

ARTICLE II.

ADMINISTRATION AND ENFORCEMENT

DIVISION 1.

GENERALLY

Sec. 62-102. 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 herein. Division of a lot or parcel of land is subject to Article VII, Subdivision Regulations.

~~(a) — *Definitions.* For the purpose of this section, the following definitions shall apply:~~

- ~~(1) — *Access* means an exclusive easement or other exclusive perpetual right of ingress or egress for all parcels eligible under this chapter which have been recorded in the public records of the county. The term exclusive, as used in this definition, shall mean access to no more than two parcels as described in subsection 62-102(b)(2)b.8.~~
- ~~(2) — *Flag lot* means any lot, plot, tract or parcel of land having a narrow, deeded strip of land connecting the main body of the lot, plot, tract or parcel to a dedicated and accepted road.~~
- ~~(3) — *Private road* means a road, street or right-of-way utilized by the abutting properties, which road, street or right-of-way is not dedicated, accepted or maintained by the county.~~
- ~~(4) — *Public street* means any street, road or easement dedicated and accepted by the board of county commissioners, built to the specifications for paved or unpaved roads adopted by the county, and maintained by the county.~~
- ~~(5) — *Single family residence* means a private residence building used or intended to be used as a home or residence in which the use and management of all sleeping quarters and all appliances for sanitation, cooking, ventilation, heating and lighting are designed primarily for the use of one family unit. This includes a manufactured home, modular coach, mobile home and duplex.~~
- ~~(6) — *Unpaved road* means any road stabilized to a limerock bearing ratio of between 40 and 60 (LBR 40 and 60) and provides a stormwater system, which would be reviewed and constructed in an existing public right-of-way. All construction should be completed in accordance with the subdivision and site plan regulations, current stormwater ordinance, and land clearing regulations.~~

~~(b) — *Criteria for issuance of building permits.*~~

- ~~(1) — Except as specifically provided in this section, no building permits shall be issued by the~~

county for use on a parcel, unless that parcel abuts on a public street, as defined herein.

~~(2) Exceptions. For parcels which do not abut on a public street, building permits may be issued for said parcels in the following circumstances:~~

~~a. *Private roads.* Building permits for single family and duplex residential structures, and appurtenant structures, may be issued for parcels utilizing private roads within recorded subdivisions, where such private roads connect directly to a public street, and where said private road is shown on a subdivision platted and recorded in the public records of the county, and if, in the opinion of the board of county commissioners, the private road meets the following requirements:~~

~~1. That the private road must be constructed to those design specifications set forth in article VII of this chapter and maintained by the applicant or homeowners association; and~~

~~2. That the private road shall not restrict public access to any county right-of-way, or preclude or obstruct any existing or planned public road street systems; and~~

~~3. Public utilities and emergency vehicles shall be granted the use of the private road, and under no circumstances shall such use be restricted; and~~

~~4. The private road shall not include a street, road, right of way, or easement dedicated to the county or "the public."~~

~~b. *Access by easement:* Building permits for single family and duplex residential structures, and appurtenant structures, may be issued for parcels which do not abut on a public street when it can be shown that the parcel has access to a public street through a perpetual and irrevocable right of access, and 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; provided, however, that the following criteria has been 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 parcel cannot be established as a flag lot, pursuant to the provisions of subsection (b)(2)d.; and~~

~~3. That the access is at least 25 feet wide; and~~

~~4. That the parent parcel which contains the easement provides at least 40 feet of unencumbered building envelope width; and~~

~~5. That the access is cleared, graded and maintained so as to assure access by emergency vehicles; and~~

- ~~6. That the access is for the exclusive use of the parcel for which the building permit is to be issued; except as stated in subsection 8; and~~
- ~~7. That 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 40 feet apart, regardless of ownership when located on local streets, or 90 feet apart, regardless of ownership when located on collector or arterial roads; and~~
- ~~8. That the access is for no more than two parcels. The sum of the parcels served by the easement, including an easement within a flag lot stem, shall be a minimum of five acres in size.~~
- ~~9. No more than two easements will be allowed per access strip.~~
- ~~10. Only one easement shall be permitted over any flag stem.~~
- ~~11. This section shall not apply to any prior easements approved by the county and designated on county zoning maps.~~
- ~~12. An administrative waiver to the separation standards or width of the easements of up to 20 percent may be granted by the county manager and/or his designee if it can be shown that the waiver request meets the conditions of subsection (c).~~

Criteria for issuance of building permits. 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 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: Building permits for single-family residential structures and accessory structures, 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. 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. 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; provided, however, that the following criteria has been 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.

b. *Flag lots* are 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 dedicated and accepted road. A building permit for single-family residential structures, and accessory structures, may be issued for a *flag lot* which has been approved by the county and designated on county zoning maps prior to January 1, 2011 or divided pursuant to Article VII, subdivision regulations.

