

## MEMORANDUM

**TO:** Howard Tipton, Town Manager

**From:** Allen Parsons, AICP  
Director, Planning, Zoning & Building Department

**Report Date:** June 5, 2024

**Meeting Date:** June 28, 2024

**Subject:** Ordinance 2024-07, Amending Chapter 158 Zoning Code

### **Recommended Action**

Adopt Ordinance 2024-07.

### **Background**

At their June 3, 2024, Town Commission Regular Meeting, the Town Commission (Commission) held first reading and forwarded Ordinance 2024-07 for second reading, public hearing, and adoption.

Ordinance 2024-07 will allow property owners whose average property elevations are at or below 3.5 ft NAVD<sup>1</sup> to elect to include up to 5 total feet of Freeboard<sup>2</sup> height. The elected amount of Freeboard height affects the point at which the Town measures height from, which is the Federal Emergency Management Agency (FEMA), Base Flood Elevation (BFE)<sup>3</sup> requirement, plus the amount of Freeboard provided.

As discussed, this action was a follow-up to Ordinance 2024-03 (adopted on April 1, 2024), which allows property owners, Town-wide, to elect to include up to 3 total feet of Freeboard height. Ordinance 2024-03 would essentially allow structures to develop to the same maximum heights that were allowable under the recently revised, and prior effective FEMA flood elevation maps for the Town. This is because the updated FEMA flood elevation maps, on both the Manatee County portion of the Town (with new FEMA maps adopted in 2021) and the Sarasota County portion of the Town (with new FEMA maps becoming effective on March 27, 2024), in general, are 2 feet lower than prior BFE heights. In essence, the change, approved via Ordinance 2024-03, that now allows an optional Freeboard election of up to 2 additional feet (1 foot of Freeboard is required by the Florida Building Code), would maintain the prior maximum building height allowances when BFE heights were generally 2 feet higher than the recently updated FEMA BFE heights. An example comparison graphic (Note: Not to scale) is available in the Town Clerk's Office.

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<sup>1</sup> The North American Vertical Datum is the official horizontal control datum for the United States, Canada, Mexico, and Central America. It is essentially measurement from a surface of zero elevation (i.e. mean sea level) to which heights of various points are referenced.

<sup>2</sup> "Freeboard." An additional amount of height above the Base Flood Elevation used as a factor of safety in determining the elevation to which a structure's lowest floor or lowest horizontal structural member of the lowest floor, as applicable, must be elevated or floodproofed.

<sup>3</sup> The elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in any given year.

Ordinance 2024-07, is intended by the Town Commission to provide an additional incentive that would not be applicable Town-wide but would be applicable to qualifying low-lying properties within the Town. The Commission's intent was that these kinds of properties are currently more susceptible to repeated periods of standing water and that such properties would be more likely to require actions, such as raising property elevation grade levels, to harmonize with future adjacent road, shoreline and drainage adaptation projects and private efforts in the Town.

Eligible properties, in low-lying areas with existing average property ground elevations at or below 3.5 feet NAVD, were supported by a recommendation from APTIM Engineering (the Town's consultant on the Sea Level Rise and Recurrent Flooding Resilience Plan). A comparison graphic depicting the building measurement implications of the prior FEMA BFE elevations, and the additional Freeboard options associated with Ordinance 2024-03 and Ordinance 2024-07 is available in the Town Clerk's Office (Note: Not to scale).

Ordinance 2024-07 includes a new (#4) addition (including a graphic) to the "Building, Height of" definition in the Town's Zoning Code indicating that, in low-lying areas (i.e., those properties that have an average ground elevation  $\leq$  3.5 feet NAVD), the building height is measured from the FEMA BFE plus the amount of Freeboard provided (up to a maximum of 5 feet, in areas not subject to wave action).

The new proposed Building Height definition (accompanying graphic is in full report available in Town Clerk's Office) in Zoning Code Sec. 158.144 is shown below (Note: The new definition generally mirrors the language approved via Ordinance 2024-03. The differences in language, approved between Ordinance 2024-03 (that allows up to 3 total feet of Freeboard, in areas not subject to wave action) and Ordinance 2024-07 are outlined below:

Ordinance 2024-03, Item 3, reads as follows:

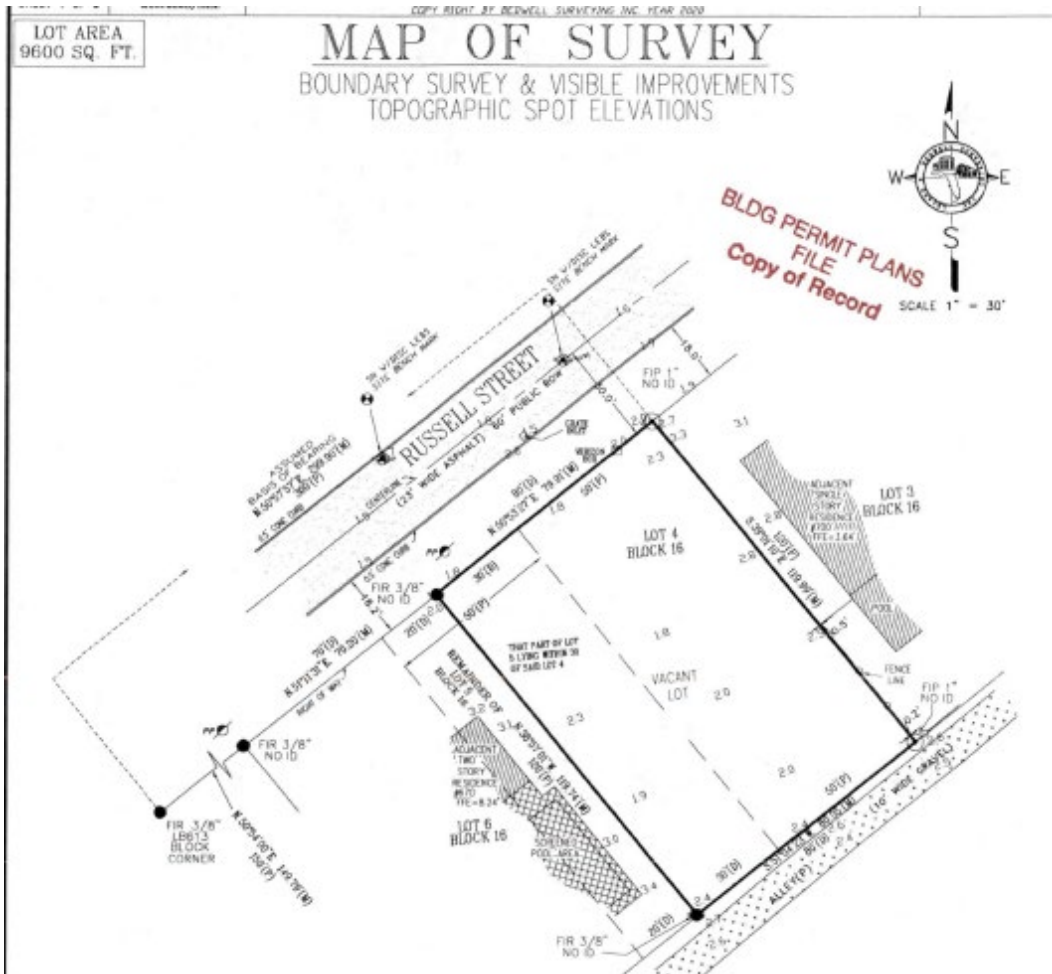
(3) For the purposes of Article IV, Bulk, Maximum height, for all structures in flood hazard areas other than Coastal A Zones, Coastal High Hazard Areas, and seaward of the CCCL, the vertical distance shall be measured from the Base Flood Elevation (BFE) plus Freeboard, except that in no case shall the vertical distance of the Freeboard exceed a maximum of three (3) feet. The building height shall be measured from the selected Freeboard to the highest point of any portion of the building (see illustration below) (illustration provided in full report available in Town Clerk's Office).

Proposed Ordinance 2024-07, Item 4, revises the language in Ordinance 2024-04, Item 3, as follows:

(4) For the purposes of Article IV, Bulk, Maximum height, for all structures and properties in flood hazard areas other than Coastal A Zones, Coastal High Hazard Areas, and seaward of the CCCL, when the average ground elevation is at or below 3.5 feet North American Vertical Datum (NAVD), as determined

by the Planning and Zoning Official based on a topographic survey, the vertical distance shall be measured from the Base Flood Elevation (BFE) plus Freeboard, except that in no case shall the vertical distance of the Freeboard exceed a maximum of five (5) feet. The building height shall be measured from the selected Freeboard to the highest point of any portion of the building (see illustration below) (illustration provided in full report available in Town Clerk's Office).

Qualifying properties will be based on average elevations provided on a Spot Elevation survey (by a licensed surveyor), which is included with building permit submittals (see topographic/spot elevation survey excerpt example below).



The Town has sought the feedback of the Florida Department of Emergency Management (FDEM). FDEM has a role in reviewing amendments to local jurisdictions' Flood Control ordinances for consistency with FEMA requirements across jurisdictions. And while Ordinance 2024-07 does not modify the Town's Flood Control ordinance, (it adds to the Building Height definition in the Zoning Code), the proposed amendment is referenced by the Flood Control ordinance. FDEM staff and consultants have worked with Town staff on the language incorporated into Ordinance 2024-07 and have no objections to the language and intended purpose of the amendments.

Staff is of the opinion that this ordinance will be positively received by many property owners in low-lying areas that are currently subject to repeated periods of inundation. Providing incentives for property owners, who are making significant investments, to be able to elect to construct higher elevated structures is expected to help maintain and improve the community, and protect the Town's property values and homes or businesses.

Allowing for an increase in Freeboard height will also provide additional incentives for certain low-lying properties, such as in the Longbeach Village, Sleepy Lagoon St. Judes, and Buttonwood neighborhoods, to be able to bring in fill to increase the existing grade, which can be subject to more regular flooding and which may have elevation differences to mitigate as low-lying roads may be elevated in the future.

The adoption of this ordinance is exempt from the Business Impact Estimate preparation and posting obligations, pursuant to Florida Statutes 166.041(4)(C).

**Staff Recommendation**

Adopt Ordinance 2024-07.

**Attachments**

- A. Ordinance 2024-07 (Available in Town Clerk's Office)
- B. Business Impact Estimate (Available in Town Clerk's Office)

**End of Agenda Item**