



AGENDA
BREVARD CITY COUNCIL - REGULAR MEETING
Monday, October 21, 2024 - 5:30 PM
City Council Chambers

A. Welcome and Call to Order

B. Invocation

Pastor Kenneth Albright, Lutheran Church of the Good Shepherd

C. Pledge of Allegiance

D. Certification of Quorum

E. Approval of Agenda

F. Approval of Minutes

1. October 8, 2024 Regular Meeting

G. Public Comments

H. Certificates / Awards / Recognition

I. Special Presentation(s)

1. Update re Tropical Storm Helene Response and Recovery

J. Public Hearing(s)

1. Proposed Amendments to City of Brevard Code of Ordinances Chapters 1, 46, and 62 - Sidewalk Usage Policy

K. Consent and Information

1. Tax Settlement Report - September 2024
2. Ordinance Declaring Road Closure for Veterans Day
3. Closing of Railroad Avenue Bridge Replacement Capital Project
4. Closing of Burrell Mountain Water Tank Capital Project

5. Authorization for City Manager to sign Deed Granting Highway Right of Way to NCDOT
6. Resolution Directing Clerk to Investigate Sufficiency of Petition for Annexation - Mills Ave Properties, LLC / Forest Hill Drive

L. Unfinished Business

1. Ordinance - Voluntary Contiguous Annexation - Jason Shepherd / 35 Verdery Avenue

M. New Business

1. Discussion of NFIP impacts on housing recovery efforts

N. Remarks / Future Agenda Considerations

O. Closed Session(s)

1. Pending Litigation: NCGS §143-318.11.(a)(3)
2. Potential Litigation: NCGS §143-318.11(a)(3)

P. Adjourn

Agenda Posted, Website, Sunshine List (October 17, 2024)
D. Hodsdon, City Clerk

To review Agenda materials, go to the City's website www.cityofbrevard.com. Select "Your Government" tab followed by "Agenda Packets" tab. Agenda packet materials are posted on Thursday afternoon prior to Council's Monday meeting.

**MINUTES
BREVARD CITY COUNCIL
Regular Meeting
October 8, 2024 – 5:30 PM**

The Brevard City Council met in regular session on Tuesday, October 8, 2024, at 5:30 p.m. in the Council Chambers of City Hall with Mayor Copelof presiding.

Present – Mayor Maureen Copelof, Mayor Pro Tem Gary Daniel, and Council Members Mac Morrow, Pamela Holder, and Lauren Wise

Absent – Aaron Baker

Staff Present – City Attorney Mack McKeller, City Manager Wilson Hooper, City Clerk Denise Hodsdon, Assistant City Manager/Finance Director Dean Luebbe, Assistant City Manager David Todd, Planning Director Paul Ray, Senior Planner Emily Brewer, Human Resources Director Kelley Craig, Communications Coordinator Becky McCann, Police Chief Tom Jordan, Fire Chief Bobby Cooper, Public Works Director Wesley Shook, Water Treatment Plant ORC Dennis Richardson, Wastewater Treatment Plant ORC Emory Owen, and Community Center Director Tyree Griffin

Press – Jon Rich, Transylvania Times

A. Welcome and Call to Order – Mayor Copelof called the meeting to order and welcomed those present.

B. Invocation – Dr. Andrew White, Pastor of Calvary Baptist Church offered an invocation.

C. Pledge of Allegiance – Mayor Copelof led the pledge of allegiance.

D. Certification of Quorum – City Clerk Denise Hodsdon certified that a quorum was present. Mr. Morrow moved, seconded by Ms. Holder to excuse Council Member Baker. The motion carried unanimously.

E. Approval of Agenda – Mr. Daniel requested to add an item regarding a Proclamation for Fire Prevention Month as Item H-3 under Certificates/Awards/Recognition; and to add an item regarding a Resolution Authorizing the PRO Housing Grant Application to New Business as Item M-1 and to re-number the remaining items in New Business. Mr. Hooper requested to add an item regarding an amendment to the Council Calendar as Item M-5 under New Business. Mr. Wise moved, seconded by Ms. Holder to approve the agenda as amended. The motion carried unanimously.

F. Approval of Minutes

F-1. September 16, 2024 Regular Meeting – Mr. Morrow moved, seconded by Ms. Holder to approve the minutes of the September 16, 2024 Regular Meeting as presented. The motion carried unanimously.

G. Public Comments

Patricia Wrinkle of 39 Appletree Street said you all have done really well during this storm and I know you're all very tired. I want to thank you all. It's going to be a long haul for a lot of people, but all of our City employees stepped up and did what needed to be done and we are blessed. Also, I want to thank you for the sidewalk by the mud hole. I am very grateful for that; I use it frequently. Something I would like answered at some point is, before Helene, you were talking to builders for the Presbyterian Church property and I'm wondering if that has happened, when will we as neighbors find out so that we can go on with our lives one way or another.

H. Certificates/Awards/Recognition

H-1. Proclamation No. 2024-20 Domestic Violence Awareness Month –

Mayor Copelof read the proclamation aloud and presented it to SAFE representatives Cindy Donaldson and Melissa Smith.

PROCLAMATION NO. 2024-20 DOMESTIC VIOLENCE AWARENESS MONTH OCTOBER 2024

WHEREAS, intimate partner violence alone affects more than 12 million people every year; and

WHEREAS, an average of 24 people per minute are victims of rape, physical violence or stalking by an intimate partner in the United States – more than 12 million women and men over the course of a single year; and

WHEREAS, nationally one in three women and one in four men will experience some form of sexual assault in their lifetime; and

WHEREAS, almost half of all women and men in the US have experienced psychological aggression by an intimate partner In their lifetime; and

WHEREAS, women ages 18 to 34 generally experience the highest rates of intimate partner violence; and

WHEREAS, current or former intimate partners accounted for nearly 33% of women killed in US workplaces between 2003 and 2008; and

WHEREAS, the presence of a gun in domestic violence situations increases the risk of homicide for women by 500%; and

WHEREAS, the City of Brevard recognizes the significant impact domestic violence has on Transylvania County individuals, families, children, schools, workplaces, and places of worship; and

WHEREAS, by working together, we can build a community where intimate partner violence is not tolerated and all individuals can be safe, feel respected, and live free from abuse;

NOW, THEREFORE, I, Maureen Copelof, Mayor of the City of Brevard hereby proclaim the month of October 2024 as "**Domestic Violence Awareness Month**" in the City of Brevard and urge the citizens of Brevard to work together to eliminate domestic violence from our community, to keep our community members safe from this crime and to stand with survivors and victims of domestic violence.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Brevard to be affixed this 8th day of October, 2024.

Attest: Denise Hodsdon, CMC, City Clerk

s/Maureen Copelof, Mayor

H-2. Proclamation No. 2024-21 Breast Cancer Awareness Month – Mayor Copelof read the proclamation aloud.

PROCLAMATION NO. 2024-21 BREAST CANCER AWARENESS MONTH October 2024

WHEREAS, the City of Brevard joins our nation in recognizing October as Breast Cancer Awareness Month; and

WHEREAS, breast cancer is the most commonly diagnosed cancer among women in the United States, and is the second-leading cause of cancer deaths among women in North Carolina and our nation; and

WHEREAS, early detection can be an effective tool in combating breast cancer, with regular screenings preventing 15 to 30 percent of all deaths from breast cancer in women over 40; when diagnosed while still confined to the breast, the 5-year relative survival rate is 99 percent; and

WHEREAS, on average, every 2 minutes a woman is diagnosed with breast cancer in the United States; and

WHEREAS, 1 in 8 women in the United States will be diagnosed with breast cancer in her lifetime and although rare, men get breast cancer too; and

housing production and to invest in communities through preservation programs. To realize that vision, the City of Brevard is requesting \$4M to complete the following activities:

- Azalea / Rhododendron Neighborhood Sewer Extension
 - Engineering design to extend sewer to the entire neighborhood; and
 - First phase of construction, including the main trunkline of the sewer infrastructure along Old Hendersonville Highway and construction of the pump station that is necessary to serve the entire neighborhood
- Extending sewer utilities to a 7.8-acre parcel on Woodland Terrace owned by Transylvania Habitat for Humanity for an affordable housing development that will feature approximately 47 cluster homes
- Housing Trust Fund Affordable Housing Preservation Programs to enable low-income homeowners to rehabilitate existing affordable housing units, improve quality and safety of the housing units, and remain in their community

Ms. Brewer noted that the purpose of the public hearing is to receive public comment that will be incorporated into the grant application. Public comment can also be submitted through the City's website, by email to her, or by contacting the Planning Department by phone to provide verbal comment.

At 6:06 p.m. Mr. Morrow moved, seconded by Mr. Wise to open the public hearing. The motion carried unanimously.

Public Participation – None.

At 6:07 p.m. Mr. Daniel moved, seconded by Mr. Morrow to close the public hearing. The motion carried unanimously.

J-2. Ordinance – Voluntary Contiguous Annexation – Jason Shepherd / 35 Verdery Avenue – Emily Brewer explained that in July, 2024 Jason Shepherd submitted a request for voluntary continuous annexation for property located at 35 Verdery Avenue, further identified by PIN 8585-28-6101-000. The parcel is zoned GR8 and is partially inside the city's corporate limits already and the petition is to annex the remainder of the parcel. The Planning Board considered this request at their September 24th meeting and unanimously recommended approval.

At 6:10 p.m. Mr. Morrow moved, seconded by Ms. Holder to open the public hearing. The motion carried unanimously.

Public Participation – None.

At 6:10 p.m. Mr. Wise moved, seconded by Ms. Holder to close the public hearing. The motion carried unanimously.

K. Consent and Information - Consent Agenda items are considered routine and are enacted by one motion. Mayor Copelof read aloud the items listed and asked for a motion to approve the consent agenda. Mr. Morrow moved, seconded by Ms. Holder to approve the consent agenda. The motion carried unanimously.

K-1. Budget Amendment – Housing Trust Fund – Purchase Agreement for \$115,000

**ORDINANCE NO. 2024-35
AN ORDINANCE AMENDING THE FY2024-2025 BUDGET.
BUDGET AMENDMENT NUMBER 25-01**

SUBJECT: Budget Amendment for purchase agreement of three properties at Azalea Avenue and Old Hendersonville Highway

AGENDA INFORMATION

Agenda Location: New Business

Department: Finance
Contact: Dean Luebbe, Assistant City Manager and Finance Director

BRIEF SUMMARY: As detailed later in this October 8th, 2024 City of Brevard agenda (Approve Option to Purchase Three Properties in Azalea/Rhododendron Neighborhood for Potential Affordable Housing Project), the City is intending to purchase three properties at Azalea Avenue and Old Hendersonville Highway. The total purchase price is \$1,100,000. At this time the City wishes to enter into a purchase agreement, with three additional one-month extensions, in the amount of \$115,000.

After these expenditures, the Housing Trust Fund will have an available cash balance of approximately \$250,500 and accounts receivable of \$172,500. Additionally, the General Fund will be contributing an additional \$148,500 to the Housing Trust Fund in the next three quarters of FY25, as budgeted in the FY25 annual City budget.

MOTION FOR CONSIDERATION: To approve Budget Amendment 25-01 as submitted, increasing the budget in expenditure account:

76-4900-7400 (Capital Outlay)	\$115,000
TOTAL	\$115,000

And increasing the budget in revenue account:

76-3990-0000 (Fund Balance Appropriated)	\$115,000
TOTAL	\$115,000

ATTACHMENTS: None.

MANAGER’S RECOMMENDATION: Adopt as presented.

Approved and adopted this 8th day of October, 2024.

Attest: Denise Hodsdon, CMC, City Clerk
Approved as to Form: Mack McKeller, City Attorney

s/Maureen Copelof, Mayor

- K-2. Age-Friendly Survey Results**
- K-3. Council Parks, Trails & Recreation Committee Minutes – August 21, 2024**
- K-4. Council Finance, Human Resources & Citizen Appointment Committee Minutes – August 26, 2024**
- K-5. Council Downtown Master Plan Committee Minutes – August 29, 2024**

L. Unfinished Business – None.

M. New Business

M-1. Resolution Authorizing PRO Housing Grant Application – Mr. Wise moved, seconded by Mr. Daniel to approve the resolution. The motion carried unanimously.

RESOLUTION NO. 2024-45
A RESOLUTION AUTHORIZING CITY STAFF TO APPLY FOR THE PATHWAYS TO REMOVING OBSTACLES TO HOUSING GRANT FOR SEWER EXTENSION AND PRESERVATION PROGRAMMING

WHEREAS, affordable and workforce housing have long been recognized as a substantial need for residents of the City of Brevard and the surrounding area; and

WHEREAS, the City of Brevard is committed to the expanding housing opportunities for all residents and is pursuing affordable housing initiatives in response; and

WHEREAS, the City has identified numerous barriers that hinders the production and preservation of affordable housing, including limited developable area, significant infrastructure constraints, high construction costs and limited local funding; and

WHEREAS, on August 13, 2024, the US Department of Housing and Urban Development (HUD) announced a second round of funding through the Pathways to Removing Obstacles to Housing (PRO Housing) program; and

WHEREAS, the program is intended to highlight communities that have shown commitment to addressing the housing crisis and support projects that create long-term affordable housing; and

WHEREAS, Transylvania County was identified by HUD as a priority geography for this funding opportunity; and

WHEREAS, sewer extensions and affordable housing preservation activities serving a majority of low to moderate income residents and affordable housing preservation activities are eligible projects of the PRO Housing grant; and

WHEREAS, the PRO Housing grant applications are due October 15, 2024, with awards expected to be announced in early 2025.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

Section 01. The City of Brevard Planning Department is hereby authorized to apply for the PRO Housing grant for sewer extension projects and affordable housing preservation programming; and

Section 02. The City Manager is hereby authorized to accept the PRO Housing grant funding if awarded.

Adopted and approved this the 8th day of October, 2024.

Attest: Denise Hodsdon, CMC, City Clerk

s/Maureen Copelof, Mayor

M-2. Approve Option to Purchase Three Properties in Azalea / Rhododendron Neighborhood for Potential Affordable Housing Project – Mr. Hooper explained that the PRO Housing grant program is our main housing effort, but this is a complementary effort. The City hopes to buy a nearly 3-acre parcel off of Azalea Avenue to prepare it for development of LMI housing and to do essentially the same thing for that property that we did for the Church property and hopefully have better outcomes. The owners of that property have expressed a willingness to sell, but only if the City buys their two other properties at the same time.



	Property 1	Property 2	Property 3
Parcel Number	8596-05-5538-000	8596-05-8315-000	8596-05-6391-000
Acres	2.98 ac	0.49 ac	0.35 ac
Description	Large vacant parcel on Azalea Ave	Smaller vacant parcel on Old Hendersonville Hwy	Singe-family House at 543 Old Hendersonville Hwy

Mr. Hooper explained that we could carve off a portion of the parcels on Old Hendersonville Highway to support the development we hope will occur on the larger parcel; and we could sell what portion of those parcels we don’t need and reimburse ourselves the cost of buying those properties. As with the Church property we need to investigate it before we buy it, and the City must have site control via an option in order to spend public money on the site-specific feasibility analysis with DFI. The terms have been negotiated with the property owners as follows:

- A 6-month option to purchase:
 - \$40,000 for the first 3 months; and if necessary
 - \$20,000 for month 4
 - \$25,000 for month 5
 - \$30,000 for month 6
- Total purchase price is \$1,100,000 and option payment will be deducted from total price if City moves forward with purchase

Mr. Hooper noted that these terms were negotiated before Tropical Storm Helene and at this time we don’t know if we will be able to do the feasibility analysis in 6 months and he asked Council to authorize him to renegotiate the terms of the option agreement with the property owners. Mr. Ray added that the Housing Committee has endorsed this property acquisition with funding planned from the Housing Trust Fund and the General Fund Reserves.

Mr. Morrow moved, seconded by Ms. Holder to approve the Resolution Endorsing Terms of the Option to Purchase Properties on Azalea Avenue and Old Hendersonville Highway for Development of Affordable Housing and Authorizing its Execution. The motion carried unanimously.

RESOLUTION NO. 2024-43
RESOLUTION ENDORSING TERMS OF THE OPTION TO PURCHASE PROPERTIES ON AZALEA AVENUE AND OLD HENDERSONVILLE HIGHWAY FOR DEVELOPMENT OF AFFORDABLE HOUSING AND AUTHORIZING ITS EXECUTION

WHEREAS, the City of Brevard is committed to the expanding housing opportunities for all residents and is pursuing affordable housing initiatives in response; and

WHEREAS, the City contracted the Development Finance Initiative (DFI) to identify sites for a potential multi-family affordable housing project and identified a 2.98 acre parcel on Azalea Ave; and

WHEREAS, the vision for the property is use it for a City-supported multi-family affordable housing project and to leverage this development potential to secure funding to extend sewer to the entire Azalea / Rhododendron neighborhood; and

WHEREAS, the second part of the City’s agreement with the Development Finance Initiative calls for an assessment of the selected site to determine whether it is suitable for building low-to-moderate income housing; and

WHEREAS, the Constitution of the State of North Carolina prohibits public resources from being used for the benefit of a private party; and

WHEREAS, therefore, the City must have legal control over the property to legally conduct its activities; and

WHEREAS, City staff and the property owners of three properties on Azalea Avenue and Old Hendersonville Highway have negotiated an option to purchase the property agreement that gives the City control of the property for up to six months for due diligence prior to full acquisition; and

WHEREAS, City Council heard a presentation on the option to purchase agreement and its terms at its October 8, 2024, meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

Section 01. The terms of the draft option to purchase agreement presented to the City Council at its meeting on October 8, 2024 are hereby endorsed; and

Section 02. The City Manager is hereby authorized to execute the option to purchase agreement with minor modifications, as necessary.

Adopted and approved this the 8th day of October, 2024.

Attest: Denise Hodsdon, CMC, City Clerk

s/ Maureen Copelof, Mayor

M-3. Approve Housing Trust Fund (HTF) Allocation and “Mini-Brooks” Act Exemption for Development Finance Initiative Phase II Work – Mr. Hooper explained that this is related to the previous item. The “Mini-Brooks” Act is a statute that gives municipalities the ability to waive competitive solicitation procedures for certain professional services such as architecture if the cost is less than \$50,000. Mr. Morrow moved, seconded by Mr. Wise to approve the resolution. The motion carried unanimously.

**RESOLUTION NO. 2024-44
RESOLUTION APPROVING HOUSING TRUST FUND APPROPRIATION FOR
PHASE II FEASIBILITY ASSESSMENT SERVICES AND EXEMPTING THE
PROJECT FROM N.C.G.S. 143-64.31 REQUIREMENTS**

WHEREAS, the Brevard Housing Trust Fund lists professional services procured for the purpose of housing creation as an eligible expense; and

WHEREAS, the second part of the City’s agreement with the Development Finance Initiative calls for an assessment of the selected site to determine whether it is suitable for building low-to-moderate income housing; and

WHEREAS, City staff proposes entering into one or more contracts for professional services to assess the feasibility of the selected site; and

WHEREAS, N.C.G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management at risk services, and design-build services (collectively “design services”) to be based on qualifications and without regard to fee; and

WHEREAS, N.C.G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of N.C.G.S. 143-64.31 if the estimated fee is less than \$50,000; and

WHEREAS, the estimated fee for design services for Phase II is less than \$50,000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

Section 01. Appropriates no more than \$50,000 from the Housing Trust Fund for Phase II design services.

Section 02. The above-described project is hereby made exempt from the provisions of N.C.G.S. 143-64.31.

Section 03. This resolution shall be effective upon adoption.

Adopted and approved this the 8th day of October, 2024.

Attest: Denise Hodsdon, CMC, City Clerk

s/Maureen Copelof, Mayor

M-4. Planning Board Appointment – As Chair of the Finance, Human Resources and Citizen Appointment Committee Mr. Wise reported that the Committee reviewed applications for Planning Board and unanimously recommended the appointment of Karen Darity. Ms. Holder moved, seconded by Mr. Daniel to appoint Karen Darity to the Planning Board. The motion carried unanimously.

**RESOLUTION NO. 2024-42
RESOLUTION APPOINTING A MEMBER TO
THE BREVARD PLANNING BOARD**

WHEREAS, in Fall 2022 the City of Brevard City Council held a work retreat to reform its board/committee structure; and

WHEREAS, the Council initiated a new system for making appointments that would apply to every body to which the Council makes appointments; and

WHEREAS, the Finance, Human Resources and Citizen Appointment Committee was charged with reviewing applicants for the various boards/committees/advisory groups and making appointment recommendations to the full Council; and

WHEREAS, the City of Brevard Code of Ordinances Chapter 15 was amended by Ordinance No. 2024-14 to increase the number of Planning Board members residing within the city from four members to five members, and decreasing the number of ETJ members from three members to two members; and

WHEREAS, city staff, with the oversight of the Finance, Human Resources and Citizen Appointment Committee, conducted an open recruitment for citizens interested in serving on the Planning Board to fill two upcoming vacancies and the newly created city-appointed seat; and

WHEREAS, the Finance, Human Resources and Citizen Appointment Committee considered applications at their August 26, 2024 meeting and recommended reappointment of two current Planning Board members and agreed to extend the recruitment period for the newly added city-appointed seat to recruit more candidates; and

WHEREAS, the Finance, Human Resources and Citizen Appointment Committee considered additional applications at its meeting on September 17, 2024 and recommended appointment to the Planning Board's newly created seat.

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

- 1) The Brevard City Council does hereby appoint Karen Darity to the Brevard Planning Board effective October 2024 and expiring in September 2024.

Adopted and approved this the 8th day of October, 2024.

Attest: Denise Hodsdon, CMC, City Clerk

s/Maureen Copelof, Mayor

M-5. Amendment to Council Calendar – Mr. Hooper explained that the current calendar includes a special Ecusta Trail Strategic Planning Workshop for October 15th. However, Hurricane Helene has disrupted city operations for the last several weeks, preventing staff from dedicating as much time to planning the workshop as they had wished. Likewise, recovery efforts are likely to occupy much of the organization's attention for months to come. He asked Council to consider amending its calendar to either a.) indefinitely postpone the Ecusta Trail Workshop, or b.) reschedule the workshop to a future date. Ms. Holder moved, seconded by Mr. Morrow to indefinitely postpone the Ecusta Trail Workshop. The motion carried unanimously.

N. Remarks/Future Agenda Considerations.

Mr. Daniel commented that we are experiencing something pretty unique in our history and the history of our country as well with this storm. I commend our staff and all the other organizations that worked tirelessly to bring us through this and I am very thankful that we dodged the worst of it.

Mr. Morrow said I really appreciate the fact that the City actually stood up to communicate what was going on to everybody in the community. What you did on the website and emails was a stark difference to some of my friends in Asheville and Biltmore Forest where they have no idea what's going on. So I have shared your emails and connections to our website so they could see, as in this case my family own

property here in the city too. Thank you to staff, and I agree with Gary that knowing what's going around us, yes we are fortunate.

Ms. Holder said I ditto what has been said, and for the City and all that you've done, especially to have information delivered to us by car when we couldn't get on the internet. Your dedication has been above and beyond. The relief efforts continue, especially with regard to Asheville and I've had the opportunity to help there. If you know of anyone here or in Asheville who needs help or assistance, please let us know. People are calling us from all over the state and the country so we appreciate that. I want to thank my colleagues from SAFE, as I serve on that board and am very passionate about the ministry and what we do in the community. Thank you for being here tonight.

Mr. Wise said it's staggering how much has happened since we last met here publicly on September 16th. I am really appreciative to see you all here tonight and thank you for coming. I know this is maybe not the easiest meeting to be at right now, but we really appreciate it. I want to give a huge shoutout to everyone at the City. There are not words to really express the amount of effort you guys are going through and have gone through, and how much we appreciate it. I'm sure I speak for everyone in this room when I say that. There is still a lot to do. I was in Philadelphia for the past five days on a business trip and everyone I ran into commented with concern and asked how they could help, so certainly a lot of people have their eyes on us right now. I agree with Gary that while we dodged a bullet, a lot of people in our community and our region didn't, so let's keep our thoughts with them, and we continue the effort to help everyone. My mom was a 30-year breast cancer survivor, so I was very glad to see the proclamation. It means a lot to me.

Attorney McKeller said being able to see this staff up close in a crisis has been amazing and I want to say that everybody is on it. But the biggest thing that I've seen out of all the activity though is that what we really need to be looking forward to comes next. We've got businesses that aren't going to be able to have a normal fall season, which everyone knows is important here. We need to be looking at those kinds of activities next. Thankfully we are in a position to do that. Asheville can't even start thinking about that; they've still got to get water on. We never lost water, and we have come out of this truly blessed, but the hard part is going to be the next step. Survival is one thing; recovery is what's next and thankfully Brevard has a track record of doing that very well, so I look forward to seeing what we're going to do next.

Ms. Hodsdon said I am extremely proud to be a part of the team that brought this city through this historic event. I was not on the front line; I did not put in the hours that you all put in; you all amaze me and I am so proud of each and every one of you.

Mr. Hooper informed Council that at the next meeting he will have a further report on our response and our early thoughts on recovery efforts. He said as a manager of this staff, and more in particular, as a resident of Brevard, I am grateful to all of the city employees who were on duty during Helene. The spirit of public service was shining as bright as the sun in them, even when the skies were gray; and even in some cases while they were experiencing personal hardships of their own. I want to remind people that some of our employees had trees on their roofs, and no water or power, and they still came in to work to serve their community members. Staff and I have been talking about ways to recognize folks officially, so stay tuned for that, but in the meantime I just want to express publicly how grateful how I am to all those city employees that were involved. Finally, I want to share an anecdote, I know we'll have stories to tell in the months to come, but I want to share this one. Even during the darkest time when things were most stressful, one of the things that helped me get through it was that just about everywhere I went, there were kids around. Public servants who were working but who didn't have water or power at their own home, brought their kids in. It was joyous to see them around playing board games, doing arts and crafts or watching videos on old VHS tape. That's the story that I'm going to carry with me in my memory of the storm and I want to thank all those youngsters who were around and chatted with me and gave me a few moments of levity and peace in the

middle of this stressful situation. Thanks to city employees; thanks to county employees; and thanks to their kids.

