

AGENDA	
Section	Unfinished Business
Item No.	V.A

Meeting Date
March 15, 2016



**AGENDA REPORT**  
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	LEGISLATIVE INTENT & PERMISSION TO ADVERTISE RE: ORDINANCE PROVIDING ADMINISTRATIVE PROCEDURE FOR DIVISION OF LAND INTO A MAXIMUM OF TWO FLAG LOTS
DEPT/OFFICE:	PLANNING & DEVELOPMENT

**Requested Action:**  
Staff is requesting that the Board grant legislative intent and permission to advertise an ordinance amending Section 62-102(b) of the Land Development Regulations to provide an administrative procedure for the division of land into a maximum of two flag lots.

**Summary Explanation & Background:**  
On July 16, 2015, the Board gave staff direction to explore a code change to reinstate an allowance for the creation of flag lots, outside of the minor subdivision process. Staff proposes an amendment to Section 62-102(b) of the Land Development Regulations, to allow for the creation of up to two flag lots from a parcel of land. Once a parcel is divided into three or more lots, the property must be platted as a subdivision pursuant to Chapter 177.031(18), Florida Statutes which states:  
  
“Subdivision” means the division of land into **three or more** lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land; and includes establishment of new streets and alleys, additions, and resubdivisions; and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided.  
  
The proposed ordinance allows an owner to subdivide a tract of land under single ownership into two lots, where either one or both resultant parcels are flag lots, through an administrative procedure. The proposed code provides for minimum design standards for the flag stem width and minimum spacing from other nearby flag stems to ensure safe access along a roadway. Flag stems may be utilized for single family, duplex, mobile homes or modular coach uses.

Clerk to the Board instruction:

Exhibits Attached:

Contract /Agreement (If attached): Reviewed by County Attorney    Yes     No     PR

County Manager  Stockton Whitten	Assistant County Manager	Department Director / Extension  Robin M. Sobrino, AICP 5-2069
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March 16, 2016

MEMORANDUM

TO: Robin Sobrino, Planning and Development Department Director

RE: Item V.A., Legislative Intent and Permission to Advertise for Ordinance Providing Administrative Procedure for Division of Land Into a Maximum of Two Flag Lots

The Board of Commissioners, in regular session on March 15, 2016, granted legislative intent and permission to advertise an ordinance amending Section 62-102(b) of the Land Development Regulations to provide an administrative procedure for the division of land into a maximum of two flag lots.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/cm

## ORDINANCE NO. 2016-

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, SECTION 62-102, TO PROVIDE AN ADMINISTRATIVE PROCEDURE FOR THE DIVISION OF UP TO TWO FLAG LOTS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE OF ORDINANCES.

WHEREAS, the Board of County Commissioners, on \*, 2016, directed preparation of an amendment to the Zoning Regulations that permit administrative approval of no more than two flags lots from any parcel; and

WHEREAS, the Building Construction Advisory Committee, on \*, 2016, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Local Planning Agency, on \*, 2016, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the above referenced advisory bodies and has considered the comments of interested citizens in public hearing; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1. Chapter 62, Article VI, Section 62-102**, Code of Ordinances of Brevard County, Florida, are hereby amended to read as follows:

**Sec. 62-102. Criteria for issuance of a residential building permit for lots abutting on private roads or unpaved roads; and for lots accessing public roads through ingress/egress easements or flag stems.**

This section of the Code applies to existing parcels and lots of record as defined in this Code. The division or subdivision of a lot or parcel of land is subject to article VII, subdivision regulations. Except where specifically provided in this section, the division or subdivision of land using flag lots is not allowable, whether directly or indirectly, under this provision. Except as specifically provided in this section, no building permits shall be issued by the county for use on a parcel or lot, unless that parcel abuts on a public street, dedicated and accepted for maintenance by the county. Building permits may be issued for parcels utilizing private roads within subdivisions, where such private roads are privately maintained and connect directly to a public street, and where said private road has been constructed to county standards and shown on a subdivision platted and recorded in the public records of the county.

