UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 2. DISTRICTS AND GENERAL PROVISIONS

2.3. Principal structures.

A. No development shall contain more than one principal building per lot, unless:

1. As part of an approved group development;
2. As part of a conditional zoning district; or
3. As part of an approved special use permit; ~~or~~
4. ~~As part of a pre-existing nonconforming use.~~

B. A multi-unit structure, such as duplexes, townhomes, and mixed-use buildings, within a single lot will be treated as a single primary structure for the purposes of compliance with the dimensional standards of this ordinance.

C. For separate lots within a zero-lot line development, such as those for some types of townhomes and mixed-use buildings, the individual units will be considered a primary structure for each lot.

D. The maximum ground floor area for principal structures varies by zoning district and shall be measured in accordance with the following table.

TABLE 2.3-A: GROUND FLOOR AREA	
District	**Maximum Ground Floor Area of Each Principal Structure**
GR4	10,000 sq. ft.
GR8	8,000 sq. ft.
RMX - Single-family home and duplex	8,000 sq. ft.
RMX - Multi-family and nonresidential	25,000 sq. ft.
NMX	30,000 sq. ft.
PGX	40,000 sq. ft.
DMX	25,000 sq. ft.
CMX	75,000 sq. ft.
IC	100,000 sq. ft.
GI	100,000 sq. ft.
Note: Projects of developments that do not meet the above standards apply for conditional zoning in accordance with Section 2.1.C.	

CHAPTER 5. ARCHITECTURAL STANDARDS

5.2. Applicability.

A. This chapter shall apply when any of the following occurs:

1. New construction of a building or buildings; and
2. Any new changes to building facades, including but not limited to replacement of exterior building elements such as wall material/design, roof material/design, or other exterior remodeling. In this case, only the element and/or material of the building that is being changed or modified (including but not limited to the wall material/design, roof material/design, windows, or doors) will be subject to these regulations

B. The following structures are exempt from the building design elements adopted under this Chapter:

1. Structures subject to regulation under the North Carolina Residential Code (see N.C.G.S. § Section 160D-702(b)).

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 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 Steep Slope Areas 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	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.

8.4. Buffers and screening.

A. ***Applicability:***

1. These regulations shall apply to the following:

i. New construction of a principal building or buildings; ~~All newly developed properties~~

ii. Expansion of an existing principal building resulting in an increase in the gross floor area of 25% or greater;

iii. Expansion of an existing principal building resulting in an increase in required off-street parking spaces equivalent to 50% or 10 vehicle parking spaces, whichever is greater; and

iv. Change of use or expansion of an existing use resulting in an increase in required off-street parking spaces equivalent to 50% or 10 vehicle parking spaces, whichever is greater; and

~~i.~~v. Any changes to existing buffers and screening. In this case, only the element that is being changed or modified will be subject to these regulations

~~ii. When expansions or changes in use result in the expansion of gross floor area of an existing building and/or parking and loading area of over 25 percent, and any property containing an existing structure~~

~~undergoes significant or substantial improvement as defined in CHAPTER 19 of this ordinance, then the parcel shall comply with the landscaping requirements of this section to the maximum extent practical.~~

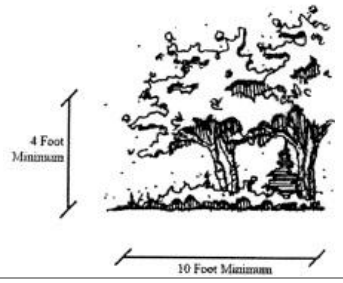
~~iii. When the zoning district classification changes for an existing use or parcel at the request of the property owner or representative thereof, then the parcel shall comply with the landscaping requirements of this section to the maximum extent practical.~~

2. The administrator may modify landscaping requirements up to ten percent in situations where pre-existing conditions make it impossible to comply with subsections ii~~, and~~ iii, and iv above.
3. Applicants are encouraged to design buffer and other landscape areas in such a way as to satisfy stormwater management requirements as set forth in CHAPTER 6 of this ordinance.

B. ***Buffer yard types:***

1. *Type A buffer yard:*
   a. Minimum width: 10 feet.
   b. Minimum height and opacity: Ground to 6 feet—Semi-Opaque Screen.
   c. Maximum horizontal openings: 20 feet.
   d. Performance standard: A buffer which is ten feet in width and contains screening materials which at maturity provide intermittent visual obstruction from the ground to a height of four feet as well as intermittent visual obstruction from a height of four feet up to a height of 30 feet. Vegetative screening materials within intermittent visual obstruction areas shall contain horizontal openings no greater than 20 feet in width upon the plants' maturity.

FIGURE 8.4-A: TYPE A BUFFER YARD

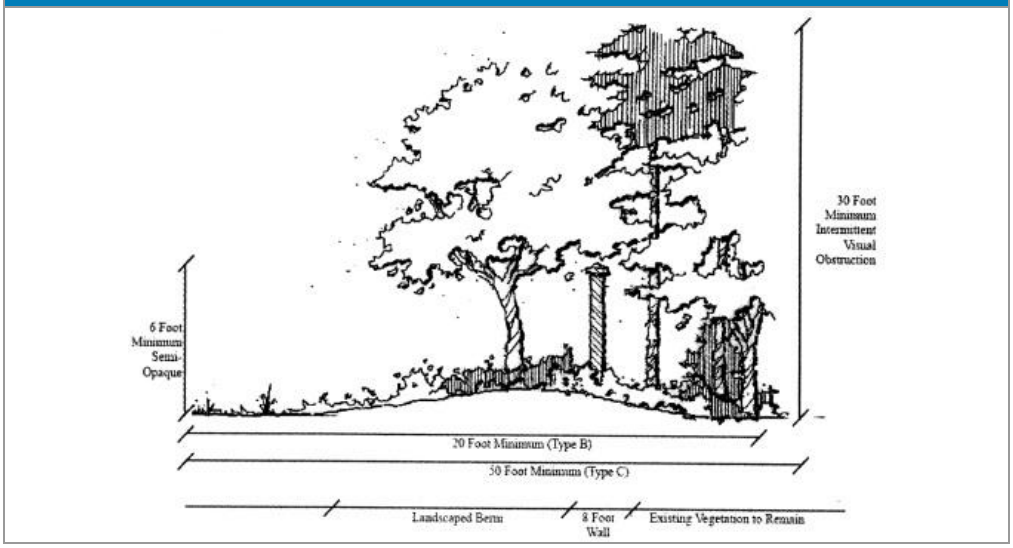


2. *Type B buffer yard:*
   a. Minimum width: 20 feet.
   b. Minimum height and opacity: Ground to 6 feet—Semi-Opaque Screen; 6—30 feet—Intermittent Visual Obstruction.
   c. Maximum horizontal openings: 15 feet—Semi-Opaque Screen Areas; 20 feet—Intermittent Visual Obstruction Areas.
   d. Performance standard: A buffer which is 20 feet in width and contains screening materials which at maturity provide semi-opacity from the ground to a height of six feet, and intermittent visual obstruction from a height of six feet up to a height of 30 feet. Vegetative screening materials within

intermittent visual obstruction areas shall contain horizontal openings no greater than 20 feet in width; and vegetative screening materials within semi-opaque areas shall contain horizontal openings no greater than 15 feet in width upon the plants' maturity.

3. *Type C buffer yard:*
   a. Minimum width: 50 feet.
   b. Minimum height and opacity: Ground to 6 feet—Semi-Opaque Screen; 6—30 feet—Intermittent Visual Obstruction.
   c. Maximum horizontal openings: 15 feet—Semi-Opaque Screen Areas; 20 feet—Intermittent Visual Obstruction Areas.
   d. Performance standard: A buffer which is 50 feet in width and contains screening materials which at maturity provides semi-opacity from the ground to a height of six feet, and intermittent visual obstruction from a height of six height up to a height of 30 feet. Vegetative screening materials within intermittent visual obstruction areas shall contain horizontal openings no greater than 20 feet in width; Vegetative screening materials within semi-opaque areas shall contain no horizontal openings greater than 15 feet in width upon the plants' maturity.

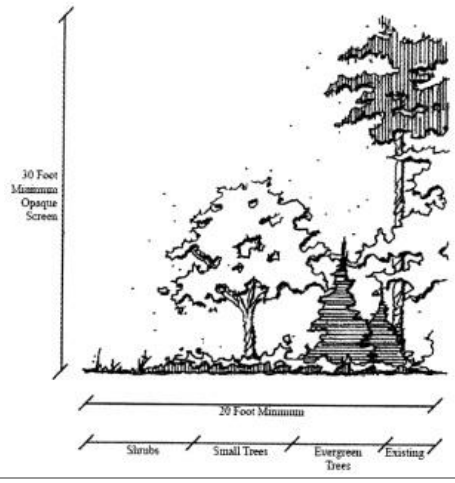
FIGURE 8.4-B: TYPE B AND TYPE C BUFFER YARDS



4. *Type D buffer yard:*
   a. Minimum width: 30 feet.
   b. Minimum height and opacity: Ground to 30 feet—Opaque.
   c. Maximum horizontal openings: None permitted.

d. Performance standard: A buffer which is 30 feet in width and contains screening materials which at maturity provides opacity from the ground to a height of 30 feet. Vegetative screening materials within opaque areas shall contain no horizontal openings upon the plants' maturity.

FIGURE 8.4-C: TYPE D BUFFER YARD



5. *Type E buffer yard.*
   a. Minimum width: 25 feet.
   b. Minimum height and opacity: Ground to 30 feet—Opaque.
   c. Maximum horizontal openings: None permitted.
   d. Performance standard: A buffer which is 25 feet in width and contains screening materials which at maturity provides opacity from the ground to a height of 30 feet. Vegetative screen materials within opaque areas shall contain no horizontal openings upon the plants' maturity.

C. ***Fences, walls, and berms:***

1. Fences, walls, or earthen berms may be substituted for all or a portion of the shrub requirement in all buffer types. In addition, existing vegetation within the buffer shall be maintained and may receive partial or total credit towards screening requirements. All berms, if provided, shall not exceed a slope with maximum rise of one foot to a run of two feet (a ratio of 1:2) and a maximum height of four feet. All berms, regardless of size, shall be stabilized with a ground cover or other suitable vegetation or permanent slope retention device. Berms taller than four feet shall be approved by the administrator on a case by case basis.

D. ***Required buffer yards:***

1. A buffer yard is intended to give spatial separation and to decrease visual contact between incompatible uses. Buffer yards shall be required in accordance with the tables below when any use is being established

on a property that abuts an existing developed lot or less intense zoning district. More stringent buffer yard requirements may apply to certain specified uses as set forth in CHAPTER 3 of this ordinance.