Mayor Copelof said I can only reecho what everyone has already said. Our world changed that day and I could not be prouder of the staff of this city. They truly worked until they were exhausted and then they kept working. They kept all 8000 people in the city safe and we came through this crisis. We came through it with some damage, with sorrow, and with some degree of trauma, but we have come through it, and we are on the road to recovery. As our City Attorney said we have now passed the survival stage, and we are looking at the rebuilding stage. We are working to make sure that everybody who has been displaced by the storm who is not able to be living in their home because it was damaged or destroyed, first we have gotten them in an emergency shelter, but now we are trying to work to get them into temporary housing probably for 6-8 months until their homes are repaired. I am very proud of the efforts that have been going on. We are going to be working with the Housing Assistance Corporation in trying to match properties that are available for temporary housing to families that have a need for that housing here in Transylvania County. We are working family by family to take care of our neighbors. We are also looking at what do we do about our businesses. Some businesses got actual physical damage, but the real damage is that this is the top month for our businesses to make money and stay in business, and store owners are worried about the survival of their business. That is critical for jobs and our community. Heart of Brevard, the Chamber, TDA, and TEA have relaunched Transylvania Tomorrow, the fund we had during Covid to help our small businesses. We have been through a trauma, so we are making sure that we are putting in place psychological support and counseling services. Our faith community, our non-profits, and our county response team working in conjunction with our city staff have all been absolutely amazing. I also want to point out how hard our City Manager worked in coordinating that effort. Yes, we had wonderful teams out there, but he was directing those teams, and I know it was a very long night. Thank you for everything that you did and the leadership that you gave to this city during this crisis. She announced that on October 21st at 4:00 pm at MCJCC we will be holding another Community Conversation session about how do we pull everything together to make our community whole again. She noted that one of the most frequently asked questions over the last few days is “what do we do with all of the storm-damaged stuff in our house; can we put it out on the curb for the city to pick up?” She informed everyone that Public Works crews have been collecting storm damaged items and storm debris left at the curb and they will continue to do so with no additional fees through October 18th. After that date people can request a waiver until November 1st.

O. Closed Session – None.

P. Adjourn – There being no further business, at 6:46 p.m. Mr. Wise moved, seconded by Mr. Morrow, to adjourn the meeting. The motion carried unanimously.

Maureen Copelof
Mayor

Denise Hodsdon, CMC
City Clerk

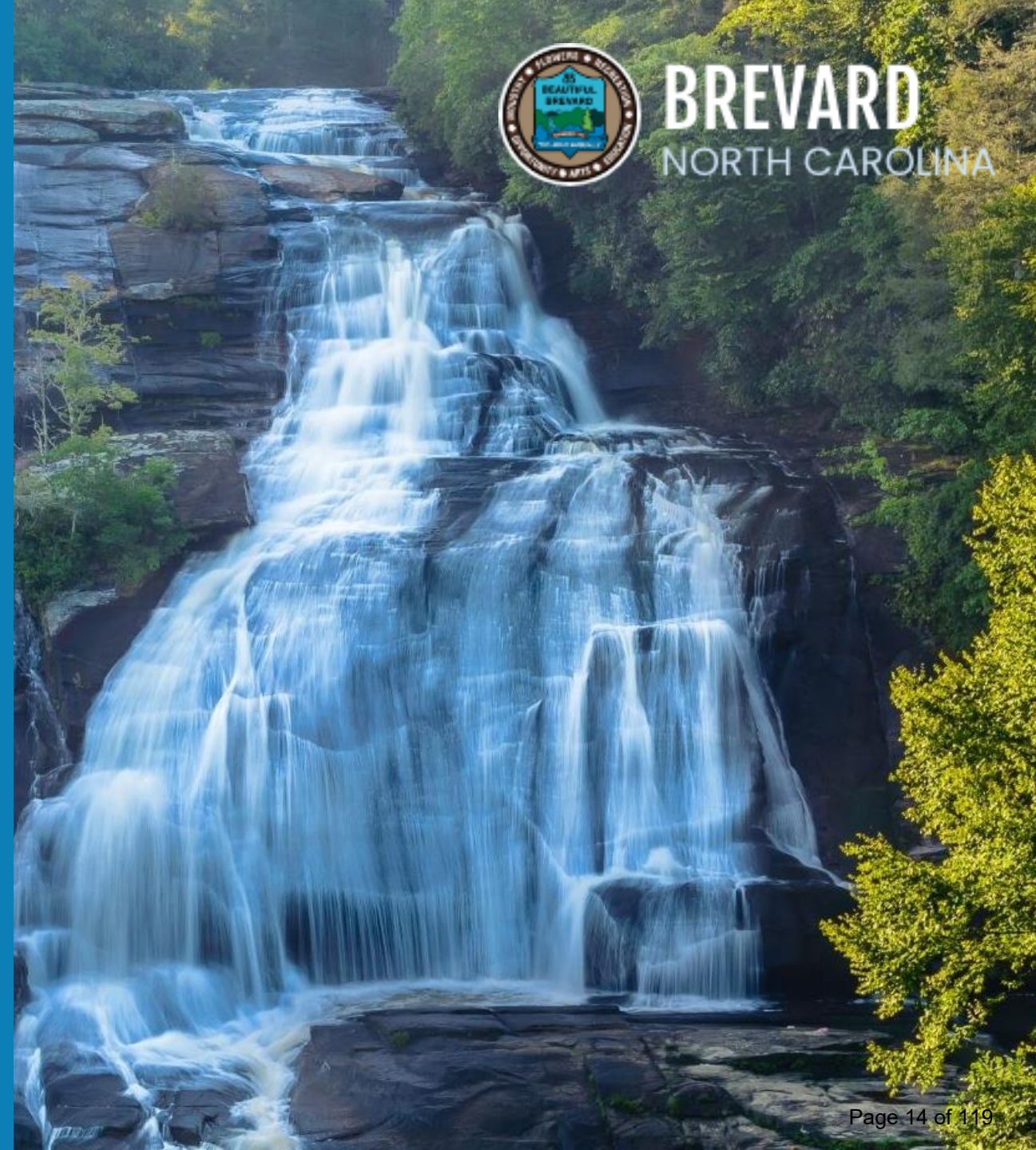
Minutes Approved: October 21, 2024



BREVARD
NORTH CAROLINA

PRO Housing Grant Application

City Council Public Hearing
October 8, 2024



PRO Housing Federal Grant

Pathways to Removing Obstacles to Housing (PRO Housing) Round 2

- \$100 million in federal grant funding for communities across the country to **identify and remove barriers** to housing production and preservation
- Administered through HUD, as a component of the Community Development Block Grant (CDBG) program
- Priority is given to:
 - Communities that have **shown commitment** to addressing the housing crisis
 - Projects that create **long-term** affordable housing
 - Communities with an **acute demand** for affordable housing → *Transylvania County*
- Grant awards will range between \$1 million and \$7 million
 - Local match is not required, but Staff time / City investment counts as leverage

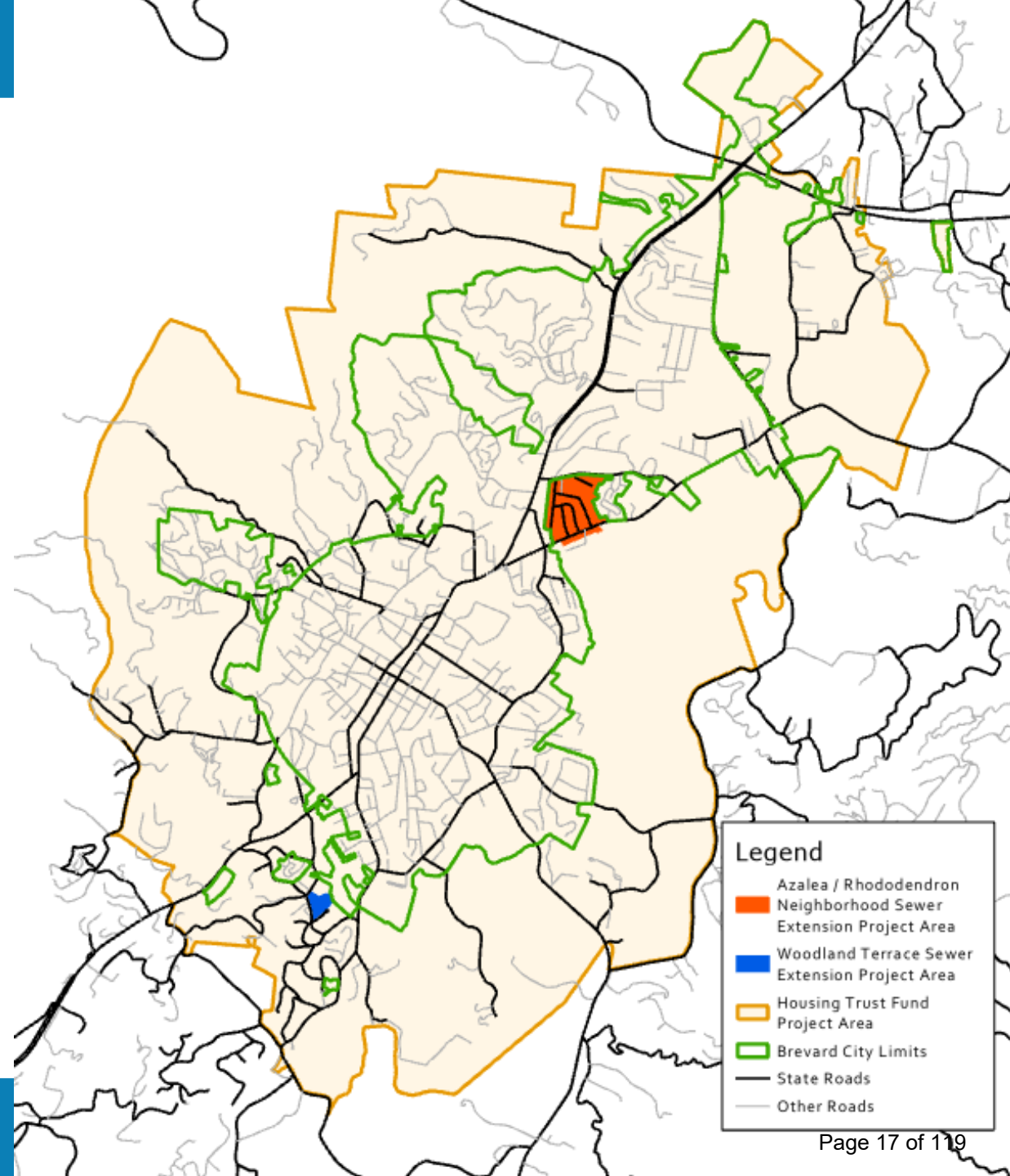
PRO Housing Federal Grant

What kinds of barriers does PRO Housing seek to remove?

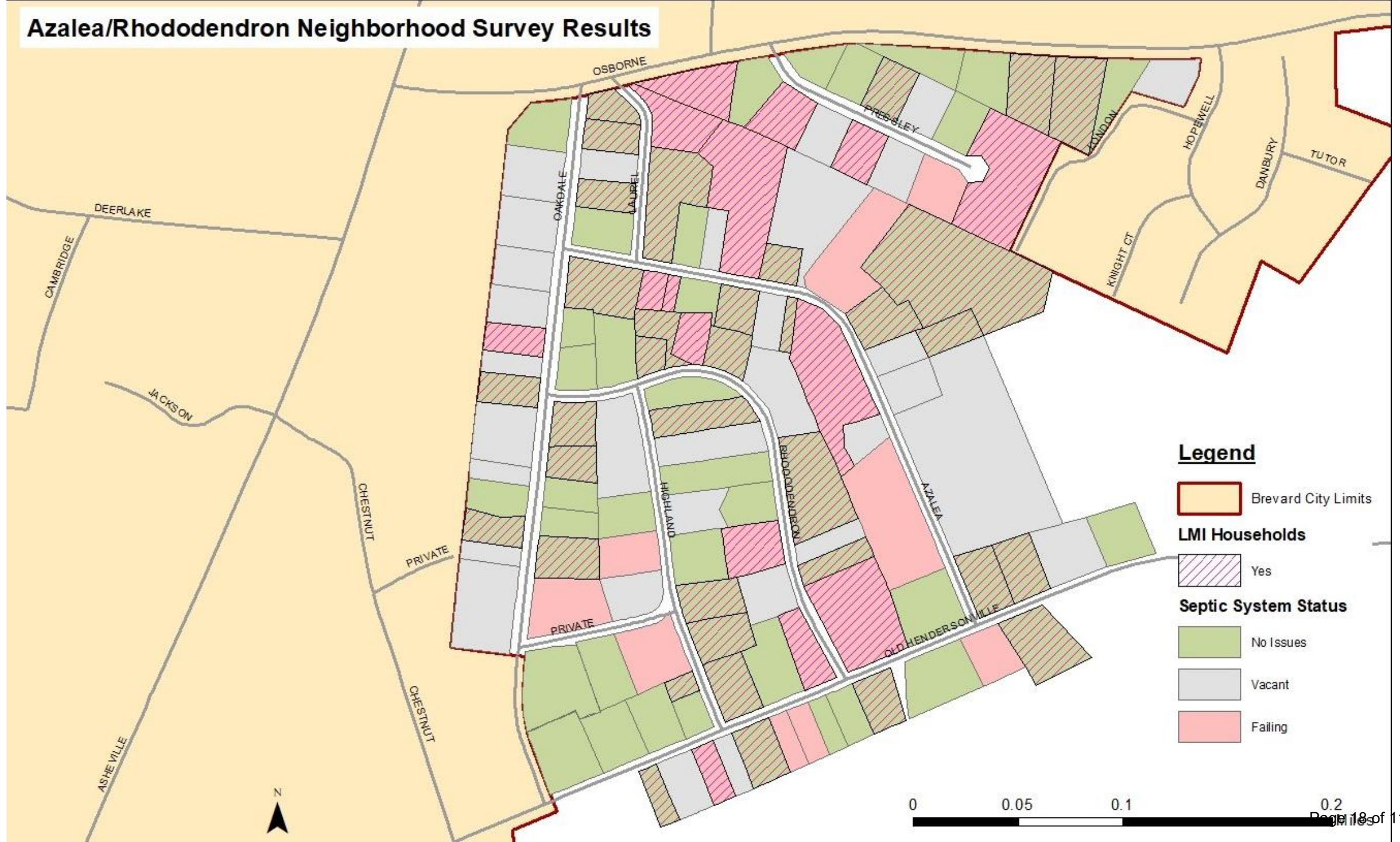
- Restrictive regulatory, zoning, or land use policies
- Outdated procedures or permitting processes
- Inadequate or deteriorating infrastructure
- Lack of financial resources, capacity, or economic investment
- Threats from environmental or natural hazards
- Other impediments to affordable housing

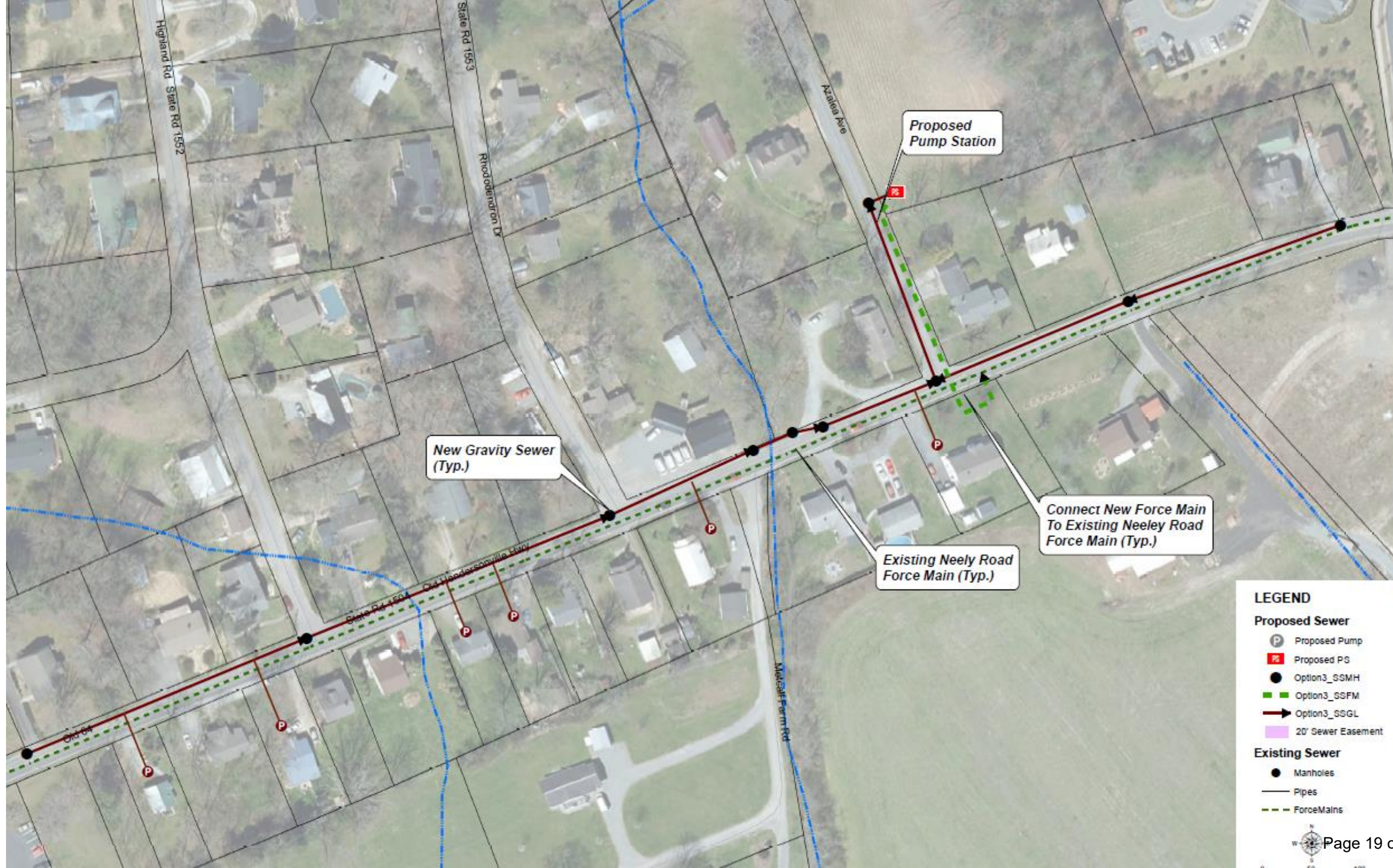
Project Proposal

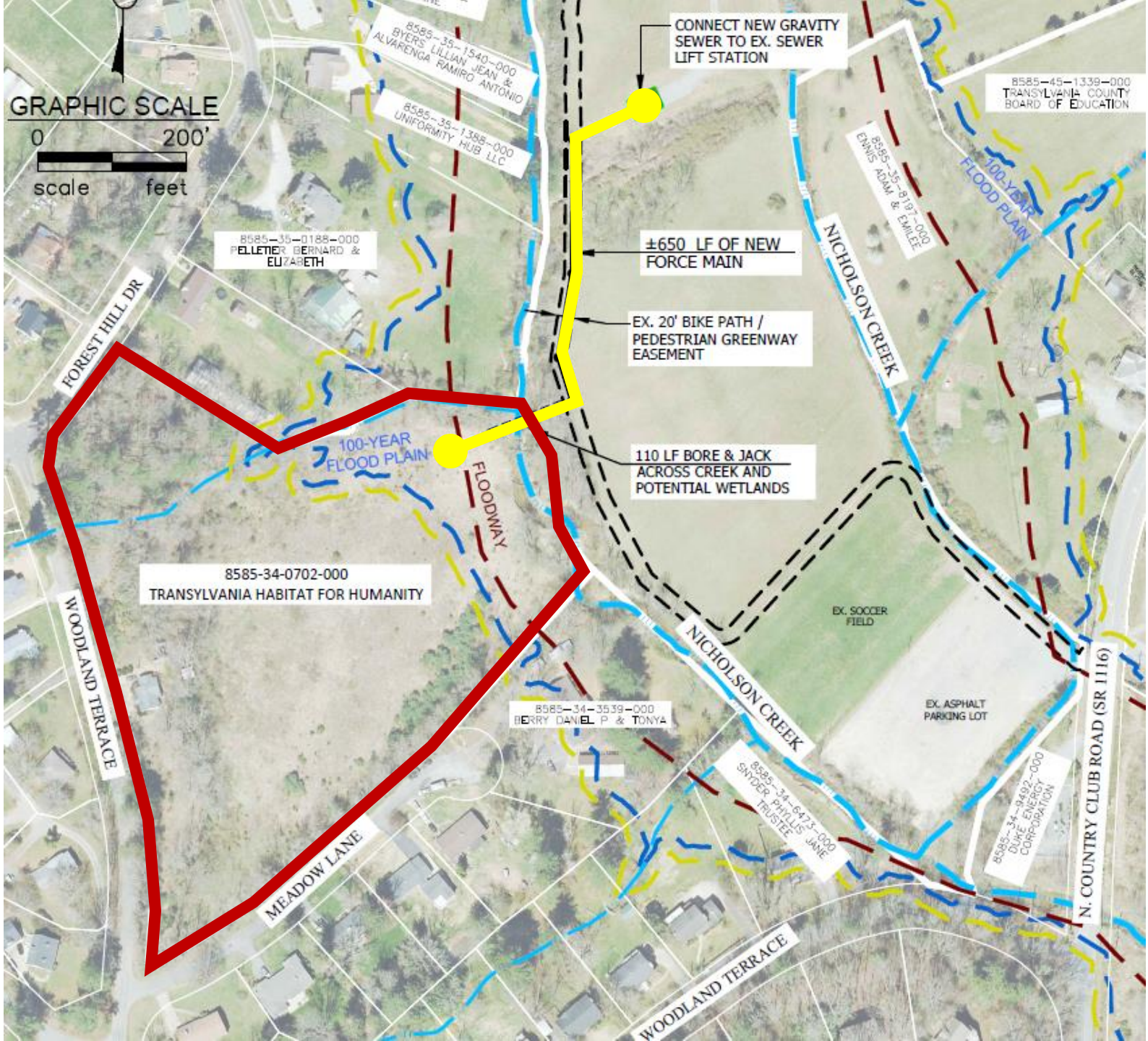
- Engineering to Extend Sewer to the Entire Azalea / Rhododendron Neighborhood → **\$348,000**
- Construction of the Main Spine and Pump Station to Extend Sewer to the Azalea / Rhododendron Neighborhood → **\$1,744,000**
- Engineering and Construction to Extend Sewer to Habitat for Humanity's Project on Woodland Terrace → **\$687,000**
- Endowing the Housing Trust Fund for Affordable Housing Preservation Programs → **\$1,221,000**

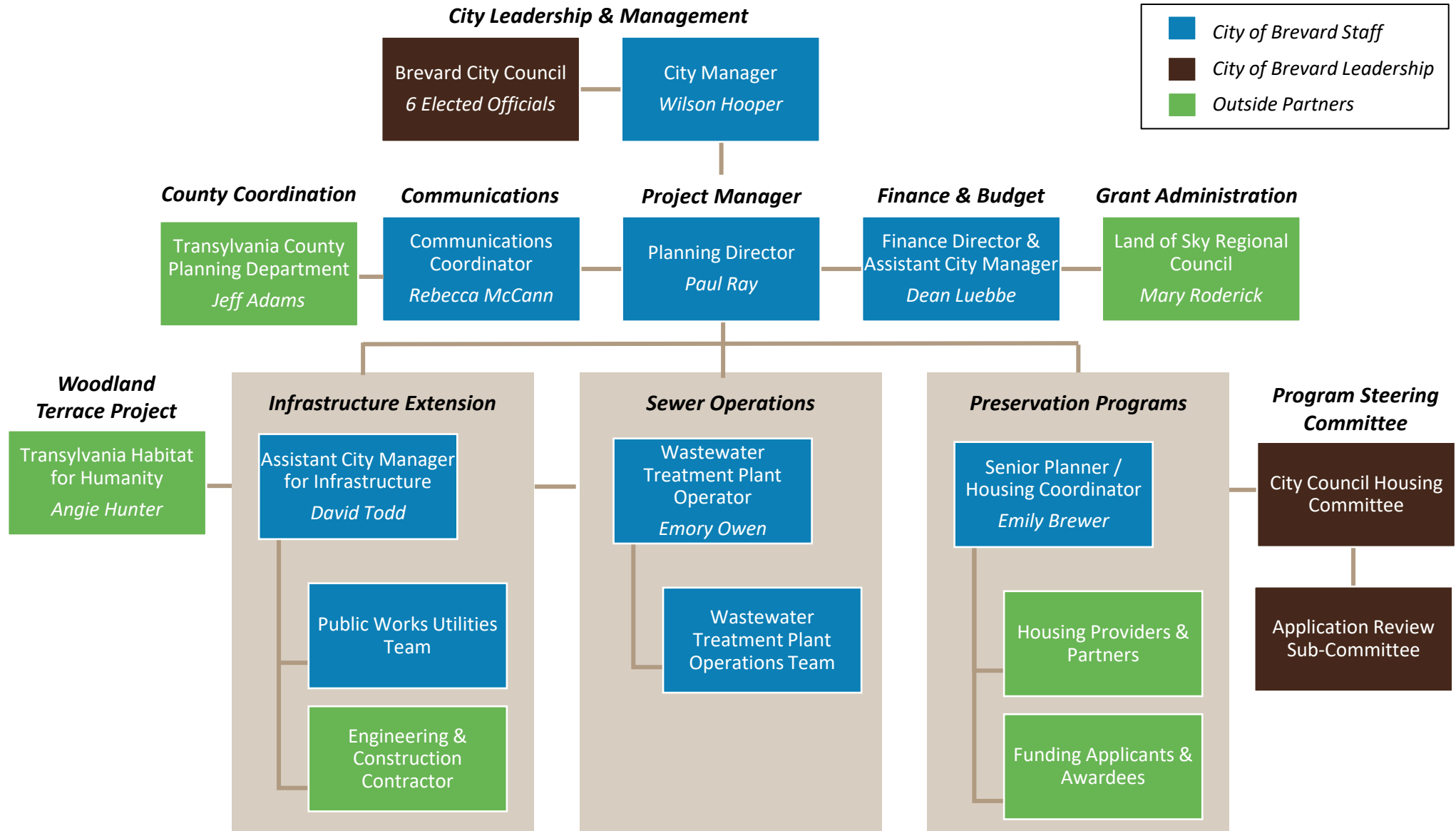


Azalea/Rhododendron Neighborhood Survey Results









PRO Housing Review Criteria

- **NEED (35 Points)**

- Demonstrated Commitment and Previous Efforts (15 points)
- Priority Geography (8 points)
- Acute Demand for Housing (2 points)
- Identification of Key Barriers (10 points)

- **SOUNDNESS OF APPROACH (35 Points)**

- Project Vision (15 points)
- Geographic Scope (5 points)
- Stakeholder Engagement (5 points)
- Affirmatively Furthering Fair Housing (5 pts)
- Budget and Timeline (5 points)

- **CAPACITY (10 Points)**

- Staffing Plan / Partners (10 points)

- **LEVERAGE (10 Points)**

- Amount of Other Funding or Non-Financial Contributions (10 points)

- **LONG-TERM EFFECT (10 Points)**

- Expected Impact and Outcomes (10 points)

TOTAL = 100 POINTS

Timeline

- ✓ **August 13th** – Funding Opportunity Released by US HUD
- ✓ **September 9th** – Application Discussed at Housing Committee
- ✓ **October 8nd** – City Council Meeting Public Hearing on Grant Application
- **October 15th** – PRO Housing Round 2 Original Application Due Date
- **October 22nd** – PRO Housing Round 2 Application Due for Federally Declared Disasters
- ***December / January*** – *Anticipated Award Announcements*
- ***February 10th*** – *Anticipated Project Start Date*

STAFF REPORT

City Council, Monday, October 21, 2024

Title: Update re Tropical Storm Helene Response and Recovery

Speaker: Wilson Hooper, City Manager
Bobby Cooper, Fire Chief
Wesley Shook, Public Works Director
Tom Jordan, Police Chief
Paul Ray, Planning Director

Prepared by: Wilson Hooper, City Manager

Approved by: Wilson Hooper, City Manager

Background

Tropical Storm Helene struck the Transylvania County area on Friday, September 27, 2024. The storm caused significant damage throughout the area including wind damage, flood damage, and landslides. The storm also knocked out power, cellular, and internet utilities for an extended period.

