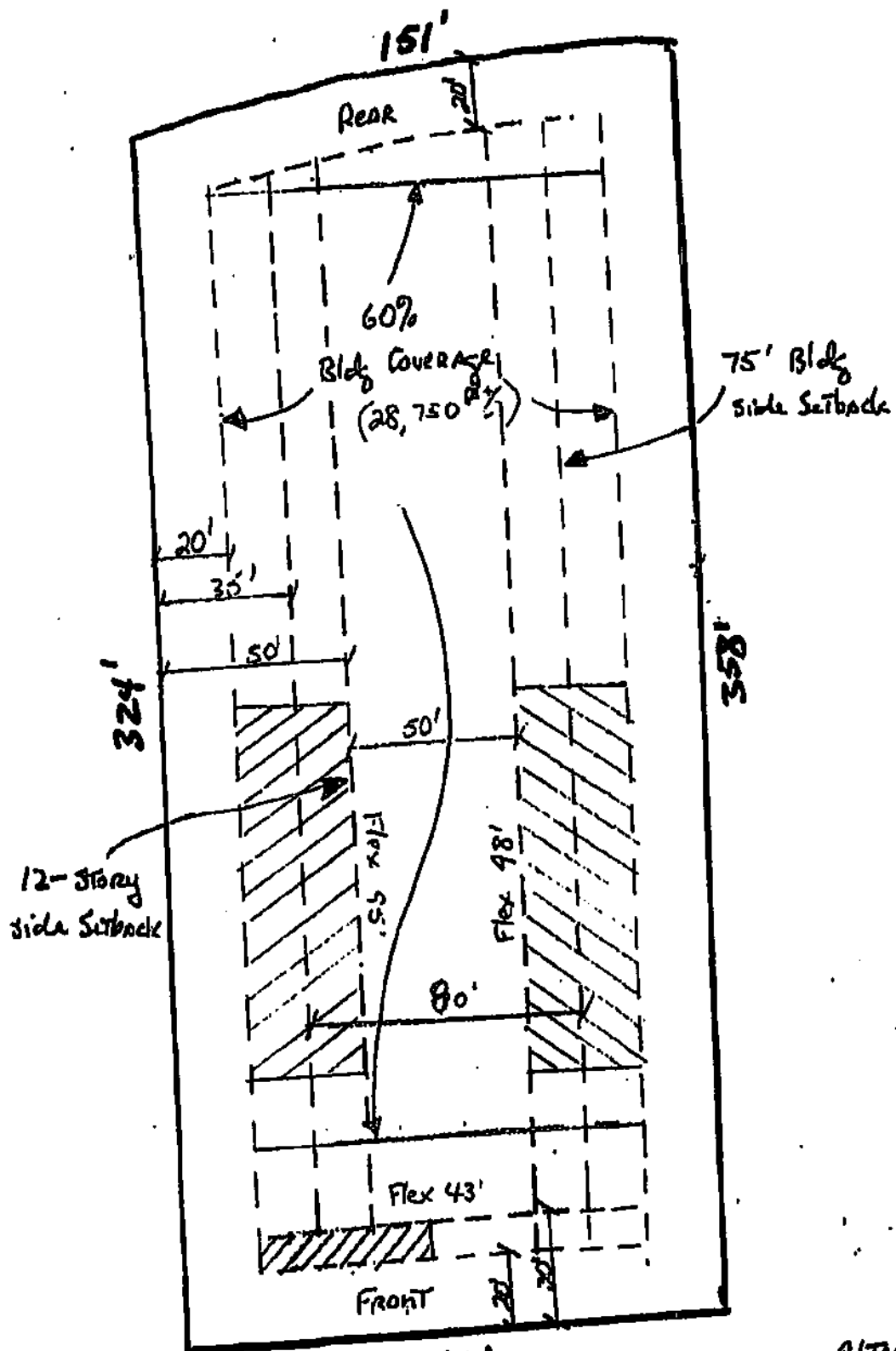
TRACT D 4
1:40 N

151'



Tract D 4
1:40 N

Biscayne Bay



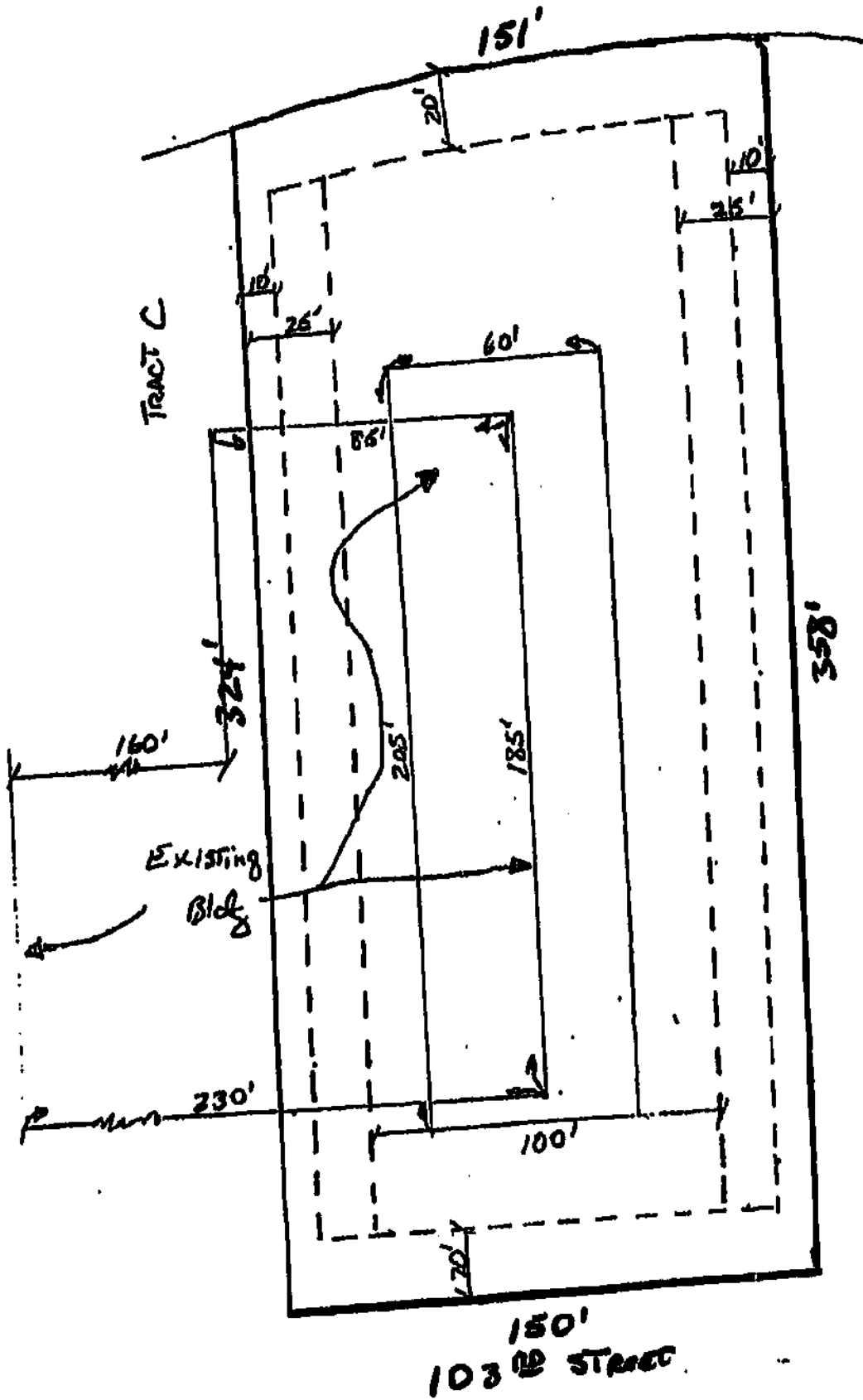
150'
103rd STREET

1.1 AC

ALTERNATIVE 2
(P2B 5/4/10)