2. Buffer yards shall be required along the perimeter of proposed projects within certain zoning districts (and associated conditional districts) when such project lies *adjacent* to a zoning district (or conditional district) of lesser intensity:

TABLE 8.4-A: REQUIRED BUFFER YARDS BY ZONING DISTRICT

		Adjacent District							
		GR	RMX	NMX	PGX	DMX	IC	CMX	GI
District in Which Development is Located	GR	None	None	None	None	None	None	B	D
	RMX	B	None	None	None	None	None	None	D
	NMX	B	A	None	None	None	None	None	D
	PGX	B	A	A	None	None	None	None	D
	DMX	B	A	A	A	None	None	None	D
	IC	B	B	A	A	A	None	None	None
	CMX	D	D	D	D	D	None	None	None
	GI	E	E	E	E	E	E	None	None

3. In addition to the buffer yards required between districts as set forth above, buffer yards shall be required for certain types of development *within* certain zoning districts and associated conditional districts, as follows. This requirement applies regardless of the adjacent district. However, where conflicts occur between 8.4.D.2, above, and this section, the more restrictive requirement shall apply.

TABLE 8.4-B: REQUIRED BUFFER YARDS BY TYPE OF PROPOSED DEVELOPMENT

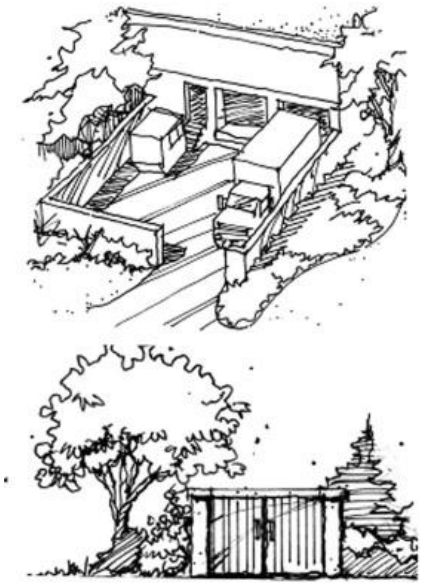
		New Multifamily (more than 4 units/bldg.)	Non-Residential Group Development
District in Which Development is Located	GR	B	B
	RMX	B	B
	NMX	B	B
	PGX	B	B
	DMX	B	B
	CMX	B	D
	IC	B	B
	GI	NA	E

4. The approving authority may require alternative buffers or landscaping, including locations other than those typically required, when a modification to the requirements of this section is warranted in order to meet the intent of the specified standards.
5. Buffer yards are intended to be constructed along the perimeter of the property or project; however, when there are irregular topographic conditions (such as the perimeter of the property is at a lower grade

than the use being screened) the approving authority may require the relocation of the required buffer yard in order to better serve its purpose.

6. Natural vegetation, vegetation required for tree protection, riparian buffer areas, and other forms of existing vegetation may be utilized to satisfy these requirements when such natural and existing vegetation clearly satisfies the purpose of this section.
7. Off-site vegetation:
    a. Existing plant material on adjacent property may be credited toward buffer requirements, provided that such material is in a permanently protected area such as a conservation easement or similarly preserved area.
    b. Plant material, existing or proposed, on an adjacent property may be credited toward buffer requirements through use of a landscape easement.
8. Buffer requirements may be reduced or waived by the approving authority in the following circumstances:
    a. Such requirements would pose a safety hazard.
    b. The plantings or planting area would conflict with utilities, easements, or overhead power lines, or encroach upon city trees, as recommended by the city horticulturalist.
    c. Special use permits based solely upon building height or building ground floor square footage size, where such requirement would serve no useful purpose.
    d. When projects to which these requirements apply exhibit unifying architectural and landscape design characteristics that integrate the project into surrounding development, and when the landscape design of such a project clearly meets and exceeds the goal of these requirements such that these requirements become unnecessary.
9. Fences, walls and berms in buffers
    a. Where walls and berms are built within any required project boundary buffer, they shall meet the following requirements.
        i. Walls and berms within a buffer may be used to permit a reduction in the buffer up to 25 percent of the required width.
        ii. Walls and berms shall not be permitted within surface water protection areas, floodplains, and floodways.
        iii. Walls and berms shall conform to other applicable requirements of this ordinance.
        iv. All walls, when located within a buffer, shall be planted on the face towards the adjacent property with at least one upright shrub for every six feet of wall length.
        v. Berms shall have side slopes of not less than three feet horizontal for each one foot vertical and a minimum crown width of two feet.
        vi. Prior to issuance of the first certificate of compliance, berms shall be planted to ensure coverage by live plant material within three to five years.
        vii. The applicant shall be required to demonstrate provision for access and maintenance of landscaping and the wall, berm, or fence structure at the time of landscape plan approval.
        viii. Chain link and concertina wire fences shall be buffered by a Type A buffer yard on all sides.

FIGURE 8.4-D: ILLUSTRATIONS OF APPROPRIATE SCREENING OF DUMPSTERS AND LOADING AREAS



8.5. Street tree plantings.

A. ***Applicability:*** Street trees shall be required along all public and private streets for the following categories of development:

1. New construction of a principal building or buildings built under the North Carolina Commercial Building Code;
2. New construction of a residential group development with 8 or more dwellings; and
3. Improvements to street frontage requirements, as established by CHAPTER 13.
4. Any new changes to existing street trees. In this case, only the street trees that are being changed or modified will be subject to these regulations

~~1. All non-residential and mixed-use development.~~

~~2. All projects approved as a conditional zoning district, special use permit, planned development, or group development.~~

~~3. All major subdivisions.~~

B. Large canopy trees shall be installed at a minimum average distance of 40 feet on-center in a planting strip a minimum of six feet in width. Such trees shall be a minimum of 1½ inches in caliper at planting. Where overhead utilities exist prior to development, ornamental trees may be substituted.

C. Street trees shall be placed at least eight feet from light poles and ten feet from electrical transformers in order to allow these utilities to be safely serviced (ornamental trees may be placed within five feet of such devices).

A minimum of 300 square feet of pervious ground area per canopy tree shall be provided unless they are planted in irrigated tree wells.

D. Street trees shall be deciduous hardwoods and shall meet the standards set forth in the American Standard for Nursery Stock by the American Association of Nurserymen as well all applicable standards of this ordinance.

8.6. Parking area screening.

A. *Applicability:* The provisions of this section shall apply to the ~~P~~perimeter yard of all parking areas visible from the street, except residential developments with six or less off-street vehicle parking spaces, when any of the following occurs

a. New construction of a principal building or buildings;

b. Expansion of an existing principal building resulting in an increase in required off-street vehicle parking spaces equivalent to 50% or 10 vehicle parking spaces, whichever is greater;

c. Change of use or expansion of an existing use resulting in an increase in required off-street vehicle parking spaces equivalent to 50% or 10 vehicle parking spaces, whichever is greater; or

d. Any new changes to parking area screening. In this case, only the element and/or material that is being changed or modified will be subject to these regulations.

~~A.~~B. *Minimum planting:* Semi-opaque screen from the ground to at least a height of three feet for screening of car lights and glare. (Minimum width: Ten feet).

~~B.~~C. *Performance standard:* This type functions as a semi-opaque screen around the perimeter of a parking area from the ground to at least three feet for the screening of car lights and glare. This shall only be required along the parking area that fronts the public right-of-way or any side of a parking area that is not protected by a required buffer yard. The location of such yards shall be determined by the administrator upon review. Effective screening devices may include solid decorative brick walls, wood fences, earth berms, tight evergreen hedges which shall reach the required height within two years of planting, or any combination of the above. Plantings which can achieve a mature height exceeding 30 inches shall not be planted in the sight triangle on each side of drives or streets.

~~C.~~D. *Screening of open storage, above ground utilities, and dumpsters:* Any open storage of merchandise, equipment, materials or goods other than those on display for retail sales, above ground utilities, and dumpsters areas shall be screened from view from any street right-of-way in accordance with the ratios (but not necessarily the minimum dimension) prescribed for type C buffer yards. Sub-grade dumpsters shall be exempt from the provisions of this section.

8.7. Parking area landscaping.

A. *Applicability:* The provisions of this section shall apply to:

1. Interiors of all parking areas with more than 16 parking spaces or more than one tenth (1/10) of an acre in size; ~~.~~

2. Interiors of all new parking areas that bring the total to or exceed 16 spaces or more than one tenth (1/10) of an acre in size. In this case only the new parking area shall be subject to these regulations; and

~~1.~~3. Any new changes to existing parking area landscaping. In this case, only the elements that are being changed or modified will be subject to these regulations.

B. *Stormwater management requirements:* Applicants are encouraged to design buffer and other landscape areas in such a way as to satisfy stormwater management requirements as set forth in CHAPTER 6 of this ordinance.

C. *Minimum plantings:*

1. No parking space shall be more than 50 feet from the base of a canopy tree.
2. One 15-to-18-inch minimum height evergreen or deciduous shrub shall be required per 250 square feet of required landscaped vehicular use area. This rate may be varied by the administrator considering alternate shrub heights, ground covers, or other factors.

D. *Performance standard:* This type functions as a tree ceiling over a parking area providing shelter from sun and rain and minimizing the impact of runoff by providing "green" surface area on which to collect. Large maturing canopy trees shall be planted in a manner that provides shade for the entire parking area at maturity. All landscaped areas shall be separated from parking spaces. The use of differing species around the parking area is encouraged to promote diversity in the overall urban tree canopy. The use of existing vegetation to satisfy this requirement is encouraged. Supplemental plantings may be required in addition to native materials.

E. *Credits for preservation of existing trees in parking areas:* Trees that are saved in a parking area (other than those in Tier 1 or Tier 2 Tree Save Areas in Section 8.3) can be used towards the interior tree landscape requirement. Note that each tree preserved will require a minimum pervious area around it equal to its drip line.

8.8. General non-residential and mixed-use landscaping.

A. In addition to the street tree and parking lot landscaping requirements of this chapter, non-residential and mixed-use projects shall meet the following requirements.

B. No less than five percent of the lot or parcel or project area to which this chapter applies shall be landscaped. This requirement shall be met in addition to any street tree requirements.

C. Landscaping consisting of trees, shrubs, and other plantings of a variety of sizes, shapes, and arrangements shall be located throughout the property, among buildings, and between the front façade of all structures and streets.

