UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 2. DISTRICTS AND GENERAL PROVISIONS

2.2. Use categories and tables of permitted uses.

A. All uses permitted in this Code have been divided into 10 general categories as detailed below and are generally defined as follows:

1. *Residential:* Premises available for long-term human habitation by means of ownership and rental, but excluding short-term leasing or rental of less than a month's duration.
2. *Lodging:* Premises available for short-term human habitation for a fee, including daily and weekly rental.
3. *Commercial:* Premises available for the transaction of general business, the provision of services, the commercial sale of merchandise, and/or food and drink consumption, but excluding manufacturing.
4. *Civic/institutional:* Premises available for organizations dedicated to religion, education, government, social service, health care, and other similar functions.
5. *Entertainment/recreation:* Premises for the gathering of people for purposes such as arts and culture, amusement, and recreation.
6. *Agriculture:* Premises primarily used to grow crops, produce, flowers, etc., raise animals, harvest timber, or other similar functions.
7. *Manufacturing/wholesale/storage:* Premises available for the creation, assemblage, storage, and repair of items including their wholesale or retail sale.
8. *Infrastructure:* Uses and structures dedicated to transportation, communication, information, and utilities.
9. *Accessory*: Uses of land or of a building or structure or portion thereof, which is incidental and subordinate to a principal use on the same lot.
10. *Temporary:* Uses of land which, having met certain requirements and conditions, that may be permitted for a period of limited duration, and which may utilize "temporary structures" for the duration of the event.

B. *Interpretation of use matrices.*

1. The use matrix is not intended to be a comprehensive list of all possible uses, but rather a list of more common uses likely to be proposed within the city.
2. In the event that a particular use is not listed in the use matrix, and such use is not listed as a prohibited use and is not otherwise prohibited by law, the administrator shall determine whether a materially similar use exists in this chapter.
    a. Should the administrator determine that a materially similar use does exist, the regulations governing that use shall apply to the particular use not listed and the administrator's decision shall be recorded in writing pursuant to G.S. 160D-403.

b. Should the administrator determine that a materially similar use does not exist, this chapter may be amended to establish a specific listing for the use in question in accordance with the provisions set forth for text amendments in CHAPTER 16.

3. When determining whether a proposed use is materially similar to a listed use, the administrator may consider the following criteria:
   a. The actual or projected characteristics of the proposed use;
   b. The relative amount of site area or floor area and equipment devoted to the proposed use;
   c. Relative amounts of sales;
   d. The customer type;
   e. The relative number of employees;
   f. Hours of operation;
   g. Amount and frequency of deliveries;
   h. Building and site arrangement;
   i. Types of vehicles used and their parking demands;
   j. The number of vehicle trips generated;
   k. Signs;
   l. How the proposed use is advertised;
   m. The likely impact on surrounding properties; and
   n. Whether the activity is likely to be found independent of the other activities on the site.
4. Prohibited uses within the applicable zoning district or uses for which the administrator determines there is not a materially similar use in the matrix may be permitted through the application of a conditional zoning district in accordance with the provisions set forth in CHAPTER 16.

C. *Use matrix.* The following matrix sets forth the manner by which certain uses may be permitted within the various districts set forth above.

1. "P" denotes those uses that are permitted "by right."
2. "—" denotes those uses that are not permitted within the given district.
3. "SUP" denotes those uses that are permitted upon issuance of a special use permit in accordance with the provisions set forth in CHAPTER 16. Additional standards for certain uses requiring a special use permit are set forth in CHAPTER 3 of this ordinance.
4. "PS" denotes those uses that are permitted with additional standards, which are set forth in CHAPTER 3.
5. "MHD" denotes those uses that are permitted within a Manufactured Housing Overlay District.

TABLE 2.2-A: LAND USE MATRIX

CATEGORY	SECTION (a)	USE	ZONING DISTRICTS							
			GR	RMX	NMX	PGX	DMX	CMX	IC	GI
Residential										
Household Living	**3.5.1**	Dwelling—Single-Family	P	P	—	—	—	—	P	—
		Dwelling—Duplex	P	P	P	P	—	—	P	—

TABLE 2.2-A: LAND USE MATRIX									
CATEGORY	SECTION (a)	USE	ZONING DISTRICTS						
			GR	RMX	NMX	PGX	DMX	CMX	IC	GI
		Dwelling—Multifamily 3—4 units/bldg.	P	P	P	P	P	P	P	—
		Dwelling—Multifamily more than 4 units/bldg.	—	P	P	P	P	P	P	—
		Dwelling—Townhome	P	P	P	P	P	P	P	—
		Manufactured Home	MHD	MHD	MHD	MHD	MHD	MHD	MHD	—
		Live-Work Units	PS	PS	PS	PS	PS	—	PS	—
		Mixed-Use Residential Unit	—	—	PS	PS	PS	PS	PS	—
Group Living	**3.5.2**	Family Care Home	P	P	P	P	P	P	P	—
		Housing Services for the Elderly	SUP	P	P	P	P	P	P	—
		Rooming or Boarding House	P	P	P	—	P	P	P	—
Social Services	**3.5.3**	Group Care Facility	P	P	P	—	P	P	P	—
		Shelter	SUP	P	P	—	P	P	P	—
Lodging										
Overnight Accommodations	**3.6.1**	All overnight accommodations, except as listed below	—	—	—	P	P	P	P	—
		Bed and Breakfast	PS	PS	PS	PS	PS	PS	PS	—
		Short-Term Rental (STR)	—	PS	PS	PS	PS	PS	PS	—
Camping	**3.6.2**	Campground/Recreational Vehicle Park	SUP	SUP	SUP	SUP	—	—	SUP	—
		Rental Cottage/Cabins	PS	PS	PS	PS	—	—	—	—
		Seasonal Camp	PS	—	—	PS	—	—	PS	—
Commercial										
Eating and Drinking Establishments	**3.7.1**	All restaurants and other eating and drinking establishments except as listed below	—	—	P	P	P	P	P	—
		Bar/Night Club	—	—	PS	PS	P	P	—	—
Personal Services	**3.7.2**	All personal services, except as listed below	—	P	P	P	P	P	P	—
		Day Care Center	PS	PS	PS	PS	PS	PS	PS	PS
Professional Services	**3.7.3**	All professional services, except as listed below	SUP	P	P	P	P	P	P	P
		Adult Establishment	—	—	—	—	—	—	—	SUP

TABLE 2.2-A: LAND USE MATRIX									
CATEGORY	SECTION (a)	USE	ZONING DISTRICTS						
			GR	RMX	NMX	PGX	DMX	CMX	IC	GI
		Banks, Credit Unions, Financial Services, and ATMs	—	—	P	P	P	P	P	P
		Funeral Homes and Services	—	—	P	—	P	P	P	—
		Human Crematories and Crematoriums	—	—	PS	—	PS	PS	PS	PS
		Indoor Animal Services	—	—	P	P	P	P	P	P
		Kennels and Outdoor Animal Services	—	—	SUP	—	—	PS	—	PS
		Landscaping and Contractor Services	SUP	SUP	SUP	—	—	—	—	P
		Vehicle Services—Major Repair/Body Work	—	—	—	—	—	PS	—	PS
		Vehicle Services—Minor Maintenance/Repair	—	—	SUP	—	SUP	PS	PS	PS
Retail	**3.7.4**	All retail and sales establishments except as listed below	—	—	P	P	P	P	P	—
		Alcoholic Beverage Sales Store	—	—	SUP	P	P	P	—	—
		Auto/Mechanical Parts Sales	—	—	—	P	P	P	—	P
		Flea market	—	SUP	SUP	SUP	SUP	SUP	—	—
		Gas Station	—	—	SUP	PS	SUP	PS	—	PS
		Gunsmiths and Weapon Sales	—	—	SUP	SUP	PS	PS	—	PS
Civic/Institutional										
Educational	**3.8.1**	All educational uses except as listed below	SUP	P	P	P	P	P	P	—
		Colleges/Universities	—	—	SUP	SUP	P	P	P	—
		Schools—Vocational/Technical	—	SUP	P	P	P	P	P	P
Government	**3.8.2**	All government uses, except as listed below	—	P	P	P	P	P	P	P
		Correctional Facilities	—	—	SUP	—	SUP	P	P	P
		Public Safety Station	SUP	SUP	P	P	P	P	P	P

TABLE 2.2-A: LAND USE MATRIX									
CATEGORY	SECTION (a)	USE	ZONING DISTRICTS						
			GR	RMX	NMX	PGX	DMX	CMX	IC	GI
Medical	**3.8.3**	All medical offices and facilities except as listed below	—	P	P	P	P	P	P	—
		Hospital	—	—	—	—	—	P	P	—
Places of Worship	**3.8.4**	All religious institutions or places of worship	SUP	P	P	—	P	P	P	—
		Cemeteries	PS	PS	PS	—	PS	PS	PS	—
Entertainment/Recreation										
Indoor Recreation	**3.9.1**	All indoor recreation facilities, except as listed below	SUP	P	P	P	P	P	P	P
		Cultural or Community Facility	SUP	P	P	P	P	P	P	—
		Indoor Amusements	—	—	SUP	P	P	P	SUP	P
		Indoor Firing Range	—	—	—	SUP	—	SUP	SUP	SUP
		Live Performance Theater	—	SUP	SUP	P	P	P	P	—
		Movie Theater	—	—	—	P	P	P	—	—
		Special Event Venue	SUP	SUP	PS	PS	PS	PS	PS	—
		Studios, Galleries and Workshops - High Impact	—	—	SUP	SUP	SUP	P	P	P
		Studios, Galleries and Workshops - Low Impact	—	P	P	P	P	P	P	—
Outdoor Recreation	**3.9.2**	All outdoor recreation facilities, except as listed below	SUP	P	P	P	P	P	P	P
		Non-Residential Swimming Pool or Pond	—	SUP	SUP	SUP	PS	PS	PS	—
		Outdoor Amusements	—	—	SUP	P	SUP	P	—	P
		Outdoor Firing Range	—	—	—	—	—	—	—	SUP
		Parks, Open Space, and Greenways	P	P	P	P	P	P	P	P
Agriculture										
Agriculture	**3.10.1**	All agricultural uses	PS	—	—	—	—	PS	PS	PS
Manufacturing/Wholesale/Storage										
Light Industrial and Manufacturing	**3.11.1**	All light industrial and manufacturing activities, except as listed below	—	—	—	—	—	SUP	—	P

TABLE 2.2-A: LAND USE MATRIX									
CATEGORY	SECTION (a)	USE	ZONING DISTRICTS						
			GR	RMX	NMX	PGX	DMX	CMX	IC	GI
		Brewery, Distillery, Winery, Cidery - High Impact	—	—	—	SUP	—	P	—	P
		Brewery, Distillery, Winery, Cidery - Low Impact	—	—	SUP	PS	PS	PS	—	PS
		Laboratory	—	—	—	—	—	P	P	P
		Laundry, Dry Cleaning Plant	—	—	—	—	—	SUP	P	P
		Manufacturing Research and Development	—	—	—	P	—	P	P	P
		Media Production	—	—	P	P	P	P	P	P
Heavy Manufacturing	**3.11.2**	All heavy manufacturing activities, except as listed below	—	—	—	—	—	—	—	SUP
		Metal Products Fabrication, Machine or Welding Shop	—	—	SUP	SUP	SUP	P	—	P
Storage and Disposal	**3.11.3**	All storage and disposal uses, except as listed below	—	—	—	—	—	SUP	—	P
		Chemical Storage Facility	—	—	—	—	—	—	—	P
		Solid Waste Disposal Facilities	—	—	—	—	—	—	—	PS
		Junkyard / Salvage Yard	—	—	—	—	—	—	—	SUP
Wholesaling and Distribution	**3.11.4**	All wholesaling and distribution activities, except as listed below	—	—	—	—	—	P	—	P
		Equipment Rental	—	—	—	—	—	P	—	P
		Indoor Vehicle/Heavy Equipment Sales	—	—	PS	—	PS	PS	—	PS
		Outdoor Vehicle/Heavy Equipment Sales	—	—	—	—	—	PS	—	PS
Extractive Industries	**3.11.5**	All extractive industries, except as listed below	—	—	—	—	—	—	—	P
		Extractive industries involving blasting	—	—	—	—	—	—	—	SUP
Infrastructure										
Utilities	**3.12.1**	Utilities—Class 1	P	P	P	P	P	P	P	P
		Utilities—Class 2	P	P	P	P	P	P	P	P

TABLE 2.2-A: LAND USE MATRIX										
CATEGORY	SECTION (a)	USE	ZONING DISTRICTS							
			GR	RMX	NMX	PGX	DMX	CMX	IC	GI
		Utilities—Class 3	—	—	—	—	—	—	—	P
Telecommunications	**3.12.2**	All wireless telecommunication facilities, except as listed below	PS	PS	PS	PS	PS	PS	PS	PS
		Wireless Telecommunication Facility—Tower	—	—	—	—	—	SUP	—	PS
Transportation	**3.12.3**	Aviation Facilities	—	—	—	—	—	—	—	SUP
		Parking Lot	SUP	PS	PS	PS	PS	PS	PS	PS
		Passenger Vehicle Terminals	—	—	P	P	P	P	—	P
Accessory										
Residential Accessory	**3.13.1**	All residential accessory uses, except as listed below	PS	PS	PS	PS	PS	PS	PS	PS
		Day Care Home	PS	PS	PS	PS	PS	PS	PS	—
		Dwelling—Accessory Unit (ADU)	PS	PS	PS	PS	PS	PS	PS	—
		Home Occupation	PS	PS	PS	PS	PS	PS	PS	—
		Keeping Bees	PS	PS	PS	PS	PS	PS	PS	PS
		Keeping Domestic Fowl (Chickens)	PS	PS	PS	PS	PS	PS	PS	PS
		Swimming Pool or Pond	PS	PS	PS	PS	PS	PS	PS	—
Non-Residential Accessory	**3.13.2**	All non-residential accessory uses, except as listed below	—	PS	PS	PS	PS	PS	PS	PS
		Accessory Retail	—	—	PS	PS	PS	PS	PS	PS
		Drive-Thrus	—	—	SUP	SUP	—	PS	—	—
		Mobile Food Vendor Site	—	SUP	PS	PS	PS	PS	PS	PS
		Recycling - Small Collection	—	—	—	—	—	SUP	SUP	P
		Rooftop Amenity Space	—	—	SUP	PS	PS	PS	PS	PS
		Taproom / Tasting Room	—	—	SUP	P	P	P	—	P
Temporary										
Events and Structures	**3.14.1**	All temporary events and structures, except as listed below	PS	PS	PS	PS	PS	PS	PS	PS

TABLE 2.2-A: LAND USE MATRIX									
CATEGORY	SECTION (a)	USE	ZONING DISTRICTS						
			GR	RMX	NMX	PGX	DMX	CMX	IC	GI
		Carnivals or Circus	—	—	—	—	—	PS	PS	PS
		Farmers Market	—	—	PS	PS	PS	PS	PS	—
Vendors	**3.14.2**	All temporary vendors, except as listed below	—	—	PS	PS	PS	PS	—	—
		Vending Pushcarts	—	—	—	—	PS	—	—	—
(a) This column refers to the section of this ordinance that contains the use definition and additional standards.										

2.5. Accessory structures.

A. ***Principal buildings required.*** The construction of an accessory structure or building is not permitted unless a principal building is located on the lot, except as set forth below or as otherwise provided in this ordinance. Accessory structures shall be incidental and subordinate to the principal structure(s). Accessory and principal buildings may be constructed concurrently.

1. Structures larger than 25% of the ground floor area of the principal structure are considered additional principal structures and shall be considered as a group development.

