



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 2302, **Version:** 1

Subject:

Amendments to Chapter 62, Article VI, Zoning Regulations, Relating to Vacation Rental as a Permitted Use in Certain Zoning Classifications.

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Local Planning Agency consider amendments to Chapter 62, Article VI, Zoning Regulations, Relating to Vacation Rental as a Permitted Use in Certain Zoning Classifications.

Summary Explanation and Background:

The Board of County Commissioners (Board), on September 15, 2020, approved legislative intent and permission to advertise amendments to land development regulations to create a definition of vacation rental consistent with Section 509.242(1)(c), Florida Statutes, and identify vacation rental as a permitted use in certain zoning classifications. The Board further directed that code amendments be drafted to prevent conflict in zoning classifications between the current resort dwelling definition and allowances and proposed vacation rental definition and allowances.

The Florida Legislature adopted Section 509.032(7)(b), Florida Statutes, in order to limit the ability of local governments to regulate vacation rentals. Specifically, this statute provides that "[a] local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011". In addition to unincorporated Brevard, about half of the municipalities in the County had resort dwelling regulations in place prior to June 1, 2011. Some municipalities require additional annual applications and inspections.

Last fall, the County Attorney's Office was asked whether certain zoning restrictions pertaining to resort dwellings could be amended. Based on research conducted by the County Attorney's Office, it is possible for such changes to take place, but certain steps must be undertaken to avoid running afoul of the State's preemption language whereby local governments are prohibited from adopting regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals.

Specifically, in order to make changes to the existing zoning regulations pertaining to resort dwellings, it will be necessary for the County to adopt a new term, e.g., "vacation rental," that mirrors the State's definition. This

will need to be done to avoid a conflict between the State's definition of "vacation rental" and the County's current definition of "resort dwelling." As a result, any new zoning classification(s) that would allow vacation rentals would need to be permitted without any restrictions or conditions. The ordinances pertaining to resort dwellings that have been in place since before June 1, 2011, and that are not amended, will continue in operation.

CURRENT CODE

In Section 62-1102 Brevard County Code (BCC), the County defines "resort dwelling" as any single-family dwelling or multi-family dwelling unit which is rented for periods of less than 90 days or three calendar months, whichever is less, or which is advertised or held out to the public as a place rented for periods of less than 90 days or three calendar months, whichever is less. For the purposes of Chapter 62, a resort dwelling is a commercial use. For the purposes of this definition, subleases for less than 90 days are to be considered separate rental periods. This definition does not include month-to-month hold-over leases from a previous lease longer than 90 days.

There are currently more than 50 zoning classifications in unincorporated Brevard County, spanning eight categories, below. Allowance of resort dwellings is dependent upon zoning classification, use, adjacent property use/zoning and sometimes location with respect to Highway A1A (A1A). These criteria determine whether resort dwellings are 1) permitted, 2) permitted with conditions, or 3) require a Conditional Use Permit (CUP).

1. Unimproved, Agricultural, Single-Family Residential - Resort Dwelling Permitted, Permitted with Conditions, or CUP Required
2. Multi-Family Residential - Resort Dwelling Permitted
3. Mobile Home Residential & Recreational Vehicular Park - Resort Dwelling Not Permitted
4. Planned Unit Developments (PUDs) - Resort Dwelling Permitted with Conditions or CUP Required
5. Commercial - Resort Dwelling Permitted
6. Tourist Commercial & Transient Tourist Use - Resort Dwelling Permitted
7. Industrial - Resort Dwelling Permitted
8. Special Classifications - Resort Dwelling Not Permitted Except in Farmton Multi-family in Workplace Zoning District

Generally, for the Unimproved, Agricultural and Single-Family Residential category, resort dwelling is a permitted use only in Single-Family Attached (RA-2-4, RA-2-6, RA-2-8, RA-2-10) and Residential Professional (RP) zoning classifications. For the remainder of the Unimproved, Agricultural, and Single-Family Residential zoning classifications, there must be a non-conforming multi-family use for a resort dwelling to be permitted with conditions. Barring a non-conforming multi-family use, the property must be west of A1A, with direct frontage to A1A or east of A1A without frontage restrictions. None of the A1A-dependent properties can abut single-family zoning or use, and these properties must request a CUP from the Board for resort dwelling. A review of zoning actions since 2014 reveals no CUP applications for resort dwellings, although there was a one Bed & Breakfast CUP in 2017 that was denied. Zoning staff reports approximately one inquiry per day regarding permissibility of resort dwellings. A recent search of code enforcements cases revealed approximately three complaints a month, about two-thirds of which are substantiated. There are about 200 code enforcement complaints of all types reported each month.

Resort dwellings that are permitted with conditions or listed as a conditional use in certain residential zoning classifications are governed by Sections 62-1841.5.5 and 62-1945.2 BCC, respectively. These code sections outline performance standards related to parking, maximum occupancy, excessive or late noise, local management, manager's responsibility, and penalties.

Although resort dwellings are permitted in commercial, industrial and tourist zoning classifications, by County definition, they must be single-family or multi-family dwelling units. Therefore, it would be rare to find non-conforming dwelling units in these zoning classifications. This, combined with some of the specific criteria for permitted with conditions and CUPs in other zoning classifications, limits the allowance of resort dwellings almost exclusively to multi-family or single-family attached residential zoning classifications as indicated by the attached maps.

PROPOSED ORDINANCE REVISION

The proposed ordinance creates a definition of vacation rental in Section 62-1102:

Vacation Rental means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family or multi-family dwelling unit that is also a transient public lodging establishment but that is not a timeshare project. A transient public lodging establishment means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Vacation Rental is proposed to be added as a permitted use to the following zoning classification categories as follows:

- Unimproved, Agricultural, Single-Family Residential -1) Resort Dwelling already a Permitted Use, or 2) Vacation Rental added as a Permitted Use. All zoning classifications would, therefore, allow Resort Dwelling or Vacation Rental as a permitted use under the proposed modification.
- Multi-Family Residential - Resort Dwelling already a Permitted Use.
- Mobile Home Residential & Recreational Vehicular Park - Resort Dwelling not currently a Permitted Use. Vacation Rental added as Permitted Use.
- Planned Unit Developments (PUDs) - Resort Dwelling Permitted with Conditions or CUP Required. Vacation Rental added as a Permitted Use to all zoning classifications.
- Commercial - Resort Dwelling already a Permitted Use.
- Tourist Commercial & Transient Tourist Use - Resort Dwelling already a Permitted Use.
- Industrial - Resort Dwelling already a Permitted Use.
- Special Classifications - Resort Dwelling not currently a Permitted Use Except in Farmton (FARM-1) Multi-family in Workplace Zoning District; Vacation Rental added as a Permitted Use to FARM-1.

The Building and Construction Advisory Committee considered the proposed ordinance on November 18, 2020 and unanimously recommended against approval of the amendments with a vote of 3-0. The Local Planning Agency considered the proposed ordinance on November 23, 2020 and recommended against approval of the amendments with a vote of 4-3.

OPTIONS FOR BOARD CONSIDERATION

1. Proceed to the second Board public hearing scheduled on December 22, 2020.
2. Reject the proposed ordinance and direct staff to refine and implement website and other tools to assist with public understanding of the current resort dwelling regulations.
3. Reject the proposed ordinance and direct staff to continue administering current resort dwelling code language.
4. Provide other direction.

Clerk to the Board Instructions:

None