TRACT D
1:40 N

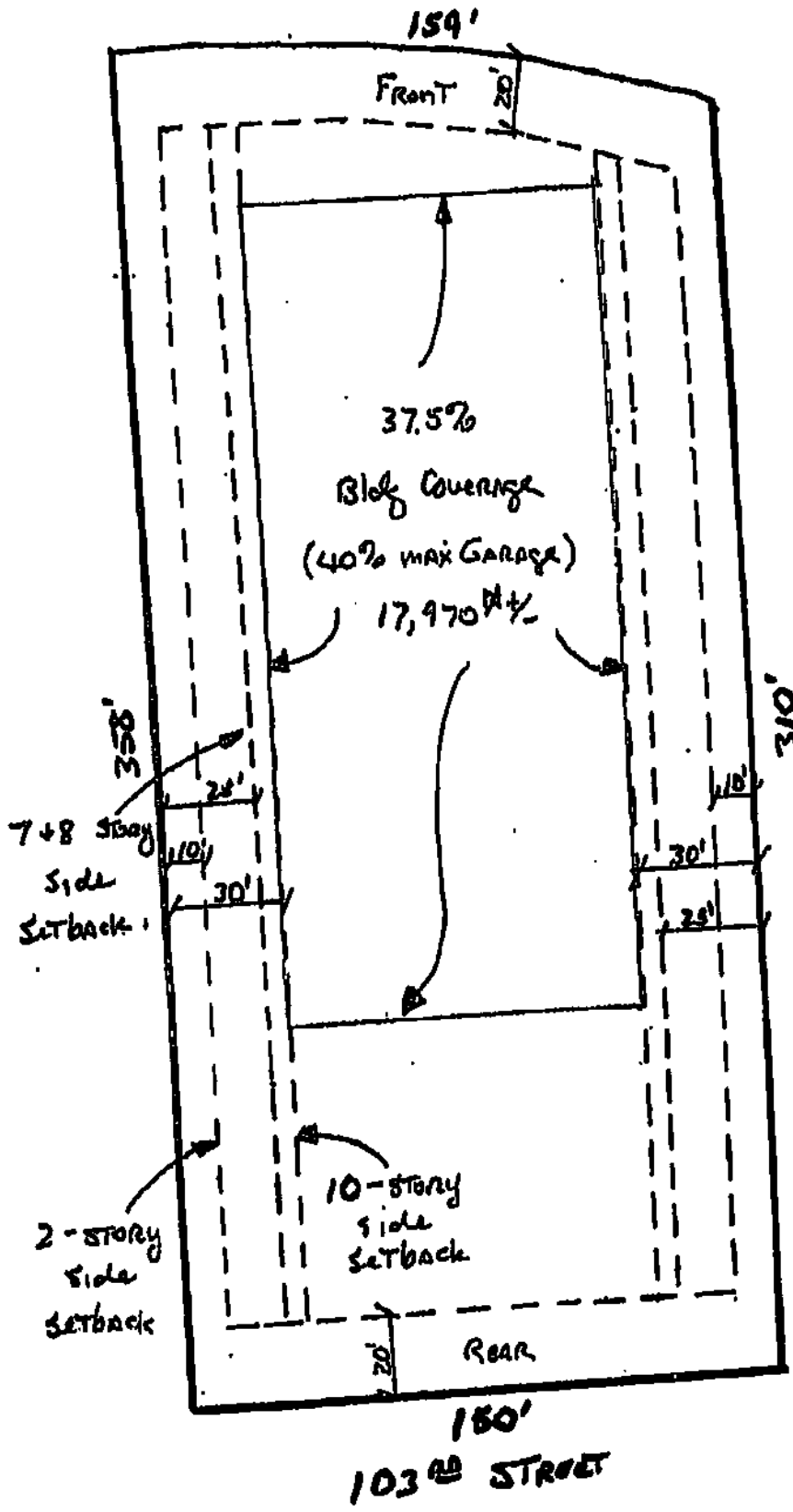
וְיִשְׂרָאֵל יָמַד.



TRACT D 4
1:40 N

TRACT "E"