~~1.~~2. Accessory structures utilized for agricultural purposes in association with agricultural primary uses may be permitted in the absence of a principal structure.

~~2.~~3. Garden sheds may be permitted in the absence of a principal structure subject to the following requirements:

a. Garden sheds shall be no larger than 120 square feet in size;

b. Garden sheds shall be single-story;

c. Garden shed shall not be connected to water, sewer, or electricity; and

d. Garden sheds shall be utilized only for the storage of lawn equipment, garden utensils, and other implements necessary for the maintenance of gardens and grounds.

B. ***Dimensional requirements.***

1. Accessory structures shall meet the yard and setback requirements of Section 2.7.
2. Accessory structures shall not exceed two stories in height.

C. ***Accessory structures on lots with single-family dwellings and duplexes.***

1. Maximum number permitted. No more than two accessory structures shall be permitted per lot. Beehives and chicken coops shall not count toward the maximum number of accessory structures on a lot.
2. Accessory structures shall be located only in the side or rear yards, except for gazebos, private garages, and carports. Such structures shall comply with the front yard setbacks for primary structures in Section 2.7.2. The administrator shall make a determination as to the side or rear yard for accessory structures proposed to be located on lots fronting more than one street.
3. Under no circumstances shall the use of a shipping container be permitted for the purpose of providing permanent storage as an accessory use.

D. ***Accessory structures on lots with non-residential uses, multi-family uses, and group developments.***

1. Maximum number permitted. No more than two accessory structures shall be permitted per lot, except in General Industrial (GI). In all other zoning districts, additional structures shall be considered as principal structures in a group development.
2. Accessory structures shall be located only in side or rear yards except for bona-fide agricultural enterprises.
3. Accessory structures shall comply with the applicable landscaping requirements of CHAPTER 8 of this ordinance.
4. Accessory structures shall ~~be clad in materials similar in appearance to the principal structure in accordance with CHAPTER 5, except when such material is non-conforming with this ordinance.~~comply with the architectural standards of Section 5.7.14 and all other applicable sections of CHAPTER 5.

E. ***Exempt structures.***

1. Structures including but not limited to mailboxes, newspaper boxes, birdhouses, flagpoles, pump covers, garden boxes and planters, doghouses, and any other similar small or ornamental structures shall not be considered principal or accessory structures and shall not require a permit.

2.7. Yards and setbacks.

2.7.9. Encroachments.

Certain structural and architectural features are permitted to encroach into setback areas and/or into rights-of-way. Unless explicitly allowed herein, no other encroachments shall be permitted to encroach into a public or private right-of-way or easement, regulatory floodplain, or surface water protection area. The following standards shall be established for encroachments:

A. ***Awnings or canopies:*** Awnings or canopies on structures ~~within commercial and mixed-use zoning districts~~ may encroach upon the front setback area and rights-of-way provided that the following conditions are met:

1. Awnings or canopies shall be supported by means of a frame attached directly to the structure receiving beneficial use of the awning or canopy. In no case shall awnings be supported by a frame attached to a sidewalk or other public right-of-way.
2. Shopfront awnings or canopies projecting the width of the sidewalk pedestrian zone must be attached to the building at 14 feet above the grade of the sidewalk. Awnings or canopies may only project two-thirds the width of the sidewalk pedestrian zone if attached lower than 14 feet above the grade of the sidewalk.
3. Awnings or canopies shall not project into the furniture/landscape zone of any sidewalk, nor over a street or adjacent on-street parking, and, in no event, shall they project further than seven feet from the face of the building.
4. The lowest point of any awning or canopy shall be at least nine feet above the grade of the sidewalk.
5. ~~All awnings in other zoning districts shall be considered a part of the structure for purposes of measuring and complying with area and setback regulations.~~

B. ***Handicapped ramps:*** The administrator may approve the installation of handicapped landings, ramps, and similar structures as additions to existing structures, even though such additions do not meet the minimum setback requirements of this ordinance, provided such additions meet the following criteria:

1. They are intended for the sole purpose of providing handicapped access to an existing structure.

2. They fully conform to North Carolina Building Code and are designed to minimize setback deviations to the maximum extent possible.
3. Prior to the issuance of any permit the administrator shall inspect the site of the proposed addition and may impose such conditions as are necessary to minimize any conflicts that may arise from the construction thereof, including the encroachment of such additions upon setback lines.
4. No such addition shall encroach into a public or private right-of-way or easement, regulatory floodway, or surface water protection area.

C. ***Roof overhangs and gutters:***

1. Roof overhangs and gutters may encroach into front, rear, or side yard setbacks by up to two feet.

D. ***Uncovered porches, stoops, and stairs:***

1. Uncovered porches, stoops, and stairs, intended primarily for means of ingress and egress, nominally in line with the first floor above grade or any floor below that, may encroach into front, or rear yard setbacks up to one-third of the required setback dimension up to a height of four feet above the elevation of the floor being served. The area of each porch not including landings between runs of stairs, shall be no greater than fifty square feet.

E. ***Balconies and bay windows:***

1. Covered or uncovered balconies and bay windows may encroach into front or rear setbacks up to three feet into the required setback dimension. Balconies or bay windows may not exceed ten feet in width. Cumulative total of balconies and bay windows projecting into the setback shall not exceed 33 percent of the total width of each elevation.

F. ***Chimneys****:*

1. Chimneys may encroach into front, rear, or side setbacks by up to two feet. Width of the chimney encroachment shall not exceed that necessary for the fireplace, flue, and the typical building walls enclosing the fireplace or flue.

~~**G.** No such eve, bay window, balcony, stairs, stoop, porch, chimney shall encroach into a public or private right-of-way or easement, regulatory floodplain, or surface water protection area.~~

CHAPTER 3. USE DEFINITIONS AND STANDARDS

3.12. Infrastructure uses.

3.12.3. Transportation use category.

A. ***Aviation facilities.***

1. Definition: Facilities for the takeoff and landing of planes, helicopters, and other types of manned aircrafts, such as ultralight vehicles and gliders.

~~**A.**~~**B.** ***Parking lot.***

1. Definition: Any public or private open area or facility used for parking automobiles and other vehicles as a principal use. The lot or facility may serve as remote parking for a principal use on a separate lot or as a principal use on the site. A fee may or may not be charged.

2. Additional Standards:
    a. All parking lots shall adhere to the applicable standards set forth in this ordinance, including CHAPTER 10 – Parking Standards and CHAPTER 8 – Tree Protection and Landscaping.
    b. Parking Lots as a Principal Use in General Residential zoning district
        i. New parking lots shall be surrounded on all sides by a "Type A" buffer yard, as described in CHAPTER 8 of this ordinance, which is primarily comprised of evergreen vegetation. Parking lot shall comply with all other applicable landscaping requirements of CHAPTER 8 of this ordinance. Expansions to existing parking lots shall comply with this requirement to maximum extent practical given site conditions.
        ii. All new parking lot lighting shall be integrated into landscaping wherever possible. Low-level lights such as bollard lights (waist-high, heavy-duty fixture posts), mushroom or step-lights (ground-level fixtures that are built in to the sides or surfaces of walkways and steps) shall be utilized in lieu of traditional pole-mounted parking lot lighting. Parking lot lighting shall comply with all applicable other lighting requirements of CHAPTER 11.
        iii. New parking lots shall be constructed with stormwater control measures designed to control the stormwater run-off generated by a 25-year, 24-hour rain event (9.2 inches), and shall otherwise comply with Section 6.6.
        iv. The administrator may impose any other condition necessary to protect the residential character of the neighborhood in which the parking lot is located.

~~B.~~C. ***Passenger vehicle terminal.***

1. Definition: Facilities for trains, buses, taxis or limo services. Passenger vehicle terminal includes, without limitation, the following uses:
    a. bus passenger terminal,
    b. multi-modal facility,
    c. railroad station, and
    d. taxi dispatch center.

3.13. Accessory uses.

3.13.1. Residential accessory use category.

A. ***Residential accessory use.***

1. Definition: A use of land or of a building or structure or portion thereof, which is incidental and subordinate to a residential or lodging principal use on the same lot.
2. Additional Standards:
    a. Accessory uses shall be clearly incidental to the residential or lodging principal use and shall not change the essential character of the dwelling or the neighborhood.
    b. Accessory uses shall adhere to the standards outlined in Section 2.5 and all other applicable sections.

B. ***Day care home.***

1. Definition: Supervision or care provided on a regular basis, as an accessory use within a principal residential dwelling unit, by a resident of the dwelling for children or adults who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adult.
2. Additional Standards:
   a. Child day care homes shall comply with the definitions and standards for family child care homes set forth in N.C.G.S. §110 (or any successors thereto).
   b. Adult day care homes shall comply with the definitions and standards for adult day care programs as set forth in N.C.G.S. §131-D (or any successors thereto).
   c. Child day care homes shall provide ample open area in the form of a rear yard with a minimum of 2,500 square feet suitable for children's play. Child day care homes located adjacent to parks are exempt from this provision.
   d. Client drop-off and pick-up areas shall be located on the site so as not to obstruct traffic flow on adjacent public streets.
   e. All day care establishments shall at all times be properly licensed by the State of North Carolina and all other appropriate governmental entities.
   f. All equipment shall be stored in the side or rear yard.
   g. No structural or decorative alteration which would alter the single-family character of an existing or proposed residential structure or which would be incompatible with surrounding residences shall be permitted.

C. ***Dwelling— accessory unit (ADU).***

1. Definition: A dwelling unit that exists either as part of a principal dwelling or as an accessory building and is secondary and incidental to the use of the property as single-family or duplex residential.
2. Additional Standards:
   a. Accessory dwelling units within residentially-zoned, single-family and duplex lots shall be encouraged and designed to meet housing needs. ADUs shall be secondary and subordinate in size to the primary living quarters.
   b. ADUs may be created as an independent structure (detached), as an addition to an existing primary structure (attached), conversion of existing space, such as a basement with an exterior entrance, or as a second story within detached garages.
      i. When built as a second story of a detached garage, the ground floor area of the garage shall not be considered part of the total square footage of the ADU.
   c. Structures for ADUs shall comply with the provisions of Section 2.5, except as provided below.
      i. Not more than one ADU is permitted on any lot.
      ii. An ADU shall be located in the side or rear yard unless an existing structure is being converted to an ADU.
      iii. The total area of an ADU shall not exceed 1,200 square feet or two-thirds of the primary structure, whichever is the lesser. The ground floor area of a detached garage shall not be considered as part of the total square footage of any ADU that is built as the second story of a detached garage; provided, however, such ground floor garage area shall not be subsequently converted to dwelling space.
   d. ADUs shall not be considered additional dwelling units for the purpose of determining maximum density or other dimensional requirements as set forth in CHAPTER 2 of this ordinance.

e. ADUs shall be constructed according to North Carolina Building Code.

f. The administrator may impose reasonable conditions regarding the height, bulk, orientation, or location of the structure in order to protect the privacy of existing dwelling units on adjacent parcels in accordance with G.S. 160D-702(b).

D. *Home occupation.*

1. Definition: An occupation or profession conducted within a dwelling unit by a residing family member that is incidental to the primary use of the dwelling as a residence. ~~Home occupations are small and quiet non-retail businesses which generally cannot be discerned from the frontage, are seldom visited by clients, require little parking, little or no signage, have only one or two employees and provide services such as professional services, music instruction, and hair styling.~~

2. Additional Standards:

a. Home occupations are not required to secure a zoning permit but are subject to the following requirements.

~~a.~~b. The home occupation shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling ~~or the neighborhood~~.

c. The ~~Home~~ home occupation and all related activities shall be confined to the interior of an approved structure.

i. A home occupation housed within a dwelling shall occupy no more than 25 percent of the total floor area of the dwelling.

ii. A home occupation conducted in an accessory structure shall be housed only in a garage or other accessory structure that meets the requirements of this ordinance.

d. There shall be no visible evidence that the property is used in any way other than for a dwelling, including but not limited to the following.

i. *Signage and displays*: There shall be no business signage or visible display of goods, products, or services.

ii. *Vehicles*: The number of vehicles used by clients or business-related visitors shall be limited to two at any given time.

iii. *Traffic*: The home occupation cannot create greater vehicular or pedestrian traffic than is average for a residential area. The home occupation and any related activity shall not create traffic hazards or nuisances in public rights-of-way.

~~i.~~iv. *Noise and other nuisances:* There shall be no perceptible noise, odor, smoke, electrical interference, vibration or other nuisance emanating from the structure where the home occupation is located in excess of that normally associated with residential use.

~~b.~~e. ~~The use shall employ no more than two persons who are not residents of the dwelling.~~Only residents of the dwelling may be engaged in work activities at the residence, If the home occupation has other employees, those employees may not come to the residence for work purposes, including pick-up of materials, vehicles, assignments, and/or other similar purposes.

~~c. There shall be no business signage or visible display of stock in trade which is sold on the premises.~~

~~d. There shall be no outdoor storage or visible evidence of equipment or materials used in the home occupation, excepting equipment or materials of a type and quantity that could reasonably be associated with the principal residential use.~~

~~e. The existence and operation of the home occupation shall not be visible and/or audible to neighboring residents from a street.~~

~~f. Only non-commercial vehicles are permitted in connection with the conduct of the home occupation.~~

~~g. Home occupations utilizing or proposing to utilize public water and sanitary sewer services shall be subject to all applicable water and sewer system development fees as per Brevard City Code, CHAPTER 70 Utilities.~~

~~h.~~f. All home occupations are subject to all other applicable regulations, including but not limited to the Brevard City Code, North Carolina Building Code, Transylvania County Health Department, and any other federal, state or local regulations governing the use. ~~Home occupations shall comply with all applicable requirements of any federal, state, or local agency with jurisdiction over the proposed use. The applicant shall provide the administrator with evidence of approval by any relevant agency.~~

~~i. Responsibilities of the administrator and applicant(s):~~

~~i. The administrator may impose any necessary condition upon the operation of a home occupation, shall monitor home occupations and conduct site inspections to ensure compliance with this ordinance and any condition of approval, and shall revoke any permit for the operation of a home occupation and cause the use to be terminated in accordance with the procedures set forth in CHAPTER 18 of this ordinance upon a determination that such use is in violation of this ordinance or any condition of approval.~~

~~ii. The administrator shall have broad authority to deny any application for home occupation if in the opinion of the administrator, the proposed use would not be in keeping with the spirit and intent of this section. The burden of proving that a proposed home occupation would be in keeping with the spirit and intent of, and satisfy all requirements of this section as well as any condition of the administrator, shall lie with the applicant.~~

~~iii. In reviewing any application for home occupation and in the monitoring and enforcement of any approved permit for home occupation the administrator shall strongly consider the expectation that the residential use and character of each residentially zoned neighborhood be preserved and shall take into consideration these unique characteristics of any proposed use and its relationship to the site and surrounding properties in considering whether such use would be suitable as a home occupation.~~

~~j. Uses permitted as home occupations:~~

~~i. Examples of uses that may be permitted as home occupations include but are not limited to professional services such as those provided by an architect, engineer or accountant; art, music, or dance instruction; hair styling; bicycle repair or vehicle cleaning; and may include other uses defined herein or listed upon the use matrix in Section 2.2 of this ordinance when such uses can be performed in a manner that is strictly in keeping with the spirit and intent of, and satisfy all requirements of, this section.~~

~~ii. Uses involving the fabrication of products may be permitted provided, however, the home occupation shall not utilize mechanical, electrical, or other equipment, materials or processes, or create any by-product or effect, which produces noise, electrical or magnetic interference, vibration, heat, glare, odor, dust, pollution or other nuisances outside the dwelling or accessory structure housing the home occupation. Examples of such uses include but are not limited to baking, candle or soap making, fly-tying, woodworking, engraving, gunsmithing and or other similar small scale craft production or fabrication. This provision shall not be construed to authorize industrial uses within the GR or RMX zoning districts.~~

~~iii. Home occupation shall not include any use that is primarily retail in nature. It is the intention of his section that goods and merchandise produced as part of any home occupation be sold off-site; any on-site retail activity must be incidental to the purpose of this home occupation.~~

~~k. Duration of permit:~~

~~i. Home occupation permits are temporary, and shall not establish a vested right to renewal. Home occupation permits shall be valid for a period of one year from the date upon which approval is granted.~~

~~ii. Applicants may apply for renewal of home occupation permits. Applications for renewal shall include a written report demonstrating compliance with the previously approved permit.~~

~~iii. In approving renewal applications, the administrator may modify prior conditions of approval and may impose any necessary, additional conditions. The administrator may deny a request for permit renewal and require the applicant to terminate the home occupation or relocate the home occupation to an appropriate commercial or mixed-use zoning district upon determination that the home occupation operated in violation of a requirement of this section or other applicable condition or requirement; or, that the home occupation has generated unanticipated effects that are detrimental to the residential character of the neighborhood in which the home occupation is located.~~

Commentary: If a home occupation is found to violate any provisions of this section, the owner shall amend their home occupation to conform with the requirements or apply for a change of use permit.

