Coastal Control Construction Setback Line

Attachments:

- Memo re Revisions to CCCL Ordinance.pdf
- CCCL2.Ord revised and new.pdf

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<td>Requested By:</td>
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Agenda Category: (check all that apply)

- [X] Proclamations & Awards
- [ ] Presentations
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Subject: This is an amendment to Section 5A-6 of the Land Development Code which governs the conditions of setbacks within the Coastal Construction Control Line.

Recommended Action: Discussion and Possible Action on second and final reading

Background: On June 5, 2012, the Planning & Zoning Board held a public hearing to review the proposed Ordinance 2012-04 with recommended changes to the Town's current Land Development Code, which governs the setback line for the Coastal Construction Control Line. This Ordinance will amend Section 5A-6 of the land Development Code revising requirements and standards for granting a variance and it repeals the maximum variance previously permitted that was ratified on December 4, 1986. The Planning & Zoning, after conducting the public hearing recommended to the Town Commission with a 5-0 vote that the Commission ratify this change to the Land Development Code. The Town Attorney, Town Planner, and the Town Manager endorse this action.

Suggested Action: Approve second and final reading of Ordinance 2012-04
ORDINANCE NO. 2012-04

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO THE TOWN COASTAL SETBACK LINE ALSO KNOWN AS THE COASTAL CONSTRUCTION CONTROL LINE; MAKING FINDINGS; AMENDING SECTION 5A-6, LAND DEVELOPMENT CODE, APPENDIX A, TOWN CODE OF THE TOWN OF MELBOURNE BEACH, FLORIDA; REVISIGN VARIANCE SUBMITTAL REQUIREMENTS AND STANDARDS FOR THE GRANTING OF A VARIANCE; PROVIDING GENERAL CONDITIONS FOR VARIANCES; REPEALING THE MAXIMUM VARIANCE PERMITTED; RATIFYING AND CONFIRMING ALL VARIANCES GRANTED FROM DECEMBER 4, 1986 UNTIL THE EFFECTIVE DATE OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY AND INTERPRETATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Brevard County set a coastal setback line in 1981 for all of Brevard County;

WHEREAS, the 1981 coastal setback line was effective within the Town of Melbourne Beach and ran roughly along the crest of the beach dune line;

WHEREAS, no construction was permitted seaward of this line;

WHEREAS, in the mid-1980s, the Legislature directed that the State of Florida would set a more restrictive coastal construction setback line to better protect the beaches from erosion and beachfront homes from being lost due to erosion;

WHEREAS, in the mid-1980’s in order to implement Chapter 161, Florida Statutes, the Florida Department of Natural Resources now known as the Florida Department of Environmental
Regulation surveyed the shoreline of Florida coastal counties in an effort to set a coastal construction control line ("CCCL");

WHEREAS, the purpose of the CCCL was intended to protect the beaches and shores from erosion by protection of the coastal dune system and to protect structures built along the coast from the natural effects of shoreline erosion by setting a construction setback seaward of which construction should only be permitted under certain circumstances;

WHEREAS, the CCCL was set using scientific and engineering data;

WHEREAS, as an interim measure, the Town of Melbourne Beach and other municipalities were asked to temporarily protect the beaches and shores from erosion by setting a local construction setback line, which could be varied through a variance system;

WHEREAS, by adoption of Town Ordinance No. 85-8 on January 20, 1986, the Town of Melbourne Beach adopted a temporary local construction setback line regulatory system and adopted a temporary coastal construction setback line 25 feet landward of the 1981 Brevard County setback, all pending completion of surveying, data collection, and adoption of the new State of Florida CCCL by the then-existent Florida Department of Natural Resources;
WHEREAS, as part of Ordinance No. 85-8, the current Section 5A-6(g) was also adopted which provision states that:

(g) The maximum extent of any variance granted hereunder shall be the difference between 25 feet and the actual erosion experienced on the subject property, as determined by the Board of Adjustment after the public hearing.

WHEREAS, the effect of the temporary coastal setback line and Section 5A-6(g), both of which were adopted by Ordinance No. 85-8, was to prohibit any variance from being given that would be effective more seaward than the 1981 Brevard County setback line;

WHEREAS, at the time of adoption of the temporary local construction setback line regulatory system in 1985, the Town Commission specifically indicated plans to amend the location of the new coastal setback line to be the same as the CCCL, then under preparation by the State of Florida;

WHEREAS, the Town Commission’s legislative intent to do so was memorialized in Section 5A-5, Appendix A, Melbourne Beach Town Code, which states:

§ 5A-5. RELOCATION OF LINES.

