



Village of Biscayne Park Commission Agenda Report

Village Commission Meeting Date: May 5, 2015

Subject: Ordinance 2015-03

Prepared By: Village Clerk Maria Camara

Sponsored By: Staff

Background:

At the February 3, 2015, Commission meeting, Attorney John Hearn explained that the code related to the Planning & Zoning Board is covered in multiple places in the Village's Code of Ordinances, and asked for Commission approval to move forward in drafting an ordinance to clarify and correct. The Commission passed a motion giving Attorney Hearn the direction to rewrite the code as necessary, including that related to the Code Compliance Board. At the April 7, 2015, Commission Meeting, the Commission approved the Ordinance at first reading with direction to the Attorney to make certain amendments which have been incorporated.

The Commission will be provided with the Board Member Application forms for both the Planning & Zoning Board and Code Compliance Board at the May 5, 2015, meeting to select, appoint and set the term of office for each member.

Fiscal / Budget Impact: Cost for advertisement of the second reading of the ordinance and cost to codify.

Attachments: Ordinance 2015-03

1 ~~13.2.1 *Appointed.* There is hereby appointed and created a village planning board hereinafter~~
2 ~~called the board to review and recommend to the village commission approval or denial of~~
3 ~~development applications submitted under this code and any other matter that may be~~
4 ~~referred to the board by the commission.~~

5 ~~13.2.2 *Term.* The planning board shall be appointed for a term of two (2) years.~~

6 ~~13.2.3 *Membership.* The board shall be composed of three (3) members. Each member shall~~
7 ~~reside in the village. When a position becomes vacant before the end of the term, the village~~
8 ~~commission shall appoint a substitute member to fill the vacancy for the duration of the~~
9 ~~vacated term.~~

10 ~~13.2.4 *Chair.* The members shall designate one of them as chair of the planning board.~~

11 ~~13.2.5 *Meetings.* The board shall meet in the village hall or at such other place or places as the~~
12 ~~members thereof may decide and at such times as the members of the board may decide.~~

13 ~~13.2.6 *Quorum.* A majority of the members of the planning board shall constitute a quorum for~~
14 ~~all purposes.~~

15 ~~13.2.7 *Procedures.* The board shall follow rules of procedure that conform to this code, the~~
16 ~~village charter and other ordinances, and state law. Minutes of the board's proceedings shall~~
17 ~~be kept, indicating the attendance of each member, and the decision on every question. Each~~
18 ~~decision of the board must be approved by majority vote. All meetings of the board shall be~~
19 ~~public meetings and all board records shall be public records.~~

20 ~~13.2.8 *Finances.* The village commission shall appropriate funds to permit the planning board to~~
21 ~~perform its prescribed functions. Members shall not be compensated, but may be paid for~~
22 ~~travel and other expenses incurred on board business under procedures prescribed in~~
23 ~~advance by the village commission.~~

24 13.2.2 *Term of office.* The initial appointments to the code compliance board and the alternate
25 members shall be as follows:

- 26
27 (1) One (1) member appointed for a term of one (1) year.
28 (2) Two (2) members appointed for a term of two (2) years.
29 (3) Two (2) members appointed for a term of three (3) years.

30
31 Thereafter, all appointments shall be made for a term of three (3) years and shall take effect
32 on May 1 of the year the appointment is made. A member may be reappointed upon
33 approval of the village commission. Appointments to fill any vacancy on the code
34 compliance board shall be for the remainder of the unexpired term of office. If any member
35 who fails to attend two (2) of the three (3) successive meetings without cause and without
36 prior approval of the chairman, the board shall declare the member's office vacant, and the
37 village commission shall promptly fill such vacancy.

38
39 The members shall serve in accordance with the Village Charter and may be suspended and
40 removed for cause as provided in the Village Code for removal of members of village
41 boards.

42
43 ~~13.2.9~~ 13.2.3 *Application fees.* The village commission shall adopt by resolution a schedule of
44 application fees for functions performed by the planning board in response to applications
45 submitted by any person, corporation, organization or governmental entity.

46 13.3. - Local planning agency.

1 13.3.1 *Designation and establishment of local land planning agency.* Pursuant to and in
2 accordance with F.S. § 163.3174, the village planning board is hereby designated and
3 established as the local planning agency for the incorporated territory of Biscayne Park,
4 Florida.

5 13.3.2 *Duties and responsibilities of as the local planning agency.* The planning board, as the
6 local planning agency, in accordance with ~~the Local Government Comprehensive Planning~~
7 ~~and Land Development Act of 1985~~, F.S. § 163.3174(4), shall:

- 8 (a) Be the agency responsible for the preparation of the comprehensive plan and shall make
9 recommendations to the ~~governing body~~ village commission regarding the adoption of
10 such plan or element or portion thereof.
- 11 (b) Monitor and oversee the effectiveness and status of the comprehensive plan and
12 recommend to the governing body such changes in the comprehensive plan as may from
13 time to time be required, including ~~preparation~~ review of the periodic reports required
14 by F.S. § 163.3191, (evaluation and appraisal of the comprehensive plan once every
15 five (5) years).
- 16 (c) When the local planning agency is serving as the land development regulation
17 commission or the local government requires review by both the local planning agency
18 and the land development regulation commission, review proposed land development
19 regulations, land development codes, or amendments thereto, and make
20 recommendations to the governing body as to the consistency of the proposal with the
21 adopted comprehensive plan or portion thereof.
- 22 (d) Perform any other functions, duties, and responsibilities assigned to it by the governing
23 body or general or special law.

