

ORDINANCE 85-14

ORDINANCE AMENDING CHAPTER 33D (BISCAYNE BAY MANAGEMENT) OF THE CODE OF METROPOLITAN DADE COUNTY, FLORIDA, BY PROVIDING FOR REVIEW OF DEVELOPMENT ACTIONS AND PLANS WITHIN THE SHORELINE DEVELOPMENT REVIEW BOUNDARY; DECLARING LEGISLATIVE INTENT; PROVIDING DEFINITIONS; ESTABLISHING A SHORELINE DEVELOPMENT REVIEW COMMITTEE AND PROVIDING DUTIES AND RESPONSIBILITIES OF THE COMMITTEE; ESTABLISHING RESPONSIBILITIES OF THE EXECUTIVE COUNCIL OF DEVELOPMENT IMPACT COMMITTEE AND OF COUNTY AND MUNICIPAL OFFICIALS; PROVIDING FOR MEMORANDA OF AGREEMENT BETWEEN COUNTY AND MUNICIPALITIES; PROVIDING REVIEW CRITERIA; PROVIDING FOR JUDICIAL REVIEW; PROVIDING FOR EXEMPTIONS AND VESTED RIGHTS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR EFFECTIVE DATE, SEVERABILITY AND INCLUSION IN THE CODE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA:

Section 1 Legislative Intent

1. The Board of County Commissioners of Metropolitan Dade County, Florida, hereby declares that it is in the public interest to provide a unified management system for the Biscayne Bay shoreline area that will preserve the basic qualities, characteristics, and the natural, recreational and aesthetic values of the Biscayne Bay area, including the northern embayments of Dumfoundling Bay, Maule Lake and Little Maule Lake. In making this declaration the Board is mindful of its authority under its Home Rule Charter to prepare and enforce comprehensive plans for the development of Dade County; to establish, coordinate and enforce zoning as is necessary for the protection of the public; and to exercise all powers and privileges granted to municipalities, counties and county offices by the constitution and law of the state, and all powers not prohibited by the constitution or by the charter, and to perform any other acts consistent with laws which are required by the Charter or which are in the common interest of the people of the County.

In furtherance of its duties and responsibilities under the Home Rule Charter, this Board has adopted the Comprehensive Development Master Plan to plan for and manage population growth in a manner compatible with preserving the natural environment, to protect natural and man-made amenities, and to improve the process of evaluating development and redevelopment projects in order to achieve creative developments which are coordinated with services and to insure the harmonious relationship between man and his environment.

In discharging its duties and responsibilities under the Home Rule Charter the Board has declared Biscayne Bay to be a County Aquatic Park and Conservation Area for the use and benefit of all citizens of Dade County and has adopted the Biscayne Bay Management Plan to address and resolve certain jurisdictional problems relating to shoreline management; to provide a wide array of water-oriented opportunities for the public-at-large at the water's edge; to enhance physical and visual access to Biscayne Bay and the northern embayments; to provide environmentally sound utilization of those water bodies; to maintain or enhance biological communities that are essential to the long-term viability of Biscayne Bay and the northern embayments; and thus to enhance Biscayne Bay's and the northern embayments' contribution to the economic health of the Dade County Community.

2. In accordance with the provisions and recommendations of the Biscayne Bay Management Plan, the procedures and criteria included herein below are intended to achieve the following objectives:

- a. to preserve or enhance the natural, aesthetic and recreational values of the Biscayne Bay Area

- b. to encourage the best use of the water and shoreline area for the benefit, use and enjoyment of residents of and visitors to Metropolitan Dade County
- c. to provide the maximum amount of public visual and physical access to the water through the provision of mixed use facilities and places open to the public at large, such as, walkways, boardwalks, plazas, and observation areas along the shoreline
- d. to encourage new shoreline development along the waterfront to respect the coastal environment, and to orient or reorient shoreline uses and buildings to the water
- e. to avoid monotony in building heights and widths and appearances along the developed areas of shoreline and, above all, to avoid further walling off of the shoreline through appropriate site preparation and landscape design
- f. to prevent the siting of uses along the bayshore that are incompatible with adjacent in-water and developed areas
- g. to encourage the retention and use of native plant materials along the shoreline
- h. to provide landscaping in the viewing corridors and shoreline setback areas that focuses views toward the water
- i. to create or recreate over the next few decades, a natural soft edge and greenbelt-like quality along the bay shoreline
- j. to plan and design new developments, or make improvements to existing developments, in a manner that will enhance the view and enjoyment of the water and shoreline area from the

street, from the water, from within the development and overlooking the development

- k. to encourage the integration of existing historic structures and features in new shoreline developments.