D. Landscaping along major corridors:

1. A type A buffer yard shall be maintained along the entire length of the street frontage of any parcel of land fronting the following streets:
    a. US Highway 64/US 276/NC 280 (Asheville Highway), north from the intersection of Lambo Creek (beginning at the top of the northern bank) and Asheville Highway, to the intersection of the city's Extraterritorial Jurisdiction and NC 280.
    b. US Highway 64 (Rosman Highway), south from the intersection of Rosman Highway and Caldwell Street to the intersection of city's Extraterritorial Jurisdiction and Rosman Highway.
2. This requirement shall be in addition to any other requirement of this ordinance, including but not limited to street trees, infrastructure improvements, setbacks, and others. The required type A buffer yard shall not be located in the right-of-way and shall be unbroken except for ground signs, driveways and streets approved in accordance with this ordinance.
3. This requirement shall apply to all properties irrespective of size or uses.
4. Deviations from this requirement shall only be considered as variances by the BOA in accordance with the procedures set forth in Section 16.8.

CHAPTER 10. PARKING STANDARDS

10.2. Applicability.

A. This chapter shall apply when any of the following occurs:

1. New construction of a principal building or buildings;
2. Expansion of an existing principal building resulting in an increase in required off-street vehicle parking spaces equivalent to 50% or 10 vehicle parking spaces, whichever is greater; ~~or~~
3. Change of use or expansion of an existing use resulting in an increase in required off-street vehicle parking spaces equivalent to 50% or 10 vehicle parking spaces, whichever is greater; or~~.~~
~~3.~~4. Any new changes to off-street parking areas, including but not limited to repaving, restriping, or circulation changes. In this case, only the element and/or material that is being changed or modified will be subject to these regulations.

CHAPTER 11. LIGHTING

11.2. Applicability.

A. This chapter shall apply when any of the following occurs:

1. New construction of a principal building or buildings;
2. Any new changes to outdoor lighting, including but not limited to additional outdoor lighting being added or the replacement of lighting fixtures. In this case, only the element and/or material that is being changed or modified will be subject to these regulations.

11.~~2~~3. Outdoor lighting standards.

~~All outdoor lighting shall conform to the following standards:~~

A. Outdoor lighting shall not shine directly into the yard or into the windows of an adjacent residence.

B. Outdoor lighting shall be designed, located, and mounted at heights no greater than 18 feet above grade for pedestrian lights, or 35 feet above grade for street or parking area lights.

C. Light sources may be located within the perimeter landscaped area and along pedestrian walkways providing provision Subsection 11.2.E is met.

D. All outdoor and parking lot lighting fixtures, including: metal halide, mercury vapor, fluorescent, induction, white high-pressure sodium and color-improved high-pressure sodium lamps used in non-cutoff fixtures shall be coated with an internal white frosting inside the outer lamp envelope.

E. All lighting must be located at least ten feet from property lines defining rear and side yards or required perimeter landscaped areas required by this Code.

F. All outdoor lighting shall be designed and located such that the maximum illumination measured in foot-candles at the property line shall not exceed one foot candle. The average intensity illumination for outdoor lighting shall not exceed four foot candles in intensity (except where noted) as measured at grade. Fixtures

should be placed to provide uniform distribution of light and to avoid intense lighting that produces excessive glare. General parking lot lighting shall not exceed a maintained average of two and one-half foot-candles.

G. Lighting fixtures scaled for pedestrian activities shall provide for uniform lighting distribution to produce minimal shadows.

H. Floodlights, spotlights or any other similar lighting shall not be used to illuminate buildings or other site features unless approved as an integral architectural element on the development plan. On site lighting may be used to accent architectural elements and not be used to illuminate entire portions of building(s). Floodlights or other type of lighting attached to light poles that illuminate the site and/or building(s) are prohibited.

I. Outdoor illumination of building, landscaping and signs:

1. Exterior lighting should be integrated with the architectural character of the building. To avoid light spillage, only full cutoff fixtures shall be used.
2. The unshielded outdoor illumination of any building or landscaping is prohibited.
3. Lighting fixtures used to illuminate an outdoor advertising sign either shall be by directed ground lighting sign or mounted on the top of the sign and shall point downward, and shall comply with shielding requirements.
4. Illumination of signs shall be limited to ten lumens per square foot.

J. No flickering, rotating, or flashing lights, or search lights shall be permitted.

K. Wall packs on buildings may be used at entrances to a building to light unsafe areas. They are not intended to draw attention to the building or provide general building or site lighting. Wall Packs on the exterior of the building shall be fully shielded (true cut-off type-bulb or light source not visible from off-site) to direct the light downward and be of low wattage (preferably 100 watts or lower). Other accent lighting projected onto buildings may be allowed provided that it is approved through the development plan process.

L. Gas station/convenience store aprons and canopies:

1. The lighting fixture bulbs shall be recessed into a canopy ceiling so that the bottom of the fixture is flush with the ceiling so that light is restrained to no more than 85 degrees from vertical.
2. As an alternative to recessed ceiling lights, indirect lighting may be used where the light is directed upward and then reflected down from the underside of the canopy. In this case, light fixtures shall be shielded so that direct illumination is focused exclusively on the underside of the canopy.
3. Lights shall not be mounted on the top or sides (facia) of the canopy, and the sides of the canopy shall not be externally illuminated.
4. The lighting for new facilities (pump islands and under canopies) shall have a minimum of 1.0 foot-candle at grade and not exceed the average horizontal illumination cannot exceed 10 foot-candles at grade level. These standards are based on the IESNA (Illuminating Engineering Society of North America) RP-33, Lighting for Exterior Environments.

M. Canopies used for building accents over doors, windows, etc. shall not be internally lit (i.e. from underneath or behind the canopy).

11.~~3~~4. Design procedures.

The maximum permitted illumination shall be measured in average foot-candles from ground level in accordance to the standards expressed in this chapter. The following standards shall be required of all exterior lighting with the exception of public street lighting.

The quantity of fixtures to be provided shall be based upon the desired level of uniform illumination as established by the current standards of the IESNA. Fixture locations should be chosen to minimize the hazards of glare.

The level of illumination shall be based upon the primary activity in each area to be lighted. The standards for various activities prescribed by the following Illuminating Engineering Society chart represent a number of exterior lighting uses for general reference. Foot-candle designations represent measurements for the average intensity at grade.

TABLE 11.3A: REQUIRED LEVEL OF ILLUMINATION		
Use	Illumination (in Foot-Candles)	
	Maximum (Glare)	Minimum (Safety)
UTILITY LIGHTING		
Minimum Visibility	—	.5
Driving	1	.5
Pedestrian Ways	1	.5
General Landscaped Areas	2	1
AREA LIGHTING		
Gas Station and Convenience Store Canopies	10	1
Parking Lots	4	1
BUILDING EXTERIORS		
Entrances (frequent use)	6	2
Entrances (infrequent use)	1	.5
Vital Locations or Structures	6	2
Building Surroundings	2	1

11.45. Outdoor recreational lighting.

Because of their unique requirements for nighttime visibility and limited hours of operation, the lighting of active recreation areas, such as for ball fields and tennis courts are not considered in this chapter. However, lighting fixtures for such uses shall be mounted and aimed so that the illumination falls within the primary playing area and immediate surroundings so that no direct light illumination is directed off site. Lights shall be turned off within of the end of any event.

11.56. Street lighting.

Street lighting shall be placed on all streets by the developer to ensure for the safe use of streets by both cars and pedestrians. All street lighting shall be placed in accordance with the following minimum design standards:

A. Minimum average street light spacing:

1. *Single family homes and duplex lots (greater than 100 feet wide):* 500 feet.
2. *Single family homes and duplex lots (less than 100 feet wide):* 300 feet.
3. *Multi-family uses:* 150 feet.
4. *All other uses:* 300 feet.

B. Preference in placement shall be given to street intersections and street curves.

C. Pedestrian lighting should be prioritized over automobile lighting. Lighting should be placed in a manner to limit the casting of shadows on sidewalks.

D. All lighting shall utilize full-cut-off fixture.

E. Alleys are excluded from the spacing and placing requirements of this chapter but are encouraged to be illuminated using private security lights, wall packs, or similar low level decorative lighting.

F. The requirement that street lights be provided may be waived by the approving authority in mountainous areas where street lights would be visible from the valley floor.

11.~~6~~7. Administration.

A. *Measurement:* Light level measurements shall be made at the property line of the property upon which the light to be measured is being generated. If measurement on private property is not possible or practical, light level measurements may be made at the boundary of the public street right-of-way that adjoins the property. Measurements shall be made at finished grade (ground level), with the light-registering portion of the meter held parallel to the ground and pointing upward. Lighting levels are to be measured in foot-candles with a direct reading, portable light meter. The meter sensor shall be mounted not more than six inches above ground level in a horizontal position.

Light levels are specified, calculated and measured in foot-candles (FC).

B. *Lighting plan:*

1. A lighting plan shall be submitted with all land development permit applications proposing the establishment of outdoor lighting.
   a. A site plan drawn to scale showing building(s), landscaping, parking areas, and proposed exterior lighting fixtures.
   b. Location of all post, canopy, supports, and light fixtures, including the height of each fixture, for any building, structure, parking, display and loading areas.
   c. Specifications of the illuminating devices, lamps, supports, and other Devices, including designation as IESNA "cut-off" fixtures. This description may include but is not limited to manufacturers catalog cuts, enlarged or reduced to the correct scale of the site plan, and drawings including sections where required.
   d. Locations of all pole mounted and building mounted fixtures and a numerical 25-foot by 25-foot grid of lighting levels, in foot-candles, that the fixtures will produce on the ground (photometric report). The photometric report will indicate the minimum and maximum foot-candle levels within the lighted area of the site. The minimum (lowest number) is usually at the outer edges of the illuminated area or between two fixtures. The average light level is determined by adding the foot-candle value of all the points in the grid and dividing by the total number of points. This information is available from the manufacturer of the specified fixture.

2. The above required plans and descriptions shall be sufficiently complete to enable the administrator to readily determine compliance with the requirements of this chapter.
3. An isolux lighting plan is also permitted in fulfillment of this section provided that it indicates the foot-candles at grade by contour diagram or grid points that cover the site as noted in Section 17.10 (Lighting Plan Requirements).

11.~~7~~8. Exemptions.

A. The following types of lighting are exempt from these requirements:

1. Lighting of the United States of America or State of North Carolina flags and other non-commercial flags expressing constitutionally protected speech.
2. Circus, fair, carnival, or other similar civic/community events.
3. Construction and emergency lighting are exempt from the provisions of this chapter provided said lighting is temporary and is discontinued immediately upon completion of the construction work or abatement of the emergency necessitating said lighting.
4. Underwater lighting used for illumination of swimming pools and fountains is exempt from shielding standards.
5. Religious/holiday decorations lighting (i.e. Christmas trees and lighting).

