# AGENDA
# CITY OF BREVARD
# PLANNING BOARD

City Hall, City Council Chambers
95 West Main Street, Brevard, NC 28712
828-885-5630
www.cityofbrevard.com

## Tuesday January 26, 2010

## -Special Called Meeting-

I. Welcome and Introduction of Board Members

II. New Business

A. Consideration of Proposed Amendments to the City of Brevard Unified Development Ordinance, Chapters 2, 3 & 19, Regarding Maximum Size of Secondary Dwellings (TXT-10-013)

*Staff Comment: Staff recommends Planning Board action to recommend approval of proposed amendments. See Staff Report, attached, for details.*

B. Consideration of Proposed Amendments to the City of Brevard Unified Development Ordinance, Chapter 14, Regarding Nonconformities (TXT-09-386)

*Staff Comment: Planning Board action not required at this time. Doug Harris (Applicant's agent) will present information regarding the applicant's request. The applicant will present draft amendments, and Staff will present Staff comments, at a future date. See Applicant's submittal, attached.*

III. Old Business - None

VII. Other Business

VIII. Adjourn

CITY of BREVARD

The mission of the City of Brevard is to promote a high quality of life, support economic prosperity, and cultivate community while honoring its heritage and culture.

Planning Department
(828) 885-5630

**Date:** Friday, December 18, 2009

**To:** City of Brevard Planning Board

**From:** Joshua S. Freeman, City of Brevard Planning Director

**Regarding:** Proposed Amendments to the City of Brevard Unified Development Ordinance Chapters 3 & 19, Maximum Size of Secondary Dwellings

**Introduction:**

Staff has identified a conflict within the UDO pertaining to the maximum allowable size of secondary dwellings (previously called "accessory dwellings"), as well as the applicability of certain standards within certain districts. Specifically:

1) Chapter 19 defines an secondary dwelling as a structure not exceeding 750 square feet, whereas Chapter 3 allows the greater of 800 square feet or 25% of the ground floor area of the principal dwelling.

Staff proposes fixing the inconsistency by establishing 800 square feet as the maximum allowable size for secondary dwellings.

2) Chapter 2 indicates that the secondary dwellings in the GR and RMX districts are subject to specific standards in Chapter 3, but that secondary dwellings in other districts are not, whereas Chapter 3 indicates that the specific standards apply to all secondary dwellings.

Staff proposes fixing the inconsistency by correcting Chapter 2 to reflect that the specific standards in Chapter 3 are generally applicable to all secondary dwellings.

The attached amendments to chapters 2, 3 and 19 reflect the modifications described above.

**Conclusion:**

Staff recommends that these amendments be adopted as proposed.

**Attachment 01**

**Proposed Amendments**
**Chapter 2 of the**
**City of Brevard Unified Development Ordinance**

## CHAPTER 2. DISTRICT PROVISIONS

### 2.2 Use Categories and Tables of Permitted Uses

**B.** Use Matrix

| **BASE DISTRICT** | **GR** | **RMX** | **NMX** | **DMX** | **CMX** | **IC** | **GI** |
|---|---|---|---|---|---|---|---|
| **Residential** | **GR** | **RMX** | **NMX** | **DMX** | **CMX** | **IC** | **GI** |
| Dwelling-Secondary | PS | PS | PS | PS | PS | PS | — |

**Attachment 02**

**Proposed Amendments**
**Chapter 3 of the**
**City of Brevard Unified Development Ordinance**

# CHAPTER 3. ADDITIONAL USE STANDARDS

**3.14.** Dwelling-Secondary ( GR, RMX, NMX, DMX, CMX, IC) *Permitted with Standards*

A. Secondary dwelling units within residentially-zoned, single-family and duplex lots shall be encouraged and designed to meet housing needs. Secondary dwelling units shall be accessory and subordinate to the primary living quarters.

B. Not more than one (1) secondary dwelling unit is permitted on any lot.

C. A secondary dwelling unit shall be located in the side or rear yard of a single family or two-family use lot subject to the requirements of this Section.

D. Secondary dwelling units shall not be considered additional dwelling units for the purpose of determining minimum lot size or maximum density as set forth in Chapter 2 of this Ordinance.

E. Secondary dwelling units shall be constructed according to North Carolina Building Ordinance.

F. No secondary structure shall exceed two stories in height.

G. Secondary dwelling units may be created as an independent structure, as an addition to an existing primary structure, or as a second story within detached garages.

H. The floor area of a secondary dwelling unit shall not exceed 800 square feet ~~or twenty-five (25) percent of the gross ground floor area of the principal structure, whichever is greater~~. The ground floor area of a detached garage shall not be considered as part of the total square footage of any secondary dwelling that is built as the second story of a detached garage; provided, however, such ground floor garage area shall not be subsequently converted to dwelling space.

