

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 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
LOCAL PLANNING AGENCY
AGENDA**

November 10, 2014

CALL TO ORDER: 6:45 PM

PLEDGE OF ALLEGIANCE

ROLL CALL

1. **Review** and **direction** requested by the Town Planner, Michael Miller with regard to a proposed amendment to the Town Code to remove the commercial component from the RM-3 Multi-Family District. Enclosed is background information provided by Town Planner Miller and a draft ordinance.

ADJOURNMENT: 6:55 PM

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, Planning and Zoning Board, or Local Planning Agency 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

November 10, 2014

ITEM NUMBER: 1.

ITEM: Review and Direction requested by the staff on a proposed amendment to the Town Code to remove the commercial component from the RM-3 Multi-Family District.

DESCRIPTION:

The Town Council discussed the commercial component on the RM3 district at the October Council meeting and requested that staff draft a proposed ordinance eliminating this provision from the town code. Enclosed is a proposed ordinance and a report from Town Planner Michael Miller.

The Town Council as the Local Planning Agency must make a recommendation to approve removing the commercial component in the district in order for the Council to take action on the proposed ordinance.

RECOMMENDED ACTION:

LPA Discretion.

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Recording Secretary

ATTACHMENTS

1.	RM3 Commercial Ord	BHI Draft Ord RM-3 Comm Uses Oct 14 2014.doc
2.	Town Planner Report	BHI RM-3 Commercial Use TC Staff Report Oct 27 2014.pdf

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 23-6 ENTITLED USE REGULATIONS TO DELETE BUSINESS AND COMMERCIAL USES FROM THE PERMITTED USE CATEGORY; AMENDING ARTICLE I, SECTION 23-11(D) ENTITLED LAND DEVELOPMENT REGULATIONS TO DELETE SUPPLEMENTAL BUSINESS AND COMMERCIAL SETBACK REFERENCES; 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, the Town Council desires to amend the Town's Zoning and Planning Code to delete Code provisions that allow business and commercial uses in the RM-3 Multiple-Family District, 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 23-6 entitled "Use Regulations" to delete business and commercial uses from the permitted uses in the RM-3 Multiple-Family Residential District; amending Article I, Section 23-11(D) entitled "Land Development Regulations" to delete supplemental business and commercial setback references in the RM-3 Multiple-Family district; 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. 23-6. - Use regulations, RM-3 district.

In the 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 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 therefor and upon the giving of specific permission therefor by the town council. Such accessory business~~ Allowable residential uses shall not be construed to include hotels, motels, condo-hotels, and 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.

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, and other land development standards, as follows, to wit:

(D) RM-3 Multiple Family Residential district.

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 multifamily 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 30 feet in height—Twenty feet.
 - (b) Buildings up to 45 feet in height—Twenty-five feet.
 - (c) Buildings up to 75 feet in height—Thirty feet.
 - (d) For buildings over 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 30 feet.

- (2) Rear yard (waterfront) setback. All lots shall have a minimum rear yard (waterfront) setback of 20 feet.
- (3) Side yard setbacks. All lots shall have minimum side yard setbacks as follows:
 - (a) Buildings up to 30 feet in height—Twenty 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, the maximum required setback shall be 30 feet.
- ~~(4) Supplemental business and commercial setbacks. In the event application shall be made to the town council for permission to provide a business or commercial use 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 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)~~ (4) 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)~~ (5) Maximum building length. The maximum overall 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 260 feet, except as hereinafter provided.
- ~~(7)~~ (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 development or in instances where enhanced architectural articulation and detailing is provided on the building façade to break the massing of the building. A breezeway is not required on a building constructed on a single platted lot. For the purpose of this section platted lots are those depicted on the subdivision plat of Bay Harbor Island recorded in Plat Book 46, at Page 5 of the public records of Miami-Dade County, Florida.
- ~~(8)~~ (7) Minimum distance between structures. 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.