CHAPTER 12. SIGNS

12.2. Applicability.

A. This chapter shall apply when any of the following occurs:

1. A sign is constructed, erected, posted, or otherwise installed, regardless of whether a permit is required or not; and
2. Any new changes to signs, including but not limited to replacement of sign materials or illumination. In this case, only the element that is being changed or modified will be subject to these regulations.

~~A. No sign of any type shall be constructed, erected, painted, posted, placed, replaced, enlarged, moved or hung in any district except without first obtaining a permit from the Administrator in compliance with this ordinance.~~

~~B. All signs shall fully comply with the requirements of the State of North Carolina Building and Electrical Codes.~~

CHAPTER 13. INFRASTRUCTURE IMPROVEMENT REQUIREMENTS

13.2. Required improvements for all development plans.

Pursuant to G.S. 160D-702, the following improvements are required for all development plans within the city limits of the City of Brevard and its Extraterritorial Jurisdiction. Specific requirements for the following public improvement types are set forth in subsequent sections.

TABLE 13.2A: REQUIRED PUBLIC IMPROVEMENTS

Public Improvement Types	Brevard City Limits	Extraterritorial Jurisdiction
Potable Water	City Water Required; Dedication to City Required	Private Water Required; City Water Optional with dedication to City required
Fire Suppression System	Hydrants Required; Dedication to City Required	Hydrants required if City Water Provided; Dry Hydrants may be required
Sanitary Sewer	City Sewer Required; Dedication to City Required	Adequate Septic Required; City Sewer Optional with dedication to City required.[1]
Public Streets	City Streets Required; Dedication to City Required	NCDOT Streets Required
Street Rights-of-Way	Required; Dedication to City Required	Required; Dedication to NCDOT Required
Utility and Access Easements	Required; Dedication to City Required	Required; Dedication to City Required
Sidewalks	Required; Dedication to City Required	Optional[2]
Multi-Use Paths/Other Pedestrian Facilities	Required when identified upon adopted transportation plans, recreation plans, and similar plans and policies of the City of Brevard or Transylvania County; Dedication to City may be Required	Required when identified upon adopted transportation plans, recreation plans, and similar plans and policies of the City of Brevard or Transylvania County; Dedication to City may be Required
Pedestrian Easements or Right-of-Way	Dedication to City Required	Required Along Streets; Dedication to NCDOT Required
Curb and Gutter	Required; Dedication to City Required	As required by NCDOT

TABLE 13.2A: REQUIRED PUBLIC IMPROVEMENTS		
Public Improvement Types	**Brevard City Limits**	**Extraterritorial Jurisdiction**
Street lights	Required; Dedication to City Required	Optional
Underground Wiring	Required	Optional
Dedicated Open Space	Required as per CHAPTER 7 of this ordinance; Dedication to City may be Required	Required as per CHAPTER 7 of this ordinance
Street Trees and Landscaping	Required; Dedication to City may be Required	Required
[1]Annexation is required in order to provide sanitary sewer to properties lying outside the corporate limits of the City of Brevard, except in certain circumstances outlined in Brevard City Code Section 2-292. *[2] In accordance with NCGS §160D-804(c), sidewalks are not required in the extraterritorial jurisdiction.*		

13.5. Streets and frontages ~~design~~.

Commented [EB1]: Note: the following sections (13.5.1 and 13.5.2) were together in one section. We are proposing to split them up to accurately apply the applicability section for the street frontage improvements.

13.5.1. Street standards.

A. *Streets required:*

1. New development without frontages upon a public street shall, in all cases, extend and connect to a public street. Public street extensions and improvements required for new development, including those beyond the development boundary, are the sole responsibility of the developer. Such improvements must be provided in accordance with the requirements of the CHAPTER 62 of Brevard City Code and this ordinance. This section shall apply to all subdivisions, the development of which is subject to the control of the city, both inside and outside the city limits.
2. Streets shall be installed by the developer and dedicated to the city prior to the approval of any final subdivision plat or development plan unless a performance guarantee is provided to the administrator in accordance with City Code, this ordinance, and procedures established by the administrator. Streets shall be installed by the developer and dedicated to the city prior to the issuance of any certificates of occupancy for any building within that phase or on that street, as applicable to the particular development.
3. City streets shall be built to the minimum specifications of this chapter and CHAPTER 62 of Brevard City Code, and shall comply with all standards and specifications of the public works director. New streets in the ETJ shall meet all standards and requirements of the North Carolina Department of Transportation.

B. *Streets to connect:* Streets shall interconnect within a development and with adjoining development in accordance with CHAPTER 9 and CHAPTER 10 of this ordinance. Culs-de-sac are permitted only where topographic conditions and/or exterior lot line configurations offer no practical alternatives for connection or through traffic. Street stubs shall be provided with development adjacent to open land to provide for future connections at the discretion of the administrator. Streets shall be planned with due regard to the designated corridors shown on adopted plans and policies of the city or Transylvania County.

C. *Topographic considerations:*

1. Wherever possible, street locations should account for difficult topographical conditions, paralleling excessive contours to avoid excessive cuts and fills and the destruction of significant trees and vegetation outside of street-rights-of way on adjacent lands.

~~C.~~D. *Infrastructure in steep slope areas*: Infrastructure shall be installed in steep slope areas in accordance with the provisions of this chapter and any other applicable provisions in CHAPTER 6.

~~D.~~E. *On-street parking:*

1. On-street parking may be required by the administrator.
2. When required, all on-street parking provided shall be parallel. Curb or angle parking is permitted upon approval of the administrator when the fronting buildings are more than 22 feet in height to provide spatial definition and when the posted speed limit is less than 25 mph.
3. When required, minimum right-of-way widths shall be modified to account for on street parking.

~~E.~~F. *Traffic calming devices:* The use of approved traffic calming measures is encouraged as alternatives to conventional traffic control measures on Neighborhood Streets and within circulation areas of commercial and mixed-use developments.

~~F.~~G. *Flood elevations:* No street in an area subject to flooding shall be approved if it is more than one foot below the elevation of the 100-year flood. The administrator may require, where necessary, profiles and elevations of streets for areas subject to flooding. Fill may be used for streets in accordance with CHAPTER 34 of Brevard City Code. Drainage openings shall be so designed as to not restrict the flow of water and unduly increase flood heights.

~~G.~~H. *Storm drainage:* Stormwater shall not be discharged into any stream and shall be retained and treated accordance with CHAPTER 6 of this ordinance, except that streets and related retention/treatment infrastructure shall be designed to accommodate a 25-year, 24-hour storm drainage standard.

~~H.~~I. *Street names:* Streets shall be named and property addressing assigned in accordance with Brevard City Code, Chapter 62, Streets, Sidewalks and Other Public Ways, Article VII, Property Addressing and Road Naming. The administrator shall require evidence that road names and property addresses have been approved and assigned by the Transylvania County Property Addressing Coordinator prior to approving any development.

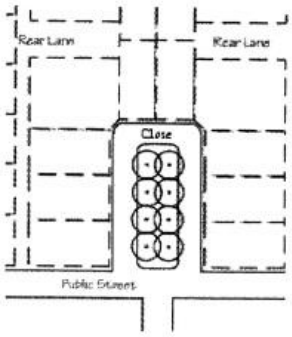
~~I.~~J. *Blocks:*

1. The lengths, widths, and shapes of blocks shall be determined with due regard to:
   a. The provision of adequate building sites suitable to the special needs of the type of use contemplated, and adequate public open spaces accessible and visible to residents.
   b. District requirements and design criteria.
   c. Needs of non-vehicular and vehicular traffic circulation and traffic control and safety.
   d. Opportunities and constraints of topography, with convenient access to important physical and topographical features such as lakes and rivers, significant areas of trees and other natural features, and areas of high ground offering scenic views.
2. Blocks shall not be less than 200 feet nor more than 660 feet (⅛-mile), as measured from edge of right-of-way, unless site and topography or other special circumstances are present as determined by the administrator. Where deemed necessary by the administrator, a pedestrian crosswalk of at least ten feet in width may be required.
3. Blocks shall have sufficient width to allow two tiers of lots of minimum depth except where single tier lots are required to separate residential development from another type of use, or when abutting a perennial stream or lake.

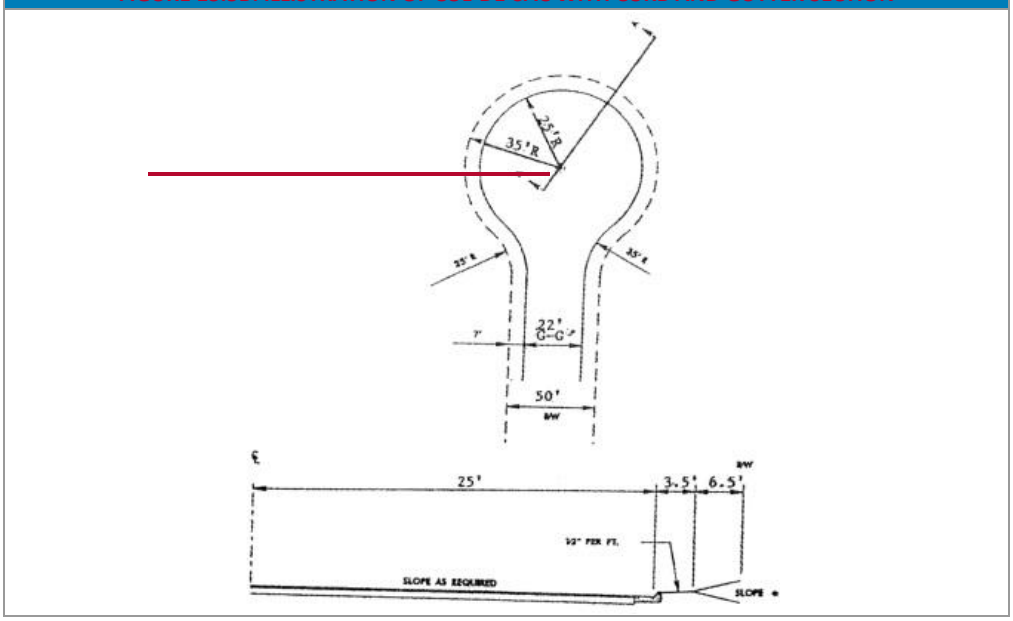
~~J.~~K. *Street markers and traffic control signs:* Street markers and traffic control signs shall be required and posted in accordance with city standards and the Manual of Uniform Traffic Control Devices. Such infrastructure shall be installed by the developer prior to the issuance of any Certificates of Occupancy for any building on that street.