E. ***Keeping bees.***

1. Definition: The keeping of bees as an accessory use. This definition shall include any permanent or temporary structures related to beekeeping.
2. Additional Standards:
   a. Keeping bees within the City of Brevard's corporate limits shall be permitted following the standards set forth in the Brevard City Code, Section 14-9, Keeping bees.
   b. In accordance with NCGS §106-645, the keeping of bees within the City's extra-territorial jurisdiction is not subject to the regulations of this ordinance.
   c. Movable frame hives may be permitted upon parcels of land where no principal structure is present.

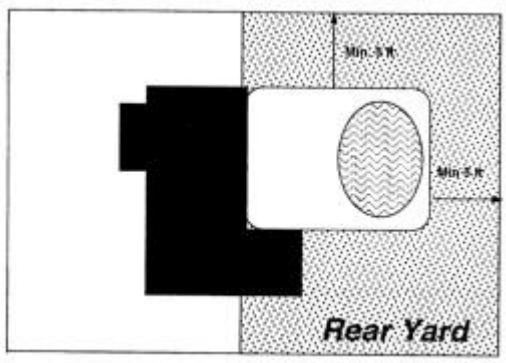
F. ***Keeping domestic fowl (chickens).***

1. Definition: The keeping of geese, ducks, chickens or other domestic fowl as an accessory use. This definition shall include any permanent or temporary structures related to domestic fowl.
2. Additional Standards:
   a. Keeping domestic fowl shall be permitted following the standards set forth in the Brevard City Code, Section 14-6, Keeping fowl.
   b. Chicken coops and chicken runs, as defined in Section ~~14-1~~ 1-2 of Brevard City Code, may be permitted upon parcels of land where no principal structure is present, subject to the requirements set forth in Brevard City Code, CHAPTER 14, Animals and Fowl; Article I, Generally; ~~Sections 14-1, Definitions, and~~ 14-6, Keeping fowl.

G. ***Swimming Pool or Pond.***

1. Definition: A structure, in-ground or above ground, that contains water over 18 inches deep and is typically intended for swimming or recreational bathing. The definition of a pool includes all structures, walks or patio areas of cement, stone, or wood, at or above grade, built for, and used in conjunction with the pool.
2. Additional Standards:
   a. All pools permitted as residential accessory uses and structures, whether above-ground or in-ground, shall be built only in side or rear yards.

FIGURE 3.13A: SWIMMING POOL OR POND PLACEMENT



   b. Pools and related structures, walks and patio areas shall be set back a minimum of five feet from all side and rear property lines. Patio areas at grade have no setback requirements from rear and side lot lines.
   c. All pools shall be designed to prevent unsupervised access by children. Pools shall be enclosed within a secured structure or by an unclimbable privacy fence (with lockable self-latching gate) with a minimum height of four feet and a maximum of eight.

3.13.2. Non-residential accessory use category.

A. ***Non-residential accessory use.***

1. Definition: A use of land or of a building or structure or portion thereof, which is incidental and subordinate to a non-residential principal use on the same lot.
2. Additional Standards:
   a. Accessory uses shall adhere to the standards outlined in Section 2.5 and all other applicable sections.

B. ***Accessory retail.***

1. Definition: The on-premises, retail sale of products directly to customers, where the retail use is incidental to a primary use conducted upon the same premises. Examples include but are not limited to the following: a furniture manufacturer who operates a show floor for the display and sales of furniture produced by the manufacturer or a bicycle manufacturer who operates a floor for the display and sales of bicycles produced by the manufacturer.
2. Additional Standards:
   a. Accessory retail uses shall be directly related to and accessory to a conforming, principal use.

b. Products offered for sale within accessory retail uses shall be products which are produced or processed by the associated principal use, or which are directly related to, and offered in support of, products which are produced or processed by the associated principal use. For example, a manufacturer of bicycles may operate an accessory retail use wherein bicycles, which were manufactured within the principal use, are offered for direct, on-premises retail sale. Bicycle accessories (such as tires, helmets), which were not produced by the manufacturer but which clearly relate to and support products which are produced or processed by the principal use, may also be offered for sale. However, products that do not clearly relate to and support products which are produced or processed by the principal use (such as backpacking or rock-climbing gear in the case of the bicycle manufacturer) cannot be offered for retail sale.

c. Accessory retail uses shall comply with all applicable standards of federal, state or local law that would otherwise apply to retail oriented principal uses. For example, parking areas serving accessory retail uses within a General Industrial zoning district shall comply with the surfacing requirements of Section 10.7.

d. Accessory retail uses are limited to an area that is equivalent to 20 percent of the gross floor area of the structure(s) containing the principal use.

e. Accessory retail uses shall be indoors, and shall not include the outdoor display of products or merchandise.

C. *Drive-thru.*

1. Definition: A facility where food and other products or services may be purchased or obtained by motorists without leaving their vehicles. Examples include drive-through fast-food restaurants, coffee, photo stores, pharmacies, bank teller windows, convenience stores, and dry-cleaning pick-up stores without dry cleaning equipment. This term does not include gas stations or other vehicle services, which are separately defined.

2. Additional Standards:

a. Drive-through stacking lanes, windows, and associated equipment shall not be permitted within 50 feet of GR or RMX district or residential use.

b. Drive-through windows and services shall be located and accessed only at the rear or side of the building and shall not be located between the principal structure and a public street. Service lanes shall not be located between the building and the street.

c. When situated at the side of the building, windows and services shall be located at least 20 feet back from the front façade of the building.

d. Vehicle storage for drive-through uses shall be located outside of, and physically separated from, the right-of-way of any street. This area shall not interfere with the efficient internal circulation of the site, adjacent property, or adjacent street right-of-way.

e. Service lanes shall be a minimum of 80 feet long for a single stacking lane or 80 feet per lane when there is more than one service lane. A service lane is measured from the curb cut to the service area or the order area if an outdoor order area precedes the service area. Service lanes do not have to be linear. Stand-alone automatic teller machines shall provide stacking distance for four vehicles outside of any right-of-way, parking area, or travel lane.

f. Drive-through service lanes shall provide a minimum of ten stacking spaces on site for restaurant and food sale uses with drive-through facilities and a minimum of six stacking spaces on site for

banking, pharmacies and similar non-food-related uses with drive-through facilities. Each stacking space shall be a minimum of nine feet by 18 feet.

g. A service lane is not required for accessory facilities where vehicles do not routinely stack up while waiting for the service. Examples are window washing, air compressor, and vacuum cleaning stations. A service lane is required for full-service drive-through automobile cleaning establishments.

h. Service lanes shall be designed so that they do not interfere with parking, parking access and vehicle circulation. Crossings shall be situated so as to minimize conflicts between pedestrians and vehicles. Where service lanes are traversed by pedestrian crossing areas, such crossings shall be clearly marked. Warning signage may be required at the discretion of the administrator in the interest of pedestrian safety.

i. All service lanes shall be clearly identified by means of striping, landscaping, curbing, and the like.

j. Site access and egress shall be shared by the drive-through and inside customer service functions.

k. The drive-through service lane shall first exit into other circulation lanes within the same project, and then onto a public street via the same exit curb cut as the other circulation lanes within the same project.

l. Service lanes shall be designed for a one-way traffic pattern only.

m. The drive-through shall be limited to a maximum of two service lanes and one additional lane for an automated teller machine (ATM).

n. Drive-through facilities shall be screened from off-site view from adjacent properties by a Type A buffer with a minimum width of ten feet.

o. Speaker box sounds from the drive-through lane shall not unreasonably disturb the peace and quiet of abutting residential property.

p. A traffic impact study may be required by the approving authority.

D. ***Mobile food vendor site.***

1. Definition: A permanent location for licensed mobile food vendors or food trucks to offer food and beverages for sale consumption.

2. Additional Standards:

a. Mobile food vendors shall only vend at permanent locations permitted under this section.

b. The owner, or authorized agent thereof, of any property upon which a mobile food vendor(s) proposes to operate, shall secure a permit for the establishment of a mobile food vendor site.

c. Mobile food vendors using the designated site shall secure all necessary permits required by the Transylvania County Health Department.

i. Mobile food vendors must follow all applicable rules and requirements of the Transylvania County Health Department and any other relevant agencies of Transylvania County or the State of North Carolina.

ii. In the issuance of permits for mobile food vendor sites and mobile food vendors, the administrator shall have broad discretion to assign such conditions as may be necessary to protect the health, safety, and welfare of the public

d. Number of mobile food vendor sites:

i. In NMX, PGX and DMX zoning districts, only 1 mobile food vendor site shall be permitted per parcel.

ii. In CMX, IC, and GI zoning districts, each parcel is permitted up to 3 mobile food vendor sites, so long as all other separation and site requirements as set forth in this section are met.

iii. Additional mobile food vendor sites may be permitted with the issuance of a special use permit in accordance with CHAPTER 16.

e. Separation requirements:

i. Mobile food vendors shall be situated at least 10 feet from all property lines and any road right-of-way, shall not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space.

(A) This requirement shall not apply to special events approved by the city for placement upon public streets.

ii. Mobile food vendors shall be situated at least 20 feet from one another.

iii. Mobile food vendors shall be situated at least 25 feet from any permanent structures.

(A) The administrator may, upon recommendation of the fire marshal, approve the placement of mobile food vendors within 25 feet or less of a permanent structure. Such approval shall be based upon building type, building materials, existing fire breaks, and other pertinent information. Such reductions shall be reviewed on a case-by-case basis, at the discretion of the administrator.

(B) There shall be no reduction in separation between mobile food vendors and permanent structures within the downtown fire district.

iv. Mobile food vendors shall be situated at least 200 feet from any residential structure that is located within GR zoning district.

v. Mobile food vendors must be set back a minimum of ten feet in all directions from fire hydrants.

f. Power.

i. Outside of the Heart of Brevard district, generators may be used to power the vending unit. Within the Heart of Brevard only dedicated power supplies shall be used.

ii. For dedicated power supplies the applicant must present documentation that power load supplied to the vehicle is sufficient to meet the vehicles needs while in operation.

g. Hours of operation for mobile food vendors shall be limited to 7:00 a.m. to 10:00 p.m., except during an approved special event, when other operating hours may be established as part of the event.

h. Mobile food vendor operators or their designee must be present at all times during operation, except in the event of an emergency.

i. Each food truck shall supply at least one waste receptacle which must be removed at the end of each day. All waste receptacles must be emptied at the end of each day and as necessary during the day. City trash receptacles shall not be used for the food truck operator's waste.

j. Mobile food vendor signage shall be limited to the following:

i. Mobile food vendors shall be allowed signage only as described in Chapter 12 of this Ordinance.

ii. Nothing in this Ordinance shall be construed to mean that mobile food vendor vehicles cannot be painted or decorated, or display menus affixed to the side(s) of the vendor vehicle.

E. ***Recycling—small collection.***

1. Definition: A location where the public may donate, redeem or sell recyclable materials, which occupies an area of 350 square feet or less. Such facility may include the following: a mobile unit; bulk reverse vending machines or a grouping of reverse vending machines occupying more than 50 square feet; and kiosk-type units that may include permanent structures.

F. ***Rooftop amenity space.***

1. Definition: A covered or uncovered space on a building rooftop that is intended to be an accessory use for residents of a building or mixed-use building type or for the patrons of a commercial building.
2. Additional Standards:
   a. Any structure on a rooftop amenity space shall not exceed 12 feet in height.
   b. The rooftop amenity space shall not be enclosed.
   c. No sign affixed to any structure in a rooftop amenity space shall be visible from the street.

G. ***Taproom or tasting room.***

1. Definition: An area that is ancillary to the production of beer or other types of alcohol at a brewery, distillery, winery, cidery, etc. where the public can purchase and/or consume ~~the~~ alcoholic beverages primarily produced on site.

CHAPTER 5. ARCHITECTURAL STANDARDS

5.7. Building types.

5.7.14. Accessory structures.

A. Accessory structures are secondary structures that share its lot with the principal structure it is designed to support.

1. Accessory structures are permitted in all zoning districts but require a principal structure to co-exist on the same lot, except as otherwise provided by this ordinance (see Section 2.5).
   ~~a. Structures larger than 25% of the ground floor area of the principal structure are considered additional principal structures and shall be considered as a group development.~~
2. All accessory structures shall use the same Architectural Style, Wall Materials, and Roofing Materials as the principal structure.

B. The following accessory structures are exempt from these requirements:

1. Accessory dwelling units (ADUs) and other structures regulated under the North Carolina Residential Code (see NCGS Section 160D-702(b)).
2. Any accessory structure that shares a lot with a principal structure regulated under the North Carolina Residential Code.