24 ~~13.3.3 *Organization, rules and procedures of the agency.* Members of the local planning agency~~
25 ~~shall continue to be appointed and follow such rules of procedure, methods of choosing~~
26 ~~officers, setting of public meetings, providing of financial support, and accomplishing its~~
27 ~~duties as provided in the Charter.~~

28 ~~13.3.4 *Public meetings and records.* All meetings of the local planning agency shall be public~~
29 ~~meetings and all agency records shall be public records. The local planning agency shall~~
30 ~~encourage public participation.~~

31 ~~13.3.5~~ 13.3.3 *Funds.* The commission shall appropriate funds at its discretion to the local
32 planning agency for expenses necessary in the conduct of its work. The local planning
33 agency may, in order to accomplish the purposes and activities required by the Local
34 Government Comprehensive Planning and Land Development Act of 1985 Act, expend all
35 sums so appropriated and other sums made available for use from fees, gifts, state or federal
36 grants, state or federal loans, and other sources; provided acceptance of loans or grants must
37 be approved by the commission.

38 ~~15.3~~13.4. - Variances.

39 ~~15.3-1~~13.4.1. *Variances recommended by the planning board.* The planning board may
40 recommend to the commission a variance from the strict application of any provision of this
41 code, except provisions of the adopted levels of service, (chapter 9).

42 ~~15.3-2~~13.4.2 *Grounds for a variance—Findings required.* The board may recommend a
43 variance from this chapter when, in its opinion, undue hardship may result from strict
44 compliance. In recommending any variance, the board shall prescribe only conditions that it
45 deems necessary to or desirable for the public interest. In making its findings, as required
46 herein below, the board shall take into account the nature of the proposed use of land and the

1 existing character of land and buildings in the vicinity. No variance shall be recommended
2 unless the board finds:

- 3 (1) That there are special circumstances or conditions affecting the property which are such
4 that the strict application of the provisions of this chapter would deprive the applicant of
5 the reasonable use of his land.
- 6 (2) That the variance is necessary for the preservation and enjoyment of a substantial
7 property right of the petitioner.
- 8 (3) That the granting of the variance will not be detrimental to the public welfare or
9 injurious to other property in the territory in which the property is situated.
- 10 (4) That the variance proposed is the minimum variance which makes possible the
11 reasonable use of the property.

12 ~~15.3.3~~13.4.3 *Imposition of conditions.* In recommending a development approval involving a
13 variance, the planning board may also recommend such conditions and restrictions upon the
14 premises benefited by a variance as may be necessary to allow a positive finding to be made
15 on any of the factors in subsection 15.3.2 above, or to minimize the injurious effect of the
16 variance.

17 ~~15.3.4~~13.4.4 *Village commission approval.* The planning board recommendation shall be sent
18 to the village commission for final consideration. The village commission shall review the
19 findings and recommendations of the planning board, determine whether all grounds for the
20 variance have been established and make a final decision regarding approval or denial of the
21 requested variance.

22 ~~15.3.5~~13.4.5 *Historic properties.* Special variances may be granted for the reconstruction,
23 rehabilitation or restoration of structures listed or classified in the national or county register
24 of historic places. The special variance shall be the minimum necessary to protect the
25 historic character and design of the structure. No special variance shall be granted if the
26 proposed construction, rehabilitation, or restoration will cause the structure to lose its
27 historical designation.

28 ~~15.3.6~~13.4.6 *Conditions and limitations.* In authorizing any variance, the commission shall
29 include as part of such variance, any condition, requirement or limitation which the board
30 may believe to be necessary and desirable to protect adjacent properties in the surrounding
31 neighborhood, and to carry out the spirit and purpose of the land development code.

32 ~~15.3.7~~13.4.7 *Administrative variances.* This part is established to provide standards and
33 procedures for the granting of administrative variances of development standards for
34 existing sites. Administrative variances are specifically intended to promote high standards
35 of design, provide flexibility in the administration of standards in recognition of site specific
36 conditions, and to establish conditions to ensure compatibility where standards are modified.

37 Administrative variances shall be limited to ten (10) percent of the affected setback or
38 substantially similar dimensional requirement, up to a maximum of one (1) foot. The village
39 manager shall be charged with the granting or denying of administrative variances. No
40 administrative variance shall be granted unless the applicant clearly shows the existence of one
41 of the following circumstances:

- 42 (1) Superior alternatives: Where the development will provide an alternative which will
43 achieve the purposes of the requirement through clearly superior design.
- 44 (2) Technical impracticality: Where the strict application of the requirements would be
45 technically impractical in terms of design or construction practices or existing site
46 conditions. The degree of existing nonconforming conditions and the extent to which

1 the proposed modification would lessen the nonconforming condition shall be
2 specifically considered.

3 (3) Protection of natural features, including trees, wetlands, archeological sites and similar
4 circumstances.

5 (4) Other technical, architectural or engineering reasons.

6 ~~15.4.13.5.~~ - Procedure for amending this code or the comprehensive plan.

7 ~~15.4.13.5.1~~ *State law.* The procedures for amending this code or the comprehensive plan shall
8 adhere to state law in all respects.

9 ~~15.4.213.5.2~~ *Applications.* Any affected person or affected local government may apply to the
10 local planning agency to amend this code or the comprehensive plan in compliance with
11 procedures prescribed by the agency.

12 ~~15.4.313.5.3~~ *Local planning agency recommendation.* The local planning agency shall hold a
13 legislative hearing on each application to amend this code or the comprehensive plan and
14 thereafter submit to the village commission a written recommendation which:

15 (a) Identifies any provisions of the code, comprehensive plan, or other law relating to the
16 proposed change and describes how the proposal relates to them.

17 (b) States factual and policy considerations pertaining to the recommendation.

