

THE CITY OF NEW SMYRNA BEACH - PLANNING & ZONING

ORDINANCE NO. 22-21: CONDUCT THE SECOND READING AND PUBLIC HEARING OF AN ORDINANCE, WHICH IF ADOPTED, WOULD AMEND SECTIONS 201 AND 703 OF THE LAND DEVELOPMENT REGULATIONS, TO IMPLEMENT REVISIONS TO THE LOCATION AND REGULATIONS PERTAINING TO THE CITY'S COASTAL CONSTRUCTION SETBACK LINE.

May 11, 2021

Background:

At the December 9, 2020 City Commission workshop, the Commission directed Staff to revise the City's LDR to adopt the Florida Department of Environmental Protection's (FDEP) Coastal Construction Control Line (CCCL) as the City's new Coastal Construction Setback Line (CCSL). The City would still maintain its own rules for activities permitted east of the line, but using the FDEP line would eliminate the confusion of having two lines, plus it would utilize the line (FDEP's CCCL) which has been located based on scientific analysis.

Exhibits included in this report:

- **Exhibit A: Map** of the Florida Department of Environmental Protection (FDEP) Coastal Construction Control Line (CCCL) and the City's current Coastal Construction Setback Line (CCSL).
- **Exhibit B:** Section 703.02 of the LDR, including the proposed deleted and added language.
- **Exhibit C:** Section 703.02 of the LDR as proposed, with the deletions and added language not indicated.
- **Exhibit D:** Section 201.00 of the LDR as proposed, with deletions and added language indicated.
- **Exhibit E:** Section 201.00 of the LDR as proposed, with deletions and added language not indicated.

Findings:

The current City CCSL and the FDEP CCCL lines are depicted on the map attached as

Exhibit A. This LDR text amendment proposes adopting the FDEP CCCL line as the City's CCSL line. In some instances this will provide property owners with more available land to develop their property. This is primarily north of Sapphire Road. To the south of Sapphire Road, the CCSL line will in most cases shift further inland, and thus become more restrictive. This occurs largely south of Sapphire Road, in the area determined by the FDEP as “critically eroded” in 2004, after a series of hurricanes impacted the coastline.

Background of the Critically Eroded Shoreline and Need for a Coastal Construction Setback Line

In 1986, the FDEP was charged with the responsibility to identify those beaches of the state which are critically eroding and to develop and maintain a comprehensive long-term management plan for their restoration. The long-term management plan has several components that the FDEP implements including the *Critically Eroded Beaches Report* and the *Strategic Beach Management Plan*. The critically eroded designation is a level of erosion that threatens development, recreational, cultural, and environmental interests. While some of this erosion is due to natural forces and imprudent coastal development, a significant amount of coastal erosion in Florida is directly attributable to the construction and maintenance of navigation inlets, which New Smyrna Beach has at its northern corporate limits. Per the report:

The FDEP, pursuant to rule 62B-36.002(5), Florida Administrative Code (F.A.C.), defines “critically eroded shoreline” as, *“a segment of the shoreline where natural processes or human activity have caused or contributed to erosion and recession of the beach or dune system to such a degree that upland development, recreational interests, wildlife habitat, or important cultural resources are threatened or lost. Critically eroded shorelines may also include peripheral segments or gaps between identified critically eroded areas which, although they may be stable or slightly erosional now, their inclusion is necessary for continuity of management of the coastal system or for the design integrity of adjacent beach management projects.”*

It is this area critically eroded area that will have a more restrictive CCSL, as it is this area that is experiencing significant erosion issues.

Background of the City CCSL Line

The CCSL historically regulated development along the oceanfront in that no structure was allowed to be constructed east of it. The CCSL was originally established in 1975 with Ordinance 31-75, and at that time it applied to the area between Crawford Street and Flagler Avenue. The Ordinance prevented beach or dune material, including vegetation, to be removed or disturbed in any manner except as is necessary and incidental to construction of approved structures for which a variance or exception has been obtained shall be permitted. No construction or construction activities were permitted east of the CCSL. In addition, the only construction permitted was a seawall or bulkhead on private property, east of the CCSL.

