

**MINUTES
BREVARD PLANNING BOARD MEETING
SPECIAL CALLED MEETING
DECEMBER 12, 2017**

Brevard Planning Board met for a special called meeting, Tuesday, December 12, 2017, at 5:30 PM in Council Chambers of City Hall.

Members Present: Jimmy Perkins, Chair
Chris Strassner
Donna Ross
Demi Loftis, Vice Chair
Keenan Smith

Absent: Katie Thompson
Frank Porter

Staff Present: Daniel Cobb, Planning Director
Aaron Bland, Planner
Janice Pinson, Board Secretary

I. Welcome

At 5:30 PM, Chair, Jimmy Perkins called the meeting to order and welcomed those in attendance.

II. Introduction of Planning Board Members

Board members introduced themselves.

III. Certification of Quorum

Chair, Jimmy Perkins confirmed with the Board Secretary that a quorum of the board was present.

IV. Approval of Agenda

J. Perkins recommended amendment of the agenda to move Density Text Amendments before Map Reviews.

D. Loftis made a motion to approve the amended agenda, seconded by C. Strassner, unanimously carried.

V. Approval of Minutes

a. Minutes of the November 21, 2017 meeting, motion was made to approve by K. Smith, seconded by D. Ross, unanimously carried.

VI. Public Comment –

None.

VII. New Business

a. Voluntary Contiguous Annexation request of Tores Properties, LLC, Agent, Tore Borhaug, for the annexation of 3.875 acres, PIN # 8596-26-6331-000 located within the City of Brevard's Extraterritorial Jurisdiction.

A. Bland presented his staff report, which is labeled, Exhibit "A" and incorporated herein by reference.

T. Borhaug stated that the number of proposed units had been decreased to 18 single family dwellings. He plans for each unit to include an efficiency apartment, attached at ground level or as a second level.

He explained that he plans to divide the property into 18 lots, and that he has owned the property for ten (10) years.

He stated that the purpose driving his development of the property is affordable, workforce housing for his employees. He explained that he is trying to fix the problem for Tores Homes, because they are struggling, and are not the only place. That his research revealed that the whole country is short on affordable housing, explaining that his goal is to fix the problem for at least his organization as a part of the big picture.

He stated that due to the infrastructure cost of developing within the City, it is hard to make 36 affordable units.

His plan is to make an intergenerational community and has done some research on the benefits of this type of community.

He stated that he still needs to round up the money to complete the project, but if it works he will take it other places. He explained that he has purchased a mobile home park in Flat Rock, and plans to upgrade the mobile homes and add a couple of tiny homes.

He explained that his hope is that this will help take care of the employee retention, and if it works, it will be huge.

A. Bland explained that mother-in-law cottages would not count toward the density.

T. Borhaug stated that there is a lot of talk about making affordable housing by increasing density. Going up 2-3 stories is too big a risk on this parcel, due to soil conditions.

J. Perkins asked how many parking spaces are being required for the project.

A. Bland stated the requirement for residential units is 2 parking spaces per structure.

T. Borhaug explained that he does not have room for any more than 2 parking spaces.

J. Perkins explained to Mr. Borhaug that the board had been having discussions about reducing parking requirements.

K. Smith questioned the huge discrepancy between law enforcement, fire, water and wastewater in the financial summary provided.

A. Bland explained that there is a table that is used for the calculations, and that it is a very rough estimate. He explained further that water is already produced so there is no additional cost associated with the service.

C. Strassner made a motion to recommend approval, seconded by K. Smith, unanimously carried.

VIII. Unfinished Business

a. Density Text Amendments

D. Cobb opened the continuation of the discussion of text amendments to UDO Chapters 2, 7, 10 and 16, regarding increase of residential density, modifying open space, and parking requirements.

There was discussion on parking in lieu fees and the need to increase.

K. Smith stated that he still was uncomfortable with the setback change between NMX-CMX. J. Perkins agreed.

D. Cobb explained the Type D Buffer requirements: minimum width of 30 feet, height of 10 feet, no separations and no horizontal openings.

After further discussion K. Smith and J. Perkins both agreed with the buffer requirements, they were comfortable with the setback reduction.

C. Strassner asked that D. Cobb explain the budget process for changing of fees.

D. Cobb explained that Council begins budget discussions in March. That he prepares the Fee Schedule annually, and that he would recommend an increase in the parking in lieu fee and attach a memo explaining.

C. Strassner made a motion to recommend approval of the text amendments as presented, directing Staff to change next year's in lieu of parking fee to the nationwide median. J. Perkins noted that the nationwide median in the staff report was almost ten (10) years old, and that the current nationwide median should be used. Motion seconded by D. Loftis, unanimously carried.

b. Zoning Ordinance Review

1. Zoning Map
2. District Map

D. Cobb presented his staff report which is labeled Exhibit "B", attached hereto, and incorporated herein by reference. He reviewed the maps and explained the concept to the board.

K. Smith asked if public input would impact what was being reviewed.

D. Cobb explained that specific public input would be staff's recommendation. Further explaining that Council wants to discuss after their Retreat in January, and that their decision on how to proceed on whether to change or basically leave the same will determine how things move forward.

The Board agreed that this is a great start.

K. Smith asked if these changes would ultimately simplify things for staff on a day to day basis.

D. Cobb stated that this is the hope, and further explained that very different areas are currently zoned the same and this presents challenges when trying to work with developers. That the goal would be that development could happen by right, so that all is clear when a developer comes to the table. The goal is eliminate gray areas as much as possible.

D. Cobb explained that from here things would need to be on hold until staff can discuss with Council, and establish the direction they want to proceed.

IX. Other Business

a. Reschedule of January meeting.

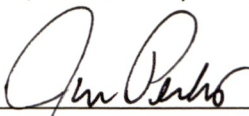
After discussion, the board decided to hold their January meeting on January 17, 2018 at 6:00 PM. Motion to approve by C. Strassner, seconded by K. Smith, unanimously carried.

X. Remarks –

None.

XI. Adjourn –

There being no further business, D. Loftis moved to adjourn, seconded by D. Ross, unanimously carried, and the meeting adjourned at 6:39 PM.



Jimmy Perkins, Chair



Janice H. Pinson, Board Secretary

STAFF REPORT

Planning Board, Tuesday, December 12, 2017

Title: **Voluntary Contiguous Annexation, ANN-17-003**

Planning Board will review and formulate a recommendation to City Council regarding a proposed voluntary contiguous annexation.

Prepared by: Aaron Bland AICP, Planner & Asst. Zoning Administrator

Approved by: Daniel Cobb, AICP, Planning Director

Background

Tore Borhaug, owner of Tore's Home, (property owner and collectively referred to as "applicant") requests voluntary contiguous annexation of the subject property located at 684 Osborne Road, PIN 8596-26-6331-000.

Discussion

The financial and service delivery impacts are estimated to be manageable. There will be a modest increase in General Fund revenues for the City by means of property tax revenue. Refer to the attached annexation report for the full financial and service impact analysis.

Policy Analysis

Voluntary, contiguous annexations are governed by North Carolina General Statute §160A-31 which authorizes cities to annex any area contiguous to its borders on receipt of a petition signed by all the owners of real property within the area proposed for annexation. The subject property qualifies for annexation under this statute.

The applicant has expressed interest in building several residential dwelling units on the property, likely the maximum that would be allowed by the zoning ordinance, approximately 24. To access newly subdivided properties a new street will be built, approximately 480 feet in length. This street will include sidewalks, planting strip, street trees, and lights, which will all be dedicated to the City for maintenance.

Annexation will make both city water and wastewater service to support these dwellings available to the property, utilizing existing water and sewer infrastructure. This is harmonious with an emphasis of the City's Comprehensive Plan (adopted November 2015) to encourage the development of vacant or underutilized land in order to increase the City's tax base with a limited impact on the cost of providing services by utilizing infrastructure already in place.

Staff Recommendation

Staff recommends approval of the proposed annexation.

The Planning Board's responsibility is to formulate a recommendation to Brevard City Council. The Board's options are as follows:

1. Recommend denial of the annexation as presented.

2. Recommend approval of the annexation as presented.

Fiscal Impact

Refer to the attached annexation report for a financial and service impact analysis of the proposed annexation.

Attachments

- A. Application Materials
- B. Annexation Report
- C. Site Map
- D. Zoning Map
- E. Aerial Map

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA
CITY OF BREVARD

ATTACHMENT A
RECEIVED
11-6-2017



PETITION REQUESTING A CONTIGUOUS
ANNEXATION
(G.S. 160A-31)

Date: 11-6-17

To the City Council of the City of Brevard:

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the City of Brevard.
2. The area to be annexed is contiguous to the City of Brevard and the boundaries of such territory are as follows:

Transylvania County Property Identification Number(s): 8596-26-6331-000

Street Address: CORNER OF OLD NEWPERSOONVILLE HWY + OSBORNE RD.
BREVARD, NC 28712

(ATTACH A METES AND BOUNDS PROPERTY
DESCRIPTION AS "ATTACHMENT A")

3. A map is attached showing the area proposed for annexation in relation to the primary corporate limits of the City of Brevard. (ATTACH MAP AS "ATTACHMENT B", including the Tax Map PIN)
4. We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate below and attach proof.)

Property Owner(s): Do you declare vested rights? Yes ☒ No ☐

Property Owners Contact Information

a. Name TORRE IS PROPERTIES, LLC
 Address P.O. BOX 362, BREVARD, NC 28712
 Telephone 828-884-5007 Email TORRE@TRESHOWNE.COM
 BY: TORRE BORRAGA, MANAGING MEMBER
 Signature Torre Borruga

b. Name _____
 Address _____
 Telephone _____ Email _____
 Signature _____

c. Name _____
 Address _____
 Telephone _____ Email _____
 Signature _____

d. Name _____
 Address _____
 Telephone _____ Email _____
 Signature _____

AGENT:

Name: _____
 Address: _____
 Telephone: _____ Email _____

Petition along with a copy of the property Deed, Metes and Bounds description (Attachment A), and Map / Survey (Attachment B) is to be returned to:

Desiree Perry, City Clerk
 City of Brevard
 95 West Main St., Brevard, NC 28712

2008005696

TRANSYLVANIA CO, NC FEE \$47.00

PRESENTED & RECORDED:

09-29-2008 03:22:54 PM

CINDY M OWNEY

REGISTER OF DEEDS

BY: KARIN SMITH

DEPUTY REGISTER OF DEEDS

BK:DOC 473

PG:625-636

RECEIVED
11-6-2019

DEED OF TRUST

RECORDATION REQUESTED BY:

United Community Bank, Brevard, 10 Park Place East, PO Box 979, Brevard, NC 28712

WHEN RECORDED MAIL TO:

United Community Bank, Brevard, 10 Park Place East, PO Box 979, Brevard, NC 28712

SEND TAX NOTICES TO:

TORES PROPERTIES LLC, PO BOX 362, BREVARD, NC 28712

This Deed of Trust prepared by:

X

UNITED COMMUNITY BANK/GAYLE E RAMSEY



000000005109202753034009292008

THIS DEED OF TRUST is dated September 29, 2008, among TORES PROPERTIES, LLC, whose address is 177 FRANKLIN STREET, BREVARD, NC 28712; A NORTH CAROLINA LIMITED LIABILITY COMPANY ("Grantor"); United Community Bank, whose address is Brevard, 10 Park Place East, PO Box 979, Brevard, NC 28712 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and GAYLE E RAMSEY, whose address is 1 NORTH GASTON STREET, BREVARD, NC 28712 (referred to below as "Trustee").

CONVEYANCE AND GRANT. NOW, THEREFORE, as security for the indebtedness, advancements and other sums expended by the Beneficiary pursuant to this Deed of Trust and costs of collection (including attorneys' fees as provided in the Note) and other valuable consideration, the receipt of which is hereby acknowledged, Grantor has bargained, sold, given, granted and conveyed and does by these presents bargain, sell, give, grant and convey to Trustee, and Trustee's heirs or successors and assigns, for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in TRANSYLVANIA County, State of North Carolina:

See PROPERTY DESCRIPTION, which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 280 OSBORNE ROAD, BREVARD, NC 28712.

To have and to hold said Real Property with all privileges and appurtenances thereunto belonging, to the Trustee, his heirs, successors and assigns forever, upon the trusts, terms and conditions and for the uses hereinafter set forth.

CROSS-COLLATERALIZATION. In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**DEED OF TRUST
(Continued)**

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THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DEED OF TRUST
(Continued)**

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by North Carolina law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the

**DEED OF TRUST
(Continued)**

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proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and

**DEED OF TRUST
(Continued)**

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continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. The lien of this Deed of Trust and the security interest granted hereby will automatically attach, without further act, to all after-acquired property attached to and or used in the operation of the Property or any part thereof. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Grantor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Grantor, if permitted by applicable law.

DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge

**DEED OF TRUST
(Continued)**

of any lien.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Express Power of Sale Provision. Upon the application or request of Lender, it shall be lawful for and the duty of the Trustee, and the Trustee is hereby authorized and empowered, to expose to sale and to sell the Property at public auction for cash, after having first complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust or such other sales appropriate under the circumstances; and upon any such sale, the Trustee shall convey title to the purchaser in fee simple. In the event of any sale under this Deed of Trust by virtue of the exercise of the

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(Continued)**

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powers granted in this Deed of Trust, or pursuant to any order and any judicial proceeding or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Lender in its sole discretion may elect. Trustee shall be authorized to hold a sale pursuant to North Carolina General Statute Chapter 45. If Trustee so elects, Trustee may sell the Property covered by this Deed of Trust at one or more separate sales in any manner permitted by applicable North Carolina law, and any exercise of the powers granted in this Deed of Trust shall not extinguish or exhaust such powers, until the entire Property is sold or the Indebtedness is paid in full. If such Indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Lender may at its option exercise the remedies granted under any of the security agreements either concurrently or independently and in such order as Lender may determine.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and

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(Continued)**

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Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Trustee's Fees. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale for a completed foreclosure. In the event foreclosure is commenced, but not completed, Grantor shall pay all expenses incurred by Trustee and partial commission computed on five percent (5%) of the outstanding Indebtedness, according to the following schedule: one-fourth of the commission before Trustee issues a notice of hearing on the right to foreclosure; one-half of the commission after issuance of notice of hearing; three-fourths of the commission after a hearing; and the full commission after the initial sale.