FIGURE 5.7.14-A: ACCESSORY STRUCTURE ILLUSTRATION

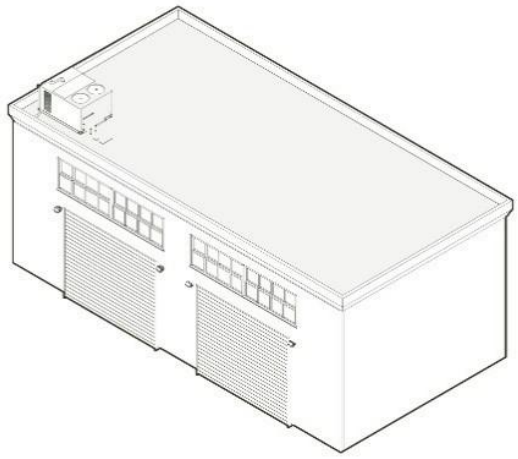


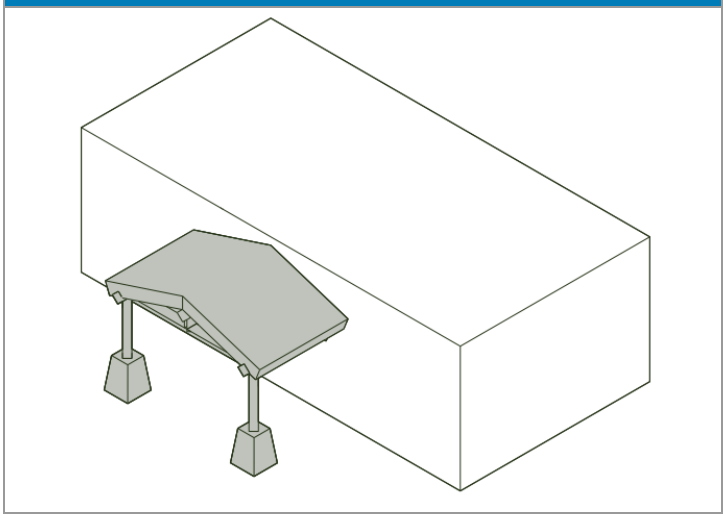
TABLE 5.7.14-A: ACCESSORY STRUCTURE BUILDING TYPE SPECIFICATIONS	
Building Dimensions / Configuration	
Number of Stories	2 max (unless otherwise specified in Section 2.5)
Ground Floor Area	No more than 25% of the ground floor area of the principal structure
Building Extensions	
Tower (see Section 5.9.1)	Not Permitted
Cupola (see Section 5.9.2)	Not Permitted
Porte Cochere (see Section 5.9.3)	Not Permitted
Awning (see Section 5.9.4)	Permitted
Canopy (see Section 5.9.5)	Permitted
Balcony (see Section 5.9.6)	Permitted
External Staircase (not Stoop) (see Section 5.9.7)	Permitted
Building Frontages	
Shopfront (see Section 5.10.1)	Permitted
Gallery (see Section 5.10.2)	Permitted
Porch (see Section 5.10.3)	Permitted
Portico (see Section 5.10.4)	Permitted
Stoop (see Section 5.10.5)	Permitted
Courtyard (see Section 5.10.6)	Permitted

5.10. Building frontages.

5.10.5. Portico.

A. Porticos are used to enhance the building entrance and provide protection from weather elements. Porticos project forward from a building façade but shall not encroach upon the right-of-way. Where both are permitted, porticos may be paired with any stoop, and function as small, entryway covers that project over the entire stoop or its landing. Without a stoop, porticos are useful to shelter at-grade entrances that require greater visual distinction and can be effective tools to break up blank facades. Unlike porches, porticos do not serve as living space.

FIGURE 5.10.5-A: PORTICO ILLUSTRATION



B. *Dimensions.*

1. Porticos shall be a minimum of 5 feet wide by 5 feet deep.
2. The portico may be a maximum of 2 stories, but shall not exceed the number of stories on the building.
3. The clear height shall be a minimum of 8 feet.
4. ~~The porch finish height shall be a minimum of 1.5 inches above the sidewalk.~~

C. *Design.* The portico must use materials that complement the Architectural Style of the building.

CHAPTER 8. TREE PROTECTION AND LANDSCAPING

8.3. Tree protection.

A. *Applicability:*

1. The provisions of the tree protection section of this chapter shall be applicable to any tree that falls within one or more of the following categories:

a. Any tree which has a trunk six inches or more in diameter at one foot above the ground; or is of a horticultural variety or is highly ornamental (such as a dogwood, redbud, crab apple, sourwood, flowering cherry, holly or any like or similar such plant) and has a trunk diameter of three inches or more at one foot above the ground.

b. Any tree that is noted as part of a development plan or that is required as part of a special use permit, group development, planned development, Conditional Zoning District, or other development approval.

c. Any tree located within a historic district or any property containing a historically designated structure.

d. Any tree subject to D, below.

B. *Exemptions:*

1. Trees located on properties subject to the North Carolina Residential Code ~~developed for single family or duplex uses located within GR districts~~ that are not in a moderately steep or steep slope area shall be exempt from the tree protection provisions of this chapter, except for those trees subject to A.1.b.—c., above, and trees and other vegetation in protection areas set forth in CHAPTER 6 and listed as Tier 1 trees in Section 8.3.D, below.
2. The following trees are exempt from the provisions of this Chapter: Mimosa (Albizia julibrissin), Princess Tree (Paulonia tomentosa), Russian Olive (Elaeagnus angustifolia), Tree of Heaven (Ailanthus altissima), Bradford Pear (Pyrus calleryana), Japanese Privet (Ligustrum japonicum), Norway Maple (Acer platanoides), Paper Mulberry (Broussonetia papyrifera), Thorney Olive (Elaeagnus pungens), White Mulberry (Morus alba), White Poplar (Populus alba), Chinese Elm (Ulmus parvifolia), Silver Maple (Acer saccharinum), Lombardy Poplar (Populus nigra), Chinese Tallow (Triadica sebiferum), Chinaberry (Melia azedarach).
3. Pruning trees as normal maintenance provided such pruning does not result in the mutilation, death or destruction of the tree.
4. All trees which are grown by a licensed plant or tree nursery or tree farm, provided such trees are planted and grown on the licensee's premises for the sale or intended sale to the general public in the ordinary course of the licensee's business.
5. All trees which have been destroyed or harmed by a storm or similar act of nature or casualty loss; provided the administrator is notified of such intended removal, replacement or relocation at least two business days prior to removal, replacement or relocation of any tree. The administrator shall approve or deny the request within the two-day period, and may require replacement subject to the requirements of this ordinance. There shall be no fee for this inspection and review.
6. Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the North Carolina General Statutes.
7. Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the North Carolina General Statutes.
8. Installation and maintenance activities conducted by public utility providers within utility easements, public lands, or public rights-of-way.

C. *Permit required:* It shall be unlawful for any person to remove, replace or relocate any tree within the city until an application for a permit has been submitted to the administrator. In determining whether a permit should be issued, the administrator shall consider the following criteria:

1. The condition of the trees with respect to disease, danger of falling, proximity to existing or proposed structures, and interference with utility services.
2. The necessity to remove trees in order to construct proposed improvements to allow economic enjoyment of the property.
3. Topography of the land and the effect of tree removal on erosion, soil retention and the diversion or increased flow of surface waters, and coordination with the city's drainage plans and recommendations on drainage patterns.
4. Number of trees existing in the neighborhood on improved property. Administrator shall be guided by the effect of tree removal upon property, as well as aesthetic values, in the area.

In all cases, the administrator may require the relocation or replacement of the trees as a condition of issuing the permit, on a one-for-one basis, with replacement trees having a caliper of two-inches or more in diameter at one foot above the ground

D. *Required tree protection areas:* Trees and existing vegetation shall be preserved in accordance with the table below. Exceptions to tree protection in Tier 2 and Tier 3 areas shall be reviewed by the board of adjustment on a case-by-case basis.

TABLE 8.3A: REQUIRED TREE PROTECTION AREAS

Tier	Priority Tree Protection Area	Required Protection
Tier 1	Special Flood Hazard Areas Required Surface Water Protection Area Required Buffer Yard Moderately Steep Slope Areas ~~Slope~~ Steep Slope Areas ~~25 percent or greater~~ Wetlands	All Vegetation and Soil to Remain Undisturbed In some cases, limited disturbance may occur within the areas to be protected provided all necessary approvals are obtained. Such activities include, but are not limited to the following: • Mitigation of development activities. • Restoration of previously disturb areas. • Stream restoration. • Utility installations and emergency public safety activities. • Construction of a trail or pedestrian walkway that will provide public access. • Required street or driveway connections.
Tier 2	Front Setback Areas Required Landscaping Areas Required Open Space ~~Slope Areas of 15—25 percent~~	All Trees Greater than 12" DBH Replacement trees, if permitted, shall be planted at a rate of one tree per each 12" DBH
Tier 3	All Other Locations	All Trees Greater than 24" DBH Replacement trees, if permitted, shall be planted at a rate of 1 tree per each 12" DBH

E. *Public tree care and protection:*

1. *Responsibility for public tree care:*
   a. The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the city or state-owned rights-of-way or bounds of all streets, alleys, lanes, squares, and city-owned

public grounds, or any that extend into the public right-of-way, or that harbors disease or insects in order to ensure public safety or to preserve or enhance the beauty of such public places.

b. The City of Brevard Public Works Department is hereby granted the responsibility of public tree care within the City of Brevard.

c. The parks, trails, and recreation committee shall assist and provide guidance to the public works department regarding care and protection of public trees as necessary.

2. *Public tree care:*

a. The city may remove or cause to be removed by the appropriate agency/contractor, any tree or part thereof which is in an unsafe condition, or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is seriously affected with any injurious insect or disease.

b. Trees, vines, shrubbery, flowers, or other ornamental vegetation standing in or upon any lot or land adjacent to any public street, sidewalk, greenway, or other public place shall be kept trimmed by the owner or occupant of the property on which the plants are growing so as not to interfere with the free and safe passage along the public way by pedestrians, bicyclists, and vehicular traffic.

c. The public works department may, in the interest of public health and safety, prune any tree that overhangs into any street, sidewalk, greenway, or right-of-way within the city, so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the walkways, a clear space of 13½ feet above the surface of streets, and a clear space of at least 17 feet above highways. The public works department will notify, in writing or in person, any property owner whose trees will be pruned in accordance with this section, no later than 24 hours prior to pruning.

d. Pruning of public trees shall be done in conformance with pruning standards published by the International Society of Arboriculture, or similar professional organization.

3. *Public tree protection:* All public trees shall be protected during construction activities in accordance with the following:

a. A tree on any street or other publicly owned property whose crown is within five feet of any excavation or construction of any building, structure, or street work, shall be guarded with a substantial fence, frame, or box. The construction tree guard shall be not less than four feet high and at a distance in feet from the trunk equal to the diameter of the trunk at breast height (DBH) in inches. All building material, dirt, or other debris shall be kept outside the construction tree guard.

b. Land-disturbing activities within five feet of a public tree shall incorporate protection for tree root areas in accordance with generally accepted best practices.

4. *Prohibited activities:*

a. Abuse of public trees:

i. No person shall intentionally damage, cut, carve, transplant, or remove any public tree.

ii. No person shall attach any rope, wire, nails, advertisements, posters, banners, or other contrivance to any public tree.

iii. No person shall knowingly allow any gaseous, liquid, or solid substance which is harmful to trees to contact public trees.

iv. No person shall set fire to public trees nor permit any fire to burn when such fire or the heat thereof will injure any portion of a public tree.

b. Tree topping of public trees, per Section 8.2.J of this ordinance.

CHAPTER 12. SIGNS

12.6. Prohibited signs.

The following signs are prohibited in all districts, unless otherwise permitted elsewhere in this chapter:

A. *Signs constituting traffic hazards:* Any sign located in a manner or place so as to constitute a hazard to traffic as demonstrated by the administrator, including signs placed within any required sight triangle.

B. *Signs within public right-of-way or easement:* Any freestanding sign located within or extending into a public right-of-way or easement, except as otherwise allowed by this chapter. City personnel may remove any sign located fully or partially within a public right-of-way.

C. *Signs obstructing passages:* Any sign that obstructs or interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress for any building.

D. *Off-premises advertising signs:* Billboards and other types of off-premises advertising signs. Off-premises directional signs may be permitted (Section 12.9.5).

E. *Signs on vehicles parked off-premises and/or near the right-of-way*: Except when in the process of loading or unloading or generally carrying out activities associated with the normal conduct of business (except advertising), vehicles, trailers, commercial trucks displaying signage for the principal use of advertising rather than transport are prohibited. Vehicles with signs for advertising may park in any legally-established parking space on the property where the commercial activity being advertised is conducted.

F. Any, electronic sign, sign that includes a monitor or TV screen, flashing device, or sign displaying flashing, animated, or intermittent lights or lights of changing degrees of intensity not expressly allowed by Section 12.9.3.

G. *Moving devices:* Any moving signs or device to attract attention, all or any part of which moves by any means, including by air, electrical, human, or other means, including but not limited to pennants, flags, propellers, discs, or inflatables, whether or not any said device has a written message. Except those allowed by Section 12.9.4.

H. Any sign posted to utility poles, bridges, overpasses, trees, fences, rocks, or other signs.

I. *Copies of official signs:* Any sign which is a copy or an imitation of an official sign or traffic light, or which purports to have official status.

J. Roof signs.

~~**J.**~~**K.** Awning signs or canopy signs.

~~**K.**~~**L.** Signs that exhibit statements, words, or pictures of obscene or pornographic subjects as determined by City Council or in accordance with North Carolina General Statutes.

~~**L.**~~**M.** Signs that promote illegal activity.

~~**M.**~~**N.** Reflective signs or signs containing mirrors.

~~**N.**~~**O.** Any sign not expressly permitted elsewhere in this ordinance.

12.8. Temporary signs.

12.8.2. Freestanding (ground) temporary signs.

A. ***General provisions***. The following standards apply to all freestanding temporary signs:

1. Signs shall not be affixed to any supporting structures that are permanently installed or anchored into the ground through the use of concrete foundations or similar anchoring techniques.
2. Signs, other than Type 4 freestanding temporary signs as allowed herein, shall not be placed in the right-of-way.
3. No more than one freestanding temporary sign may be displayed on a parcel or group of adjacent parcels under common ownership or tenancy at any given time, regardless of type, unless otherwise expressly permitted.

B. ***Type 1 freestanding temporary signs***. Signs in this category consist of small, temporary yard signs that are typically associated with, but are not limited to, the advertisement of real estate, political campaigns, and meetings.

1. *Where permitted*. Type 1 freestanding temporary signs may be displayed in any zoning district and may be associated with any use, including parcels containing vacant or undeveloped land.
2. *Size*. The maximum sign display area is limited to four square feet.
3. *Height*. The maximum height of the sign, including any supporting posts or stakes, is limited to four feet above the lowest adjacent grade.
4. *Number.*
    a. One Type 1 freestanding temporary sign may be displayed per parcel, per street frontage, without a permit. Additional Type 1 freestanding temporary signage may be allowed with the issuance of a permit.
    b. During the period beginning 30 days before the beginning date of early voting, under N.C.G.S. 163-166.40, and ending 10 days after the primary or election day, this limit on the number of Type 1 freestanding temporary signs that may be displayed without a permit is suspended for residential parcels. All other regulations associated with such signage shall remain in effect during such period of suspension.
5. *Material*. Type 1 freestanding temporary sign faces shall be made of a rigid material.
6. *Mounting standard*. Signs may only be mounted and supported by posts or stakes.
7. *Number of sides*. The display area may be either single or dual sided.
8. *Duration of display*. The duration of the display of a Type 1 sign is limited to 100 days, with a minimum separation period of 10 days between displays.

C. ***Type 2 freestanding temporary signs***. Signs in this category are commonly referred to as "banners" that are typically associated with, but not limited to, the announcement of new business openings, community events, and similar unique events.

1. *Where permitted*. Type 2 signs are permitted only on parcels in the RMX, NMX, PGX, DMX, CMX, GI, and IC zoning districts. A permit is required for this type of temporary signage.
2. *Size*. The maximum sign display area is limited to 18 square feet in RMX, NMX, PGX, and DMX districts, and 32 square feet in CMX, GI, and IC districts.
3. *Height*. The maximum height of the sign, including any supporting posts or stakes, is limited to four feet above the lowest adjacent grade.

4. *Number*: One Type 2 freestanding temporary sign may be displayed on a parcel or group of adjacent parcels under common ownership or tenancy.
5. *Material*. Sign faces shall be made of a flexible material.
6. *Mounting standard*. Signs may only be mounted and supported by posts or stakes.
7. *Number of sides*. The display area may be either single or dual sided.
8. *Duration of display*. Type 2 freestanding temporary signs are permitted to be displayed during the initial openings of businesses, community events, or special sales, for a maximum of 14 days at a time. A maximum of six separate displays are permitted during each calendar year with a minimum of ten days of separation between displays by the same use/business/tenant.

D. ***Type 3 freestanding temporary signs***. Signs in this category are larger temporary signs typically associated with, but not limited to, the advertisement of large tracts of land for sale, construction and development activity, or the advertisement of commercial or industrial buildings for sale or lease.