Biscayne Bay

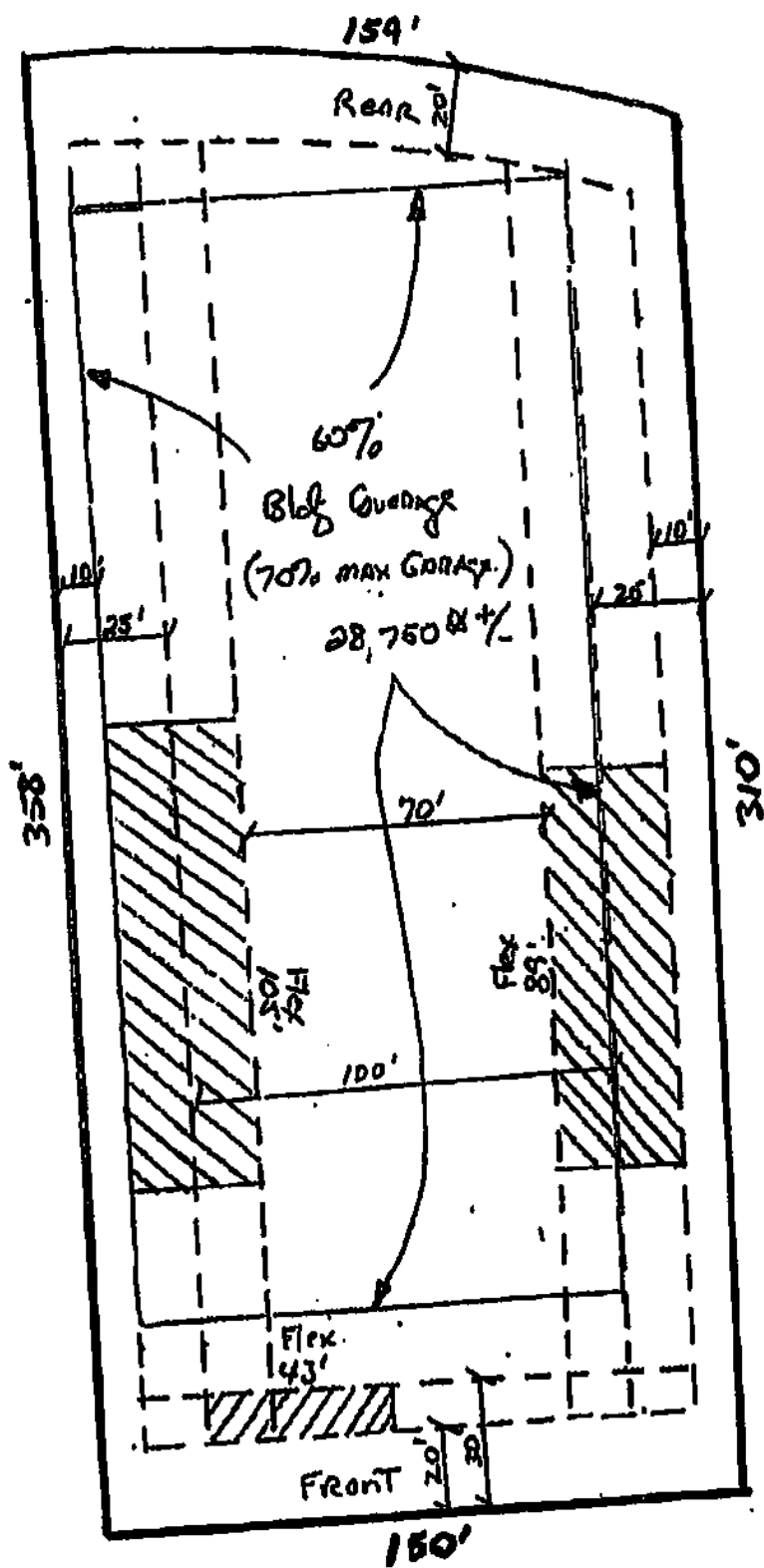


1.1 Ac

Existing Conditions
11/10/09

TRACT E
1:40 N

Biscayne Bay



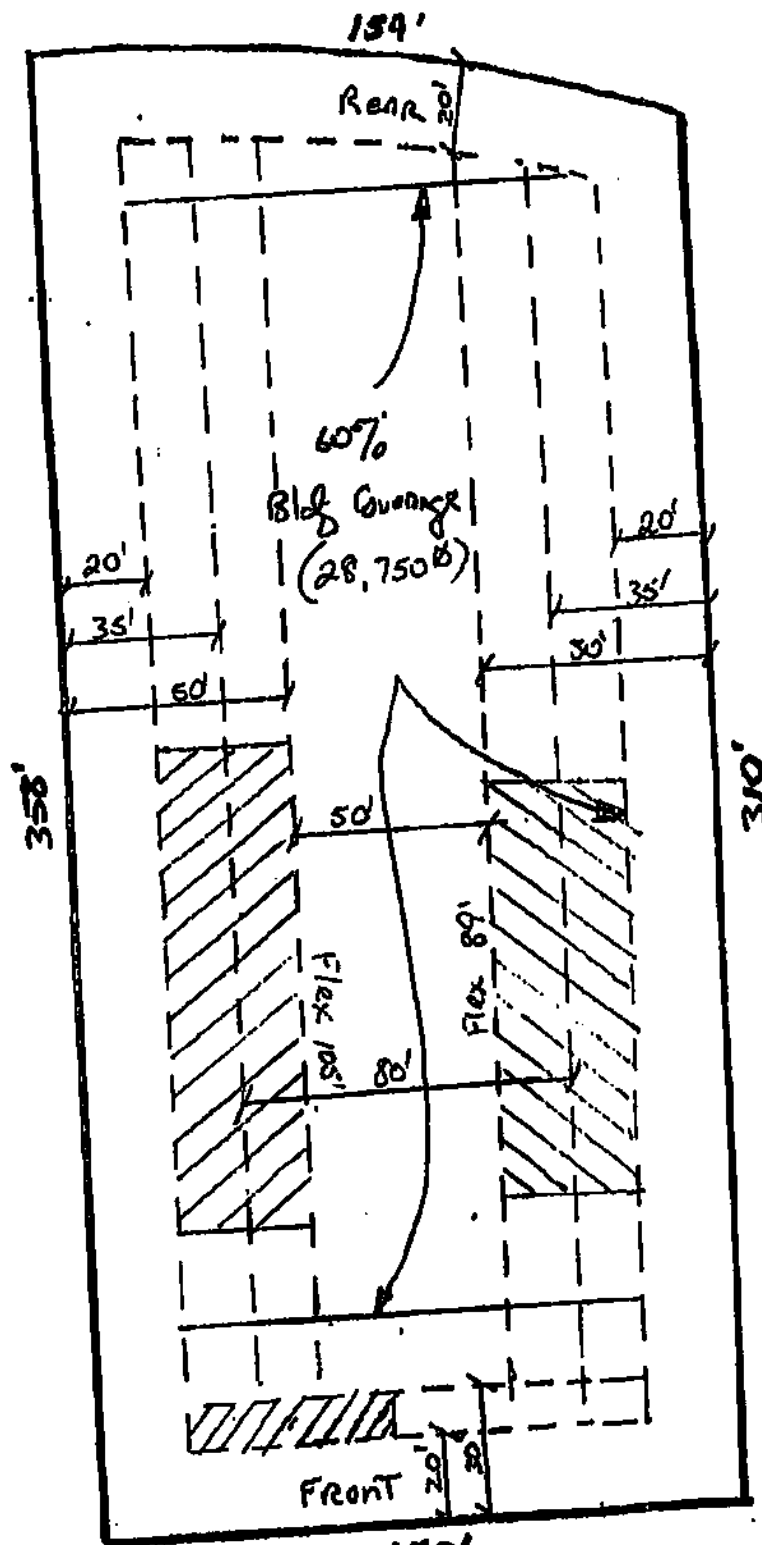
103RD STREET

1.1 AC.

ALTERNATIVE 1
(MMPA)

TRACT E
1:40
N

Biscayne Bay



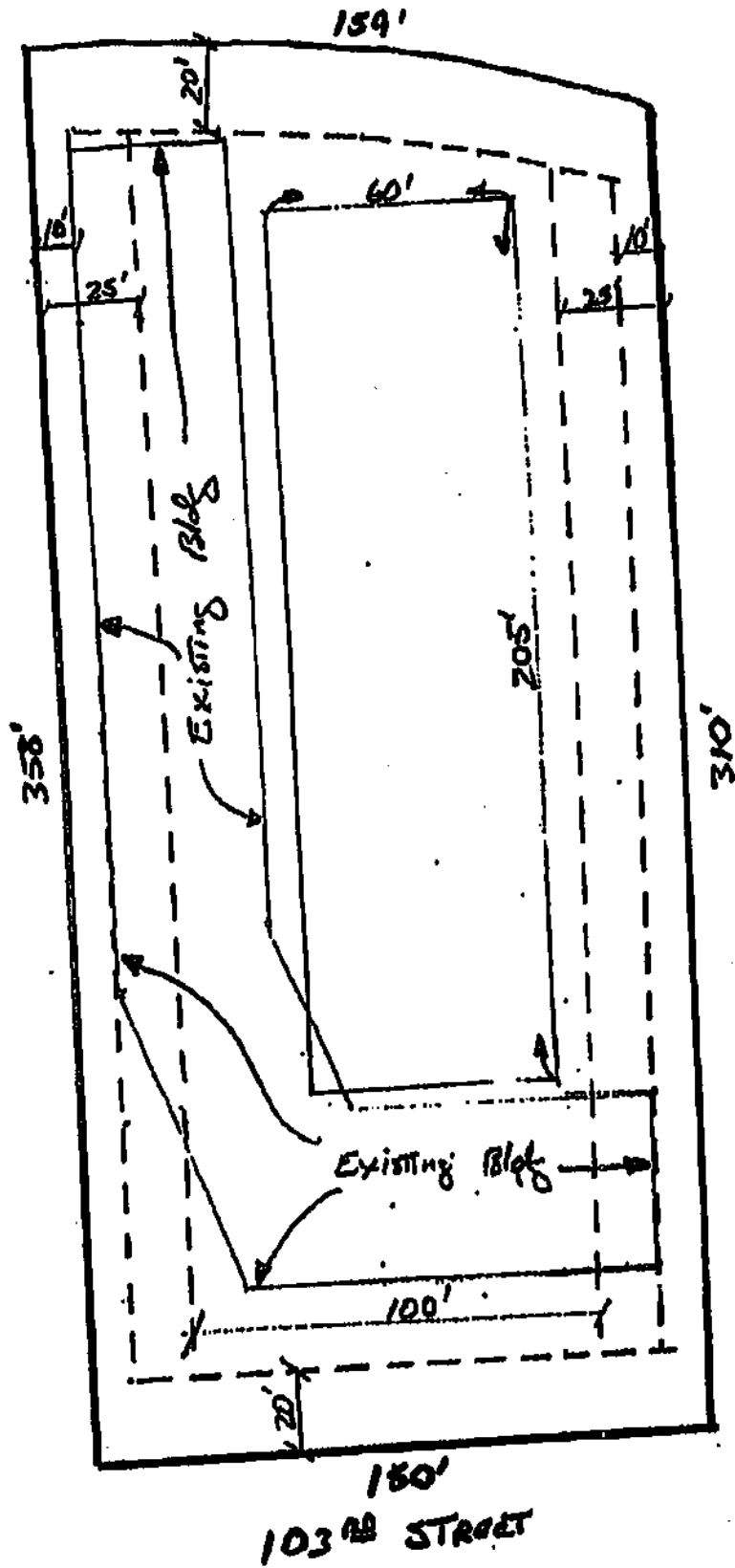
103RD STREET

1.1 AC.

ALTERNATIVE 2
(P2B 5/4/10)

