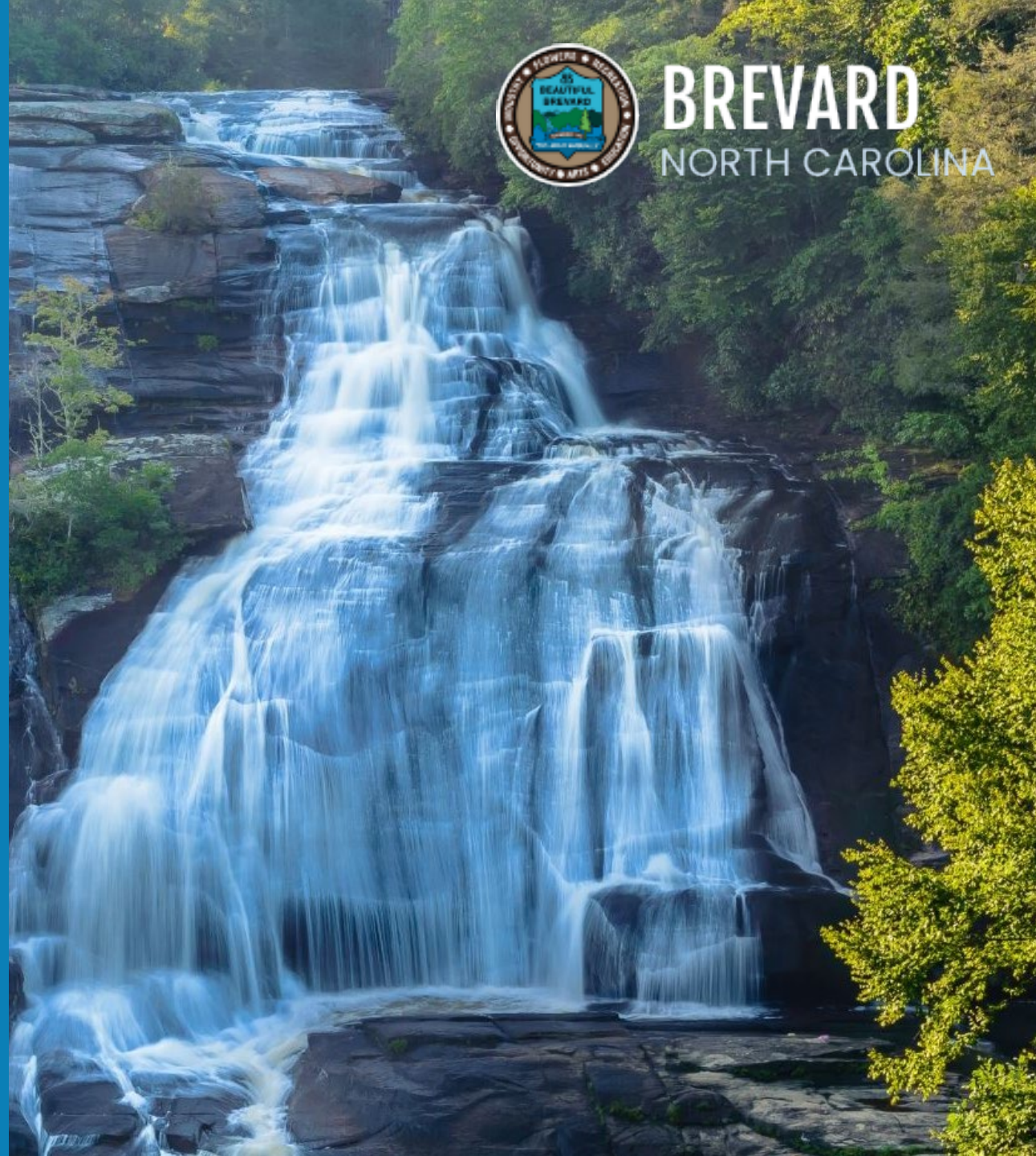
Nonconformities Public Hearing

City Council | May 18, 2026



What is a Nonconformity?

- **Nonconformity**: A lot, structure, use, sign or site feature that was ***legally-established*** but that no longer complies with the code
  - **Nonconformities ≠ Violations**
  - Typically, the result of development code amendments, annexations, and zoning district changes
- **Types / Examples:**
  - **Nonconforming uses**: a use that is no longer permitted in the zoning district
  - **Nonconforming structures:** a building that does not meet dimensional standards (setbacks, height, size, etc.)
  - **Nonconforming lots:** a lot that does not meet current requirements for street frontage
  - **Nonconforming site features:** a site element that does not meet the current requirements (parking layouts, landscaping, signs, buffers, etc.)