Express Power to Substitute a Trustee. Lender shall have the irrevocable right to remove at any time and from time to time without limit the Trustee named in this Deed of Trust without notice or cause and to appoint a successor by an instrument in writing, duly acknowledged, in such a form as to entitle such written instrument to be recorded in the State of North Carolina; and, in the event of the death or resignation of the Trustee named in this Deed of Trust, Lender shall have the right to appoint a successor by such written instrument, and any Trustee so appointed shall be vested with the title to the Property, and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though the successor trustee were named in this Deed of Trust as Trustee.

NOTICES. Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

LIMITATION OF REMEDIES. Lender and I agree that neither party shall have a remedy of punitive or exemplary damages against the other in any Dispute and hereby waive any right or claim to punitive or exemplary damages we have now or which may arise in the future in connection with any Dispute whether the Dispute is resolved by arbitration or judicially. Further, Lender and I agree to limit damages to actual compensatory damages flowing directly from the claimed breach, specifically excluding damages for lost profits, wages and/or income.

PLACE, TIME AND COST OF ARBITRATION. If either Borrower or Lender demands arbitration, such arbitration proceedings shall be held by a single arbitrator, as soon as practicable, but in any event within sixty (60) days after the demand for arbitration is made, in TRANSYLVANIA County, North Carolina. Notwithstanding anything to the contrary elsewhere in this Agreement, all of the expenses charged by the arbitrator or arbitration service shall be borne exclusively by the Lender, and no such expenses shall be the responsibility of the Borrower.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration. Lender and Grantor agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Deed of Trust or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the financial services rules of Endispute, Inc., d/b/a J.A.M.S./ENDISPUTE or its successor in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no

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arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Deed of Trust shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of North Carolina without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of North Carolina.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Transylvania County, State of North Carolina.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means United Community Bank, and its successors and assigns.

Borrower. The word "Borrower" means TORES PROPERTIES, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the default section of this Deed of Trust.

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Grantor. The word "Grantor" means TORES PROPERTIES LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

Lender. The word "Lender" means United Community Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated September 29, 2008, in the original principal amount of \$165,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of the Note is September 29, 2013. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

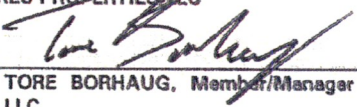
Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means GAYLE E RAMSEY, whose address is 1 NORTH GASTON STREET, BREVARD, NC 28712 and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

TORES PROPERTIES LLC

By: 

TORE BORHAUG, Member/Manager of TORES PROPERTIES, LLC

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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF NORTH CAROLINA)
) SS
COUNTY OF TRANSYLVANIA)

I, WANDA A. BRYSON, a Notary Public for said County and State, certify that **TORE BORHAUG**, Member/Manager of **TORÉ'S PROPERTIES, LLC** personally came before me this day and acknowledged the due execution of the foregoing instrument in writing by himself or herself for **TORÉ'S PROPERTIES, LLC**, a limited liability company, for the uses and purposes therein set forth.

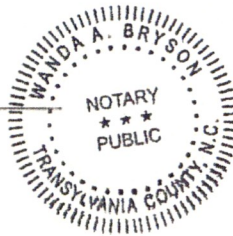
Witness my hand and Notarial Seal this the 29th day of September, 2008.

Wanda A Bryson
Notary Public

My Commission Expires:

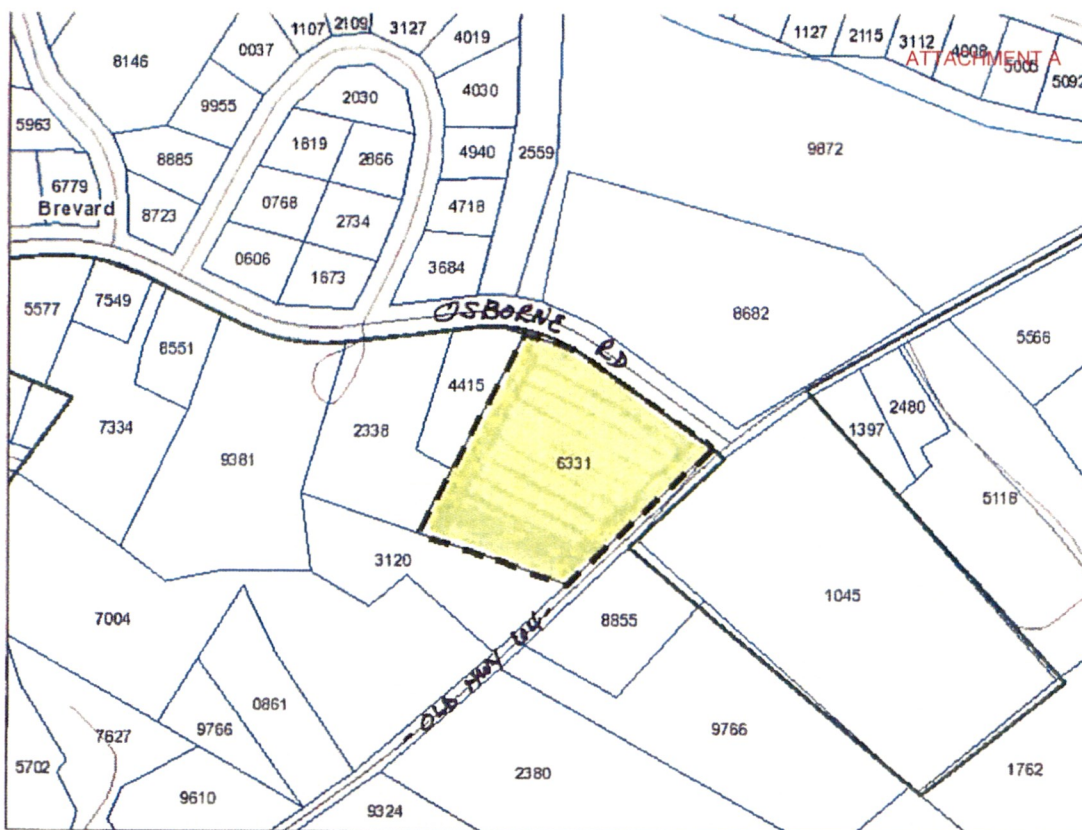
9-29-08

(Affix Notarial Seal Here)



PROPERTY DESCRIPTION TO A DEED OF TRUST FROM TORES PROPERTIES, LLC

BEGINNING at a 5/8 inch iron rod set at the east edge of the pavement of Old U. S. Highway No. 64, said iron rod being located just east of the intersection of the center of Osborne Road (North Carolina State Road No. 1556) with the intersection of the center of Old U. S. Highway No. 64, and runs thence crossing Old U. S. Highway No. 64 and along the center of the pavement of Osborne Road the following seven (7) calls: North 56 deg. 51 min. 39 sec. West 154.47 feet; North 57 deg. 25 min. 29 sec. West 113.43 feet; North 59 deg. 34 min. 11 sec. West 63.53 feet; North 62 deg. 12 min. 27 sec. West 47.63 feet; North 67 deg. 00 min. 21 sec. West 34.62 feet; North 72 deg. 38 min. West 34.84 feet; North 79 deg. 52 min. 09 sec. West 16.60 feet to a point in the center of said road, said point being the northeast corner of a 0.550 acre tract of land conveyed to Zebulon Franklin Osborne and wife, Lorene York Osborne, in a deed from Ralph Sumpter Osborne (Widower), et al, dated January 20, 1983, and recorded in the office of the Register of Deeds for Transylvania County, North Carolina; thence leaving the center of the pavement of Osborne Road and along the eastern property line of Zebulon Franklin Osborne and wife, Lorene York Osborne, the following two (2) calls: South 25 deg. 27 min. 33 sec. West, passing through a concrete monument set on November 22, 1982, at 30.25 feet, a total distance of 471.19 feet to a 5/8 inch iron rod set in the northern property line of a tract of land conveyed to Gillespie in a deed recorded in Book 256, page 655, Records of Deeds for Transylvania County, North Carolina; thence leaving the property line of Zebulon Franklin Osborne and wife, Lorene York Osborne, and along the property line of Gillespie, South 72 deg. 08 min. 21 sec. East 331.02 feet to a 5/8 inch iron rod set at the east edge of the pavement of Old U. S. Highway No. 64; thence leaving the property line of Gillespie and along the east edge of the pavement of Old U. S. Highway No. 64 the following two (2) calls: North 43 deg. 37 min. 49 sec. East 326.76 feet to a stake and North 45 deg. 43 min. 34 sec. East 91.24 feet to the BEGINNING. Containing 4.025 acres, more or less, as surveyed and platted by P. Robert Raxter, Jr., RLS, in November, 1982, and as shown on an unrecorded plat dated December 3, 1982, and designated as Drawing 0-122 (7-89).



Disclaimer: The information contained on this page is NOT to be construed or used as a survey or legal description. Map information is believed to be accurate but accuracy is not guaranteed.

Approx. Scale 1:3344

0 279 ft 558 ft

Layer: Parcels

PIN: 8596-26-6331-000
 Owner: TORES PROPERTIES LLC
 Address2: PO BOX 362
 City: BREVARD
 State: NC
 Zip: 28712
 Acres: 3.87511299

Land Area: 4.03
 Land Units: AC
 Township: 02
 Land Value: 295600
 Assessed Value: 295600
 Legal Address: HWY 64 & OSBORNE RD
 Shape.STArea(): 148036.74359131

Attributes at point: 892611, 566284

Attributes at point: 892611, 566284	
Layer: Fire Districts Fire District: FR02	Layer: Voting Tabulation Districts (VTD) Name: Brevard 3
Layer: Precincts Description: B3_BREVARD #3	Layer: Brevard Zoning District: General Residential (6)

TORE'S PROPERTIES, LLC

Annexation Metes and Bounds Description

Beginning at an iron pin on the east side of Old Highway 64 (SR No. 1504) at the intersection with Osborne Road (SR No. 1556), thence crossing Old Highway 64 and running with the center line of Osborne Road the following seven calls: North 56 degrees 51 minutes 39 seconds West, 154.47 feet; North 57 degrees 25 minutes 29 seconds West, 113.43 feet; North 59 degrees 34 minutes 11 seconds West, 63.53 feet; North 62 degrees 12 minutes 27 seconds West, 47.63 feet; North 67 degrees 00 minutes 21 seconds West, 34.62 feet; North 72 degrees 38 minutes 00 seconds West, 34.84 feet; North 79 degrees 52 minutes 09 seconds West, 16.60 feet to an iron pin in the center of Osborne Road; thence leaving Osborne Road South 25 degrees 27 minutes 33 seconds West, 440.94 feet with the line of Carolyn Osborne Howie to an iron pin near a Private Asphalt Driveway; thence along with but not parallel to the said driveway, South 72 degrees 08 minutes 21 seconds East, 331.02 feet, crossing Old Highway 64 to an iron pin on the east side of the said highway; thence with the east side of the said highway, North 43 degrees 37 minutes 49 seconds East 326.76 feet to an iron pin; thence continuing with the east side of the said highway North 45 degrees 43 minutes 34 seconds East, 91.24 feet, to the Point of Beginning. Being 4.025 acres, more or less, as platted by E. Roger Raxter, Drawing No. 17024B, dated November 9, 2017, and recorded at Plat File _____, Slide _____, in the Transylvania County Registry.

– CONTIGUOUS ANNEXATION REPORT –
Tores Properties LLC
684 Osborne Road, Brevard, NC
ANN-17-003

Brevard Planning Board

Date: December 12, 2017

Property Description

PIN: 8596-26-6331-000
Owner: Tores Properties LLC,
PO Box 362
Brevard, NC 28712
Deed book/page: 473/622
Plat file/page: Not given

Background

Tore Borhaug, owner of Tore's Home, (property owner, referred to as "applicant") requests voluntary contiguous annexation of the subject property described herein.

Governing Statutes

Voluntary, contiguous annexations are governed by North Carolina General Statute §160A-31 which authorizes cities to annex any area contiguous to its borders on receipt of a petition signed by all the owners of real property within the area proposed for annexation. The subject property qualifies for annexation under this statute.

Service Delivery Impact Analysis

Administration/Finance/Human Resources

Future residential development upon the subject properties will be connected to City water and waste water. This will result in additional meter reading and billing duties for the Finance Department; this impact is deemed to be negligible.

Law Enforcement Services

The proposed annexation will bring the subject property within the law enforcement jurisdiction of the Brevard Police Department. It not expected that this will result in a measurable impact as the property is contiguous to current Brevard Police Department jurisdiction.

Fire Services

The proposed annexation is currently within the Brevard Fire District, thus the Brevard Fire Department is already the primary provider of fire protection services to the site.

Solid Waste Collection & Recycling

Subject property is adjacent existing services; impact is deemed to be minimal.

Street, Sidewalk, & Street Lighting Maintenance

To access newly subdivided properties a new street will be built, approximately 480 feet in length. This street will include sidewalks, planting strip, street trees, and lights, all of which will be dedicated to the City for maintenance. This additional maintenance responsibility is believed to be manageable by current Public Works staffing. This increase in City-maintained streets will result in a small increase in the amount of Powell Bill funding the City receives.

Water Production & Distribution

Capacity exists for the production and distribution of water at the maximum residential buildout for the property as allowed by the UDO. Water lines run under Old Hendersonville Highway and Osborne Road adjacent property. Though some details regarding water line size and possible hydrant placement are still unclear, the Public Works Director has stated that the concept looks good and he has no immediate concerns.

Wastewater Collections and Treatment

Capacity exists for the collection and treatment of wastewater for the maximum residential buildout for the property as allowed by the UDO. Sewer lines run under Old Hendersonville Highway and Osborne Road adjacent property. Though some details regarding sewer line size and possible pumping requirements are still unclear, the Public Works Director has stated that the concept looks good and he has no immediate concerns.

Parks & Property Management

None.

Planning Services

The proposed annexation will not impact the current or long-range planning functions of the Planning Department.

The property is currently located inside the City's extra-territorial jurisdiction, and therefore is already part of the City of Brevard's planning jurisdiction and subject to the City's zoning, subdivision, and floodplain regulations as set forth in the Unified Development Ordinance. The subject property is also within the scope of the City's 2002 Land Use Plan. Annexation would also bring the property under the City's vegetation and health/sanitation regulations set forth in City Code of Ordinances. Very minor increases to the workload of Planning Staff may result from code complaints on the property.

