



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.5.

8/27/2024

Subject:

Approval: Revisions to BCC-100, "Evaluation Procedures for Development Proposals Pursuant to the Live Local Act Which Are Not Otherwise Permissible."

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

Board approval of revisions to BCC-100, "Evaluation Procedures for Development Proposals Pursuant to the Live Local Act Which Are Not Otherwise Permissible."

Summary Explanation and Background:

On March 29, 2023, the Live Local Act was signed into law by Governor DeSantis. This Act is designed to facilitate and encourage the development of affordable housing. Included in this Act were several requirements regarding land use as it relates to affordable housing developments. In response, in October 2023 the Board of County Commissioners instituted BCC-100, "Evaluation Procedures for Development Proposals Pursuant to the Live Local Act Which Are Not Otherwise Permissible," as its mechanism to implement the land development aspects of the Act.

Staff recommended addressing the matter through Board policy rather than Ordinance because it expected the "law to continue to develop and be clarified in the foreseeable future." That expectation has come to pass. During the 2024 Legislative Session, the Legislature made further Amendments to the law via Chapter 2024-188, Laws of Florida. The attached amended policy is designed to implement these changes.

On July 22, 2024, the Planning and Zoning Board reviewed the amended policy, and it recommended denial with the additional recommendations to (1) ensure compliance with Federal and State regulations and (2) investigate the ability to change threshold figures related to affordability. Based on the recommendation regarding State and Federal regulation, staff has added language to ensure compliance with such regulations where it would be a normal part of its review outside of the Live Local Act. Staff cross-checked the threshold affordability figures contained within BCC-100 (e.g. the requirement that at least 40% of units must be affordable to qualify for certain exemptions), and they accurately reflect the statutory mandates contained in Section 125.01055, Florida Statutes.

Substantive changes to the Policy include:

- Exclusion of “airport impacted areas” and a radius of ¼ mile from military installations from the exemptions from Land Development Regulations.
- Removal of definition of “major transit stop” and inclusion of definition for “transit stop.” It should be noted that due to an amendment to Sec. 125.01055, Fla. Stat., the Board is required to also amend its definition of “transit stop” in the Brevard County Code of Ordinances. Approval of this code amendment is before the Board within the Public Hearings section of this agenda.
- Amendments to height allowances.
- Inclusion of Floor Area Ratio as a criteria for review.
- Amendments to procedures and criteria for reduced parking requirements.
- Clarification that failure to continuously abide by the provisions of the Act will result in treatment of the property as a nonconforming use and allowing for a reasonable time to cure.

Clerk to the Board Instructions:

Please forward the signed original copy of the Policy to the County Manager’s Office



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

August 28, 2024

M E M O R A N D U M

TO: Frank Abbate, County Manager

RE: Item F.5., Approval for Revisions to BCC-100, "Evaluation Procedures for Development Proposals Pursuant to the Live Local Act which are not Otherwise Permissible"

The Board of County Commissioners, in regular session on August 27, 2024, approved revisions to BCC-100, "Evaluation Procedures for Development Proposals Pursuant to the Live Local Act which are not Otherwise Permissible." Enclosed is the fully-executed Policy.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: Planning and Development



BOARD OF COUNTY COMMISSIONERS

POLICY

Number: BCC-100
Cancels: October 24, 2023
Approved: August 27, 2024
Originator: Planning and Development
Review: August 27, 2026

TITLE: Evaluation Procedures for Development Proposals Pursuant to the Live Local Act Which Are Not Otherwise Permissible

I. Objective

To institute the requirements of the “Live Local Act,” Chapter 2023-17, Laws of Florida, and related provisions of law.

II. Definitions and References

- A. “Adjacent to” means those properties sharing more than one point of a property line, but does not include properties separated by a public road.
- B. “Airport impacted area” shall mean any of the following:
 - i. The area near a runway within one-quarter mile of a mile laterally from the runway edge and within an area that is the width of one-quarter of a mile extending at right angles from the end of the runway for a distance of 10,000 feet of any existing airport runway or planned airport runway identified in the County’s airport master plan.
 - ii. A proposed development within any airport noise zone identified in the federal land use compatibility table.
- C. “Affordable” shall have the same definition as that found in Fla. Stat. § 420.0004, or its successor.
- D. “Affordability Period” shall be a minimum of 30 years.
- E. “Available parking” means parking available for use by residents of the proposed development including, but not limited to, on-street parking, parking lots, or parking garages.
- F. Fla. Stat. § 125.01055, “Affordable housing.”
- G. “Live Local Act,” Chapter 2023-17, Laws of Florida.

