



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 5781, **Version:** 1

Subject:

Legislative intent and permission to advertise an amendment to Chapter 62, Article X, Division 5, entitled Floodplain Protection.

Fiscal Impact:

FY22/23: Advertising Costs

Dept/Office:

Natural Resource Management Department

Requested Action:

Approval of legislative intent (option 1) for an amendment to Chapter 62, Article X, Division 5 (Floodplain Protection), Section 62-3724(4)(e), prohibiting accessory structures requiring fill in unincorporated North Merritt Island (NMI) north of Hall Road.

Summary Explanation and Background:

Historically, Brevard County has documented increasing flooding impacts in the NMI area due to intense rainfall storm events such as tropical storms and hurricanes. On August 21, 2018, the Board authorized staff to upgrade the FEMA flood model for NMI by developing a Hydrologic and Hydraulic Study (HHS) and Stormwater Model.

The Board adopted the NMI HHS and Stormwater Model on October 25, 2022. The study spans 38 square miles, from the Barge Canal north to Nasa Parkway. An integrated surface water-groundwater model was created for this specific watershed. The Stormwater Model is used for the analysis of current and future flooding conditions.

Additionally, on August 20, 2019, the Board directed staff to bring back code modifications to clearly demonstrate that development complies with current code including “cause no adverse impact to other properties” by requiring both compensatory storage and certification by an engineer that there will be no adverse impacts due to any improvements planned for any parcels seeking a permit on NMI north of Hall Road and south of State Road 405 (Area), excluding federally owned lands.

On December 5, 2019, the Board adopted modifications to Chapter 62, Article X, Division 5 (Floodplain Protection) and Article XIII, Division 4 (Land Alteration) for floodplain protection in NMI. Section 62-3724(4) establishes stormwater criteria for the Area. Section 62-3724(4)(e) contains criteria for single-family parcels created prior to the effective date of the ordinance. This includes the ability to obtain a waiver when compensatory storage is not available as a result of insufficient depth to groundwater. However, the final

sentence of Section 62-3724(4)(e), "Accessory structures requiring fill are not permitted," has resulted in unintended consequences. The County Attorney's Office determined that the prohibition stands alone. As a result, staff must deny all applications for accessory structures requiring fill in the Area. This applies even if compensatory storage is available, or the if the site can demonstrate no adverse impacts using the HHS and Stormwater Model.

Therefore, Staff requests legislative intent and permission to advertise an amendment to Section 62-3724(4)(e), as follows:

Compensatory storage waivers shall not be granted for accessory structures requiring fill in the floodplain.

This modification reflects the intent of the code and will allow accessory structures in the Area if it can be demonstrated that there are no resulting adverse impacts. If compensatory storage is not available as a result of insufficient depth to groundwater, and the applicant cannot demonstrate that there will be no adverse impacts, the structure is presumed to pose an off-site flooding risk. Therefore, the accessory structure would not be permissible to avoid adverse impacts to the neighborhood.

Options for Board Consideration

Option 1: Approve legislative intent and permission to advertise an amendment to Section 62-3724(4)(e), as follows:

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.

Option 2: Take no action.

Option 3: Provide other direction.

Clerk to the Board Instructions:

None