Financial Summary

REVENUE SOURCE	ANNUAL FISCAL IMPACT/REVENUE
Estimated Future Tax Revenues	\$ 19,602 per year
Utility Bill Collections	\$ 20,088 ¹
Powell Bill Revenues	\$ 150
Total Estimated Annual General Fund Revenues	\$ 19,752
Total Estimated Annual Utility Fund Revenues	\$ 20,088
Total Estimated Revenues	\$ 39,840

(1) Based on average residential bill for past nine months of water usage.

SERVICE AREA	ANNUAL FISCAL IMPACT/EXPENDITURE
Administration/Finance/HR	Minimal
Law Enforcement	\$ 12,704
Fire Protection	\$ 9,158
Solid Waste & Recycling	\$ 4,440
Street, Sidewalk & Street Lighting Maintenance	\$ 1,108
Water Distribution	Minimal
Wastewater Collection	Minimal
Water Plant	\$ 36
Wastewater Plant	\$ 57
Parks & Property Management	Minimal
Planning & Zoning	Minimal
Total Estimated Expenditures	\$ 27,503

Vested Rights

The applicant's application does declare vested rights but no details are given.

Other Concerns

None.

Planning Board Recommendation

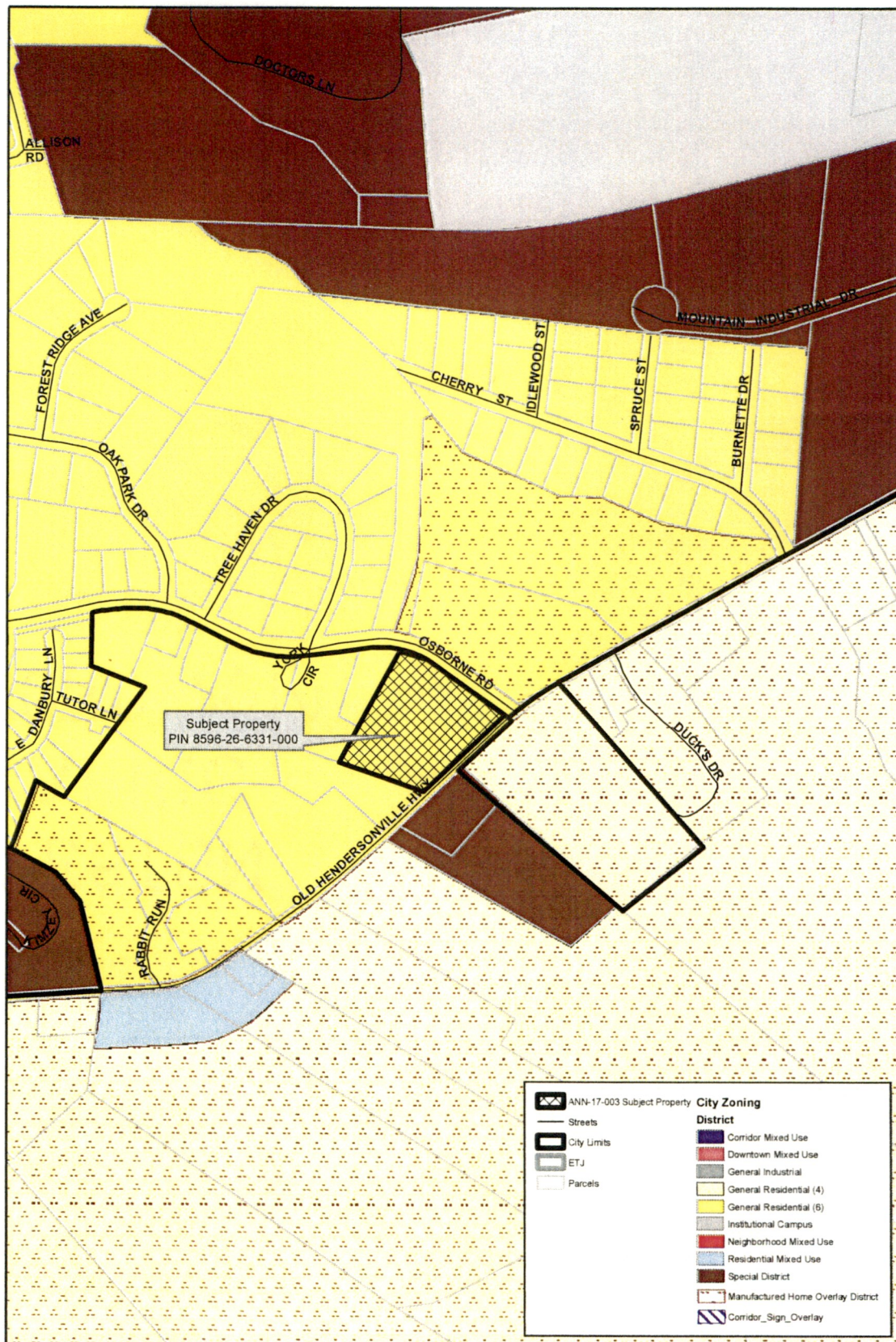
To be determined.

Staff Recommendation

Staff recommends approval of the proposed annexation as submitted.



Contiguous Annexation Request ANN-17-003
Tores Properties LLC
684 Osborne Road
PIN: 8596-26-6331-000
Ord. No. _____



Contiguous Annexation Request ANN-17-003

Tores Properties LLC

684 Osborne Road

PIN: 8596-26-6331-000

Ord. No. _____

1 inch = 400 feet



Contiguous Annexation Request ANN-17-003

Tores Properties LLC

684 Osbourne Road

PIN: 8596-26-6331-000

Ord. No. _____

1 inch = 400 feet

STAFF REPORT

Planning Board, Tuesday, December 12, 2017

Title: Text Amendments – UDO Chapters 2, 7, 10, and 16

The Board will continue discussions with regard to consideration of increasing residential density and modifying open space, and parking requirements.

Speaker: Daniel Cobb, AICP, Planning Director

Prepared by: Daniel Cobb, AICP, Planning Director

Aaron Bland, AICP, Planner and Assistant Zoning Administrator

Approved by: Daniel Cobb, AICP, Planning Director

Background

In August, the Board considered text amendments to remove the Special Use Permit (SUP) requirement for residential development in the Downtown Mixed-Use district (DMX) as well as the Neighborhood Mixed-Use (NMX) district. These amendments were subsequently passed by City Council, resulting in increased density allowed by-right in the DMX and NMX districts.

Following additional discussion with the Planning Board in September Staff presented the Board with a set of amendments in October. The amendments included with this report reflect changes to address concerns raised by the Board in October. Specifically parking ratios and open space requirements.

During the Board's last meeting in November further discussion took place with specific questions for Staff. One such question was the adequacy of the City's parking fee-in-lieu calculation. The Board requested examples from other jurisdictions. This information is included below. Additionally a request was made for staff to provide a map of the city's jurisdiction showing both areas of steep slopes and those prone to flood hazards. This map is also included for review.

Discussion

There are no changes to the proposed amendments since the Board's November meeting. After researching and speaking with other jurisdictions it is clear Brevard's parking fee-in-lieu is very low.

- 2008 Median Nationwide – \$9,125
- Blowing Rock, NC – Currently \$7,500, will increase to \$15,000 July 1, 2020
- Louisville, CO – \$3,600
- Brevard, NC \$500

Policy Analysis

The increase in allowable density that would result from these amendments is directly called for in the City's 2015 Comprehensive Plan:

Policy 2.1.A: Modify zoning regulations to encourage and allow greater density and intensities of land use within its jurisdiction.

Policy 4.2.A: Modify zoning to increase allowable densities and the mixing of uses in appropriate areas.

Recommendation

Staff recommends approval of the amendments modified and presented.

Attachments

- A. Chapter 2 Amendments
- B. Chapter 7 Amendments
- C. Chapter 10 Amendments
- D. Chapter 16 Amendments
- E. Zoning Consistency Statement
- F. Maps
 - 1. Zoning Map
 - 2. Open Space Analysis
 - 3. Steep Slopes
 - 4. Floodplains
 - 5. Steep Slopes, Floodplains, and Open Space

1 CHAPTER 2. – DISTRICT PROVISIONS

2 2.3. - Density and Dimensional Requirements.

District	Minimum Lot Size/Project Area	Maximum Project Area By Right	Maximum Dwelling Unit (DU) Density	Maximum Ground Floor Area Each Principle Structure	Principal Structure Ground Floor Area With SUP (See 2.3(A) and 2, below)
GR4	None	20 acres	4 du/ac	4,000 sq. ft.	>4,000 sq. ft.
GR 6 8	None	20 acres	6 8 du/ac	4,000 sq. ft.	>4,000 sq. ft.
GR 10 GD	None	20 acres	10 du/ac	4,000 sq. ft.	>4,000 sq. ft.
RMX	None	10 acres	10 15 du/ac, 15 20 SUP	4,000 sq. ft.	>4,000 sq. ft.
RMX GD	None	10 acres	10 du/ac	4,000 sq. ft.	>4,000 sq. ft.
NMX	None	10 acres	15 25 du/ac 30 SUP	10,000 sq. ft.	>10,000 sq. ft.
NMX GD	None	10 acres	10 du/ac	10,000 sq. ft.	>10,000 sq. ft.
DMX	None	10 acres	15 du/ac None	10,000 sq. ft. 25,000 sq. ft.	>10,000 sq. ft.
DMX GD	None	10 acres	10 du/ac	10,000 sq. ft.	>10,000 sq. ft.
CMX	None	10 acres	15 40 du/ac 50 SUP	20,000 sq. ft. 30,000 sq. ft.	>20,000 sq. ft.

CMX CD	None	10 acres	15 du/ac	20,000 sq. ft.	>20,000 sq. ft.
IC	None	None	15 du/ac	20,000 sq. ft.	>20,000 sq. ft.
GI	None	None	DU Not Permitted	50,000 sq. ft. <u>100,000 sq. ft.</u>	>50,000 sq. ft.
GI CD	None	None	DU Not Permitted	20,000 sq. ft.	>20,000 sq. ft.

3 A. *Development intensity.*

4 1. The following development types are considered group developments that may be
5 permitted by the administrator in accordance with chapter 16:

6 (a) Groupings of two or more principal structures or principal uses built on a single
7 lot, tract or parcel of land (or grouping thereof) not subdivided into the
8 customary streets and lots and designed for occupancy by separate families,
9 businesses or other enterprises normally permitted within the underlying
10 district (Examples include, but are not limited to, summer camps, school
11 campuses and hospitals, shopping centers, industrial parks, and apartment
12 complexes);

13 (b) Minor subdivisions, as defined in chapter 19, resulting in the establishment of
14 condominium buildings, lots or spaces, town homes, and other projects for
15 which zero lot line development is proposed; or

16 (c) Individual structures designed to accommodate a variety of distinct uses may
17 be considered as a group development at the discretion of the administrator.

18 2. [Reserved.]

19 B. *Front yard setbacks.*

Minimum Front Yard Setbacks		
District	Setback from Right-of-Way (See 2.4(B(1)))	Commercial Service/Alley/Rear Lane (See 2.3(B(1)))
GR (4, 68, 10 CD)	15 feet	Edge of right-of-way
RMX/ RMX CD	10 feet	Edge of right-of-way
NMX/ NMX CD	Edge of right-of-way	Edge of right-of-way

DMX/ CBD-CD	Edge of right-of-way	Edge of right-of-way
CMX/ CMX-CD	10 feet	Edge of right-of-way
IC (2.4, 2.3)	40 feet	Edge of right-of-way
GI/ GI-CD (2.4, 2.3)	40 feet	Edge of right-of-way
PD	To be determined by approving authority	

1. Front yard setbacks as set forth below shall be measured from the edge of the right-of-way of the roadway. For private streets, a right-of-way in accordance with Chapter 13 shall be assumed by the administrator. The administrator may impose additional setbacks based upon specific guidance from the *City of Brevard Comprehensive Transportation Plan*, the *City of Brevard Downtown Master Plan* and other district or small area/master plans, the *City of Brevard Comprehensive Pedestrian Plan*, the *City of Brevard Street Schedule*, or other plans or policies of the city.
 2. IC and GI setbacks as listed above shall only apply to public streets within and adjacent to the subject campus or project. Internal setbacks shall be to the edge of the right-of-way or assumed right-of-way.
 3. Setbacks as listed in the preceding table may not account for landscaping requirements set forth in Chapter 8 of this ordinance.
 4. [Reserved.]
 5. The administrator may approve deviations from required setbacks by up to 20 percent of the required area in accordance with Chapter 16 in order to protect right-of-way or in deference to the steep slope, surface water protection, and other requirements of this ordinance, as well as the flood damage prevention requirements of Chapter 34 of Brevard City Code.
 6. Structures located on corner lots or multi-fronted lots shall conform to the front yard setbacks as set forth herein along all streets upon which such lots front.
 7. The administrator shall require additional setbacks as necessary to account for existing or proposed additional automobile, bicycle, or pedestrian travel lanes, turn lanes, roundabouts, on-street parking, and other improvements that deviate from a standard street cross-section.
 8. The administrator shall deduct appropriate setbacks as necessary to account for one-way streets.
- C. *Side and rear yard setbacks.*

District	Side Yard Setback	Setback Between Buildings New Development Without Partwall	Rear Yard Setback
GR (4, 6 <u>8</u> , 10 <u>CD</u>)	6	6	25
RMX/ RMX-CD	6	6/10 (MF)	25
NMX/ NMX-CD	0/ 30 <u>10</u> from residential district	6/10 (MF)	25 <u>10</u>
DMX/ CBD-CD	0	0	0
CMX/ CMX-CD	0/ 30 <u>10</u> from residential district	0	10/40 from residential district
IC	40 foot setback along all external boundaries		
GI/ GI-CD	40 foot setback along all external boundaries		
PD	To be determined by approving authority		

49 1. Zero-lot line development (i.e. town homes, condominiums and similar structures)
50 and other structures using partiwalls are permitted subject to other requirements as set
51 forth in this ordinance.