18 ~~15.4.413.5.4~~ *Decision by the village commission.* The village commission shall hold a
19 legislative hearing on the proposed amendment and may enact or reject the proposal, or
20 enact a modified proposal that is within the scope of matters considered at the hearing.

21 ~~15.4.513.5.5~~ *Legislative hearing.* Each legislative hearing shall conform to the following
22 requirements:

23 (a) Notice. Notice that complies with the requirements of state law shall be given.

24 (b) Hearing. The public hearing shall as a minimum:

25 (i) Comply with the requirements of state law.

26 (ii) Present the local planning agency's analysis of the proposed decision.

27 (iii) Present the local planning agency's summary of reports by other agencies.

28 (iv) Permit any affected person or affected local government to submit written
29 recommendations and comments before or during the hearing.

30 (v) Permit a reasonable opportunity for interested persons to make oral statements.

31 ~~15.513.6.~~ - Appeals.

32 ~~15.5.113.6.1~~ *Submission of appeal.* Appeals as to any provision of this code or regulations may
33 be made to the commission by any aggrieved resident or property owner of the area affected,
34 and upon receipt of such appeal it shall be referred to the local planning agency for
35 investigation.

36 ~~15.5.213.6.2~~ *Local agency evaluation.* Such appeals may concern general provisions of the
37 plan and regulations or their effect in application to specific pieces of property. The local
38 planning agency shall determine whether or not relief may be granted without substantial
39 detriment to the public good and without impairing the intent and purpose of the plan and
40 code, and shall report its findings and recommendations as to change and amendments, if
41 any, to the commission.

42 ~~15.5.313.6.3~~ *Final action.* Final action on appeals shall be taken by the commission after
43 receipt of such report, and the commission may overrule the local planning agency.

1 ~~15.5.4~~13.6.4 *Local planning agency failure to act.* Failure of the local planning agency to act
2 on any appeal within thirty (30) days after its official submission to it shall be deemed
3 approval unless a longer period is requested and granted by the commission.

4 ~~15.5.5~~13.6.5 *Certification.* Changes in the adopted comprehensive plan and land development
5 code, or amendments thereto, originated by the local planning agency may be certified
6 through the commission at any regular meeting and adopted as amendments to this code in
7 the regular manner.
8

9 **Section 3.** Chapter 14, entitled “Code Compliance Board”, is hereby amended to read
10 as follows:

11 **CHAPTER 15 14. – PROCEDURES CODE COMPLIANCE BOARD**

12
13 ~~15.1.~~ 14.1 - Code compliance board—Generally.

14 ~~15.1.1~~ 14.1.1 *Purpose.* This chapter sets forth the procedures of the code compliance board.
15 When not expressly provided for in this Chapter, Article III, Section 2-30 of the Biscayne
16 Park Code shall apply. for enforcement of this code, for the consideration of variances from
17 this code, for amending this code or the comprehensive plan, and for appealing decisions.
18 ~~Section 15.1 shall be for code compliance procedures. Section 15.2 relates to planning board~~
19 ~~requirements.~~

20 ~~15.1.2~~ 14.1.2 *Intent.* It is the intent of the village to provide an equitable, expeditious, effective,
21 and inexpensive method of enforcing the codes and ordinances in force in the village by
22 granting to the code compliance board the authority to impose administrative fines and other
23 ~~no~~ non-criminal penalties for violation(s) of said codes and ordinances.

24 ~~15.1.3~~ 14.1.3 *Composition.* The five-member board shall be appointed by the village
25 commission. Members of the code compliance board shall be property owners and residents
26 of the Village of Biscayne Park. Appointments shall be made on the basis of experience or
27 interest and, when possible, ~~the inclusion of~~ include the following individuals ~~is encouraged:~~
28 an architect, an attorney a business person, an engineer, a general contractor, a subcontractor
29 and a licensed real estate person.

30 ~~15.1.4~~14.1.4 *Term of office.* The initial appointments to the code compliance board and the
31 alternate members shall be as follows:

- 32
33 (1) One (1) member appointed for a term of one (1) year.
34 (2) Two (2) members appointed for a term of two (2) years.
35 (3) Two (2) members appointed for a term of three (3) years.
36

37 Thereafter, all appointments shall be made for a term of three (3) years and shall take effect
38 on May 1 of the year the appointment is made. A member may be reappointed upon
39 approval of the village commission. Appointments to fill any vacancy on the code
40 compliance board shall be for the remainder of the unexpired term of office. If any member
41 who fails to attend two (2) of the three (3) successive meetings without cause and without
42 prior approval of the chairman, the board shall declare the member’s office vacant, and the
43 village commission shall promptly fill such vacancy. The terms of office of the members of
44 the board shall be up for reappointment yearly at the regular March village commission
45 meeting. The nominating commissioner can continue the term of the commissioner's current
46 appointment or appoint a new member. If no action is taken by the commissioner or the

1 ~~commission, the board or committee member shall continue to serve. New commissioners~~
2 ~~will also be able to continue the term of a previous commissioner or appoint a new member.~~

3 The members shall serve in accordance with the Village Charter and may be suspended and
4 removed for cause as provided in the Village Code of Ordinances and resolutions for removal of
5 members of village boards.

6 ~~15.1.5~~ 14.1.5 *Procedures.*

7 (a) *Chairman.* The members of the code compliance board shall elect a chairman from
8 among its members.

9 (b) *Quorum.* The presence of three (3) members shall constitute a quorum of the code
10 compliance board.

11 (c) *Expenses.* Members shall serve without compensation, but may be reimbursed for such
12 travel, mileage and per diem expenses as may be authorized by the village commission.

13 ~~15.1.6~~ 14.1.6 *Counsel.* The village attorney shall either be counsel to the code compliance
14 board or shall represent the village by presenting cases before the board, but in no case shall
15 the village attorney serve in both capacities.

