BYLAWS AND RULES OF PROCEDURE
OF THE CITY OF BREVARD
BOARD OF ADJUSTMENT

REWRITTEN AND ADOPTED: OCTOBER 1, 2024

## Article I. Name

The name of this organization is the City of Brevard Board of Adjustment, hereinafter referred to as the "Board" or "BOA".

## Article II. Purpose and Powers

The Board shall have those powers and duties set out in North Carolina General Statues ("N.C.G.S")160D-302, and elsewhere in the General Statutes, and in the Unified Development Ordinance ("UDO") of the City of Brevard, as well as those powers not inconsistent therewith as set forth herein.

## Article III. General Rules

The Board shall be governed by the Ordinances of the City of Brevard and the Laws of the State of North Carolina. The Board shall follow the procedures outlined in these rules of procedure.

## Article IV. Jurisdiction

The Board's jurisdiction shall apply equally within the City limits and the City's area of Extraterritorial Jurisdiction ("ETJ").

## Article V. Organization

**Section 1**. *Membership.* The Board shall consist of a total of five members with three members residing in the city limits and two members residing in the ETJ. In addition, two alternate members residing in the city limits and one alternate member residing in the ETJ shall be appointed. Alternates shall serve on the Board in the absence of a member and while serving shall have and may exercise all of the powers and duties of a regular member. The members residing in the ETJ shall have equal right, privileges, and duties with other members of the Board in all matters pertaining to the UDO both within the corporate limits of the city and within its ETJ.

In accordance with N.C.G.S 160D-307(a), the total membership of the BOA shall be proportional to the population of residents of the city and residents in the ETJ area. At a minimum, the membership of the Board shall be examined following every decennial census, and changes shall be made as necessary to maintain an appropriate balance of city and ETJ Board membership.

Representatives from within the corporate limits shall be appointed by the Brevard City Council. Representatives from the ETJ area shall be appointed by the Transylvania County Board of Commissioners.

The term of office shall be three years, although initial appointments shall be made for one, two and three years so the terms may be staggered. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

Any member of the Board may be removed by the applicable appointing authority for neglect of duty, malfeasance, or conflict of interest.

**Section 2.** *Officer Election.* At its January meeting each year, the Board shall elect a Chair and Vice-Chair for the coming year. The Chair and Vice-Chair shall hold office for one year and shall be eligible for reelection.

**Section 3**. *Chair.* The Chair shall have the following duties:

A. Preside at meetings of the Board;
B. Provide general supervision of the conduct of the affairs of the Board and assigned staff members;
C. Advise the Zoning Administrator of member concerns;
D. Appoint any committees and committee Chairs;
E. Perform such other duties as determined by the Board, the bylaws, policies and procedures adopted by the Board from time to time.

**Section 4.** *Vice-Chair*. The Vice-Chair shall serve as acting Chair in the absence of the Chair and, at such times, shall have the same powers and duties as the Chair.

**Section 5.** *Clerk.* The Board may delegate duties or functions to staff members as needed to carry out its assigned duties. The Brevard Planning Department Secretary Administrative Staff shall serve as the Clerk to the Board of Adjustment and shall keep the minutes and do other tasks as assigned by the Board. The Clerk shall have the following responsibilities:

A. Attend all regular and special meetings and hearings, as well as any committee meetings, and keep a record thereof, which shall be transcribed in the minute book of the Board.
B. Send notices of all meetings of the Board required to be sent by law, under these bylaws, or as directed by the Chair.
C. Have charge of all books, papers and records of the Board and attend to all correspondence of the Board.

If for any reason the Clerk is unable to attend a meeting of the Board or is temporarily unable to otherwise fulfill the responsibilities of that office, the Chair may appoint a substitute on an interim basis.