52 D. *Accessory structures.*

District	Side Yard Setback		Rear Yard Setback	
	< 120 sq. ft.	≥ 120 sq. ft.	< 120 sq. ft.	≥ 120 sq. ft.
GR (4, 6 <u>8</u> , 10 <u>CD</u>)	3	6	3	10
RMX/ RMX-CD	0	3	0	3
NMX/ NMX-CD	0	3	0	3
DMX/ CBD-CD	0	0	0	0

CMX/ CMX-CD	0	0	0	0
IC	40 foot setback along all external boundaries			
GI/ GI-CD	40 foot setback along all external boundaries			
PD	To be determined by approving authority			

53

54 E. *Other structure and lot dimensional requirements.*

District	Height By Right (1)	Min. Lot Width at Building Line and Right-of-Way Line (2)
GR (4, 6 8 10 CD)	35 feet	30 feet
RMX/ RMX-CD	35 feet	30 feet
NMX/ NMX-CD	35 feet	20 feet
DMX/ GBD-CD	50 feet	0 feet
CMX/ CMX-CD	50 feet	0 feet
IC	50 feet	60 feet
GI/ GI-CD	50 feet	60 feet
PD	To be determined by approving authority	

55

- 56 1. Additional height may be permitted by the board of adjustment (hereinafter BOA)
57 as a special use permit. See the requirements for large structures as set forth in
58 Chapter 5, Section 5.14. See computation of building height as set forth in Chapter 5,
59 Section 5.17.
- 60 2. The approving authority may authorize the establishment of lots in GR, RMX, and
61 NMX districts that do not meet the minimum width requirements set forth above.
62 However, the following standards shall apply:

- 63 (a) Such lots shall have frontage upon a public street.
- 64 (b) Off-street parking shall be provided in the rear of the principal structure and
65 shall not be located in the side yard or front yard of the lot.
- 66 (c) Off-street parking shall be accessed by a commercial service street, alley, or rear
67 lane. Provided that all lots meet minimum public street frontage requirements
68 of this ordinance. Such travel lane may be a situated upon a private easement or
69 right-of-way.
- 70 3. Front and side yard setbacks for infill structures shall be consistent with or equal to
71 the average setbacks for all principal structures within 300 feet or one block length
72 (whichever is greater). Where no buildings exist or in new neighborhoods the
73 minimum dimensional standards shall be as stated above. Other setback
74 modifications are permitted through the provisions of Chapter 16 of this ordinance.
- 75 4. Handicapped ramps are permitted to encroach into the front setback and side
76 setback in accordance with Chapter 4.
- 77 5. Roof overhangs and gutters may encroach into front, rear, or side yard setbacks by
78 up to two feet.
- 79 6. Uncovered porches, stoops, and stairs, intended primarily for means of ingress and
80 egress, nominally in line with the first floor above grade or any floor below that, may
81 encroach into front, or rear yard setbacks up to one-third of the required setback
82 dimension up to a height of four feet above the elevation of the floor being served.
83 The area of each porch not including landings between runs of stairs, shall be no
84 greater than 50 square feet.
- 85 7. Covered or uncovered balconies and bay windows may encroach into front or rear
86 setbacks up to three feet into the required setback dimension. Balconies or bay
87 windows may not exceed ten feet in width. Cumulative total of balconies and bay
88 windows projecting into the setback shall not exceed 33 percent of the total width
89 of each elevation.
- 90 8. Chimneys may encroach into front, rear, or side setbacks by up to two feet. Width of
91 the chimney encroachment shall not exceed that necessary for the fireplace, flue,
92 and the typical building walls enclosing the fireplace or flue.
- 93 9. No structure or land use shall encroach upon any public or private easement or
94 public or private right-of-way or easement unless otherwise provided for by this
95 ordinance.

1 **CHAPTER 7 – OPEN SPACE**

2 7.1. - Purpose and intent.

3 The intent of these requirements is to allow for the usage of centrally located
4 unencumbered land as neighborhood open spaces and not to permit the use of leftover or
5 otherwise unusable land to fulfill the requirements of this chapter. Open space as defined by
6 this chapter is also distinct from those areas that are environmentally significant and must
7 be protected in their pristine state as dedicated open space, as required in Chapter 6 of this
8 ordinance.

9 7.2. - General provisions.

10 A. Open space is defined as all public or common areas not covered by building or parking
11 lots, detention structures, streets, required setbacks, or golf courses unless permitted by
12 administrative review.

13 B. Open space shall be planned and improved, accessible and usable by persons living
14 nearby. Improved shall mean cleared of underbrush and debris and may contain one or
15 more of the following enhancements: landscaping, picnic tables, gazebos, walls, fences,
16 walks, statues, underground utilities, irrigation, fountains, ball fields, and/or playground
17 equipment.

18 C. Environmentally sensitive stands of trees, stream bed areas, natural habitat, and other
19 valuable topographic features shall be preserved within the required open space areas
20 and left unimproved in accordance with Chapter 6 and 8 of this ordinance.

21 D. Playground equipment, statues, and fountains should be located toward the interior of
22 squares and parks away from the public right-of-way to provide for adequate safety of
23 the user.

24 E. Walls and fences shall be made of brick, stone, wrought iron, or wood and shall not
25 exceed four feet in height. (Exception: Fences used in conjunction with ball fields.)

26 F. Open space should protect sensitive natural areas and provide focal points for the
27 neighborhood and city. A central square or green, for example, may comprise a majority
28 of the area required for dedication.

29 G. Dedicated open space shall be separately deeded to a homeowner's association, a non-
30 profit land trust or conservancy, a local or state government, or may be held in private
31 ownership with conservation easements recorded in the Transylvania County Register
32 of Deeds in a form approved by the administrator.

33 H. The approving authority may require that recreational open space be dedicated for
34 ownership and maintenance to the City of Brevard. Such a condition shall be based upon
35 a determination that such recreational space would clearly serve a public benefit.

36 7.3. - Open space dedication.

37 All residential and mixed-use residential developments with more than eight total units
38 shall be required to dedicate open space. ~~To encourage development of residential units in~~

~~the Downtown Mixed Use district, all such residential development shall be exempt from these provisions.~~ The amount of useable open space required for dedication shall be determined using the open space dedication matrix.

A. First, the matrix was designed to base open space requirements on the number of bedrooms in a given development rather than the usual dedication based upon the dwelling unit. This more accurately reflects the needs of the residents, as the number of bedrooms within a given development is a better representation of the actual number of residents who would use open space.

B. Second, the matrix is established to encourage the preservation of land. By allowing for an increase in densities, the matrix provides for an increasing requirement in open space dedication. For example, a 50-acre subdivision of 100 lots developed at a density of two units per acre would generally require 3.44 acres or seven percent of dedicated open space. In contrast, this same tract of land subdivided into 400 lots (or condos) at a density of eight units per acre would require 15.15 acres or 30 percent of dedicated open space. These figures are based upon an average of three bedrooms per unit.

Because the open space dedication requirements are based upon preliminary estimations of bedroom units in a given development, changing market conditions and final build-out of a project may yield a different bedroom count. In order to accommodate for variations, this code will permit variations to the estimated number of bedrooms up to ten percent. Variations in excess of ten percent may allow a payment in lieu of additional dedication or the dedication of additional open space.

For the purposes of good faith estimation, all single family developments will dedicate open space at a rate of 3.5 bedrooms per unit unless otherwise stipulated. Attached homes and apartments will dedicate open space at a rate of two—four bedrooms per unit in accordance with actual building specifications.

		Gross Dwelling Units per Acre			
		0—2	2—6	6—10	+10
Estimated Number of Bedrooms	×	500	520	550	580

How to use this matrix:

1. Determine average density for proposed development (Gross Dwelling Units per Acre).
2. Determine average number of bedrooms per dwelling unit (good faith estimate).

3. Multiply the average number of bedrooms by the total number of units to get to the estimated number of bedrooms.

4. Multiply the estimated number of bedrooms by figures shown in the matrix which relate to the density of the site and its proximity to existing open space.

EXAMPLE:

A developer wants to subdivide a 50 acre tract of land into 120 lots. The average number of bedrooms per lot is 3.5 (some three bedroom, some four bedroom). The tract is not within ¼ mile walking distance to any publicly dedicated open space. How much open space is required for dedication?

The density (in dwelling units per acre) is 2.4. There are an estimated 420 bedrooms. Using the multiplier of 520 as shown in the matrix, the required amount of useable open space to be required is 218,400 square feet or 5.01 acres or ten percent of the total area.

C. Exemptions

To encourage development of residential units in the Downtown Mixed Use district and Neighborhood Mixed Use district, all such residential development shall be exempt from these provisions.

Any residential development within 1,320 feet (¼) mile of public open space. Examples include Franklin Park, Hap Simpson Park, the bike path, and other similar publicly owned locations.

7.4. - Payment in lieu of open space dedication.

A. If open space within a development is physically impractical due to unusual topographic conditions, then the administrator may, at their discretion, accept either an equitable amount of land in another location or a fee paid to the city in lieu of dedication. A combination of open space dedication and payments-in-lieu of dedication is permitted.

B. Payments in lieu of dedication may be approved as part of the development plan. Any disagreement in the amount of required payment shall be resolved by conducting a professional appraisal, at the expense of the developer, of the fair market value of the property. The professional appraiser shall be mutually agreed upon by the developer and city. An appraiser may be appointed by the city should an agreement not be reached.

C. All payments made in lieu of dedication shall be made at the time of construction document approval. Failure to submit the required fee along with such applications will delay approval of such submissions until payment is rendered.

D. All funds received for payment in lieu of dedication shall be used for the acquisition, improvement, development, or redevelopment of public open space within the city.

CHAPTER 10. - PARKING STANDARDS

10.1. - Purpose and intent.

Parking lots, loading areas, and similar facilities are necessary elements in the urban environment. However, these facilities have been known to cause the following negative impacts:

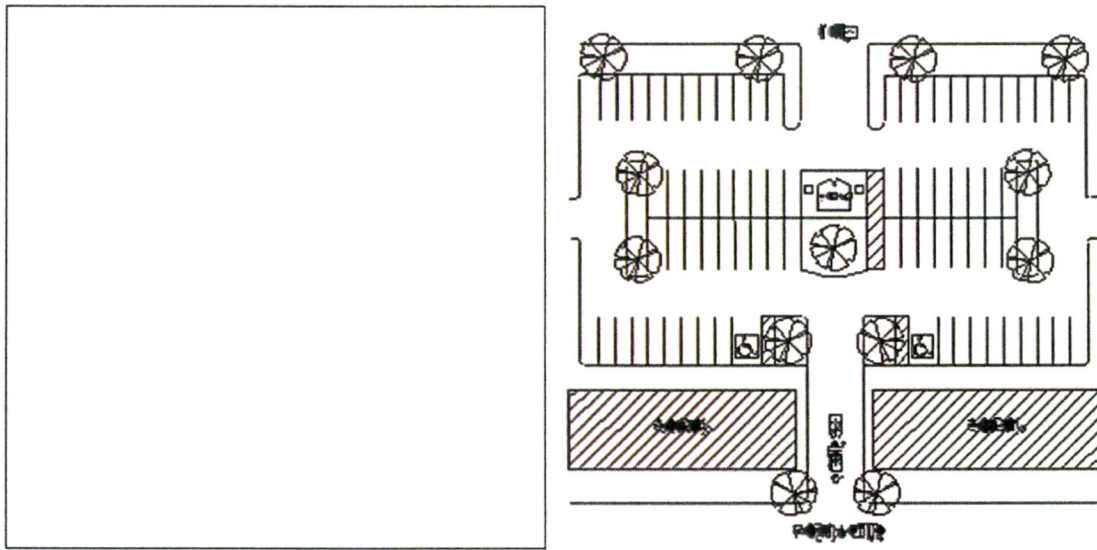
- Increased stormwater volume and velocity;
- Increased surface pollutants;
- Increased surface level heat and glare;
- Reduction in the efficiency of the connecting street system; and,
- Reduction in the operations of the surrounding pedestrian and bicycle network.

To mitigate these negative impacts, and to provide adequate service, the city has enacted standards to regulate the construction, expansion, and renovation of such facilities.

10.2. - Applicability.

Off-street parking and loading spaces shall be provided for all uses as well as for any expansion of such uses or change in use in accord with the requirements of this section.

10.3. - Off-street parking requirements.



Typical Parking Arrangement

21 A. *Minimum parking ratios:*

Use Type	Required Parking Spaces
<u>Single-Family Residential</u> (All types)	2 spaces <u>per dwelling unit</u>
Residential Accessory Dwelling Unit	1 space
<u>Multi-Family Residential (DMX, NMX)</u>	<u>1 space per dwelling unit</u>
<u>Multi-Family (All Other)</u>	<u>1.5 space per dwelling unit</u>
Retail Uses	1 per 500 square feet
Office Uses	1 per 500 square feet
Theaters	1 per 3 seats
Restaurants	1 per 4 seats
Manufacturing/Warehousing/Light Assembly	.25 per 1,000 square feet of non-office space
Bed and Breakfast Inns/Hotels/Motels	1 per room or suite
Civic Uses (Assembly Uses Only)	1 per 4 seats (If benches or pews are used then the standard shall be measured as 1 per 6 feet)

22 *Note: All square footage is in gross square feet.*

23 B. *Maximum parking allowed:*

- 24 1. Additional parking that exceeds ten percent of the required minimum (hereafter
25 "excess parking") shall not be permitted, except as follows:
- 26 a. Excess parking may be provided within in an underground, roof-top, or multi-
27 story parking structure.
- 28 b. Other excess parking may be permitted. However, stormwater control
29 measures for such excess parking area shall be designed to control the
30 stormwater run-off generated by a 25-year, 24-hour rain event (9.2 inches), and
31 shall otherwise comply with Chapter 6, Section 6.6 of this ordinance.

32 C. *Motorcycle and bicycle parking:*

1. All developments containing 20 or more parking spaces shall provide dedicated motorcycle parking areas. One motorcycle space shall be provided for every 20 automobile parking spaces. Motorcycle spaces shall be located near the front of the building and shall not be counted as excess parking.

2. Group developments, planned developments, multi-family developments containing more than three dwelling units, conditional zoning districts, and special use permit developments, and any other development containing ten or more parking spaces shall provide secure bicycle storage capable of serving building users. One bicycle space shall be provided for every 20 automobile parking spaces, with a minimum of one 4-bicycle rack provided near the primary entrance of each building entrance. The administrator may adjust bicycle parking requirements to account for shared parking, buildings located in close proximity to one another, or the presence of public bicycle racks in close proximity.