16
17 ~~15.1.7~~ 14.1.7 *Compliance procedure.*

18 (a) It shall be the duty of the code compliance officer to initiate enforcement proceedings of
19 the various codes; provided, however, no member of the code compliance board shall
20 have the power to initiate such enforcement proceedings.

21 (b) Except as provided in subsections (c) and (d), if a violation of the codes is found, the
22 code compliance officer shall notify the violator and give the violator a reasonable time
23 to correct the violation ~~and, unless an emergency or life safety situation may issue a~~
24 ~~courtesy notice.~~ Should the violation continue beyond the time specified for correction,
25 the code compliance officer shall notify the code compliance board of the charges and
26 request a hearing pursuant to procedure in section ~~15.1.8~~ 14.1.8, ~~of the Land~~
27 ~~Development Code.~~ Notice shall be provided pursuant to section ~~15.1.13~~ 14.1.13, ~~of the~~
28 ~~Land Development Code.~~

29 (c) If the violation is corrected and then recurs or if the violation is not corrected by the
30 time specified for correction by the code compliance officer, the case may be presented
31 to the code compliance board even if the violation has been corrected prior to the board
32 hearing, and the notice shall so state. If a repeat violation is found, the code compliance
33 officer shall notify the violator but is not required to give violator a reasonable time to
34 correct the violation. The code compliance officer, upon notifying the violator of a
35 repeat violation, shall notify the code compliance board and request a hearing. The code
36 compliance board shall schedule a hearing and shall provide notice pursuant to section
37 ~~15.1.12~~ 14.1.12, ~~of the Land Development Code.~~ The case may be presented to the code
38 compliance board even if the repeat violation has been corrected prior to the board
39 hearing, and the notice shall so state. "Repeat violation" means a violation of a
40 provision of a code or ordinance by a person who has been previously found, through a
41 code compliance board or other quasi-judicial or judicial process, to have violated or
42 has admitted violating the same provision within five (5) years prior to the violation.

43 (d) If the code compliance officer has reason to believe a violation presents a serious threat
44 to the public health, safety and welfare, the code compliance officer may proceed

1 directly to the procedure in subsection ~~15.1.7(b)~~ 14.1.7(b), of the ~~Land Development~~
2 ~~Code~~ without ~~being required to~~ notifying the violator of a ~~reasonable time to correct~~.

3 (e) If the owner of the property which is subject to an enforcement proceeding before a
4 code compliance board, or if the court, transfers ownership of such property between
5 the time the initial pleading was served and the time of the hearing, such owner shall:

6 (1) Disclose, in writing, the existence and the nature of the proceeding to the
7 prospective transferee.

8 (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other
9 materials relating to the code enforcement proceeding received by the transferor.

10 (3) Disclose, in writing, to the prospective transferee that the new owner will be
11 responsible for compliance with the applicable code and with orders issued in the
12 code enforcement proceeding.

13 (4) File a notice with the code compliance department of the transfer of the property,
14 with the identity and address of the new owner and copies of the disclosures made
15 to the new owner, within five (5) days after the date of the transfer. A failure to
16 make the disclosures described in this subsection before the transfer creates a rebut
17 table presumption of fraud. If the property is transferred before the hearing, the
18 proceeding shall not be dismissed, but the new owner shall be provided a
19 reasonable period of time to correct the violation before the hearing is held.

20 ~~15.1.8~~ 14.1.8 *Conduct of hearing.*

21 (a) The chairman of the code compliance board may call hearings of the board, and
22 hearings may also be called by written notice signed by at least three (3) members of the
23 code compliance board. The board, at any hearing, may set a future hearing date. The
24 board shall attempt to convene no less frequently than once every two (2) months, but it
25 may meet more or less often as the demand necessitates. Minutes shall be kept of all
26 hearings by the board, and all hearings and proceedings shall be open to the public. The
27 village shall provide clerical and administrative personnel as may be reasonably
28 required by the board for the proper performance of its duties.

29 (b) Each case before the code compliance board shall be presented by a code compliance
30 officer appointed by the village for that purpose.

31 (c) The code compliance board shall proceed to hear the cases on the agenda for that day.
32 All testimony shall be under oath and shall be recorded. The board shall take testimony
33 from the code compliance officer, the alleged violator, and any witnesses called. Formal
34 rules of evidence shall not apply, but fundamental due process shall be observed and
35 govern said proceedings.

36 (d) At the conclusion of the hearing, the code compliance board shall issue findings of fact,
37 based on evidence recorded and conclusions of law, and shall issue an order affording
38 the proper relief consistent with powers granted herein. The finding shall be by motion
39 approved by a majority of those present and voting, except that at least three (3)
40 members of the code compliance board must vote for the action to be official. The order
41 may include a notice that it must be complied with by a specified date and that a fine
42 may be imposed if the order is not complied with by said date. A certified copy of such
43 order may be recorded in the public records of ~~Miami-Dade County~~ the county and shall
44 constitute notice to any subsequent purchasers, successors in interest, or assigns if the
45 violation concerns real property, and the findings therein shall be binding upon the
46 violator and, if the violation concerns real property, any subsequent purchasers,

1 successors in interest, or assigns. If an order is recorded in the public records pursuant
2 to this subsection and the order is complied with by the date specified in the order, the
3 code compliance board shall issue an order acknowledging compliance that shall be
4 recorded in the public records. A hearing is not required to issue such an order
5 acknowledging compliance.

6 ~~15.1.9~~ 14.1.9 *Powers of the code compliance board.* The code compliance board shall have the
7 power to:

- 8 (1) Adopt rules for the conduct of its hearings.
- 9 (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by
10 the police department.
- 11 (3) Subpoena evidence to its hearings.
- 12 (4) Take testimony under oath.
- 13 (5) Issue orders having the force of law commanding whatever steps are necessary to bring
14 a violation into compliance.