This ordinance and all implementing resolutions adopted pursuant to this ordinance shall apply to both the incorporated

~~incorporated~~

Section 2 Definitions

1. Ancillary Structure any structure other than the principal building on a lot or parcel which is subordinate to or not a part of the principal building.

2. Basin Area a water area in Biscayne Bay defined by the mainland on the west, the barrier islands on the east, and causeways or natural banks on the north and south.

3. Bay Biscayne Bay and the northern embayments of Dumfoundling Bay, Maule Lake and Little Maule Lake and the Intracoastal Waterway from NE 163 Street to the Broward County line.

4. Development the carrying out of any use permitted on land by applicable zoning regulations (i.e. Chapter 33 of the Code of Metropolitan Dade County, Florida, or municipal codes), or making any material change in the use or character of the upland or submerged land, including but not limited to the placement of structures on the upland, or on or over submerged lands.

5. Development action any standard form Coastal Construction permit as defined in Chapter 24 of the Dade County Code or any plat approval; building permit; zoning permit or approval, rezoning or district boundary change; variance; special exception; conditional permit; unusual use; special use permit or any

other zoning action that would alter the outside configuration of any building, structure or ancillary structure or change the existing grade elevation or use of any parcel within the shoreline development review boundary.

6. Grade the established grade of the premises, whether vacant or improved, is the highest elevation of the centerline of the existing (or proposed) roadway adjacent to the property.

7. Plan a document, area study or map prepared by a private or public entity for or at the request of, a unit of government. Such plans may include goals and objectives, policy statements, guidelines and recommended implementation methods. Such plans shall include the land use master plan amendments as described in the Florida Local Government Comprehensive Planning Act (Florida Statutes, Chapter 163, Part II) or may be related to specific functions and uses such as, but not limited to resource use, resources management, transportation, commercial or economic development and park plans. For purposes of this ordinance, this shall not include site or building plans which are submitted as part of an application for development action.

8. Roadway any cleared, plowed, bulldozed, filled, graded, excavated, or artificially created paved or unpaved path or way on public property intended or used for the passage of vehicles.

9. Shoreline the immediate interface of land and surface water body.

10. Shoreline Development Review Boundary defined by the nearest public roadway, or extension of such roadway alignment, or private roadway on a previously approved site plan, paralleling the shoreline of Biscayne Bay and the northern embayments of Dumfoundling Bay, Maule Lake and Little Maule Lake and the Intracoastal Waterway from NE 163 Street to the Broward County line. Where it is not feasible to follow existing road

configurations or extensions of those alignments, zoning district boundaries shall be used to define the boundary. The boundary line shall extend southward from the Broward County line to the northern boundary of Biscayne National Park. The Board of County Commissioners hereby designates all land areas shown on Exhibit 1, certified by the Clerk of the Board as a part of this ordinance and incorporated herein by reference, as the land areas lying within the Shoreline Development Review Boundary. The official map shall be transmitted to the custody of the director of the Dade County Building and Zoning Department, and copies of the official map shall be filed with the Clerk of the Board. The Clerk of the Board shall submit to each affected municipality a copy of the official map which may from time to time be altered, enlarged, added to, amended or deleted by ordinance.

11. Shoreline Setbacks the horizontal distance between the mean high water line, or cap of the bulkhead or top of the riprap and a side of the principal building or accessory structures.

12. Site Plan a document including the following information: location of lot lines and setbacks; location, shape, size and height of structures, decorative walls and entrance features; location of on-site and off-street parking, loading facilities, service areas, and waste collection areas; location of all streets, alleys, driveways, pedestrian ways, and sidewalks.

13. Visual Corridor an unobstructed area extending from a public right-of-way to the shoreline which is retained at grade and landscaped in such a manner as to permit and encourage views of the water.

14. Water Related Uses uses which are not directly dependent upon access to a water body, but which are designed to encour-

age views, public use and enjoyment of the water's edge, such as restaurants, outdoor cafes and boat rental facilities.

15. Water Dependent Uses a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to a water body for waterborne transportation, energy production or source of water.

Section 3 Shoreline Development Review Committee

1. There is hereby established a Biscayne Bay Shoreline Development Review Committee composed of seven members, six of whom shall be recognized professionals in one or more of the following fields: architecture, landscape architecture and urban design. The Board of County Commissioners shall invite the American Institute of Architects, the American Planning Association, the American Society of Landscape Architects, and the cities of Bay Harbor Island, Miami, Miami Beach, Coral Gables, Miami Shores, Bal Harbour, North Miami, North Miami Beach, North Bay Village, and Surfside to submit, within thirty (30) days from adoption of this ordinance, one recommended candidate for membership on this Committee. The seventh member and an alternate shall be appointed from a list of names submitted by the Builder's Association of South Florida. The Biscayne Bay Shoreline Development Review Committee may be expanded to nine members solely for purposes of considering development actions and plans which involve real property lying within the boundaries of any individual shoreline municipality. In such instances two additional members who are recognized professionals in one or more of the following fields: architecture, landscape architecture and urban design, may be appointed by the local governing body of the municipality and may participate as full members. The method of appointment and term of office of said additional members shall be determined at the discretion of the local governing body of the municipality. Said appointments may

be made for a specified term or may be limited to a single development action or plan.