Regulations for Nonconformities

- **Continuation of Lawful Nonconformities (aka "Grandfathering")**
  - Allow for lawfully established nonconforming uses, structures, and lots to continue even if they no longer comply with current zoning regulations.
  - Typical ordinance language:
    - May **continue in operation**
    - May **remain in its existing location and footprint**
    - Must have been **lawfully established before the zoning change**
  - Cities adopt ordinances to manage them over time
  - Nonconformities sit at the intersection of **vested rights** (what property owners can continue to do) and **municipal zoning authority** (City's authority to regulate land use and development)

Regulations for Nonconformities

- **Diverging Ideas:**
  - Protecting existing property rights
  - Advancing community planning goals
- **Development Balancing Act:**
  - Too strict → discourages reinvestment
  - Too lenient → perpetuates noncompliance
- **Goals of Regulations**
  - Limit substantial investment in nonconformities
  - Bring about eventual elimination and/or lessen their impact on surroundings
  - Preserve the integrity of the ordinance and the character of the city

Current Ordinance Challenges

- **Vague and confusing**
  - Difficult to administer fairly or objectively
  - Difficult for developers to understand expectations
  - Uses language like “to the maximum extent possible” or “increasing the degree of nonconformity”
- **Conflates nonconforming uses and structures**
  - Regulated differently but included together
  - Contradictory in many cases
- **Relies on investment as a percentage of building value to determine compliance**
  - Doesn’t define normal repairs / maintenance versus building improvements
  - Requires staff to parse out project costs to our best ability
  - In practice, many low-value buildings are unable to make any improvements because they cannot afford full site redevelopment

Nonconformity Regulation Components

Types of Nonconformities

- Uses
- Structures
- Lots
- Site Features

Policy Considerations

- Authority to Continue
- Authority to Expand / Alter
- When Compliance is Required

Expansion Policy Approaches

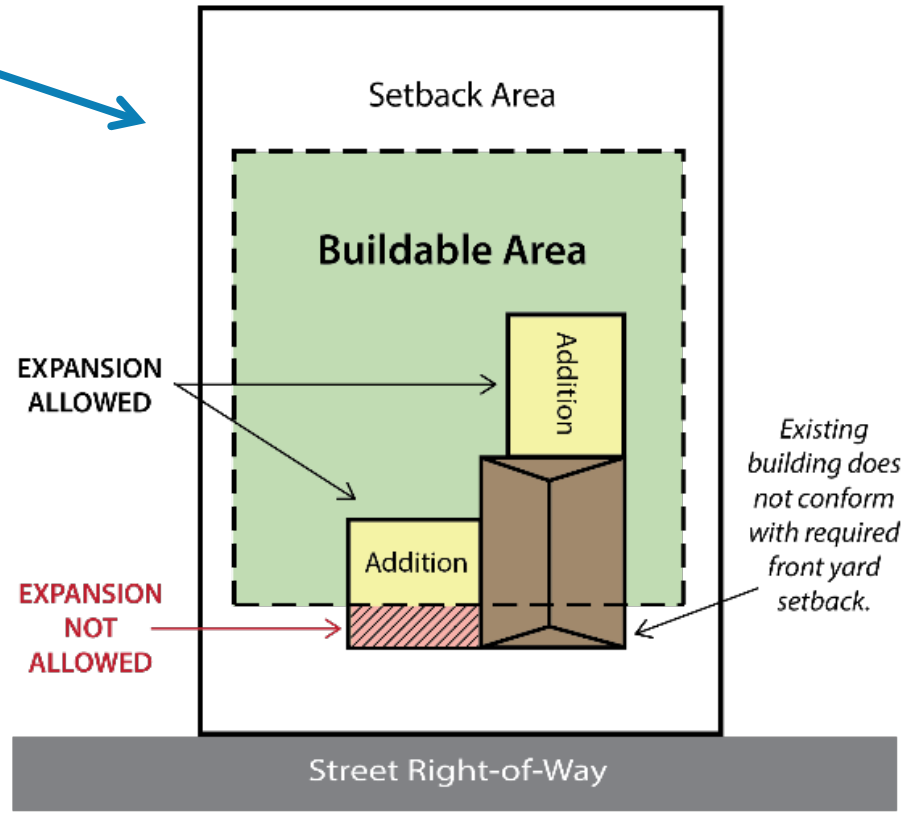
- **Strict Elimination**
  - No expansion allowed
  - Simple to administer
  - Discourages reinvestment but requires full compliance when it does redevelop
- **Controlled Expansion**
  - Allows expansion with caps (e.g., percentage increase)
  - Moderately flexible
  - May still limit meaningful improvements
- **Compliance-Based Approach**
  - Expansion allowed if complies with regulations
  - New investment aligned with policy goals