15 ~~15.1.10~~ 14.1.10 *Fines; liens.*

- 16 (a) The code compliance board, upon notification by the code compliance officer that a
17 previous order of the board has not been complied with by the set time, or finds a
18 person to be a repeat violator under subsection (c), may order the violator to pay a fine
19 in an amount specified in this section for each day the violation continues past the date
20 set by the board for compliance or, in the case of a repeat violation, for each day the
21 repeat violation continues past the date of notice to the violator of the repeat violation.
22 If a finding of a violation or a repeat violation has been made as provided in this part, a
23 hearing shall not be necessary for issuance of the order imposing the fine.

24 An "*uncorrectable violation*" is a violation which cannot be remedied after the violation
25 has been committed because the violation constitutes a single prohibited act rather than
26 an ongoing condition or circumstance. Each reoccurrence of an uncorrectable violation
27 shall constitute a separation violation and shall subject the violator to an additional
28 penalty in the same amount as that prescribed for the original violation. If, however, a
29 violator has been once found guilty of an uncorrectable violation, and causes the same
30 uncorrectable violation to occur a second time, each reoccurrence of the uncorrectable
31 violation by such violator shall constitute a "repeat violation."

32 "*Continuing violations*" are those violations which remain uncorrected beyond the
33 reasonable time period for correction contained in either the civil violation notice or the
34 final order of the code compliance board, whichever is applicable. For each day of
35 continued violation after the time for correction has run, an additional penalty in the
36 same amount as that prescribed for the original violation shall be added.

37 A "*repeat violation*" is a recurring violation of an ordinance by a violator who has
38 previously been guilty of the same violation within the last five (5) years. In the case of
39 correctable violations, a repeat violation can occur only after correction of the previous
40 violation has been made. For the first repeat violation, the amount of the civil penalty
41 shall be double the amount of penalty prescribed for the original violation.

- 42 (b) *Amount of fine.*

- 43 (1) A fine imposed pursuant to this section shall not exceed the following:

- 1 a. Two hundred fifty dollars (\$250.00) per day per violation for a first violation;
2 b. Five hundred dollars (\$500.00) per day per violation for a repeat violation;
3 c. Up to one thousand dollars (\$1,000.00) per day if the code compliance board
4 finds the violation to be irreparable or irreversible in nature; and
5 d. A limit of fifteen ~~five~~ thousand dollars (\$15,000.00) per violation if the code
6 compliance board finds the violation to be irreparable or irreversible in nature.
- 7 (2) In determining the amount of the fine, if any, the code compliance board shall
8 consider the following factors:
- 9 a. The gravity of the violation;
10 b. Any actions taken by the violator to correct the violation; and
11 c. Any previous violations committed by the violator.
- 12 (c) *Reduction of fine imposed pursuant to this section.*
- 13 (1) The code compliance board is hereby delegated the authority to hear requests for
14 reduction of fines pursuant to this section and make the final decision on behalf of
15 the village.
- 16 (2) For all requests for reduction of fine, the code compliance officer shall submit a
17 written recommendation to the code compliance board. In formulating the
18 recommendation, the code compliance officer shall consider criteria, which
19 includes, but is not limited to the following:
- 20 a. The cooperation of the respondent, including whether the respondent had
21 appeared before the board at the original hearing;
22 b. The documentation provided by the respondent in support of the request;
23 c. Whether the respondent has new evidence or information which could not be
24 provided at the original hearing;
25 d. Whether there was any extraordinary hardship which existed or currently
26 exists;
27 e. Whether the respondent has come into compliance with the order of the board;
28 f. The number of days that the violation existed;
29 g. Whether the respondent has been deemed a repeat violator by the board;
30 h. Whether the property is homestead or non-homestead property; and
31 i. The total administrative cost to the village for the handling of the case, which
32 cost will be inclusive of staff time and recording and release of lien fees.
- 33 (3) The code compliance board shall consider the same criteria as the code compliance
34 officer.
- 35 (4) The code compliance board shall not waive administrative costs incurred by the
36 local government in enforcing its codes. In addition, the code compliance board
37 and the administrative panel shall not waive costs of repairs incurred by the local
38 government.
- 39 (d) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded
40 in the public records and thereafter shall constitute a lien against the land on which the
41 violation exists, or, if the violator does not own the land, upon any other real or personal
42 property owned by the violator. Upon petition to the circuit court, such order shall be
43 enforceable in the same manner as a court judgment by the sheriffs of this state,
44 including execution and levy against the personal property of the violator but such order

1 shall not be deemed otherwise to be a judgment of a court except for enforcement
2 purposes. A fine imposed pursuant to this part shall continue to accrue until the violator
3 comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed
4 pursuant to this section, whichever occurs first. After three (3) months from the filing of
5 any such lien which remains unpaid, the code compliance board may authorize the
6 village attorney to foreclose on the lien. No lien created pursuant to the provisions of
7 this chapter may be foreclosed on real property, which is a homestead under the Florida
8 Constitution, Art. X, § 4.

9 ~~15.1.11~~ 14.1.11 *Duration of lien.* No lien provided by the Code Compliance Boards Act
10 shall continue for a longer period than twenty (20) years after the certified copy of an order
11 imposing a fine has been recorded, unless within that time an action to foreclose on the lien
12 is commenced in a court of competent jurisdiction. In an action to foreclose on the lien, the
13 prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it
14 incurs in the foreclosure. The continuation of the lien effected by the commencement of the
15 action shall not be good against creditors or subsequent purchasers for valuable
16 consideration without notice, unless a notice of ~~lies pendent~~ lis pendens is recorded.