For parcels, which do not abut on a public or privately maintained street, building permits may be issued for said parcels in the following circumstances:

- (a) Access by easement or license. Building permits for single-family residential structures and accessory structures, meeting applicable building and health codes, may be issued for a lot or parcel, which was created prior to January 1, 2011, when it can be shown that the lot has access to a public street through a county approved, perpetual and irrevocable right of access easement or, as to a landlocked lot of record or a lot of record which can only be physically accessed across the property of a governmental agency, a right of access by a written license authorizing access granted by the agency or its agent. Approval for a building permit shall only be allowed on lots which; (1) are consistent with the comprehensive plan and zoning code, or (2) are established as nonconforming lots of record as set forth in section 62-1188 provided the following criteria are met:
  1. That the parcel is of unique dimension or character, such that direct access by abutting on a public street is not feasible; and
  2. That the access easement is at least 20 feet wide; and
  3. That the parent parcel which contains the easement provides at least 40 feet of unencumbered building envelope width; and
  4. That the access is cleared, graded, stabilized and maintained so as to assure access by emergency vehicles; and
  5. That the access easement is for the exclusive use of the parcel for which the building permit is to be issued, and includes a public utility easement and emergency access easement; and
  6. The easement must be approved by the county and designated on county zoning maps prior to permit issuance; and
  7. Such access shall not include a street, road, right-of-way or easement dedicated to the county or "the public" by a plat or other recorded instrument.
- (b) A flag lot is defined as a parcel of land which has a narrow, deeded strip of land connecting the main body of the lot, plot, or parcel to a road dedicated and accepted for maintenance by a public entity. A building permit for single-family residential structures, and accessory structures, may be issued for a flag lot only under one of the following circumstances:
  1. An existing flag lot which has been approved by the county and designated on county zoning maps prior to January 1, 2011 or
  2. Any flag lot which has been divided pursuant to article VII, subdivision regulations, or
  3. Newly divided flag lot(s) pursuant to the following conditions:

Approval for three or more lots shall be obtained from the board of county commissioners as part of the subdivision process in Article VII. However, an application to subdivide any lot, parcel or tract of land under single ownership into not more than two lots, where either one or both resultant parcels are flag lots, may be approved administratively after considering the following factors:

    - a. Each flag lot shall have a minimum lot area of one acre, excluding the flag stem.
    - b. The flag stem shall be a minimum of 25 feet in width.
    - c. Where more than one access strip is utilized, such access strips, not to exceed two, may be located side by side, and additional access strips shall be a minimum of 90 feet apart on collector and arterial roads and 40 feet apart on local streets, regardless of ownership, providing the property located between the flag stems meets the minimum lot width, depth and size requirements of the county zoning requirements.