Transylvania County opened its Emergency Operations Center (EOC) on September 26, 2024 and was the lead agency for storm response, coordinating the work of all the county's public safety agencies including the City of Brevard's police and fire departments. Brevard's public works and utility units were also engaged, maintaining infrastructure and providing operational support to the response and recovery efforts. The City also stepped up to provide enhanced public messaging using available forums.

This evening, staff will provide an update on its work during the storm, the emergency response period, and the recovery efforts so far.

Action

No action needed; for information and discussion only.

Attachments:

STAFF REPORT

City Council, Monday, October 21, 2024

Title: Proposed Amendments to City of Brevard Code of Ordinances Chapters 1, 46, and 62 - Sidewalk Usage Policy

Speaker: Emily Brewer, AICP, Senior Planner

Prepared by: Emily Brewer, Senior Planner

Approved by: Wilson Hooper, City Manager, Paul Ray, Planning Director

Background

North Carolina General Statutes §160A-296 states that cities have general authority and regulatory authority over all public sidewalks within its corporate limits. It is the stated duty of a municipality to keep the public sidewalks “open for travel and free from unnecessary obstructions.”

In 2020, the City permitted the usage of the sidewalk by businesses in response to the COVID-19 pandemic. The success of this program prompted the City to sign a Sidewalk Dining Agreement with NCDOT that allows the City to permit sidewalk dining areas on NCDOT rights-of-way. One of the provisions of this agreement is that the City must adopt a sidewalk dining ordinance that aligns with the terms of the agreement as NC General Statutes. Staff, in consultation with the Downtown Master Plan Committee, prepared comprehensive amendments to the City’s sidewalk usage policies and added the required provisions to the Code. The amendment was adopted by City Council on January 19, 2021. Shortly thereafter, the City adopted the Downtown Master Plan with two of the primary objectives being to “enhance mobility, accessibility, and safety in Downtown” and “create an attractive and engaging pedestrian experience.”

The City recently completed the Main Street improvements from the Downtown Master Plan, added new public amenities, and established a social district in Downtown. The steps made to improve the pedestrian experience prompted Staff to revisit the sidewalk usage ordinance.

The North Carolina League of Municipalities (NCLM), the City’s insurance provider, advised Staff that, in order to be adequately covered, all items placed in the public rights-of-way need to be permitted with insurance naming the City as an additional insured and an executed hold harmless agreement. Additionally, the City needs to proactively monitor the sidewalk encroachments and take enforcement actions to remedy violations when necessary.

This is a staff-initiated text amendment to ensure that all items (e.g., merchandise, planters, furnishings) placed in City or State rights-of-way have insurance and meet the minimum separation requirements. The proposed changes also aim to reduce the burden on business owners by making it a one-time permit. Staff conducted a comprehensive review of legal constraints and ordinances from other municipalities to ensure compliance

with federal and state laws and planning best practices. Summaries of these reviews are included as attachments.

Discussion

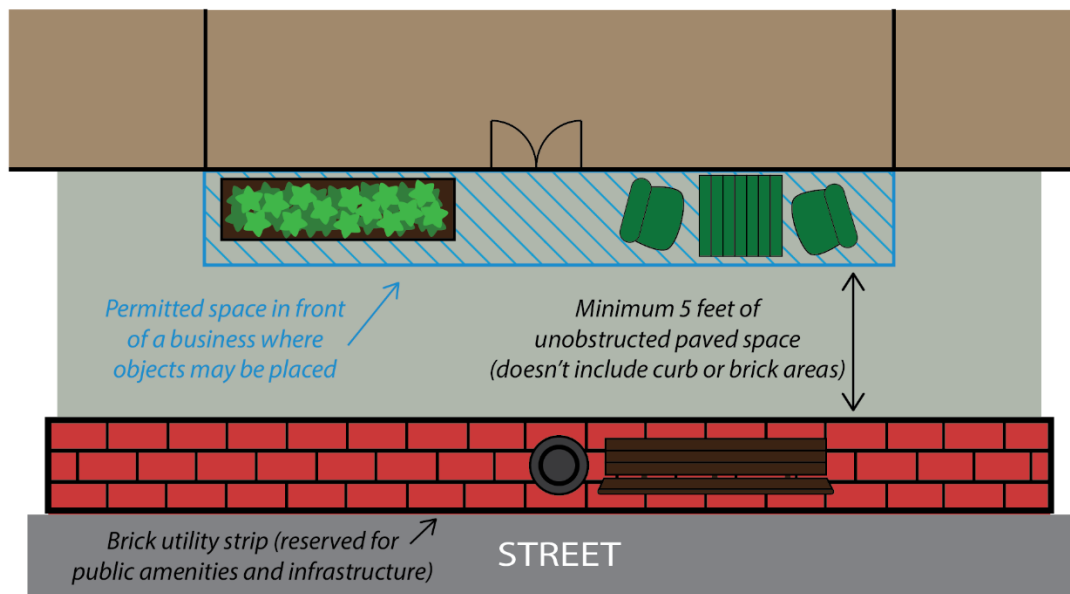
Below is a summary of the proposed changes and Staff's rationale.

Permitted Space for Obstructions on the Sidewalk:

The current regulations have different requirements for merchandise (*Section 46-1*) and permanent or semi-permanent objects that stay outside at all times (*Section 46-6*). The proposed amendments consolidate the regulations for placing obstructions on the sidewalk to *Section 62-1 – Placing objects on streets and sidewalks* and requires a business to secure a permit for a space in front of the establishment where objects may be placed. The new section requires the business owner to provide proof of insurance, a site plan that meets the setback requirements, and an executed encroachment / hold harmless agreement. This approach still allows merchants to place merchandise, furnishing or decorations while ensuring that the City is not liable, in accordance with NCLM's advice.

The setbacks and separation requirements align with those in North Carolina General Statutes §136-27.4 for sidewalk dining, which states that a minimum of five feet of unobstructed paved space of sidewalk remains clear for the passage of pedestrians. These are unchanged from the current regulations except that no objects may no longer be placed in the bricked utility strip. (Note that permitted A-frame signs and objects installed by the City or NCDOT may still be placed in the bricked utility strip).

In preparing these amendments, Staff prepared an updated Encroachment / Hold Harmless Agreement for the City and the business owner will sign to place objects in a permitted space. The new agreement removes the additional burden on the business owner to secure an annual permit but instead requires them to advise the City of any changes to the insurance policy. The agreement template, which is included as Attachment 3, has been reviewed by NCLM and the City Attorney.



Sidewalk Dining: Sidewalk dining is governed by an agreement signed between the City of Brevard and NCDOT, which includes minimum requirements for permitting dining on the sidewalk. The minor changes include expanding the allowable furnishing materials and consolidating the setback requirements in the revised Section 62-1.

A-Frame Signs: A-frame signs are regulated in the Unified Development Ordinance Chapter 12. No changes are proposed to these regulations at this time.

Downtown Master Plan Committee Proir Reviews

These changes were first discussed by the Downtown Master Plan Committee in January 2024, and the Committee reviewed a full draft of the amendments on April 10th and May 8th. At those meetings, the Committee made the following minor changes and recommended in favor of the amendment:

- Adding a definition for “sidewalk dining” to further distinguish it from general sidewalk usage / placement of objects on the sidewalk.
- Expanding the allowable furnishing materials for sidewalk dining.
- Clarifying that the objects cannot be anchored or permanently affixed to the sidewalk, building, or other infrastructure.
- Clarifying that furnishings may be permitted to stay on the sidewalk after business hours, so long as the objects are secured and clearance is maintained.

A public hearing was conducted on June 17, 2024. At that meeting, City Council send the text amendment back to the Downtown Master Plan Committee for further review. Staff brought the amendment to the Committee again on August 29, 2024. The Committee unanimously recommended in favor of the amendments with the following changes:

- Reducing the required amount of liability insurance to \$1,000,000.
- Renaming the title of *Chapter 46 - Peddlers and Solicitors* to *Chapter 46 - Peddlers, Solicitors, and Businesses*.
- Adding an exemption for the City, NCDOT, or other government agency to place public infrastructure and amenities with a reduced minimum separation, provided that NC Building Code and ADA minimum requirements are met.

Action

No action requested at this time; for public hearing purposes only. City Council will be asked to take one of the following actions at the next regular meeting:

- Adoption of the amendment as written;
- Adoption of the amendment as revised by city council;
- Rejection of the amendment;
- Send the application back to the a committee for further study and consideration; or
- Call for additional public hearings on petitions brought before them.

Attachments:

1. Summary of Proposed Amendments by Type of Sidewalk Obstruction
2. Proposed Text Amendment - Strikethrough Version
3. Sidewalk Usage Constraints
4. Summary of Other Cities
5. Sidewalk Dining Agreement with NCDOT
6. Hold Harmless Agreement Template

Summary Table of Proposed Amendments by Type of Sidewalk Obstruction

Type of Sidewalk Obstruction	Current Regulations	Proposed Changes to Current Regulations
Merchandise	- No permit or insurance required - Can be placed adjacent to wall or in the brick area - Must be removed at the end of the day	- Permit, insurance, and hold harmless agreement required for <u>a space where obstructions can be placed</u> - Can be placed within the <u>permitted space</u> adjacent to the building - Cannot be in the brick area - Furnishings may remain outside after hours, but merchandise and stands must be removed
Permanent / Semi-permanent Objects	- Permit, insurance, and hold harmless required <u>for specific items</u> - Can be placed adjacent to wall or in the brick area - Furnishings must be placed 6 ft from travel lanes	
Sidewalk Dining	- Permit, insurance, and hold harmless required - Furnishings must be placed 6 ft from travel lanes - Barricades / signage required if serving alcohol (unless participating in the Social District) - Furnishings must be metal	- Furnishings must be metal or <i>other similarly durable material</i> - Furnishings may remain outside after hours
A-Frame Signs	- Permit required - Dimensional standards for the sign - Can be placed abutting the wall or in the brick area - Must be removed at the end of the day	No changes proposed.
<i>*All objects must have 5ft of unobstructed sidewalk for pedestrians and cannot obstruct fire lanes, driveways, alleyways, building entrances, utility access, fire hydrants, ADA ramps, etc.</i>		



PART II: CODE OF ORDINANCES

CHAPTER 1. GENERAL PROVISIONS

1-2. Definitions and rules of construction.

Obstruction: An object that is placed on public streets, sidewalks, and alleyways. Such objects include but are not limited to displays, fixtures, inventory racks, display cases, planters, and seating. See also obstruction – permanent or semi-permanent.

Obstruction – {permanent or semipermanent}: An [obstruction or](#) object that is kept out on public streets, sidewalks, and alleyways after business hours. Such objects include but are not limited to displays, fixtures, inventory racks, display cases, planters, vending machines, and seating. Also referred to as a semipermanent or permanent object.

Sidewalk dining: Serving food and beverages from a restaurant abutting a public right-of-way to customers seated in the public right-of-way.

CHAPTER 46. PEDDLERS, ~~AND~~ SOLICITORS, AND BUSINESSES

ARTICLE I. IN GENERAL

46-1. Selling on streets and sidewalks.

~~A. Permission for sidewalk merchandise. Merchants lawfully conducting and operating a business from permanent physical business facilities which front on and abut a city sidewalk may display and sell goods, wares and merchandise from the sidewalk without need of application and approval from the city council; provided, however, that such merchandise, along with all racks, display cases and other accessories thereto, shall be removed from all public sidewalks at the end of every business day during which the same may have been displayed.~~

~~B. Setback.~~

- ~~1. On sidewalks at least 12 feet in width, excluding the curb, the maximum distance that the goods, wares or merchandise may be placed from the wall or front of the place of business shall be 36 inches.~~
- ~~2. On sidewalks at least seven feet in width, excluding the curb, the maximum distance shall be 24 inches.~~
- ~~3. On sidewalks less than seven feet in width, excluding the curb, no goods, wares or merchandise shall be placed on the sidewalks or streets.~~
- ~~4. On sidewalks that include a brick section adjacent to the curb, goods, wares and merchandise may be placed in the brick area as long as at least five feet of unobstructed concrete paved space, measured from any permanent or semi-permanent object, remains on the sidewalk or pedestrian way for the passage of pedestrians.~~
- ~~5. Additional restrictions. Notwithstanding the other provisions of this section, authority for merchants to sell from city sidewalks does not extend to city streets, and is limited to those sidewalk areas immediately abutting their own property. Further, the setback requirements of subsection 46-1.B shall apply to all obstructions of every description.~~



~~C. Special events.~~ The city manager may waive the setback requirements for special events recognized by the city, such as the Brevard/Transylvania Festival of the Arts, but in no event shall any merchant be permitted to fully obstruct a city sidewalk.

~~D.A. Selling from streets and vehicles.~~ It shall be unlawful for any vendor, or for any person whatsoever, to sell, barter, exchange or attempt to sell, barter, or exchange any goods, wares or merchandise from any city street, city sidewalk or pedestrian way, or from any vehicle except:

1. As may be authorized with respect to vending carts in CHAPTER 3 of the City of Brevard UNIFIED DEVELOPMENT ORDINANCE; or
2. As the prohibition may be waived by the approving authority for special events recognized by the city provided that the applicant satisfies all permit requirements of Section 66-13 and complies with Article I of CHAPTER 66 and other applicable provisions of this Code.

~~E.B. Merchandise or other obstructions may be placed on the sidewalk or pedestrian way pursuant to Section 62-1; provided no transactions occur outside of the business' legal premises.~~

46-6. ~~Placement of permanent and semipermanent obstructions.~~ Reserved.

~~Except as authorized herein, it shall be unlawful to place permanent and semipermanent displays, fixtures, inventory racks, display cases, planters, vending machines and other obstructions of a permanent or semipermanent nature on city-maintained sidewalks, streets, or alleyways without first obtaining a permit from the city manager in accordance with the requirements of this article. As used in this section, the term city manager includes his or her authorized designee.~~

~~A. Application.~~ Any business owner desiring to install a permanent or semipermanent obstruction shall prepare and file an application with the city manager which shall contain the following information:

1. ~~The name, addresses, and telephone number of the business desiring to install the obstruction.~~
2. ~~The name, address, and telephone number of the business owner.~~
3. ~~A drawing or site plan showing the section of sidewalk or pedestrian way to be used for the object, and the section to be kept clear for pedestrian and fire lane use, and depicting the proposed dimensions and placement on the sidewalk or pedestrian way.~~
4. ~~A description and images, drawings or other illustrative graphics of the semipermanent or permanent obstruction(s) to be installed.~~
5. ~~Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the permittee, the city, and NCDOT, if applicable, from all claims for damages to the property and bodily injury, including death, which may arise from placement of the object under or in connection with the permit. Such insurance shall name the city and, if applicable, NCDOT as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without advance written notice to the city. Such insurance shall afford minimum limits of \$2,000,000.00 aggregate annually.~~
6. ~~The business operator shall provide an agreement to indemnify and hold harmless the city and, if applicable, NCDOT from any claim resulting from placement of the permanent or semipermanent obstruction.~~
7. ~~Additional information may be requested by the city manager or his designee in order to determine compliance with this section.~~



~~8. At the time the application is filed, the applicant shall pay the city a fee as set forth in the schedule of taxes, fees and charges.~~

~~B. Standards for placement of permanent and semipermanent obstructions. No permit for the placement of permanent and semipermanent obstructions may be issued unless the application is complete and the following standards are met:~~

- ~~1. The business seeking to place or install a semipermanent or permanent obstruction must abut and front on the sidewalk or pedestrian way.~~
- ~~2. The placement of the obstruction(s) as shown in the drawing submitted with the site plan must be done in such a manner that at least five feet of unobstructed space, excluding the curb, measured from any permanent or semi-permanent object, remains on the sidewalk or pedestrian way for the passage of pedestrians. In accordance with North Carolina Fire Code, no fire exits or lanes may be blocked and must remain clear at all times.~~
- ~~3. The objects shall not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilation areas, or ramps necessary to meet accessibility requirements under the Americans with Disabilities Act.~~
- ~~4. The obstructions shall be allowed to remain in place until such time as the business establishment vacates the premises or until such time as replacement is warranted due to a deterioration of physical condition or appearance, whichever might first occur. At such time the business will reapply.~~

~~C. Administrative review procedure.~~

- ~~1. The administrator shall review and comment on the application and supporting materials.~~
- ~~2. If deemed necessary by the administrator, the application and supporting materials may be circulated to the Downtown Master Plan Committee and any other relevant city, county, and state agencies, committees, and officials for comment(s) as to the proposed obstruction's conformance to all applicable standards and requirements and whether approval is recommended.~~
- ~~3. The administrator shall approve, approve with conditions, or deny the application.~~
- ~~4. Permit denial. A permit may be denied if it is found that the application does not demonstrate compliance with this section and/or that the granting of the permit would not be in the public interest or would jeopardize public safety. Any applicant denied a permit to place a semipermanent or permanent object shall receive a written statement outlining the grounds on which the denial is based. The applicant may appeal the denial of the permit to the board of adjustment (BOA) within 15 days after the certified receipt of the written denial, and the BOA may take such action as it shall find necessary.~~

~~D. Permit revocation. In the event the city manager, or his or her designee, determines good grounds exist for the revocation of a permit issued under this section, he or she shall provide the business owner written notice stating the violation; provided, that if, in the opinion of the administrator, police department, or fire department, the unlawful condition is such that is of imminent danger or peril to the public, the public services department may, without notice, proceed to abate the same, and the cost thereof shall be charged against the property. The city manager, or his or her designee, shall give written notice to the business owner regarding a permit issued pursuant to this section if he or she finds that the business owner has:~~

- ~~1. Deliberately misrepresented or provide false information in the permit application.~~
- ~~2. Placed or moved the object in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare.~~
- ~~3. Placed or moved the object in violation of any city, county or state law, ordinance, or regulation.~~



~~Such notice shall direct that all violations existing thereupon be resolved within 15 days from the certified receipt of the such written notice. If the violation is not resolved within 15 days of receipt of the written warning, the city manager shall revoke the permit. The business operator may appeal any such order by filing a written notice of appeal with the city clerk within 15 days of receipt thereof. The board of adjustment (BOA) shall conduct a hearing on the appeal and render its decision thereon. Such notice of appeal shall stay the revocation of the permit by the city until a final determination by the BOA.~~

~~E. Permit exemptions. The following types of semipermanent and permanent obstructions shall not require a permit.~~

~~1. Holiday decorations placed in the space directly adjacent to the building as permitted in Section 46-1.B. Such decorations shall only be placed in the space directly adjacent to the building and not the brick section adjacent to the curb. Lighting shall comply with the City of Brevard Unified Development CHAPTER 11.~~

~~2. Objects owned, installed, and placed by the city, county, or NCDOT.~~

ARTICLE II. SIDEWALK DINING AREAS

46-34. Standards for sidewalk dining areas.

No permit for the operation of a sidewalk dining area may be issued unless the application is complete and the following standards are met:

- A. The sidewalk dining area must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities, and other customer convenience facilities as the restaurant. The sidewalk dining must be operated under the same name as the restaurant and may not be open or operated at any time when the restaurant is not open for business.
- B. The operation of the sidewalk dining area must be clearly incidental to the associated restaurant business. The seating capacity of the sidewalk dining area may not be more than 50 percent of the interior seating capacity of the associated restaurant.
- C. The restaurant seeking to operate the sidewalk dining area must abut, front on, and open onto the sidewalk or pedestrian way. Tables, chairs, and other furnishings may be placed on the sidewalk which fronts the business and on the sidewalk on the side of the business if located on a street corner. Furnishings and barricades may extend up to eight feet onto adjacent property frontage in either or both directions with the written permission (provided at the time of application) of the occupant of the adjacent property.
- D. Tables, chairs and other furnishings shall be placed a minimum of six feet from any travel lane.
- ~~E. The placement of tables, chairs and other furnishings as shown in the drawing submitted with the site plan must be done in such a manner that complies with Section 62-1. ~~at least five feet of unobstructed space, excluding the curb, measured from any permanent or semi-permanent object, remains on the sidewalk or pedestrian way for the passage of pedestrians. In accordance with North Carolina Fire Code, no fire exits or lanes may be blocked and must remain clear at all times. The pedestrian passage way may not be used for the display of merchandise or for signs.~~~~
- ~~F.E. Tables, chairs, and other furnishings shall not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilation areas, or ramps necessary to meet accessibility requirements under the Americans with Disabilities Act.~~



- G.F.** The tables, chairs and other furnishings used in the sidewalk dining area shall not be anchored and shall be made of a type of street furniture that is ~~easily~~ movable. Furnishings must be constructed of metal (aluminum, steel, wrought iron, etc.) or other non-combustible material of similar durability. Commercial umbrellas must be made with outdoor fabric and a metal or commercial grade plastic stand. Advertising messages may not be displayed from tables, chairs, umbrellas, or other furnishings.
- H.G.** Tables, chairs, and other furnishings that remain on the sidewalk at times when the business is not in operation shall be secured in a manner that allows clear access from the street, and umbrellas shall be taken inside.
- H.H.** Merchants with sidewalks dining are responsible for cleanliness and are subject to all applicable health department regulations.
- H.I.** Umbrellas over tables are permissible but must provide a clearance of a minimum of 78 inches from the lowest point of their canopy.
- K.J.** The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for sidewalk dining activities shall not be greater than 45 miles per hour.
- L.K.** The restaurant operator shall cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building, by NCDOT, the city, its agents or employees, or by any other governmental entity or public entity.

CHAPTER 62. STREETS, SIDEWALKS AND OTHER PUBLIC WAYS

ARTICLE I. IN GENERAL

62-1. Placing objects on streets and sidewalks.

- A.** No ~~brick, stone or wood or other substance obstructing~~ obstruction of any kind shall ~~the free passage of persons or vehicles shall~~ be placed or allowed to lie in any of the alleys, streets, sidewalks or other public ways of the city obstructing the free passage of persons or vehicles except as permitted by the provisions of ~~Subsection 62-1.C~~ this subsection, ~~nor, except as permitted in this chapter or by the provisions of Section 46-1, shall any person place or allow to lie on or in any of the streets, sidewalks, alleys or other public ways of the city any boxes, crates, casks or barrels of any description, or any other obstruction of any kind;~~ provided, any person erecting a building may, with the permission of the city manager or his/her designee, place building materials for immediate use on the streets or sidewalks in such a way as to not unduly interfere with vehicular or pedestrian traffic.
- B.** Setbacks and separation requirements. Obstructions of any kind of public sidewalks or other pedestrian way closed to vehicular traffic shall adhere to the following setback requirements:
- 1.** The placement of the obstructions shall be done in such a manner that at least five feet of unobstructed paved space of sidewalk, excluding the curb, bricked utility area, or any planting strip, measured from any permanent or semi-permanent object for the passage of pedestrians.
 - a.** On sidewalks at least twelve feet in width, excluding the curb, the maximum distance that the obstruction may be placed from the wall or front of the place of business shall be 36 inches.
 - b.** On sidewalks at least seven feet in width, excluding the curb, the maximum distance that the obstruction may be placed from the wall or front of the place of business shall be 24 inches.



1. Placed or moved obstructions in violation of any city, county or state law, ordinance, or other regulation.
 2. Placed or moved obstructions in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety, or welfare.
 3. Violation of the approved permit, insurance requirements, or hold harmless agreement.
 - b. In the event the administrator determines an obstruction is placed in violation, he or she shall provide the business owner written notice stating the violation. Such notice shall direct that all violations existing thereupon be resolved within 15 days from the certified receipt of the such written notice.
 1. The business operator may appeal any such order by filing a written notice of appeal with the city clerk within 30 days of receipt thereof. The board of adjustment (BOA) shall conduct a hearing on the appeal and render its decision thereon. Such notice of appeal shall stay the revocation of the permit and/or abatement by the city until a final determination by the BOA.
 2. However, if, in the opinion of the administrator, police department, or fire department, the unlawful condition is such that is of imminent danger or peril to the public, the city may, without notice, proceed to abate, and the cost thereof shall be charged against the property.
 - c. Violations not resolved within 15 days from the certified receipt of the written notice shall be subject to the following:
 1. City abatement and/or object removal with the cost thereof charged against the property;
 2. Permit revocation; and /or
 3. Civil penalties in accordance with North Carolina General Statutes or any executed encroachment agreements.

7. *Permit exemptions.* The following types of obstructions shall not require a permit.

- a. Objects owned, installed, and placed by the city, county, NCDOT, or any other state or federal agency.
 - b. Temporary objects placed as part of a permitted special event, provided the setback and separation requirements of this section are met.

~~B.D.~~ Any existing door which opens outward over a public sidewalk may remain in place so long as the building owner executes an agreement acknowledging that the door could present a safety hazard to pedestrians and holding the city harmless for any and all costs to the city, including attorney's fees, court costs and all damages suffered by any pedestrian claiming injury from such door, provided that (1) no such door shall occupy more than 24 inches of space over the public sidewalk and (2) the city manager reviews, approves and accepts the specific provisions contained in the hold harmless agreement. Should no such agreement be made within 30 days' notice to the building owner, then all doors on such building which open over the public sidewalk shall be removed by the building owner.

~~C.~~ ~~An elevated pedestrian boardwalk may be placed within the northeastern portion of south alley, subject to the following provisions:~~



- ~~1. Such boardwalk shall be handicapped accessible and compliant with all applicable provisions of the Americans with Disabilities Act, the North Carolina Accessibility Code, and the North Carolina Building Code.~~
- ~~2. Such boardwalk may be permitted at the discretion of the city manager, and may be removed at the discretion of the city manager.~~
- ~~3. Such boardwalk is a public way, and shall remain open to the general public at all times.~~
- ~~4. Such boardwalk may extend along the northeastern portion of south alley, and may extend in a southwestern direction for a distance not to exceed the length of the building located at 36 East Main Street.~~
- ~~5. Such boardwalk shall be constructed at the expense of one or more adjacent property owners and shall be warranted by the same for a period not less than three years; such warranty shall be provided in a manner that is approved by the city manager.~~

~~D.A. Alleyways closed to vehicular traffic shall not be subject to the sidewalk setback requirements as defined in Subsection 46-1.B, as a minimum at least 36 inches of unobstructed travel way must remain open and clear.~~

62-2. ~~Newsracks~~Reserved.