Ordinance 65-75 established a bulkhead line from the centerline of Crawford Road to the north corporate limit of the City, and a CCSL, which repealed all conflicting ordinances or portions thereof. In addition, a CCSL line was established fifty (50) feet west of the afore-described bulkhead line. Where no seawall was constructed, no construction whatsoever was allowed to be constructed east of the CCSL, no excavation made nor any beach material disturbed or removed. Where a seawall was constructed, no living units were to be built east of the setback line. Structures such as shuffleboard courts, patios and swimming pools could be built no closer than 15 feet to the seawall and the area up to the seawall could be landscaped, all as approved by the Planning Board and the City Manager.

In 1985, the City Commission amended the CCSL regulations, establishing a consistent construction setback line from the north corporate limit to the south corporate limit along the Atlantic Ocean Beach. From the Ponce de Leon Inlet to the centerline of Crawford Street, the CCSL was established 50 feet west of the DNR line. From Crawford Street to the centerline of Flagler Avenue, the CCSL was the same as the DNR line, and from the Flagler Avenue to the south corporate limit, the CCSL was again 50 feet west of the bulkhead line. The approval process required the Planning Board to approve the location of seawalls and bulkheads on private property, with the construction details to be approved by the DNR (now the FDEP). Seawalls, bulkheads, and other types of coastal armoring structures on public property had to be approved by the City Commission.

In 1991, the DNR line, which was established in 1973, was replaced by the CCCL. The establishment of the CCCL was based on mathematical models generated by the University of Florida. These models created predictability of shoreline erosional trends, shoreline fluctuations (seasonal and storm induced), and storm surges and its associated waves impacts. They were then cross-checked with past data to verify for accuracy and calibrated, if needed. The FDEP notes that the method for determining erosion trends is constantly changing. However, 1991 was the last time the CCCL line has been updated, almost 30 years ago. Further, in 2004, after a series of hurricanes inflicted significant damage to the New Smyrna Beach coastline, the area south of Sapphire Road was determined to be critically eroded. Per the FDEP, studies are underway to potentially change the location of the CCCL again. If the new CCCL line deviates from the current CCCL line, staff recommends the future CCSL follow the new CCCL as well. If the proposed change is adopted, no action by the City would be needed if FDEP moved the CCCL line, as the City's CCSL line would be recognized at the same location as the CCCL, after any changes to the CCCL.

LDR Amendments

Section 703.02 of the City's LDR includes the requirements for development in the coastal area. The changes to the Section are included as **Exhibit B**, with strikethroughs indicating deleted sections, and underlined words indicating added language. The changes are summarized as follows:

- Changed the location of the City's CCSL line to match the existing FDEP CCCL line
- Updated list of structures prohibited seaward of the CCSL
- Updated the list of exemptions for structures that may be permitted seaward of the CCSL, including new principal or accessory structures located at or landward of the easternmost facade of an existing principal structure, and no higher than any part of the existing principal structure. Qualified exemptions require a building permit and site plan approval, if applicable.
- Added a new variance section including specific criteria for CCSL variances, which go to the Planning & Zoning Board.
- Modifications to the rebuild sections to be consistent with the other changes in Section 703.

The proposed changes affect the definition of waterfront setback in Section 201.00 in the

City's LDR. These changes are included as **Exhibit E**.

Recommendation

The Planning & Zoning Board considered the request at their regularly meeting on April 5, 2021. The Board voted 6-0 (one member was absent) to recommend the City Commission approve the revisions to the CCSL. The Planning Board suggested several changes which have been incorporated into the proposed text amendments.

Additionally, the City Attorney has made some modifications since the item has left the Planning and Zoning Board. Those changes are incorporated into the Ordinance 22-21.

Staff recommends the City Commission **approve** the proposed text amendments.

Fiscal Analysis:

This ordinance has no fiscal impact.

Strategic Plan Item:

No

Staff Report Created By: Kelly McQuillen - City Clerk

Attachments:

[Exhibit A CCSL CCCL map.pdf](#)

[Exhibit B 703.02 Additions and Deletions.pdf](#)

[Exhibit C 703.00 CLEAN.pdf](#)

[Exhibit D Section 201. General Definitions - Additions and Deletions.pdf](#)

[Exhibit E Section 201 General Definitions CLEAN.pdf](#)

[Ord 22-21 LDR Amendment Sec 201 703 and 26-771.pdf](#)