- H. "Major transportation hub" shall be any transit station that is served by public transit with a mix of other transportation options, and is accessible from the proposed development by safe, pedestrian-friendly means such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features.
- I. "Recreational and commercial working waterfront" shall have the same meaning as defined in Fla. Stat. § 342.201(2)(b).
- J. "Transit Stop" shall have the same definition as that of "transit stop," as defined in Section 62-2, "rules of construction and definitions," Brevard County Code of Ordinances.

III. Proposal Procedures

- A. A developer seeking Live Local Act allowances that would not otherwise be permitted under Chapter 62, Brevard County Code of Ordinances, or the Brevard County Comprehensive Plan, shall submit a narrative of the proposed development. Such narrative shall, at minimum, include the following:
 - 1. Property location
 - 2. Property size, in acres
 - 3. Type of residential development (i.e., single-family residential, attached or detached; multi-family residential; mixed residential types, etc.)
 - 4. Number of residential units proposed
 - 5. Whether the proposed units are to be owner-occupied units or rental units
 - 6. Household income levels proposed for each unit of the development (i.e., moderate, low, or very low)
 - 7. A statement of how the income restrictions will be enforced
 - 8. Provide a copy of the marketing brochure of similar development, if applicable
 - 9. Provide a sample lease agreement (terms of the lease shall be a minimum 91 days within single-family residential zoning classifications)
 - 10. Building style of the proposed development (i.e., single-story or multi-story; number of building floors; townhome style; garden home style; etc.)
 - 11. Number of parking spaces
 - 12. How the project will meet all review criteria, as stated in Section IV

- B. Applicant shall furnish any documentation required by staff necessary to complete its review and certify compliance as needed.

IV. Review Criteria

- A. As these criteria are in furtherance of administering exceptions to the County's Land Development Regulations pursuant to Florida Law, the below review criteria are to be strictly construed.
- B. Staff shall confirm that the application for the development is made prior to October 1, 2033, unless the legislature extends relevant provisions of the Live Local Act.
- C. Staff shall evaluate whether the development site is in an area with commercial, industrial, or mixed-use zoning.
- D. Staff shall confirm that the proposed development is not within one-quarter mile of a military installation.
- E. Staff shall confirm that the proposed development is not within an "airport-impacted area" or on property that is "recreational and commercial working waterfront" under Fla. Stat. § 342.201(2)(b).
- F. If the conditions outlined in subsection B, C, D, and E are met, and if the proposed development is for mixed-use, staff shall determine whether at least 65 percent of the total square footage is to be used for residential purposes.
- G. Staff shall determine whether the proposal includes at least 40 percent of the residential units being affordable for the affordability period.
- H. If the applicable requirements outlined in this Section are met, staff shall not require the proposed multi-family development to obtain a zoning or land use change, conditional use permit, variance, comprehensive plan amendment, or similar waiver, as it relates to building height, zoning classification, floor area ratio, or density limitations, provided the following conditions are met:
1. The proposed density is no more than 30 units per acre.
 2. If the proposed development is not adjacent to, on two or more sides, a parcel zoned for single-family residential use which is within a residential development with at least 25 contiguous single-family homes, the height of the proposed development shall be no more than
 - a) the highest allowed height for a commercial or residential building within unincorporated Brevard County within 1 mile of the site that was not permitted pursuant to 125.01055, Fla. Stat., or which has a height that was the result of a variance, bonus, or waiver or

b) 3 stories, whichever is higher.

3. If the proposed development is adjacent to, on two or more sides, a parcel zoned for single-family residential use which is within a residential development with at least 25 contiguous single-family homes, the height shall be either (whichever is higher)
 - a) Permissible under the Brevard County Land Development Code
 - b) No more than the highest of the following:
 - i. 150 percent of the tallest building on any adjacent property, or
 - ii. 3 stories
4. The Floor Area Ratio is no more 3.72.
5. Staff shall review the proposed development for compliance and consistency with applicable provisions of the Brevard County Comprehensive Plan and Brevard County Code of Ordinances, as well as applicable provisions of State and Federal regulation that are part of the County's normal review process. As part of this analysis, staff will ensure concurrency under the County's Land Development Regulations.
 - a) This shall include, but not be limited to, parking requirements, except that
 - i. Parking requirements under the Land Development Code shall be reduced by 20 percent if the following criteria are met
 - a. The development is within one-half mile of a major transportation hub, and
 - b. Has available parking within 600 feet, regardless of whether such parking compensates for the reduction

OR

 - ii. If the development is within one-quarter mile of a transit stop," and such a stop is accessible from the development, staff shall evaluate whether it is appropriate to reduce parking requirements on a case-by-case basis.
 - a. As part of this analysis, staff may request the applicant to provide data supporting a reduction in parking requirements prepared by a Professional Engineer (PE) or allied profession licensed by the State of Florida.
- I. Upon certification by the County Manager, or his/her designee, that all of the above criteria are met, staff shall administratively approve the development, subject to continuing requirements outlined in this Policy.