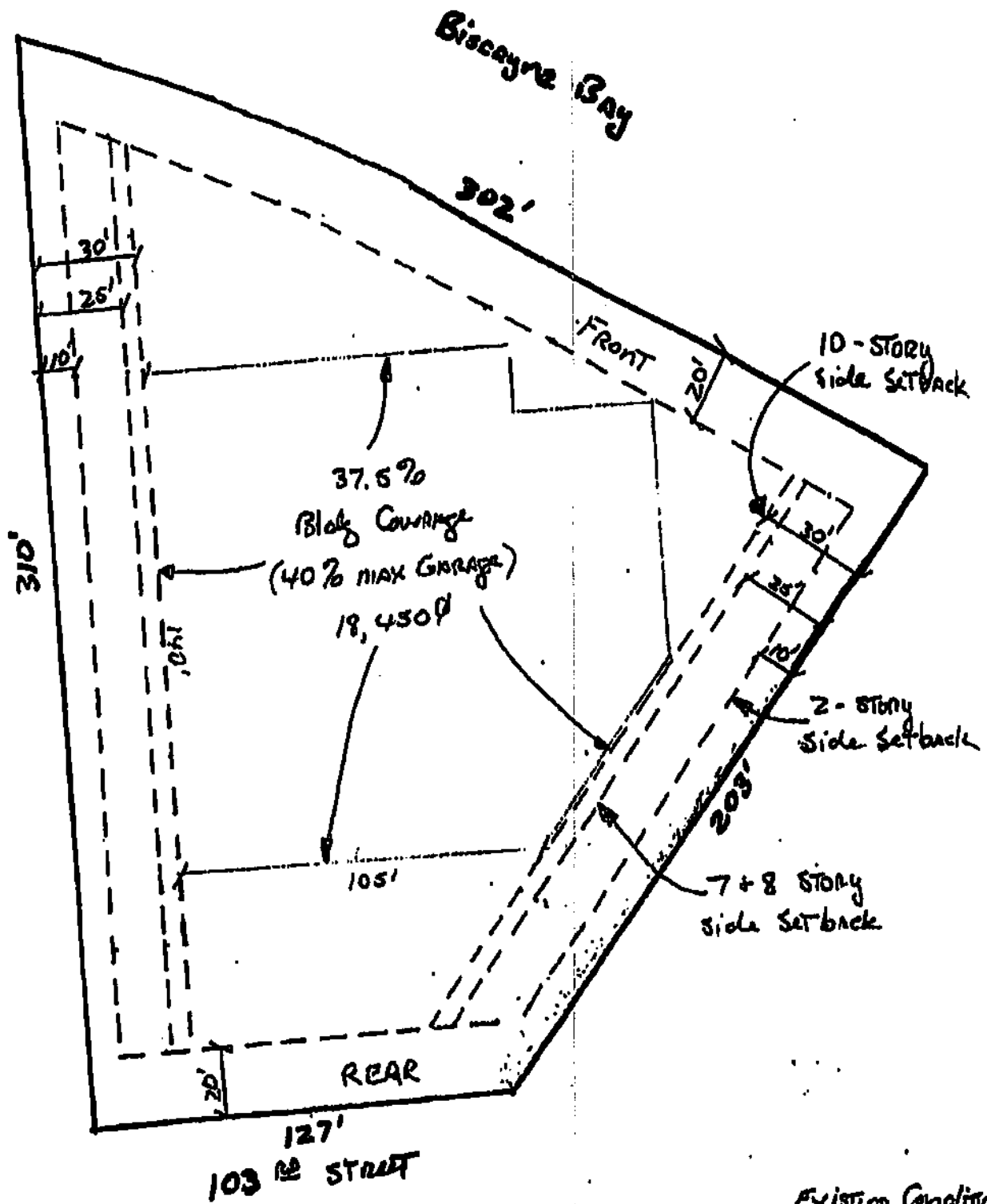
TRACT E
1140 N

Biscayne Bay

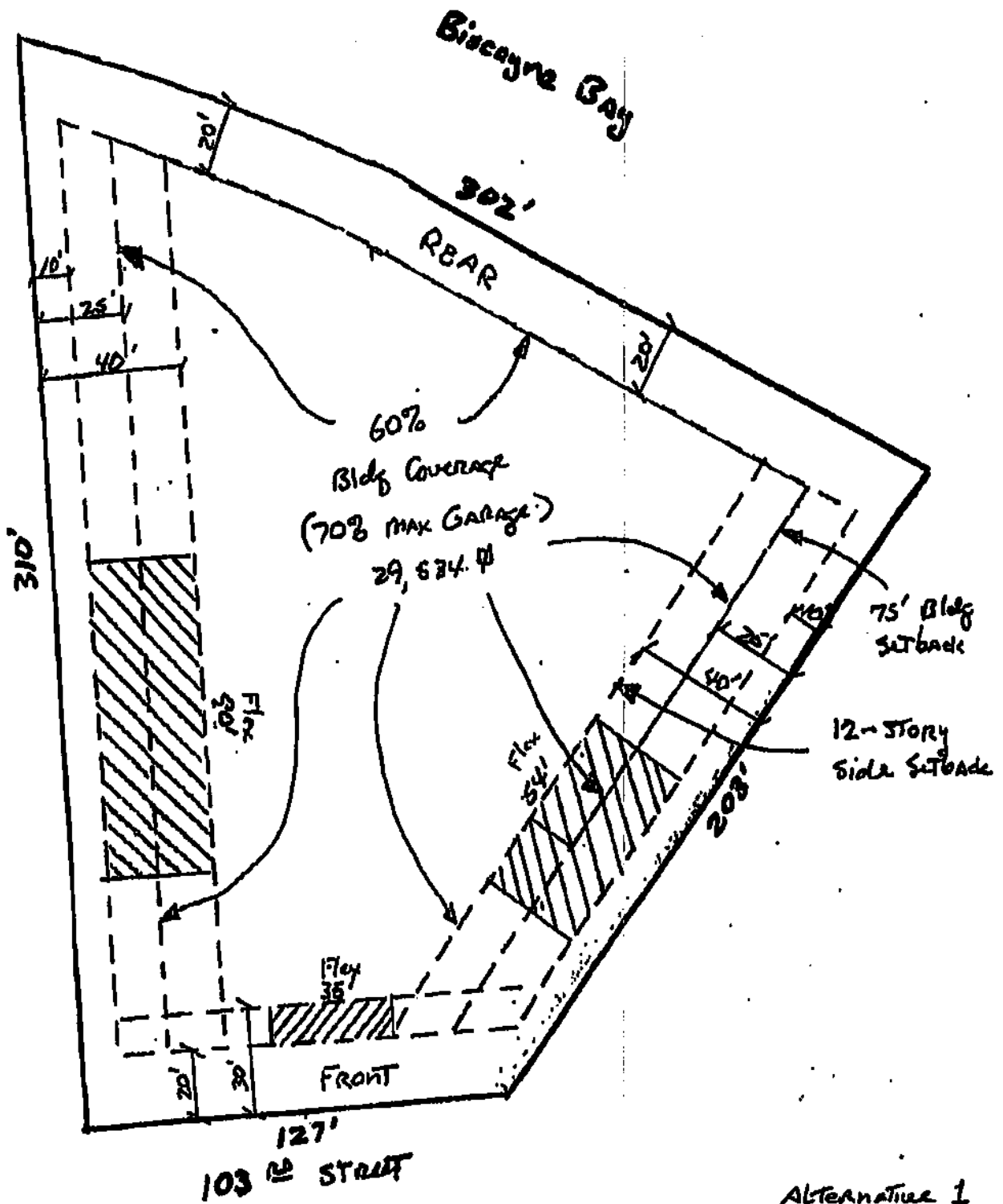


TRACT E
1:40
N

TRACT "F"