D. *Accessible parking:* Accessible parking shall be provided in accordance with the North Carolina State Accessibility Code.

E. *Exemptions and adjustments:*

1. Developments which meet any of the following criteria may be totally or partially exempt from the parking requirements of this section.

a. Developments which involve an increase in floor area and which will not increase the number of parking spaces required under this chapter by more than 25 percent;

b. Developments which involve only a change of use and which will not increase the number of parking spaces required under this chapter by more than 25 percent.

2. In any district, the minimum number of spaces required may be adjusted by the administrator when it has been determined that the reductions are necessary to preserve a healthy tree or trees (with a 12-inch or greater diameter) from being damaged or removed, and where the site plan provides for the retention of said tree or trees.

3. No development shall be exempted from bicycle and motorcycle parking requirements.

F. *Variations in parking requirements:* In lieu of actual construction of required on-site parking spaces, all or any portion of the off-street parking required in this section may be provided as follows:

1. *Satellite parking:* Satellite parking (a parking lot that is located on a parcel or lot that is not contiguous or adjacent to the parcel or lot containing the use for which the parking is intended) may be permitted, subject to certification by the administrator that the following requirements have been met:

a. The use being served by the satellite parking shall be a permitted principal use, as established in Chapter 2, in the zoning districts within which the lot containing such parking is located;

- 74 b. The satellite parking spaces shall be located within ~~300~~ 1,320 feet (¼ mile)
 75 walking distance of a public entrance to the structure or lot containing the use
 76 for which such spaces are required. A safe, direct, attractive, lighted and
 77 convenient pedestrian route shall exist or be provided between the satellite
 78 parking and the use being served;
- 79 c. The continued availability of satellite parking spaces necessary to meet the
 80 requirements of this section shall be ensured by an appropriate condition that
 81 the continued validity of the zoning compliance or special use permit shall be
 82 dependent upon the permit holder's continued ability to provide the requisite
 83 number of parking spaces.
- 84 2. *Payment in lieu:* For uses located within the Downtown Mixed-Use District and
 85 Neighborhood Mixed-Use, compliance with parking requirements may be achieved
 86 by making payments to the City of Brevard Parking Fund in accordance with the
 87 Brevard Schedule of Fees adopted by the eCity eCouncil. The payment shall be based
 88 upon a dollar amount per parking space. Parking fund moneys shall be used to
 89 acquire, maintain, administer, and improve city-owned parking lots.
- 90 3. *Shared/combined parking:* The joint use of shared off-street parking between two
 91 uses may be made by contract between two or more adjacent property owners.
- 92 4. *Overflow parking:* Off-street areas used to accommodate occasional (no more than
 93 once per month) overflow parking may be constructed of grass. The owner of the
 94 property shall be responsible for the maintenance of such parking in a clean and
 95 dust-free condition.
- 96 G. *Use of parking spaces and loading spaces:*
- 97 1. Required parking and loading areas shall be available for the parking of operable
 98 vehicles of residents, customers, and employees, and shall not be used for the
 99 storage of vehicles or materials, or for the parking of vehicles used for loading or
 100 unloading.
- 101 2. Required loading spaces shall be available for the loading and unloading of vehicles,
 102 and shall not be used for the storage of vehicles or materials, or to meet off-street
 103 parking requirements.
- 104 10.4. - Off street loading requirements.
- 105 A. Every lot on which a retail or wholesale business, trade, industry, or multifamily housing
 106 is hereafter established, shall provide space indicated herein for the loading and
 107 unloading of vehicles off the street.
- 108 B. Such space shall have access to an alley or commercial service street or, if there is no
 109 alley or service street, to a street. For the purposes of this section, an off-street loading
 110 space shall have the minimum dimensions of 12 feet by 40 feet and be free and clear of
 111 obstruction at all times. However, the minimum loading requirements shall meet the
 112 needs of each individual use. Required space shall be considered as follows:
- 113 1. *Retail businesses:* One space per business location.

2. *Wholesale, industrial, governmental and institutional uses (including public assembly places, hospitals, and educational institutions):* One space for the first 25,000 square feet, such uses shall provide loading spaces according to the following schedule.

Square Feet	Number of Spaces
25,000—99,999	2
100,000—159,999	3
160,000—239,999	4
240,000—349,999	5
Additional 100,000 or fraction thereof	1 additional

3. *Multifamily residences:* Ten or more units, one space.

C. Where a loading space is adjacent to a public sidewalk or other public pedestrian way, it shall be so located, arranged and improved with curbs or other barriers, as to provide adequate protection for pedestrians.

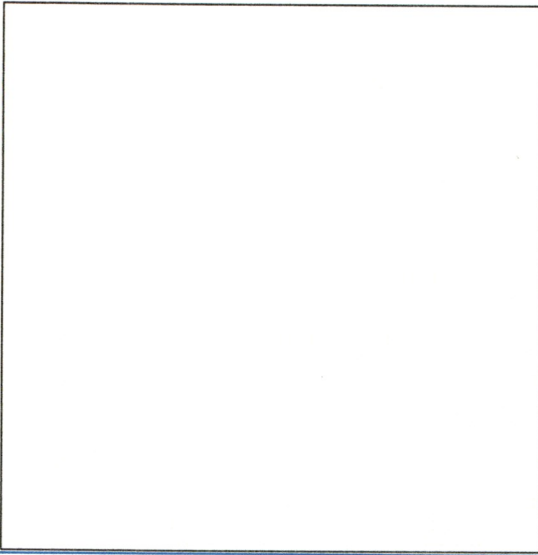
D. All off-street loading spaces shall be provided with adequate off-street maneuvering areas so that vehicles do not obstruct traffic during maneuvering.

10.5. - General off-street parking area design standards.

A. *General:* Internal parking area design and circulation shall be subject to the review and approval of the approving authority, who may impose such conditions as are necessary in order to ensure the safety of pedestrians and motorists.

B. *Connectivity:* Adjacent lots shall be interconnected. Each parking area that is interconnected may reduce their minimum parking requirement by five percent. Exceptions may be granted by the administrator in the case of existing natural barriers such as steep slopes, surface water protection areas, etc. between the sites.

C. *Circulation drives:* A circulation drive may be permitted around the front of the building but may not encroach into any required landscape area. If provided, this drive shall be one way and designed to be the minimal width required (not to exceed 12 feet in width) and shall be constructed using alternative paving treatments such as unit pavers or stamped concrete.



137

138

139 Circulation Drives

140 *Circulation drives, if provided, should be minimized and treated with pedestrian-scaled*
 141 *materials.*

142 D. *Primary entry drives:* Parking lots shall be served by a primary entrance drive that is
 143 constructed to the standards of a local boulevard. The approving authority may approve
 144 construction in accordance with the standards set forth for a local collector street when
 145 a local boulevard is not feasible due to dimensional limitations within the site.

146 E. *Parking aisles:* Parking aisles shall be a minimum of 24 feet in width.

147 F. *Pedestrian amenities:*

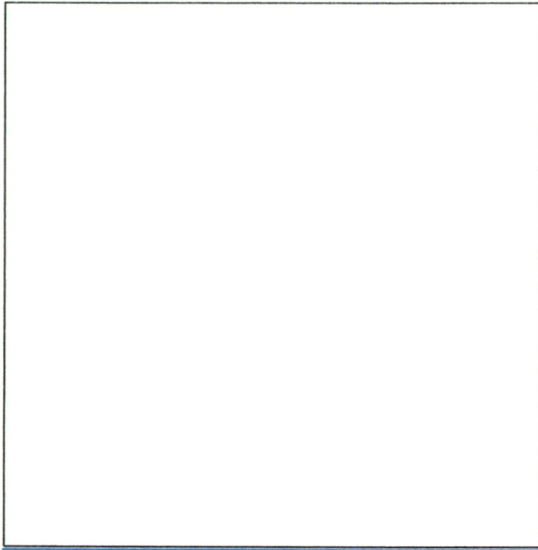
148 1. Off-street parking areas shall be designed to allow pedestrians to safely move from
 149 their vehicles to the building. Barrier free access shall be provided across parking
 150 lots and between adjacent pedestrian generators such as commercial or public
 151 buildings.

152 2. All structures (other than single-family and duplex structures) shall be connected to
 153 the street and, if available, an adjacent public sidewalk, by a sidewalk. Furthermore,
 154 all structures within a group development, planned development, or other project
 155 containing multiple principal structures shall be connected by a sidewalk. Sidewalks
 156 shall also connect other phases of the same development, and adjacent
 157 developments, as required by the administrator

158 3. In addition to any required sidewalk, barrier free access shall also include providing
 159 ramps at curbs, clear walkways between pre-cast wheel stops, and clearly
 160 delineated walkways on the parking lot surface across travel lanes.

161 4. For lots of 36 spaces or greater, no parking space shall be more than 65 feet from a
 162 sidewalk that provide access to the entrance of the building or to other sidewalks

connecting to the building. Sidewalk corridors a minimum of five feet in width shall be provided within the parking area or along the perimeter to provide safe building access for pedestrians.



Pedestrian Amenities

Sidewalks must connect parking areas and streets to principal structures.

G. *Location of off-street parking:*

1. Off-street parking shall not be permitted within any public right-of-way.
2. Off-street parking shall not be permitted within any front yard setback area.
3. Except for properties located in the Corridor Mixed Use (CMX) zoning district, off-street parking shall not be permitted between any principal structure and the street upon which such structure fronts. Where a structure fronts upon two or more streets, parking may be permitted between the principal structure and the adjacent street of lesser classification when parking cannot reasonably be placed in another location.
4. The following uses and parking types shall be exempt from subsections 10.5.G.2. and 10.5.G.3. above:
 - a. Single-family and duplex residential structures in GR, RMX and NMX districts, except those which are subject to subsection 2.3.E.2.
 - b. Handicapped parking spaces as required by the North Carolina Accessibility Code or other federal, state, or local regulations.
 - c. Bicycle parking spaces required by this ordinance.

- d. Existing nonresidential and multifamily development undergoing significant or substantial improvement or change of use as defined in chapter 19 of this ordinance, provided that all newly created parking spaces associated with such redevelopment shall conform with subsections 10.5.G.2. and 10.5.G.3. unless the approving authority deems that compliance would be impractical due to existing site constraints.

10.6. - Parking area construction standards.

A. *Surfacing:* All vehicle accommodation area surfacing shall be constructed in accordance with the following specifications:

1. *Hard surface required:* Except for single family dwellings in ~~the NRG and GR~~ Districts, all off-street parking areas including drives connecting such areas with the public street rights-of-way shall be surfaced with a dust-free paving treatment including but not limited to asphalt, concrete, or unit pavers.
2. *Porous paving permitted:* The administrator may permit and/or require that porous paving materials be substituted for conventional paved surfaces in some portion of a vehicular surface area where it finds it is necessary to protect the root system of an existing tree or trees from damage or reduce the amount of impervious surface for stormwater calculation purposes.
3. *Exceptions to paved parking:* The following situations are exempted from the requirements of this section. (*Note: Non-paved parking areas are still subject to the landscaping requirements of Chapter 8.*)
 - a. A parking lot used only for occasional (not more than once per month) use or is temporary in nature (not exceeding 24 months), as determined by the administrator.
 - b. Public recreational facilities located in residential districts.
 - c. Whenever a proposed development involves only one of the following:
 - (1) A non-occupied accessory structure, or,
 - (2) A change in use which will not increase the number of required parking spaces by more than 25 percent, and provided that no significant or substantial improvements to the primary structure are proposed.
 - d. The administrator may exempt up to 75 percent of the required employee parking spaces for industrial uses in industrial zoning districts from the paving requirements of the section. The exemption is based upon the following criteria: if the employee parking area is not visible, either by effective buffer screening or because of the grade of the site, from any public right-of-way or a residentially or commercially zoned property.
4. *Non-paved areas:* Whenever an off-street parking area is exempt from the paved parking requirements the administrator shall require the following:
 - a. Landscape aisles or other spatial separations shall be provided to ensure that the parking spaces will be readily identifiable to the users; and,

226 b. The perimeter of off-street parking areas encompassing the parking stalls and
 227 the side of any unpaved drive or aisle leading to said stalls, shall be edged with
 228 brick, pressure treated timbers, or cast in place concrete, and anchored into
 229 place. Alternate borders may be considered on a case by case basis.

230 c. Landscaping or other measures shall be utilized to prevent the discharge of
 231 sediment off-site or into any body of water from an unpaved parking area.

232 B. *Curbing required:* All parking areas and circulation drives shall be curbed using a
 233 vertical curb with a minimum width of 1'6". Landscape islands and areas shall be
 234 similarly curbed to protect vegetation. This requirement may be waived to permit sheet
 235 flow drainage into pervious areas as part of an approved engineered stormwater
 236 retention system.

237 C. *Parking area containment:* Off-street parking areas shall be designed so that parked
 238 vehicles do not encroach upon or extend onto public rights-of-way, sidewalks or strike
 239 against or damage any wall, vegetation, utility, or other structure.

240 D. *Parking space dimensions:* Standard parking spaces shall be 9' × 18' (width × length).
 241 Alternative parking space designs spaces shall be dimensioned in accordance with
 242 Architectural Graphics Standards by Ramsey & Sleeper published by the American
 243 Institute of Architects, latest edition.

244 E. *Stormwater management:* Parking areas are subject to stormwater management
 245 requirements set forth in Chapter 6 of this ordinance. It is strongly encouraged that
 246 parking area landscaping be incorporated into the approved stormwater management
 247 system for any project.

248 10.7. - Structured parking.

249 Locating structured parking at the interior of the block, surrounded by buildings, is the
 250 preferred method of screening.

251 10.8. - Additional requirements for parking lots within GR-4 and GR-6 zoning districts.

252 The requirements set forth below shall apply to any parking lot within a GR-4 or GR-6
 253 zoning district except parking provided for other uses that are denoted on the use matrix in
 254 Chapter 2 of this ordinance as permitted "by right" ("P") or "permitted with additional
 255 standards" ("PS") within a GR-4 or GR-6 zoning district. These standards are designed to
 256 protect the character of residential neighborhoods, which are intended and reserved
 257 primarily for residential uses.