- d. The narrow strip for each flag lot shall intersect a dedicated and accepted road at no less than a 60 degree angle with curvature beginning no less than 40 feet from the road right-of-way.
  - e. Flag lots may be utilized in low-density platted subdivisions having lots of one acre or more as approved by the board of county commissioners as part of the subdivision plat approval procedure. Flag lots shall be utilized for single-family, duplex, mobile home and modular coach purposes only.
  - f. Any flag lot of record prior to June 23, 1976, shall be considered a nonconforming lot of record if the flag stem is a minimum of ten feet in width; and such lot shall enjoy the same nonconforming rights as set forth in section 62-1188.
  - g. Upon verification of compliance with the above regulations, staff shall issue a preliminary letter of approval, and the applicant shall have 90 days to record the approved flag lot(s) in the public records of the county. Once recorded, the applicant shall submit the recorded instrument to staff which will then issue the final letter of approval, upon verification that the lots were recorded as designed in the preliminary approval. If the applicant fails to record the lots within 90 days, the preliminary approval shall expire.
- (c) Unpaved road agreements. The board of county commissioners and a single property owner or multiple property owners whose property abuts a right-of-way which is not maintained by the county may enter into an agreement, to allow the issuance of a permit to construct an unpaved road within county right-of-way and obtain a permit for the consideration of one or more single-family residence under the following conditions:
- 1. These agreements shall be limited to existing county rights-of-way of at least 50 feet in width. If a right-of-way exists of less than 50 feet in width, additional easements, dedicated or deeded to the county and accepted by the county for maintenance in accordance with the provisions of subsection 7. below, must be obtained on each side of the right-of-way by the owner for drainage and sidewalk purposes to bring the total width to 50 feet. Any requests for deviation from the 50-foot width requirement shall be made as part of the application process and will be reviewed by the county for a determination. Any acquisition costs associated with the right-of-way and easements will be borne solely by the property owner. The traveling surface of the road will be centered within the right-of-way.
  - 2. Only those properties within 1,320 feet of a county-maintained roadway are eligible. However, an administrative approval may be considered by staff to allow a distance up to 20 percent or 264 feet beyond the 1,320 feet, if the extension would not create a detrimental impact to the public interest. Staff shall consider topography, drainage characteristics and impact to adjacent land in granting this administrative approval.
  - 3. When an unpaved road is initiated, it may only extend 1,320 feet from an existing county maintained roadway which has been established as the beginning point for the project. If the existing maintained roadway is unpaved, that existing maintained roadway must have been constructed and maintained without the benefit of unpaved road agreements. In addition, the roadway built under an unpaved road agreement will not be permitted to extend beyond the original 1,320 feet from an existing county-maintained roadway until such time as the existing county-maintained road is paved and a special assessment project has been established to pave the unpaved road section constructed under one or more unpaved road agreements.
  - 4. Each lot, parcel or tract of land must meet all of the requirements of the comprehensive plan, shall satisfy all criteria of the environmental health section, and shall meet all of the requirements of the office of natural resource management and land clearing regulations for issuance of a building permit.
  - 5. There shall be a limitation of one agreement per parcel, which agreement shall not be transferable.

6. By entering into an unpaved road agreement, every participating property owner is responsible for all costs related to the construction of the unpaved roadway including survey, design, initial signage and installation, engineering, permitting and construction for the length of roadway covered by the agreement. The roadway shall be designed and stabilized to a minimum of between LBR 40 and 60 and shall be reviewed and inspected by the county for approval prior to the issuance of a building permit. Additionally, to defer the cost of county maintenance, the agreement shall stipulate a fixed amount that must be paid prior to execution of the agreement. This amount would be determined by the road and bridge department or its successor and adopted by resolution in an amount necessary to reimburse the county for maintenance costs. The unpaved road agreement shall also constitute the participating land owner's consent to a special assessment project involving the payment of a proportionate share of the county's cost to pave the road, in the manner prescribed by subsections 7a. [7.a]] and 8. once 50 percent of the owners of lots abutting the unpaved road have obtained building permits.
7. The following conditions shall apply to the county's acceptance of a dedication or deed for right-of-way required to construct an unpaved road:
  - a. Whether an unpaved road agreement exists or not, the county's acceptance of an owner's offer to dedicate or deed right-of-way, shall constitute an agreement by the property owner dedicating or conveying the right-of-way necessary to construct an unpaved road as well as the agreement of any successor in interest to that owner, approving a special assessment project involving the payment of a proportionate share of the county's cost to pave the road once 50 percent of the owners of lots abutting the unpaved road have obtained building permits. The proportionate share shall be calculated by a method of assessment procedure which may entail a calculation based upon a property's front footage along the road, or the number of platted lots fronting the road, or square footage of platted lots fronting the road, or any combination thereof deemed equitable by the board of county commissioners. Said method of assessment shall be based upon the cost to pave the road and shall be assigned to the number of assessable lots specially benefitted by the paving project. Assessable lots shall include all lots specially benefitted by the paving project, including any lot, the owner of which, has entered into an unpaved road agreement and any owner who has not entered into an unpaved loan agreement.
  - b. Either upon receipt of notice that a special assessment is being levied for paving of an unpaved road or upon application for a building permit for property abutting an unpaved road, any owner of such property may enter into an agreement for the assessment and repayment of the owner's pro rata share for the cost of paving the unpaved road, as determined in subparagraph a. [7.a] above, at the time the paving project is completed. The agreement shall provide for repayment of the owner's assessment upon completion of the paving project, in either (1) a lump sum; or (2) over a period of ten years in monthly or annual installments of the principal due bearing interest at a rate not to exceed two percent above the true interest cost of any bonds used to finance the cost for paving the road, or (3) through any other method of financing approved by the board. Such an agreement shall take the form of a recordable assessment lien against the owner's property, provided the county may also record against any owner of an assessable lot who does not enter into an unpaved road an assessment lien in the amount of the assessment plus interest (as recited above) payable over a period of ten years in monthly or annual installments. Per Resolution 04-045, Brevard County will use the uniform method of collecting non-ad valorem assessments levied by the county for any assessment lien. Default in non-ad valorem taxes can result in a tax certificate being sold on the property and additional charges will accrue, subject to the exception provided for in subparagraph 8. below.