**Section 6.** *Attendance at Meetings*. Members are expected to attend all meetings of the Board. In accordance with Chapter 15.4 of the UDO, any member who attends less than 75% of the regular and special meetings held by the Board during any one-year period may be removed from the Board by City Council. The Board Clerk shall notify the Chair and proper appointing authority if a member fails to abide by this requirement.

**Section 7.** *Conflict of Interest*. No Board member shall take part in the hearing, consideration, or deliberation of any case or matter before the Board in which the Board member, or any member of the Board member's family, either directly or indirectly, is a

party or has any financial interest per N.C.N.C.G.S 160D-109. A member who wishes to be excused from voting shall so inform the Chair, who shall take a vote of remaining members present on the request.

## Article VI. Meetings

**Section 1.** *Open Meetings.* All meetings shall be open to the public and properly noticed as provided by state law.

**Section 2.** *Regular Meetings*. Regular meetings of the Board shall be held at 3:00 p.m. on the first Tuesday of each month in the Council Chambers of City Hall, except when otherwise decided by the Board, with due notice to the press. If a day scheduled for a regular meeting is a holiday for which the offices of the City of Brevard are closed, the regular meeting shall be held at 3:00 p.m. on a date agreed to by the Board.

**Section 3.** *Special Meetings*. Special meetings of the Board may be called at any time by the Chair provided that at least 48 hours written notice of the time and place of a special meeting be given, to each regular and alternate member of the Board and to the Clerk. In addition, members of the press shall be notified of each meeting in accordance with law. Special meetings may include Board retreats and like meetings held to conduct internal business of the Board.

**Section 4.** *Cancellation of Meetings*. If there is no business for the Board, or if it is apparent a quorum will not be available, the Chair or Clerk may dispense with a regular or special meeting by giving written or oral notice to all members not less than 24 hours prior to the time set for the meeting.

**Section 5.** *Quorum.* A quorum shall consist of four members of the Board (including alternates); provided, however, when hearing an application for a variance, the Board shall, upon the request of the applicant, continue the hearing when less than five members of the Board are present. Notwithstanding the foregoing, a quorum shall not be necessary to do any of the following:

A. Set a date, time, or place for any subsequent meeting;
B. Discuss general internal Board business; provided, however, in no event may the Board without a quorum hear or discuss the merits of any matter brought or to be brought before the Board as part of a hearing.

**Section 6.** *Voting*. Except as otherwise provided in these bylaws, including the policies and procedures attached hereto, a majority of all regular and alternate members eligible to vote shall be necessary to transact any official business. Except as otherwise provided herein, any regular member in attendance at any meeting shall be eligible to vote on all matters brought before the Board at that meeting. If there are more alternates present than regular members missing, the Chair shall select which alternate(s) shall be eligible to vote. The Chair may empower alternates to vote at any portion of a meeting where a regular member is absent or excused, including any hearing.

## Article VII. Agenda

**Section 1.** *Order of Business*. The order of business at regular meetings shall be as follows:

A. Roll call; determination of quorum;
B. Approval of the Agenda;
C. Approval of Minutes of previous meeting;
D. Approval of Orders;
E. Hearing of cases;
F. Other business;
G. Adjourn.

## Article VIII. Rules and Policies

**Section 1.** *Board Policies.* These rules may be amended at any meeting after the meeting at which the amendment is first presented upon an affirmative vote of not fewer than four members of the Board. These rules should be reviewed annually.

A. Policies shall be adopted by a majority vote of the regular and alternate members attending the meeting at which the vote is taken.
B. Policies may be amended or rescinded from time to time by a vote of a majority of members, regular and alternate, of the Board present at any lawful meeting of the Board in a manner consistent with the procedures for amending the bylaws of the Board. Any proposed amendment may be read at any meeting. Final vote thereon, shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.
C. Policies may be suspended temporarily by a majority vote of those present, for reasons declared clearly and specifically and placed upon the minutes.