~~Notwithstanding the provisions of Section 62-1, racks for the display of newspapers, magazines and other printed material may be placed on sidewalks or other exterior areas if specific locations do not interfere with parking and loading areas or pedestrian traffic, or otherwise create safety problems, subject to the provisions of Section 46-1.~~

SIDEWALK USAGE CONSTRAINTS SUMMARY

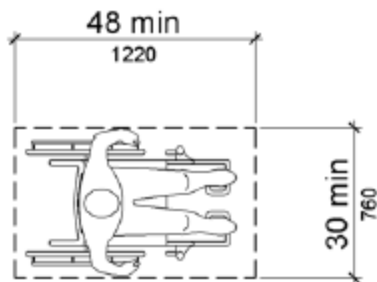
NORTH CAROLINA GENERAL STATUTES

- N.C.G.S. §160A-296 imposes upon cities the duty to keep public streets and sidewalks **open for travel** and **free from unnecessary obstructions**.
 - It also grants cities the power to regulate the use of public streets, sidewalks, alleys, and bridges.
- N.C.G.S. §136-27.4 allows NCDOT to enter into agreements with cities to allow **sidewalk dining** in their rights-of-way, subject to the following minimum requirements:
 - Furnishings must be a minimum of **6 feet from any travel lane**
 - Must have at least **5 feet of unobstructed paved space of the sidewalk** clear for the passage of pedestrians and provides adequate passing space that complies with the Americans with Disabilities Act

AMERICANS WITH DISABILITIES ACT REQUIREMENTS

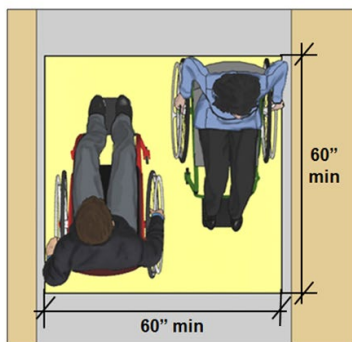
Clear Space

- Section 305.3: Clear floor or ground space shall be 30 inches minimum by 48 inches minimum.

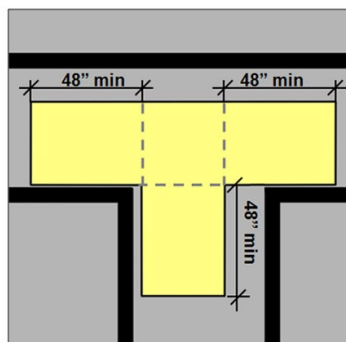


Clearance / Accessible Routes

- Section 403.5.1: The clear width of walking surfaces shall be a **minimum of 36 inches**
- Section 403.5.3: Passing space is required **every 200 feet** and must be provided as a **60-inch by 60-inch minimum space** or as T-shaped space where each stem is at least 48 inches long



60" Min. by 60" Min. Passing Space



T-Shaped Passing Space

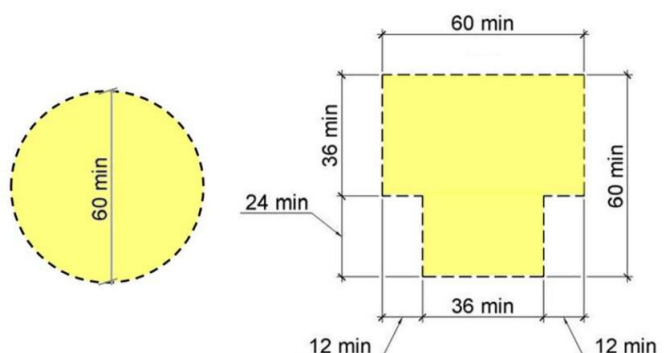
- Section 404.2.4: Depending on the type of door (push or pull; approach direction; etc.), minimum maneuvering clearances range from 42 inches to 60 inches

Surfaces

- Section 302.1: Floor and ground surfaces shall be stable, firm, and slip resistant
- Section 303.2: Vertical changes in level are only permitted if less than ¼ inch high.

Turning Spaces

- Section 304.3.1: A circular space for turning shall be a minimum of 60 inches in diameter
- Section 304.3.2: A T-shaped turning space within a minimum of 60-inch square with arms and base a minimum of 36 inches wide. Each arm of the T shall be clear of obstructions 12 inches minimum in each direction and the base shall be clear of obstructions 24 inches minimum.



NORTH CAROLINA BUILDING CODE

- Section 1104.1: The clear width of the exterior accessible path of travel shall be **48 inches minimum**.
- Where there are differences between the 2010 ADA Standards and the NC Building Code, whichever requirements is more restrictive takes precedence.
- The reason the NC has a 48" exterior path of travel requirement is to allow sufficient space for:
 - A person to walk with a guide animal
 - A person to walk next to another person while supporting or assisting him or her
 - To allow sufficient space for non-standards size mobility devices

NORTH CAROLINA LEAGUE OF MUNICIPALITIES GUIDANCE

NC League of Municipalities (NCLM), the City's insurance provider, advised Staff that in order to be adequately covered:

- **All items** placed in the public rights-of-way must have an encroachment / hold harmless agreement
- **All items** placed in the public rights-of-way must have insurance naming the City as an additional insured
- City must **proactively monitor** items and **take enforcement actions**, when necessary

“URBAN STREET DESIGN GUIDE”, NATIONAL ASSOCIATION OF CITY TRANSPORTATION OFFICIALS (2013)

- Prevailing design guidelines recommend a **minimum sidewalk cross-section of 5 feet**, exclusive of other amenities and **large enough for two people walking side by side**.
- The through-zone ensures that pedestrians have a safe and adequate place to walk and should be **5–7 feet wide in residential settings** and **8–12 feet wide in downtown or commercial areas**.
- Where a sidewalk is directly adjacent to moving traffic, the desired minimum is 8 feet, providing a **minimum 2-foot buffer** for street furniture and utilities.
- Narrow neighborhood sidewalks should be redesigned to provide a wider pedestrian through-zone and street furniture zone whenever practical.



“8 MAJOR ROADBLOCKS TO INCLUSIVE STREETS”, AMERICAN PLANNING ASSOCIATION (2022)

- Wide sidewalks are a basic part of universal design.
- The Federal Highway Administration suggests a minimum sidewalk width of **8 feet for high pedestrian traffic areas** and notes the **bare minimum of 4 feet can still force people into the roadways** if a barrier is introduced
- In practical terms, a sidewalk must be at least 6 feet wide to allow two wheelchair users to safely pass each other

[NCDOT ROADWAY DESIGN MANUAL \(MAY 2024\)](#)

- Sidewalks provide a path for pedestrians parallel to the roadway, providing safer access to destinations and public transportation.
- Heavy pedestrian traffic may warrant wider widths:

Table 4-8 Desirable and Minimum Sidewalk and Berm Widths

	Commercial and School Routes		Residential Areas	
	Desirable	Minimum	Desirable	Minimum
Sidewalk Width	10'	5'	5'	4'
Berm Width	17'	6'	10'	5'

Municipality	Sidewalk Dining?	Merchandise?	Other Encroachments? (planters, chairs, etc.)	Liability Insurance	Sidewalk Dining Clearance / Dimensional Requirements	Merchandise Clearance / Dimensional Requirements	Notes
Brevard (current)	Yes, annual permit of \$100	No permit required	Yes, one-time permit \$100	\$2,000,000 - sidewalk dining and other obstructions None - Merchandise	- Minimum 5 feet unobstructed pedestrian space - Minimum 6 feet from any travel lane	- Minimum 5 feet unobstructed pedestrian space - Can be placed adjacent to building or in brick area - On sidewalks 12+ ft wide, only 36 inches from building - On sidewalks 7+ ft wide, only 24 inches from building - Not permitted on sidewalks less than 7 ft wide	- Holiday decorations are exempt
Brevard (Staff proposal)	Yes, one-time permit of \$100	Yes, one-time permit for a space \$100	Yes, one-time permit for a space \$100	\$2,000,000	- Minimum 5 feet unobstructed pedestrian space - Minimum 6 feet from any travel lane - Can be placed adjacent to building - On sidewalks 12+ ft wide, only 36 in from building - On sidewalks 7+ ft wide, only 24 in from building - Not permitted on sidewalks less than 7 ft wide	- Minimum 5 feet unobstructed pedestrian space - Can be placed adjacent to building - On sidewalks 12+ ft wide, only 36 in from building - On sidewalks 7+ ft wide, only 24 in from building - Not permitted on sidewalks less than 7 ft wide	
Asheville	Yes, annual permit of \$7 / square foot	Yes, annual permit	Unclear / Not Permitted	\$1,000,000	- Minimum 6 feet unobstructed pedestrian space - May be located adjacent to the building or curb - If abuts the curb, additional 18 inch buffer is required - When seating abuts the pedestrian way, additional 18 inch buffer is required to allow for movement of chairs without obstructing the pedestrian way.	- Minimum 6 feet unobstructed pedestrian space - Can only be placed next to the building	- Sidewalk dining is required to have "Outdoor Dining Area" signage - Sidewalk dining and merchandise are only permitted in commercial districts
Hendersonville	Yes, annual permit of \$0.50 / square foot	Yes, unclear if permit is required	Yes, unclear if permit is required	\$500,000 - sidewalk dining	- Minimum 5 feet unobstructed pedestrian space	- Minimum 5 feet unobstructed pedestrian space - May only extend 36 inches into the sidewalk	- All sidewalk dining must have barricades - Guide includes a note that "if two people walking side by side have to go single file, or a wheel chair cannot pass through without maneuvering, your sidewalk is not accessible and adjustments need to be made to be in compliance"
Sylva	Yes, part of development permit	No	Unclear / Not Permitted	N/A	- Minimum 5 feet unobstructed pedestrian space	N/A	- Sidewalk dining is treated as a use standard - Outdoor merchandise is permitted but must be at least 5 feet from the public sidewalk
Waynesville	Yes, annual permit	Yes, annual permit	Yes, annual permit	Required but amount not specified	- Minimum 7 feet pedestrian space - Must be at least 1 foot from the curb - Only on sidewalks 10 feet or greater or part of a special events permit	- Minimum 7 feet pedestrian space - Must be at least 1 foot from the curb - Only on sidewalks 10 feet or greater or part of a special events permit	- All sidewalk dining must have barricades
Lenoir	Yes, annual permit	No	Unclear / Not Permitted	\$1,000,000	- Minimum 5 feet unobstructed pedestrian space	N/A	- All sidewalk dining must have barricade - All objects (including tables and chairs, excluding planters) must be moved inside when closed
Charlotte	Yes, annual permit of \$950	No	Unclear / Not Permitted	\$1,000,000	- Minimum 6 feet unobstructed paved space in CBD - Minimum 5 feet unobstructed paved space in all other zoning districts - Not within 10 feet of any driveway or alley - Not within 15 feet of a fire hydrant or standpipe - Not within 10 feet of crosswalk or intersection	N/A	- All sidewalk dining must have barricades

Municipality	Sidewalk Dining?	Merchandise?	Other Encroachments? (planters, chairs, etc.)	Liability Insurance	Sidewalk Dining Clearance / Dimensional Requirements	Merchandise Clearance / Dimensional Requirements	Notes
Durham	Yes, annual permit of \$260	No	Unclear / Not Permitted	\$1,000,000	- Minimum 6 feet unobstructed pedestrian space - Minimum 4 feet unobstructed space from the entrance of any establishment - May be located adjacent to the building or curb - If adjacent to curb, minimum 2 feet of clearance between seating area and the curb (3 feet clearance adjacent to on-street parking)	N/A	- "Seating cannot block access to public amenities, such as bicycle racks, street furniture, trash receptacles, dumpster and wayfinding or directional signs" - Only permitted in the Downtown Design and Compact Design zoning districts
Wake Forest	Yes, annual permit of \$150	Yes, annual permit of \$25	Yes	\$1,000,000 - general encroachment \$3,000,000 - sidewalk dining	Unclear - refers to ADA, NC Building Code, Manual of Uniform Traffic Control Devices, and the City of Raleigh Public Utilities Department	Unclear - refers to ADA, NC Building Code, Manual of Uniform Traffic Control Devices, and the City of Raleigh Public Utilities Department	
Raleigh	Yes, annual permit of \$352 ("Outdoor Seating")	Yes, annual permit	Yes, one time permit	\$1,000,000 - bodily injuries / death \$500,000 - property damage	- Minimum 5 feet unobstructed <u>straight</u> pedestrian corridor - Can be measured around obstructions (fire hydrants, poles, etc.) if they are less than 1 foot in diameter - Minimum 2 feet of clearance next to the curb for seating - Minimum 7 feet unobstructed <u>straight</u> pedestrian corridor in Fayetteville Street District (with wider sidewalks and enhanced streetscape elements)	- Minimum 5 feet unobstructed <u>straight</u> pedestrian corridor - Can be measured around obstructions (fire hydrants, poles, etc.) if they are less than 1 foot in diameter - Minimum 2 feet of clearance next to the curb for seating - Minimum 7 feet unobstructed <u>straight</u> pedestrian corridor in Fayetteville Street District (with wider sidewalks and enhanced streetscape elements)	Outdoor seating of any kind (whether it be attached to a restaurant or not) must comply with the same standards (see "Outdoor Seating Guide")
Black Mountain	No	No	No	N/A	N/A	N/A	Outdoor dining is allowed to encroach up to 5 feet into the required front setback, but it must be separated from the right-of-way by landscaping or vertical barrier.
North Wilkesboro	No	No	No	N/A	N/A	N/A	"It shall be unlawful for any person to place anything on any public street, sidewalk or public place, or in any gutter, which will impede travel or traffic or annoy pedestrians . This prohibition shall be applicable generally and is not limited to the use of sidewalks by merchants for the display of merchandise or storage of materials, nor to the erection in streets and upon sidewalks of booths or stands...."

**NORTH CAROLINA
TRANSYLVANIA COUNTY**

SIDEWALK DINING AGREEMENT

DATE: 8/11/2020

**NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION**

AND

CITY OF BREVARD

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department", and the City of Brevard hereinafter referred to as the "Municipality."

WITNESSETH:

WHEREAS, the North Carolina General Assembly (NCGA) has enacted legislation to allow sidewalk dining (or the serving of food and beverage) on property within or adjacent to State right of way; and,

WHEREAS, this AGREEMENT is made under the authority granted to the Department by the NCGA including, but not limited to, the following applicable legislation: North Carolina General Statutes (NCGS), Section 136-18(9) and Section 136-27.4; and,

WHEREAS, this AGREEMENT is made in accordance with the most recent *Stewardship and Oversight Agreement on Project Assumption and Program Oversight*, executed between the Federal Highway Administration (NC Division) and the Department; and,

WHEREAS, this AGREEMENT outlines the Municipality's administrative rights and responsibility to enact a Sidewalk Dining Ordinance and issue Permits for such;

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

I. SIDEWALK DINING ORDINANCE AND PERMITS - CONDITIONS OF APPROVAL-

The Municipality is given approval to administer a sidewalk dining ordinance and issue approval of permits allowing such in State right-of-way in or near the vicinity of the Municipality under the condition that the Municipality meets the following criteria:

- A. The Municipality shall enact an ordinance that meets the requirements of, but not necessarily limited to the requirements of the General Statutes of North Carolina (NCGS), Section 136-27.4.
- B. The Municipality shall provide the Department a copy of the ordinance once enacted and shall provide the Department any updates to the ordinance.
- C. The permit issued by the Municipality shall require the restaurant operator to provide evidence of adequate liability insurance in an amount satisfactory to the local government, but in no event in an amount less than the amount specified by the local government under G.S. 160A-485 as the limit of the local government's waiver of immunity or the amount of Tort Claim liability specified in G.S. 143-299.2, whichever is greater. The insurance shall protect and name the Department and the local government as additional insureds on any policies covering the business and the sidewalk activities.
- D. The permit issued by the Municipality shall require the restaurant operator to provide an agreement or evidence to indemnify and hold harmless the Department or the local government from any claim resulting from the operation of sidewalk dining activities.
- E. The permit shall require the restaurant operator to provide a copy of all permits and licenses issued by the State, county or city, including health and ABC permits, if any, necessary for the operation of the restaurant or business, or a copy of the application for the permit if no permit has been issued to the Municipality. This requirement includes any permits or certificates issued by the county or city for exterior alterations or improvements to the restaurant.
- F. The Municipality shall also meet any other requirements deemed necessary by the Department, either for a particular local government or a particular component of the State highway system to safely allow sidewalk dining.
- G. The Municipality may impose additional requirements on a case-by case basis and nothing in this AGREEMENT requires the Municipality to issue or maintain any permit for sidewalk dining activities if, in the opinion of the Municipality, such activities cannot be conducted in a safe manner in the State right-of-way.
- H. The Department shall cancel this AGREEMENT and revoke the permission of the Municipality to issue permits if at any time the Department considers that the safety of the traveling motorist, pedestrians, or any other third party may be compromised.

- I. The Department reserves the right to cancel this AGREEMENT on a case-by-case basis if the Department deems the activities permitted by the Municipality cannot be conducted in a safe manner.
- J. No permits may be issued for sidewalk dining on any interstate route.
- K. The Municipality shall obtain permission from the Department to permit the right-of-way of any federal-aid route on or off the National Highway System to be used for sidewalk dining. A request for permission should be coordinated with the Department's Division Engineer.
- L. The Municipality shall keep and maintain a list or database of all current permits and issued parties that may be requested by the Department at any time. A copy of all paperwork and submitted documents shall be kept on hand and provided to the Department if requested. If the permit is incomplete or does not meet the standards of this AGREEMENT, the Department reserves the right to cancel this AGREEMENT.

II. SIDEWALK DINING ORDINANCE AND PERMITS - MINIMUM CONDITIONS OF ORDINANCE

The ordinance enacted by the Municipality shall be consistent with, but not necessarily limited to, the following minimum criteria:

- A. Tables, chairs, and other furnishings shall be placed a minimum of six feet from any travel lane.
- B. Tables, chairs, and other furnishings shall be placed in such a manner that **at least five feet of unobstructed paved space of the sidewalk, measured from any permanent or semi-permanent object,** remains clear for the passage of pedestrians and provides adequate passing space that complies with the Americans with Disabilities Act.
- C. Tables, chairs, and other furnishings shall not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilations areas, or ramps necessary to meet accessibility requirements under the Americans with Disabilities Act.
- D. The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for sidewalk dining activities shall not be greater than 45 miles per hour.
- E. The standards set forth by this AGREEMENT are minimums according to General Statute. Every potential site for Sidewalk Dining shall be reviewed by the Municipality for safety. Meeting these minimum guidelines alone does not imply that minimum standards for safety have been met. NCDOT reserves the right to limit or restrict application of this AGREEMENT along specific corridors or locations if safety becomes an issue.

- F. The restaurant operator shall cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building, by the Department, the local government, its agents or employees, or by any other governmental entity or public utility.

III. SIDEWALK DINING ORDINANCE AND PERMITS - TIME FRAME

This AGREEMENT shall remain in place until canceled in writing by either party with thirty (30) days written notice to the other party.

IV. ADDITIONAL PROVISIONS

- A. This AGREEMENT shall not preempt or override local ordinances which have been enacted within the authority of the NCGS that are currently in place.
- B. The Department shall not be held liable for any damages resulting from implementation of any ordinances or issuance of any permits under the terms of this AGREEMENT.
- C. This AGREEMENT contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this AGREEMENT except as expressly set forth herein.
- D. The parties hereby acknowledge that the individual executing this AGREEMENT on their behalf is authorized to execute this AGREEMENT on their behalf and to bind the respective entities to the terms contained herein and that he has read this AGREEMENT, conferred with his attorney, and fully understands its contents.
- E. A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the AGREEMENT as binding as an original, and the parties agree that this AGREEMENT can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the AGREEMENT.
- F. By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

IN WITNESS WHEREOF, this AGREEMENT has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

BY: Denise Hodsdon

TITLE: Executive Assistant

DATE: August 19, 2020

CITY OF BREVARD

BY: [Signature]

TITLE: City Manager

DATE: August 19, 2020

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.



This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature]
(FINANCE OFFICER)

Federal Tax Identification Number

56-6001186

Remittance Address:

95 W. Main Street

Brevard, NC 28712

DEPARTMENT OF TRANSPORTATION

BY: [Signature]
(CHIEF ENGINEER)

DATE: 9/15/2020

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 9-3-2020 (Date) [Signature]

**CITY OF BREVARD
ENCROACHMENT & HOLD HARMLESS
AGREEMENT**

This ENCROACHMENT & HOLD HARMLESS AGREEMENT is given this ____ day of _____, 202__, by _____, ("Grantor") to the City of Brevard, a North Carolina incorporated City (the "City").

THAT WHEREAS, the Grantor desires access to encroach on the public right-of-way designated as (address) _____, adjacent to the parcel identified as (PIN) _____, with the placement of _____

("Encroachments"); and that the Grantor will construct, install, and maintain the Encroachments in accordance with the site plan attached hereto as Exhibit A and incorporated herein by reference, and any other such standards or requirements as the City has required as of the date hereof; and

WHEREAS, the City, in the exercise of authority conferred upon it by ordinance, is willing to allow Encroachments within the limits of the right-of-way as indicated, under the terms and conditions herein set forth; and

WHEREAS, the Grantor has paid to the City the applicable fee to defray the administrative costs of the City in processing this request.

NOW, THEREFORE, in consideration of these promises, the required development fees in hand paid, the receipt and sufficiency of which are hereby acknowledged, and other consideration, the Grantor and the City hereby agree that the Grantor is hereby granted a license to encroach upon the right-of-way by constructing, installing, and thereafter maintaining the Encroachments for its sole interest and convenience in accordance with the following stipulations:

1. The Grantor is responsible for any and all expenditures of labor or materials required for the planning, installation, erection, repair, maintenance and removal ordered by the City of the Encroachments.
2. The Grantor is to be fully responsible for any and all property damage or injury or death of any person which results from any and all negligence, omission, defect in design, maintenance, or workmanship created by the Grantor, its agents or contractors relating to the Encroachments, or any cause of action arising out of the installation, erection, repair, maintenance, location or removal of said Encroachments.
3. The Grantor agrees to and does hereby hold the City, its officers, agents, and employees

harmless from any and all liability arising out of such negligence, omission, defect, or other cause of action; that it will defend the City, its officers, agents, and employees, and pay all attorney fees in any and all actions brought as a result of such; and that it will indemnify the City, its officers, agents, and employees against any and all loss sustained by reasons of such negligence, omission, defect, or other cause of action arising out of the installation, erection, repair, maintenance, location or removal of said encroachments.

4. The Grantor agrees to abide by all applicable laws, statutes, ordinances and code provisions.
5. This agreement shall not divest the City of any rights or interest in said right-of-way, and for any reason the City may terminate this encroachment agreement by giving the Grantor 15 days advance written notice of termination. Prior to the termination date, the Grantor shall remove or relocate, at its own expense, all or part of the encroachments as specified by the City.
6. The City further retains the right and privilege to remove or alter the encroachments whenever an emergency or other situation requires prompt action, and the City may recover the cost associated with removing or altering the encroachments from the Grantor.
7. The Grantor, during the life of this agreement, agrees to procure an insurance, issued by an insurance company licensed to do business in the State of North Carolina, in the minimum amounts of \$2,000,000.00 covering full liability for any and all personal injury, property damage or wrongful death caused by the construction, maintenance, location, repair, removal or visual obstruction of said Encroachments. The Grantor shall furnish the City on the Effective Date of this Encroachment Agreement certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect. The Grantor, the City, and if applicable North Carolina Department of Transportation, shall be named as insured parties. In the event of any change in the insurance policy, the Grantor shall give the City thirty (30) days' notice of such change. The City may, at any time, request proof of adequate insurance from the Grantor. Should Grantor fail to pay premiums upon said insurance or to perform any of the agreements, terms or conditions herein contained, the City, at its option, by written notice may declare this agreement cancelled and terminated and all rights acquired hereunder by Grantor shall thereupon terminate.
8. The Grantor shall obtain all necessary permits from the City prior to the placement or installation of the encroachments.
9. The rights conveyed to the Grantor under this Agreement shall be personal to the Grantor and non-transferrable to any other party unless the City provides its prior written consent thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this _____ day of _____, 202__.

ATTEST:

Sign Name: _____
Print Name: _____
Title: _____

CITY OF BREVARD:

Sign Name: _____
Print Name: _____
Title: City Manager or Designee

STATE OF NORTH CAROLINA,
COUNTY OF TRANSYLVANIA.

I, _____, a Notary Public for said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ day of _____, 202__.

(SEAL)

Notary Public

My Commission expires: _____.

EXHIBIT A
SITE PLAN AND LOCATION OF ENCROACHMENTS



CITY of BREVARD

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

TAX SETTLEMENT REPORT FOR MONTH ENDED SEPTEMBER 30, 2024

Tina Tanner
Certified Tax Collector

CITY OF BREVARD TAX SETTLEMENT REPORT
MONTH ENDING SEPTEMBER 30, 2024

UPDATED: 10.10.24

YEAR	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
2024		\$ 4,145,519.25	\$ 355,192.81				
2023-2011	\$ 3,514.80	\$ 4,462.58	\$ 2,327.19				
2010 - Prior	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
TOTAL:	\$ 3,514.80	\$ 4,149,981.83	\$ 357,520.00	\$ -	\$ -	\$ -	
2024	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	TOTAL
2023-2011							\$ 4,500,712.06
2010 - Prior	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,304.57
TOTAL:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,511,016.63

HEART OF BREVARD TAX SETTLEMENT REPORT
MONTH ENDING SEPTEMBER 30, 2024

UPDATED: 10.10.2024

YEAR	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
2024		\$ 64,583.54	\$ 12,538.17				
2023-2011	\$ 28.47	\$ 137.22					
2010 - Prior	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
TOTAL:	\$ 28.47	\$ 64,720.76	\$ 12,538.17	\$ -	\$ -	\$ -	
	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	TOTAL
2024							
2023-2011							\$ 77,121.71
2010 - Prior	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 165.69
TOTAL:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 77,287.40

STAFF REPORT

City Council, Monday, October 21, 2024

Title: Ordinance Declaring Road Closure for Veterans Day

Speaker: Aaron Bland

Prepared by: Aaron Bland, Asst Planning Director

Approved by: Wilson Hooper, City Manager

Background

The North Carolina Department of Transportation (NCDOT) requires local approval for special events that involve the closing or repurposing of state-owned highways and roads.