I. At least one (1) parking space shall be provided per unit.

J. Secondary dwelling units shall be located, designed, constructed, landscaped and decorated to compliment the appearance of the principal building.

K. The location of windows on dwelling units on adjacent parcels shall be taken into consideration in the design and placement of windows within the secondary dwelling unit. The Administrator may impose reasonable conditions regarding the design of the structure in order to protect the privacy of existing dwelling units on adjacent parcels.

~~L. Secondary dwellings shall be buffered from adjacent properties by a Type A buffer yard along the side and rear property lines adjacent to the secondary dwelling unit.~~

**Attachment 03**

**Proposed Amendments**
**Chapter 19 of the**
**City of Brevard Unified Development Ordinance**

## Chapter 19. DEFINITIONS

### 19.3 Definitions.

**Dwelling-Secondary:** A dwelling unit designed for occupancy by one or two persons, not exceeding ~~750~~ 800 square feet of gross floor space and located on a lot with an existing single-family dwelling. No more than one such dwelling shall be situated on any lot.

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# CITY OF BREVARD UNIFIED DEVELOPMENT ORDINANCE AND PREVIOUSLY DEVELOPED SITES
## A Proposed Text Amendment
**November 23, 2009**

### Introduction & Purpose

This document is directed to propose a text amendment to the City of Brevard Unified Development Ordinance (UDO) related to improvements to existing building and the degree to which a property is required to be brought into conformance with the UDO. The following subjects are addressed below:

- UDO Requirements
- Real Impact and Unintended Effects
- Specific Examples
- Common Goals
- Proposed Changes
- Process
- Benefits

### Existing Unified Development Ordinance Requirements

Chapter 14 of the UDO defines how requirements of the ordinance are to be interpreted and applied to existing buildings and already developed sites.

In summary, the ordinance recognizes the unique challenges of improving, adapting, renovating, expanding, or repairing a building or site developed legally under an earlier zoning ordinance but does not comply with all of requirements of the current ordinance. The chapter establishes two levels of compliance based on the scope of the proposed project in relation to the value of the existing improvements.

**Significant Improvement** is defined as "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."

**Substantial Improvement** is defined as "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." Costs for work required to meet minimum building, health, sanitary, or safety code requirements and assure safe living conditions or costs for qualified improvements to historic structures can be omitted in determining project costs.

Section 14.3, E, 1-7 outlines the degree of compliance required for projects where the cost of the proposed improvements are equal to or greater than 25% but do not exceed 50% of the value of the building. These projects, classified as Significant Improvements, cannot increase the building's non-conformity, must be permitted and occupied within certain time limits, and must satisfy all requirements of the Ordinance "to the maximum extent possible" including non-conforming aspects of the entire property including other buildings, signage, landscaping, parking, flood hazard reduction, surface water protection, and storm water management provisions. There is no definition for "to the maximum extent possible". Application of this term would be made on a case by case basis and would be largely at the discretion of the Planning Department.

Section 14.3, F requires that projects where the cost of the proposed improvements exceeds 50% of the value of the building meet all requirements of the Ordinance.

**Real World Factors and Unintended Effects**

In the abstract the requirements of the existing ordinance appear reasonable in its establishing a graduated scale of compliance as the scale and scope of a proposed project increases. However, the ordinance fails to recognize and account for three factors:

- The value assigned to the building on most previously developed properties
- The cost of construction
- The fundamental difference between an unimproved parcel of land and a previously developed site and the impact each will have on the

aesthetics of the landscape and the community, adjacent property owners, property values and safety

In the typical case of a property where an owner or prospective owner would be interested in improving the existing building, it's reasonable to assume the building is sub-standard, obsolete, or lacking in some way. In most cases, addressing the deficiencies in the existing building is the initiating factor for the proposed project. The condition of the building and the scope of necessary improvements to accommodate a reasonable and allowable use reduce the accessed or appraised value of the building. For any given structure two things are true – one, the worse condition the building is in, the more work it will need and the more those improvements will cost and two, the worse condition a building is in, the lower its value will be accessed. An ordinance that bases the degree of compliance on the relationship between the value of the building and the cost of the proposed improvements penalizes the properties in the worst condition and creates a disincentive to owners who might want to improve and reinvest in their property.

Construction costs, the other side of the equation, have generally been higher in Brevard than in many surrounding communities and higher in Western North Carolina than in the rest of North Carolina or the Southeast as a region. Construction costs for renovations and additions are also considerably higher than for new construction. The cost of demolition, the uncertainty of unknown conditions, the cost of correcting deficient conditions once they are discovered, and the difficulty of working in an existing building and on a tight site all increase the cost of a renovation project. This unavoidable premium in construction cost is not reflected in the graduated standard for compliance with the UDO and again creates a disincentive to improving existing buildings.