V. Monitoring, Compliance, and Enforcement

- A. Any development approved under this Policy must continue to meet the requirements outlined herein and the related sections of Florida law impacted by the Live Local Act, as may be amended. Failure to do so may result in the revocation of approval, thereby subjecting the development to treatment as a nonconforming use under the County's Comprehensive Plan and Code of Ordinances. In the event of a failure to maintain the requirements herein, a reasonable time shall be given to cure such violation, as determined by the County Manager or his/her designee.
- B. The County Manager, or his/her designee, shall have the authority to require a Land Use Restrictive Agreement in order to ensure the development maintains the affordability requirements under the Live Local Act, and that such requirements remain binding on successors-in-interest to the applicant.
- C. Affordable housing developments approved under this policy shall be required to provide documents to the County showing compliance with all criteria throughout the affordability period. This shall include, but not be limited to, the following:
 - 1. The property owner/manager shall certify the income qualification for tenant-applicant at initial lease-up and re-certify annually thereafter for each affordable housing unit. The property owner/manager shall provide the County Housing and Human Services Department with annual income compliance reports to satisfy this requirement. Annual income compliance reports required by other federal or State agencies, including, but not limited to, the Florida Housing Finance Corporation, the State of Florida, or Housing and Urban Development, may satisfy this requirement.
- D. Recordkeeping Requirements (to be made available to the County for inspection upon request)
 - 1. Affordable housing development projects with rental units shall maintain records on each affordable housing rental unit, including a copy of leases, all income verification documents, and rent calculation documentation.
 - 2. Affordable housing development property owner/manager shall maintain and retain no less than the five (5) most recent years of documentation throughout the affordability period.
 - 3. Affordable housing developers of newly constructed single-family homes shall maintain records of income verification and transfer-of-property documents for each property.
 - 4. Failure to maintain and make available such records may result in the revocation of approval, thereby subjecting the development to treatment as a nonconforming use under County's Comprehensive Plan and Code of Ordinances.

VII. Reservation of Authority

The authority to issue or revise this policy is reserved by the Board of County Commissioners.



Rachel Sadoff, Clerk

Jason Steele, Chair
Board of County Commissioners
As approved by the Board on August 27, 2024



BOARD OF COUNTY COMMISSIONERS

POLICY

Number: BCC-100
Cancels: ~~N/A~~ October 24, 2023
Approved: ~~October 24, 2023~~ August 27, 2024
Originator: Planning and Development
Review: ~~October 24, 2025~~ August 27, 2026

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ii. A proposed development within any airport noise zone identified in the federal land use compatibility table.

B.C. “Affordable” shall have the same definition as that found in Fla. Stat. § 420.0004, or its successor.

D. “Affordability Period” shall be a minimum of 30 years.

E. “Available parking” means parking available for use by residents of the proposed development including, but not limited to, on-street parking, parking lots, or parking garages.

G.F. Fla. Stat. § 125.01055, “Affordable housing.”

G. “Live Local Act,” Chapter 2023-17, Laws of Florida.

H. “Major transportation hub” shall be any transit station that is served by public transit with a mix of other transportation options, and that is accessible from the proposed development by safe, pedestrian-friendly means such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features.

D-I. “Recreational and commercial working waterfront” shall have the same meaning as defined in Fla. Stat. § 342.201(2)(b).

E-J. “Major Transit Stop” shall have the same definition as that of “transit stop,” as defined found in Section 62-2, “rules of construction and definitions,” Brevard County Code of Ordinances.

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- D.F. If the conditions outlined in subsection B, ~~and C, D, and E~~ are met, and if the proposed development is for mixed-use, staff shall determine whether at least 65 percent of the total square footage is to be used for residential purposes.

- E.G. Staff shall determine whether the proposal includes at least 40 percent of the residential units being affordable for the affordability period.

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Rachel Sadoff, Clerk

~~Rita Pritchett~~Jason Steele, Chair
Board of County Commissioners

As approved by
the Board on ~~October 24, 2023~~August 27, 2024