Discussion

The NCDOT guidelines state the local municipality must pass an ordinance for each street closure of City-sponsored events. The State will neither approve nor deny such requests for closures. They will, however, recommend alternative routes should they have a project scheduled for the same day as a special event. The attached ordinance is for the Veterans Day ceremony.

Policy Analysis

The City has been sponsoring and permitting special events for several years. The passing of an ordinance only applies to City-sponsored special events on state roads. Permits sponsored by individuals or non-profits are permitted differently and do not require an ordinance. Council has passed ordinances for City-sponsored events since 2015.

Action

Council's options are to adopt or reject the street closure ordinance.

Attachments:

1. Road Closure Ordinance Veterans Day

ORDINANCE NO. 2024-XX

**AN ORDINANCE DECLARING A ROAD CLOSURE
FOR VETERAN’S DAY CEREMONY**

WHEREAS, Brevard City Council acknowledges a tradition of providing for festivals and special events downtown for the pleasure and enjoyment of citizens and visitors alike; and,

WHEREAS, Brevard City Council acknowledges that festivals and special events provide an opportunity for family-oriented activities that celebrate our small-town charm; and,

WHEREAS, Brevard City Council acknowledges these events require NCDOT system roads to be closed for setup, activities, and cleanup; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

SECTION 1. Pursuant to authority granted by G.S. 20-169, the City of Brevard hereby declares the following temporary road closure during the day and time set forth below on the following described portion of a State Highway System route:

Veteran’s Day Ceremony
Date: Monday, November 11, 2024
Time: 10:00 AM – 1:00 PM
Route Description: Main Street (U.S. 276) from Broad Street to Gaston Street.

SECTION 2. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 21st day of October 2024.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon, CMC
City Clerk

APPROVED AS TO FORM:

Mack McKeller
City Attorney

STAFF REPORT

City Council, Monday, October 21, 2024

Title: Closing of Railroad Avenue Bridge Replacement Capital Project

Speaker: Dean Luebbe

Prepared by: Dean Luebbe, Assistant City Manager/Finance Director

Approved by: Wilson Hooper, City Manager

Background

The City was awarded funding in August of 2013, for the replacement of the Railroad Avenue Bridge. Funds were expended on property acquisition and engineering from 2016 to the middle of 2019. During this time period, the City was exploring the possibility of the "West Loop", which was intended to reduce the amounts of traffic on Broad and Caldwell Streets in the heart of the downtown area. Ultimately, this bypass route was not pursued. The COVID pandemic of early 2020 halted progress on the project. In late 2021, progress resumed on the project, and the City was made aware that costs had greatly increased, and the City might be responsible for close to \$700,000 of City funds to complete the project. Thanks in large part to the efforts of Interim City Manager Steve Harrell, Mayor Maureen Copelof, Wanda Austin from NCDOT, and local representatives Jake Johnson and Chuck Edwards, the City was able to form an agreement in which NCDOT took over the project, and the only future City obligation was for \$70,000 of engineering, related to right of way, and utility relocation. The bridge was completed in December of 2023, and final reimbursement was received by the City in August of 2024.

Fiscal Impact

Actual revenues on this project exceed actual expenditures by \$11,696. Budgeted and actual revenues and expenditures on this project will be reversed on the City financial software. The revenue overage of \$11,696 will be recorded in fund 78, fund balance, and will be available for the Estatoe Trail Project.

Action

Staff requests Council approve the ordinance as submitted to close the Railroad Bridge Replacement Capital Project.

Attachments:

1. CPO Closeout - Railroad Avenue Bridge
2. Railroad Ave Bridge Repl - financial summary
3. Proj Ord 2022-43 Railroad Ave Bridge

ORDINANCE NO. 2024-XX

CAPITAL PROJECT ORDINANCE TO CLOSE ORDINANCE
NO. 2022-21 and 2023-43, RAILROAD AVENUE BRIDGE REPLACEMENT PROJECT

BE IT ORDAINED by the City Council of the City of Brevard, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby closed:

Section 1: In August of 2013, the City of Brevard received funding through the NC Dept of Transportation for the replacement of the Railroad Avenue Bridge. The funding agreement (B-5550) provided 80% or \$832,000 and the City was required to provide a match of 20% (\$208,000). Expenses were first recorded in early 2016, and mainly involved engineering and property acquisition, through the middle of 2019. Progress on the project was halted by the COVID pandemic in early 2020. At this stage, the City had spent nearly \$600,000 of the budgeted funds. In late 2021, the City became aware that the most recent estimates for the bridge replacement were \$1,750,000, requiring an additional \$700,000 in City funds. Fortunately, the City, mainly through the efforts of Interim City Manager Steve Harrell and Mayor Maureen Copelof were able to work with NCDOT to produce an agreement where NCDOT took over the entire bridge replacement and the City was only responsible for an additional \$70,000 of engineering costs. Local Representatives Jake Johnson and Chuck Edwards, and Wanda Austin from NCDOT played an important role in this agreement.

Section 2: The project will be closed with actual revenues of \$677,147 and actual expenditures of \$665,451. Actual and budgeted revenues and expenditures will be reversed on the City financial software, and no further expenditures will be required on the project.

Section 3: The following amounts were appropriated for the project:

Account Number	Account Name	Budget Amount
78-6500-4500	Railroad Ave Bridge Repl	\$1,810,200
TOTAL PROJECT APPROPRIATION		\$1,810,200

Section 4: The following revenues were anticipated to be available for project expenses:

Account Number	Account Name	Budget Amount
78-3345-0000	NCDOT STP B-5550	\$832,000
78-3750-0000	Transfer from GF – 20%	\$208,000
78-3755-0110	Transfer from GF	\$700,000
78-3750-0020	Transfer from GF – CDM	\$70,200
TOTAL PROJECT REVENUE		\$1,810,200

Section 5: The Finance Director will maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 6: The Finance Director will maintain a detailed analysis of all revenues and expenses associated with the project since its inception.

Section 9: Copies of this capital project close out shall be furnished to the City Clerk, Finance Director and City Manager.

ADOPTED by the City Council of the City of Brevard, North Carolina, on this 21st day of October, 2024.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon
City Clerk

APPROVED AS TO FORM:

Mack McKeller
City Attorney

**City of Brevard Capital Project - Multi Use Paths Fund
Railroad Avenue Bridge Replacement**

As of October 3, 2024		Budget	Prior Year	Current Year	Total prior plus current
Expenditures					
78-6500-4500	Railroad Ave Bridge Repl	1,810,200	665,451	-	665,451
Revenues					
78-3345-0000	NCDOT Kings Creek Bridge	832,000	469,147	-	469,147
78-3750-0000	Transf from GF	208,000	208,000	-	208,000
78-3755-0110	NCDOT Supplemental Agreement	700,000			
78-3750-0020	Transfer from GF - CDM Smith eng	70,200			
Total Revenues		1,810,200	677,147	-	677,147

Expenditure Detail	Contract Amount	Prior Year Expenses	Current Year Expenditure	Total prior plus current	Amount Remaining on Contract
CDM Smith		380,202	-	380,202	
Easements		196,251	-	196,251	
Brown Consultants		8,920		8,920	
Other		9,875	-	9,875	
CDM Smith	70,000	70,202	-	70,202	-
	70,000	665,451	-	665,451	-

ORDINANCE NO. 2022-43

CAPITAL PROJECT ORDINANCE TO AMEND ORDINANCE
NO. 2022-21, RAILROAD BRIDGE REPLACEMENT

BE IT ORDAINED by the City Council of the City of Brevard, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1: The budgeted revenues listed under the ordinance (2022-21) will be amended to increase \$700,000 of funding from the NCDOT supplemental agreement, and decreasing \$700,000 of ARPA funding. Additionally, the City may responsible for up to \$70,200 in engineering fees associated with utility relocation. This amount will be transferred from General Fund fund balance.

Section 2: The project was authorized to replace the bridge located on Railroad Avenue near the intersection of Commerce Street.

Section 3: The following amounts are appropriated for the project:

Account Number	Account Name	Budget Amount
78-6500-4500	Railroad Avenue Bridge Repl	\$1,810,200
TOTAL PROJECT APPROPRIATION		\$1,810,200

Section 4: The following revenues are anticipated to be available for project expenses:

Account Number	Account Name	Budget Amount
78-3345-0000	NCDOT B-5550	\$832,000
78-3750-0000	Transfer from General Fund	\$208,000
78-3755-0110	NC DOT Supplemental	\$700,000
78-3750-0111	Transfer from GF - fund balance	\$70,200
TOTAL PROJECT REVENUE		\$1,810,200

Section 5: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 6: Funds may be advanced from the General Fund or from any Enterprise Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 7: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 8: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 9: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Brevard, North Carolina, on this
1st day of August, 2022.



Maureen Copelof
Maureen Copelof
Mayor

Jill Murray
Jill Murray, CMC
City Clerk

APPROVED AS TO FORM:

Mack McKeller
Mack McKeller
City Attorney

STAFF REPORT

City Council, Monday, October 21, 2024

Title: Closing of Burrell Mountain Water Tank Capital Project

Speaker: Dean Luebbe

Prepared by: Dean Luebbe, Assistant City Manager/Finance Director

Approved by: Wilson Hooper, City Manager

Background

The City completed the replacement of a one million gallon water tank on Burrell Mountain in January of 2024. Overall costs of the project were \$3,154,714. The North Carolina Department of Environmental Quality provided \$2,143,538 in grant funding and the City incurred \$947,597 in zero percent twenty year debt. The difference of \$63,579 was received from the Water and Sewer operating fund. The new water tank has an expected life of fifty years.

Fiscal Impact

68%, or \$2,143,538, of the project was grant funded through the North Carolina Department of Environmental Quality. City debt payments on this project are expected to be approximately \$48,000 annually, ending in 2043.

Action

Staff requests Council adopt ordinance as submitted to close the Burrell Mountain Water Tank Capital Project.

Attachments:

1. CPO Closeout - Burrell Mountain Water Tank
2. Burrell Mountain Water Tank - financial summary
3. Ord 2024-24 CPO Amendment - Burrell Mountain Water Tank Project

ORDINANCE NO. 2024-XX

CAPITAL PROJECT ORDINANCE TO CLOSE ORDINANCE
NO. 2021-37 AND 2024-24, BURRELL MOUNTAIN WATER TANK PROJECT

BE IT ORDAINED by the City Council of the City of Brevard, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby closed:

Section 1: In June of 2021, the City of Brevard received funding through the NC Dept of Environmental Quality for the replacement of the Burrell Mountain Water Tank. The funding agreement provided 75% or \$2,143,538 in debt forgiveness and 25% or \$714,512 in twenty year, zero percent debt. The project went over budget and the City requested and received additional debt funding of \$233,085 in March of 2024. Expenses were first recorded in October of 2020, and the project was completed in January of 2024.

Section 2: The project will be closed with actual revenues of \$3,091,135 and actual expenditures of \$3,154,714. Actual and budgeted revenues and expenditures will be reversed on the City financial software, and no further expenditures will be required on the project.

Section 3: The following amounts were appropriated for the project:

Account Number	Account Name	Budget Amount
31-8540-1000	Burrell Mountain Water Tank	\$3,165,211
TOTAL PROJECT APPROPRIATION		\$3,165,211

Section 4: The following revenues were anticipated to be available for project expenses:

Account Number	Account Name	Budget Amount
31-3330-0000	Transfer from Water Fund	\$57,161
31-3970-0420	Burrell Mtn grant and loan	\$3,108,050
TOTAL PROJECT REVENUE		\$3,165,211

Section 5: The Finance Director will maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 6: The Finance Director will maintain a detailed analysis of all revenues and expenses associated with the project since its inception.

Section 9: Copies of this capital project close out shall be furnished to the City Clerk, Finance Director and City Manager.

ADOPTED by the City Council of the City of Brevard, North Carolina, on this 21st day of October, 2024.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon
City Clerk

APPROVED AS TO FORM:

Mack McKeller
City Attorney

**City of Brevard Capital Project - Water and Sewer Capital Project Fund
Burrell Mountain Water Tank**

Original Ordinance	2021-37	2,915,211	8/16/2021
Amendment	2024-24	250,000	6/3/2024

TOTAL 3,165,211

As of June 30, 2024		Budget	Prior Year	Current Year FY24	Total prior plus current
Expenditures					
31-8540-1000	Burrell Mountain Water Tank	3,165,211	1,351,881	1,802,833	3,154,714
Revenues					
31-3330-0000	Transfer from GF	57,161	-	-	-
31-3970-0420	Burrell Mtn debt and loan	3,108,050	1,250,338	1,840,797	3,091,135
	loan forgive	2,143,538	-	-	-
20 year	0% debt	947,597	-	-	-
Total Revenues		3,165,211	1,250,338	1,840,797	3,091,135

Expenditure Detail	Contract Amount	Prior Year Expenses	Current Year Expenditure	Total prior plus current	Amount Remaining on Contract
6883 Brown	548,050	407,070	140,860	547,930	-
NCDEQ	-	57,161	4,662	61,823	-
7262 MB Kahn	2,549,930	887,650	1,650,356	2,538,006	-
S & ME		-	6,955	6,955	-
	3,097,980	1,351,881	1,802,833	3,154,714	-

ORDINANCE NO. 2024-24

CAPITAL PROJECT ORDINANCE TO AMEND ORDINANCE
NO. 2021-37 BURRELL MOUNTAIN WATER TANK PROJECT

BE IT ORDAINED by the City Council of the City of Brevard, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1: The budgeted expenditures and revenues listed under the ordinance 2021-37 will be increased from \$2,915,211 to \$3,165,211.

Section 2: The Project replaced a one million gallon water tank on Burrell Mountain that was over sixty years old. The Project was completed in December of 2023

Section 3: The Project exceeded budget, mainly due to the removal of large amounts of substandard soil that was not anticipated.

Section 3: The following amounts are appropriated for the project:

Account Number	Account Name	Budget Amount
31-8540-1000	Burrell Mountain Water Tank	\$2,915,211
31-8540-1000	Burrell Mountain Water Tank	\$250,000
TOTAL PROJECT APPROPRIATION		\$3,165,211

Section 4: The following revenues are anticipated to be available for project expenses:

Account Number	Account Name	Budget Amount
31-3250-0000	Transfer from Water Fund	\$57,161
31-3970-0420	NCDEQ Loan Forgiveness	\$2,143,538
31-3970-0420	NCDEQ Debt Payable	\$714,512
31-3970-0420	NCDEQ Debt Payable	\$233,085
31-3970-0000	Fund Balance Approp	\$16,915
TOTAL PROJECT REVENUE		\$3,165,211

Section 5: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 6: Funds may be advanced from the General Fund or from any Enterprise Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

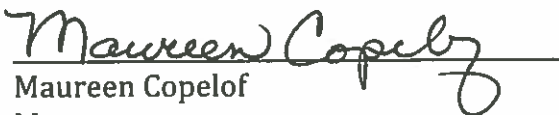
Section 7: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 8: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 9: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Brevard, North Carolina, on this 3rd day of June, 2024.

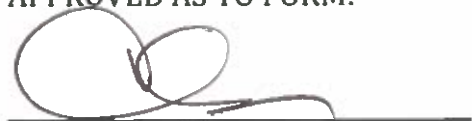



Maureen Copelof
Mayor

ATTEST:


Denise Hodsdon, CMC
City Clerk

APPROVED AS TO FORM:


Mack McKeller
City Attorney

STAFF REPORT

City Council, Monday, October 21, 2024

Title: Authorization for City Manager to sign Deed Granting Highway Right of Way to NCDOT

Speaker: Dean Luebbe

Prepared by: Dean Luebbe, Assistant City Manager/Finance Director

Approved by: Wilson Hooper, City Manager

Background

NCDOT project R-5800 involves the construction of a roundabout at Fortune Cove Road and US Hwy 276/64, near Food Matters. NCDOT has requested the City to sign a deed granting a right of way easement, a permanent utility easement, and a temporary construction easement on city-owned rights-of-way. The parcels measure just under a quarter of an acre, and the City will receive \$25,000 from NCDOT as consideration for the easements. The parcel is currently unused by the City.

Action

Authorize the City Manager to sign the deed for Highway Right of Way at Fortune Cove Road and Highway 276/64.

Attachments:

1. NCDOT - Right of Way deed - Straus Parkway
2. Gencor-TaxMap Straus Parkway
3. Resolution Authorizing City Manager to Execute Deed for Highway Right of Way to NCDOT

Revenue Stamps \$ 50.00

DEED FOR HIGHWAY RIGHT OF WAY

THIS INSTRUMENT DRAWN BY Nathaniel R Clapsaddle CHECKED BY _____

The hereinafter described property ☐ Does ☒ Does not include the primary residence of the Grantor

RETURN TO: Frankie J Dills, Jr., Division R/W Agent, NCDOT
1594 E Main ST
Sylva NC 28779

NORTH CAROLINA
COUNTY OF TRANSYLVANIA
TAX PARCEL _____

TIP/PARCEL NUMBER: R-5800 054
WBS ELEMENT: 44985.2.1
ROUTE: US64 / US276 Fortune Cove RD
to US64BUS N Caldwell ST

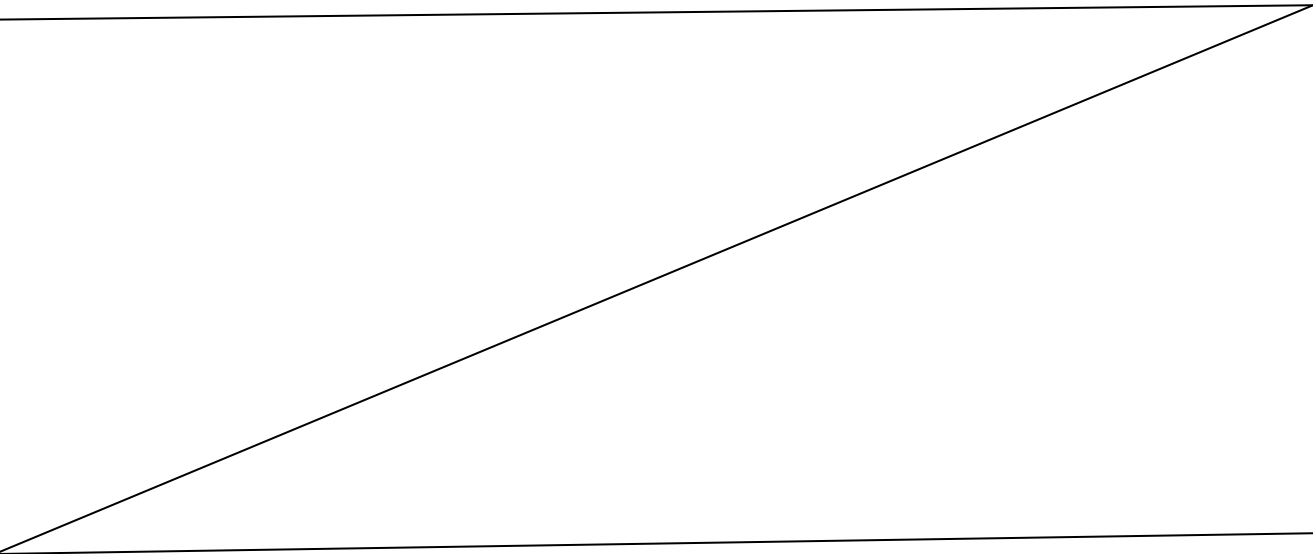
THIS FEE SIMPLE DEED, made and entered into this the _____ day of _____ 20 _____
by and between City of Brevard
95 W Main ST
Brevard NC 28712

hereinafter referred to as GRANTORS, and the Department of Transportation, an agency of the State of North Carolina, 1546 Mail Service Center, Raleigh, NC 27611, hereinafter referred to as the Department;

WITNESSETH

That the GRANTORS, for themselves, their heirs, successors, and assigns, for and in consideration of the sum of \$ 25,000.00 agreed to be paid by the DEPARTMENT to the GRANTORS, do hereby give, grant and convey unto the DEPARTMENT, its successors and assigns, in FEE SIMPLE that certain property located in City of Brevard Township, Transylvania County, North Carolina, which is particularly described as follows:

Point of beginning being N 56^40'15.2" W, 166.396 feet from -L- Sta 74+00 thence to a point on a bearing of N 57^5'56.9" W 61.515 feet thence along a curve 33.454 feet and having a radius of 95.000 feet. The chord of said curve being on a bearing of S 2^20'47.1" E, a distance of 33.282 feet thence to a point on a bearing of S 38^37'9.2" E 61.883 feet thence along a curve 11.585 feet and having a radius of 95.000 feet. The chord of said curve being on a bearing of N 16^42'6.9" E, a distance of 11.578 feet thence along a curve 38.134 feet and having a radius of 145.000 feet. The chord of said curve being on a bearing of N 12^39'40.7" E, a distance of 38.025 feet returning to the point and place of beginning.



IN ADDITION, and for the aforesated consideration, the GRANTORS further hereby convey to the DEPARTMENT, its successors and assigns the following described areas and interests:

Permanent Utility Easement described as follows:

Point of beginning being N 89°48'33.1" W, 116.463 feet from -L- Sta 74+00 thence to a point on a bearing of S 38°37'9.2" E 32.849 feet thence to a point on a bearing of S 88°53'32.7" E 13.311 feet thence to a point on a bearing of N 17°35'44.0" E 70.063 feet thence to a point on a bearing of N 57°5'56.9" W 29.517 feet thence to a point on a bearing of S 27°57'55.8" W 64.418 feet returning to the point and place of beginning.

Said Permanent Utility Easement (PUE) in perpetuity is for the installation and maintenance of utilities, and for the purposes for which the Department of Transportation is authorized by law to subject the same. The Department of Transportation and its agents or assigns shall have the right to construct and maintain in a proper manner in, upon and through said utility easement area(s) a utility line or lines, with all necessary pipes, poles and appurtenances, together with the right at all times to enter said utility easement area(s) for the purpose of inspecting said utility line or lines and making all necessary repairs and alterations thereon; together with the right to cut away and keep clear of said utility line or lines, all trees and other obstructions inside the utility easement area(s) and to cut, fell and remove any and all trees on the premises that are or may become tall enough, in The Department of Transportation and its agents or assigns' opinion, to endanger a line or other facility within the utility easement area(s) ("Danger Trees"). The Department of Transportation and its agents or assigns shall also have the right to access the utility easement area(s) and Danger Trees at any time and from time to time by vehicles, equipment, and pedestrians, provided that such access to the utility easement area(s) and Danger Trees from outside of the utility easement area(s) shall be confined to then-existing streets, roads, and driveways to the extent they provide sufficient access. The Department of Transportation shall also have the right to construct and maintain the cut and/or fill slopes in the above-described permanent utility easement area(s), and the right to use the permanent utility easement area(s) for additional working area during the above-described project. The underlying fee owner(s) retain(s) the right to continue to use the permanent utility easement area(s) in any manner and for any purpose, including but not limited to access and parking, provided that such use does not interfere with or disturb the permanent utility easement or utility installations. The Department of Transportation's acquisition of the permanent utility easement(s), by itself, does not constitute new control of access (C/A), and the subject property shall retain existing abutter's rights (if any) and existing points of ingress and egress (if any) not affected by other takings on the subject property. Furthermore, upon completion and acceptance by the Department of Transportation of the above-described project, utilities or appurtenances within the permanent utility easement(s) shall not be added or modified to i) obstruct the subject property's access point(s), and/or ii) unreasonably interfere with the subject property's parking.

Temporary Construction Easement One described as follows:

Point of beginning being N 64°11'0.1" W, 210.305 feet from -L- Sta 74+00 thence along a curve 33.454 feet and having a radius of 95.000 feet. The chord of said curve being on a bearing of N 2°20'47.1" W, a distance of 33.282 feet thence to a point on a bearing of N 57°5'56.9" W 25.717 feet thence to a point on a bearing of S 5°16'25.2" W 16.643 feet thence to a point on a bearing of S 38°37'9.2" E 39.229 feet returning to the point and place of beginning.

It is understood and agreed that the DEPARTMENT shall have the right to construct and maintain the cut and/or fill slopes in the above-described area(s) until such time that the property owners alter the adjacent lands in such a manner that the lateral support of the cut and/or fill slopes are no longer needed. Any additional construction areas lying beyond the right of way limits and beyond any permanent easement areas will terminate upon completion of the project. The underlying fee owner shall have the right to continue to use the Temporary Easement area(s) in any manner and for any purpose, including but not limited to the use of said area for access, ingress, egress, and parking, that does not, in the determination of the DEPARTMENT, obstruct or materially impair the actual use of the easement area(s) by the DEPARTMENT, its agents, assigns, and contractors.

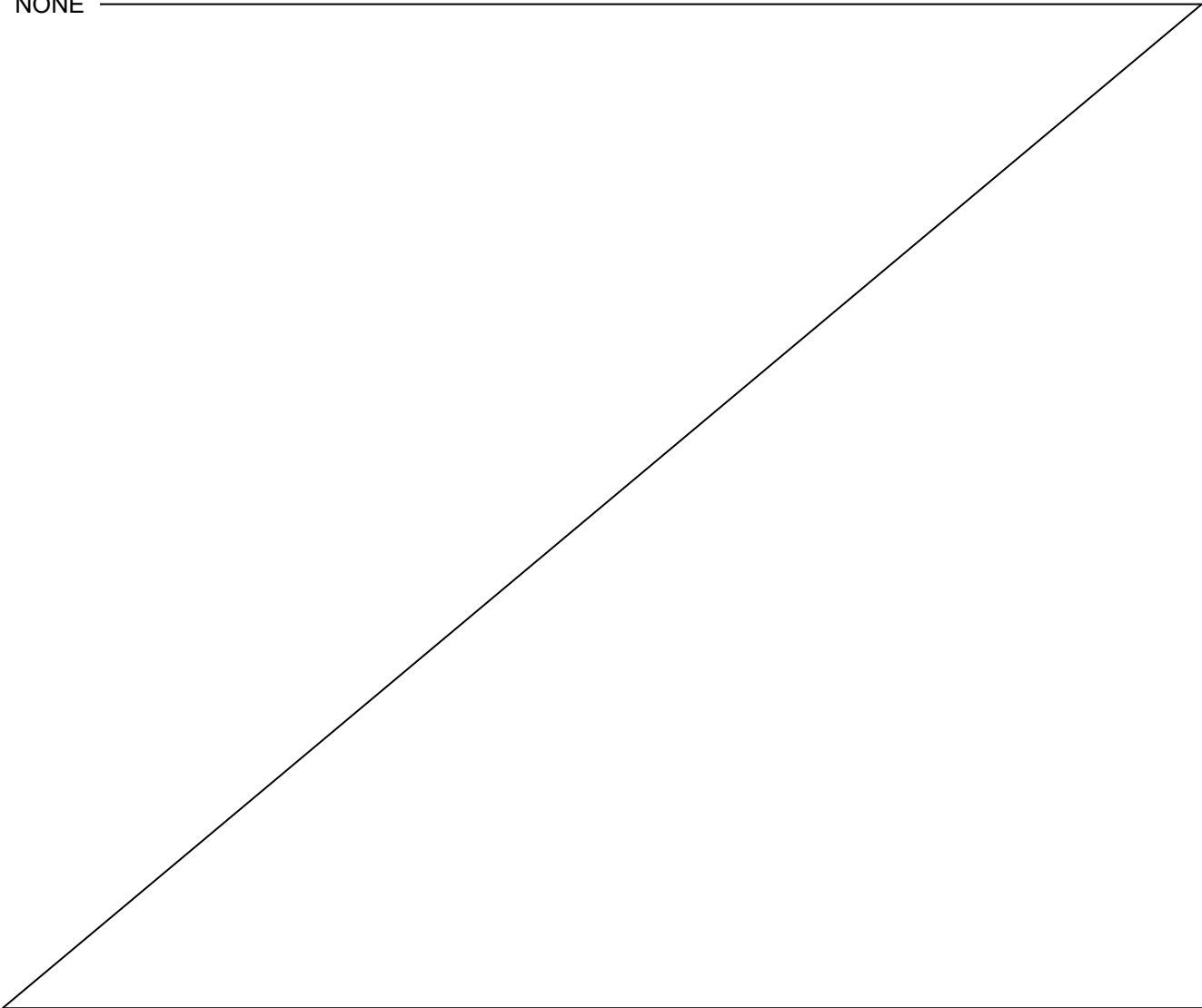
Temporary Construction Easement Two described as follows:

Point of beginning being N 73°59'26.7" W, 156.771 feet from -L- Sta 74+00 thence to a point on a bearing of S 38°37'9.2" E 45.704 feet thence to a point on a bearing of N 5°18'18.9" E 69.149 feet thence to a point on a bearing of N 57°5'56.9" W 27.701 feet thence along a curve 38.134 feet and having a radius of 145.000 feet. The chord of said curve being on a bearing of S 12°39'40.7" W, a distance of 38.025 feet thence along a curve 11.585 feet and having a radius of 95.000 feet. The chord of said curve being on a bearing of S 16°42'6.9" W, a distance of 11.578 feet returning to the point and place of beginning.