17 ~~15.1.12~~ 14.1.12 *Appeal.* An aggrieved party, including the village, may appeal a final order
18 of the code compliance board to the circuit court. Such an appeal shall not be a hearing do
19 novo but shall be limited to appellate review of the record created before the board. An
20 appeal shall be filed within thirty (30) days of the execution of the order to be appealed.

21 ~~15.1.13~~ 14.1.13 *Notices and procedures.*

22 (a) All notices required by this part shall be provided to the alleged violator by:

- 23 (1) Certified mail, return receipt requested, provided if such notice is sent under this
24 subsection to the owner of the property in question at the address listed in the tax
25 collector's office for tax notices, and at any other address provided to the village by
26 such owner and is returned as unclaimed or refused, notice may be provided by
27 posting as described in subsections (b)(1) and (2) below, and by first class mail
28 directed to the addresses furnished to the local government with a properly
29 executed proof of mailing or affidavit confirming the first class mailing; or
30 (2) Hand delivery by the sheriff or other law enforcement officer, code compliance
31 officer, or other person designated by the local governing body; or
32 (3) Leaving the notice at the violator's usual place of residence with any person
33 residing therein who is above fifteen (15) years of age and informing such person
34 of the contents of the notice.

35 (b) (1) In lieu of notice as described in subsection (a), such notice may be posted at least
36 ten (10) days prior to the hearing, or prior to the expiration of any deadline
37 contained in the notice, in at least two (2) locations, one of which shall be the
38 property upon which the violation is alleged to exist and the other of which shall be
39 at the Village Hall.

40 (2) Proof of posting shall be by affidavit of the person posting the notice, which
41 affidavit shall include a copy of the notice posted and the date and places of its
42 posting.

43 (c) Evidence that an attempt has been made to hand deliver or mail notice as provided in
44 subsection (a), together with proof of notice or posting as provided in subsection (b),

1 shall be sufficient to show that the notice requirements of this chapter have been met,
2 without regard to whether or not the alleged violator actually received such notice.

3 14.1.14 ~~(d)~~ Enforcement procedures by code compliance officer.

4 (1a) For the purposes of this chapter, a "code compliance officer" is defined to be any
5 agent or employee of the village or Miami-Dade County whose duty is to assure the
6 enforcement of and compliance with the Village Code, the Florida Building Code,
7 or Miami-Dade County, as applicable. Prior to being provided the authority to
8 initiate enforcement proceedings under this chapter, a code compliance officer shall
9 be required to successfully complete a criminal background investigation as
10 prescribed by administrative order of the county manager. Subject to the
11 requirements of section 8CC-11, a "code compliance officer" is also defined to be
12 any agent or employee of a municipality who has been authorized pursuant to that
13 section to assure code compliance. Municipal employees shall also be required to
14 successfully complete a criminal background investigation prior to being provided
15 authority to initiate enforcement proceedings under this chapter.

16 (2b) For the purposes of this chapter, "violators" shall be deemed to be those persons or
17 entities legally responsible for the violation of the Village's Code of Ordinances,
18 applicable provision of the Miami-Dade County Code, or the Florida Building
19 Code.

20 (3c) A code compliance officer who finds a violation of an ordinance shall determine a
21 reasonable time period within which the violator must correct the violation. This
22 determination shall be based on considerations of fairness; practicality; ease of
23 correction; ability to correct; severity of violation; nature, extent and probability of
24 danger or damage to the public; and other relevant factors relating to the
25 reasonableness of the time period prescribed. A time for correction need not be
26 specified if the violation is deemed to be an uncorrectable violation.

27 (4d) Service shall be effected by delivering the civil violation notice to the violator or
28 his agent, or by leaving the civil violation notice at the violator's usual place of
29 abode with any person residing therein who is fifteen (15) years of age or older and
30 informing that person of its contents. If such service cannot be effected, the notice
31 may be sent by certified mail, return receipt requested, or by posting of the civil
32 violation notice in a conspicuous place on the premises or real property upon which
33 the violation has been observed or by mailing to or posting the civil violation notice
34 at the property owner's mailing address as listed in the tax records of Miami-Dade
35 County. Such posting of the notice or violation shall be deemed proper service, and
36 the time for compliance, stated in the notice, shall commence with the date such
37 notice is posted.

38 (5e) A code compliance officer is authorized to record in the public record the civil
39 violation notice or a notice of violation which is based upon the civil violation
40 notice. The recording of the civil violation or a notice of violation under this
41 section shall not act as or be a lien on the property and shall not act as a notice of a
42 lien on the property but shall merely act as public notice of the existence of the
43 violation.

44 (6f) A code compliance officer must have, at a minimum, a Florida Association of Code
45 Enforcement (F.A.C.E.) Level 1 certification within one (1) year of hire.

46 ~~15.2.—Planning board.~~

1 ~~Authority/duties.~~ This planning board shall serve as the local planning agency, review
2 variance applications, and have other authority as provided by state law and code.

3 ~~15.3. Variances.~~

4 ~~15.3.1. Variances recommended by the planning board.~~ The planning board may recommend to
5 the commission a variance from the strict application of any provision of this code, except
6 provisions of the adopted levels of service, (chapter 9).