1. *Where permitted*. Type 3 signs are allowed with a permit only on parcels or groups of adjacent parcels under common ownership that meet one of the following:
   a. A residential use on a parcel or group of adjacent parcels under common owner-ship that is a minimum of three acres in size zoned GR;
   b. Vacant or undeveloped land where the parcel or group of adjacent parcels under common ownership that is a minimum of one acre in size in any zoning district;
   c. A non-residential use in any zoning district except GR or RMX upon a parcel that has a minimum of 200 feet of frontage on a public street, as measured at the right-of-way; or
   d. A non-residential use in any zoning district except GR or RMX upon a parcel that has construction or development activity per an active development permit.
2. *Simultaneous display prohibited*. A Type 3 sign shall not be displayed upon a parcel that contains a permanent freestanding sign or sign structure.
3. *Size*. The maximum area is limited to 16 square feet in GR and RMX districts, and 24 square feet in all other districts.
4. *Height*. The maximum height of the sign, including any supporting posts or stakes, is limited to five feet above the lowest adjacent grade in GR and RMX districts, and eight feet above the lowest adjacent grade in all other districts.
5. *Setbacks*.
   a. Front: No portion of any freestanding ground sign described in this section may be located closer than ten feet (10') to any street right-of-way, except in the DMX district where signs shall be no closer than five feet (5') to any street right-of-way.
   b. Side and Rear: No portion of any freestanding sign described in this section shall be located any closer than ten feet (10') to any side or rear property line.
6. *Number*: One Type 3 freestanding temporary sign may be displayed on a parcel or group of adjacent parcels under common ownership or tenancy.
7. *Material*. Sign faces shall be made of a rigid material.
8. *Mounting standard*. Signs shall be mounted to and supported by a minimum of two (2) separate posts or stakes.
9. *Number of sides*. The display area may be either single or dual sided.

10. *Duration of display*.
    a. Type 3 signs may be displayed up to 90 days on any parcel or group of adjacent parcels under common ownership which contain only vacant or undeveloped land for which no development permits have been issued.
    b. Type 3 signs may be displayed up to 90 days on any parcel or group of adjacent parcels under common ownership zoned NMX, PGX, CMX, DMX, or GI that have unoccupied commercial buildings.
    c. In all other cases, the duration of display shall be limited to two months.
    d. Where the display of a Type 3 sign is subject to a limit on the duration of display, there shall be a minimum period of separation of 60 days between the removal of the previously permitted sign and the display of a new sign. Such period of separation shall apply in all cases where a sign subject to a limit on the duration of its display is removed, regardless of whether the maximum allowed duration for its display has been reached at the time of its removal.

E. ***Type 4 freestanding temporary signs***. The category of signs defined as Type 4 freestanding temporary signs shall include only those signs which are constructed in a manner that is commonly referred to as an "A-frame" or "sandwich board" sign, consisting of two sides connected at the top by hinges or similar mechanisms.

1. *Where permitted*. Type 4 freestanding temporary signs are allowed with a permit in the RMX, NMX, PGX, DMX, CMX, and IC zoning districts.
2. *Size*. The maximum sign display area is limited to eight square feet per side.
3. *Height*. The maximum height of the sign is limited to four feet above the grade of the surface upon which it is displayed when placed in its display position.
4. *Number.* One Type 4 freestanding temporary sign may be displayed per tenant space, provided that no more than two Type 4 signs may be displayed per parcel along the same building street frontage.
5. *Material*. Sign faces shall be composed of rigid material.
6. *Location*. Type 4 freestanding temporary signs may be placed upon a public sidewalk or other pedestrian walkway, provided that a minimum of five feet of unobstructed clearance is maintained along the directional path of the walkway. In no case shall a Type 4 sign be placed in a manner that obstructs vehicular access, movement, or visibility. Such signs shall not be locked, chained, or otherwise tethered to posts, utility poles, trees, permanent signs, or any other permanent object.
7. *Duration of display*. Type 4 signs may only be displayed during the period beginning 30 minutes prior to the daily opening and ending 30 minutes following the daily closing of the business displaying the sign.

12.8.3. Wall-mounted temporary signs.

A. Temporary signs mounted to building walls shall include all wall-mounted temporary signs, including but not limited to, wall-mounted signs or banners for the announcement of new business openings, community events, and/or availability of vacant tenant space.

1. *Where permitted.* Wall mounted temporary signs are allowed on buildings housing a commercial use in any zoning district with a permit.
2. *Size.* Maximum display area for temporary wall signs:

TABLE 12.8.3-A: MAXIMUM SIZE OF WALL- MOUNTED TEMPORARY SIGNS BY ZONING DISTRICT	
Zoning District	**Maximum Size (ft.^{2})**
GR	16 ft.^{2}
RMX	16 ft.^{2}
NMX	24 ft.^{2}
PGX	24 ft.^{2}
DMX	24 ft.^{2}
CMX	32 ft.^{2}
GI	38 ft.^{2}
IC	32 ft.^{2}

3. *Number.*
   a. One temporary wall sign may be displayed per building occupied by a single tenant.
   b. Buildings designed for occupancy by multiple tenants may display one temporary wall sign per tenant, but the sum of all signage displayed at one time is limited to the maximum for the building's zoning district as set forth above.
4. *Location*.
   a. Temporary wall signs shall be mounted flush against the building wall and secured at each corner.
   b. Temporary wall signs shall not be permitted on awnings, canopies, or building roofs.
5. *Duration of Display.*
   a. Temporary wall signs may be displayed for a maximum of 30 consecutive calendar days.
   b. Temporary wall signs may be displayed a maximum of four times per calendar year. A minimum of 30 days of separation shall pass before a new temporary wall sign permit can be issued.

12.8.7. Temporary construction signage.

A. Upon issuance of a development permit from the City of Brevard, properties may display one temporary ground sign or wall-sign on each street frontage of the location of the development project for the duration of construction.

B. For the purposes of this section, the duration of construction is from the start of construction, defined by this ordinance, until 30 days after the certificate of occupancy is issued. If a permit expires or a project is abandoned, all signs shall be removed immediately.

C. The applicant may choose any temporary ground sign or temporary wall-mounted sign found in Section 12.8 and must adhere to all requirements set forth for the sign type, except the duration of display and whether a separate permit is required.

12.9. Permanent signs.

12.9.2. Signs mounted to walls.

A. ***Wall signs***.

1. *Where permitted*. Wall signs shall be permitted to be displayed in association with any non-residential use in any zoning district.
2. *Location*. Wall signs may be displayed on any building wall that includes a customer or public entrance, faces a public street, or faces a parking area.
3. *Number*.
   a. In GR and RMX districts, maximum of 1 wall sign per street frontage.
   b. In all other districts, maximum of 3 wall signs per street frontage.
4. *Maximum area*.
   a. Subject to the other provisions of this section, the maximum size for all wall signs combined shall be determined as follows:
      i. There may not be more than 1.0 square feet of sign surface area per linear foot of a building's main façade, or the portion of the building rented by the tenant, up to 200 linear feet
      ii. There may not be up to 0.5 square feet of additional sign surface area per linear foot in excess of 200 feet.
      iii. The "main façade" shall be the side of the building which faces the public street, or faces the street of highest classification.
   b. In DMX and PGX districts no single wall sign shall be larger than 64 square feet.
5. *Changeable copy.* Wall signs may only include changeable copy features when displayed on buildings containing "Entertainment/Recreation" and "Civic/Institutional" uses, per the Table of Permitted Uses (Section 2.2.C).
6. *Illumination.* Wall signs may be illuminated either internally or externally. Illumination levels shall be in compliance with all other applicable provisions as established in Section 11.2, Outdoor Lighting Standards.
7. *Mounting*: Wall signs may not project more than 12 inches from the building wall to which they are mounted and shall not be mounted in a manner where any part of the sign extends past the top of the building wall.

B. ***Projection signs***.

1. *Where permitted*. Projection signs shall be permitted to be displayed by any non-residential use in any zoning district except GR and RMX.
2. *Location*. Projection signs shall be located at the main entrance of the business or on the corner of the building occupied by the business.
3. *Number*. One per business establishment.
4. *Maximum area*. The maximum permitted area for projection signs shall not exceed eight square feet per side.
5. *Changeable copy.* No changeable copy feature, either manual or electronic, is permitted to be included on a projection sign.
6. *Illumination.* Projection signs may be illuminated externally. The light source shall be mounted directly to the sign. Illumination levels shall be in compliance with all other applicable provisions as established in Section 11.2, Outdoor Lighting Standards.
7. *Mounting.* Projection signs shall be designed so that each face of the sign is parallel to the other face. When mounted at a location other than the corner of a building, the faces of the projecting sign shall be aligned so that they are perpendicular to the building wall.

8. *Minimum clearance required*. Projecting signs shall be installed in such a manner as to provide a minimum of eight feet of clearance above grade.
9. *Maximum projection*. Wall-mounted p~~P~~rojecting signs shall not project greater than five feet from the building wall to which they are attached. Projecting signs shall be installed so that the edge of the sign closest to the building wall is no greater than 12 inches from such wall.

~~***C. Awning signs.***~~

~~1. *Where permitted*. Awning signs shall be permitted to be displayed on awnings associated with any non-residential use in any zoning district.~~

~~2. *Location*. Awning signs may only be displayed on awnings which are installed to cover an entrance that is used by customers.~~

~~3. *Number*. One per awning valance on awnings installed to cover a customer entrance.~~

~~4. *Maximum area*. The maximum permitted area for awning signs shall not exceed 80 percent of the width of the valance of the awning.~~

~~5. *Material*. Awning signs in the fire district shall not be constructed of a flammable substance.~~

~~6. *Illumination*. Awning signs shall not be illuminated.~~

12.9.3. Freestanding (ground) signs.

A. ***Setbacks.***

1. *Front.* No portion of any freestanding ground sign described in this section may be located closer than ten feet to any street right-of-way, except in the DMX district where signs shall be no closer than five feet to any street right-of-way.
2. *Side and rear.* No portion of any freestanding sign described in this section shall be located any closer than ten feet to any side or rear property line.

B. ***Non-residential uses in General Residential (GR) and Residential Mixed-Use (RMX) districts.***

1. Nonresidential uses permitted in GR and RMX districts shall be allowed one ground or wall sign, subject to the following:
   a. *Number.* One ground or wall sign may be displayed per business.
   b. *Maximum area.* Shall be no larger than twenty-four square feet.
   c. *Changeable copy.* No changeable copy feature, either manual or electronic, is permitted.
   d. *Height.* Such ground signs shall not exceed five feet in height.
   e. *Illumination.* Neither such wall or ground signs shall not be illuminated.
   f. *Material.* Sign faces shall be composed of rigid material. A banner affixed to a rigid surface shall not suffice for this requirement.
2. *Nameplate signs.* Home occupations shall be allowed one nameplate sign that shall not exceed four square feet of surface area, shall be attached to the residence, and shall not be illuminated.

C. ***Non-residential uses all other zoning districts.*** The following standards shall apply to individual businesses on individual parcels. Non-residential group developments, non-residential conditional zoning districts, and institutional campuses shall be subject to the same dimensional requirements, but the number of allowable ground signs in such developments is set forth in Section 12.9.6.

1. *Where permitted.* Any zoning district provided the business lies outside the Downtown Development Overlay District. Businesses located in this overlay district may display A-frame signs as described herein.
2. *Number.* One ground sign may be displayed per establishment.
3. *Maximum area.* Shall be no larger than the maximum size as defined in the table below, unless specifically defined elsewhere in this ordinance.

TABLE 12.9.3A: MAXIMUM SIGN SIZE FOR NON-RESIDENTIAL USES	
District	**Max Size in Square Feet (ft.^{2})**
NMX	32 ft.^{2}
PGX	32 ft.^{2}
DMX	32 ft.^{2}
CMX	85 ft.^{2}
IC	24 ft.^{2}
GI	50 ft.^{2}
Highway 64 Corridor Sign Overlay District	85 ft.^{2} in surface area

4. *Changeable copy*. Changeable copy features are allowed.
5. *Height*. No portion of any ground sign shall exceed 20 feet in height.
6. *Illumination*. Illumination levels shall be in compliance with all other applicable provisions as established in Section 11.2, Outdoor Lighting Standards.
7. *Material*. Sign faces shall be composed of rigid material. A banner affixed to a rigid surface shall not suffice for this requirement.

~~**D. *Canopy signs*.**~~

~~1. *Where permitted*. Canopy signs shall be permitted to be displayed in association with any non-residential use in any zoning district except GR or RMX.~~

~~2. *Location*. Canopy signs may be displayed on any freestanding or attached canopy covering a vehicular use area, such as an automobile fueling area or passenger drop-off area.~~

~~3. *Number*. One sign may be displayed per side of the canopy.~~

~~4. *Maximum area*. Signs may occupy up to 20 percent of the area of the valance of the canopy, up to a maximum of 24 square feet in zoning districts except GR or RMX.~~

~~5. *Changeable copy*. No changeable copy feature, either manual or electronic, is permitted to be included on a canopy sign.~~

~~6. *Illumination*. Canopy signs may be illuminated internally. Illumination levels shall be in compliance with all other applicable provisions as established in Section 11.2, Outdoor Lighting Standards.~~

~~E.~~D. ***A-frame/sandwich board signs***. A sandwich board sign is an A-frame or inverted V-shape sign which is portable and usually double-sided.

1. *Where permitted.* Non-residential business establishments within the DMX, NMX, PGX, and RMX zoning districts may elect for an A-frame sandwich board sign in lieu of a traditional ground sign.
2. *Location.* Such a-frame signs shall be placed on the sidewalk adjacent to the front of the individual business or on the brick paved area providing such a location does not pose a safety hazard, maintains

five feet of unobstructed paved space, does not obstruct any building entrances or exist, or impede any public infrastructure, utilities, and amenities. Such A-frame signs must be removed each day at the end of business hours.

3. *Number.* One ground or wall sign may be displayed per business.
4. *Maximum area.* Such A-frame signs shall not exceed eight square feet in area per side.
5. *Height.* Such A-frame signs shall not exceed four feet in height.
6. *Changeable copy.* Manual changeable copy features are allowed.
7. *Illumination.* Such A-frame signs shall not be illuminated.
8. *Alleys.* Business establishments located in any official city-owned alley may also be permitted to collectively place one Type 4 freestanding temporary sign near the primary alleyway entrance, provided the location of the sign does not pose a safety hazard, and that the sign is removed at the end of each day when the last business in the alley closes.

~~F.~~E. ***Electronic display signs***. Electronic display signs may be permitted as ground signs, subject to the following additional requirements:

1. *Where permitted*. Only the following uses shall be permitted to install electronic display signs:
   a. Colleges/universities;
   b. Schools—Elementary and Secondary;
   c. Schools—Vocational/Technical; and
   d. Government services.
2. Master planned campuses of different uses than described in this section may have one electronic display sign that is internal to the campus and not visible from any public street.
3. Only one electronic display sign shall be permitted per parcel.
4. Only one electronic display sign shall be permitted within any group development, conditional zoning district, or institutional campus.
5. Electronic display signs shall display only non-moving text and images with changes alternating on not less than a five second level, and shall display no scrolling, flashing, blinking, or otherwise moving message.
6. Electronic display signs shall adhere to all other applicable wall or ground sign requirements of this chapter, as well as the lighting standards of CHAPTER 11 of this ordinance.

CHAPTER 15. BOARDS AND COMMISSIONS

15.1. Boards and commissions established.

The following boards and commissions are hereby established:

A. ***Brevard Planning Board.*** The authority to establish a Planning Board for the City of Brevard is granted under the authority of G.S. 160D-301 and 160D-307.