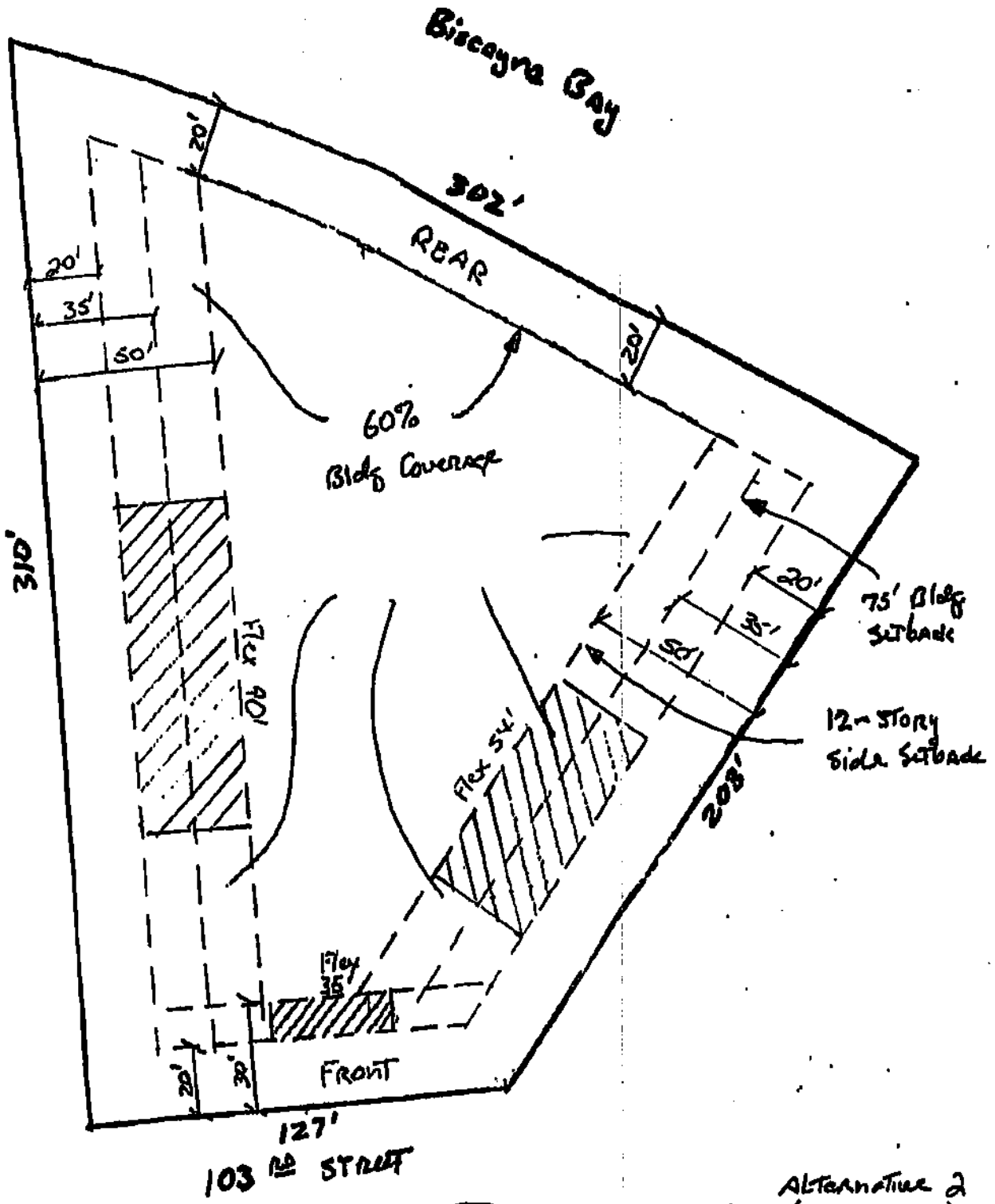


EXISTING CONDITIONS
11/10/09
TRACT F
1:40
N



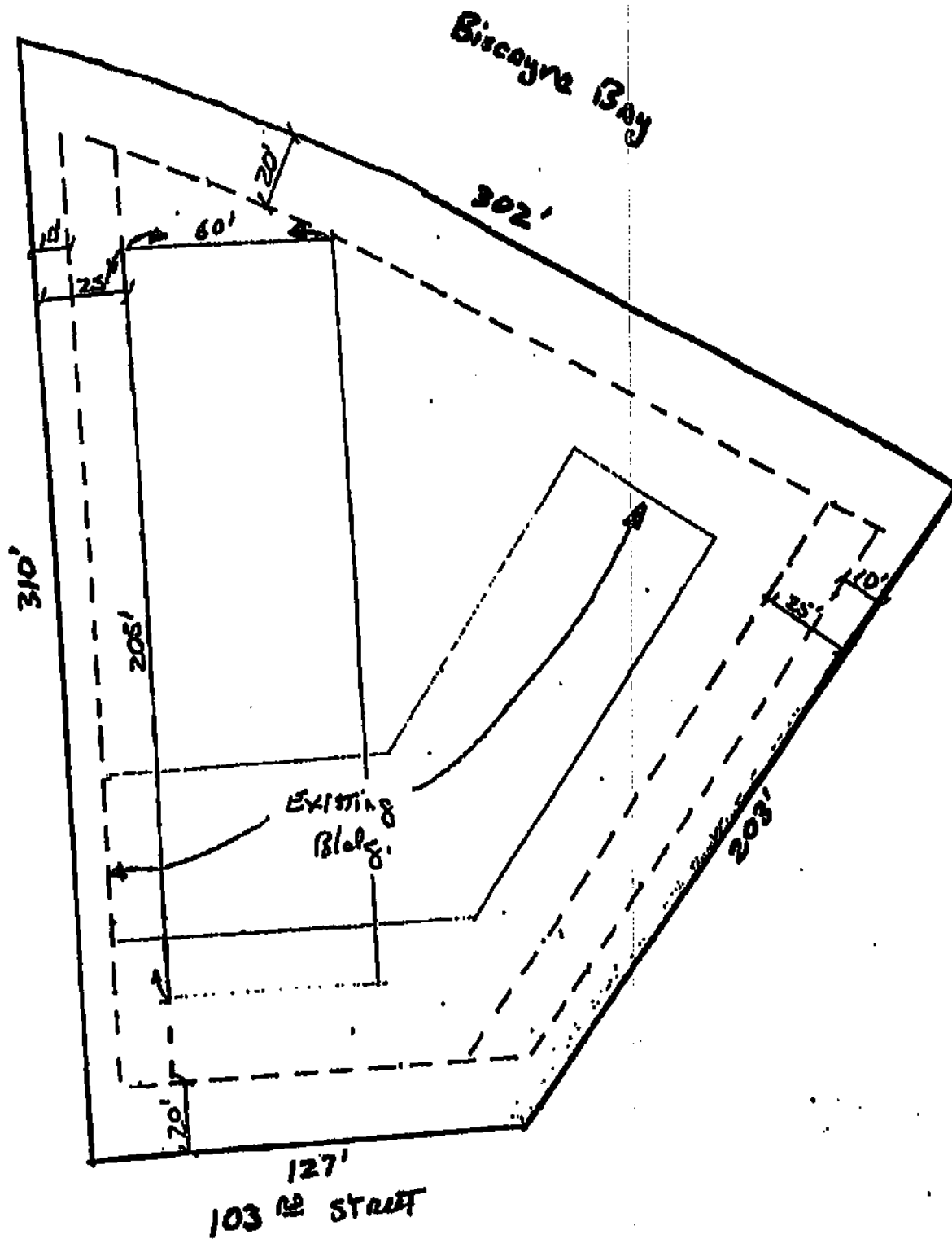
1.13 AC

Alternative 1
(MMPA)
TRACT F
1:40
N



1.13 AC

Alternative 2
(P2B 5/4/10)
TRACT F
1:40
N



**TOWN OF BAY HARBOR
ISLANDS
RM-3 TRACT DISTRICTS
REGULATIONS 2010
RBA (RM-3) WHITE PAPER**

ORDINANCE NO. _____

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 23-8 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 ____ day of _____, 2010.

PASSED 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 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 facade 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 provide 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.

TOWN OF BAY HARBOR ISLANDS PROPOSED ZONING CODE AMENDMENTS RBA ZONING DISTRICT

Sec. 23-6. Use regulations, RBA-Tract 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:

COMMENTS: What does RBA stand for? The name is a bit confusing. The Town could consider renaming this district RM-3 (Residential Multiple Family). The Town's two other multiple family residential districts (Waterfront and Non-Waterfront) are named RM-1 and RM-2). However, the "B" may have referred to the current allowance of limited business uses as well as residential ("R").

- (1) Any use permitted in the RE-Multiple Family district.

COMMENTS: The RE-District no longer exists as it was renamed with prior Code amendments. This should be changed from "RE" to RM-1 and RM-2.

- (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.

COMMENTS: This section does not provide any specific provisions or processes to request the "specific application" from the Town Council to allow for business or commercial uses, does not provide any guidance or identification of what types of commercial uses would be desired or prohibited and provides no guidance as to what, if any, criteria should be used to regulate any such uses.

Policy 2.10 of the Town's Comprehensive Plan indicates that the Town will allow limited accessory commercial uses within multifamily residential developments as defined by the Town's adopted land development regulations. Traditionally, the Comprehensive Plan would set the general policy language of allowing limited commercial uses and the Land Development Regulations (Zoning Code) would implement the policy by providing specific criteria relating to the type of commercial uses, locations, operational or other criteria to regulate such commercial uses in order to insure compatibility with other residential uses allowed in the district.

Based upon discussions with Town staff there does not appear to be any commercial uses currently operating in the Town's RBA zoning district. MMPA recommends the Town Council consider whether or not the Town desires to continue to allow for the potential operation of limited commercial uses in the multifamily areas, and if so desired, to adopt more specific approval criteria and establish processes to govern the approval, development and operation of such uses. At a minimum MMPA would recommend the Town provide guidance as to

the general nature of the ancillary commercial uses to be allowed (i.e. spas, salons, limited sundry stores, small shops as accessory to larger buildings, restaurants, etc.) and an application process similar to a Special Exception process to include public hearings with an ability for the Town to impose certain conditions.

(D) RBA-Tract Area:

- (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.

COMMENTS: The above regulations establish the water side of these lots as the "front" yard and requires a minimum front yard setback of 20 feet (from the waterward edge of the bulkhead) without regard to height of a building or portions of a building. This is the same waterfront setback as the RM-1 district. Furthermore, the current regulations allow for a similar 20 feet setback from the street side ("rear") of each lot. While these regulations provide common minimum building setback standards, the current Code does not require any building articulation of any type, staggered setbacks, relief or incorporation of architectural detailing on the front or rear facades. This could result in significant massing of a building up to the currently allowed "by right" building height of 75 feet (previously 10-stories plus parking garages = 12+/- stories = 120'+/-) with a flat front or rear building façade as close as 20 feet from the street side (rear) or water side (front) property lines. The absence of any design guideline or architectural criteria governing development in the RBA zoning district creates the potential for construction of potentially uninteresting architecture that the Town would have no power to regulate. The RM-1 and RM-2 Districts were revised to include requirements for front (street) yard setback "additional step back" provisions for buildings over 30 feet in height. In the RM districts buildings under 30 feet in height must have at least a 20 foot street setback. Buildings more than 30 feet in height but less than 45 feet must have at least a 25 foot street setback. Buildings over 45 feet in height must have at least a 30 foot street setback. The Town does allow "flex" setbacks for 1/3 the width of the building but in no case may any portion of a building encroach into the minimum setback areas. On the waterfront it is not as important to "step back" as compared to the street frontage, as there are no "neighbors" to impact. MMPA recommends the Town consider re-defining the yards to modern terms (front = street / rear = water), maintain the waterfront setback (like the RM-1 = 20 feet) but modifying the front "street" setback to follow the RM-1 / RM-2 sliding scale setbacks based on height.

The RBA Tracts are considerably larger than the typical RM lots (.26 Ac). The RBA Tracts range from about 1.10 acres to 1.81 acres according to our best data sources (not from surveys). Following is an estimated lot size breakdown:

- Tract A = 1.81 Ac. (Blair House - Condo)
- Tract B = 1.30 Ac. (Mediterranean / Indian Creek Towers - Coop)
- Tract C = 1.23 Ac. (Island Pointe - Condo)
- Tract D = 1.10 Ac. (Island Pointe - Condo)
- Tract E = 1.10 Ac. (Bay Harbor Club - Coop)
- Tract F = 1.13 Ac. (Bay Harbor Continental - Coop)

It could be argued that due to the size, shape and location of these lots at the northernmost and southernmost edges of the East Island, their water facing front yards do not impact other development within the Town. However, the same cannot be said of the "rear" (street facing) yards which could have a significant impact on adjacent residential developments within the Town. As stated previously the current regulations would permit the entire façade of a 75 foot tall building (or grandfathered 100'-120') to be as close as 20 feet from a street with no required articulation or design guideline of any sort. Such a building could have a significant impact on abutting residential properties as a 75 foot tall flat façade of a building could be considered "imposing" upon the abutting RM-2 (non-waterfront) zoned properties located across the street from the RBA Tracts and to a lesser extent the RM-1 (waterfront) properties which abut them.