The Town Commission hereby declares that as a result of anticipated long-term coastline changes, due to storm events, beach erosion, dune damage, and rising relative sea level, causing the coastline to continue to move landward,
it shall be the intent of the Town Commission to reconsider the location of the coastal setback line from time to time as such coastline changes dictate the necessity therefor.

WHEREAS, on December 4, 1986, the State of Florida adopted the new CCCL by adoption of Rule 16B-26.017, Florida Administrative Code, which has since been moved and re-adopted by the Florida Department of Environmental Regulation as Rule 62B-26.017, Florida Administrative;

WHEREAS, for reasons unknown, it was not until 2008 that the Town Commission abolished the temporary construction control line set in 1985 and re-set the construction control line as being coincident with the CCCL adopted by the State of Florida in 1986. See Town of Melbourne Beach Ordinance No. 2008-02;

WHEREAS, at the same time, Section 5A-6(g) should also have been repealed, but it was not;

WHEREAS, the CCCL in many portions of the Town generally follows the West side of the A-1-A right-of-way and is over 200 feet West of the 1981 coastal setback line;

WHEREAS, during the 1990’s and in the first decade of the new millennia, the Town Board of Adjustment periodically adopted variances based on the CCCL as if in fact it had been re-set by the Town Commission;
WHEREAS, the Town Commission registered its intent to formally reset the Town’s Coastal Setback Line to coincide with the CCCL adopted by the State of Florida in late 1986 pursuant to Town Ordinance No. 2008-02;

WHEREAS, Section 5A-6(g), Appendix A of the Town of Melbourne Code of Ordinances contains a provision that prohibits any CCCL variance from allowing construction more than 25 feet seaward of the CCCL, which given the width of the Highway A-1-A right-of-way would allow a CCCL variance to be given generally commensurate with the eastern edge of the pavement on Highway A-1-A;

WHEREAS, the effect of this regulation would prohibit a CCCL variance from being given thereby prohibiting construction on beachfront property from being approved by the Board of Adjustment seaward of A-1-A in many areas of the Town, and resulting in a categorical taking of private property rights directly inconsistent with a ruling of the U.S. Supreme Court in Lucas v. South Carolina Coastal Council, 112 S.Ct. 2886 (1992);

WHEREAS, the Planning & Zoning Board has examined the issue and finds that: (1) Section 5A-6(g) should be repealed; and (2) the Town’s Board of Adjustment has issued numerous variance using the CCCL which while technically proper may have been inconsistent with Section 5A-6(g);
WHEREAS, those CCCL variances adopted from December 4, 1986, the date that the CCCL was adopted by the State of Florida, to the effective date of this Ordinance should be ratified and confirmed because they were evaluated using the State of Florida coastal construction control line;

WHEREAS, the Town’s adopted Comprehensive Plan includes in its Future Land Use Element the following objectives and policies which are supportive of this Ordinance, including:

  Policy 6.1: Periodically review existing development regulations to ensure that they are consistent with changes within the community and that they reflect, to the extent possible, improvements in methods and practices in the regulation of land-uses.

  Objective 7.0: Ensure all new construction and/or redevelopment is consistent with requirements for flood prone areas and that residential densities are consistent with Town, county, and regional Hurricane evacuation plans.

  Policy 7.2: Ensure that Ordinances of the Town are in conformance with County, State and Federal Rules and Regulations regarding development and redevelopment within the “Coastal High Hazard Areas”;

WHEREAS, the intent of Section 5A-5, Melbourne Beach Code of Ordinances, was to revise the Town ordinances to utilize the CCCL set in 1986;

WHEREAS, the aforementioned policies in Comprehensive Plan’s Future Land Use Element directly support use of the CCCL
for protection of potential flood prone areas, and this Ordinance is consistent with that goal;

WHEREAS, the Town’s adopted Comprehensive Plan includes in its Conservation Element the following objectives and policies which are supportive of this Ordinance, including:

Objective 1.0: Protect the coastal dune system, associated native vegetative communities and beaches from the impacts of development.
Policy 1.1: Complete review of existing ordinances directed at protection of the beaches, dune system, and dune vegetative communities and strengthen if necessary by January 1, 2012.