It is understood and agreed that the DEPARTMENT shall have the right to construct and maintain the cut and/or fill slopes in the above-described area(s) until such time that the property owners alter the adjacent lands in such a manner that the lateral support of the cut and/or fill slopes are no longer needed. Any additional construction areas lying beyond the right of way limits and beyond any permanent easement areas will terminate upon completion of the project. The underlying fee owner shall have the right to continue to use the Temporary Easement area(s) in any manner and for any purpose, including but not limited to the use of said area for access, ingress, egress, and parking, that does not, in the determination of the DEPARTMENT, obstruct or materially impair the actual use of the easement area(s) by the DEPARTMENT, its agents, assigns, and contractors.

SPECIAL PROVISIONS. This deed is subject to the following provisions only:

NONE _____



The property hereinabove described was acquired by the GRANTORS by instrument(s) recorded in the Transylvania County Registry in Deed Book 537 Page 647 Plat 7 Slide 796 .

The final right of way plans showing the above described right of way are to be certified and recorded in the Office of the Register of Deeds for said County pursuant to N.C.G.S. 136-19.4, reference to which plans is hereby made for purposes of further description and for greater certainty.

The Grantors acknowledge that the project plans for Project # 44985.2.1 have been made available to them. The Grantors further acknowledge that the consideration stated herein is full and just compensation pursuant to Article 9, Chapter 136 of the North Carolina General Statutes for the acquisition of the said interests and areas by the Department of Transportation and for any and all damages to the value of their remaining property; for any and all claims for interest and costs; for any and all damages caused by the acquisition for the construction of Department of Transportation Project # 44985.2.1 , Transylvania County, and for the past and future use of said areas by the Department of Transportation, its successors and assigns for all purposes for which the said Department is authorized by law to subject the same.

TO HAVE AND TO HOLD the aforesaid premises and all privileges and appurtenances thereunto belonging to the DEPARTMENT, its successors and assigns in FEE SIMPLE, or by easement as indicated, for the past, present and future use thereof and for all purposes which the said Department is authorized by law to subject the same.

And the GRANTORS covenant with the DEPARTMENT, that the GRANTORS are seized of the premises in fee simple, have the right to convey the same in fee simple, or by easement as indicated, that the title thereto is marketable and free and clear of all encumbrances, and that the GRANTORS will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is hereby conveyed subject to the following exceptions:
Restrictive covenants and easements of record, government regulations, and the lien of property taxes for the current year.

IN WITNESS WHEREOF, the GRANTORS have hereunto set their hands and seals (or if corporate, has caused the instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors) the day and year first above written.

This instrument does not transfer the herein described interests unless and until this document is accepted by an authorized agent of the Department of Transportation.

City of Brevard

(SEAL) BY: _____

ATTEST: _____

ACCEPTED FOR THE DEPARTMENT OF TRANSPORTATION BY: _____

(Official Seal)	North Carolina, _____ County
	I, _____, a Notary Public for _____ County, North Carolina, certify that
	_____ personally came before me this day and acknowledged that he/she is the CLERK of the CITY OF _____, and that by authority duly given, the foregoing instrument was signed in its name by its CITY MANAGER of the CITY OF _____, sealed with its corporate seal, and attested by _____ as its CITY CLERK.
	Witness my hand and official seal this the _____ day of _____, 20 ____.
	_____ Notary Public My commission expires:



STRAUS PKWY

ASHEVILLE HWY

8586-97-2426-000

2426

253

8586-97-1363-000

8586-97-5

RESOLUTION NO. 2024-XX

**AUTHORIZING CITY MANAGER TO EXECUTE DEED GRANTING
HIGHWAY RIGHT OF WAY TO NCDOT REGARDING PROJECT R-5800**

WHEREAS, R-5800 is a North Carolina Department of Transportation (NCDOT) project to construct a roundabout at Fortune Cove Road and US Hwy 276/64 in the City of Brevard, Transylvania County, North Carolina; and

WHEREAS, NCDOT has requested, for the consideration of \$25,000, that the City grant a deed for a right of way easement, a permanent utility easement, and a temporary construction easement on city-owned rights of way; and

WHEREAS, the parcel measures just under a quarter of an acre and is unused by the City;

WHEREAS, the Brevard City Council received a staff report on this request with maps and other relevant information at its October 21, 2024 City Council meeting.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BREVARD,
NORTH CAROLINA THAT:**

The City Manager (or his designee) is hereby authorized to execute the deed for highway right of way with the North Carolina Department of Transportation for the purposes described in the above referenced staff report.

Approved and adopted this 21st day of October, 2024.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon, CMC
City Clerk

STAFF REPORT

City Council, Monday, October 21, 2024

Title: Resolution Directing Clerk to Investigate Sufficiency of
Petition for Annexation - Mills Ave Properties, LLC / Forest
Hill Drive

Speaker: Aaron Bland

Prepared by: Denise Hodsdon

Approved by: Wilson Hooper, City Manager

Background

A Petition Requesting Voluntary Contiguous Annexation was submitted on September 17, 2024 by Ben Stone of Mills Ave Properties, LLC. The preliminary annexation plat was received on October 17, 2024. The petition requests that four parcels located on Forest Hill Drive be annexed into the City of Brevard. (Tax Property Identification Numbers: 8585-36-0021; 8585-35-0899-000; 8585-35-1747-000; and 8585-35-1676-000).

Discussion

In keeping with NCGS 160A-31(c), City Council is asked to direct the City Clerk to Investigate the Sufficiency of the Petition.

Policy Analysis

In keeping with the City's annexation procedures, the applicant has submitted a Petition, metes and bounds description of the property, a copy of the Warranty Deed, and an annexation plat.

Fiscal Impact

None.

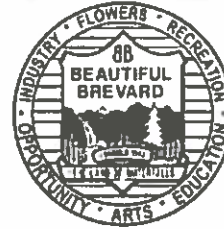
Action

Staff recommends Council adopt the drafted Resolution Directing the City Clerk to Investigate Sufficiency of the submitted Annexation Petition.

Attachments:

1. Petition for Annexation - Mills Ave Properties, LLC
2. Preliminary Annexation Plat
3. Resolution Directing Clerk to Investigate Sufficiency of Petition for Annexation

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA
CITY OF BREVARD



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

Date: 9/13/2024

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): 8585-36-0021-000,
8585-35-0899-000, 8585-35-1747-000 - 8585-35-1676-000

Street Address: LOTS: TR-2A, TR-2B, TR-2C, + TR-2D

(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 ☐
(Vested rights are rights belonging completely and unconditionally to a person which cannot be impaired or taken away by another party.)

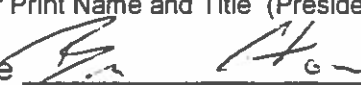
Property Owners Contact Information (If there are more than three property owners, provide their names, contact information and signatures upon a separate and attached sheet.)

a. Name _____
Address _____
Telephone _____ Email _____
Signature _____

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

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

Property Ownership by Corporation or LLC: (If there are more than three principals or managing members then provide their names, contact information and signatures upon a separate and attached sheet.)

a. Name MILLS AVE PROPERTIES LLC
Address 86 W. MORGAN ST.
BREVARD, NC 28712
Telephone 828 553 3565 Email Benjamin.steylestone@gmail.com
By: BEN STONE
Type or Print Name and Title (President / Managing Member)
Signature 

b. Name _____
Address _____

Telephone _____ Email _____

By: _____
Type or Print Name and Title (President / Managing Member)

Signature _____

c. Name _____
Address _____

Telephone _____ Email _____

By: _____
Type or Print Name and Title (President / Managing Member)

Signature _____

AGENT:

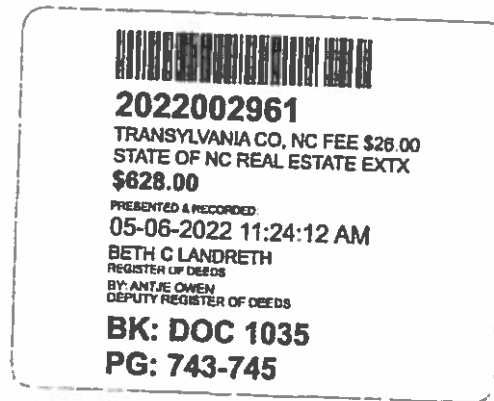
Name: _____

Address: _____

Telephone: _____ Email _____

Petition along with a copy of the property Deed, Metes and Bounds description (Attachment A), Map / Survey (Attachment B) and cash/credit or check in the amount of \$500 made payable to the City of Brevard is to be returned to:

Denise Hodsdon, City Clerk
City of Brevard
95 West Main St., Brevard, NC 28712



NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$628.00

Return after recording to: Donald E. Jordan

Brief description for the Index: Tracts 2A, 2B, 2C & 2D, Brevard Township

This Deed was prepared by: Donald E. Jordan, Attorney at Law

This property does not include the primary residence of Grantor

SP 5-622

This DEED is made this 4th day of May, 2022, by and between:

GRANTOR: **THOMAS WEAVER and
LINDA M. WEAVER,
Husband and Wife**
Grantor's Address: 83 Buena Vista Drive, Brevard, NC 28712

GRANTEE: **MILLS AVE PROPERTIES, LLC,
a North Carolina limited liability company**
Grantee's Address: 86 West Morgan Street, Brevard, NC 28712

The designation Grantor and Grantee in this Deed shall include the parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

The Grantor, for a valuable consideration paid by the Grantee (the receipt of which is acknowledged) grants, bargains, sells and conveys to the Grantee in fee simple, all of the lot or parcel of land located in Brevard Township, Transylvania County, North Carolina, and as is described in the attached Exhibit A. This is a portion of the same property acquired by Grantor by Deeds recorded in Document Book 255, Page 215 and Document Book 255, Page 218, Transylvania County Registry. This conveyance is made subject to easements and rights of way of record, to any covenants of record, and to real property taxes for the current year.

THIS CONVEYANCE IS MADE FOR THE GRANTEE TO HAVE AND TO HOLD the Property and all privileges and appurtenances belonging to the Property in fee simple.

The Grantor covenants with the Grantee that Grantor is seized of the Property in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons, subject only to the stated exceptions.

Grantor is signing this Deed as of the date specified above.


Thomas Weaver

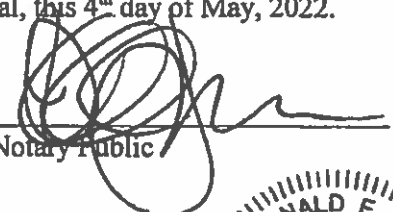

Linda M. Weaver

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, Donald E. Jordan, a Notary Public of the specified County and State, certify that Thomas Weaver and Linda M. Weaver personally appeared before me this day and acknowledged the voluntary execution of this Deed.

Witness my signature and official stamp or seal, this 4th day of May, 2022.

My commission expires: August 30, 2024


Notary Public

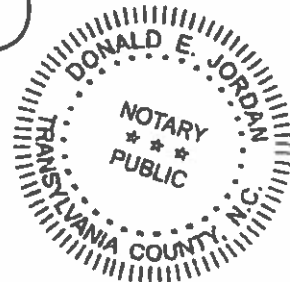


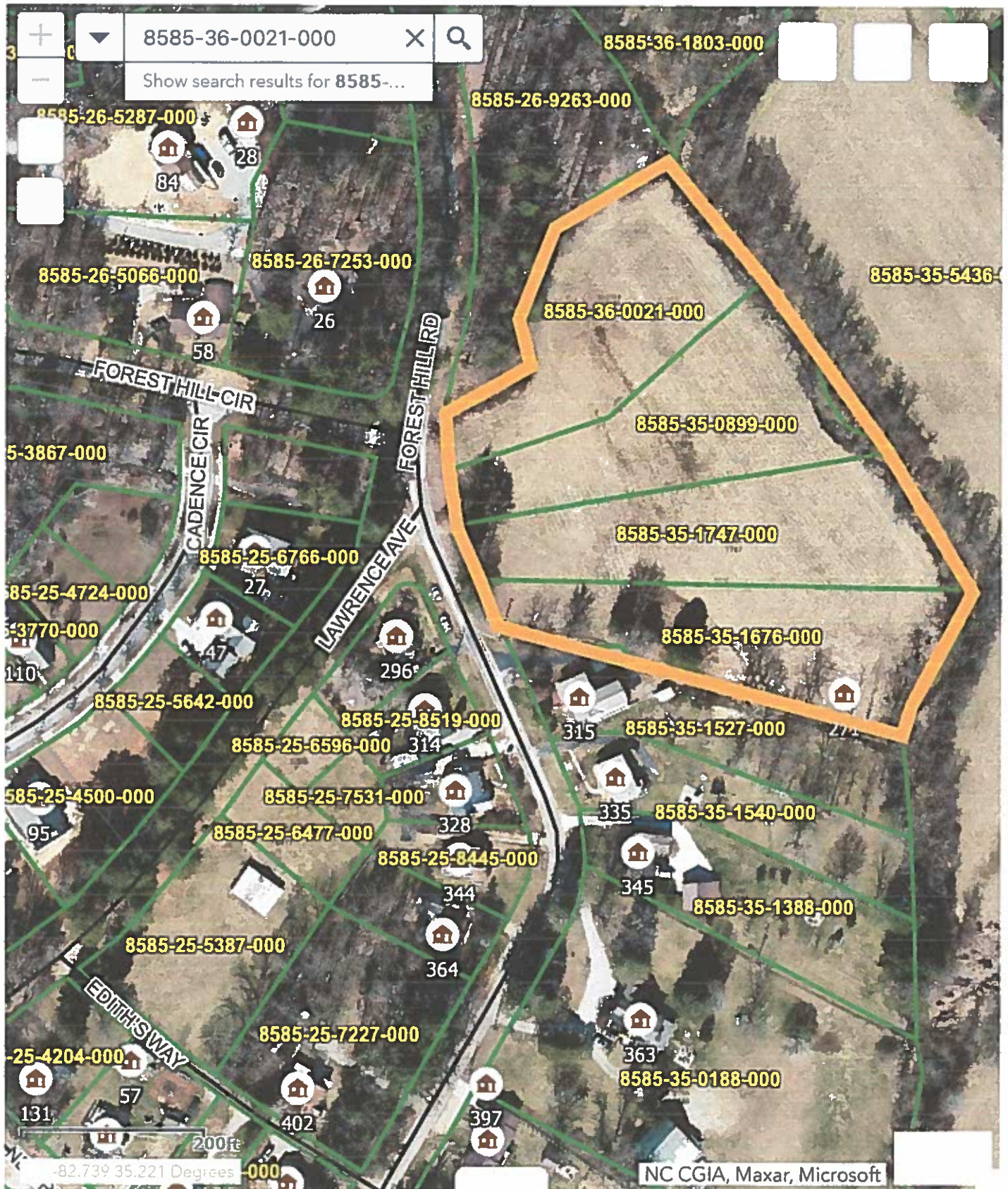
EXHIBIT A - LEGAL DESCRIPTION

All of Tracts 2A, 2B, 2C and 2D as shown on the plat of survey, dated April 27, 2022, prepared by Carolina Mountain Surveying, for Thomas and Linda M. Weaver, recorded in Plat File 22, Slide 158, Records of Plats for Transylvania County, in the office of the Register of Deeds, Transylvania County, North Carolina.

Together with and subject to all rights of way, easements and restrictions of record.



Tax Administration Portal



All rights reserved

CITY ANNEXATION LEGAL DESCRIPTION
FOR TRACTS 2A-2D ON FOREST HILL ROAD
PLAT FILE 22, SLIDE 158

Beginning at a broken concrete monument having North Carolina NAD 83/86 grid coordinates of North: 555675.23 East: 882903.55; said monument standing S 36°49'51" E a distance of 1,328.41 from NCGS MONUMNET GEORGE which has North Carolina NAD 83/86 grid coordinates of North: 556738.54 East: 882107.07 and 6.2' away from an existing utility pole in the right of way for Forest Hill Road;

thence N 72°35'30" W a distance of 9.48' to a calculated point on the old 45' right of way;

thence N 22°22'36" W a distance of 58.85' to a calculated point on the old 45' right of way;

thence N 22°22'36" W a distance of 30.91' to a calculated point on the old 45' right of way;

thence with a curve turning to the right with an arc length of 27.95', with a radius of 289.00', with a chord bearing of N 19°36'24" W, with a chord length of 27.93', to a calculated point on the old 45' right of way;

thence with a compound curve turning to the right with an arc length of 58.85', with a radius of 289.00', with a chord bearing of N 11°00'10" W, with a chord length of 58.75', to a calculated point on the old 45' right of way;

thence with a compound curve turning to the right with an arc length of 58.87', with a radius of 289.00', with a chord bearing of N 00°39'58" E, with a chord length of 58.76', to a calculated point on the old 45' right of way;

thence leaving the old right of way N 42°42'28" E a distance of 18.15' to a point in the center of a ditch;

thence down and with the center of a ditch N 70°17'08" E a distance of 32.99' to a point in the center of the ditch;

thence N 65°22'33" E a distance of 44.58' to a point in the center of a ditch;

thence N 39°05'26" E a distance of 19.33' to a point in the center of a ditch;

thence N 13°02'07" W a distance of 42.04' to a point in the center of a ditch;

thence N 15°38'54" E a distance of 60.58' to a point in the center of a ditch;

thence N 27°30'15" E a distance of 27.48' to a point in the center of a ditch;

thence N 46°24'44" E a distance of 34.48' to a point in the center of a ditch;

thence N 52°18'45" E a distance of 44.06' to a point in the center of a ditch;

thence N 63°35'23" E a distance of 24.90' to a point in the center of a ditch;

thence N 68°35'48" E a distance of 34.51' to a point in the center of a ditch;

thence N 82°42'23" E a distance of 18.77' to a point in the center of a ditch;

thence N 59°06'04" E a distance of 10.91' to a point where the ditch meets the center of Brushy Creek;

thence down and with the center of Brushy Creek S 31°45'09" E a distance of 62.74' to a point in the center of Brushy Creek;

thence S 36°59'42" E a distance of 95.95' to a point in the center of Brushy Creek;

thence S 36°59'42" E a distance of 76.42' to a point in the center of Brushy Creek;

thence S 11°00'05" E a distance of 45.80' to a point in the center of Brushy Creek;

thence S 19°22'35" E a distance of 32.79' to a point in the center of Brushy Creek;

thence S 38°07'26" E a distance of 24.16' to a point in the center of Brushy Creek;

thence S 58°35'26" E a distance of 37.39' to a point in the center of Brushy Creek;

thence S 38°46'28" E a distance of 17.91' to a point in the center of Brushy Creek;

thence S 38°46'28" E a distance of 15.80' to a point in the center of Brushy Creek;

thence S 28°10'33" E a distance of 121.25' to a point in the center of Brushy Creek;

thence S 22°12'32" E a distance of 22.95' to a point in the center of Brushy Creek;

thence S 09°32'28" E a distance of 3.35' to a point in the center of Brushy Creek;

thence S 09°32'28" E a distance of 16.33' to a point in the center of Brushy Creek;

thence S 18°24'11" W a distance of 35.66' to a point in the center of Brushy Creek;

thence S 33°58'27" W a distance of 65.28' to a point in the center of Brushy Creek;

thence S 44°26'22" W a distance of 31.27' to a point in the center of Brushy Creek;

thence S 14°19'46" W a distance of 29.38' to a point in the center of Brushy Creek;

thence leaving the center of Brushy Creek N 77°32'22" W a distance of 21.02' to a point in the center of a ditch;

thence N 70°38'59" W a distance of 156.06' to a point in the center of a ditch;

thence N 77°40'10" W a distance of 71.18' to a 5/8" rebar;

thence N 72°39'09" W a distance of 29.26' to a 5/8" rebar;

thence N 46°48'46" W a distance of 41.05' to a 5/8" rebar;

thence S 89°46'32" W a distance of 60.26' to 5/8" rebar;

thence N 72°47'04" W a distance of 28.12' to a 5/8" rebar;

thence N 72°50'41" W a distance of 30.42' to a broken concrete monument;

which is the place and point of beginning and containing Tracts 2A, 2B, 2C and 2D as shown on Plat File 22, Slide 158, and having an area of 4.640 acres

CITY OF BREVARD
CASH RECEIPT

Receipt No: 686981
Date: 10/17/2024
Time: 11:15:44AM

Received From:
MILLS AVE PROP

Received: 500.00

For
ZONING ADMIN 500.00
CITY ANNEX FOREST HILL-S

Check 500.00
1090
RECEIVED BY WINDOW

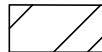
LEGEND

P.F., SL. PLAT FILE, SLIDE
PIN TAX PARCEL IDENTIFICATION NUMBER
NCGS NORTH CAROLINA GRID SYSTEM
NAD NORTH AMERICAN DATUM
FCM FOUND CONCRETE MONUMENT
FR FOUND REBAR
NTS NOT TO SCALE
C/L CENTERLINE
R/W RIGHT OF WAY
CP CALCULATED POINT
H/W HIS WIFE
O/A OVERALL
DOC. BK., PG. DOCUMENT BOOK, PAGE
SR/POL SET REBAR/POINT ON LINE
S.R. SECONDARY ROAD

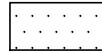
Ⓟ UTILITY POLE



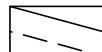
ASPHALT



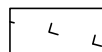
FLOODWAY



FLOOD ZONE AX



FLOOD ZONE AE



ANNEX AREA

--- ADJOINING LINES NOT SURVEYED

--- RIGHT OF WAY

--- EXISTING LOT LINES 2A-2D

ANNEX PARCEL
CALL TABLE

LINE	BEARING	DISTANCE
A1	N42°42'28"E	18.15'
A2	N70°17'08"E	32.99'
A3	N65°22'33"E	44.58'
A4	N39°05'26"E	19.33'
A5	N13°02'07"W	42.04'
A6	N15°38'54"E	60.58'
A7	N27°30'15"E	27.48'
A8	N46°24'44"E	34.48'
A9	N52°18'45"E	44.06'
A10	N63°35'23"E	24.90'
A11	N68°35'48"E	34.51'
A12	N82°42'23"E	18.77'
A13	N59°06'04"E	10.91'
A14	S31°45'09"E	62.74'
A15	S11°00'05"E	45.80'
A16	S19°22'35"E	32.79'
A17	S38°07'26"E	24.16'
A18	S58°35'26"E	37.39'
A19	S38°46'28"E	17.91'
A20	S38°46'28"E	15.80'
A21	S22°12'32"E	22.95'
A22	S09°32'28"E	3.35'
A23	S09°32'28"E	16.33'
A24	S18°24'11"W	35.66'
A25	S33°58'27"W	65.28'
A26	S44°26'22"W	31.27'
A27	S14°19'46"W	29.38'
A28	N77°32'22"W	21.02'
A29	N77°40'10"W	71.18'
A30	N72°39'09"W	29.26'
A31	N46°48'46"W	41.05'
A32	S89°46'32"W	60.26'
A33	N72°47'04"W	28.12'
A34	N72°50'41"W	30.42'
A35	S72°35'30"E	9.48'

ANNEX PARCEL CURVE TABLE

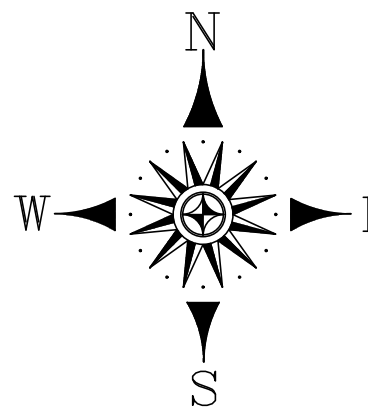
CURVE	CHORD BEARING	CHORD LENGTH	RADIUS	ARC LENGTH	DELTA ANGLE
AC1	N19°36'24"W	27.93'	289.00'	27.95'	5°32'25"
AC2	N11°00'10"W	58.75'	289.00'	58.85'	11°40'02"
AC3	N00°39'58"E	58.76'	289.00'	58.87'	11°40'14"

OWNER CERTIFICATION-ANNEXATION

I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON, AND THAT I (WE) HEREBY ADOPT THIS PLAT OF ANNEXATION WITH MY (OUR) FREE CONSENT

DATE

OWNER(S)



NCGS NORTH (NAD 83/86)
(P.F. 22, SL. 158)

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, _____, REVIEW OFFICER OF TRANSYLVANIA COUNTY, CITY OF BREVARD, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER

DATE

CITY OF BREVARD-ANNEXATION

I HEREBY CERTIFY THAT THIS PLAT FOR ANNEXATION HAS FOLLOWED ALL REQUIREMENTS AND PROCEDURES AND A PUBLIC HEARING WAS HELD BY THE CITY OF BREVARD TO ANNEX THE PROPERTY HEREIN DESCRIBED. THE CITY OF BREVARD ADOPTED ORDINANCE NUMBER _____ TO ANNEX THE PROPERTY DESCRIBED HEREIN ON _____ WITH THE EFFECTIVE DATE OF ANNEXATION ON _____

CITY CLERK

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, _____, A NOTARY PUBLIC OF SAID STATE AND COUNTY, DO HEREBY CERTIFY THAT

PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE DUE EXECUTION OF THE FOREGOING INSTRUMENT.