A review of the existing street setbacks of developments within the RBA Tracts reveals the following as-built setbacks (not from surveys – measured +/-):

- Tract A = 100' (Blair House)
- Tract B = 100' (Mediterranean / Indian Creek Towers)
- Tract C = 100' (Island Pointe)
- Tract D = 100' (Island Pointe)
- Tract E = 20' (Bay Harbor Club)
- Tract F = 50' (Bay Harbor Continental)

None of the existing buildings have any "step back" design features. Most existing buildings are simple linear designs with flat planes on the exterior elevations. Another important factor to consider is that the lots zoned RBA are a minimum of 150 foot wide, considerably wider than any of the single RM-1 and RM-2 lots (75 feet) which could result in significantly larger (wider) building facades presented to the street as compared with the RM-1 and RM-2 zoned properties.

Summary - MMPA recommends the Town give consideration to the adoption of design guidelines / staggered setbacks and flex provisions for buildings in the RBA Tracts as they get taller from the rear (street) yards only, similar to the RM-1 and RM-2 Districts front yard setbacks (3:1 over 30 feet). The Code should also be revised to correctly identify the front (street) and rear (water) yards as we did during the RM Code rewrite.

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.

COMMENTS: Relating to Sections (a), (b), (c) and (d): In 2004 the Town adopted the new RM-1 and RM-2 Zoning Districts to modernize the prior RE-Multifamily Zoning District regulations. Included within the new Zoning District regulations are new sliding scale "additional step back" setbacks for side yards which require taller portions of buildings to be further separated from adjoining properties which result in greater diversity of architectural design (not a box). The current side setback regulations in the RBA Zoning District are similar but slightly different. The newer RM regulations have a gradual sliding scale setback increase above 30 feet (3:1) as well as "flex" setbacks for architectural diversity, if chosen. The current RBA regulations require a "wedding cake" type design for those portions of taller buildings based on stories, in that, for each portion of a building that is above a certain height that section of the building must be setback a uniform additional distance from the side property line. For example, the first two stories must be at least 10 feet, then the entire 3rd and 4th stories must be stepped back an additional 5 feet (15'), the entire 5th and 6th stories must be stepped back again an additional 5 feet (20'), the 7th and 8th stories must be stepped back again an additional 5 feet (25'), and the 9th and 10th stories must be stepped back again an additional 5 feet (30') similar to the layers of a wedding cake (see attached sketch). None of the existing buildings have step back designs – the builder chose to push the entire building back to meet the most stringent setback. The new regulations adopted by the Town for the RM-1 / RM-2 Zoning Districts require those portions of a building above 30 feet in height to be gradually stepped back at a rate of 1 foot of additional setback for each 3 feet in building height above 30 feet (3:1 slope). This type of sliding scale provides a more gradual or smoother transition, enables greater flexibility for architectural design, and also provides the ability to gain more interior building volume (square footage). Finally, the current RBA regulations do not include the Town's "flex" setback provisions that allow for limited encroachment (via "flex setbacks") into the required additional building setback for 1/3 of the building facades that are taller than 30 feet. This provides architects an ability to be more creative in their design and truly develop unique and interesting undulating buildings as opposed to the more rigid setbacks previously contained in the former RE District, which were similar to the existing wedding cake side setbacks currently contained in the RBA Zoning District presented above. MMPA recommends the Town consider the adoption of modified gradual side and front setbacks for the RBA zoning district, similar to the RM Zoning Districts.

Since the RBA Zoning District lots are considerable larger, wider and deeper than the existing lots located in the RM-1 and RM2 zoning district, while MMPA is of the opinion that the Town should consider the adoption of modifications to the current rigid "story setback" zoning regulations contained in the RBA Zoning District in principal, MMPA strongly recommends the Town carefully craft such regulations to address the larger lot sizes and probable additional building volumes that could be achieved by said modifications.

COMMENTS: Relating to Sub-Section (d): In 2002 the electorate of the Town adopted an amendment to the Town's Charter that limits the height of all buildings to a maximum of 75 feet in height, even though several of the RBA Tract sites and a few others exceed the 75-foot height. The Town's Charter does provide that if a taller building is approved by a majority of the registered voters in the Town, it could exceed 75 feet in height. The City of North Miami has / had this same

Charter procedure in place for many years. It would be a difficult process but not impossible. MMPA recommends the Town incorporate a reference to the Town's current Charter building height limit of 75 feet and delete references to stories. Finally, MMPA believes that the Code should address the situation of catastrophic damage to one of the non-conforming buildings that exceed 75 feet in height. MMPA believes if a property is voluntarily re-developed it must comply with the Charter height limit (75 feet). If a building is remodeled more than X% or damaged in a hurricane, it should be allowed to be rebuilt at the taller height. If not a property rights issue exists - who would have to move out?

Provided, however, that in the event application shall be made to the town council for permission to make business or commercial use of a Tract, pursuant to the provisions contained in section 23-6, then, in such event, the town council may increase the side yard setbacks as it shall deem fit and proper under the circumstances.

COMMENTS: With respect to the above, there are no criteria listed to govern what are reasonable increased setbacks, which may be deemed too loose if challenged. If the Town removes the allowance for commercial uses the point is mute. If the provisions stays MMPA recommends criteria be added.

- (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.

COMMENTS: The previous lot coverage was deleted from the previous RE Zoning District (35%) when the Town created the RM-1 and RM-2 Zoning Districts. This was because upon researching the matter it was found few of the existing developments met the Code. The Town's Zoning Code was created many years after most of the development occurred. The Town's original Deed Restrictions included only setbacks. It is unknown how, why or where the original Zoning Code criterion was obtained from. Typically in earlier times (1950s) local governments "borrowed" criteria from other local governments without much thought as to the impact on existing development. For example, Miami Beach still has lot coverage zoning criteria, although it is doubtful many older structures meet the current Code upon visual examination. It could be there was some reason for the lot coverage too. MMPA staff reviewed the as-built development on the RBA Tracts and found the following existing lot coverage data:

Tract A = 28.0% (Blair House)
Tract B = 15.2% (Mediterranean / Indian Creek Towers)
Tract C = 56.1% Building / 68.5% with Parking Deck (Island Pointe)
Tract D = 56.1% Building / 68.5% with Parking Deck (Island Pointe)
Tract E = 22.9% Building / 33.5% with Terrace (Bay Harbor Club)
Tract F = 17.2% Building / 18.3% with Cabana (Bay Harbor Continental)

As may be observed, other than the Island Pointe development, all of the others easily meet the 37.5% lot coverage criteria. Neither the Blair House or the Mediterranean has parking garages - they primarily have open parking lots. Island Pointe has an under-building parking garage as well as surface parking. The others have limited surface parking on-site. All have some on-street swale parking as well. In the many re-development site plans the Town received in the last few years typical midrise projects ranged between 50-60% building lot

coverage while townhouses average about 40%. On larger tracts of land building coverage is much more noticeable. The Town could simply delete the percentage limit like the RM Zoning Districts and rely on the setbacks / building height / parking / open space criteria, or it could chose to keep the current limit (37.5%) or increase the limit. MMPA believes in this instance a lot coverage limit should remain – possibly 50-60%. The existing and proposed setbacks are quite minimal and more suited to the smaller RM lots. The Town adopted a 20% "green open space" requirement at ground level in the RM Multiple Family developments, which should be added to the RBA areas.

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

COMMENTS: With respect to the maximum height of buildings in the Town the Town's Charter was amended in 2002 to limit the height of all new buildings in the Town to a maximum of 75 feet tall, unless otherwise approved by a majority of the Town's registered voters (see below) The Town's Charter reads as follows:

Section 86.

(1) The maximum height for all new buildings and structures in the Town of Bay Harbor Islands shall be seventy-five (75) feet. Any proposed structure or building greater than seventy-five (75) feet in height must be approved by a majority of the registered voters of Bay Harbor Islands as a condition precedent to final governmental approval.

(2) Any other provisions of the Town Code relating to heights of buildings which are inconsistent are hereby repealed and this section 86 of the Town Charter shall be the exclusive provision relating to the heights of buildings in the Town.