2. Four members shall be appointed by the Board of County Commissioners to serve for two years and three shall be appointed to serve three years. At the end of the initial two year period successors to the initial two year appointments shall be appointed for three years. The process of appointment and other requirements of Sections 2-11.36 through 2-11.40 of the Code of Metropolitan Dade County, Florida, shall be followed. At its first meeting in each calendar year, the Committee shall elect a chairman and a vice chairman by a simple majority vote as long as a quorum of five members is present. In all other actions taken by the Committee a quorum of five members and a minimum of four affirmative votes shall be required for the passage of any motion. Where the membership of the Biscayne Bay Shoreline Development Review Committee has been expanded to include municipal appointees as provided in Subsection 3 (1) above, a quorum of 7 members and a minimum of 5 affirmative votes shall be required for the passage of any motion.

3. The County Manager shall designate a person to serve as the County staff coordinator for the Committee. Administrative and secretarial staff shall be provided by the County. For all proposed development actions and plans located within unincorporated Dade County, the following Metropolitan Dade County departments shall provide the staff reviews: Building and Zoning, Environmental Resources Management, Park and Recreation, Planning and Public Works. These departments shall also provide similar professional staff support for any municipality which has not submitted a memorandum of agreement to the County in accordance with the provisions of Section 6 hereinbelow.

Section 4. Responsibilities of the Shoreline Development Review Committee

The Shoreline Development Review Committee responsibilities shall include the following:

1. Provide a timely review of plans and applications for development action within the Shoreline Development Review Boundary in accordance with procedures described in implementing resolutions and/or memoranda of agreement adopted pursuant to this ordinance. This review shall apply to proposed development actions which fall within the following thresholds:

a. Residential developments except single family or duplex, and all business, commercial, industrial, recreational, entertainment, cultural and governmental uses that directly abut the shoreline within the Shoreline Development Review Boundary

b. Residential developments except single family or duplex, and all business, commercial, industrial, recreational, cultural, entertainment and governmental uses that occur on a minimum of one acre or which have 30 units or more, and are located within the Shoreline Development Review Boundary but not abutting the shoreline

c. Standard form coastal construction activities as described in Chapter 24 of the Dade County Code, which meet or exceed one of the following thresholds:

- 1) Boat docking facilities containing at least 50 new or additional slips, or
- 2) Boat docking facilities, other than single family residential which do not meet the side setback or exceed the waterward projection criteria as set forth in Section D-5 of the Metropolitan Dade

County Public Works Manual as may be amended or supplemented from time to time, or any comparable section of a municipal code or public works manual, or

- 3) The installation or construction of floating structure(s) other than floating docks, or
- 4) The installation or construction of a fixed structure(s) above proposed or existing docks or piles requiring a Class 1 Coastal Permit public hearing.

d. Plans for any site or area which lies wholly or partially within the Shoreline Development Review Boundary.

2. Determine whether and the extent to which:

a. Any plan or development action as proposed, conforms to the Dade County Comprehensive Development Master Plan as amended from time to time, any applicable municipal master plan as may be amended from time to time, and Biscayne Bay Management Plan as may be amended from time to time and is otherwise compatible with the existing area, and surrounding in-water and upland natural features.

b. Any plan, or development action, as proposed, is consistent with the Biscayne Bay Aquatic Preserve Act (Florida Statutes, Chapter 258.165) as may be amended from time to time. and rules, plans and criteria adopted pursuant to that Act.

c. Any plan, or development action, as proposed, is consistent with applicable County or municipal codes and the extent to which departure from said codes would be required to meet the intent of this ordinance.

d. Any plan, or development action as proposed, is consistent with all applicable criteria contained in Section 8 hereinbelow and guidelines and minimum standards set forth in implementing resolutions adopted pursuant to the ordinance.

3. Review and consider County or municipal staff's evaluation in formulating its recommendation(s) on any proposed plan or development action application at an advertised public meeting and may consider germane presentations by interested parties.

4. Instruct the County staff coordinator to send a report of its recommendations including a written statement, signed by the Chairman, or administrative staff member at the order of the Chairman or Vice Chairman, detailing the reasons for those recommendations to the Board of County Commissioners or other applicable board of Metropolitan Dade County, or to the applicable board of the municipal governing body, or to the County or municipal official vested with the administrative authority to grant the development action or plan approval being sought. This report of the Committee's recommendations shall become part of all hearing or permit records on the proposed development action.