**Section 2**. *Administration.* The Clerk shall house all official books, papers and records of the Board and shall be responsible for all official correspondence relative to hearings, meetings, resolutions, and decisions of the Board, if any such delegation of duties is not specifically set forth in the Bylaws.

**Section 3.** *Filing appeals, variances, and special use permits.* Notices of appeal shall be filed with the city Clerk. Applications for variances, special use permits, and architectural special use permits shall be filed with the administrator in accordance with Chapter 16.5 of the UDO.

A. Notice of Evidentiary hearings. Notice of evidentiary hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal or application is the subject of the hearing; to the owner of the property that is the subject of hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by these regulations. In the absence of evidence to the contrary, the city may rely on the Transylvania County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time

period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The Board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

B. *Administrative materials*. The administrator or staff to the Board shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the Board prior to the hearing if at the same time they are distributed to the Board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

C. *Docket procedures.* The filing deadline for docketing cases for any Board meeting shall be 5:00 p.m. on the day that is 45 days before the Board meeting; however, no more than three cases shall be docketed for hearing at any regular meeting of the Board. Except as otherwise directed by the Chair, cases shall be docketed in the order in which applications were received. The agenda of cases to be considered at any Board meeting shall be posted in City Hall not less than three days before such meeting.

D*. Hearings*. The Board shall conduct an evidentiary hearing on the appeal or application. It shall determine contested facts and make its decision within 45 days of the conclusion of hearing. The Board's decision shall be based upon competent, material, and substantial evidence in the record of the hearing.

1. Hearings shall be held in the Council Chamber of the City of Brevard or such other place as the Chair Board Clerk from time to time designates.
2. Cases set for hearing on a given day shall be heard in the order in which they appear on the agenda unless the Chair directs otherwise. Once a case is called for hearing by the Chair, the Applicant shall have fifteen (15) minutes to appear and present its case. After the fifteen (15) minute grace period expires, the Board may, in its discretion, take any action allowed by its Bylaws and Policies including deferring action on the case to a subsequent meeting.
3. The Chair shall rule on any matter of law before the Board, including the admissibility of evidence and the competence of any witness. In addition, the Chair may limit testimony by an examination of a witness for reasonable cause. On motion of the Chair or any Board member, the Chair's ruling may be reversed by an affirmative vote of three members of the board present for the entirety of the hearing to that point and eligible

to vote on the application. In these bylaws and policies, a member may be absent from the meeting for a very brief period, as determined by the Chair under all the circumstances, and still be present for "the entirety of the hearing."

4. Rulings of the Chair or the Board on the admissibility of evidence, the competence of witnesses and like matters shall not be strictly bound by the North Carolina Rules of Evidence; however, these rules shall be a guide to rulings on such matters, which rulings shall be made with the intention of preserving both the credibility of the evidence and the public policies of the State of North Carolina with respect to judicial and quasi-judicial hearings.
5. Within a reasonable time before the hearing, any person who has the right to introduce evidence may subpoena witnesses.
6. Each person who testifies at any hearing shall first furnish his name and address to the Board.
7. Each matter in the hearing shall be heard in the following order:
   a) In each case, after testimony is presented, the witness may be cross examined.
   b) The Chair of the Board, or other presiding officer, shall read the notice of the hearing.
   c) The Zoning Administrator, or their designee, shall present a summary of the history of the application and contents of the file. The entire file shall be made part of the record of the case without the necessity of a motion by any person.
   d) The applicant, or the applicant's designee, may make a statement giving reasons for the request.
   e) Other persons in favor of the application shall be heard.
   f) Those persons neither in favor of nor opposed to the application, may be heard. The Zoning Administrator or other representative of the City may present evidence.
   g) Those persons opposed to the application shall be heard.
   h) Parties shall have an opportunity to offer evidence in rebuttal.
   i) The Chair shall close the hearing, after which no testimony shall be allowed unless the Board votes to reopen the hearing.
   j) For good cause the Chair may continue the hearing.
8. Following the hearing, the Board may take any of the following actions:
   a) Approve the application as submitted or modified. The Board may attach reasonable conditions to the approval of any application.
   b) Deny the application.
   c) Close the hearing and defer action on the case to a subsequent meeting, subject to its bylaws and procedures.
9. The following may appear before the Board to present or oppose an application:
   a) Individual persons representing their own interests, if deemed by the Board to have a sufficient interest in the application.