~~K.~~L. *Culs-de-sac and closes.* Where practical, a close (see graphic, below) shall be used in place of a cul-de-sac. Culs-de-sac and closes shall be designed to facilitate the turning radius of emergency vehicles.

FIGURE 13.5A: ILLISTRATION OF CLOSE



~~FIGURE 13.5B: ILLISTRATION OF CUL-DE-SAC WITH CURB AND GUTTER SECTION~~



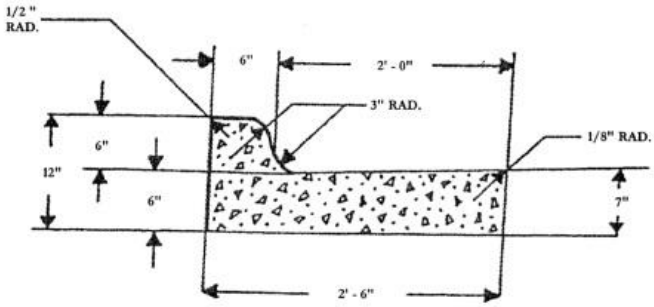
~~L.~~M. *Intersections:*

1. All streets shall intersect at right angles as nearly as possible and no street shall intersect at less than 60 degrees.
2. Where practical, intersections should be aligned to create four-way intersections.
3. Off-set intersections for local streets and neighborhood collectors should be at least 125 feet apart measured from centerline to centerline. A larger spacing in accordance with American Association of State Highway and Transportation Officials (AASHTO) standards may be required for all other streets.
4. Property lines at street intersections shall be rounded with a minimum radius of 20 feet. At an angle of intersection of less than 90 degrees, a greater radius may be required.
5. Proper sight lines shall be maintained at all intersections of streets to permit adequate sight distance. Where the posted speed limit is less than 20 mph, the intersection sight distance may be reduced to 105 feet.
6. Bulb-outs are discouraged on narrow streets (less than 30 feet face-of-curb to face-of-curb) but encouraged on wider streets.
7. Property lines at street intersections shall be rounded with a minimum radius of 20 feet. Where a street intersects a state highway, the design standards of the state department of transportation shall apply.

~~M.~~N. *Curb radii:* Curb radii shall be designed to reduce pedestrian crossing times along all streets requiring sidewalks. In general, curb radii should not exceed 20 feet except along NCDOT-maintained roads.

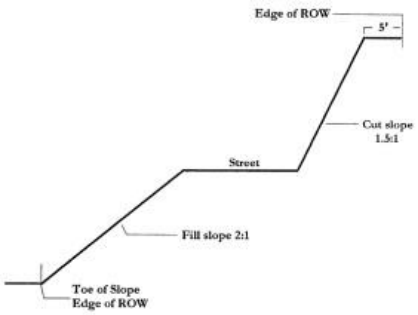
~~N.~~O. *Curbs and drainage for city streets:* The following requirements shall apply to streets within the city. Streets within the ETJ shall meet all applicable requirements of the North Carolina Department of Transportation.

FIGURE 13.5C: STANDARD VERTICAL FACE CURB AND GUTTER



1. Curb and gutter shall be required on all new residential and commercial streets constructed within the city.
2. Standard vertical face curb and gutter within the city shall be two-foot, six-inch concrete with a height of six inches (see graphic, above). All curbing shall be properly backfilled.
   a. Exceptions to this requirement may be made by the administrator subject to circumstances in the area under study. Such circumstances shall relate to the topography of the area, future maintainability of the streets, or other factors deemed relevant by the administrator.
   b. This shall not limit, or prohibit the use of, curb and gutter design standards adopted by the North Carolina Department of Transportation for subdivision roads adjacent to, and serving dwellings subject to North Carolina Residential Code.
3. Vertical face curbing is required along all streets with on-street parking and around all required landscaping areas and parking lots.
4. All drainage gates must be safe for bicyclists. Bicycle-safe drainage grates are types E, F, and G as approved by the NCDOT.
5. City street culvert dimensions shall be subject to the requirements of the public works director.
6. The right-of-way shall extend from a point five feet outward from the top of the bank of any cut slope to the toe of any fill slope. Maximum slope of any cut slope shall be at a ratio of no greater than 1.5 feet of horizontal run to one foot of vertical rise (1.5:1 slope), and the maximum slope of any fill slope shall be at a ratio of no greater than two feet of horizontal run to one foot of vertical rise (2:1 slope).

FIGURE 13.5D: RIGHT-OF-WAY MAXIMUM SLOPE CROSS SECTION



~~O.~~P. *Centerline radius:* A 90-foot minimum centerline radius shall be used for local streets, parkside drives, and minor streets between reverse curves though they may be reduced to 45 feet for design speeds less than 20 mph. All other streets shall be in accordance with AASHTO standards.

~~P.~~Q. *Posted speed limits: All streets shall be posted in accordance with the Manual of Uniform Traffic Control Devices and the City of Brevard Traffic Schedule.*

~~Q.~~R. *Street grades: The maximum permissible street grade shall be 18 percent.*

~~R.~~S. *Design standards: Design standards not specifically addressed in this ordinance must comply with the minimum design and construction criteria of the N.C. Department of Transportation.*

~~S.~~T. *Minimum right-of-way: The administrator shall determine right-of-way widths based upon the characteristics of the proposed development. However, unless otherwise specified, the minimum right-of-way for all new streets within the city shall be 50 feet, and shall satisfy minimum requirements of the North Carolina Department of Transportation in the ETJ.*

13.5.2. Street frontage standards.

A. ***Applicability***

1. New construction of principal building or buildings built under the NC Commercial Building Code;
2. New construction of a residential group development with 8 or more dwellings;
3. Expansion of an existing principal building or buildings built under the NC Building Commercial Code by 50% or greater; and
4. Any new changes to existing street frontages, including but not limited to replacement of the street trees or other change to a street frontage. In this case, only the element that is being changed or modified will be subject to these regulations.

~~A. New development and substantial improvements to existing development with frontages on existing public streets shall be required to upgrade all their frontages to meet the standards of this chapter.~~

~~B. *Pedestrian and bicycle infrastructure:* Pedestrian and bicycle infrastructure shall be required as set forth within this chapter and conformance with adopted plans and policies of the city or Transylvania County.~~

~~C.~~B. ***Landscaping:***

1. Streets shall be landscaped with street trees. Commercial streets shall have trees which compliment the face of the buildings and which shade the sidewalk. Residential streets shall provide for an appropriate canopy, which shades both the street and sidewalk, and serves as a visual buffer between the street and the home.
2. All street trees shall be installed in accordance with CHAPTER 8 of this ordinance. Large canopy trees shall be planted in a planting strip at a minimum average distance of 40 feet on-center.
3. The minimum width of all planting strips shall be six feet. For large canopy trees such as Willow Oaks and Red Maples, a minimum of eight foot planting strip is suggested. Refer to CHAPTER 8 of this ordinance for additional information on landscaping.

~~D.~~C. ***Pedestrian and bicycle infrastructure:*** Sidewalks, multi-use paths, or other pedestrian/bicycle infrastructure shall be constructed in accordance with the following requirements:

1. In determining the type of pedestrian/bicycle infrastructure that shall be required the Administrator shall refer to any adopted plan or policy of the city for guidance. Such plans or policies include but are not limited to: *City of Brevard Comprehensive Transportation Plan, City of Brevard Comprehensive Pedestrian Plan, City of Brevard Street Schedule, City of Brevard Comprehensive Land Use Plan, City of Brevard Recreation Plan,* other master plans and small area plans, and other plans and policies.
2. Sidewalks, multi-use paths, and other pedestrian and bicycle improvements shall be installed by the developer and dedicated to the city prior to the approval of any final subdivision plat, or issuance of final zoning approval or certificate of occupancy for any development plan. Pedestrian and/or bicycle infrastructure shall be constructed within the street right-of-way. The approving authority shall require the dedication of additional street right-of-way or a pedestrian easement when sufficient right-of-way does not exist to comply with this requirement. The approving authority may accept the dedication of additional right-of-way or a pedestrian easement in order to accommodate alternative routes and designs that do not follow streets.
3. Streets shall be bordered by pedestrian/bicycle infrastructure on both sides. Exceptions to this requirement and modifications to the design of pedestrian/bicycle infrastructure may be granted by the TRC for developments in steep slope areas and where warranted by environmental or topographic conditions, or where this requirement would serve no useful purpose.

~~4. Without exception, pedestrian/bicycle infrastructure shall be required along all new public and private streets within new subdivisions or developments, and within new phases of existing subdivisions and any other form of development.~~

~~5. Without exception, pedestrian/bicycle infrastructure shall be required along existing streets within or abutting new subdivisions and any other form of development (except subdivisions in GR districts establishing less than eight dwelling units); or along existing streets within or abutting any form of existing development undergoing substantial improvement (except single-family and duplex residential structures in GR districts).~~

~~6.~~4. Pedestrian/bicycle infrastructure shall be required along the same side of the street upon which the development fronts, except that when a development project is located on both sides of the same street the approving authority may require that infrastructure be installed on both sides of the street.

~~7.~~5. When site characteristics and/or traffic patterns are such that the construction of pedestrian/bicycle infrastructure in accordance with this section would be a hardship and would not result in useful pedestrian walkways, the administrator, upon recommendation from the TRC may allow the applicant to pay the designated cost of constructing such infrastructure into the city sidewalk fund in lieu of requiring construction of the infrastructure. In determining whether to accept a fee in lieu of construction of

infrastructure, the administrator shall refer to any adopted plan or policy of the City for guidance. Such plans or policies include but are not limited to: *City of Brevard Comprehensive Transportation Plan, City of Brevard Comprehensive Pedestrian Plan, City of Brevard Street Schedule, City of Brevard Comprehensive Land Use Plan, City of Brevard Recreation Plan,* other master plans and small area plans, and other plans and policies.

~~8.~~6. The administrator may accept a performance guarantee for the construction of sidewalks on behalf of the city in situations where no other public infrastructure is proposed in accordance with CHAPTER 16 of this ordinance.

~~9.~~7. Multi-use paths and other infrastructure:

a. Multi-use paths, and other pedestrian and bicycle infrastructure shall be provided instead of or in addition to sidewalks wherever called for on an adopted plan or policy of the city. Such plans or policies include but are not limited to: *City of Brevard Comprehensive Transportation Plan, City of Brevard Comprehensive Pedestrian Plan, City of Brevard Street Schedule, City of Brevard Comprehensive Land Use Plan, City of Brevard Recreation Plan,* other master plans and small area plans, and other plans and policies.

b. When a multi-use path is required in an area not adjacent to a public or private street, then such facility shall be credited towards the satisfaction of the open space requirements as set forth in CHAPTER 7 of this ordinance.

c. All required multi-use paths shall be dedicated to the City of Brevard by means of right-of-way or pedestrian easement.

d. On-street bicycle lanes shall be required when called for upon an adopted plan or policy of the city.