5. From time to time shall recommend to the Board of County Commissioners revisions of the Shoreline Development Review Manual approved by implementing resolutions adopted pursuant to this ordinance, and develop additional guidelines and minimum standards as may be required for the expeditious review of applications for development actions or plans within the Shoreline Development Review Boundary.

Section 5 Responsibilities of the Executive Council of the Metro-Dade County Developmental Impact Committee

The responsibilities of the Executive Council of the Dade County Developmental Impact Committee shall include the following:

1. Provide a timely review whereby a determination of need for compliance can be made regarding applications for development actions within the Shoreline Development Review Boundary, based on the standards and procedures in implementing resolutions adopted pursuant to this ordinance.

2. Provide a timely review whereby a determination of vested rights can be made regarding applications for development actions within the Shoreline Development Review Boundary, based on Section 10 hereinbelow and procedures in implementing resolutions adopted pursuant to this ordinance.

Section 6 Memoranda of Agreement

1. This ordinance and all implementing resolutions adopted pursuant to this ordinance shall apply in the incorporated and unincorporated areas. However, any affected municipality may elect to develop a memorandum of agreement with Metropolitan Dade County identifying its professional capability to provide the staff review in accordance with the intent and requirements of this ordinance, plus any implementing resolutions pertaining to standards and criteria adopted pursuant to this ordinance. Any such memoranda of agreement shall identify the person or office within the municipality that will be responsible for coordination of the municipality's shoreline development review and shall specify the procedures, fee schedules, and time frames to be used by the municipality. The memorandum shall be evaluated by the Shoreline Development Review Committee prior to submittal to the Board of County Commissioners for action and shall be reviewed bi-annually thereafter. The evaluation of the Shoreline Development Review Committee shall be forwarded to the Commission together with the memorandum of agreement.

Section 7 Municipal and/or County Official's Responsibilities

For any application for development action which is located within the Shoreline Development Review Boundary, and meets the thresholds described in Section 4 hereinabove, the municipal or County official responsible for accepting the application for development action, as well as the applicant for the same shall notify the County staff coordinator in writing at the time of filing the application for development action within the city or County. Said notification from the city or County official shall include a copy of the development action application and a statement certifying that no final development action permit or approval shall be issued by the city or County until the review described herein and in implementing resolutions adopted pursuant to this ordinance has been completed or terminated.

Section 8 Shoreline Development Action Review Criteria

The Shoreline Development Review Committee's evaluation of proposed development actions and plans within the Shoreline Development Review Boundary shall be conducted in accordance with the provisions of this ordinance. In addition to the criteria set forth below, guidelines and minimum standards in the Shoreline Development Review Manual, approved by implementing resolutions adopted pursuant to this ordinance, shall also be used by the Committee to provide consistency in this review process. These criteria and the guidelines and minimum standards contained in the Shoreline Development Review Manual shall apply countywide within the Shoreline Development Review Boundary.

1. Shoreline Setbacks

a. The minimum shoreline setback shall be twenty-five (25) feet for building elevations not exceeding thirty-five feet in height measured vertically from the mean high water line to

top of the building parapet. The shoreline setback shall be measured from the water side of the cap of the bulkhead, seawall or the top of the riprap (where said riprap has been placed in accordance with the provisions of Chapter 24 of the Dade County Code) or from the mean high water line as defined in Chapter 177, Part 2, Florida Statutes, where no bulkhead, seawall or riprap exists.

b. For building elevations exceeding thirty-five (35) feet in height measured vertically from the mean high water line to the top of the building parapet, the minimum shoreline setback shall be increased by fifty percent of the additional height of the building to a maximum setback of seventy-five (75) feet. Said setbacks shall be measured from the water side of the cap of the bulkhead, seawall or the top of the riprap where said riprap has been placed in accordance with the provisions of Chapter 24 of the Dade County Code or from the mean high water line as defined in Chapter 177, Part 2, Florida Statutes, where no bulkhead, seawall or riprap exists.

c. ~~No buildings~~, accessory uses, above grade structures, ancillary structures or other uses shall be allowed in the setback area described hereinabove; provided however, if public shoreline walkways are provided, along with covenants and provisions to ensure public use and maintenance of these walkways in perpetuity, then the Committee may recommend that the shoreline setback be decreased. Design of all shoreline walkways shall be in conformance with the guidelines in the Shoreline Development Review Manual in implementing resolutions adopted pursuant to this ordinance.

The Shoreline Development Review Committee shall review the status of all setback areas every two years and shall petition the appropriate local government(s) to acquire, develop, maintain and assume liability for portions of the public shoreline walkway as it becomes feasible. Design of the shoreline walkway shall be in conformance with the guidelines in the