- c. Dedication or conveyance of the right-of-way required to pave an unpaved road, as well as the maintenance responsibility for that right-of-way, must be accepted by resolution duly adopted, by the Brevard County Board of County Commissioners. The resolution shall provide a legal description of the property and shall be recorded in the public records of Brevard County, Florida.
  8. Any special assessment project arising out of the application of this subsection 62-102(c) shall be implemented using the procedures and a methodology provided for in F.S. ch. 170. Upon completion of the special assessment project and compliance with the procedures in F.S. ch. 170, the special assessment shall constitute a lien with the priority provided for in said statutes. The special assessment lien shall be enforceable by the uniform method of collecting non-ad valorem assessments, provided that the owners of residential property qualified for a homestead exemption on September 30, 2008 may defer payment of the assessment until the homestead is sold and conveyed. The county shall record a release of lien within 60 days after the date the assessment is paid.
  9. Where the subject roadway on which the agreement applies intersects with an existing county-maintained dirt road, and where all buildable lots abutting the subject roadway are two and one-half acres or larger in area, the property owner would not be required to participate in the establishment of a special assessment project for paving of the road.
- (d) Waivers and appeals to unpaved roads. Where the county manager and/or his designee, and affected agencies find that undue hardship may result from strict compliance with section (c), the county manager may approve a waiver to the requirements of this section if the waiver meets the criteria set forth in subparagraphs 1. through 5. below and serves the public interest. An applicant seeking a waiver shall submit a written request, stating the reasons for the waiver and the facts, which support such waiver. All requests for waivers must be submitted prior to or in conjunction with the application for an unpaved road. The county manager and affected agencies shall not approve a waiver, unless they determine the following:
1. The particular physical condition, shape or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.
  2. The granting of the waiver will not be physically or economically injurious to other adjacent property.
  3. The conditions upon which a request for waiver are based, are peculiar to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant.
  4. The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan and the requirements of this section.
  5. The county and affected agencies concur that undue hardship was placed on the applicant.

If the county manager and affected agencies approve a waiver, the county may attach such conditions to the waiver to assure that the waiver will comply with the intent and purpose of this section.

The board of county commissioners shall hear appeals relating to any administrative decisions or determination concerning implementation or application of the section provisions, and shall make the final decision approving or disapproving the decision or interpretation in the event of such appeal. The request for appeal shall be submitted to the county within 30 calendar days of the written decision or determination. A hearing shall be scheduled before the board of county commissioners within 30 days of receipt of the written request. The request shall contain the basis for the appeal.

**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 regulation, the more restrictive shall apply.

**SECTION 3. Severability.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

**SECTION 4. Area Encompassed.** This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

**SECTION 5. Effective Date.** A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

**SECTION 6. Inclusion in Code.** It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

**DONE, ORDERED AND ADOPTED,** in regular session, this \* day of \*, 2016.

Attest:

BOARD OF COUNTY  
COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA

\_\_\_\_\_  
Scott Ellis, Clerk

\_\_\_\_\_  
Jim Barfield, Chairman  
(as approved by the Board on \*, 2016)

( S E A L )

Reviewed for legal form and content by: \_\_\_\_\_