~~10.~~8. Pedestrian and bicycle improvements shall be as follows:

TABLE 13.5A: PEDESTRIAN AND BICYCLE IMPROVEMENT WIDTHS

Zoning District	Facility Width	
	City Streets	NCDOT Streets*
GR	5 feet	5 feet
RMX, NMX, PGX, CMX, DMX, GI, IC	5 feet	8 feet
Public Streets	City Streets Required; Dedication to City Required	NCDOT Streets Required
Street Rights-of-Way	Required; Dedication to City Required	Required; Dedication to NCDOT Required
Multi-Use Path (where required)	10 feet	10 feet
On-Street Bike Lane (where required)	5 feet	5 feet

*Sidewalks are not required along alleys and commercial service streets except when required as a condition of a Conditional Zoning District, Group Development, or special use permit.

11. All pedestrian/bicycle infrastructure shall comply with the minimum requirements for handicapped accessibility in compliance with the North Carolina Accessibility Code or other federal, state, or local regulations. During the construction of pedestrian/bicycle infrastructure, whether new or replacement,

handicapped ramps shall be placed in the sidewalk where it intersects with streets and other pedestrian and vehicular travel ways.

~~12.~~ All sidewalks shall be made of 4,000 PSI concrete with a minimum depth of four inches, except that street and driveway crossings shall be a minimum of six inches in depth. Bike lanes and multi-use paths shall be made of asphalt, designed according to the North Carolina Bicycle Planning and Design Guidelines published by the NCDOT and shall include all appropriate signage and pavement markings. Alternative materials and designs may be approved by the TRC in consultation with the public works director.

~~E.~~D. ***Street lights:*** Street lights shall be installed by the developer on all streets in accordance with CHAPTER 12 of this ordinance.

CHAPTER 14. NONCONFORMITIES

14.1. Purpose and applicability.

A. ***Purpose***

1. The purpose of this chapter is to regulate and limit the continued existence of uses, structures, lots, site elements or signs that do not conform to these regulations but were lawfully established prior to the effective date of this ordinance and any subsequent amendments. ~~The purpose of this section is to regulate and limit the continued existence of uses and structures established prior to the effective date of this ordinance (or any subsequent amendment) that do not conform to this ordinance.~~ Any nonconformity created by a change in the classification of property or the text of these regulations shall also be regulated by the provisions of this ~~section~~chapter.
2. Many nonconformities may continue, but the provisions of this ~~section~~ chapter are intended and designed to limit substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity- of this ordinance and the character of Brevard and its extraterritorial jurisdiction~~of the area in which it is located~~.

B. ***Applicability:***

1. This chapter shall apply to any lot, structure, use of land, or other development conditions, which existed lawfully and was created in good faith prior to the adoption, revision, or amendment to this ordinance, but which now fails to conform to the requirements of this ordinance as a result.
2. This chapter shall not apply, however, to any development condition that is the subject of a variance or modification granted by the Board of Adjustment or City Council. Where a variance or modification has been granted for a development standard that does not otherwise conform to the requirements of this Ordinance, that development standard shall be deemed conforming.
3. Nothing in this chapter shall be construed as to deny the City the authority to take action on or require the removal of development conditions that were not legally established and/or did not meet the requirements of the ordinance when it was established. Those shall not be considered nonconformities with regards to this section.

14.2. General provisions.

A. ***Continuation of Nonconformities***

1. Legal nonconformities may continue subject to the limitations of this chapter and any amortization provision. Continuation, reconstruction, alteration, and/or expansion of such nonconformities shall but subject to the requirements of this chapter.

B. *Determination of Legal Nonconforming Status*

1. The administrator may verify whether a nonconforming condition was legally established by reviewing information submitted by the property owner, City records and other readily available information to reach a determination.
2. The administrator may request evidence to be considered in its determination, and it shall be the responsibility of the property owner to prove a nonconforming condition is legally established, unless otherwise required by state law.

C. *Ordinary Repair and Maintenance*

1. Incidental repairs and ordinary maintenance of nonconformities are permitted unless otherwise expressly prohibited by this ordinance. This may include but is not limited to the repair and maintenance of walls, roofs, fixtures, wiring, plumbing, and ventilation.
2. This allowance also includes activities that increase building/structural integrity, Americans with Disability Act (ADA) accessibility, or other health and safety improvements.
3. Incidental repairs and ordinary maintenance of nonconformities in the special flood hazard area are subject to the applicable provisions of Chapter 34 of the Brevard City Code.

D. *Change of Ownership or Tenancy*

1. Changes in ownership, tenancy, or management of an existing nonconformity are permitted but such nonconformities shall continue to be subject to the provisions of this chapter.

14.2~~2~~3. Nonconforming uses.

A. *Authority to Continue*

1. Subject to the provisions of this chapter or any amortization provision, any nonconforming use may continue in operation on the same land area and on the same floor area of the structure that was occupied by the nonconforming use on the date the use first became a nonconforming use. ~~Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses may continue only in accordance with the provisions of this section, but this section shall only apply to the extent these or such nonconformities fully and clearly meet the definition of "non-conforming use" in CHAPTER 19 of this ordinance.~~

B. *Expansion*

1. Except as provided herein, a nonconforming use shall not be expanded, enlarged or otherwise increased in intensity of the activity.
   a. For the purposes of this provision, an increased intensity of activity means the change generates more traffic, people, hours of operation, noise or impacts than before. This may include, but is not limited to, larger floor area, larger parking area, more employees, longer hours, higher daily visits, increased truck deliveries, and greater demand on utilities.
2. The following uses may be expanded, provided any such expansion complies with all other ordinance provisions.
   a. Dwelling—Single-Family
   b. Dwelling—Duplex
   c. Dwelling—Multifamily 3—4 units/bldg.

~~1. A nonconforming *non-residential* use shall not be expanded, changed to another non-conforming use, or enlarged, nor shall such a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located (either attached or detached). However, if a nonconforming non-residential use can expand within the existing structure, it may do so as long as the administrator determines that the interior expansion will not have a negative impact upon surrounding conforming uses. Any occupation of additional lands beyond the boundaries of the lot on which the nonconforming use is located is prohibited.~~

~~2.~~1. ~~An existing nonconforming *residential* use may be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements and other regulations of such structures as required in the specific district.~~

C. ***Abandonment or Cessation of Use***

1. If a nonconforming use is abandoned for 180 consecutive calendar days or more, the use shall not be ~~allowed to be~~ re-established. All new uses subsequently established shall be conforming.

D. ***Change of Use***

1. Once a nonconforming use has been changed to a conforming use, it shall not revert or be used for any nonconforming use.

E. ***Damage or Destruction***

1. In the event that a structure that is wholly or partially occupied by a nonconforming use is damaged and/or destroyed by exercise of eminent domain, fire, accident, flood, or other event resulting from natural causes or an accident, the nonconforming use may be reestablished, provided:
   a. The repair or reconstruction of the structure commences with a valid permit within 180 days of the date of such damage or destruction.
   b. The nonconforming use complies with the provisions of subsection 14.3(B) above.

14.~~3~~4. Nonconforming principal structures.

A. ***Authority to Continue***

1. Subject to the provisions of this chapter or any amortization provision, any nonconforming principal structure may continue to occupy the same land area within the existing configuration and size of the structure which existed on the date the structure first became a nonconforming structure.

~~1. A nonconforming principal structure containing a use permitted in the district may continue only in accordance with the provisions of this chapter.~~

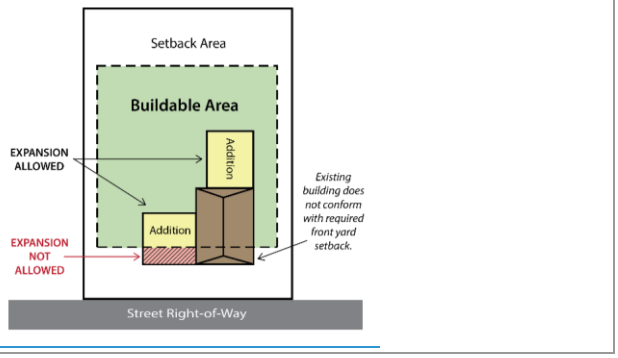
~~2. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures and any nonconforming use contained therein.~~

B. ***Enlargement or Alteration***

~~3.~~1. A nonconforming principal structure may be enlarged, provided the enlargement does not have the effect of increasing the degree or extent of a nonconforming feature and the enlargement complies with all requirements and regulations of this ordinance. ~~A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.~~
   a. For the purposes of this provision, increasing the degree or extent of a nonconformity includes, but is not limited to:
      i. An addition that extends beyond the required yard setbacks.
      ii. An addition that adds a story on a portion of the structure that encroaches into the required yard setbacks.

iii. An enclosure or covering of a nonconforming deck, uncovered porch, stoop or other similar element.

FIGURE 14.4: EXAMPLE EXPANSION OF NONCONFORMING STRUCTURE



b. If the expansion does not exceed 25% of the size of the building at the time it became nonconforming, the structure may continue the existing architectural style of the building (e.g., building materials, roof type, color). If the expansion, or any combination of expansions since the time the structure became nonconforming, exceeds 25% the addition shall comply with the requirements of CHAPTER 5.

2. The expansion of a structure does not require compliance with the provisions of Section 2.7.8, if applicable.

C. *Relocation*

1. No nonconforming structure shall be relocated in whole or in part to any other location on the same or any other lot unless the entire structure conforms to the regulations of the district to which such structure is relocated.

~~4. Subject to the provisions of Section 14.3(E) and 14.3(F), when a nonconforming structure is moved on lot upon which it is located, it shall, if possible, be moved so as to make the structure conforming. Otherwise, the moved structure shall be placed on the lot in as conforming a manner as possible.~~

D. *Damage or Destruction:*

1. In the event that a nonconforming principal structure is damaged and/or destroyed by exercise of eminent domain, fire, accident, flood, or other event resulting from natural causes or an accident, the following provisions apply.
   a. If the extent of the damage is equivalent to 50% or less of the replacement value of the structure immediately prior to such damage, the structure may be repaired and reconstructed, provided that such repair or reconstruction is commenced with a valid permit within 180 days of the date of such damage or destruction.
   b. If the extent of the damage is equivalent to more than 50% of the replacement value of the structure immediately prior to such damage, or if the extent of the damage is equal to 50% or less and the repair does not commence within 180 days of the date of such damage, the structure shall

not be restored unless the structure conforms to all regulations of the district in which the structure is located.

c. The percentage of damage shall be calculated by using the replacement value of the entire structure as the denominator and by using the replacement value of the damaged portion of the structure as the numerator. The same method must be used to determine the numerator and denominator.