258 A. Any parking lot that is not associated with any particular business or use and that
 259 exists and operates as a "stand alone" for-profit business or enterprise where the
 260 spaces are intended for lease or rent to various establishments or the general public,
 261 shall not be permitted within any GR-4 and GR-6 Zoning District. This provision shall
 262 not be construed to prohibit shared parking as set forth in Section 10.3(F)(3), above.

263 B. Satellite parking lots (as described in Section 10.3(F)(1), above) within a GR-4 or
 264 GR-6 zoning district shall only be provided for uses that are denoted on the use
 265 matrix in Chapter 2 of this Ordinance as permitted "by right" ("P"), permitted with

additional standards ("PS"), or "permitted by special use permit ("SUP") within a GR-4 or GR-6 zoning district. Satellite parking lots shall otherwise comply with all requirements of Section 10.3(F)(1), above.

- C. Parking lots for uses not permitted within GR-4 or GR-6 zoning districts may be permitted provided that said lot is located on the same parcel or lot as the use for which the parking is intended, or on a parcel or lot that is contiguous or adjacent to the parcel or lot containing the use for which the parking is intended, and provided that all other requirements of this section are satisfied.
- D. New parking lots shall be surrounded on all sides by a "Type A" buffer yard, as described in Chapter 8 of this ordinance, which is primarily comprised of evergreen vegetation. Parking lot shall comply with all other applicable landscaping requirements of Chapter 8 of this ordinance. Expansions to existing parking lots shall comply with this requirement to maximum extent practical given site conditions.
- E. All new parking lot lighting shall be integrated into landscaping wherever possible. Low-level lights such as bollard lights (waist-high, heavy-duty fixture posts), mushroom or step-lights (ground-level fixtures that are built in to the sides or surfaces of walkways and steps) shall be utilized in lieu of traditional pole-mounted parking lot lighting. Parking lot lighting shall comply with all applicable other lighting requirements of Chapter 11 of this ordinance.
- F. New parking lots shall be constructed with stormwater control measures designed to control the stormwater run-off generated by a 25-year, 24-hour rain event (9.2 inches), and shall otherwise comply with Chapter 6, Section 6.6 of this ordinance.
- G. Maximum parking spaces permitted:
 - 1. The number of parking spaces provided for any use denoted on the use matrix in Chapter 2 of this ordinance as permitted "by right ("P"), permitted with additional standards ("PS"), or permitted by special use permit ("SUP") within a GR-4 or GR-6 zoning district, shall be no greater than 110 percent of the minimum required number of spaces required for any use as set forth in Section 10.3(A), above.
 - 2. Satellite parking lots and parking lots provided for uses not permitted within a GR-4 or GR-6 zoning district shall not exceed the lesser of 50 parking spaces or 110 percent of the minimum required number of spaces required for any use as set forth in Section 10.3(A), above.
- H. The administrator may impose any other condition necessary to protect the residential character of the neighborhood in which the parking lot is located.

1 **CHAPTER 16. – ADMINISTRATION**

2 16.8. - Conditional zoning.

3 A. *Authority.* Brevard City Council may establish zoning districts by means of conditional
4 zoning in accordance with G.S. 160A-382.

5 1. *Purpose.* Conditional zoning is established to provide for flexibility in the
6 development of property while ensuring that the development is compatible with
7 neighboring uses. Conditional zoning affords a degree of certainty in land use
8 decisions not possible when rezoning to a base district. Additional standards and
9 regulations may be attached to a proposed development to ensure compatibility
10 with the surrounding uses and with applicable adopted plans in accordance with the
11 requirements of this section.

12 2. *Districts which may be established by conditional zoning.* Conditional zoning is
13 available for any of the base districts enumerated in this ordinance ~~as set forth in~~
14 Chapter 2, as well as for PD Planned Development Districts. The conditional zoning
15 designation shall be indicated on all zoning maps and other official documents with
16 the suffix, "CD" (e.g. CMX CD; GI CD) for conditional zoning districts or PD for
17 planned development districts.

**STATEMENT OF CONSISTENCY
WITH CITY POLICIES AND PLANS**

NCGS 160A-383 requires that the City's review of the proposed zoning amendment include a written statement as to the consistency of the amendment with adopted plans and policies of the City.

The Board forwards this recommendation to City Council with a finding that the proposed zoning amendments are **consistent** with the following elements of the City's adopted plans and policies:

2015 Comprehensive Plan, Element 2: Economic health goals include:

Policy 2.1.A: Modify zoning regulations to encourage and allow greater density and intensities of land use within its jurisdiction.

Policy 4.2.A: Modify zoning to increase allowable densities and the mixing of uses in appropriate areas.



- City of Brevard Regulatory Jurisdiction**
- Zoning Districts**
- General Industrial
 - Corridor Mixed Use
 - Downtown Mixed Use
 - Neighborhood Mixed Use
 - Residential Mixed Use
 - Institutional Campus
 - General Residential (S)
 - General Residential (A)
 - Special District
 - Floodway & Zone AE
 - Zone AE
 - Manufactured Home Overlay District
 - Highway Corridor Sign Overlay

List of Map Amendments:

April 03, 2006, Ordinance 08-06, Effective Date
 May 07, 2007, Ordinance 05-07, French Broad Place
 May 21, 2007, Ordinance 07-07, Gravelly
 September 17, 2007, Ordinance 12-07, Cowart / Conley
 October 05, 2007, Ordinance 14-07, Brevard Community Church
 December 03, 2007, Ordinance 20-07, Morris Road
 March 17, 2008, Ordinance 04-08, Bridges
 February 02, 2009, Ordinance 20-09, Darkwood River Village
 June 15, 2009, Ordinance 11-09, Brevard Music Center
 June 15, 2009, Ordinance 12-09, Transylvania Regional Hospital
 June 15, 2009, Ordinance 13-09, Broad River Terrace
 July 06, 2009, Ordinance 10-09, Duval
 May 17, 2010, Ordinance 09-10, STJ Extension
 January 24, 2011, Ordinance 09-11, Habitat for Humanity
 March 07, 2011, Ordinance 09-11, Gardens at English Village
 April 18, 2011, Ordinance 10-11, Cottages at Brevard
 June 20, 2011, Ordinance 12-11, The Family Place at Transylvania County
 February 02, 2012, Ordinance 20-12, SAFE, Inc.
 March 18, 2012, Ordinance 20-12, Jennings Industrial Park
 May 20, 2012, Ordinance 20-12, Brevard
 April 21, 2014, Ordinance 20-14-07, Brevard College
 September 15, 2014, Ordinance 20-14-21, Brevard Place
 March 2, 2015, Ordinance 20-15-01, Bryson
 May 10, 2015, Ordinance 20-15-19, Lockhart
 November 16, 2015, Ordinance 20-15-24, Beardon
 June 20, 2016, Ordinance 20-16-15, Challenge Foundation
 August 15, 2016, Asheville Hwy & 909 Ecusta Road

I hereby certify that this is the Official Zoning Map of the City of Brevard, NC, referred to in Chapter 1, Sections 1.1 & 1.11 of the City of Brevard Unified Development Ordinance, adopted by the City Council of the City of Brevard on April 03, 2006 and subsequently amended.

Jimmy Harris, Mayor Date

Desiree Perry, City Clerk Date

0 0.5 1 Miles

Note: The Special Flood Hazard Area is shown for informational purposes only. Please refer to the Flood Insurance Study (FIS) and the Flood Insurance Rate Study (FIRS) for Transylvania County, NC, and incorporated Areas, dated October 1, 2005 for city-specific flood hazard information.

Official Zoning Map of the City of Brevard North Carolina

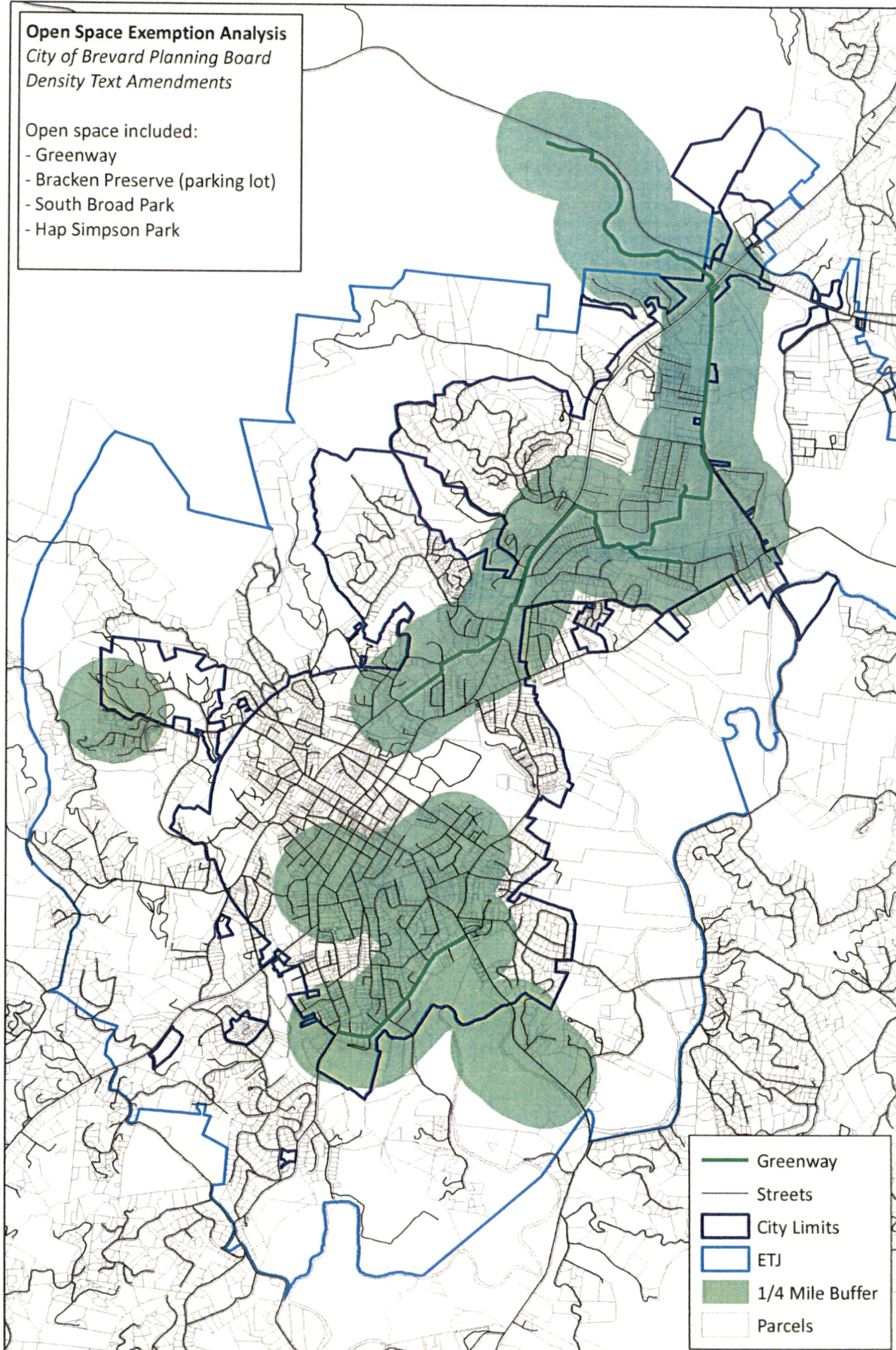


August 15, 2016
City of Brevard Planning Department
95 West Main Street
Brevard NC 28712

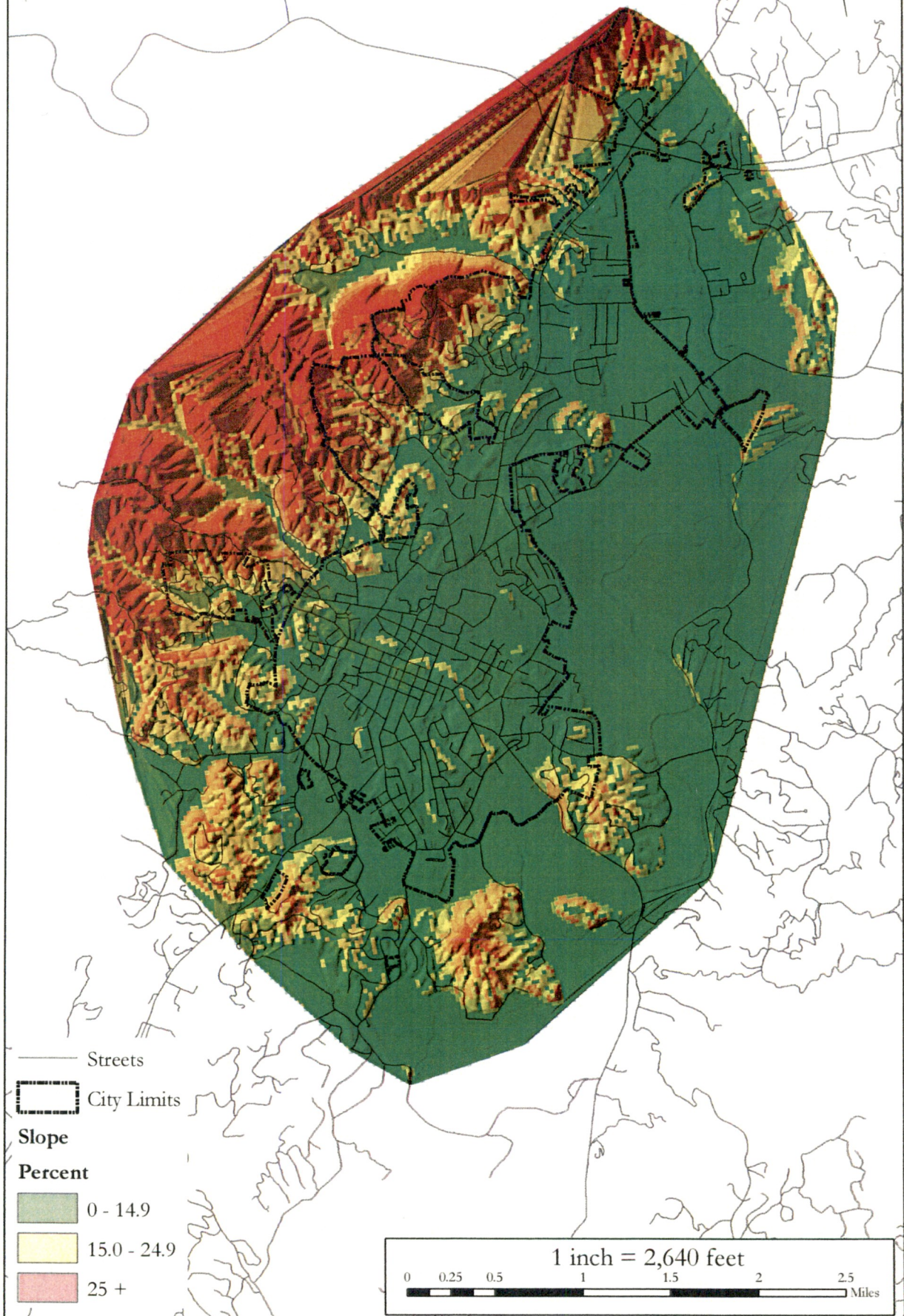
Open Space Exemption Analysis
City of Brevard Planning Board
Density Text Amendments