WHEREAS, the Town’s Planning & Zoning Board, sitting as the Local Planning Agency, has consistent with Conservation Element Policy 1.1 completed a review of Chapter 5A-5, Melbourne Beach Code of Ordinances, and finds that the amendments proposed by this Ordinance will be consistent with Objective 1.0 of the Conservation Element;

WHEREAS, the Town’s adopted Comprehensive Plan includes in its Coastal Management Element the following objectives and policies which are supportive of this Ordinance, including:

Objective 2.0: The Town shall continue to coordinate with the applicable Federal, State, County and agencies in order to protect the beach and dune system as a viable feature providing storm protection for upland
property and serving as an important recreation and aesthetic resource.

Policy 2.1: Codes that control and regulate construction activities in the coastal zone areas shall be adopted and enforced consistently throughout the Town.

Policy 2.2: Codes shall be updated when necessary to conform to new state regulations and advances in the understanding of the coastal process.

Policy 2.3: The coastal building setback requirement shall be modified when necessary to allow the setback line to follow any repositioning of the Coastal Construction Control Line (CCCL).

Policy 5.1: No construction or development activity shall be permitted, except through the Florida Department of Environmental Protection, seaward of the Coastal Construction Control Line (CCCL) unless it is intended for restoration and enhancement of natural resources.

WHEREAS, the foregoing policies in the Coastal Management Element of the Town’s Comprehensive Plan require that Chapter 5A should be revised to employ the CCCL, a state mandated and set construction control line, and this Ordinance is consistent with each of the foregoing policies;

WHEREAS, the Town Planning & Zoning Board, sitting as the Local Planning Agency, has recommended adoption of this Ordinance as being in promotion of the public safety and welfare as a means of protecting the beaches and shores from erosion by protection of the coastal dune system and to protect structures
built along the coast from the natural effects of shoreline erosion and finds that based on the foregoing Objective and Policies in the Comprehensive Plan, among others, this Ordinance is consistent with the Town’s Comprehensive Plan.

**BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:**

SECTION 1. That Section 5A-6, Appendix A, of the Town Code of the Town of Melbourne Beach, Florida, is hereby amended to read as follows:

§ 5A-6. VARIANCES.

(a) Variances from the provisions of §§ 5A-2 through 5A-4 may be granted by the Board of Adjustment of the town, after a public hearing, notwithstanding conflicting provision as to variances contained in this Land Development Code, pursuant to the following criteria and Procedures:

(1) A fully completed application for a variance shall be submitted by the property owner of record, or his authorized representative, to the Town Clerk on a form provided by the town. The application shall include, as a minimum, the following information:

   a. Name and address of applicant.

   b. Street address of the Property, if available.
c. A statement describing the proposed work, activity, and construction seaward of the coastal setback line.

d. A list of names and addresses or owners of all properties located within 500 feet of the subject property.

e. A notice containing the aforementioned information shall be posted by the applicant on the affected property at least 15 days prior to the public hearing. If the property abuts a public road right-of-way, the notice shall be posted in such a manner as to be visible from the road right-of-way. An affidavit signed by the owner or applicant evidencing posting of the affected real property shall be received by the Town Board of Adjustment, prior to the public hearing.

f. Written approval of the applicant's construction plans by the State Department of Natural Resources, Division of Beaches and Shores, following submission by the applicant of the information necessary for the agency to render such approval.

(b) The applicant shall also supply two copies of a topographic survey of the subject property, prepared or verified for accuracy not more than six months prior to the date of application and certified by a licensed professional Florida land surveyor and mapper registered in the state. The
survey must be prepared at the expense of the variance applicant with all applications for a variance pursuant to this section. The survey must be certified to and for reliance by the Town.