7 ~~15.3.2. Grounds for a variance—Findings required.~~ The board may recommend a variance from
8 this chapter when, in its opinion, undue hardship may result from strict compliance. In
9 recommending any variance, the board shall prescribe only conditions that it deems
10 necessary to or desirable for the public interest. In making its findings, as required herein
11 below, the board shall take into account the nature of the proposed use of land and the
12 existing character of land and buildings in the vicinity. No variance shall be recommended
13 unless the board finds:

- 14 ~~(1) That there are special circumstances or conditions affecting the property which are such~~
15 ~~that the strict application of the provisions of this chapter would deprive the applicant of~~
16 ~~the reasonable use of his land.~~
- 17 ~~(2) That the variance is necessary for the preservation and enjoyment of a substantial~~
18 ~~property right o the petitioner.~~
- 19 ~~(3) That the granting of the variance will not be detrimental to the public welfare or~~
20 ~~injurious to other property in the territory in which the property is situated.~~
- 21 ~~(4) That the variance proposed is the minimum variance which makes possible the~~
22 ~~reasonable use of the property.~~

23 ~~15.3.3. Imposition of conditions.~~ In recommending a development approval involving a variance,
24 the planning board may also recommend such conditions and restrictions upon the premises
25 benefited by a variance as may be necessary to allow a positive finding to be made on any of
26 the factors in subsection 15.3.2 above, or to minimize the injurious effect of the variance.

27 ~~15.3.4. Village commission approval.~~ The planning board recommendation shall be sent to the
28 village commission for final consideration. The village commission shall review the findings
29 and recommendations of the planning board, determine whether all grounds for the variance
30 have been established and make a final decision regarding approval or denial of the
31 requested variance.

32 ~~15.3.5. Historic properties.~~ Special variances may be granted for the reconstruction,
33 rehabilitation or restoration of structures listed or classified in the national or county register
34 of historic places. The special variance shall be the minimum necessary to protect the
35 historic character and design of the structure. No special variance shall be granted if the
36 proposed construction, rehabilitation, or restoration will cause the structure to lose its
37 historical designation.

38 ~~15.3.6. Conditions and limitations.~~ In authorizing any variance, the commission shall include as
39 part of such variance, any condition, requirement or limitation which the board may believe
40 to be necessary and desirable to protect adjacent properties in the surrounding neighborhood,
41 and to carry out the spirit and purpose of the land development code.

42 ~~15.3.7. Administrative variances.~~ This part is established to provide standards and procedures for
43 the granting of administrative variances of development standards for existing sites.
44 Administrative variances are specifically intended to promote high standards of design,
45 provide flexibility in the administration of standards in recognition of site specific
46 conditions, and to establish conditions to ensure compatibility where standards are modified.

1 ~~Administrative variances shall be limited to ten (10) percent of the affected setback or~~
2 ~~substantially similar dimensional requirement, up to a maximum of one (1) foot. The village~~
3 ~~manager shall be charged with the granting or denying of administrative variances. No~~
4 ~~administrative variance shall be granted unless the applicant clearly shows the existence of one~~
5 ~~of the following circumstances:~~

- 6 (1) ~~Superior alternatives: Where the development will provide an alternative which will~~
7 ~~achieve the purposes of the requirement through clearly superior design.~~
8 (2) ~~Technical impracticality: Where the strict application of the requirements would be~~
9 ~~technically impractical in terms of design or construction practices or existing site~~
10 ~~conditions. The degree of existing nonconforming conditions and the extent to which~~
11 ~~the proposed modification would lessen the nonconforming condition shall be~~
12 ~~specifically considered.~~
13 (3) ~~Protection of natural features, including trees, wetlands, archeological sites and similar~~
14 ~~circumstances.~~
15 (4) ~~Other technical, architectural or engineering reasons.~~

16 ~~15.4. Procedure for amending this code or the comprehensive plan.~~

17 ~~15.4.1 State law. The procedures for amending this code or the comprehensive plan shall adhere~~
18 ~~to state law in all respects.~~

19 ~~15.4.2 Applications. Any affected person or affected local government may apply to the local~~
20 ~~planning agency to amend this code or the comprehensive plan in compliance with~~
21 ~~procedures prescribed by the agency.~~

22 ~~15.4.3 Local planning agency recommendation. The local planning agency shall hold a~~
23 ~~legislative hearing on each application to amend this code or the comprehensive plan and~~
24 ~~thereafter submit to the village commission a written recommendation which:~~

- 25 (a) ~~Identifies any provisions of the code, comprehensive plan, or other law relating to the~~
26 ~~proposed change and describes how the proposal relates to them.~~
27 (b) ~~States factual and policy considerations pertaining to the recommendation.~~

28 ~~15.4.4 Decision by the village commission. The village commission shall hold a legislative~~
29 ~~hearing on the proposed amendment and may enact or reject the proposal, or enact a~~
30 ~~modified proposal that is within the scope of matters considered at the hearing.~~

31 ~~15.4.5 Legislative hearing. Each legislative hearing shall conform to the following~~
32 ~~requirements:~~

- 33 (a) ~~Notice. Notice that complies with the requirements of state law shall be given.~~
34 (b) ~~Hearing. The public hearing shall as a minimum:~~

- 35 (i) ~~Comply with the requirements of state law.~~
36 (ii) ~~Present the local planning agency's analysis of the proposed decision.~~
37 (iii) ~~Present the local planning agency's summary of reports by other agencies.~~
38 (iv) ~~Permit any affected person or affected local government to submit written~~
39 ~~recommendations and comments before or during the hearing.~~
40 (v) ~~Permit a reasonable opportunity for interested persons to make oral statements.~~

41 ~~15.5. Appeals.~~

42 ~~15.5.1 Submission of appeal. Appeals as to any provision of this code or regulations may be~~
43 ~~made to the commission by any aggrieved resident or property owner of the area affected;~~

1 and upon receipt of such appeal it shall be referred to the local planning agency for
2 investigation.