Open space included:

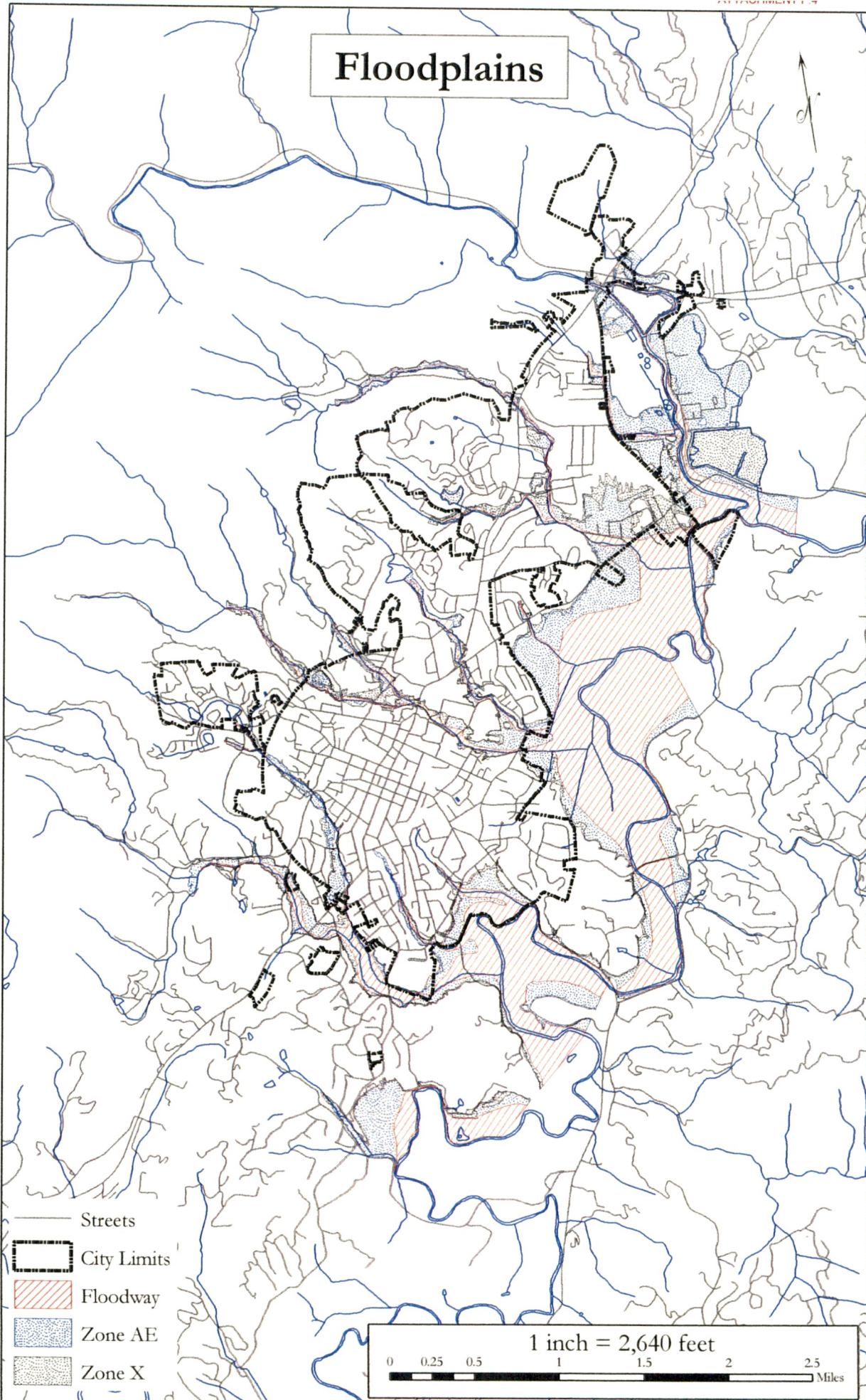
- Greenway
- Bracken Preserve (parking lot)
- South Broad Park
- Hap Simpson Park



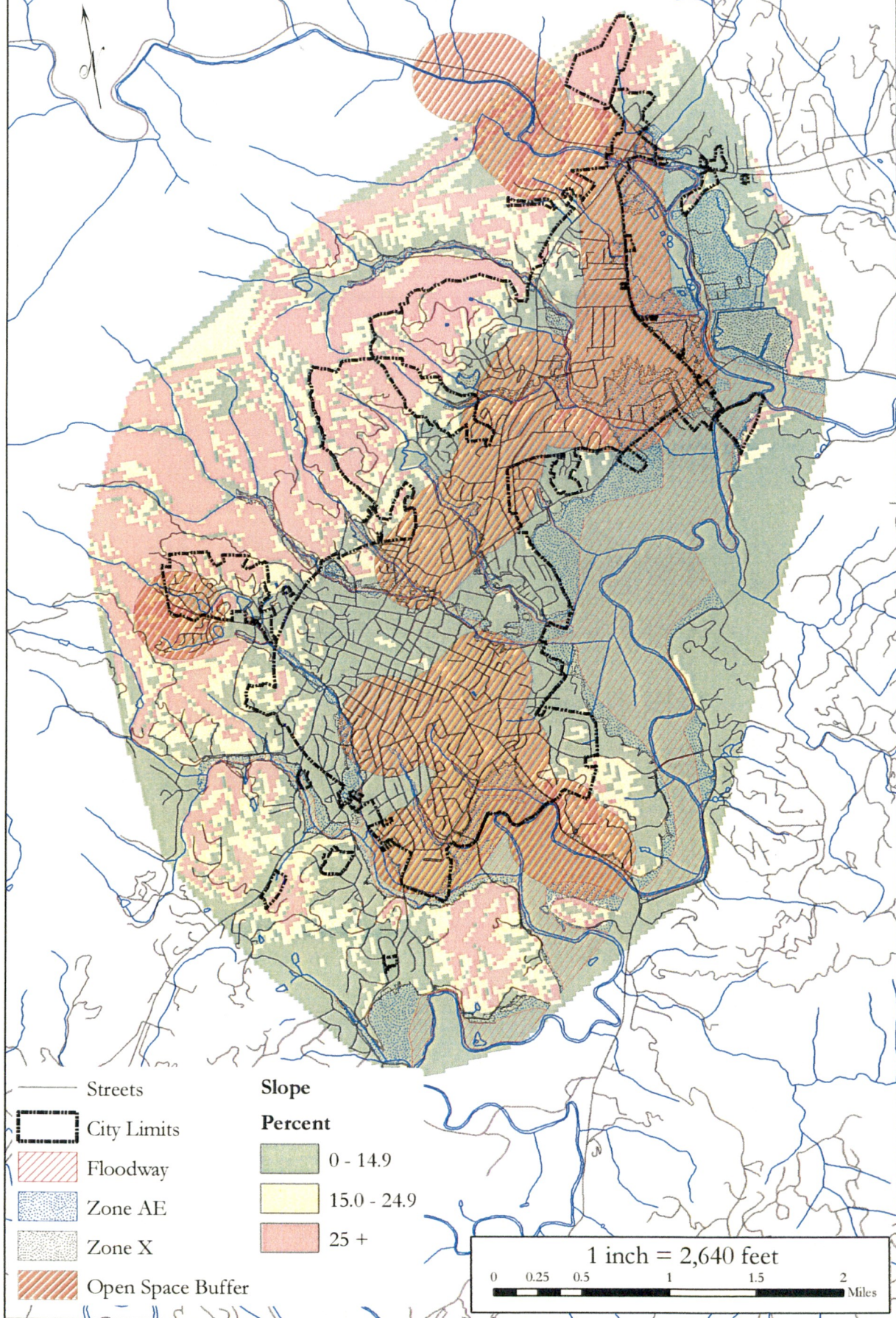
Percent Slope



Floodplains



Steep Slopes, Flood Plains & Open Space



STAFF REPORT

Planning Board, December 12, 2017

Title: **Zoning Ordinance Review**

The Board will continue its review of the new zoning and subdivision ordinance.

Speaker: Daniel Cobb, AICP, Planning Director

Prepared by: Daniel Cobb, AICP, Planning Director

Aaron Bland, AICP, Planner & Assistant Zoning Administrator

Approved by: Daniel Cobb, AICP, Planning Director

Background

Brevard has had a zoning ordinance since May of 1946, which has been updated several times over the years. The current version is known as the Unified Development Ordinance (UDO) and was adopted in April 2006. The City has been working towards updating the UDO for the last two years with the resulting changes forming what is commonly referred to as a "Form-Based Code."

Form-based codes are an alternative form of zoning that use the physical form of development as the organizing principle for the code, as opposed to the traditional separation of uses, in order to emphasize predictable development. Form-based codes focus on the relationships between buildings and the public areas of a city, such as sidewalks, roads, or bike paths. An individual site is viewed as a piece of the larger unified design of the district it is in, and the city as a whole. This ensures that development fits the desired character by regulating building height, placement, orientation, mass, and scale.

Discussion

The following items are attached to this report for the Board's review:

Attachment A – Description of Districts & Zones

Attachment B – District Map

Attachment C – Zone Map

The task before the Board at this point is to review the District and Zone Maps. The District Map will serve as the city's future land use map, thus is more general in nature. A *district* is an aggregation of several zones and is to be used for land use planning generally. The *zones* are what are commonly referred to as zoning districts in the UDO. These are specific regulatory areas that have unique rules associated with them and are very specific and intentional in their placement. There are several more zones than currently exist within the UDO. This was done intentionally to recognize small geographic areas which are unique and cannot be zoned the same as other areas of town, even though they may be of similar size. The UDO contains 7 zones, the new code contains 13. These zones are listed and described in Attachment A.

The maps as presented represent what is most logical, efficient, and purposeful layout in Staff's opinion. They were generated after review of the city's existing infrastructure, steep slopes,

floodplains and underutilized property. The final maps will likely change somewhat to recognize the needs and desires of the community. However, from a land use planning perspective these maps are sound.

Policy Analysis

This project is directly related to several **Goals, Objectives, and Policies** in the 2015 Comprehensive Plan. Please see Attachment D for a full list of these.

Staff Recommendation

No action is needed at this time. Staff request feedback from the Board on the District and Zone maps which will aid in the completion of Chapters 4, 5, and 6.

Fiscal Impact

None at this time.

Attachments

- A. Zone Descriptions
- B. District Map
- C. Zone Map
- D. Comprehensive Plan Excerpts

DISTRICT DESCRIPTIONS

City Center

An assemblage of adjacent properties that can be circumscribed by 5-minute walk that are safe and purposeful and which contain a mix of uses, a wide range of lot sizes in close proximity, varied block dimensions, open space, and are serviced by at least one primary street in addition to an interconnected system of secondary and local streets. The Center City District is subdivided into Zones the provisions of which reinforce the design character of a traditional, pedestrian-oriented center of commerce. It is the most dense business, service, and civic area of the municipality. It is shared by all neighborhoods within the City. Residential densities in this Zone have no maximum, only minimum.

Center

An assemblage of adjacent properties that are either, i) circumscribed by a five minute walk that is safe and purposeful and which contain a mix of uses, a wide range of lot sizes in close proximity, varied block dimensions, open space, and which are serviced by at least one primary street in addition to an interconnected system of secondary and local streets; or ii) areas of the City that contain a mix of uses and lot sizes that are serviced primarily by automobile along primary and secondary streets, which may not be interconnected. The multifunctional social condenser of surrounding neighborhoods. In scale and size a Center is smaller and less dense than the City Center. They are within walking distance of large residential catchments.

General

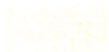
An assemblage of adjacent properties containing primarily residential uses.. Serviced predominantly by secondary and local streets. The General District contains moderate to high-density residential neighborhoods that surround and support the City Center and Centers. Not all residential located in the General District need be walkable to the City Center, or a Center, however, all the City Center and all Centers shall be adjacent to the General District. The General Zone has no minimum density, only maximum.