The third factor the Ordinance fails to reflect is the difference between an unimproved site and one that has been improved and that might be nearing the end or its useful life or fallen into disrepair. For a green field or unimproved property, if the cost of complying with the UDO is seen as too high for a property owner or tend to make a proposed project fiscally infeasible, the owner will elect not to proceed with the project. The result is a field, woods, or hillside left in its existing and natural state. Neighbors will often fight a proposed project and will see this outcome as an improvement over the proposed project.

All buildings require periodic repair, improvement, and updating to assure their long term viability and utility. If this does not happen, a building will gradually degrade in condition and its ability to serve the functional and aesthetic requirements of a changing market and community.

If the owner of a previously improved property views the requirements of the UDO the same way that the owner of the unimproved property and decides not to reinvest in his building, the outcome and impact on the community will be quite different. Gradually, the quality and vitality of the enterprise housed in the building will diminish. The contribution to the community, supported by the building is likewise reduced. If the condition continues, the effects become more significant and widely felt. Derelict or abandoned buildings and vacant lots showing only the remnant of a foundation and the rubble left behind after demolition present eyesores, attract crime and present dangerous conditions. In terms of both economic contributions and other less tangible contributions such as community reputation, appearance, and general vitality, there is a net loss year after year of a degrading building stock.

Rather than the UDO providing an incentive for reinvestment in existing properties, the current requirements impose what is in effect a penalty. The Ordinance motivates an investor, developer, or business owner to abandon or avoid an existing building and move to an unimproved site, possibly outside the city limits, to build a new building.

In addition to creating a disincentive for reinvesting, for projects that do proceed, the Ordinance creates artificial limits on what an owner might invest in an attempt to avoid crossing one of the thresholds and triggering a much wider and more expensive level of compliance. By creating the 25% and 50% thresholds and a situation where spending one dollar over these limits would potentially increase the overall project budget significantly in order to comply with UDO requirements, the Ordinance effectively promotes projects of limited scope and low quality.

## Specific Examples

The UDO was adopted in April, 2006 and has been in effect for three and a half years. Changes in buildings and sites, both in Brevard and surround areas of Transylvania County over that time respond to many factors. All changes cannot be attributed directly or solely to the UDO requirements but if must be recognized as a contributing factor.

Examples of properties which have been affected, at least partially by the UDO:

- Former Brown Tire Site, Asheville Highway – building demolished by fire, rebuilding requires 100% compliance with UDO.

- Former Rexal Electric Building, Asheville Highway – currently vacant and for sale, prospective buyers have cited renovation costs, including complete UDO compliance as negative factors in considering the building

- Former Exxon Quick Way Convenience Store, Asheville Highway – currently vacant and for sale, prospective buyers have cited renovation costs, including complete UDO compliance as negative factors in considering the building

- Triangle Stop Gas Station and Convenience Store, Rosman Highway – currently occupied and owner operated. Changes to current layout, building location, and driveways required by the UDO have kept owner from redeveloping the property to expand and enhance existing operation.

- McDonalds Restaurant, Asheville Highway - Changes to current layout, building location, signage and driveways required by the UDO influenced owner not to replace existing building with new facility.


- Asheville Highway, Rosman Highway, and Hendersonville Highway outside Brevard city limits and ETJ – numerous new commercial developments completed or under construction with no land use controls or contribution to the City of Brevard tax base


## Common Goals

This requested text amendment does not intend to bring into question the underlying goals of the UDO. The City of Brevard elected officials and staff, property owners, developers, the business community, and the community share the common goal of protecting property values, protecting public safety, maintaining the existing qualities and features of our community, promoting orderly growth and development that is consistent with community values, goals, and a long range vision of how the City of Brevard should grow and what we should become. There are clearly differences in the details of these goals and how they should be realized but the underlying goal is broadly held and supported. Maintaining land use regulations through the UDO which support these common goals is critical to realizing a vision of what the future of Brevard should look like. Rather, this text amendment requests acknowledgement of the effect the UDO is having in reality, the identification of how it might be either ineffective or influential in a manner directly contrary to its goals, and the adoption of logical changes and improvements to the Ordinance.

## Proposed Changes

The specific language of a text amendment should be drafted with input from the full range of effected parties. It should comply with state law, be easy to understand, easy to administer, and effective in realizing the intended goals. Rather than propose specific language, a broad statement of principles and goals and the proposal of a general structure which might be crafted into a text amendment might be more productive to the process.

Without bringing into question the intent of the Ordinance or considering the benefits UDO compliance has on a broader scale, the effect the current ordinance has, viewed on a narrow, project specific scale, is to creative a disincentive to the redevelopment of previously developed sites, limit investment and promote renovations of limited scope and/or poor quality, and challenge the economic feasibility of any redevelopment project. Considering the reality of property values and construction costs, most redevelopment projects will fall into the substantial improvement category, requiring full UDO compliance. The effect is that projects are less likely to happen and no remediation of non-complying buildings and no improvements to any of these buildings will occur.

