

ORDINANCE 2023 - _____

AN ORDINANCE OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 62, ARTICLE X, DIVISION 5, CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, RELATING TO FLOODPLAIN PROTECTION. SPECIFICALLY AMENDING SECTION 62-3724(4)(E) DEVELOPMENT REGULATIONS TO ALLOW ACCESSORY STRUCTURES IN NORTH MERRITT ISLAND IN THE AREA FROM HALL ROAD NORTH TO STATE ROAD 405, EXCLUDING FEDERALLY OWNED LANDS, IF IT CAN BE DEMONSTRATED THAT THERE ARE NO RESULTING ADVERSE IMPACTS; PROVIDING FOR THE INTERPRETATION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, Section 62-3723 General provisions, subsection (2), Code of Ordinances of Brevard County, Florida, requires that “[d]evelopment within floodplain areas shall not have adverse impacts upon adjoining properties;” and,

WHEREAS, Section 62-3724 Development regulations, subsection (2)(a), Code of Ordinances of Brevard County, Florida, requires that “[d]evelopment within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality;” and,

WHEREAS, North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands (Area), may be subject to increased flooding due to additional impervious areas and fill within floodplains and wetlands causing displacement of water, reduction of storage capacity, and increased stormwater runoff; and

WHEREAS, on December 5, 2019, the Board adopted an amendment to Section 62-3724 Development regulations, requiring compensatory storage and written certification from engineers of record that proposed development and redevelopment in the Area will not have negative or adverse impacts on adjacent property, and will protect private property, public facilities and Brevard County; and

WHEREAS, the final sentence of adopted Section 62-3724(4)(e), “Accessory structures requiring fill are not permitted,” has resulted in unintended consequences, as the criterion is a stand-alone prohibition; and

WHEREAS, the Board finds that a clarifying amendment that accessory structures may be permitted in the Area if it can be demonstrated that there are no resulting adverse impacts, reflects the intent of the code; and will protect private property, public facilities and Brevard County waterways from flooding due to new development and redevelopment; and

WHEREAS, the Board finds that this amendment serves the public, safety, health and welfare of its citizens.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF

BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Sec. 62-3724(4)(e). Development regulations. Code of Ordinances of Brevard County, Florida, is hereby amended to read:

Compensatory storage for fill in the area shall be required for single family parcels created prior to the effective date of the ordinance from which this section is derived. However, written certification in subsection (4)(b) shall not be required. If compensatory storage is not available as a result of insufficient depth to groundwater, a compensatory storage waiver must be obtained from the county manager or designee by property owner or designee. The amount of fill for which a waiver may be granted shall be limited to the volume necessary to construct no more than the minimum floor area designated by the applicable zoning classification, plus on-site disposal system and necessary ingress and egress. ~~Accessory structures requiring fill are not permitted.~~ Compensatory storage waivers shall not be granted for accessory structures requiring fill in the floodplain.

SECTION 2. CONFLICTING PROVISIONS. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulations, the more restrictive shall apply.

SECTION 3. SEVERABILITY. If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 4. AREA ENCOMPASSED. This ordinance shall take effect within the unincorporated area of Brevard County, Florida.

SECTION 5. EFFECTIVE DATE. This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE, ORDERED AND ADOPTED in Regular Session, this _____ day of _____, 2023.

Attest:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

Rachael M. Sadoff, Clerk

Rita Pritchett, Chair

(As approved by the Board on _____, 2023)