(Ord. No. 712, § 1, 12-10-02)

As can be seen above, Section 86(1) of the Town's Charter also stipulated that any Section of the Town's Code which purports to allow for a building taller than 75 feet without approval by a referendum was repealed. MMPA is of the opinion that while approval of a proposed building by a majority of the Town's registered voters seems to be an unlikely event, it is conceivable that a developer could (emphasis added) propose a building taller than 75 feet and have it approved first by referendum and subsequently by the Town Council; therefore, this section of the Code was not repealed and remains in full force and effect. In the event that such a building (taller than 75 feet) would be proposed, this section of the Code as currently written would limit the height of such proposed building to 100-120' (building and parking garage). In order to avoid any future ambiguity with respect to whether or not this Section of the Code remains valid, in light of the Charter provisions, MMPA recommends the Town Council review this section of the Code and determine if the Town still desires to ensure that even in the event a developer would propose a building taller than 75 feet, which would be required to be approved first by referendum of the Town residents, that any such proposed building could be no taller than 100-120' (10 stories plus parking garage). It is conceivable that due to the language in the Charter, confusion could result in what the maximum height of a building could be if approved by referendum.

The above Code section does not refer to a maximum dimension for the height of a building; rather it refers to ten (10) stories. The Town's Code does not define a "story" anymore, as the Code Sections were repealed and now refer to maximum building height. Typically a story is defined as ten (10) feet in height between floor slabs. However, this definition (stories) is not consistent with the pattern of land development regulations the Town has re-written in the last few years. Therefore, one could opine that the maximum height intended by this Section was to be 100 feet tall. Therefore, a 10-story building would be deemed to be 100 feet tall. The Town's Code now defines the height of a building or structure as follows:

"Height of building or structure: The vertical distance from the base flood elevation (BFE) to the highest point of the roof surface for a flat roof, to the deck line for a mansard roof or to the average height of the highest gable of a pitched, hip or gambrel roof. Decorative architectural roof features, mechanical equipment or rooms, elevator equipment rooms, water storage facilities, air conditioning equipment, accessory recreational facilities, fences, walls and similar facilities (nonhabitable roof features) shall not be counted as part of the height. See subsection 23-12(11) for design guidelines. "

MMPA recommends the Code Section (3) be amended to delete the 10-story height limit now in the RBA Zoning District regulations and add the following:

"... 75 feet, 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)."

- (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.

COMMENTS: This Code section currently allows for a building to (1) be raised above 10-stories to an unknown height to provide vehicular parking, utilities or services under a building (no living quarters), and (2) allows the maximum building lot coverage to be increased to 40% if such an arrangement is provided. First, the Code is not specific as to how many levels of parking garage could be provided; therefore, a building could conceivably be 10-stories of dwelling units with multiple levels of parking garage resulting in, for example, a 13+-story / 130-foot+- building with 3 levels of parking garage. Even though the Charter restrictions apply in the RBA area, the Town has several legal non-conforming buildings that need regulations for their existing condition and possible future re-development or re-modeling. As to the second provision, the above discussion on lot coverage should address this matter.

AGENDA ITEM REPORT

October 7, 2014

ITEM NUMBER: 2.

ITEM: Discussion and direction to staff regarding possible zoning amendments for balconies in the RM1 and RM2 District.

DESCRIPTION:

Staff recommends that no changes be made to the RM-1 and RM-2 Districts pertaining to balcony encroachments.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Marante, Town Clerk

ATTACHMENTS

1.	Memorandum	BHI TC Staff Report RM-1 RM-2 Balconies Sept 30 2014.pdf
2.	RM 1 - RM 2 Memo Backup	RM 1 - RM 2 Memo backup.pdf

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Council Members
Town of Bay Harbor Islands

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: September 30th, 2014

Subject: Town of Bay Harbor Islands
Land Development Code Analysis
Balconies – RM-1 / RM-2 Multiple Family Zoning Districts
MMPA Acct. No. 01-0702-0800

ISSUE

At the September 8th, 2014 Town Council meeting a draft Ordinance was debated that would revise the Town's existing Land Development Regulations (LDRs) definition of "building coverage" to remove exterior balconies attached to buildings from being counted in "building coverage". The RM-3 Multiple Family District (formerly RBA Tract District) is the only Town zoning district where this provision would apply. Questions arose from the Town Council, property owners and some residents about what this change would mean.

The discussion also led to questions about the current Zoning Code allowances in the RM-1 (waterfront) and RM-2 (interior lot) districts as to balconies attached to the exterior of buildings. Town Code Section 23-12(15)a.v. MMPA was instructed to prepare some backup materials and a brief staff report on this subject to highlight the issue.

BACKGROUND INFORMATION / PREVIOUS TOWN ACTIONS

Over the past decade the Town Council has methodically studied and updated many of its LDRs. A Town-wide Community Visioning exercise was done in 2002-03 that established community desires for future growth and massing. Also in 2002 the residents of the Town voted for a general 75-foot tall building height limit, except if approved by the residents / Town Council. Almost every zoning district and supplemental development regulation have been studied and updated if felt to be necessary, including the Code section addressing "Projections into Yard Areas". This Code section addresses everything from swimming pools, pool decks, boat docks, balconies, canopies, trellis, stairs, patios and terraces, chimneys, architectural details, roof overhangs, A/C equipment, pool equipment, etc.

**Town of Bay Harbor Islands
Land Development Code Analysis
Balconies - RM-1 / RM-2 Zoning District
September 30th, 2014
Page 2**

In May of 2005 the Town Council adopted revisions to its Land Development Regulations (LDRs) addressing "yard encroachments", including balconies. The Code includes separate provisions for the West Island (single family) and East Island (multiple-family). There are separate LDRs for the RM-1 (waterfront) lots and the RM-2 (interior) lots.

As opposed the much large RM-3 Tracts (all over 1 acre in size), the RM-1 and RM-2 zoned lots were platted generally with only 75' of road frontage and 150' of lot depth (11,250 sq. ft. / .258 acre). The single family lots on the West Island are wider (80') but shallower (125') except the waterfront lots (80' x 150'). Because of the small platted multiple family lot sizes, the developer's original Deed Restriction setbacks and current Town Code requirements are "sized" for those lot sizes. Until 2004-05+/- the Town mostly followed the basic setbacks set forth in the Developer's Deed Restriction criteria from the 1940s. Over 97% of the existing buildings in the Town were built prior to 1975. It has only been in recent years the Town has been experiencing a "renaissance" of redevelopment, as is occurring elsewhere. In recent years the Town has adopted Code modifications that require more severe setbacks for taller buildings. As late as February 2014 a Code modification was adopted that increased by 50% the minimum side yard setbacks for multiple lot developments. Single lot developments can still use the standard ten (10) foot side setback for shorter buildings that must increase 1:3 feet over 30 feet in height. So all new redevelopment must comply with much stricter LDRs.

On a single lot development if one takes a standard 75' wide lot and deducts 10' from each side (20' total) this leaves only 55' of buildable width area. At taller building heights the allowable width is even narrower.

On a two lot development if one takes two standard 75' wide lots (150') and deducts 15' from each side (30' total) this leaves 120' of buildable width area. Again, at taller building heights the allowable width is even narrower. For a three lot development the side setbacks must be at least 22.5' on each side (45' total). The Code has a maximum side setback of 22.5 feet for 3 or more lot developments. This is significantly wider than any previous LDR for setbacks.

The Town Code allows typical yard encroachments for balconies attached to the exterior of buildings. Slightly more encroachment is allowed for front yards and rear yards than side yards. Finally, for waterfront lots the rear setback encroachment is slightly deeper too. If yard encroachments for balconies is removed entirely it would significantly impact land use design.

Following is summary of the current LDRs for balconies on the East Island:

Waterfront

Front	4' yard encroachment / 6' max. depth (unless PZB approves more depth)
Rear	6' yard encroachment / 8' max. depth (unless PZB approves more depth)
Side	2' yard encroachment / 8' max. depth (unless PZB approves more depth)

Non-Waterfront

Front	4' yard encroachment / 6' max. depth (unless PZB approves more depth)
Rear	4' yard encroachment / 6' max. depth (unless PZB approves more depth)
Side	2' yard encroachment / 8' max. depth (unless PZB approves more depth)

Note: In no instance can balconies encroach further into minimum / required setback areas (includes base setbacks plus additional setbacks due to increased building height – only increased balcony depths into the building).

SUMMARY / RECOMMENDED ACTION

At the September 8th, 2014 Town Council meeting MMPA was requested to prepare an analysis and recommendation for balconies in the RM-1 and RM-2 Multiple Family Zoning Districts. This issue was studied in depth in 2004-05 when the collective "Yard Encroachment" Code section was studied / updated. It is common for governments to allow certain encroachments into setback areas for various accessory features (see extensive list above). Since these provisions were written the Town has significantly increased the side setback requirements in these districts (50% increase). The Town's platted lots are very small and it is vital to provide some flexibility in the building envelope and limited yard encroachments. While some have expressed comments about the "closeness" of newer redevelopment, the same basic setback and yard encroachments have existed for 67+/- years and is appropriate in this instance. The Town is located in a tropical coastal area with ocean breezes that invite the use of outdoor spaces. Almost all new upscale multiple family development has some form of outdoor balconies.