b) Individual persons representing groups of persons of whom they are a member, if the group is deemed by the Board to have a sufficient interest in the application.
c) Individual employees or members of an association, corporation, partnership, or limited liability company, or any officer or director thereof, if the entity so represented is deemed by the Board to have a sufficient interest in the application.
d) Any official representing a governmental body, if the government so represented is deemed by the Board to have a sufficient interest in the application. The City, whose ordinances are necessarily the subject of every application, shall be deemed to have a sufficient interest to appear before the board at every hearing.
e) Persons possessing a current valid license to practice law in North Carolina may represent any of the persons or entities mentioned above.
f) No person, group or entity may be represented by more than one person at any one hearing. This provision is not intended to limit the number of witnesses called.
g) No licensed attorney not appearing on his or her own behalf may both (1) offer testimony and (2) question any witness or argue (or both) at any one hearing.

E. *Burden of persuasion.* In all quasi-judicial hearings, the applicant or appellant, as the case may be, shall have the burden of persuasion.

F. *Rehearings.*

1. An application for a rehearing shall be made in the same manner as provided for an original hearing within a period of 15 days after the date of the Board's decision. In addition, specific information to enable the Board to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented in writing or graphically. A rehearing shall be denied by the Board, if, in its judgment, a prima facie case for such change has not been alleged. A quasi-judicial hearing shall not be required to be held by the Board to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least four-fifths of the Board for a variance and a simple majority for all other matters. In the event that the Board finds that a rehearing is warranted, it shall proceed as in the original hearing except that the application fee shall be waived.

2. Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one year after the date of denial of the original application.

G. *Appeals of the BOA's decisions.* Every quasi-judicial decision of the BOA under this section shall be subject to review by the Superior Court Division of the General

Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. A petition for review shall be filed with the Clerk of superior court within the times specified in N.C.G.S 160D-1405(d).

**Section 4**. *Procedures for special use permits.* Special uses are generally compatible with the land uses permitted by right in a zoning district but require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district. Only those uses enumerated as special uses in a zoning district shall be authorized by the BOA. Applications for special use permits shall be processed, considered, and decided upon using the same procedures and subject to the same requirements as those established in Chapter 16.8.A of the UDO, except as provided below.

A. *Application required.*

1. The applicant shall submit a sketch plan, in accordance with Chapter 17.4 of the UDO.
2. The applicant shall submit a description or narrative stating why the special use is requested.
3. The administrator may request an environmental survey.
4. The administrator may require any other documentation, such as construction documents and building elevations, deemed necessary by the administrator in order to provide a complete and accurate description of the proposed use.

B. *Administrative review procedure.*

1. The applicant shall submit the completed application, pursuant to Chapter 16.5 of the UDO at least 45 days prior to the BOA meeting at which it will first be reviewed. For urgent matters, the administrator may request the BOA to review the application at an earlier meeting if processing time permits.
2. The administrator shall review and comment on the application and supporting materials in accordance with Chapter 16.6 of the UDO.
3. The administrator may require that the application and supporting materials be reviewed by the technical review committee (TRC) in accordance with Chapter 15.1 of the UDO.
4. The administrator may require that the application be circulated to other relevant city, county, and state agencies and officials for comment(s) as to the proposed development's conformance to all applicable standards and requirements and whether approval is recommended.
5. The administrator may require a neighborhood compatibility meeting in order to gather neighborhood feedback, and may require the person proposing the special use permit to report on any communication with neighboring property owners and residents.