WITNESS MY HAND AND NOTARIAL SEAL, THIS THE _____ DAY OF _____, 20_____.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

NOTES:

- 1) PARCELS SHOWN HEREON ARE IDENTIFIED BY THEIR TAX PARCEL IDENTIFICATION NUMBERS. PROPERTY ORIGINALLY SURVEYED IN JUNE OF 2022. THIS PLAT IS DEFINING THE PROPERTY THAT IS BEING ANNEXED INTO CITY LIMITS. LOTS 2A, 2B, 2C, AND 2D ARE BEING ANNEXED INTO THE CITY LIMITS. TRACT 1 IS NOT BEING ANNEXED INTO THE CITY LIMITS. NOT ALL IMPROVEMENTS ARE SHOWN HEREON. DISTANCES SHOWN ARE HORIZONTAL GROUND UNLESS NOTED OTHERWISE. THE CREEK LOCATION WAS NOT RE-SURVEYED FROM THE ORIGINAL SURVEY/PLAT. THE PROPERTY LINE BY DEED IS THE CENTERLINE OF BRUSHY (TUCKER'S or NICHOLSON) CREEK.
- 2) AREA OF
TRACT 2A = 1.192 ACRES
TRACT 2B = 1.134 ACRES
TRACT 2C = 1.146 ACRES
TRACT 2D = 1.168 ACRES
TOTAL PLATTED AREA = 4.640 ACRES
AREA CALCULATED BY COORDINATE COMPUTATION
- 3) THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE SEARCH. THUS THIS PROPERTY IS SUBJECT TO ALL RIGHT-OF-WAYS, COVENANTS, EASEMENTS AND RESTRICTIONS OF RECORD BOTH SHOWN AND NOT SHOWN HEREON
- 4) SEE P.F. 22, SL. 158 FOR DETAILED INFORMATION ON RIGHT OF WAYS, NCGS TIE, AND CALLS AND DESCRIPTIONS FOR THE INTERNAL LINES.
- 5) DEED REFERENCE: DOC. BK. 1035, PG. 743
- 6) PLAT REFERENCE: P.F. 22, SL. 158
- 7) TAX PINS: 2A 8585-36-0021
2B 8585-35-0899
2C 8585-35-1747
2D 8585-35-1676
- 8) THIS PROPERTY IS CURRENTLY ZONED GENERAL RESIDENTIAL 4.
- 9) POINTS ALONG THE C/L OF BRUSHY CREEK AND THE C/L OF THE DITCH ARE CALCULATED AND WERE NOT SET.
- 10) FLOODWAY, FLOOD ZONES, AND PORTIONS OF THE ROADWAY WERE DOWNLOADED FROM FRIS.NC.GOV FROM FLOOD INSURANCE RATE MAP 3700858500J; EFFECTIVE DATE OCTOBER 2, 2009.

G.S. 47-30 f(11) d.

I, MICHAEL A. PFOUTZ Sr., PROFESSIONAL LAND SURVEYOR, CERTIFY THAT THIS SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION
I, MICHAEL A. PFOUTZ, Sr., PROFESSIONAL LAND SURVEYOR, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL FIELD SURVEY PERFORMED UNDER MY DIRECTION FROM INFORMATION IN P.F. 22, SL. 158; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION REFERENCED HEREON; THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY AS CALCULATED BY LATITUDES AND DEPARTURES BEFORE ADJUSTMENT IS NOT LESS THAN 1 : 10,000 ; AND THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

PRELIMINARY PLAT
NOT FOR RECORDATION,
CONVEYANCES, OR SALES.

ORDINANCE No. _____

PROPERTY SITUATE IN
CITY OF BREVARD, BREVARD TOWNSHIP
TRANSYLVANIA COUNTY, NORTH CAROLINA
OWNERS OF RECORD: MILLS AVE PROPERTIES LLC

ANNEXATION PLAT

PREPARED FOR
MILLS AVE PROPERTIES LLC

DATE

SEPTEMBER 27, 2024

FIELD RECORDS

DATA COLLECTOR

DRAWING

CMS24053-ANNEX

COORD. FILE

CMS18084.CRD

PROJECT NUMBER

CMS24053

60 0 60 120 180

GRAPHIC SCALE - FEET WRITTEN SCALE: 1"=60'

PREPARED BY
CAROLINA MOUNTAIN SURVEYING

FIRM LICENSE NUMBER #F-1205
137 NORTH BROAD STREET; SUITE 2
BREVARD, NORTH CAROLINA 28712
(828) 883-2670
CMSURVEYING@COMPORIUM.NET

RESOLUTION NO. 2024-XX

A RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE THE SUFFICIENCY OF A PETITION FOR AN ANNEXATION PURSUANT TO NCGS 160A-31, AS AMENDED

WHEREAS, a petition was received on September 17, 2024, requesting the annexation of a contiguous area described in said Petition as the Mills Ave Properties, LLC property located on Forest Hill Drive, Brevard, NC 28712, consisting of 4.64 acres, more or less, be annexed into the City of Brevard. (Tax Property Identification Numbers: 8585-36-0021; 8585-35-0899-000; 8585-35-1747-000; and 8585-35-1676-000).

Metes and Bounds Property Description:

Beginning at a broken concrete monument having North Carolina NAD 83/86 grid coordinates of North: 555675.23 East: 882903.55; said monument standing S 36°49'51" E a distance of 1,328.41 from NCGS MONUMNET GEORGE which has North Carolina NAD 83/86 grid coordinates of North: 556738.54 East: 882107.07 and 6.2' away from an existing utility pole in the right of way for Forest Hill Road;

thence N 72°35'30" W a distance of 9.48' to a calculated point on the old 45' right of way;

thence N 22°22'36" W a distance of 58.85' to a calculated point on the old 45' right of way;

thence N 22°22'36" W a distance of 30.91' to a calculated point on the old 45' right of way;

thence with a curve turning to the right with an arc length of 27.95', with a radius of 289.00', with a chord bearing of N 19°36'24" W, with a chord length of 27.93', to a calculated point on the old 45' right of way;

thence with a compound curve turning to the right with an arc length of 58.85', with a radius of 289.00', with a chord bearing of N 11°00'10" W, with a chord length of 58.75', to a calculated point on the old 45' right of way;

thence with a compound curve turning to the right with an arc length of 58.87', with a radius of 289.00', with a chord bearing of N 00°39'58" E, with a chord length of 58.76', to a calculated point on the old 45' right of way;

thence leaving the old right of way N 42°42'28" E a distance of 18.15' to a point in the center of a ditch;

thence down and with the center of a ditch N 70°17'08" E a distance of 32.99' to a point in the center of the ditch;

thence N 65°22'33" E a distance of 44.58' to a point in the center of a ditch;

thence N 39°05'26" E a distance of 19.33' to a point in the center of a ditch;

thence N 13°02'07" W a distance of 42.04' to a point in the center of a ditch;

thence N 15°38'54" E a distance of 60.58' to a point in the center of a ditch;

thence N 27°30'15" E a distance of 27.48' to a point in the center of a ditch;

thence N 46°24'44" E a distance of 34.48' to a point in the center of a ditch;

thence N 52°18'45" E a distance of 44.06' to a point in the center of a ditch;

thence N 63°35'23" E a distance of 24.90' to a point in the center of a ditch;

thence N 68°35'48" E a distance of 34.51' to a point in the center of a ditch;

thence N 82°42'23" E a distance of 18.77' to a point in the center of a ditch;

thence N 59°06'04" E a distance of 10.91' to a point where the ditch meets the center of Brushy Creek;

thence down and with the center of Brushy Creek S 31°45'09" E a distance of 62.74' to a point in the center of Brushy Creek;

thence S 36°59'42" E a distance of 95.95' to a point in the center of Brushy Creek;

thence S 36°59'42" E a distance of 76.42' to a point in the center of Brushy Creek;

thence S 11°00'05" E a distance of 45.80' to a point in the center of Brushy Creek;

thence S 19°22'35" E a distance of 32.79' to a point in the center of Brushy Creek;

thence S 38°07'26" E a distance of 24.16' to a point in the center of Brushy Creek;

thence S 58°35'26" E a distance of 37.39' to a point in the center of Brushy Creek;

thence S 38°46'28" E a distance of 17.91' to a point in the center of Brushy Creek;

thence S 38°46'28" E a distance of 15.80' to a point in the center of Brushy Creek;

thence S 28°10'33" E a distance of 121.25' to a point in the center of Brushy Creek;

thence S 22°12'32" E a distance of 22.95' to a point in the center of Brushy Creek;

thence S 09°32'28" E a distance of 3.35' to a point in the center of Brushy Creek;

thence S 09°32'28" E a distance of 16.33' to a point in the center of Brushy Creek;

thence S 18°24'11" W a distance of 35.66' to a point in the center of Brushy Creek;

thence S 33°58'27" W a distance of 65.28' to a point in the center of Brushy Creek;

thence S 44°26'22" W a distance of 31.27' to a point in the center of Brushy Creek;

thence S 14°19'46" W a distance of 29.38' to a point in the center of Brushy Creek;

thence leaving the center of Brushy Creek N 77°32'22" W a distance of 21.02' to a point in the center of a ditch;

thence N 70°38'59" W a distance of 156.06' to a point in the center of a ditch;

thence N 77°40'10" W a distance of 71.18' to a 5/8" rebar;

thence N 72°39'09" W a distance of 29.26' to a 5/8" rebar;

thence N 46°48'46" W a distance of 41.05' to a 5/8" rebar;

thence S 89°46'32" W a distance of 60.26' to 5/8" rebar;

thence N 72°47'04" W a distance of 28.12' to a 5/8" rebar;

thence N 72°50'41" W a distance of 30.42' to a broken concrete monument;

which is the place and point of beginning and containing Tracts 2A, 2B, 2C and 2D as shown on Plat File 22, Slide 158, and having an area of 4.640 acres

WHEREAS, said Petition has been received by the City Council of the City of Brevard, North Carolina; and

WHEREAS, NCGS 160A-31, as amended, provides that the sufficiency of the Petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Brevard deems it advisable to proceed in response to this request for annexation.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

Section 1. The City Clerk is hereby directed to investigate the sufficiency of the above-described Petition and to certify as soon as possible to the City Council the result of her investigation.

Section 2. This Resolution shall become effective upon its adoption and approval.

Adopted and approved this the 21st day of October, 2024.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon, CMC
City Clerk

STAFF REPORT

City Council, Monday, October 21, 2024

Title: Ordinance - Voluntary Contiguous Annexation - Jason Shepherd / 35 Verdery Avenue

Speaker: Emily Brewer, Senior Planner

Prepared by: Aaron Bland, Asst Planning Director

Approved by: Wilson Hooper, City Manager

Background

In July Jason Shepherd ("Applicant") submitted a request for voluntary continuous annexation for property located at 35 Verdery Avenue, further identified by PIN 8585-28-6101-000. The Planning Board considered this request at their September 24th meeting and unanimously recommended approval.

Discussion

The parcel is zoned GR8 and is partially inside the city's corporate limits already and the petition is to annex the remainder of the parcel. As the lot is currently vacant, the financial and service delivery impacts are estimated to be minimal.



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.

Action

Council is asked to take one of the following options:

- 1.) Approve the annexation as requested

- 2.) Deny the annexation
- 3.) Table the matter for further consideration

Attachments:

1. Petition for Annexation
2. Annexation Plat
3. Metes and Bounds Description
4. Ordinance Extending Corporate Limits - Jason Shepherd

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA
CITY OF BREVARD

RECEIVED
7/1/2024
Alfordson



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

Date: 6/25/24

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): 8585-28-6101-000

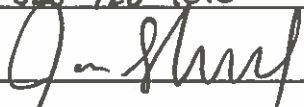
Street Address: 35 Verdery Ave. Brevard NC 28712

(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 ☐
(Vested rights are rights belonging completely and unconditionally to a person which cannot be impaired or taken away by another party.)

Property Owners Contact Information (If there are more than three property owners, provide their names, contact information and signatures upon a separate and attached sheet.)

a. Name Jason Shepherd
Address 301 Carolina Ave.
Brevard NC 28712
Telephone 828-423-9010 Email jshepherd.nc@gmail.com
Signature 

b. Name Merideth Saine
Address 301 Carolina Ave
Brevard NC 28712
Telephone 828-329-4003 Email merideth.saine@gmail.com
Signature 

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

Property Ownership by Corporation or LLC: (If there are more than three principals or managing members then provide their names, contact information and signatures upon a separate and attached sheet.)

a. Name _____
Address _____
Telephone _____ Email _____
By: _____
Type or Print Name and Title (President / Managing Member)
Signature _____

b. Name _____
Address _____

Telephone _____ Email _____

By: _____
Type or Print Name and Title (President / Managing Member)

Signature _____

c. Name _____
Address _____

Telephone _____ Email _____

By: _____
Type or Print Name and Title (President / Managing Member)

Signature _____

AGENT:

Name: _____

Address: _____

Telephone: _____ Email _____

Petition along with a copy of the property Deed, Metes and Bounds description (Attachment A), Map / Survey (Attachment B) and cash/credit or check in the amount of \$500 made payable to the City of Brevard is to be returned to:

Denise Hodsdon, City Clerk
City of Brevard
95 West Main St., Brevard, NC 28712

**2016002524**

TRANSYLVANIA CO. NC FEE \$26.00

STATE OF NC REAL ESTATE EXT

\$2.00

PRESENTED & RECORDED

06-06-2016 03:51:11 PM

CINDY M OWNBEY

REGISTER OF DEEDS

BY D REE M POWELL

DEPUTY REGISTER OF DEEDS

BK: DOC 765**PG: 452-455****NORTH CAROLINA GENERAL WARRANTY DEED****Excise Tax: \$ 2.00**Parcel Identifier No. _____ Verified by Transylvania County on the 6 day of June, 2016
By: _____Mail/Box to: DONALD E. JORDAN, 4 W. Main Street, Brevard, NC 28712This instrument was prepared by: GAYLE E. RAMSEY (No Title Search Performed by the Preparer)

Brief description for the Index: _____

THIS DEED made this 1st day of June, 2016, by and between**GRANTOR**MARTHA SHEPPARD HIPP and husband,
RAYMOND D. HIPP, and
NORMA COLLINS HIPP and husband,
EVERETT L. HIPP304 Carolina Avenue
Brevard, NC 28712**GRANTEE**

JASON M. SHEPHERD

301 Carolina Avenue
Brevard, NC 28712

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Brevard, Brevard Township, Transylvania County, North Carolina and more particularly described as follows:

BEING ALL OF THE SAME LAND DESCRIBED ON THE PAGE WHICH IS ATTACHED HERETO, DESIGNATED AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

All or a portion of the property herein conveyed _____ does X does not include the primary residence of the Grantor.

A map showing the above described property is recorded in Plat File _____, Slide _____.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Easements, restrictions and rights of way of record, and those matters set forth in Exhibit "A" attached hereto.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

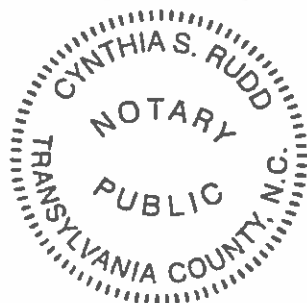
Norma Collins Hipp (SEAL)
NORMA COLLINS HIPP

Everett L. Hipp (SEAL)
EVERETT L. HIPP

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA.

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: NORMA COLLINS HIPP and EVERETT L. HIPP

WITNESS my hand and Notarial Seal, this the 6th day of June, 2016.



Cynthia S. Rudd
Signature of Notary Public

Cynthia S. Rudd
Printed or typed name of Notary Public

My commission expires: 6/23/2020

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Easements, restrictions and rights of way of record, and those matters set forth in Exhibit "A" attached hereto.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

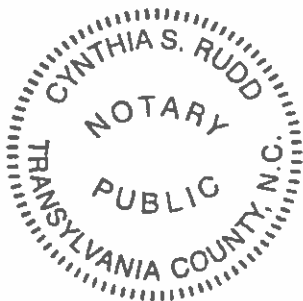
 (SEAL)
MARTHA SHEPPARD HIPP

 (SEAL)
RAYMOND D. HIPP

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA.

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: MARTHA SHEPPARD HIPP and RAYMOND D. HIPP

WITNESS my hand and Notarial Seal, this the 6th day of June, 2016.




Signature of Notary Public

Cynthia S. Rudd

Printed or typed name of Notary Public

My commission expires: 6/23/2020

EXHIBIT "A" TO A DEED FROM HIPPI TO SHEPHERD

Being all of the same land described in a deed from Betty M. Sitton, widow of B. J. Sitton, Sr., et al, to Lawrence Hipp and wife, Elizabeth Hipp, dated April 14, 1957, and recorded in the office of the Register of Deeds for Transylvania County in Deed Book 119, page 52, said land being more particularly described in said deed as follows:

Being all of Lots Numbered 39, 40, 41, and 42 of the Brevard Park Subdivision, Transylvania County, North Carolina, as shown on plat of said subdivision recorded in the Office of the Register of Deeds for Transylvania County in Map Book 1, at page 52, reference to which plat is hereby made for a full and particular description of said lots by metes and bounds.

Being a part of Tract I as described in a deed from Elizabeth K. Hipp (Widow) to Martha Sheppard Hipp, Norma Collins Hipp and Elizabeth K. Hipp dated June 11, 2004, and recorded in the office of the Register of Deeds for Transylvania County in Document Book 245, page 49.

This parcel is also shown on a plat recorded in Plat File 16, Slide 749, Records of Plats for Transylvania County.

cindy/exhibits/hipp to shepherd \$1000

2016002521
TRADESTILLMAN CO NC 416 627 0000
06-06-2016 03:48:09 PM
CPO# 18-DIV-657
Bk: 18-DIV-657
Pg: 748-749
BK: PF 16
PG: 748-749

ERNEST DUNCAN
D.B.320 PG.140

PLAT OF SURVEY FOR
JASON M. SHEPHERD
BEING THE PROPERTIES DESCRIBED IN
D.B. 245, PG. 40
CITY OF BREVARD
BREVARD TOWNSHIP
TRANSYLVANIA COUNTY
NORTH CAROLINA
MAY 16th, 2016
SCALE 1" = 30'

Plaf-fil 16, Slide 749

1. STANDARD WAGONER, a PROFESSIONAL LAND SURVEYOR, certifies that this plat was drawn under my supervision from an actual survey made under my supervision. Page 30204. }
(Detailed description recorded in Book 148, }
that the boundaries and surveyed are clearly indicated }
therein from information found in Book 48, Page 30204. }
That the ratio of precision as calculated is 1/155,000. }
That this plat was prepared in accordance with G.S. 17-30 }
and contains my original signature, registration }
number and seal. }
This 1st day of March, A.D. 2016.

PROCESSES AND FUNCTION

1. STATION ALONG HIGHWAY PROFESSIONAL LAND SURVEYOR,
certify that this plat represents a survey of an existing parcel or
portion of land and does not create a new street or change an
existing street. G.S. 47-30 (1) (11) (c)

North Carolina, Transylvania County.
The foregoing certificate of STEVEN LLOYD WAGGONER, Professional Land Surveyor, is certified to be correct. This plot was prepared for recording and duly recorded in this office in PLAT FILE _____, SLICE _____, Tract No. _____, 2016 ADJ. at _____ o'clock, P. M.

REGISTER OF DEEDS

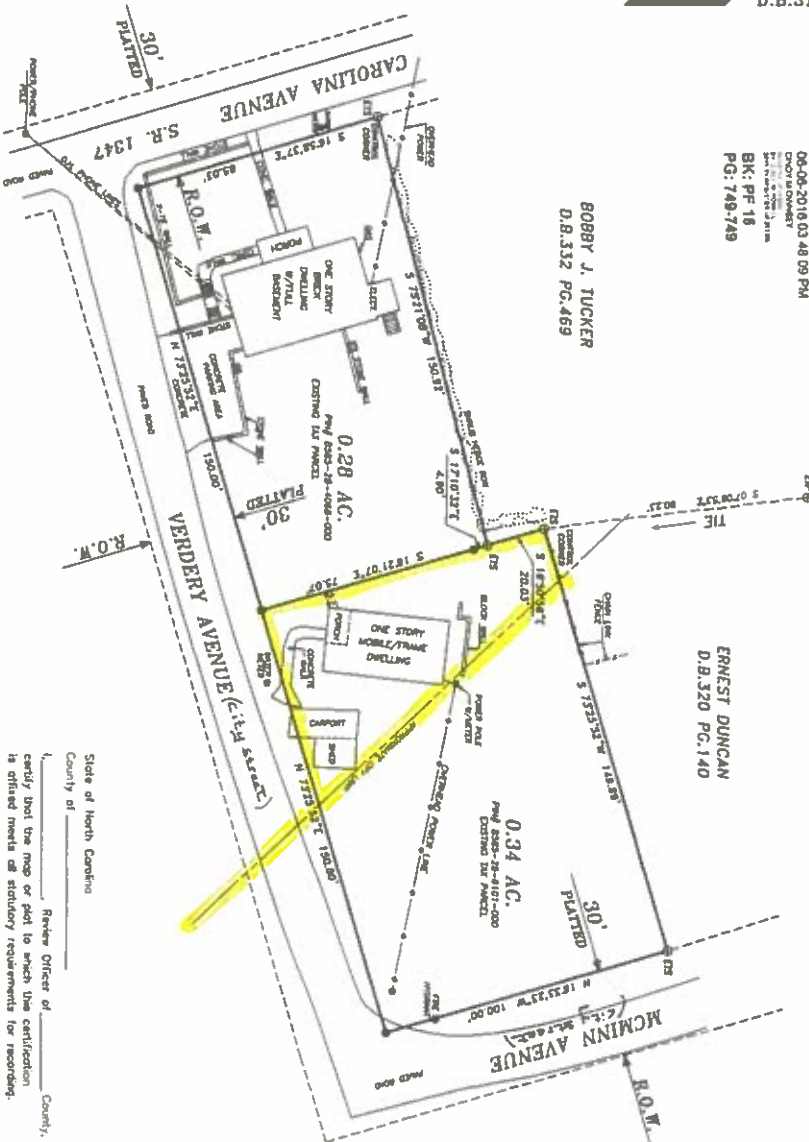
SCALE 1" = 30'



NOTES:

- 1) AREAS DETERMINED BY COORDINATE COMPUTATION
- 2) THE CURRENT OWNERS OF RECORD ARE MARTHA SHEPARD HIPP, NORMA COLLINS HIPP, AND ELIZABETH K. HIPP, AS PER D.B. 245, PG. 49.
- 3) THESE SUBJECT PROPERTIES ARE CURRENTLY ZONED GR-6 BY THE CITY OF BREVARD ETL, WITH BUILDING SETBACK DIMENSIONS OF: FRONT/ROW 15'; SIDE 6'; REAR 25'.

- EXISTING CORNER MONUMENT
- AS NOTED
- NEW IRON PIPE SET OR
- AS NOTED
- COMPUTED POINT-NOT STAKED
- CONCRETE MONUMENT
- AS NOTED



LOCATION MAP (NTS)



State of North Carolina
County of _____

I, _____, Review Officer of _____ County,
certify that the map or plat to which this certification
is affixed meets all statutory requirements for recording.
Date _____ Review Officer _____

REFERENCES
Polidi, J. R. 245

U.S. 314 P.C. 198

PLAT BK. 1, PG. 54

TAX ID REFERENCE:
AS SHOWN ON MAP

SCRN FILE



SURVEY BY
STEVEN LLOYD WAGGONER
NC PLS 2874

WAGONER & RHODES
LAND SURVEYORS, P.L.C.

543 SOUTH GROVE STREET
HERNANDSVILLE, NORTH CAROLINA 28792
PHONE: 828-693-1022
FAX: 828-693-4019

DATE: MAY 16th, 2016

DRAWN BY: DKS/SL

W	JOB NUMBER: 15-029
---	--------------------

CITY OF PREVARD
CASH RECEIPT
DUPLICATE

Receipt No: 672956
Date: 6/25/2024
Time: 2:55:39PM

Received From:
JASON SHEPHERD

Received: 500.00

For
ZONING ADMIN 500.00
ANNEXATION APPLICATION

Check 500.00

569
RECEIVED BY WINDJW

LEGEND

- EXISTING PROPERTY MONUMENT (AS NOTED)
⊙ PROPERTY MONUMENT SET
○ POINT NOT SET (PNS)
-○- POWER POLE
R/W RIGHT OF WAY
IPS IRON PIN SET
OTP OPEN-TOP-PIPE
RBC REBAR AND CAP
CMF CONCRETE MONUMENT FOUND
PSF PLANTED STONE FOUND
RBR REBAR

- SUBJECT PROPERTY LINE
----- ADJOINER PROPERTY LINE
(LINE NOT SURVEYED)
----- TIE LINE
----- BUILDING SET BACK
----- EXISTING R/W
----- OVERHEAD ELECTRIC
----- OVERHEAD TELEPHONE
----- FENCE LINE
----- DEED BOOK & PAGE
----- PLAT BOOK & PAGE
D.B. / PG.
P.B. / PG.

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, _____, A NOTARY PUBLIC
OF SAID STATE AND COUNTY, DO HEREBY CERTIFY THAT

PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED
THE DUE EXECUTION OF THE FOREGOING INSTRUMENT.

WITNESS MY HAND AND NOTARIAL SEAL, THIS THE _____
DAY OF _____, 2024

NOTARY PUBLIC
MY COMMISSION EXPIRES _____

State of North Carolina
County of TRANSYLVANIA

I, _____, Review Officer of TRANSYLVANIA County,
certify that the map or plat to which this certification is affixed meets all
statutory requirements for recording.