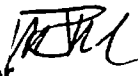
- ~~(9)~~ (8) Maximum building coverage. The maximum building coverage of any lot shall not exceed 40 percent of the plot area for all principal structures. If an elevated parking garage structure is provided the combined total of all building coverage shall not exceed 60 percent of the plot. An elevated parking garage shall not include any living quarters, meeting rooms or recreational facilities. See section 23-1 for the definition of building coverage.
- ~~(10)~~ (9) Maximum building height. No building shall exceed 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 council 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)~~ (10) 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 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 parking or 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.
- ~~(12)~~ (11) 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.
- ~~(13)~~ (12) Maximum allowable density. The maximum allowable base density is 34 dwelling units per acre. The maximum allowable overall density (includes base density/TDR units) is 80 dwelling units per acre. If the Town approves a development with a height exceeding 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)~~ (13) Interpretation of side lot lines. Side setbacks shall be regarded as those setbacks other than ones abutting streets and water.

~~(15)~~(14) 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)~~(15) Parking garage structures. For any redevelopment of an existing RM-3 site after the effective date of Ordinance No. 907, 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 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
COMMUNITY DEVELOPMENT
MEMORANDUM**

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

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: October 27th, 2014

Subject: Town of Bay Harbor Islands
Land Development Code Amendment
RM-3 Multiple Family Residential District
Removal of Accessory Commercial Uses
MMPA Acct. No.: 01-0702-0500

ISSUE

Over the last decade the Town Council, seeking to modernize and update its original (1950-1960) development standards, studied its Land Development Regulations and adopted amendments thereto addressing virtually every aspect of site design and development criteria. In 2009-2010 the Town studied and amended the former RBA Tract District / now named the RM-3 Multiple Family Residential District. Considerable analysis of the existing development characteristics and desired future development criteria was undertaken and the updated Code provisions were adopted in December 2010. The 2010 Code update tightened the types of allowable accessory commercial uses and provide that the Town can require greater setbacks and screening of such uses. Since the founding of the Town in the late 1940s and included in its Zoning Code since the 1950s accessory commercial uses have been allowed in the RM-3 District. It is a common practice in higher density developments to allow limited accessory commercial uses that primarily serve the residents of the building complex and to a lesser degree neighborhood needs. If one examines high density residential development patterns along Collins Avenue this land use pattern is common (spas / dry cleaners / travel agencies / banks / restaurants / etc.). However, the Town's RM-3 sites are located geographically in a much different "isolated" location than the aforementioned Collins Avenue / other major roadway locations. There are currently no accessory commercial uses operating in the Town.

The Town recently received interest in the re-development of a parcel of land in the RM-3 Zoning District. Through meetings and subsequent discussions about possible redevelopment, the Town became aware of a few Code sections (building coverage / commercial uses) that have caused the Town to re-examine the Code provisions. The RM-3 Zoning District currently allows for business or commercial uses subject to approval by the Town Council and subject to

**Town of Bay Harbor Islands
Land Development Code Amendment
Commercial Uses – RM-3 Multiple Family Residential District
October 27th, 2014
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supplemental setbacks requested by the Town Council. This subject was discussed at several recent Town Council meetings (Sept. / Oct. 2014), at which time, the Town Council instructed staff to prepare Ordinances to amend the definition of Building Coverage to remove "balconies" attached to the exterior of buildings from being counted. Also, a request was made to remove accessory business / commercial uses from the RM-3 District entirely. MMPA has prepared a suggested Code amendment to accomplish this request.

BACKGROUND

Business and commercial uses have been permitted in the RM-3 (formerly RBA) district since the Code was established for this zoning district. This model of accessory business / commercial uses within higher density residential districts is very popular along Collins Avenue in nearby municipalities (Bal Harbour Village, Miami Beach, Sunny Isles Beach, Hollywood, Hallandale Beach, Fort Lauderdale, etc.). It is felt by Town staff and the Town Council that this land use model may not fit Bay Harbor Islands today because of the distinctly different geographical location (not on higher volume road) and the allowable development density / building height (75') is so restrictive. The permitted intensity of future multi-family buildings could most likely not support accessory business / commercial uses, and the impacts of delivery trucks / noise / odors / etc. could negatively affect the nearby areas.

SUMMARY

The RM-3 Multiple Family Residential Zoning District currently allows for limited accessory business or commercial uses, subject to individual approval by the Town Council and subject to supplemental setbacks as may be requested by the Town Council. This subject was discussed at several recent Town Council meetings, at which time, the Town Council instructed staff to prepare an Ordinance to remove the allowance of accessory business / commercial uses from the district entirely. MMPA coordinated with Town staff on this request and has prepared a draft Ordinance for consideration.