6. Once the administrator has reviewed the application and circulated it to other relevant agencies, committees, and officials, the administrator shall transmit the application to the BOA for action.

C. *Hearings.*

1. The evaluation and approval of the special use permit shall be based upon the sworn testimony and evidence presented at the hearing relevant to the following findings of fact:

a. The use meets all requirements and specifications of the ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and

b. The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible to the surrounding area; and

c. The proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.

2. The BOA may require a traffic impact study, an environmental survey or impact statement, and any other additional information or evidence as necessary to properly consider the application.

D. *Permit approval.*

1. In approving an application for a special use permit, the BOA may attach reasonable and appropriate conditions on the location, nature, and extent of the proposed use, which support the required findings of fact. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. These conditions shall not include requirements for which the city does not have the statutory authority to impose or for which the courts have held to be unenforceable if imposed directly the city. Only those conditions mutually approved in writing by the BOA and the applicant shall be incorporated into the permit requirements.

2. The BOA may not require the landowner to waive a vested right as a condition of the special use permit approval. The burden of proof of producing evidence to support these findings and to overcome any challenges that approval of the plan would be contrary to one or more of these findings shall rest entirely with the applicant or landowner.

3. Following the approval of the special use permit by the BOA, the applicant shall submit to the administrator all construction documents and any other documents specified by Chapter 17 of the UDO for project development approval and administration. The administrator shall require evidence of approval of any other permit required by any other federal, state, or local

agency (i.e., NCDOT permits, NCDENR permits, Army Corps of Engineers permits, etc.).

E. *Effect of approval.*

1. If an application is approved, the special use permit that is established and all conditions which may have been attached to the approval are binding on the property. All subsequent development and use of the property must be in accordance with the approved plan and conditions. The approved special use permit shall be recorded with the Transylvania County Register of Deeds and a copy of the recordation be submitted to the city, pursuant to N.C.G.S 160D-705(c).

F. *Modifications.*

1. Modifications to an approved special use permit shall be in accordance with Chapter 16.9 of the UDO.

G. *Revocation of special use permits.*

1. Revocation of special use permits shall be conducted pursuant to Chapter 16.8 of the UDO.

2. In addition to the reasons for revocation outlined in Chapter 16.13 of the UDO, the applicant must secure a valid building permit within a 12-month period from date of approval of the special use permit unless otherwise specified.

**Section 5.** *Procedures for administrative appeals.* Appeals of administrative decisions and development approvals shall follow the same procedures and be subject to the same requirements as those established in Chapter 16.8.A of the UDO except as provided below:

*A. Applicability.* In accordance with N.C.G.S 160D-405, the BOA shall hear and decide appeals of final and binding decisions made by administrative officials charged with enforcement of any development regulations, including administrative modifications and denials of development permits. Any person who has standing under N.C.G.S 160D-405 or the city may appeal a decision to the BOA. The owner of the property or any other party with standing shall have 30 days from receipt of notice, pursuant to Chapter 16.4 of the UDO, within which to file a notice of appeal stating the grounds for appeal.

*B. Stays.*

1. An appeal of a notice of violation or other enforcement order stays enforcement of the decision appealed from and accrual of any fines assessed unless the official who made the decision certifies to the BOA after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulations. In that case, enforcement proceedings shall not be

stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after such a request is filed.

2. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulations shall not stay further review of an application for development approvals to use such property; in these situations, the appellant or city may request and the BOA may grant, a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

C. *Hearings.* The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all powers of the official who made the decision.

D. *Alternative dispute resolution.* The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

**Section 6.** *Procedures for variances.* Except as limited herein, the Board of adjustment shall have the authority to vary provisions of the UDO in accordance with this section. Applications for variances shall follow the same procedures and be subject to the same requirements as those established in Chapter 16.8.A of the UDO except as provided below.