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 land development division 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 land development division 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(b)(2)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. ~~Flag lots. A building permit may be issued for a flag lot as defined in this section where the width of such lot does not entirely abut a dedicated and accepted road. Approval for such flag lots shall be obtained from the board of county commissioners as part of the plat approval process. However, an application involving no more than two flag lots in any lot, parcel or tract of land under single ownership may be approved administratively after considering the following factors:~~

- ~~1. There shall be no more than two flag lots subdivided from any one lot, parcel or tract unless approved by the board of county commissioners pursuant to article VII of this chapter.~~
- ~~2. Each flag lot shall have a minimum lot area of one acre, excluding the flag stem.~~
- ~~3. The flag stem shall be a minimum of 25 feet in width.~~
- ~~4. 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, except as defined in subsection 9. below; providing the property located between the flag stems meets the minimum lot width, depth and size requirements of the county zoning requirements.~~
- ~~5. The narrow strip for each flag lot shall intersect a dedicated and accepted road at no less than a 60 feet degree angle with curvature beginning no less than 40 feet from the road right of way.~~
- ~~6. 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.~~
- ~~7. 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.~~
- ~~8. Where the flag lot is utilized for the purpose of a multifamily project, the access strip shall be a minimum of 50 feet in width; and the access driveway shall be paved and constructed to county standards for a public road in accordance with article VII of this chapter.~~
- ~~9. An administrative waiver to the separation standards or flag stem width of up to 20 percent may be granted by the county manager and/or his designee if it~~

~~can be shown that the waiver request meets the conditions of subsection (c).~~

~~d.(C.)~~—*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 ~~sub-section c.~~ ~~(B)(2)b., (B)(2)c., and (B)(2)d.~~, the county manager shall approve a waiver to the requirements of this section if the waiver serves the public interest. ~~Conditions:~~ An applicant seeking a waiver shall submit a written request ~~to the county manager for the waiver,~~ 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, flag stem or easement. The county manager and affected agencies shall not approve a waiver, unless they determine the following:

- ~~1.(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.(2)~~ The granting of the waiver will not be injurious to the other adjacent property.
- ~~3.(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.(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.(5)~~ The county ~~land development division~~ and affected agencies concur that undue hardship was placed on the applicant.

If the county manager and affected agencies approve a waiver, the county ~~land development division~~ 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 these section provisions, and shall make the final decision approving or disapproving the decision or interpretation. The request for appeal shall be submitted to the county land development division within 30 calendar days of the decision or determination. ~~that shall schedule a~~ 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.

~~— (d) —~~ *Application procedure.* ~~Any person seeking the issuance of a building permit, under the provisions of this section, shall submit an application with permitting and enforcement department, on such form as provided by the permitting and enforcement department, together with such application fee as may be adopted by resolution by the board of county commissioners. Said application shall include, at a minimum, the following:~~

~~— (1) —~~ A copy of the recorded deed or instrument indicating current ownership of the parcel; and

- ~~(2) A copy of the recorded deed or instrument indicating applicant's interest in the subject parcel; and~~
 - ~~(3) A copy of the county property appraiser's map of the subject parcel, indicating all properties within 500 feet of the subject parcel; and~~
 - ~~(4) A copy of the land clearing application and plan of the limits of clearing. (Note: "Fees are not required but notification of surrounding owners may be required.")~~
 - ~~(5) A current (within six months of application date), certified survey reflecting "flag lot" and/or easement configuration. Said survey should also include the parcel to be served by the flag stem or easement.~~
- ~~(e) *Review of decisions.* Any applicant who is aggrieved by any decision by the county land development division that the subject parcel does not comply with the criteria set forth in this section, may, within 30 days after the date of the decision of the county land development division, apply to the board of county commissioners for review and consideration of the county land development division's decision. (Code 1979, § 14-41; Ord. No. 93-27, § 1, 11-10-93; Ord. No. 96-25, §§ 1--3, 5-21-96; Ord. No. 97-02, § 1, 1-28-97; Ord. No. 00-36, 7-25-00; Ord. No. 01-33, § 1, 7-10-01; Ord. No. 03-011, § 1, 3-4-03; Ord. No. 08-46, § 1, 11-17-08)~~

Secs. 62-104--62-150. Reserved.