1. *Authority and responsibility.* The Brevard Planning Board (hereafter BPB) shall have the following duties and responsibilities:

a. Review and comment on all proposed amendments to the zoning regulations or zoning map in accordance with G.S. 160D-604(b).

b. Advise and comment on whether any proposed amendment to the zoning regulations or zoning map action is consistent with any comprehensive or land-use plan that has been adopted, and any other officially adopted plan that is applicable, in accordance with G.S. 160D-604(d). The planning board shall provide a written recommendation to city council that addresses plan consistency and other matters as deemed appropriate by the planning board.

c. Review and provide advice and consultation to the city council when adopting a new comprehensive plan, in accordance with G.S. 160D-501(c).

d. Prepare, review, maintain, monitor, and periodically update and recommend to the city council a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis to do so, in accordance with G.S. 160D-301(b).

e. Review and comment on the required investigative study and reports required for the changing of the boundaries of a historic district, or the creation of additional districts within the city.

f. Review and make a recommendation on development activities and other requests as set forth in Section 16.6 of this ordinance, in accordance with G.S. 160D-604(c).

g. Perform any other duties which may lawfully be assigned to the BPB by the city council or General Statutes.

2. *Membership and terms of office.*

a. The BPB shall consist of a total of seven members with five members residing within the city and two members residing in the extraterritorial jurisdiction. The members residing in the ETJ shall have equal rights, privileges and duties with other members of the board in all matters pertaining to the UNIFIED DEVELOPMENT ORDINANCE both within the corporate limits of the city and within its ETJ.

b. In accordance with G.S. 160D-307(a), the total membership of the BPB 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.

c. 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.

d. The term of office shall be three years staggered. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

e. The BPB shall elect the board chair and vice-chair from among its members. They each shall serve a one-year term.

B. ***Board of adjustment.*** The authority to establish a board of adjustment is granted under the authority of G.S. 160D-302.

1. *Authority and responsibility.* The board of adjustment (hereinafter BOA) shall have the following duties and responsibilities:

a. To hear and decide appeals from any order, decision, determination, or interpretation made by the administrator pursuant to or regarding these regulations and in accordance with G.S. 160D-405, G.S. 160D-705, or G.S. 160D-1008.

b. To hear and decide petitions for variances from the requirements of these regulations.

c. To hear and decide petitions for special use permits.

d. To make an interpretation of any portion of this ordinance.

2. *Membership and terms of office.*

a. The BOA 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 any 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 UNIFIED DEVELOPMENT ORDINANCE both within the corporate limits of the city and within its ETJ.

b. In accordance with 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.

c. 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.

d. 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.

e. The BOA shall elect the board chair and vice-chair from among its members. They shall each serve a one-year term.

C. *Technical review committee.*

1. *Authority and responsibility.* The technical review committee (hereinafter TRC) shall have the following duties and responsibilities:

a. To review and offer recommendations regarding all applicable local, state, and federal codes and regulations in response to all land development applications or projects in accordance with Section 16.6 of this ordinance.

b. At the request of the planning director, to review and offer recommendations regarding all applicable local, state, and federal codes and regulations in response to any land development application or project that has been deemed, in the opinion of the planning director, because of its potential impact to the city, due to the development project's size, scope, mass, number of dwelling units, or complexity. The planning director shall provide written justification for such review of these applications.

c. At the direction of the administrator, to review and render opinions and make recommendations on issues and petitions related to the City of Brevard Code of Ordinances and other land use plans and policies which may be adopted and require approval by the city council.

d. To make recommendation and/or approve any other item as requested by the administrator, the planning board, or city council.

2. *Actions by the TRC.*

a. Upon receiving notices of a land development application which requires TRC review from the ~~planning director~~administrator, members of the TRC must take the following action:

i. Review the development application and related plan documents in relation to all applicable local, state, and federal codes and regulations.

ii. Recommend major and/or minor changes to the application to be considered by the developer or property owner.

iii. Each member of the TRC shall provide written comments to the ~~planning director~~administrator within 15 days of having received notification from the ~~planning director~~ administrator of a land development application requiring their review.

3. *Members.*

a. The TRC shall consist of the following members:

i. City of Brevard Planning Director and/or zoning administrator

~~ii. City zoning administrators~~

~~iii.~~ii. Chief of Brevard Police Department, or designee

~~iv.~~iii. Chief of Brevard Fire Department, or designee

~~v.~~iv. City of Brevard Public Works Director, or designee

~~vi.~~v. City of Brevard Wastewater Treatment Plant ORC, or designee

~~vii.~~vi. City of Brevard Water Treatment Plant ORC, or designee

~~viii.~~vii. Transylvania County Building Permitting and Inspections Department Director, or designee

~~ix.~~viii. Transylvania County Fire Marshall, or designee

b. Other appropriate city, county, state, or federal officials may be invited to participate in the TRC review when deemed necessary by the administrator.

CHAPTER 16. ADMINISTRATION

16.5. Application submittal for development approvals.

A. Applications for development approvals, including but not limited to zoning permits, special use permits, zoning map amendments, conditional zoning districts, variances, and subdivisions shall be submitted to the administrator.

B. The applicant ~~shall~~ may request a meeting with the administrator to discuss, in general, the procedures and requirements for a development approval or regulation request. ~~Submittal requirements will be identified during this pre-application meeting.~~

C. *Determination of completeness of application*. The administrator shall only accept applications for consideration by the approving authority upon a determination that all application materials as required by this ordinance have been provided. Until an application is determined to be complete in accordance with the requirements in this ordinance, an application has not been submitted. A complete application is one that:

1. Contains all information and materials required by this ordinance for submittal of the applicable type of application, and in sufficient detail, format, and readability for city staff to evaluate the application for compliance with applicable review standards; and

2. Is accompanied by the fee established for the applicable type of application.

D. *Incomplete applications*. On determining that the application is incomplete, the administrator shall, as appropriate, provide the applicant written notice of the submittal deficiencies. The applicant may correct the deficiencies and resubmit the application. If the applicant fails to resubmit the application within ~~14 calendar~~30 days after being first notified of the submittal deficiencies, the application submittal is subject to abandonment. Once the application is abandoned, a new application must be submitted.

E. *Complete application*. On determining that the application is complete, the administrator shall accept the application as submitted in accordance with the procedures and standards of this ordinance in effect at the time of the submittal.

1. The administrator shall approve, approve with conditions, or deny development applications for which it is the approving authority, pursuant to Section 16.6, within 30 days of having first considered such application.
2. The administrator shall forward application materials to the appropriate approving authority upon a determination that all application materials as required by this ordinance have been provided.

16.6. Development approval review procedure in general.

A. Planning department staff, also referred to as the administrator, and the approving authority shall have the discretion to refer any land development permit application to a body of greater authority for consideration and approval or denial consistent with this section.

B. The administrator shall provide advisory review and comment to all boards and city council regarding the application's compliance to this section. The administrator may determine that additional review is required and request review and/or a recommendation by a board beyond the required process described herein.

C. Designation of approving authority:

TABLE 16.6A: DEVELOPMENT REVIEW, APPROVAL, AND APPEAL AUTHORITIES

Category	Development Activities	Review / Recommendation	Approving Authority	Appeal Authority
Annexation & Dedication	Annexations	Planning Board	City Council	Superior Court
	Dedication / Acceptance of Infrastructure	Technical Review Committee	Staff	Board of Adjustment
	Street / Right-of-Way/Easement Abandonment	Technical Review Committee	City Council	Superior Court
Land Use & Development	All Land Use and Development Activity for which No Higher Review is Required	-	Staff	Board of Adjustment
	Group Developments	Technical Review Committee	Staff	Board of Adjustment
	Temporary Uses	-	Staff	Board of Adjustment
	Special Use Permits	-	Board of Adjustment	Superior Court
	Development Agreements	-	City Council	Superior Court

TABLE 16.6A: DEVELOPMENT REVIEW, APPROVAL, AND APPEAL AUTHORITIES				
Category	**Development Activities**	**Review / Recommendation**	**Approving Authority**	**Appeal Authority**
	Vested Rights Determination	-	City Council	Superior Court
Regulations	Adoption, Amendment, or Repeal of Development Regulations	Planning Board	City Council	Superior Court
	Official Zoning Determinations and Other Interpretations of this Ordinance	-	Staff	Board of Adjustment
Zoning	Rezonings / Zoning Map Amendments	Planning Board	City Council	Superior Court
	Conditional Zoning Districts	Technical Review Committee and Planning Board	City Council	Superior Court
	Final Master Plan Approval for Conditional Zoning Districts	-	Planning Board	Superior Court
	Variances	-	Board of Adjustment	Superior Court
Modifications	Minor Modifications	-	Staff	Board of Adjustment
	All Other Modifications	Original Approval Process		

D. In addition to any findings that may be otherwise required by this chapter, the approving authority shall only approve a land development application upon determination that the application meets the following requirements:

1. All applicable requirements of this ordinance and Brevard City Code are satisfied.
2. All other applicable federal, state, and local requirements and plans are satisfied.
3. All applicable policies and plans of the City of Brevard are satisfied.
4. All required system development fees, performance guarantees, or other dedications have been or will be secured.
5. Approval of the application will not otherwise endanger the health, safety, or welfare of the public.
6. The applicant agrees to adhere to all reasonable conditions and requirements imposed in accordance with this chapter.

E. The approving authority shall consider impacts upon traffic conditions, public safety, public infrastructure and services, and other relevant factors, including any proposed project's likely effect on the public health or safety in determining whether to approve or reject any land development application, and may impose such reasonable conditions as are allowed under G.S. 160D noting the applicable approval process. Findings as to such factors made by any reviewing entity shall not bind the city officer, committee, board, or council acting as the approving authority, which shall consider such factors de novo.

F. If the administrator or approving authority requires the application to be reviewed by the technical review committee (TRC) in accordance with Section 15.1, its members shall provide written comments to the planning

director within 15 days of having received notification from the planning director of a land development application requiring their review, unless otherwise stated in this Chapter.

G. A permit or development approval shall be in writing, and may be issued in print or electronic form pursuant to G.S. 160D-403. Any permit or approval issued exclusively in electronic form shall be protected from further editing once issued. The permit or approval may contain a provision that the development shall comply with all applicable state and local laws. If an application is denied, the reasons for denial shall be stated in writing.

H. Typical procedures following issuance of land development permit:

1. Upon issuance of a land development permit, the applicant may proceed to the Transylvania County Health Department and/or Transylvania County Building Permitting and Enforcement for any necessary permits.
2. Upon creation of structural footers or the pouring of the first-floor slab of any building or structure, the applicant shall contact the administrator for a preliminary setback inspection. The administrator shall inspect for compliance with applicable dimensional requirements and shall issue preliminary setback approval or require modifications, as applicable.
3. Upon competition of all land development activity and the installation of all approved improvements the applicant shall contact the administrator to arrange for a final inspection. As authorized by G.S. 160D-403(e) and -1113, the administrator shall inspect for compliance with all applicable requirements of this ordinance and Brevard City Code. The administrator shall deny final inspection approval if full compliance with this ordinance and Brevard City Code, approved development plans, and all other requirements, is not observed. The administrator may issue conditional approval. Conditional approval shall be extended for a defined period of time and all conditions shall be clearly set forth in writing. The administrator may require the submission of final "as built" construction documents as a condition of final written approval.
4. Upon issuance of final approval by the administrator, the applicant shall contact the Transylvania County Building Inspection Department to request issuance of a certificate of occupancy in accordance with G.S. 160D-403(g).
5. The administrator shall, from time to time, inspect the building, structure, use, or other approved activity for continued compliance with this ordinance, Brevard City Code, the approved land development plan, and any other applicable requirement, and shall take such action as is necessary to ensure continued compliance, including any remedy as set forth in CHAPTER 18 of this ordinance.

I. *Professional services:* The administrator may secure the services of a qualified professional (e.g., licensed architect, attorney, engineer, landscape architect, arborist, surveyor, or planner) in the review of any application.

1. Professional services purposes include but are not limited to: the review of floodplain development proposals, proposed infrastructure of stormwater systems, traffic impact analysis, specialized legal services, etc.
2. The actual cost of professional services shall be the responsibility of the applicant. The applicant shall be informed in advance of the City's intention to secure professional services. The applicant shall be provided with all reports generated by qualified professionals, and copies of all statements and receipts. The applicant shall reimburse the City for professional services expenditure prior to the issuance of a certificate of occupancy or final zoning / project approval.

~~I.~~**J.** Final zoning approval and certificate of occupancy:

1. No structure shall be used or occupied until final zoning approval has been issued by the City of Brevard and a certificate of occupancy has been issued by the Transylvania County Building Inspection Department

pursuant to G.S. 160D-403(g). Such approval shall be issued with the presumption that the structure or portion of a structure is in compliance with Brevard City Code, all applicable provisions of this ordinance, any specific conditions and requirements of the city, and the information stated on the development permit.

2. A record of all final zoning approvals shall be kept on file in the office of the administrator, and a record of all certificates of occupancy shall be kept on file in the office of the Transylvania County Building Inspection Department. Copies shall be furnished, on request, to all interested parties.
3. If final zoning approval or a certificate of occupancy is denied, the reasons for such denial shall be specified in writing and provided to the applicant.
4. Where certain infrastructure elements have not been installed (i.e. landscaping due to time of year), a temporary final zoning approval may be issued by the administrator, and a final certificate of occupancy may be issued by Transylvania County with permission from the administrator.

~~J.~~K. Right of appeal:

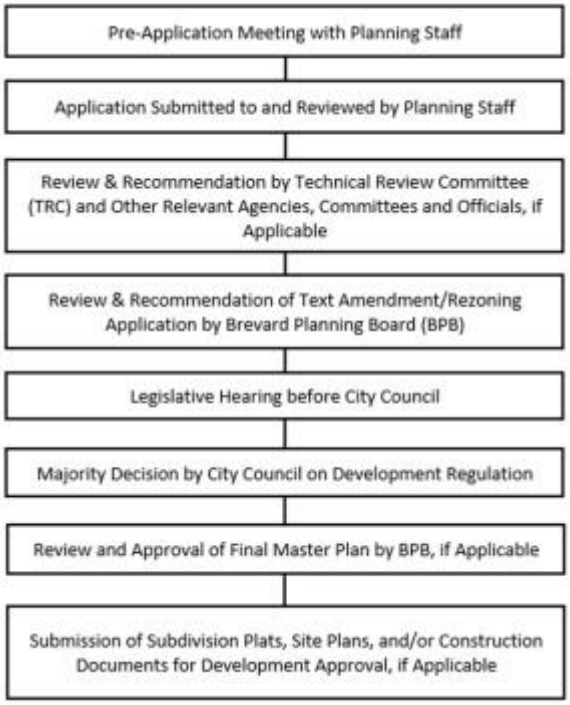
1. If a request for a development permit is denied or if a ruling of the administrator is questioned, any aggrieved party may appeal such ruling to the board of adjustment (hereafter, "BOA") in accordance with this chapter and G.S. 160D-405.
2. Appeals of a ruling of the BPB, the BOA, or city council shall be heard by the Superior Court of Transylvania County. In accordance with G.S. 160D-1402, the aggrieved party may request a stay of execution or enforcement of the decision of the quasi-judicial board pending superior court review. If in the absence of a stay, an applicant proceeds with development, the person does so at his or her own risk.

16.7. Legislative decisions.

A. The purpose of this section is to establish uniform procedures for legislative decisions. In accordance with G.S. 160D-102(1), a legislative decision is the adoption, amendment, or repeal of a development regulation. It also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Section 16.11.