A. *Administrative review procedure:*

1. The applicant shall submit the completed application, pursuant to Chapter 16.5 of the UDO at least 45 days prior to the BOA meeting at which it will first be reviewed. For urgent matters, the administrator may request the BOA to review the application at an earlier meeting if processing time permits.

2. The administrator shall review and comment on the application and supporting materials in accordance with Chapter 16.6.

3. The administrator may require that the application and supporting materials be reviewed by the technical review committee (TRC) in accordance with Chapter 15.1 of the UDO.

4. The administrator may require that the application be circulated to other relevant city, county, and state agencies and officials for comment(s) as to the proposed development's conformance to all applicable standards and requirements and whether approval is recommended.

5. Once the administrator has reviewed the application and circulated it to other relevant agencies, committees, and officials, the administrator shall transmit the application to the BOA for action.

B. *Standards for granting variances.* Except as limited by alternate dispute resolution, when unnecessary hardships would result from carrying out the strict letter of the UDO, the BOA shall vary such regulations upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the regulations. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

4. The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

*C. Guiding principles.* In judging a request for a variance, the BOA shall be guided by the following principles:

1. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;

2. The hardship relates to the applicant's land, rather than personal circumstances;

3. The hardship is unique, or nearly so, rather than one shared by many surrounding properties;

4. The hardship is not the result of the applicant's own actions; and

5. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not constitute an unnecessary hardship.

6. Hardships for the following regulations are shared across many properties, are broadly required for public safety and general welfare, and are unlikely to create a situation warranting a variance:

a. To provide relief from the requirements of Chapter 4.5 of the UDO for visibility at street intersections and driveways. In order to

ensure that the requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured and substantial justice is achieved, the following additional requirements shall apply:

i. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, ordinances.

ii. The variance shall only be issued upon the inclusion of the following determinations:

(1) The variance will not pose a danger to the public safety based on competent evidence. As used in this subsection, competent evidence shall not be deemed to include the opinion testimony of lay witnesses as to vehicular safety resulting from the reduction of visibility of the sight triangle.

(2) The variance is the minimum necessary to afford relief.

b. To provide relief from the surface water protection requirements of Chapter 6.7 of the UDO pertaining to encroachments into surface water protection areas other than that portion lying in the regulatory floodway may be considered. In order to ensure that the requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured and substantial justice is achieved, the following additional requirements shall apply:

i. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, ordinances.

c. Variances shall only be issued upon the following determinations:

i. The granting of the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws ordinances.

ii. The variance is the minimum necessary to afford relief.

iii. Variances shall only be issued prior to floodplain development approval.

D. *Conditions*. The BOA, in granting a variance, may prescribe appropriate conditions and safeguards on any variance, provided that the conditions are reasonably related to the variance. Violation of such conditions and safeguards, when made a part of the

terms under which a variance is granted, shall be deemed a violation of this ordinance and shall be punishable as prescribed in Chapter 18 of the UDO.

E. *Limitations on Board's authority*. The BOA shall not have authority to grant variances in the following situations:

1. To change the permitted uses for any property.
2. To provide relief from the environmental protection requirements in Chapter 6 of the UDO including, but not limited to, steep slope, sedimentation and erosion prevention, stormwater runoff, surface water protection, and flood damage prevention, except those surface water protection areas of Section 6 outlined in subsection C above.
3. To provide relief from the water, sewer, and utility requirements of Chapter 13.4 of the UDO.

F. *Conformance with City Code.* Structures and uses permitted by means of a variance from a provision of this ordinance shall otherwise conform to all other applicable provisions of this ordinance and the Brevard City Code of Ordinances.

G. *Recording.* The approved variance shall be recorded with the Transylvania County Register of Deeds and a copy of the recordation be submitted to the city, pursuant to N.C.G.S 160D-705(c).

Adopted by vote of the Board this the 1st day of October, 2024.

_____
Peter Offen
Board Chair

Attested to:

_____
Janice Pinson
Board Clerk