3 ~~15.5.2 Local agency evaluation.~~ Such appeals may concern general provisions of the plan and
4 regulations or their effect in application to specific pieces of property. The local planning
5 agency shall determine whether or not relief may be granted without substantial detriment to
6 the public good and without impairing the intent and purpose of the plan and code, and shall
7 report its findings and recommendations as to change and amendments, if any, to the
8 commission.

9 ~~15.5.3 Final action.~~ Final action on appeals shall be taken by the commission after receipt of
10 such report, and the commission may overrule the local planning agency.

11 ~~15.5.4 Local planning agency failure to act.~~ Failure of the local planning agency to act on any
12 appeal within thirty (30) days after its official submission to it shall be deemed approval
13 unless a longer period is requested and granted by the commission.

14 ~~15.5.5 Certification.~~ Changes in the adopted comprehensive plan and land development code, or
15 amendments thereto, originated by the local planning agency may be certified through the
16 commission at any regular meeting and adopted as amendments to this code in the regular
17 manner.
18

19 **Section 4.** Chapter 15, entitled “Enforcement”, is hereby amended to read as follows:
20

21 **CHAPTER 15. - ENFORCEMENT**
22

23 ~~14.1.~~ 15.1. - Generally.

24 ~~14.1.1~~ 15.1.1 *Enforcement of Land dDevelopment eCode.* The planning board and the code
25 compliance board shall enforce this code ~~according to procedures set out in chapter 15~~
26 ~~herein.~~

27 ~~14.2.~~ 15.2. - Building official.

28 ~~14.2.1~~ 15.2.1 *Designation.* The building official shall be designated by the appointing authority,
29 whatever the official title, to enforce the provisions of the South Florida Building Code and
30 other applicable laws; provided, the official may act with the aid and through authorized
31 assistants.

32 ~~14.2.2~~ 15.2.2 *Authority.* The building official is hereby authorized and directed to interpret and
33 enforce all of the provisions of this code subject to the powers vested in the planning board
34 and the code compliance board.

35 ~~14.3.~~ Campaign sign removal enforcement.

36 ~~14.3.1~~ *Authority to remove campaign signs.* Authority is hereby given to the chief of police or
37 an officer under his direction to remove or cause to be removed any and all campaign signs
38 constructed or maintained in the village in violation of this code.

39 ~~14.4.~~ 15.3. - Violations and general penalty.

40 ~~14.4.1~~ 15.3.1 *General penalty.* Whenever in this code or in any ordinance of the village any act
41 is prohibited or is made or declared to be unlawful or an offense, or whenever in such code
42 or ordinance the doing of any act is required or the failure to do any act is declared to be
43 unlawful, where no specific penalty is provided therefor, the violation of any such provision
44 of this code or any ordinance shall be punished by a fine not to exceed five hundred dollars
45 (\$500.00), or imprisonment for a term not exceeding sixty (60) days, or by both a fine and

1 imprisonment. Each day violation of any provision of this code or of any ordinance shall
2 continue shall constitute a separate offense.

3 ~~14.4.2~~ 15.3.2 *Continuation of violation.* In addition to the penalties hereinabove provided, any
4 condition caused or permitted to exist in violation of any of the provisions of this code or
5 any ordinance shall be deemed a public nuisance and may be, by the village, abated as
6 provided by law, and each day that such condition continues shall be regarded as a new and
7 separate offense.

8 ~~14.5.~~ 15.4. - Other penalties and remedies.

9 ~~14.5.1~~ 15.4.1 *Planning board determination.* If the planning board determines that the code
10 enforcement process would otherwise be an inadequate response to a given violation, it may
11 pursue the following penalties and remedies, as provided by law.

12 ~~14.5.2~~ 15.4.2 *Civil remedies.* If any building or structure is erected, constructed, reconstructed,
13 altered, repaired, or maintained or any building, structure, land, or water is used in violation
14 of this code, the planning board or the code compliance board, through the village attorney,
15 may institute any appropriate civil action or proceedings in any court to prevent, correct, or
16 abate the violation.

17 ~~14.5.3~~ 15.4.3 *Civil citation.* For any violation against this code and to enforce any provisions of
18 this code, civil citation procedures may be used ~~along with a fine of twenty five dollars~~
19 ~~(\$25.00).~~

20 ~~14.5.4~~ *Criminal penalties.* ~~Any person who violates any provisions of this code shall be deemed~~
21 ~~guilty of a misdemeanor and shall be subject to fine and imprisonment as provided by law.~~
22

23 **Section 5.** Conflicts. That all Ordinances or parts of Ordinances, Resolutions or parts
24 thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

25 **Section 6.** Severability. The provisions of this Ordinance are declared to be
26 severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be
27 held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining
28 sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it
29 being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any
30 part.

31 **Section 7.** Codification. It is the intention of the Village Commission of the Village of
32 Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Code of
33 Ordinances of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance may be

1 renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or other
2 word or phrase in order to accomplish such intention.

3 **Section 8.** Effective Date. This Ordinance shall be effective upon adoption on
4 second reading.

5 The foregoing Ordinance was offered by Commissioner _____, who moved its
6 adoption. The motion was seconded by _____ and upon being put to a vote,
7 the vote was as follows:

8
9 PASSED AND ADOPTED upon first reading this 7th day of April, 2015.

10 PASSED AND ADOPTED upon second reading this ____ day of _____, 2015.

11

The foregoing ordinance upon being put to a
vote, the vote was as follows:

Mayor Coviello ____
Vice Mayor Jonas ____
Commissioner Anderson ____
Commissioner Ross ____
Commissioner Watts ____

12 _____
13 David Coviello, Mayor

14
15
16
17 Attest:

18
19
20
21 _____
22 Maria C. Camara, Village Clerk

23
24 Approved as to form:

25
26
27 _____
28 John J. Hearn, Village Attorney