B. ***Outline of review procedures for legislative decisions.***

FIGURE 16.7A: REVIEW PROCEDURES FOR LEGISLATIVE DECISIONS



C. ***General procedures for amending development regulations.*** Before adopting amending, or repealing any ordinance or development regulation, the city council shall hold a legislative hearing pursuant to the procedures outlined below, in G.S. 160D Article 6, and in Sections 16.7.D, 16.7.E, and 16.7.F when applicable.

1. *Application required.* An adoption, amendment, or repeal of a development regulation may be initiated by the city council, the BPB, the planning department, the city manager, or any private citizen filing an application with the administrator.

   i. Applicants shall submit a description or narrative stating why the proposed amendment or conditional zoning district is requested.

   ii. In accordance with G.S. 160D-601, no amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the city. For purposes of this section, "down-zoning" is defined by G.S. 160D-601(d). ~~means a zoning ordinance that affects an area of land in one of the following ways:~~

   ~~1. By decreasing the development density of the land to be less dense than was allowed under its previous usage.~~

   ~~2. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.~~

   iii. Amendments to zoning ordinances shall not be initiated, applicable or enforceable without consent of the owner with regard to buildings and uses for which either:

1. Building permits have been issued pursuant to G.S. 160D-403 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired unrevoked pursuant to G.S. 160D-403, or
2. A vested right has been established and remains valid and unexpired pursuant to Section 16.10.

2. *Administrative review procedure:*
   i. The applicant shall submit the completed application, pursuant to Section 16.5, at least 60 calendar days prior to the meeting of the BPB at which the petition is to be heard. For urgent matters, the administrator may request the BPB to review the application at an earlier meeting if processing time permits.
   ii. The administrator shall review and comment on the application and supporting materials in accordance with Section 16.6.
   iii. The administrator shall forward the petition to the BPB for review and recommendation to the city council.
3. *Brevard Planning Board review and comment:* The BPB shall review and make recommendations to city council on any development regulations assigned to city council in Section 16.6.B, pursuant to G.S. 160D-604.
   i. All proposed amendments to the development regulations or zoning map shall be submitted to the BPB for review and comment. If no written report is received from the BPB within 30 days of referral of the amendment to that board, the city council may act on the amendment without the BPB report. The city council is not bound by the recommendations, if any, of the BPB.
   ii. When conducting a review of proposed zoning text or map amendments, the BPB shall consider the Comprehensive Land Use Plan and other adopted plans and policies when making a recommendation and shall submit a consistency statement with their findings whether the application complies with the applicable plans.
   iii. All recommendations shall be by majority vote.
   iv. The BPB shall make one of the following recommendations with regard to a petition to amend the text of a development regulation:
      1. Adoption of the amendment as written;
      2. Adoption of the amendment as revised by the BPB; or
      3. Rejection of the amendment.
4. *Notification requirements:* A notice of the legislative hearing shall be published in a newspaper having general circulation in the city once a week, for two successive weeks, the first notice to be published not less than ten days nor more than 25 days prior to the date established for the hearing.
5. *Citizen comments:*
   i. Development regulations may from time to time be amended, supplemented, changed, modified, or repealed. Citizens shall be provided an opportunity to comment, in writing, upon such proposed amendment, modification, or repeal. No comment on or protest against any change in or amendments to a development regulation shall be valid or effective for the purposes of G.S. 160D-603 unless it be in the form of a written statement bearing the signatures of property owners. The statement shall be submitted to the city clerk at least one week prior to the date established for the

legislative hearing on the proposed change or amendment. The city clerk shall deliver such written statement to city council.

ii. The city council may by ordinance require that all citizen comments be on a form prescribed and furnished by the city, and such form may prescribe any reasonable information deemed necessary to permit the city to determine sufficiency and accuracy of the commenters.

iii. A person who has signed a written statement may withdraw his or her name from the protest at any time prior to the vote on the proposed development regulation amendment.

6. *Legislative hearing:* Once the BPB has made a recommendation on an application for a text amendment or rezoning, the city council shall hold a legislative public hearing on the application. Due to the legislative nature of those applications for which council is the approving authority, council may choose to table, approve, approve with conditions, or deny such applications at its discretion. However, council shall approve, approve with conditions, or deny any land development application for which it is the approving authority by means of referral in accordance with Section 16.6.A within 90 days of having first considered such application. Legislative decisions for development regulations may be finally adopted, by affirmative simple majority vote, on the date on which the regulation is introduced. For purposes of this section, an application shall be deemed to have been introduced on the date the subject matter is first voted on by council.

i. The city council shall consider the Comprehensive Land Use Plan and other adopted plans and policies when making a decision and must adopt a consistency statement indicating whether the application complies with the approved plans in accordance with G.S. 160D-605(a).

ii. A decision concerning a petition to amend the text of this ordinance shall be as follows:

1. Adoption of the amendment as written;
2. Adoption of the amendment as revised by the BPB or by city council;
3. Rejection of the amendment;
4. Send the application back to the BPB for further study and consideration; or
5. Call for additional public hearings on petitions brought before them.

iii. In the instance of a failure to vote by a member who is physically present in the council chamber, or who has withdrawn due to a conflict-of-interest without being excused by a majority vote of the remaining members present, the failure to vote shall not be included as an affirmative or negative vote.

7. *Rehearing:*

i. 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 city council decision.

ii. Specific information to enable the city council 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.

iii. A rehearing shall be denied by the city council, if in its judgment a prima facie case for such change has not been alleged.

iv. A legislative hearing shall not be required to be held by the city council to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least four voting members. In the event that the city council finds that a rehearing is warranted, it shall then proceed as in the original hearing except that the application fee shall be waived.

~~v. 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.~~

~~vi.~~v. Every decision of the city council 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. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within 30 days after the decision of the board is filed in the office of the city clerk, or after a written copy is delivered to an aggrieved party who has filed a written request for such copy with the administrator at the time of the hearing of the case by the city council, whichever is later.

8. *Application withdrawal:*

i. The petitioner may withdraw his or her application before submission of the public notice to the newspaper announcing the legislative hearing.

ii. After submission of such notice, an application may be withdrawn at the discretion of city council at the legislative hearing.

~~iii. No more than one withdrawal may occur on the same parcel or portion of land within a one-year period~~

~~iv. No application shall be filed on the same parcel or portion of land within a one-year period after the date of the second withdrawal.~~

D. ***Procedures for zoning map amendments.*** Applications for zoning map amendments shall be processed, considered, and voted upon using the same procedures and subject to the same requirements as those established in Section 16.7.C except at provided below:

1. *Notification requirements:* Hearings on proposed zoning map amendments require additional public notices in accordance with G.S. 160D-602. Additional notification of the public hearing shall be as follows:

i. A notice of a proposed change to the official map shall be sent by first-class mail by the administrator to the affected property and to all abutting property owners. For the purpose of this section, properties are "abutting" even if separated from the subject property by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least ten but not more than 25 days prior to the date of the hearing.

ii. The first-class mail notice required under subsection (a) of this section shall not be required when the zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice procedures provided that the advertisement shall not be less than one-half newspaper page in size. The local government will publish the notice of a hearing in a newspaper having general circulation in the city once a week, for two successive weeks, the first notice to be published not less than ten days nor more than 25 days prior to the days prior to the date established for the hearing. The notice shall only be effective for the property owners who reside in the area of general circulation of the newspaper which published the notice. Property owners who reside outside of the city's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. The person or persons mailing the notices shall certify to the city council that fact, and the certificates shall be deemed conclusive in the absence of fraud.

iii. One or more prominent signs with the notice of the hearing shall be posted on the subject property or properties beginning not less than ten days nor more than 25 days prior to the date established

for the hearing. Such notice shall state a phone number to contact during business hours for information. The sign shall remain until after the city council has rendered its final decision.

iv. When a zoning map amendment is proposed and if substantial impact on the neighborhood can be anticipated, the administrator shall have the right to require a neighborhood compatibility meeting in order to gather neighborhood feedback, and may require the person proposing the zoning map amendment to report on any communication with neighboring property owners and residents. A substantial impact on the neighborhood includes but is not limited to applications for zoning map amendments affecting multiple parcels with separate owners and for conditional zoning districts that request modifications to the density, dimensional and setback requirements enumerated in CHAPTER 2.

2. *Brevard Planning Board review and comment:*

i. When a zoning map amendment is initiated by the City, the administrator shall send a notice of the Planning Board meeting by first-class mail to the affected property owners in the affected area. This notice must be deposited in the mail at least ten but not more than 25 days prior to the date of the meeting. If the proposal affects more than 50 properties, the administrator may utilize the notification procedure outlined in Section D.1.b.

ii. In place of the recommendations outlined in Section 16.7.C, the BPB shall make one of the following recommendations with regard to a petition for a zoning map amendment:

1. Grant the zoning map amendment as requested;
2. Grant the zoning map amendment with a change of the area requested;
    a. If the change in area is an expansion of the area requested, the Board shall hold a second meeting discussing the expanded area. The administrator shall send a notice of the meeting by first-class mail to the affected property owners in the proposed expanded area. This notice must be deposited in the mail at least ten but not more than 25 days prior to the date of the second meeting. If the proposal affects more than 50 properties, the administrator may utilize the notification procedure outlined in Section D.1.b.
    b. If the change in area is a reduction of the area requested. Then no additional meetings or notifications are required.
3. Grant the zoning map amendment to a more restrictive general zoning district or districts; or
4. Deny the application.

iii. The BPB shall submit a statement analyzing the reasonableness of any proposal for a zoning map amendment. The statement of reasonableness may consider, among other factors:

1. The size, physical conditions, and other attributes of any area proposed to be rezoned;
2. The benefits and detriments to the landowners, the neighbors, and the surrounding community;
3. The relationship between the current actual and permissible development and the development permissible under the proposed amendment;
4. Why the action taken is in the public interest; and
5. Any changed conditions warranting the amendment.

3. *Legislative hearing:*

i. In addition to the general procedures outlined in Section 16.7.C.7, when adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed

rezoning must be approved by the city council in accordance with G.S. 160D-605. The statement of reasonableness and the plan consistency statement may be approved as a single statement.

ii. In place of the decisions outlined in Section 16.7.C.7(b), a decision concerning a petition for a zoning map amendment shall be as follows:

1. Grant the zoning map amendment as requested;
2. Grant the zoning map amendment with a reduction in the area requested;
3. Grant the zoning map amendment to a more restrictive general zoning district;
4. Grant the zoning map amendment with a combination of (ii) and (iii) above;
5. Deny the application;
6. Send the application back to the BPB for further study and consideration; or
7. Call for additional legislative hearings on petitions brought before them.

iii. In accordance with G.S. 160D-605, if a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan, and shall be required. A plan amendment and a zoning amendment may be considered concurrently, and does not require a separate application fee for a plan amendment.

E. ***Procedures for conditional zoning districts.*** Applications for conditional zoning shall be processed, considered, and voted upon using the same procedures and subject to the same requirements as those established in Section 16.7.D for zoning map amendments, except as provided below:

1. *Application required:*

i. A conditional zoning district application shall be considered only upon request of the owner of the affected property or a duly authorized representative of the property owner. When applying for conditional zoning, the owner shall specify the nature of the proposed development and shall propose conditions to ensure compatibility with the surrounding uses and consistency with adopted plans.

ii. The applicant shall submit a final master plan or a preliminary master plan, pursuant to Section 17.5. If the applicant submits a final master plan as part of the initial application, subsection 5 below shall not be applicable.

iii. The applicant shall submit a recent survey of the parcel(s) completed within three years of the application submittal.

iv. The administrator may request an environmental survey.

v. The administrator may require any other documentation, such as building elevations, deemed necessary by the administrator in order to provide a complete and accurate description of the proposed development.

2. *Administrative review procedure:* The administrator may require that the application be circulated to any relevant city, county, and state agencies, committees and officials for comment(s) as to the proposed development's conformance to all applicable standards and requirements and whether approval is recommended.

3. *Brevard Planning Board review and comment:*

i. The BPB shall make one of the following recommendations with regard to a petition for a conditional zoning district:

1. Grant the creation of the district as request;
2. Grant the creation of the district with a reduction of the area requested;
3. Include recommended conditions for the district;
4. Continued BPB consideration of the application in order to receive further information; or
5. Deny the application.

4. *Legislative hearing:*

i. During the adoption of a conditional zoning district, specific conditions may be proposed by the applicant, city council, BPB, technical review committee, or administrator, but only those conditions mutually approved in writing by city council and the applicant shall be incorporated into the zoning regulations and permit requirements. Conditions and site specific standards imposed in a conditional zoning district shall be limited to those that address the conformance of the development and use of the site to city ordinances, the adopted Comprehensive Land Use Plan or other plans, or the impacts reasonably expected to be generated by the development or use of the site.

ii. The conditions agreed upon pursuant to the conditional zoning approval may include but are not limited to:

1. Allocating and/or limiting the land uses which are permitted on the property;
2. Specifying locations on the property of the proposed structure(s);
3. The number of dwelling units and density;
4. The location and extent of supporting facilities such as parking lots, driveways, and access streets;
5. The location and extent of buffer areas and other special purpose areas;
6. The timing of development;
7. The height of structures;
8. The location and extent of rights-of-way and other areas to be dedicated for public purposes; and
9. Other such matters as may be identified as appropriate for the proposed development.

iii. City council may approve the preliminary master plan provided that the enacting ordinance sets forth specific requirements to be satisfied by a master plan and subsequent site plans, construction documents, and subdivision plats.

iv. A decision concerning a petition for a conditional zoning district shall be as follows:

1. Grant the creation of the district as requested with agreed upon conditions;
2. Grant the creation of the district with a reduction in the area requested with agreed upon conditions;
3. Deny the application;
4. Send the application back to the BPB for further study and consideration; or
5. Call for additional legislative hearings on petitions brought before them.

v. Upon adoption of an enacting ordinance establishing a conditional zoning district, the official zoning map of the City of Brevard shall be amended to add the district.

5. *Procedures following preliminary master plan approval.* Unless a final master plan was approved at the time of creation of a conditional zoning district, then within one year of the enactment of the ordinance

creating the district, or such other period, not to exceed five years, specified in said ordinance, the applicant shall submit a final master plan for development, or any phase thereof, meeting the requirements of Section 17.5. The provisions contained herein relating to submittal of final master plans may be modified by means of a development agreement between the developer and the City of Brevard, pursuant to Section 16.11.

i. Upon receipt of a final master plan, the planning director shall review it for completeness and for compliance with the conditions and standards imposed in the enacting ordinance if the planning director determined that the plan is complete and does not constitute a major modification of the enacting ordinance pursuant to Section 16.9, including all conditions attached thereto and the approved preliminary master plan, he or she shall forward it to the BPB for its consideration. City council may require, as a condition at the time of creation of the conditional zoning district, that council be the approving authority for final master plan approval.

ii. If the approving authority determined that the final master plan complies with the enacting ordinance, including all conditions attached thereto, and with the approved preliminary master plan and with all applicable regulations, it shall grant final master plan approval for the development or a phase thereof, as applicable.

6. *Modifications.* Modifications to approved conditional zoning districts, including the enacting ordinance, an approved preliminary master plan, or the final master plan shall be in accordance with Section 16.9.