Review Officer

Date

OWNER CERTIFICATION – ANNEXATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY DESCRIBED HEREON,
AND THAT I HEREBY ADOPT THIS PLAT OF ANNEXATION WITH MY FREE CONSENT

DATE

OWNER

CITY OF BREVARD – ANNEXATION

I HEREBY CERTIFY THAT THIS PLAT FOR ANNEXATION HAS FOLLOWED ALL REQUIREMENTS
AND PROCEDURES AND A PUBLIC HEARING WAS HELD BY THE CITY OF BREVARD TO
ANNEX THE PROPERTY HEREIN DESCRIBED
THE CITY OF BREVARD ADOPTED ORDINANCE NUMBER _____
TO ANNEX THE PROPERTY DESCRIBED HEREIN ON _____
WITH THE EFFECTIVE DATE OF ANNEXATION ON _____

DATE

CITY CLERK

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	983.05'	113.84'	113.78'	S 42°18'23" E	6°38'06"
LINE	BEARING	DISTANCE			
L1	N 76°10'43" E	18.15'			
L2	S 76°09'56" W	72.55'			

BOBBY TUCKER AND
HAZEL TUCKER
8585-28-4159-000
DB: 332 PG: 469

EARNEST DUNCAN
8585-28-6222-000
DB: 320 PG: 140

JASON M. SHEPHERD
8585-28-6101-000
DB: 765 PG: 452
P.F. 16 SL. 749
0.344 ACRES

JASON M. SHEPHERD
8585-28-4068-000
DB: 765 PG: 436
P.F. 16 SL. 749

REVISIONS 7/23/24:

- CITY OF BREVARD CERTIFICATION CORRECTED
- SHADING AND NOTE ADDED TO PORTION OF THE PROPERTY TO BE ANNEXED
- NOTE 14 ADDED
- ADDED NOTARY CERTIFICATION
- ADDED CALL TABLE

NOTES:

- ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DISTANCES
UNLESS OTHERWISE NOTED.
- AREAS SHOWN ARE SUBJECT TO EASEMENTS OF RECORD.
- AREA DETERMINED BY COORDINATE METHOD.
- OWNER OF RECORD: AS NOTED.
- RECORD REFERENCES: AS NOTED.
- AREAS INCLUDE ANY AND ALL PORTIONS OF PROPERTY UNDER
RIGHTS OF WAY AND OR EASEMENTS EITHER ACQUIRED OR CLAIMED.
- ALL PROPERTY CORNERS ARE AS NOTED.
- ALL EXISTING UTILITIES ARE ASSUMED TO HAVE EASEMENTS WHICH MAY AFFECT
PORTIONS OR ALL OF THE PROPERTY SHOWN.
- ANY UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE AND SHOULD BE VERIFIED
- ANY NAMES LISTED ARE FOR INDEXING PURPOSES ONLY, NOT A CERTIFICATION OF TITLE
- MEASUREMENTS TO HOUSE CORNERS WERE TAKEN AT THE FACE OF THE WALLS
- THIS LOT IS LOCATED IN FLOOD ZONE X (MINIMAL FLOOD RISK) PER F.I.R.M. OF THIS AREA
- SUBJECT PROPERTIES ARE ZONED GR8 PER CITY OF BREVARD
- IT IS THE INTENT OF THE OWNER TO ANNEX ANY PORTION OF TAX ID# 8585-28-6101-000
THAT IS NOT CURRENTLY IN THE CORPORATE LIMITS OF THE CITY OF BREVARD, INTO THE
CORPORATE LIMITS OF THE CITY OF BREVARD



I DAVID L. BURRELL, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY PERFORMED UNDER MY
SUPERVISION (PROPERTY DESCRIPTION RECORDED IN DEED BOOK 765, PAGE 452); THAT THE BOUNDARIES NOT SURVEYED ARE
CLEARLY INDICATED AS DRAWN FROM INFORMATION AS SHOWN; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000 OR
GREATER; THAT THE GLOBAL POSITIONING SYSTEM (GPS) SURVEY AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE GNSS
SURVEY:

CLASS OF SURVEY: B
POSITIONAL ACCURACY: .03'
TYPE OF GPS FIELD PROCEDURE: NETWORK RTK
DATES OF FIELD SURVEY: 6/14/2024
DATUM/EPOCH: NAD83 (2011)
PUBLISHED FIXED CONTROL USE: GPS 2
GEOID MODEL: GEOID 18
COMBINED GRID FACTOR: 0.999775
UNITS: US SURVEY FEET

ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORY AS DESCRIBED IN G.S. 47-30(f)(11):

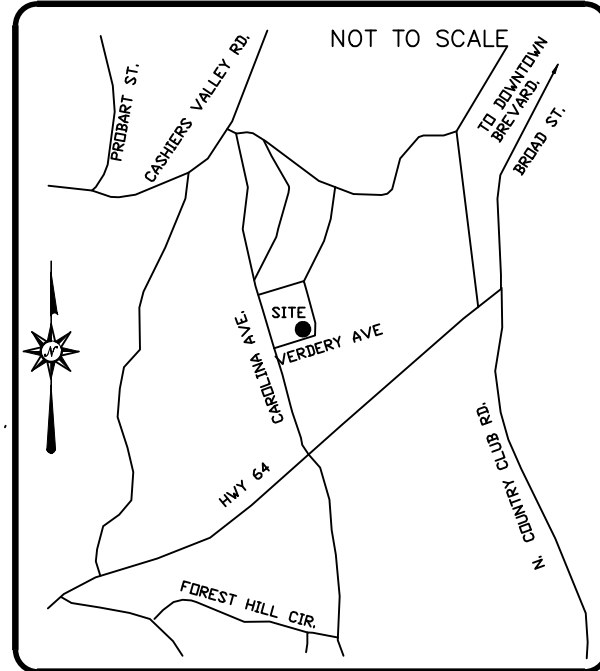
(c.)(1.) THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN
EXISTING STREET;

WITNESS MY SIGNATURE, LICENSE NUMBER, AND SEAL THIS _____ DAY OF _____, A.D., 20____

N.C. PROFESSIONAL LAND SURVEYOR

L-5546
LICENSE #

P.F. _____ SL. _____



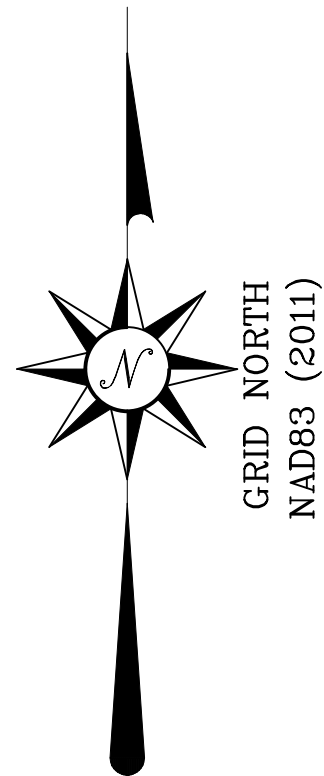
DAVID L. BURRELL
PROFESSIONAL LAND SURVEYOR

L-5546 (NC)

828-577-6568

133 COBB ST, EASLEY SC 29640

DRAWING NO. 24-27-REVISED



SCALE: 1 INCH = 20 FEET

ANNEXATION PLAT- ORDINANCE NO. _____
OF THE PROPERTY OWNED BY JASON M. SHEPHERD

**PLAT OF A BOUNDARY/ANNEXATION SURVEY FOR
JASON M. SHEPHERD
BEING THE PROPERTY
DESCRIBED IN: DEED BOOK 765 PAGE 452
PIN # 8585-28-6101-000
BREVARD TOWNSHIP
TRANSYLVANIA COUNTY, NORTH CAROLINA
JUNE 20, 2024 REVISED JULY 23, 2024**

That certain piece of land being located in the state of North Carolina, county of Transylvania, township of Brevard. Beginning at an unmarked point on the existing line of the City of Brevard Limits and on the northern right of way line of Verdery Ave., also being located on the southern line of that property of Jason M. Shepherd described in Deed Book 765 Page 452, said property being that 0.34 Acre tract shown on Plat File 16 Slide 749. Thence running with the existing City of Brevard Limits, a curve with an arc length of 113.84', with a radius of 983.05', with a chord bearing of N 42°18'23" W, with a chord length of 113.78', to an unmarked point in the northern line of the before mentioned tract, said point being on the existing line of City of Brevard Limits. Thence leaving the existing City of Brevard limits and running with the Earnest Duncan line a course S 76°10'43" W a distance of 18.15' to a 1/2" Rebar found, the southwest corner of the Earnest Duncan property described in Deed Book 320 Page 140. Thence with the Bobby Tucker line a course S 14°14'36" E a distance of 20.01' to a 1/2" Rebar found at a 3" spindle guard stake, the southeast corner of the Bobby Tucker Tract described in Deed Book 332 Page 469. Thence with the line of the other property owned by Jason M. Shepherd, described in Deed Book 765 Page 436, for two calls, S 13°27'48" E a distance of 4.95' to a 5/8" Rebar and Cap set, thence S 13°37'43" E a distance of 75.06' to a 5/8" Rebar and Cap set. Thence leaving the Shepherd tract described in Deed Book 765 Page 436 and traveling along the northern right of way line of Verdery Ave. N 76°09'56" E a distance of 72.55' to an unmarked point on the existing line of the City of Brevard Limits, which is the point of beginning. Containing 0.101 acres more or less. Being a portion of the property conveyed to Jason M. Shepherd in Deed Book 765 Page 452.

Also shown as "This Portion of Property to be Annexed +/- 0.101 acres" on a plat prepared by David L. Burrell titled "Plat of a Boundary/Annexation Survey for Jason M. Shepherd" being drawing number 24-27-REVISED and dated June 20, 2024-Revised July 23, 2024. Reference is hereby made to said plat for a more complete and accurate description.

The intent of the land owner, Jason M. Shepherd, is to annex any portion of the property described in Deed Book 765 Page 452 that is not in the existing City of Brevard Limits, into the City of Brevard limits.

ORDINANCE NO. 2024-XX
AN ORDINANCE TO EXTEND THE CORPORATE LIMITS
OF THE CITY OF BREVARD, NORTH CAROLINA

WHEREAS, the Brevard City Council has been petitioned under G.S. 160A-31, as amended, to annex the contiguous area described herein, and,

WHEREAS, the City Council has by Resolution No. 2024-30 directed the City Clerk to investigate the sufficiency of said petition; and,

WHEREAS, the Brevard Planning Board reviewed the Petition at their meeting held on September 24, 2024 and recommended approval of the voluntary contiguous annexation; and,

WHEREAS, the City Clerk has certified the sufficiency of said petition (relying on the opinion of the City Attorney) and the City Council adopted Resolution No. 2024-36 fixing a date of public hearing. By authority granted by G.S. 160A-31, a public hearing on the question of this annexation was held at the City Council Chambers at 5:30 P.M. on the 8th day of October, 2024, after due notice by publication on the 23rd day of September, 2024; and

WHEREAS, the City Council does hereby find as a fact that the petition meets the requirements of G.S. 160A-31, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA, THAT:

Section 1. By virtue of the authority granted by G.S. 160A-31, as amended, all of that property lying in Transylvania County, owned by Jason Shepherd, as shown and being a portion of that property described in the deed recorded in Document Book 765, Pages 452-455, in the Transylvania County Register of Deeds and that certain plat provided by the Petitioners to be duly recorded upon annexation is hereby annexed and made a part of the City of Brevard as of the 21st day of October, 2024.

Said property is more fully described as follows:

Location: 35 Verdery Avenue, Brevard, NC 28712. A portion of Transylvania County Tax Property Identification Number 8585-28-6101-000

Property Description:

That certain piece of land being located in the state of North Carolina, county of Transylvania, township of Brevard. Beginning at an unmarked point on the existing line of the City of Brevard Limits and on the northern right of way line of Verdery Ave., also being located on the southern line of that property of Jason M. Shepherd described in Deed Book 765 Page 452, said property being that 0.34 Acre tract shown on Plat File 16 Slide 749. Thence running with the existing City of Brevard Limits, a curve with an arc length of 113.84', with a radius of 983.05', with a chord bearing of N 42°18'23" W, with a chord length of 113.78', to an unmarked point in the northern line of the before mentioned tract, said point being on the existing line of City of Brevard Limits. Thence leaving the existing City of Brevard limits and running with the Earnest Duncan line a course S 76°10'43" W a distance of 18.15' to a 1/2" Rebar found, the southwest corner of the Earnest Duncan property described in Deed Book 320 Page 140. Thence with the Bobby Tucker line a course S 14°14'36" E a distance of 20.01' to a 1/2" Rebar found at a 3" spindle guard stake, the southeast corner of the Bobby Tucker Tract described in Deed Book 332 Page 469. Thence with the line of the other property owned by Jason M. Shepherd, described in Deed Book 765 Page 436, for two calls, S 13°27'48" E a distance of 4.95' to a 5/8" Rebar and Cap set, thence S 13°37'43" E a distance of 75.06' to a 5/8" Rebar and Cap set. Thence leaving the Shepherd tract described in Deed Book 765 Page 436 and traveling along the northern right of way line of Verdery Ave. N

76°09'56" E a distance of 72.55' to an unmarked point on the existing line of the City of Brevard Limits, which is the point of beginning. Containing 0.101 acres, more or less. Being a portion of the property conveyed to Jason M. Shepherd in Deed Book 765 Pages 452-455.

Also shown as "This Portion of Property to be Annexed +/- 0.101 acres" on a plat prepared by David L. Burrell titled "Plat of a Boundary/Annexation Survey for Jason M. Shepherd" being drawing number 24-27-REVISED and dated June 20, 2024- Revised July 23, 2024. Reference is hereby made to said plat for a more complete and accurate description. The intent of the landowner, Jason M. Shepherd, is to annex any portion of the property described in Deed Book 765 Pages 452-455 that is not in the existing City of Brevard Limits, into the City of Brevard limits.

Section 2. Upon and after the 21st day of October, 2024 the above-described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Brevard and shall be entitled to the same privileges and benefits as other parts of the City of Brevard. Said territory shall be subject to the municipal taxes according to G.S. 160A-31.

Also being all of that property described in a plat prepared by David L. Burrell, PLS for Jason M. Shepherd, dated June 20, 2024, revised July 23, 2024 and recorded in Plat File _____, Slide _____, of the Transylvania County Registry.

Section 3. Pursuant to 160A-29 it shall be the duty of the Mayor of the City of Brevard to cause an accurate map of the annexed territory as described in Section 1 hereof, together with a duly certified copy of this Ordinance, to be recorded in the office of the Register of Deeds of Transylvania County, North Carolina, and in the office of the Secretary of State at Raleigh, North Carolina. Such a map shall also be delivered to the Transylvania County Board of Elections as required by G.S. 163.288.1.

Section 4. Notice of adoption of this Ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Brevard.

Adopted and approved this the 21st day of October, 2024.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon, CMC
City Clerk

APPROVED AS TO FORM:

Mack McKeller
City Attorney

STAFF REPORT

City Council, Monday, October 21, 2024

Title: Discussion of NFIP impacts on housing recovery efforts

Speaker: Paul Ray, Planning Director
Wilson Hooper, City Manager
Mack McKeller, City Attorney

Prepared by: Paul Ray, Planning Director, Wilson Hooper, City Manager

Approved by: Wilson Hooper, City Manager

Background

Since 1978 the City of Brevard has participated in FEMA's National Flood Insurance Program (NFIP). Brevard's property owners are eligible to purchase government-provided flood insurance and receive other benefits by virtue of the City's eligibility for and participation in this program. (See attachment 3) In 1992 Brevard joined the Community Rating System (CRS) program by adopting higher floodplain management standards. CRS participating qualified Brevard property owners for an additional 10% discount on their government-backed flood insurance.

To be eligible, the City of Brevard must adopt certain regulations with regard to development in the 100-year floodplain, the most notable of which is the requirement that all houses in the flood hazard area elevate to two feet above base flood elevation if "substantial improvements" are done to the structure. "Substantial improvement" is defined as improvements with cost that are 50% or greater than the value of the structure.

According to FEMA's criteria, nearly 60 properties within the city and its ETJ are considered "substantially damaged" as a result of damage they received during Helene. This is important since *any* improvements that require a permit are considered to be "substantial improvements" on a "substantially damaged" property. This has implications for Brevard's disaster recovery and for storm-displaced people looking to repair their homes back to habitable standards.

This evening, staff will brief Council on an emerging conflict between NFIP requirements and recovery needs, and seek their thoughts on a path forward.

Discussion

Understandably, owners of property damaged by Helene wish to begin repairs as soon as possible. And some are able to as volunteer contractors/laborers and donated materials have made their way to the area to help with rehousing. For example, it is staff's understanding that some of the damaged mobile homes in Duckworth trailer park can be brought back to habitable standards within two weeks of permit issuance.

This is where the conflict emerges. There is a public health case to be made for allowing quick repairs so that people can live in safe, sanitary, and stable housing. Yet the elevation

requirement is also, despite its difficulty, a public health and safety measure because it protects lives and property from the hazards of flooding.

Early in the recovery, it was staff's understanding that FEMA/NFIP gives localities discretion to incorporate flexibility into its enforcement. Staff developed a "Temporary Repair Authorization in Special Flood Hazard Area" scheme that was discussed with community actors, Mayor Copelof, and MPT Daniel at a meeting on Friday, October 11, 2024. All attendees agreed that the plan was a reasonable way forward.

Since that time, however, staff have received additional feedback from FEMA staff and land use experts suggesting that adopting such a scheme could put Brevard's NFIP eligibility at risk.

After consulting additional resources, staff was referred to Craven County, NC who faced a similar dilemma after Hurricane Florence in 2018. Their program has accomplished much of what Brevard is hoping to accomplish, and hasn't been sanctioned by FEMA. Staff will brief Council on the particulars of this program this evening. a draft permit is included as attachment 2.

Irrespective of the Craven County option, groups such as the North Carolina League of Municipalities, the UNC School of Government, and the North Carolina branch of the American Planning Association have pledged their resources to getting clarity from FEMA as to how much flexibility localities have, or to get flexibility from FEMA/NFIP themselves to allow minimal repairs without triggering the "substantial improvement" clause. But it's unlikely their work will be concluded before Brevard starts receiving permit requests.

Though Craven County's program has been in effect six years with no blowback from FEMA, it should be noted that any deviation from NFIP carries risk. But, on the other hand, strict adherence to NFIP means no permits can be issued for substantially damaged structures in the flood hazard zone unless the improvements include elevation.

Action

No formal action requested. Staff requests Council consider the various risks of each option and give feedback to staff on how to proceed with this matter.

Attachments:

1. SWOT Analysis Temporary Floodplain Permit ver. 2
2. Temporary Authorizaion Permit SFHA (based on Craven)
3. Effects of non-participation in NFIP

NFIP Temporary Permitting Possibilities

Temporary NFIP grace period based on Craven County, NC program			
Basic Terms: - One year¹ grace period to make minimal repairs² - Initial application for grace period must include an estimate from a licensed general contractor or design professional calculating the cost of the minimal repairs <i>and</i> elevating the structure - Two one-year extensions available upon evidence of good faith effort to elevate - If noncompliance, enforcement measures up-to and including revocation of certificate of occupancy			
Strengths	Weaknesses	Opportunities	Threats/Risks
• Permits for minimal repairs that bring homes back to habitability can be issued very soon. • Less likely to have “unpermitted repairs” under this scheme • Potentially heads off a significant public health challenge of people living in damaged homes or homes with unpermitted repairs	• Leaves non-elevated structures in the special flood hazard area • Theoretically property owners could perform hundreds of thousands of dollars of repairs that would officially be “temporary”² • Uncertain whether there’s a mechanism to “cloud the deed” so that new owners of properties that get sold are aware that the property is encumbered in this way.	• Preserves housing stock • Gets signed agreement from property owners that property will eventually be elevated • Gives time for recovery agencies to mobilize and help people elevate	• Not endorsed by FEMA • Unknown impact on NFIP eligibility which, if lost, would prevent others from buying subsidized flood insurance and eligibility for other benefits³ • Kicks the can down the road on tough enforcement actions.

1- From date of federal emergency declaration (September 28, 2024)

2- Staff will be informed as to what constitutes a minimal repair by the State of North Carolina’s “Sheltering and Temporary Essential Power (STEP) in North Carolina” program, a FEMA-approved program established for certain eastern counties after Hurricane Florence.

3- See attached “Effects of Non-Participation in the National Flood Insurance Program” sheet

No grace period; enforce NFIP			
Strengths	Weaknesses	Opportunities	Threats/Risks
• Preserves NFIP eligibility, which keeps all Brevard property owners eligible for govt subsidized flood insurance¹ • Flood safety elements of NFIP will be implemented • Fewer in-use structures in the special flood hazard area	• Owners of substantially damaged property unable to get permits for minimal repairs needed to make structures habitable	• ALL construction will be deemed “substantial improvement” so we may see a number of properties elevated all at once.	• May displace people indefinitely² • May lead to people returning to damaged homes² • Contributes to housing shortage. • Unpermitted repairs will be performed. • May see an increase in vacant/abandoned properties

1- See attached “Effects of Non-Participation in the National Flood Insurance Program” sheet

2- Significant efforts underway by non-profit sector (with support from city and county) to find temporary housing openings and match displaced families with them.

TEMPORARY REPAIR AUTHORIZATION in SPECIAL FLOOD HAZARD AREA

City of Brevard Planning Department

In response to the Major Disaster Declaration for Transylvania County North Carolina issued by the President of the United States, (Tropical Storm Helene, FEMA-4827-DR) and pursuant to the direction and instruction of the Federal Emergency Management Agency in the attached flyer, the City of Brevard as Flood Plain Administrator for those properties, as authorized by part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Articles 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, which delegates to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare and existing in the jurisdiction of the City of Brevard, agrees to approve issuance of a TEMPORARY AUTHORIZATION TO REPAIR to:

_ who is the Property Owner of certain real and/or personal property located at:

With a Transylvania County Tax PIN Number or HUD Label
Number: _____

And with a FEMA Application Number and/or Transylvania Damage Assessment
Number: _____

The above listed Property Owner is authorized to pursue permitting for a Temporary Certificate of Occupancy from the Transylvania County Building and Inspections Department to conduct only **MINIMAL** repairs necessary to be made to render the residence safe and sanitary to live (i.e. electrical, mechanical, plumbing, and structural) in and no other improvements are authorized until the residence meets the substantial damage restoration requirements of the City of Brevard Flood Damage Prevention Ordinance (Chap 34) including but not limited to elevating, lifting or raising the building plus equipment.

“Substantial Damage” is defined as:

“Damage of any origin sustained by a structure during any five-year period whereby the cost of restoring the structure to the before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See also the definition of "substantial improvement." Substantial damage also means flood-related

damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

The Property Owner is authorized to pursue permitting from the Transylvania County Building and Inspections Department for the following **MINIMAL** repairs to correct existing safety, sanitary, and health deficiencies caused by Hurricane Helene currently existing on the property:

This Temporary Repair Authorization shall be valid for a period of ONE YEAR from today's date after which time the Property Owner shall be required to bring the dwelling into full compliance with the requirements of the City of Brevard Flood Damage Prevention Ordinance (Section 34) for the substantial improvements made thereon. No additional zoning or land development permits shall be issued until the application includes complete plans for bringing the substantially damaged structure into full compliance with the City's Flood Damage Prevention Ordinance.

The above Property Owner agrees, contracts, and affirms that they shall use their best efforts to bring the herein described property into compliance with the City of Brevard Flood Damage Prevention Ordinance within the ONE year period of this authorization. In furtherance of this effort, the Property Owner has engaged a General Contractor () Professional Engineer () who has rendered an estimate of the cost of bringing the said property into compliance which estimate is attached to and made a part of this application.

The property owner acknowledges the inherent risk of occupying any structure located in the Special Flood Hazard Area which is below the regulatory base flood elevation level and holds the City of Brevard harmless in future storm events or injury that may result, or ineligibility of insurance claims.

This Temporary Repair Authorization in Special Flood Hazard Area may be extended two times for an additional period of ONE YEAR upon application of the Property Owner and a showing of need and a good faith attempt to bring the property into compliance as documented in this file.

This the ____ day of _____, 2024.

Property Owner

Property Owner

Approved by:

City of Brevard Planning Department

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein intended.

Witness my hand and official stamp (or seal), this _____ day of _____, 2024.

Notary Public

SEAL/STAMP

My commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein intended.

Witness my hand and official stamp (or seal), this _____ day of _____, 2024.

Notary Public

SEAL/STAMP

My commission expires: _____



NC Department of Public Safety EMERGENCY MANAGEMENT

Roy Cooper, Governor

Eddie M. Buffaloe Jr., Secretary
William C. Ray, Director

EFFECTS OF NON-PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM

The National Flood Insurance Program (NFIP) is a voluntary program. A community has the right to choose whether or not to participate in the NFIP and regulate development within flood-prone areas designated by FEMA. However, the Federal government will not support development in these hazardous areas through Federal programs if a community chooses not to participate. Federal law imposes certain restrictions on Federal or federally-assisted financing within the flood hazard areas of non-participating communities. State restrictions on hazard mitigation grants and disaster assistance also apply.

FLOOD INSURANCE Flood insurance is not available through the NFIP in a non-participating community. Residents and property owners cannot purchase an NFIP flood insurance policy or renew an existing policy. Existing policies are cancelled at the end of the current policy year.

FEDERALLY-BACKED MORTGAGES No federally-backed mortgages (e.g., FHA, VA, and FmHA) are available for buildings in Special Flood Hazard Areas (SFHAs).

FEDERAL GRANTS AND LOANS No Federal grants or loans may be made for buildings in SFHAs. This includes all Federal agencies such as HUD, FmHA, SBA, and Rural Housing Services.

STATE DISASTER ASSISTANCE Communities are not eligible for State Public Assistance grants to recover from flood damage following State declared disasters.

FEDERAL DISASTER ASSISTANCE No Federal disaster assistance may be provided for the permanent repair or reconstruction of insurable buildings in SFHAs following a Presidential disaster declaration resulting from flooding.

MORTGAGE INSURANCE No Federal mortgage insurance may be provided in SFHAs. This includes FHA, VA, and Rural Economic and Community Development Services.

CONVENTIONAL LOANS Conventional loans (non-federal or private sources of funding) are allowed on real property in SFHAs at the discretion of the lending institution **provided that the lender** (a) notifies the buyer or lessee that the property is in a flood hazard area and (b) notifies the buyer or lessee that the property in the flood hazard area is not eligible for Federal disaster assistance in a declared flood disaster.

IMPLEMENTATION The Flood Insurance Rate Map (FIRM) goes into effect and the flood resistant construction provisions in the NC Building and Residential Codes must be implemented in SFHAs **regardless of whether or not a community participates in the NFIP**. Unregulated construction in SFHAs might become unsalable in the future due to cost-prohibitive flood insurance rates or the unavailability of mortgage loans.

LIABILITY The local governing body may be susceptible to liability by not participating because their action (a) denies the ability of its citizens to purchase flood insurance, (b) does not take positive steps to reduce the exposure of life and property in the face of authoritative scientific and technical data, and (c) may permit unwise development that aggravates flooding.

REAPPLICATION If the community permits development to take place in the floodplain that aggravates the flood hazard, the community will be required to remedy the increased hazard to the maximum extent possible before eligibility can be restored.

HAZARD MITIGATION ASSISTANCE GRANTS Communities are not eligible to apply for disaster or non-disaster hazard mitigation assistance grants (e.g., HMGP, BRIC, FMA).