~~5. If a nonconforming structure is significantly damaged or significantly improved, the following requirements shall apply in the issuance of any permit:~~

~~a. Where modifications are proposed to repair damages to a structure, a permit for reconstruction of such structure must be secured no later than 180 days from the date of its destruction.~~

~~b. If the structure can be rebuilt on the same lot and meet all district and building type requirements, it shall be.~~

~~c. If the structure cannot be rebuilt at the same size (ground floor area) in accordance with the minimum standards of the district in which it is located or building type, then it shall be placed on the lot in as conforming a manner as possible.~~

~~d. A nonconforming structure shall not be rebuilt in a manner which increases its nonconformity.~~

~~e. Significant damage and/or significant improvement to any non-conforming structure that is located within a lot containing any other non-conforming condition shall, to the maximum extent possible, require the satisfaction all other requirements of this ordinance and the elimination of all non-conforming conditions. Examples include, but are not limited to, the provision of sufficient parking, landscaping and buffering, and public improvements (i.e., sidewalks and other), and full compliance with all applicable signage, flood hazard reduction, surface water protection, and stormwater management provisions.~~

~~f. In no case shall significantly damaged structure be rebuilt so as to encroach upon any public right-of-way, easement, regulatory floodway, surface water protection area or except as allowed by CHAPTER 6 of this ordinance or Chapter 34 of Brevard City Code.~~

~~g. A non-conforming use which existed within the structure to which modifications are made may reoccupy such structure upon issuance of certificate of occupancy provided that:~~

~~1. Modifications do not result in an expansion of the nonconforming use.~~

~~2. The nonconforming use is reestablished within the structure within 60 days of the issuance of a certificate of occupancy.~~

~~3. Any use requiring the issuance of a special use permit shall not be reestablished in a district within which such special use is not permitted.~~

~~6. If a nonconforming structure is substantially damaged or substantially improved, the structure, all nonconforming uses contained therein, and all non-conforming conditions within the same property (i.e., parking, landscaping, signage, flood hazard issues, and etc.) shall be brought into full compliance with the requirements of this ordinance.~~

~~a. This provision shall not necessitate full compliance with CHAPTER 5 unless the applicability standards of Section 5.2 are met.~~

E. ***Historic Structures:***

1. Nonconforming historic structures may be altered or enlarged provided:

a. The enlargement, expansion, or alteration does not exceed the density and dimensional requirements (Section 2.6) or the yard and setback requirements (Section 2.7) of this ordinance; and,

b. The enlargement, expansion, or alteration shall, to the greatest extent practical, preserve historic materials, features, and/or spatial relationships that characterize the structure as certified by a historic preservation specialist or licensed architect and approved by the Transylvania County Joint Historic Preservation Commission; and,

c. The enlargement, expansion, or alteration shall be constructed to be compatible with the historic building material, features, size, scale, proportion, and massing to protect the historical integrity of the subject structure, as certified by a historic preservation specialist or licensed architect and approved by the Transylvania County Joint Historic Preservation Commission.

F. ***Replacement of Nonconforming Manufactured Homes***

1. The replacement of a nonconforming manufactured home that fails to meet one or more of the requirements of this ordinance and/or the construction standards promulgated by US Department of Housing and Urban Development, may not be replaced. This includes, but is not limited to, manufactured homes located outside of the Manufactured Home Overlay District and manufactured homes that do not meet setback requirements.

~~14.4. Nonconforming manufactured homes/mobile homes, and mobile home parks.~~

~~A. A nonconforming manufactured home may only be replaced in accordance with the standards set forth in Section 3.5.1.~~

~~B. A manufactured home may continue to be placed or replaced within a non-conforming manufactured home subdivision or park on previously platted lots or previously approved spaces, as well as make any necessary improvements to the subdivision or park infrastructure, but shall not be permitted to expand the area or number of units contained within the boundary of the subdivision or park, except as otherwise provided in CHAPTER 2 of this ordinance.~~

~~C. A nonconforming manufactured home may be replaced with another manufactured home only if the manufactured home meets all regulating district requirements.~~

~~(Ord. No. 2020-23 , § 1(Exh. A), 10-19-20)~~

~~14.5. Nonconforming accessory uses and structures.~~

~~A. A nonconforming accessory use may not be expanded.~~

~~B. A nonconforming accessory structure may be expanded only if the expansion does not increase the nonconforming condition of the structure.~~

~~C. No nonconforming accessory use or accessory structure shall continue after the principal use or structure is substantially or significantly damaged or improved, or if the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory use or structure shall become or replace any terminated principal nonconforming use or structure.~~

14.~~6~~5. Nonconforming lots.

A. ***Authority to Develop:***

1. Subject to the provisions of this chapter or any amortization provision, a nonconforming vacant lot may be developed in accordance with the requirements of this ordinance. ~~Except as provided herein, a nonconforming vacant lot may be developed for any of the uses permitted by these regulations in the district in which it is located, provided that the use meets all applicable yard and setback requirements for the district in which the lot is located.~~

~~b. In such cases, the administrator shall require evidence of the presence of a deeded right-of-way or other access easement prior to the issuance of any permit.~~

2. However, a nonconforming vacant lot shall not be developed if it can be combined with an adjoining lot owned by the same in order to create a single lot. ~~A nonconforming vacant lot shall not be developed if it can be combined with an adjoining lot owned by the same entity on or after the effective date of these regulations in order to create a single lot.~~

~~c.~~a. For the purposes of this ~~section~~provision, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.

~~B. A nonconforming lot may be developed if, at the effective date of this ordinance, the lot is located in:~~

~~1. A subdivision in which the lot is located has received preliminary plat approval; or~~

~~2. A subdivision in which the lot is located has received final plat approval.~~

B. ***Inadequate Street Frontage:***

1. Where a record lot does not comply with the street frontage requirements as provided in Section 4.2.3, the administrator shall require evidence of the presence of a deeded right-of-way or access easement prior to the issuance of any permit.

~~3.~~2. ~~The administrator may permit the establishment of a private right-of-way or access easement in order to facilitate access to pre-existing land-locked parcels. However, t~~The provision of such ~~private access~~ right-of-way or access easement shall not be considered satisfactory of the street frontage requirement unless it fully complies with the requirements of Section 4.2.3.

C. ***Subsequent Subdivision Activity***

~~4.~~1. No subdivision activity shall be permitted on nonconforming parcels of land unless it remedies or improves the parcel's nonconformance with this ordinance. ~~No subdivision activity shall be permitted on parcels of land that do not meet the street frontage requirements of this ordinance.~~ This requirement shall apply regardless of the size of the ~~landlocked or otherwise~~ non-compliant parcel.

14.6. Nonconforming site features.

A. ***Authority to Continue:***

1. Subject to the provisions of this chapter or any amortization provision, any nonconforming site feature may continue in operation on the same land area within the existing configuration which existed on the date the site feature became nonconforming. This includes, but is not limited to, nonconforming accessory structures, fences, walls, signs, off-street parking, vehicular surface areas, landscaping, buffers, and lighting.

B. ***Enlargement or Alteration:***

1. Additions or changes to nonconforming site features shall not be made unless the addition or alteration brings the land improvements or the development of which it is a part into greater conformity with this ordinance.
2. Resurfacing, restriping, or reconfiguring of an existing nonconforming off-street parking area shall be permitted without requiring compliance with all parking lot design and landscaping requirements, provided:

   a. The new surface materials and parking dimensions comply with the provisions of Section 10.7; and

   b. There is no increase in the amount of impervious surface coverage.

C. *Required Conformance:*

1. Unless otherwise stated, all nonconforming site elements must be brought into conformance when there is new construction of a principal building or when otherwise required by this ordinance.

D. *Public Health and Safety*

1. Nothing in this chapter shall prohibit the administrator from requiring changes to site characteristics that endanger public health and safety. This includes but is not limited to improvements or changes to existing driveways, curbing, and sidewalks.

E. *Damage or Destruction*

1. In the event that a nonconforming site feature is damaged and/or destroyed by exercise of eminent domain, fire, accident, flood, or other event resulting from natural causes or an accident, such site feature shall not be restored unless it will conform to all regulations of the district in which it is located.

~~14.7. Nonconforming signs.~~

~~A. Nonconforming signs shall be removed in accordance with the amortization provisions set forth in CHAPTER 12.~~

~~B. Any nonconforming sign that is located upon the same property as any structure, use, or activity that is the subject of any land development permit application shall be brought into compliance with the provisions of this ordinance prior to the issuance of such land development permit application.~~

~~14.8. Nonconforming landscaping, screening, buffering, and lighting.~~

~~A. Any property shall fully comply with all landscaping, buffering, screening, and lighting requirements if any of the following activities occurs within the same lot or project:~~

~~1. An expansion of the heated square footage of an existing primary structure.~~

~~2. The construction of a new primary structure.~~

~~3. Significant or substantial damage or improvement to a principal structure.~~

~~4. A change to a more intensive use of an existing structure.~~

~~5. The establishment of additional primary uses.~~

~~6. Approval of any application for the establishment of a special use, conditional zoning district, group development.~~

~~7. Expansions to the parking area or loading areas which increase the total area more than 40 percent shall be required to comply with all applicable parking and loading area landscaping and screening.~~

B. Outdoor light fixtures installed prior to the effective date of this ordinance are exempt from the provisions of CHAPTER 11, provided that no change in use, replacement, and structural alteration of outdoor light fixtures shall be made unless it conforms to the provisions of this ordinance.

14.9. Nonconforming street improvements.

A. A lot (excluding those containing one pre-existing single family structure), group development, or planned development shall fully comply with all street improvement requirements of CHAPTER 13 along the fronting streets including, but not limited to, turning and traffic storage lanes, sidewalks, multi-use paths, bike lanes, and curb and gutter, if any of the following activities occurs within the same lot or project:

1. An expansion of the heated square footage of an existing primary structure.
2. The construction of a new primary structure.
3. Significant or substantial damage or improvement to a principal structure.
4. A change to a more intensive use of an existing structure.
5. The establishment of additional primary uses.
6. Approval of any application for the establishment of a special use, conditional zoning district, or group development.
7. Expansions to the parking area or loading areas which increase the total area more than 40 percent shall be required to comply with all applicable parking and loading area landscaping and screening.