7. *Issuance of permits:*

i. Demolition permits may be issued based upon an approved preliminary master plan. However, no permit shall be issued for the construction, remodel, or rehabilitation of any structure within the area of a conditional zoning district, nor shall any structure be approved within the area of a conditional zoning district, until a master plan has been approved by the approving authority and, subsequently, site plans, construction documents, and/or subdivision plats, as applicable, have been approved by the administrator. No subdivision of land within a conditional zoning district shall be permitted prior to final master plan approval unless the ordinance creating the district provides otherwise.

ii. Following approval of the final master plan of any conditional zoning district, the applicant shall submit to the administrator applications for subdivision and/or development approvals within one year of the date of final master plan approval. The administrator shall follow the applicable procedures in this chapter for subdivision and development approvals, and shall verify that all applicable requirements of the ordinance and conditions of city council are satisfied prior to granting approval. The administrator shall require any additional construction documents needed for permitting and evidence of approval of any other permit required by any other federal, state, or local agency (i.e., NCDOT permits, NCDEQ permits, Army Corps of Engineers permits, etc.).

8. If for any reason any provision of an enacting ordinance of a conditional zoning district is found to be illegal or invalid, or if the applicant should fail to provide written consent to any condition, the entire ordinance enacting the applicant' s individual conditional zoning district shall be null and void. If the applicant shall fail to adhere to any condition set forth in the enacting ordinance for a conditional zoning district, the administrator may employ the remedies set forth in CHAPTER 18 or may initiate appropriate action to rezone the affected property to another zoning classification. The applicant' s failure to adhere to one or more conditions shall constitute a rational basis for rezoning of the land contained within a conditional zoning district.

9. If no action has been taken to begin development of the property in accordance with a conditional zoning ordinance within 24 months of its approval by city council or such other period, not to exceed five years, specified in the conditional zoning ordinance, the administrator may initiate appropriate action to rezone the affected property to any other classification. Such failure to begin development shall constitute a rational basis for rezoning the land contained within a conditional zoning district.
10. If the use or uses commenced pursuant to an enacting ordinance of a conditional zoning district section are abandoned or discontinued for a period of 180 days, the administrator may initiate appropriate action to rezone the affected property to any other classification. Such abandonment or discontinuance shall constitute a rational basis for rezoning of the land contained within a conditional zoning district.

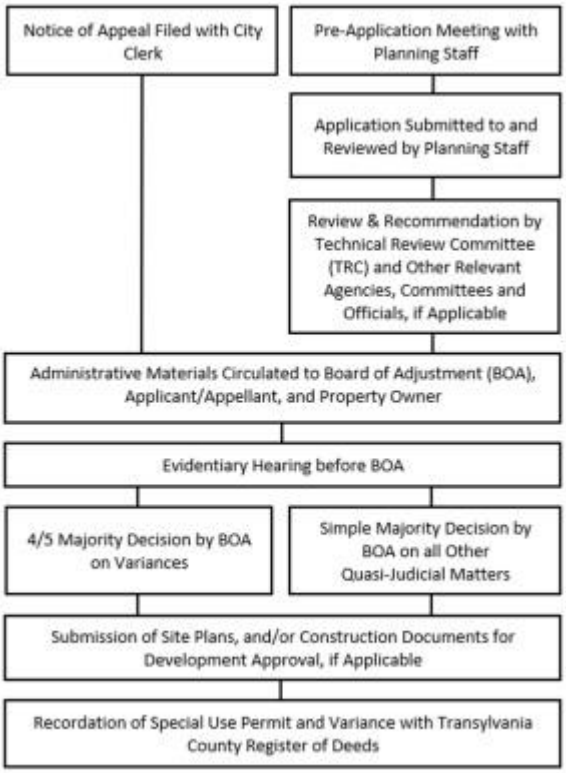
F. ***Procedures for extension of the Extraterritorial Jurisdiction (ETJ).*** Applications for extending the ETJ shall be processed, considered, and voted upon using the same procedures and subject to the same requirements as those established in Section 16.7.C except as provided below:

1. *Notification requirements:* A notice of a proposed extension of the ETJ shall be sent by first-class mail by the administrator to the last address listed for the affected property owners. The notice shall be mailed at least 30 days prior to the date of the hearing by following the procedures and containing information in accordance with G.S. 160D-202(d). In the instance of a single hearing for both a zoning map amendment and an ETJ extension, the initial notice of the zoning map amendment hearing may be combined with the boundary hearing notice.
2. *Legislative hearing:* In accordance with G.S. 160D-202(a), if a zoning map amendment is being proposed in conjunction with an expansion of municipal extraterritorial planning and development regulation jurisdiction, a single hearing on the zoning map amendment and the boundary amendment may be held.
3. The city shall take any other measures consistent with G.S. 160D-204 in order to adopt and apply its development regulations for the area at the same time it assumes jurisdiction.

16.8. Quasi-judicial decisions.

A. ***Outline of review procedures for quasi-judicial decisions.***

FIGURE 16.8A: REVIEW PROCEDURES FOR QUASI-JUDICIAL DECISIONS



B. ***General procedures.*** In accordance with G.S. 160D-102, a quasi-judicial decision is a process that involves the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. Quasi-judicial decisions include but are not limited to decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative decisions that are final and binding. Pursuant to G.S. 160D-406, the board shall follow quasi-judicial procedures for all quasi-judicial decisions.

1. *Procedure for filing appeals and applications.* Notices of appeal shall be filed with the city clerk. Applications for variances and special use permits shall be filed with the administrator in accordance with Section 16.5. Certificates of appropriateness are outlined in CHAPTER 20 of this Ordinance.
2. *Notice of evidentiary hearing.* 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.

3. *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.
4. *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.
    a. The applicant, the city, and any person who would have standing to appeal the decision under G.S. 160D-1402 shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value, traffic impacts, or other matters about which only expert testimony would generally be admissible under the rules of evidence.
    b. Objections regarding jurisdictional and evidentiary issues, including but not limited to, the timeliness of an appeal, the inclusion or exclusion of administrative material, or the standing of a party, may be made to the board. The board chair shall rule on any objections and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.
    c. Witnesses shall testify under oath. The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.
    d. The official who made the decision, or the person currently occupying that position if the decision-maker is no longer employed by the city, shall be present at the hearing as a witness. The appellant shall not be limited at the evidentiary hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the BOA shall continue the hearing.
    e. When hearing an appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D-1402(j).
    f. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of members shall be required to decide any other quasi-judicial matter or to determine an appeal in the nature of certiorari. For the purposes of this paragraph, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under Section 15.5 shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
    g. The decision shall be reduced to writing and reflect the board's findings of contested facts, if any, the facts' application to applicable standards, and conclusions of law. The written decision shall be approved by the board and signed by the chair or other duly authorized member of the board. The decision of the board shall be effective upon filing such decision with the clerk to the board. The clerk shall see that the decision is delivered by personal delivery, electronic mail, or by first-class mail to

the applicant, property owner, any entity granted party status at the hearing, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective and shall certify that proper notice has been made.

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

6. *Rehearings.*

   a. 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.

   b. 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.

   c. A rehearing shall be denied by the board, if, in its judgment, a prima facie case for such change has not been alleged.

   ~~a.~~d. 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.

   ~~b. 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.~~

7. *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 G.S. 160D-1405(d).

C. ***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 Section 16.8.A, except as provided below.

1. *Application required.*

   a. The applicant shall submit a sketch plan, in accordance with Section 17.4.

   b. The applicant shall submit a description or narrative stating why the special use is requested.

   c. The administrator may request an environmental survey.

   d. 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.

2. *Administrative review procedure.*

a. The applicant shall submit the completed application, pursuant to Section 16.5 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.

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

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

d. 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.

e. 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.

f. 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.

3. *Hearings.*

a. 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:

i. 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

ii. 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

iii. 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.

b. 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.

4. *Permit approval.*

a. 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.

b. 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.

c. 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 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.).

5. *Effect of approval.* 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 G.S. 160D-705(c).
6. *Modifications.* Modifications to an approved special use permit shall be in accordance with Section 16.9.
7. *Revocation of special use permits.*
   a. Revocation of special use permits shall be conducted pursuant to Section 16.13.
   b. In addition to the reasons for revocation outlined in Section 16.13, 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.

D. ***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 Section 16.8.A except as provided below:

1. *Applicability.* In accordance with 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 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 Section 16.4, within which to file a notice of appeal stating the grounds for appeal.
2. *Stays.*
   a. 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.
   b. 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.
3. *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.
4. *Alternative dispute resolution.* The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

E. ***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 Section 16.8.A except as provided below.

1. Administrative review procedure:
   a. The applicant shall submit the completed application, pursuant to Section 16.5 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.
   b. The administrator shall review and comment on the application and supporting materials in accordance with Section 16.6.
   c. The administrator may require that the application and supporting materials be reviewed by the technical review committee (TRC) in accordance with Section 15.1.
   d. 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.
   e. 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.
2. *Standards for granting variances*. Except as limited by subsection 16.8.D.4, below, 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:
   a. 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.
   b. 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.
   c. 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.
   d. 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.
3. *Guiding principles*. In judging a request for a variance, the BOA shall be guided by the following principles:
   a. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
   b. The hardship relates to the applicant's land, rather than personal circumstances;
   c. The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
   d. The hardship is not the result of the applicant's own actions; and
   e. 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.

f. 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.

i. To provide relief from the requirements of Section 9.5 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:

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

(B) 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.

ii. To provide relief from the surface water protection requirements of Section 6.7 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:

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

(B) Variances shall only be issued upon the following determinations:

(1) 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.

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

(C) Variances shall only be issued prior to floodplain development approval.

4. *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.

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

a. To change the permitted uses for any property.

b. To provide relief from the environmental protection requirements in CHAPTER 6 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 6.7 outlined in subsection 3 above.

c. To provide relief from the water, sewer, and utility requirements of Section 13.4.

6. *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.

7. 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 G.S. 160D-705(c).

16.13. Revocation/invalidation of land development permit.

A. *Expiration of permit:*

1. Unless otherwise specified in this ordinance, any development permit issued in accordance with this ordinance will lapse and become invalid unless the work for which it was issued ~~is started~~ has substantially commenced within ~~12 months/365 days~~one year of the date of issue, or if the work authorized by it is suspended or abandoned for a period of at least ~~12 months/365 days~~one year, pursuant to G.S. 160D-403(c).

~~2.~~1. ~~The planning director may grant one extension per permit of the above time periods for an additional 365 days upon written application therefor from the developer, filed prior to the expiration of the permit and payment of a fee of $500.00.~~

~~3.~~2. Substantial commencement of work shall be determined by the administrator based on any of the following:

a. The start of construction as defined in Section 19.3 of this Ordinance; ~~or~~

~~a.~~b. The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than 30 days;

~~b.~~c. The development has installed substantial on-site infrastructure;

~~c.~~a. ~~The start of construction as defined in Section 19.3 of this Ordinance; or~~

~~d. The development has received and maintained a valid building permit for the construction and approval of a building foundation.~~

~~4.~~3. Even if work has substantially commenced, a development approval still expires if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, as calculated and tolled pursuant to G.S. 160D-108.

4. The planning director may grant one extension per permit of the above time periods for an additional one year ~~365 days~~ upon written application therefor from the developer, filed prior to the expiration of the permit ~~and payment of a fee of $500.00~~.

5. Notwithstanding the times of validity and extensions stated in subsections (1)—(4), at such time as a building permit is issued, the land development permit will run concurrently with the building permit, or in developments where multiple building permits are issued, the land development permit shall run concurrently with the last building permit to renew or expire, without any action being required of the city.

B. *Compliance and violations:* Land development permits issued on the basis of plans approved by the city authorize only the use, arrangement, and construction set forth in such approved plans and applications, and subject to any specific conditions and requirements of the city. Use, arrangement, or construction which differs from that authorized by the land development permit shall be deemed a violation of this ordinance and shall cause the administrator to revoke the land development permit stating the reason for revocation in writing, following the same process as used for the approval and impose penalties as per CHAPTER 18 and G.S. 160D-403(f).

C. *Compliance with regulations and previous permits:*

1. Buildings/structures, uses, or other activities authorized by this Ordinance or preceding ordinances and authorized by the administrator shall otherwise comply with applicable federal, state, or local laws, statutes, ordinances, regulations, requirements, or agreements, and any permit issued by the administrator shall be issued based upon a presumption of compliance with such.
2. The administrator may revoke any permit upon a determination that related buildings/structures, uses, or any other activity deriving from such permit is not otherwise in compliance with applicable federal, state, or local laws, statutes, ordinances, regulations, requirements, permits, agreements, or specific conditions or requirements; and may cause the cessation of any use or other activity related to or deriving from such permit and impose penalties as per CHAPTER 18.
3. Any land development permit mistakenly issued in violation of an applicable federal, state or local law may also be revoked.
4. The owner or operator of any structure, use or activity that is the subject of any condition or requirement that was imposed by the city as part of any permit (i.e., "building permit", "zoning permit," "preliminary/final subdivision approval", "special use permit," "planned development," "public safety facility approval", "variances," "paving waivers," and other) that was duly issued prior to the adoption of this ordinance, shall adhere to such conditions and requirements until conditions and requirements are superseded by subsequent approvals under this ordinance.

D. *Right of appeal:* The applicant, property owner, or other party with standing has the right to appeal in accordance with to Section 16.6.J and G.S. 160D-405.

CHAPTER 19. DEFINITIONS

19.3. Definitions.

The following words, terms and phrases, when used in this UDO, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aviation Facilities: Facilities for the takeoff and landing of planes, helicopters, and other types of manned aircrafts, such as ultralight vehicles and gliders.

Awning*:* A roof-like covering mounted above a building entrance or windows to protect pedestrians and the façade from the natural elements. (See Section 5.9.4) ~~A roof-like shelter of canvas or other material extending over a doorway from the top of the window, over a deck, etc., in order to provide protection from the weather.~~

Canopy*:* A fixed, structural overhang above a building entrance or windows to protect pedestrians and the façade from the natural elements. (See Section 5.9.5) ~~Any shelter or shelter-like structure, freestanding or attached to a building, and projecting over public or private property.~~

Home occupation*:* An occupation or profession conducted within a dwelling unit by a residing family member that is incidental to the primary use of the dwelling as a residence. ~~Home occupations are small and quiet non-retail businesses which generally cannot be discerned from the frontage, are seldom visited by clients, require little parking, little or no signage, have only one or two employees and provide services such as professional services, music instruction, and hair styling.~~

Sign, awning*:* A sign ~~constructed of a fabric-like nonrigid material which is part of a fabric or plastic awning~~affixed to or printed on an awning. This does not include projection signs suspended from the underside of the awning.

Sign, canopy: A sign affixed to a canopy. This does not include projection signs suspended from the underside of the canopy.

~~**Sign, marquee**: A sign affixed to a hood, canopy, or projecting roof structure over the entrance to a building, store, or place of public assembly.~~

Start of construction: The start of construction shall be the earlier of:

~~**A.** Issuance of a building permit;~~

~~**B.**~~**A.** The first placement of permanent improvements on a site, such as piles, footings, slab, gravel or other foundation work for buildings (including manufactured homes), public streets or walkways;

~~**C.**~~**B.** The beginning of installation of public utilities;

~~**D.**~~**C.** The beginning of installation of a private line which will connect to existing public utilities;

~~**E.**~~**D.** The beginning of installation of improvements for surface water drainage or erosion control;

~~**F.**~~**E.** Any other work beyond the stage of excavation.

For purposes of this ordinance, the start of construction does not include any of the following: land preparation, such as clearing, grading and filling; excavation for a basement, footings, piers or foundations; the erection of temporary forms; the installation of accessory buildings, such as garages or sheds, ~~not occupied as dwelling units or not part of the main structure~~when a principal building is included in the permitted work.

For a substantial improvement (as distinguished from new construction), the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Taproom or tasting room: An area that is ancillary to the production of beer or other types of alcohol at a brewery, distillery, winery, cidery, etc. where the public can purchase and/or consume ~~the~~ alcoholic beverages primarily produced on site.