Nonconforming Uses

- Expansion not permitted
  - Exception: single-family, duplex, triplex and quadraplex uses
  - Example: single-family residential is not permitted in DMX, but we would allow house with a single-family residential use to be expanded
- Increased intensity not permitted
  - Example: the use now has longer, hours, more employees, more trips generated per day, etc.
- If use is abandoned for 180 days or more, it cannot be reestablished
- Once a nonconforming use is changed to a conforming use, it cannot revert back

Nonconforming Structures

- May be enlarged if it doesn't increase the extent of its nonconformity and it complies with current regulations
- Damaged or destroyed by natural disaster or accident varies based on amount of damage compared to the replacement cost of the structure
  - Damage >50% → Can be replaced or reconstructed as pre-damaged but must begin work within 180 days
  - Damage 50%+ → Cannot be replaced or reconstructed as pre-damaged, must be built back conforming
- Notable distinctions
  - Historic structures can be altered or expanded if meets setback requirements and is approved by JHPC
  - Manufactured home cannot be replaced if they don't meet ordinance requirements (e.g., setbacks, located outside of MHD)



Other Nonconformities

- **Nonconforming Lots**
  - Inadequate street frontage
  - May be developed have evidence of a deeded right-of-way or access easement
  - Cannot be developed if can be combined with an adjoining lot owned by the same person
  - No subdivision activity allowed unless it remedies or improves the nonconformance
- **Nonconforming Site Features**
  - Accessory structures, fences, signs, off-street parking areas, landscaping, buffers, lighting, etc.
  - Changes need to bring feature into greater compliance
  - The administrator can always require changes to site characteristics that endanger public health and safety (e.g. driveways, curbing, sidewalks)

Compliance Thresholds

- **Redevelopment Trigger Compliance**
  - Properties required to meet current zoning and site design standards when redevelopment occurs
  - Example: construction of a new principal building and major structural expansions
  - Avoids forcing full compliance during minor repairs but challenging for low-value structures
- **Proportional Compliance Investment**
  - Applicant must invest a percentage of project value into correcting nonconformities
  - Example: 5% of project cost must be spent improving nonconforming landscaping and sidewalks
  - Moves projects closer to compliance but hard to administer or to fairly / objectively apply
- **Incremental Improvement Compliance**
  - Certain elements required to be brought into compliance as improvements are made
  - Example: expanding parking lot requires compliance with parking area design, buffers, and sidewalks
  - Limited investment in nonconforming elements, gradual compliance based on “rational nexus”

Proposed Hybrid Compliance Approach

- **Full compliance triggered by "new construction" of a principal building:**
  - New construction is "any newly constructed building or structure. This definition shall also apply to existing buildings that are altered in the following ways:
    - Additions to existing structures that equal or exceed 75% of the gross floor area of the existing structure.
    - Substantial improvements to existing structures that equal or exceed 75% of the value of the existing structure and require the issuance of at least two trade permits from the Transylvania County Building and Inspections Department."
- **Incremental compliance based on what improvements are being done**
  - Applicability is derived from impact not necessarily monetary investment
  - Example: Compliance with landscaping buffers and screening (Section 8.4) when:
    - New construction of principal building
    - Expansion of existing principal building (gross floor area increase 25%+)
    - Expansion of a parking area by 50% or 10+ spaces (whichever is greater)

Adoption Process

- ✓**January – March**: Staff reviewed ordinance language for other municipalities and "tested" potential options here in Brevard based on previous development
- ✓**March 24th**: Staff held a workshop with Planning Board to discuss nonconformities and proposed ideas
- ✓**April 8th**: Planning Board reviewed draft language and unanimously recommended in favor
- ✓**May 18th**: City Council holds public hearing
- **June 1st**: City Council votes on proposed amendments