14.10. Nonconforming plans.

Commented [EB2]: Not necessary - vested rights and modification procedures

A. Any site specific plan for the development of property and/or construction of a building which has received final approval by the City of Brevard for development and/or construction, but does not conform to this ordinance, may be developed and/or constructed in accordance with the ordinance, rules, and regulations in effect at the time that it was approved, including any conditions imposed upon approval.

B. A property owner with an approved site specific plan as identified above may elect to develop such property and/or construct such building in accordance with the terms and provisions of this ordinance and the rules and regulations upon which the plan was approved. The property owner shall notify the administrator assigned to approve such plan. A property owner shall be notified in writing of additional required approvals or modifications which may be necessary in order for the plan to conform to the ordinance.

C. Any amendment or modification to an approved site specific plan, which would have required approval pursuant to the ordinance, rule or regulation by which the plan was originally approved, shall be reviewed and considered in accordance with the terms and provisions of this ordinance as if it were an amendment or modification to a plan originally approved under this ordinance.

D. This section does not prohibit the exercise of any vested right established by common law, ordinance or statute.

14.11. Phasing for the purposes of evasion of the provisions of this chapter.

Commented [EB3]: Moved to Section 16.3

In no case shall the development of property or the modification of a structure, lot, sign, use, or other matters addressed by this chapter be phased so as to circumvent the provisions of this ordinance.

CHAPTER 16. ADMINISTRATION

16.3. General applicability.

A. In accordance with G.S. 160D Article 7, the provisions of this chapter shall be applicable to all development activity under the jurisdiction of the City of Brevard. An application for development approval may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property. No building, sign or other structure (except as otherwise provided for in this ordinance) shall be erected, moved, extended or enlarged or structurally altered, nor shall the use conducted within any building change, nor shall any land disturbance activity, grading, excavation or filling of any property be commenced, nor shall any vegetation be disturbed, nor shall any new use or change in the use of a property be commenced, nor shall any modification or installation of streets or other infrastructure be commenced until the administrator has issued a land development permit for such work.

B. The issuance of a land development permit is subject to the required development review process as applicable for the development petition.

C. ***Phasing for the Purpose of Evasion:*** In no case shall development activity be phased so as to circumvent the provisions of this ordinance.

~~C.~~**D.** Properties located within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such under the applicable development procedure.

~~D.~~**E.** Notwithstanding any other provisions of this ordinance, the administrator may waive the required development review process only in the following cases when the administrator determines that the submission of a development plan in accordance with CHAPTER 17 would serve no useful purpose. For such projects a certificate of compliance shall be provided to the property owner or their representative, in accordance with G.S. 160D-403(g).

1. Street construction or repair.
2. Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way.
3. Mailboxes, newspaper boxes, retaining walls, garden structures, play structures, recreation equipment, birdhouses, flag poles, pump covers, and doghouses.
4. Interior alterations and renovations requiring a county building permit which do not alter the footprint or height of an otherwise conforming use and/or structure such as AC/HVAC, re-roofing, steps, siding (except in a designated historic district), etc.
5. Accessory structures for all building types.
6. Incidental repairs and ordinary maintenance of structures (including but not limited to the repair and maintenance of walls, roofs, fixtures, wiring, and plumbing) outside of the special flood hazard area that would not necessitate additional review in accordance with this ordinance.

~~6. Minor improvements to a principal structure that would not equal "substantial improvement" or "significant improvement" as defined in CHAPTER 19 of this ordinance, and that would not necessitate~~

~~additional review under the procedures for special use permits, conditional zoning districts, planned development districts, or other special procedures.~~

~~7. A change in principal use or occupancy where such change would not result in a change in lot coverage, off-street parking access or other external site characteristics, or other significant or substantial improvement.~~

~~8.~~7. Incidental land disturbance related to minor landscape modifications, utility repair, or other property improvements listed above, and that would not generate sedimentation or erosion, that would not cause an increase in off-site stormwater discharge, and that would not affect landscaping or vegetation that is otherwise regulated by this ordinance.

Commented [EB4]: We require a change of use permit in these cases.

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:

Abandon*:* To intentionally discontinue from actively using land, structures, or any premises for the intended or previous use for a specified period of time, but excluding temporary periods of inactivity due to remodeling, maintaining, restoring, or otherwise improving a facility.

~~**Assessed and appraised value***: The value of a structure prior to being damaged or, in the absence of damage, prior to any proposed modification or improvement. Assessed value is determined by the most recent tax evaluation of the structure by the Transylvania County Tax Assessor, prior to damage or improvement. Appraised or market value is determined by an appraisal submitted by a qualified appraiser. The administrator shall utilize the assessed value of any structure in the administration of this ordinance unless a more accurate appraisal is provided by the property owner. The administrator shall have the authority to request that the property owner provide additional independent appraisals if the administrator feels that a submitted appraisal may be in error or otherwise questionable.~~

~~**Market value***: The value of a building, not including the land value or the value of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal, by replacement cost depreciated for age of building and cost of construction (actual cash value), or by adjusted tax assessed values.~~

New construction: Any newly constructed building or structure. This definition shall also apply to existing buildings that are altered in the following ways:

- Additions to existing structures that equal or exceed ~~66%~~ 75% of the gross floor area of the existing structure.
- Substantial improvements to existing structures that equal or exceed ~~66%~~ 75% of the replacement value of the existing structure and require the issuance of at least two trade permits from the Transylvania County Building and Inspections Department.

Nonconformity: A development condition which existed lawfully and was created in good faith prior to the adoption, revision, or amendment to this ordinance, but which now fails to conform to the requirements of this ordinance as a result. See also nonconforming use, nonconforming structure, nonconforming lot, and nonconforming site feature.

Nonconforming use: A use that was legal when established but is no longer permitted in the zoning district.

Nonconforming structure: A building that was legally created but does not meet current development standards (setbacks, height, size, architectural elements, etc.)

Nonconforming lot: A lot that was legally created but does not meet current requirements for street frontage.

Nonconforming site feature: A site element that does not meet the current requirements. This includes, but is not limited to, parking lots, landscaping, signs, buffers, and accessory structures.

~~**Nonconformities**: A lot, structure, use of land, or condition, which existed lawfully and was created in good faith prior to the adoption, revision, or amendment to this ordinance, and which conformed to applicable regulations in effect prior to the adoption, revision, or amendment to this ordinance in terms of size, area, dimension, location, intensity of use, or other condition, but which now fails to conform to the requirements of this ordinance by reason of such adoption, revision, or amendment. Nonconformities include, but are not limited to, the following:~~

~~**A.** *Non-conforming lots*: lots of non-standard shape or lots with insufficient frontage, in accordance with CHAPTER 4.~~

~~**B.** *Non-conforming structures*: structures located within a right-of-way, or that exceed height or setback limitations, or that are located within setback areas, floodways, or streamside protection areas.~~

~~**C.** *Non-conforming uses of land*: industrial activity within residentially zoned areas, hazardous chemical storage in flood-prone areas, open storage in a improperly zoned area.~~

~~**D.** *Non-conforming conditions*: insufficient parking, landscaping, or buffering for an otherwise conforming use or structure; cleared vegetation in a streamside protection area; inadequate stormwater control measures.~~

~~**Non-substantial or non-significant improvement**: Any improvement that does not meet the definition of substantial or significant improvement, as defined in this section.~~

Replacement value: The estimated value or cost to reconstruct a structure of similar size, quality, design and function, excluding land, as determined by a licensed appraiser, independent construction cost estimator, or other qualified professional using nationally recognized cost data. Replacement value shall be determined by one of the following methods:

- The market value of the structure as established by an independent certified appraisal;
- The replacement cost depreciated for age of building and cost of construction (actual cash value); or
- The most recent tax value for the building or buildings as reported in the Transylvania County tax office.

The administrator shall have the authority to request that the property owner provide additional independent appraisals or cost estimates if the administrator feels that submitted materials may be in error or otherwise questionable.

~~**Significant damage**: Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to it's before-damaged condition would equal or exceed 25 percent of the market value of the structure before the damage occurred. In the absence of any information pertaining to market value, the administrator shall utilize the assessed value of the structure. See definition of significant improvement.~~

~~**Significant improvement**: Any combination of repairs, reconstruction, rehabilitation, addition, or other modification or improvement of a structure, taking place during any one-year period, for which the cost equals or exceeds 25 percent of the market value of the structure as of the date the improvement was permitted (or, in the absence of any permit, as of the date of start of construction of the improvement). In the absence of any information pertaining to market value, the administrator shall utilize the assessed value of the structure. This term includes structures which have incurred significant damage regardless of the actual repair work performed. The term does not, however, include either of the following:~~

~~**A.** Any correction of existing violations of state, city, or county health, sanitary, or safety code specifications which have been identified by the administrator or other authorized official of the State of North Carolina or Transylvania County, and which are the minimum necessary to assure safe living conditions; or~~

~~**B.** Any alteration of a historic structure provided that: such alteration is necessary to maintain retain or restore historically significant characteristic; the alteration will not preclude the structure's continued designation as a historic structure; and the alteration does not result in the expansion of a non-conforming condition.~~

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

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;

B. The beginning of installation of public utilities;

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

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

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, when a principal building is included in the permitted work.

For ~~a substantial~~ improvements to existing structures ~~(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.

~~**Substantial damage**: Any damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to the before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of substantial improvement. Single-family residential structures not located in the special flood hazard area and not otherwise subject to the flood hazard prevention requirements of this ordinance shall only be considered substantially damaged if the cost of restoring the structure to its before damaged condition would equal or exceed 75 percent of the market value of the structure before the damage occurred. In the absence of any information pertaining to market value, the administrator shall utilize the assessed value of the structure.~~

~~**Substantial improvement**: Any combination of repairs, reconstruction, rehabilitation, addition, or other modification or improvement of a structure taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure as of the date the improvement was permitted (or, in the absence of any permit, before the date of start of construction of the improvement). In the absence of any information pertaining to market value, the administrator shall utilize the assessed value of the structure. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either of the following:~~

~~**A.** Any correction of existing violations of state, city, or county health, sanitary, or safety code specifications which have been identified by the administrator or other authorized official of the State of North Carolina or Transylvania County, and which are the minimum necessary to assure safe living conditions; or~~

~~**B.** Any alteration of a historic structure provided it meets the following criteria: such alteration is necessary to maintain, retain or restore historically significant characteristics; the alteration will not preclude the structure's continued designation as a historic structure; and the alteration does not result in the expansion of a non-conforming condition.~~

~~Single family residential structures shall only be considered substantially improved if the cost of such improvement(s) equals or exceeds 75 percent of the market value of the structure as of the date the improvement was permitted or, in the absence of a permit, as of the date construction commenced. In the absence of any information pertaining to market value, the administrator shall utilize the assessed value of the structure.~~