Edge

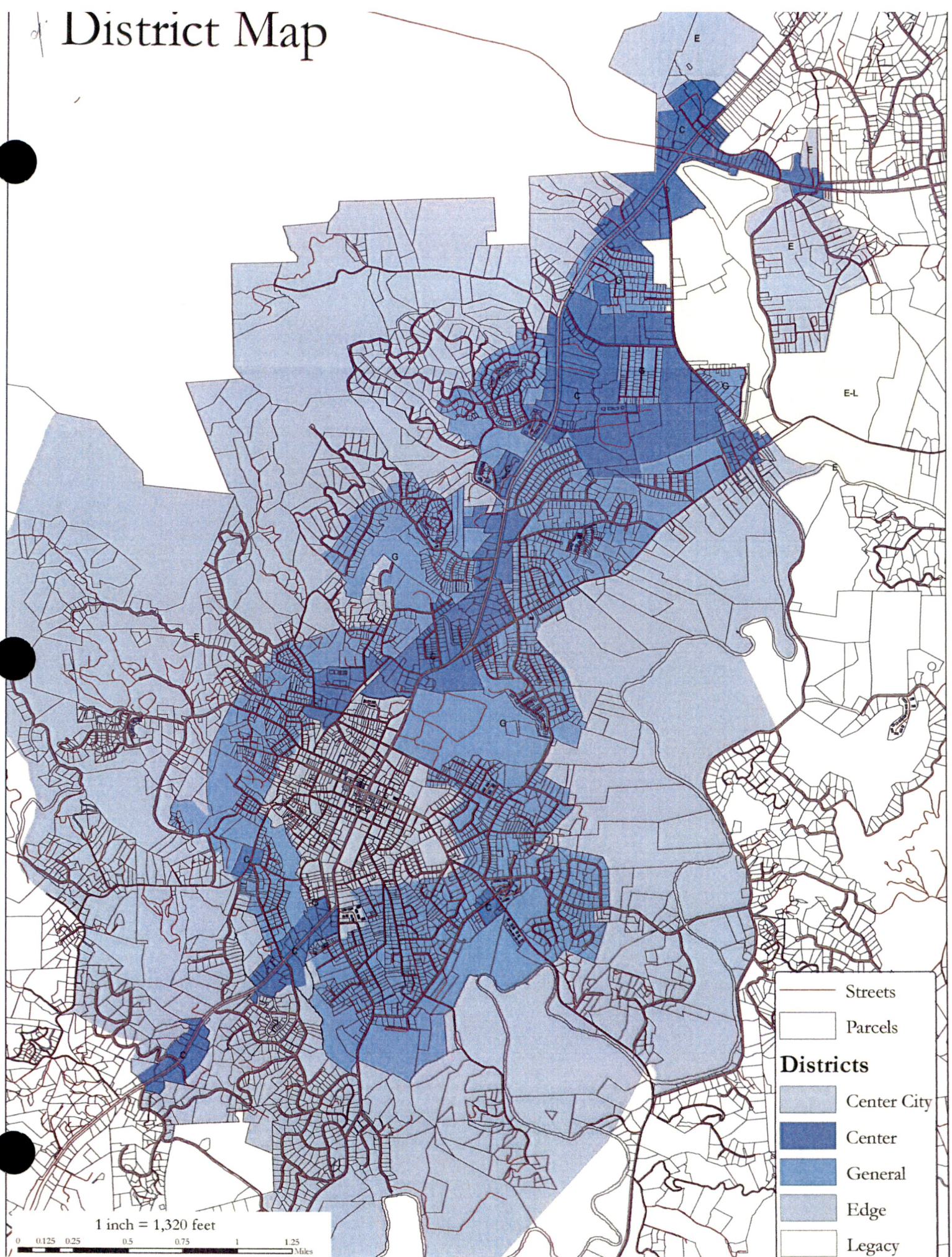
An assemblage of adjacent properties containing residential, agriculture, and conservation uses on lots of varied size and shape, without a block structure, interspersed among undeveloped lots, serviced predominantly directly off primary or secondary streets. The Edge Zone is the least dense, residential area of the municipality. Edge Districts shall not be adjacent to Center Districts unless separated by physical and topographical features such as steep slopes, rivers, and open spaces with an average minimum width of 2,000 feet.

ZONE DESCRIPTIONS

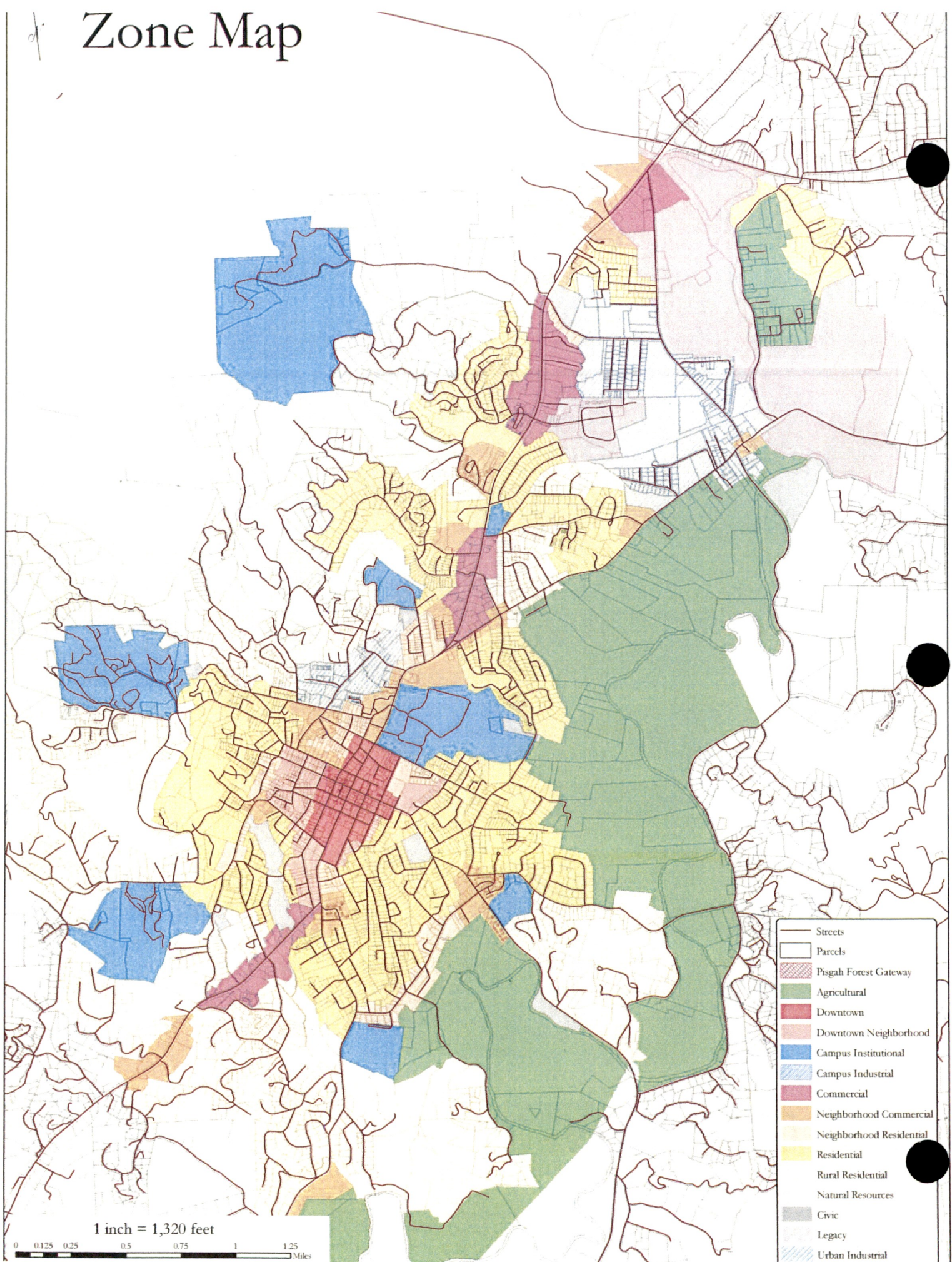
- The Pisgah Forest Gateway zone is designed for the entrance to Pisgah National Forest. This area is currently zoned the same as downtown Brevard which does not make sense.
- The agriculture and natural resources zones are setup to recognize specific areas for farming and natural resource preservation. These areas are almost exclusively located on steep slopes or floodplain.
- The residential zones are essentially only residential uses, although some small offices for professional services will be allowed (i.e. accounting).
- The downtown and neighborhood zones allow varying degrees of traditional downtown development and mixing of uses.
- Commercial areas are designed for highway commercial uses that one would expect to see along auto-oriented highway development patterns.
- The urban industrial zone is intended to allow for properties like Comporium or Kier Manufacturing on Railroad Avenue grow but not in a purely industrial form because they are surrounded very closely by residential development.
- The campus industrial zone is geared towards more traditional, large scale industrial development with little emphasis on public infrastructure like sidewalks or street trees. These areas are designed for large trucks and not pedestrian movement.
- Legacy zones are setup to recognize existing special zoning designations like the Davidson River Village Planned Development District.

	Pisgah Forest Gateway
	Agricultural
	Downtown
	Downtown Neighborhood
	Campus Institutional
	Campus Industrial
	Commercial
	Neighborhood Commercial
	Neighborhood Residential
	Residential
	Rural Residential
	Natural Resources
	Civic
	Legacy
	Urban Industrial

District Map



Zone Map



LAND DEVELOPMENT CODE (FORM-BASED CODE) 2015 COMPREHENSIVE PLAN SUPPORTING DOCUMENTATION:

Element 1: Arts & Culture

Goal

With a diverse range of physical and programmatic cultural resources available to residents and visitors year-round, Brevard will:

- Have arts, culture, and creativity integrated into community life.
- Be a nationally recognized destination for arts, music, and cultural events.

OBJECTIVE 1.4: Increased public art throughout the City.

POLICY 1.4.B: Create flexibility within development ordinances to allow for murals and other forms of public art.

Element 2: Economic Health

Goal

With an environment that encourages private and public investment built through strategic partnerships and cultivation, Brevard Will:

- Be an economically viable community.
- Expand and strengthen its tax base.
- Support reinvestment in existing business as well as the establishment of new businesses.

Objective 2.1: Expand tax base. As the City of Brevard's primary source of financial capital, the City will take proactive measures to stabilize and grow the tax base.

Policy 2.1.A: Modify zoning regulations to encourage and allow greater density and intensities of land use within its jurisdiction.

Policy 2.1.B: Collaborate with partner organizations and developers to financially support the City's goals for infill development and redevelopment.

Policy 2.1.C: Prioritize transportation and utility investments within the corporate limits to support infill development. This includes evaluating the City's current water and sewer systems to identify gaps in service and under-served areas within the City, prioritizing these areas based upon their potential for supporting new development, and marketing these investments as incentive to attract new development.

Element 3: Environmental Health

Goal

Through appropriate conservation and preservation measures that protect the health and sustainability of the environment and our abundant natural resources, Brevard will:

- Successfully preserve our woods and water for future generations.
- Promote our world-class natural resources as an asset.
- Prevent development in environmentally sensitive and critical areas.
- Preserve farmland.

OBJECTIVE 3.1: Preservation of surrounding natural assets of mountains, farmlands, woods, and water for future generations.

POLICY 3.1.A: Continue using land development regulations and incentives to steer future development away from environmentally sensitive areas such as steep slopes and floodplains.

POLICY 3.1.B: Connect landowners and developers with local conservation organizations and encourage the permanent protection of farmlands, steep slopes, floodplains and other sensitive natural areas.

POLICY 3.1 C: Enforce stream buffer requirements for new development in order to protect the quality of water in our streams and rivers.

POLICY 3.1.D: Seek out and develop innovative solutions to protect water quality while reducing the cost of stormwater management to private developers.

POLICY 3.1.E: Revise development regulations to encourage and incentivize the use of Low Impact Design techniques to manage stormwater.

POLICY 3.1 F: Maintain and update as necessary dark skies protections within the City's development regulations.

OBJECTIVE 3.2: Reduction of the City's carbon and ecological footprint.

POLICY 3.2.A: Ensure development regulations continue to allow for homeowners, builders, and developers to incorporate wind and solar technology into development projects.

POLICY 3.2.C: Continue requiring landscaping in new development projects.

Element 4: Livable Communities

Goal

With a strong sense of community that supports livability for all, Brevard will:

- Foster efficient land use, support a mix of housing types, increase efficiency of public utilities and services, and accommodate multiple modes of transportation.
- Enjoy a network of complete neighborhoods that provide for all types of residents.

- Provide the services and amenities that allow residents to live happy, healthy, productive lives.

OBJECTIVE 4.1: Increased efficiency of land uses to help stabilize and grow the City's tax base.

POLICY 4.1.A: Evaluate and amend development ordinances to facilitate infill development on vacant and under-developed parcels, as well as revitalization of developed parcels.

POLICY 4.1.B: Continue to utilize Community Development Block Grants and other resources

POLICY 4.1.G: Modify development ordinances and regulations to incorporate design standards and guidelines that respect existing community character while allowing greater residential density and intensity of nonresidential development within mixed use zoning areas.

POLICY 4.1.H: Encourage residential development on upper floors within mixed use zoning areas, particularly the Central Business District.

POLICY 4.1.I: Evaluate the City of Brevard's current design review process to streamline procedures; clarify roles, responsibilities, and authorities of the various review boards; and improve the overall quality of new development.

OBJECTIVE 4.2: Develop a system of "complete neighborhoods" throughout Brevard. (This is a multi-faceted objective that will rely on objectives and policies from other elements as well.)

POLICY 4.2.A: Modify zoning to increase allowable densities and the mixing of uses in appropriate areas.

POLICY 4.2.B: Connect neighborhoods to the greenway system with spur connections.

POLICY 4.2.C: Invest in new sidewalk construction and existing sidewalk repair within neighborhoods.

POLICY 4.2.D: Prohibit gated communities to foster community and maintain connectivity between neighborhoods.

POLICY 4.2.E: Collaborate with partners to increase the amount of available affordable and workforce housing, and to combat homelessness.

POLICY 4.2.F: Combat deteriorating property conditions through proactive code enforcement efforts.

POLICY 4.2.G: Update the Minimum Housing Code to help ensure equity and quality of all housing options in Brevard.

POLICY 4.2.H: Promote and encourage renovation of existing housing stock to reduce utility and maintenance costs for owners and occupants, conserve energy, and reduce pollution.

POLICY 4.2.I: Develop recreational amenities at the neighborhood level, such as pocket parks.

POLICY 4.2.J: Collaborate with the Transylvania County Farmer's Market

Element 5: Infrastructure

Goal

With a robust and balanced transportation system, Brevard will:

- Have interconnected neighborhoods with access to services and amenities via multiple modes of transportation.
- Enjoy safe and efficient travel around and through the City.

With modern and capable infrastructure, Brevard will:

- Be poised to support growth of both population and economic activity well into the future.
- Foster economic opportunities and capacity by ensuring availability of broadband internet.

OBJECTIVE 5.1: Increased safety and efficiency of vehicular traffic within and passing through Brevard.

POLICY 5.1.C: Maintain development regulations that require interconnected street systems between and within neighborhoods as part of new development.

OBJECTIVE 5.2: Increased connectivity of neighborhoods and key destinations through investments in cycling and pedestrian infrastructure and programs.

POLICY 5.2.C: Continue to require new sidewalks and parking for bicycles and motorcycles with new development.

OBJECTIVE 5.3: Develop sufficient potable water and wastewater production, treatment, and distribution capacity to accommodate planned growth.

POLICY 5.3.E: Evaluate the feasibility of establishing a stormwater utility enterprise fund to finance stormwater infrastructure investments and improvements.