The topographic survey shall include the following specific information:

(1) The location of the contour line corresponding to elevation zero feet NGVD;

(2) The location of any existing vegetation line on the subject property; and

(3) The location of the established State Department of Environmental Protection Natural Resources Coastal Construction Control Line and the mean high water line, and the town beach coastal setback line for the full width of the subject property, including the location and number of the two nearest State Department of Environmental Protection’s Natural Resources’ baseline monuments;

(4) The location of all proposed development to be constructed as a result of the proposed variance;

(5) The location of all existing development to remain on-site as a part of the development or redevelopment of the site;

(6) The location seaward of the coastal
construction control line of all portions of all existing, and
planned development, depicting the number of feet seaward of the
coastal construction control line of said development;

(7) The location for the full width of the subject
property of: the line of continuous construction; the top of
the coastal dune system; the toe of the coastal dune system on
or adjacent to the property at the time of application to the
point at the dune as it existed in September, 1972; and the
location of the East side of the A-1-A right-of-way; the
location of any principle structure to the North and South of
the proposed project property and located within 100 feet of the
proposed project property. As used in this sub-section, the
term “line of continuous construction” is a line drawn from the
most seaward edge of any principle structure to the North, and
within 100 feet, of the proposed project to the most seaward
edge of any principle structure to the South, and within 100
feet, of the proposed project; and

(8) A certification as to the maximum number of
feet seaward of the coastal construction control line for which
the variance is requested for the full width of the subject
property.

* * * *
(d) The Board of Adjustment may grant the requested variance, after a public hearing, in those cases where the facts presented at the public hearing demonstrate evidence the following:

(1) That the subject property experienced less than 25 feet of beach-dune erosion since September, 1972. The erosion shall be measured by determining the extent of horizontal recession from the toe of the dune as it exists at the time of application to the point at the dune as it existed in September, 1972, which corresponds to the same elevation as the toe of the dune as it exists at the time of application;

(2) That the granting of the variance shall not be injurious to adjacent properties, nor contrary to the public interest; and

(3) That the granting of the variance will not jeopardize the stability of the beach-dune system.

In granting any variance, the board of adjustment will when reasonable to do so require that new development on the property subject to the variance be no further seaward than existing development to the North or South of the subject property.

* * *
(f) In determining the extent of erosion experienced on the subject property, and the extent to which the requested variance may be granted, the Board of Adjustment shall take into account the State Department of Natural Resources, Division of Beaches and Shores' February, 1985 erosion standards; the recommendation or comments, if any, of the State Department of Environmental Protection Natural Resources, Bureau Division of Beaches and Coastal Systems Shores, submitted to the Board after review of the application for variance; the historical seasonal fluctuations in erosion for the subject property; and the certified topographical survey and other information submitted by the applicant.

(g) General conditions of variance granted. The maximum extent of any variance granted hereunder shall be the difference between 25 feet and the actual erosion experienced on the subject property, as determined by the Board of Adjustment after the public hearing.

(1) With regard to any variance granted pursuant to this section after August 1, 2012, if the rights authorized by a variance are not exercised within 730 days of the date of grant of such variance, they shall lapse and may be reestablished only after notice, a new hearing, and an evaluation pursuant to this section.
(2) All variances issued pursuant to this section are conditioned upon the development depicted on the survey submitted pursuant to this sub-section and will not be applicable to or permit other development.

(3) In compliance with 44 CFR §60.3(a)(2), all other applicable state or federal permits must be obtained before the commencement of development.

[Statement of Intent: The language in subsection (g)(3) is added as agreed to in a memorandum dated May 7, 2012 from Bryan Koon, Director of the Florida Division of Emergency Management regarding the impact of HB-503 (2012 Leg. Sess.) on NFIP regulation pursuant to 44 CFR §60.3(a).]

*    *    *

SECTION 2. All coastal construction control line variances issued by the Town Board of Adjustment pursuant to Section 5A-5 after December 3, 1986, until the effective date of this Ordinance are hereby ratified and confirmed.

SECTION 3. Severability/Interpretation Clause.

(a) In the event that any term, provision, clause, sentence or section of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences,
or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:

(1) Words underlined are additions to existing text.

(2) Words stricken through are deletions from existing text.

(3) Asterisks (* * *) indicates a deletion from the Ordinance of text existing in the Code of Ordinances. It is intended that the text in the Code of Ordinance denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

(c) Section 2. of this Ordinance shall not be codified. Statements of Intent in this Ordinance shall not be codified.

SECTION 4. Effective Date. This Ordinance shall become effective upon adoption.

PASSED by the Town Commission of the Town of Melbourne Beach on first reading on the 20th day of June, 2012, and ADOPTED by the Town Commission of the Town of Melbourne Beach,
Florida, on final reading on the 18th day of July, 2012.

TOWN OF MELBOURNE BEACH,
FLORIDA

By: ______________________________
    Tom Davis, Mayor

ATTEST:

__________________________
(TOWN SEAL)

Rhonda Danielle,
Town Clerk