MMPA feels the current LDRs have served the Town well and resulted in good site design and land development. MMPA recommends that no changes be made to the existing LDRs as related to balconies in the RM-1 and RM-2 Zoning Districts.

Review the attached backup materials, discuss the matter and provide direction to staff on any desired Code amendments.

**TOWN OF BAY HARBOR
ISLANDS**

FEBRUARY 2014

**RM-1/RM-2 SIDE SETBACK
INCREASE**

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES AS RELATED TO SIDE YARD SETBACKS; AMENDING SECTION 23-11 OF THE ZONING AND PLANNING CODE TO MODIFY THE SIDE YARD SETBACKS FOR RM-1 AND RM-2 ZONED LOTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Town's various Land Development Regulations accordingly; and

WHEREAS, the Town Council has studied the current Zoning and Planning Code provisions of the Town and find that certain modifications are necessary and desirable to address the requests of the Town, by increasing the side yard setbacks for RM-1 and RM-2 zoned lots; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) of the Town to review the proposed modifications to the Town's Land Development Regulations; and

WHEREAS, the Town Council held duly advertised public hearings to consider the proposed modifications to the Town's Land Development Regulations.

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 Sign Code is hereby amended to modify subsection 23-11(B1)(3) and 23-11(B2)(3) increasing the side yard setbacks, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 2: The Town finds that the adoption of these regulations may have impacts on land development applications that have been previously approved by the

Town or are in the process of being reviewed / acted upon by the Town; therefore, the Town Council finds that any Site Development Plan approval, or any pending land development application deemed complete and legally valid by the Town filed prior to the adoption of this Ordinance shall be "saved" and considered "grandfathered" and shall not be deemed a non-conforming use, and any such prior or pending land development approval shall be subject to the regulations in effect at the time of approval or application, provided no alterations are made to the project from the time of submission to the Town, or as long as the Site Development Plan approval is deemed valid as per Section 5-23 of the Town Code. Notwithstanding anything in this Code or Section 23-8 of the Code in particular, in the event of a natural calamity or other non-voluntary destruction of the structure the property may be reconstructed in accordance with the lawfully approved plans on file with the Town.

Section 3: 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 4: 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 5: 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 6: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this 13th day of January, 2014.

PASSED on Second Reading this 10th day of February, 2014.

ROBERT H. YAFFE
Mayor

ATTEST:

MARLENE MARANTE
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT "A"

**The Town of Bay Harbor Islands, Florida Code of Ordinances
is hereby amended as follows:**

CHAPTER 23

ZONING AND PLANNING

ARTICLE I. ZONING REGULATIONS

Sec. 23-11. Land development regulations.

In all area districts hereinabove set forth and designated, there shall be front, rear and side yard setbacks provided for of not less than the dimensions specified, as follows, to wit:

(B1) *RM-1 Multiple Family Residential district (Waterfront lots).*

The purpose of the district is to provide appropriate land development regulations for the waterfront properties on the eastern island of the town. As the lots abut the wide waterways surrounding the island where no adjacent development occurs, the regulations reflect appropriate development criteria.

(1) *Front yard setback (street frontage).* All lots in the RM-1 Multiple Family zoning district shall have a minimum front yard (street) setback as follows:

- a. *Buildings less than 30 feet in height.*** Twenty feet.
- b. *Buildings less than 45 feet in height.*** Twenty-five feet.
- c. *Buildings less than 75 feet in height.*** Thirty feet.

(2) *Rear yard (waterfront) setback.* All lots in the RM-1 Multiple Family zoning district shall have a minimum rear yard (waterfront) setback of 20 feet.

(3) *Side yard setbacks.* All lots in the RM-1 Multiple Family zoning district shall have minimum side yard setbacks as follows:

- a. *Buildings less than 30 feet in height.*** Ten feet.
- b.** For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height. Notwithstanding the above provision, for developments located on single lots, the maximum setback shall be 20 feet.

- c. Notwithstanding the above provisions, for developments on more than one lot the minimum setback from each side lot line shall be equal to ten (10) percent of the street frontage of the lot but not less than ten (10) feet. The maximum required side setback width shall be twenty-two and one-half (22.5) feet.
- (4) *Flex setbacks.* A project designer has the option to offer creative design solutions to the building configurations and the town council may allow portions of the building structure to encroach into the setback requirements 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.
- (5) The maximum overall length of any single building in a linear shape with no breaks or angles greater than 15 degrees shall not exceed 205 feet, except as hereinafter provided.
- (6) *Maximum building length/breezeways.* A building may exceed 120 feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of 20 feet. Notwithstanding the above, this provision shall not apply to buildings less than 45 feet in height. The Planning and Zoning Board may modify the application of this requirement for townhouse developments or in instances where enhanced architectural articulation and detailing is provided on the building facade to break the massing of the building.
- (7) *[Minimum unobstructed distance.]* The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be 20 feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.
- (8) *[Corner, waterfront lots.]* In the case of corner lots and waterfront lots, side setbacks shall be regarded as those setbacks other than ones abutting streets and water.

- (9) *[RM-1 height limits.]* No building in the RM-1 Multiple Family area shall exceed the following height limits:
Block 1. Seventy-five feet.
Block 2, Lots 1 through 13, inclusive. Sixty-five feet.
Block 2, Lots 14 through 29, inclusive. Seventy-five feet.
Block 3. Sixty-five feet.
Block 4. Seventy-five feet.
- (10) *Landscape requirements.* Each plot shall provide for a minimum of 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 provide 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.
- (11) *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 densities may be increased on a case-by-case basis only through the process described elsewhere in chapter 23.
- (12) *Maximum number of hotel rooms.* The maximum number of hotel rooms shall not exceed 70 rooms per acre.
- (13) *Building roof design.* All rooftops of buildings with flat 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 on-site 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 recreational purposes, a minimum of 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.

(B2) RM-2 Multiple Family Residential district (Non-waterfront).

The purpose of the district is to provide appropriate land development regulations for the non-waterfront properties on the eastern island of the town. As the interior lots abut other lots, and the relationship of buildings to other buildings require the regulations to reflect appropriate development criteria.

- (1) **Front yard setback.** All lots in the RM-2 Multiple Family areas shall have a minimum front yard setback as follows, the front yard being the yard abutting on any street:
- a. ***Buildings less than 30 feet in height.*** Twenty feet.
 - b. ***Buildings less than 45 feet in height.*** Twenty-five [feet].
 - c. ***Buildings less than 65 feet in height.*** Thirty feet.
- (2) **Rear yard setback.** All lots in the RM-2 Multiple Family areas shall have a minimum rear yard setback as follows:
- a. ***Buildings less than 30 feet in height.*** Ten feet.
 - b. ***[Additional setback.]*** For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height.
- (3) **Side yard setbacks.** All lots in the RM-2 Multiple Family areas shall have minimum side yard setbacks as follows:
- a. ***Buildings less than 30 feet in height.*** Ten feet.
 - b. ***[Additional setback.]*** For each additional three feet of building height above 30 feet, there shall be one additional foot of building setback for that portion of the structure over 30 feet in height. Notwithstanding the above provision, for developments located on single lots, the maximum setback shall be 20 feet.
 - c. **Notwithstanding the above provisions, for developments on more than one lot the minimum setback from each side lot line shall be equal to ten (10) percent of the street frontage of the lot but not less than ten (10) feet. The maximum required side setback width shall be twenty-two and one-half (22.5) feet.**

- (4) *Flex setbacks.* A project designer has the option to offer creative design solutions to the building configurations and the town council may allow portions of the building structure to encroach into the setback requirements 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.
- (5) *Maximum building length.* The maximum length of any single building in a linear shape with no breaks or angles greater than 15 degrees shall not exceed 205 feet, except as hereinafter provided.
- (6) *Maximum building length/breezeways.* A building may exceed 120 feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding 120 feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of 20 feet. Notwithstanding the above, this provision shall not apply to buildings less than 45 feet in height. The Planning and Zoning Board may modify the application of this requirement for Townhouse developments or in instances where enhanced architectural articulation and detailing is provided on the building facade to break the massing of the building.
- (7) *Minimum distance between buildings.* The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be 20 feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.
- (8) *[Corner lots.]* In the case of corner lots, side setbacks shall be regarded as those setbacks other than ones abutting streets.
- (9) *Maximum building height.* No building in the RM-2 Multiple Family district shall exceed 65 feet in height.
- (10) *Landscape requirements.* Each plot shall provide for a minimum of 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 provide 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.

- (11) **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 densities may be increased on a case-by-case basis only through the process described elsewhere in chapter 23.
- (12) **Building roof design.** All rooftops of buildings with flat 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 on-site 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 recreational purposes, a minimum of 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.