Two aspects of the North Carolina State Building Code provide examples of how similar concerns with the requirements and consequences of an ordinance were addressed. The North Carolina State Accessibility Code, modeled after a national code, includes a provision regarding **disproportionality**. In the renovation of an existing building, non-accessible conditions are required to be remedied up to, but not in excess of 20% of the total renovation budget. Requirements of the accessibility code are prioritized based on the impact they have on the overall accessibility of the building and non accessible conditions must be addressed based on the priority order. New work is required to be fully accessible but the costs of removing non-accessible conditions in areas that are significantly remodeled contribute towards the 20% requirement. This provision improves the accessibility of all renovated buildings but keeps the extent of this work from becoming a disproportionate share of the overall project and making the project infeasible.

The second example is the adoption of the North Carolina State Rehabilitation Code. Code officials statewide became aware that the cost of renovating existing buildings to meet the new building code often discouraged owners from taking on renovations. Buildings were left in service with no improvements being made. The code officials acknowledged that these buildings, left in service, would generally continue to provide safe and sound accommodations and that any improvements that were made would improve the overall life safety.

The Rehabilitation Code adopts two premises unique to building codes – an “if it’s not broken, don’t fix it” standard for existing conditions, and a compensatory improvement provision. The first provision allows for a common sense approach to accessing and improving existing construction. Under the general building code, an existing floor would be required to meet specific live and dead load requirements. If calculations indicated that the existing floor did not meet these criteria, the floor would need to be reinforced or upgrades as a part of the project. Under the rehab code, if the existing building was built in compliance with the applicable building code at the time it was built and the floor was sound, free of obvious deflection or vibrations while in normal use and the use or loading would not be increased as a result of the project, the existing floor could remain without changes. The Rehab Code requires the installation of certain relatively easy to accomplish improvements such as emergency lighting, alarm systems, and in certain cases, a sprinkler system. These systems improve the overall life safety of the building and compensate for other aspects of the building that are not brought into compliance. The overriding concept behind the Rehab code is that the public is provided with a higher degree of life safety by a code that facilitates reasonable renovations with moderate improvements in life safety than a code whose requirements discourage any renovation from taking place.

Chapter 14, Sections 14.3 E and F to meet the following goals:

- Support the broad intent of the UDO.
- Create a flexible process that gives greater weight to meeting the broad goals of the UDO and improving existing conditions than to strict and total compliance.
- Recognize the realities of the market place and the factors that affect the feasibility of projects.
- Acknowledge the cost of construction and the accessed or appraised value of existing property.
- Reflect the importance of maintaining and improving existing buildings.
- Create an ordinance that recognizes the value of the natural landscape and the benefit of maintaining unimproved sites in their natural state.
- Acknowledge the difference between green field sites and previously developed sites and the effect each has on surrounding properties and the realization of broader planning objectives.
- Provide an incentive through the UDO to the redevelopment of previously developed sites.
- Prioritize or categorize the requirements of the UDO according to their impact on broad underlying goals and objectives. This process should provide the maximum degree of flexibility in addressing the redevelopment of existing sites. Critical requirements of the UDO may be categorized as non-negotiable but compliance with most requirements should be flexible
- Create an ordinance which enhances the feasibility of redevelopment projects that will include partial UDO compliance and improvement to existing areas of non-compliance.

- The text amendment should apply to all redevelopment projects, including renovations, additions, tear-downs, and new construction on vacant, previously developed sites.
- The degree of compliance with UDO requirements for all redevelopment projects should be on a sliding scale and related to either the total investment or the cost of the renovation compared to a comparable new construction project, minus a percentage, creating an incentive to redevelop existing sites rather than green field sites. The degree of compliance should not be based on the value of the existing building and the cost of the proposed construction.
- Project reviews should start with an assumption that noncompliant features of existing sites can be grandfathered in if the building is to remain or be reconstructed with an equal but not greater degree of noncompliance if the building has either been demolished or will be demolished as a part of the proposed project.

- While noncompliant features should not be allowed to be made more noncompliant, consideration of extending non compliant features should be allowed. For example, a building with a noncompliant setback should not be permitted to extend the building further into the required setback but may be allowed, based on site specific conditions, to add on to the existing building in such a way that the addition extends the noncompliant setback.

## Summary

In summary, the adopted text amendment should establish a flexible process similar to the planned development process, reflect the concerns, goals, and constraints of all parties in the development process – the community, the city, the developer, and the property owner, allow for the uniqueness of each site and each project in the process, and recognize that an ordinance that facilitates and encourages reinvestment, redevelopment and incremental improvement in compliance ultimately serves the community than an ordinance whose effect is to cut off development.