



AGENDA
BREVARD PLANNING BOARD - REGULAR MEETING
Tuesday, March 25, 2025 - 5:30 PM
City Council Chambers

I. Welcome

II. Introduction of Board Members

III. Certification of Quorum

IV. Approval of Agenda

V. Approval of Minutes

- a. Draft Minutes 02.25.2025

VI. New Business

- a. Consideration of Annexation ANN-25-001 Valenti
- b. Consideration of Rezoning REZ-25-002: Valenti
- c. Consideration of Text Amendment TXT-25-004: Changes to Abandoned Use and Retail Definitions

VII. Unfinished Business

VIII. Public Comments

IX. Remarks

X. Adjourn

Agenda Posted, Website March 18th, 2025
M. Baker, Clerk to the Board

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

**MINUTES
BREVARD PLANNING BOARD REGULAR MEETING
February 25TH, 2025
COUNCIL CHAMBERS CITY HALL**

Brevard Planning Board met for a regular meeting Tuesday, February 25th, 2025, at 5:30 PM, in Council Chambers at City Hall.

Members Present: Reid Wood, Vice Chair
Molly Jenkins
Peter Chaveas
Alan Mercaldo
Karen Darity
James Carli

Staff Present: Paul Ray, Planning Director
Aaron Bland, Assistant Planning Director
Emily Brewer, Senior Planner
Stephanie Holland, Planner
Madalin Baker, Board Clerk

I. Welcome

At 5:30 PM, Reid Wood, Vice Chair, called the meeting to order.

II. Introduction of Planning Board Members

The Board introduced themselves.

III. Certification of Quorum

R. Wood, Vice Chair, confirmed with the Board Clerk that a quorum of the Board was present.

IV. Approval of Agenda

R. Wood, Vice Chair, made a motion to move public comments to above New Business. Motion to approve the agenda with that change by A. Mercaldo, second M. Jenkins, unanimously carried.

V. Approval of Minutes

Motion to approve January 28th, 2025 minutes by M. Jenkins second by P. Chaveas, unanimously carried.

VI. Public Comments – None

VII. New Business

a. Formal Recommendation on TXT-25-003 Architectural Standards

Emily Brewer, Senior Planner, presented her staff report, a portion of which follows:

Background

This is a continuation of the architectural standards draft review that the Board began at the January meeting.

In December 2023, City Council passed a resolution authorizing the City Manager to sign a contract with the planning and urban design consulting firm Plusurbia Inc. to begin updating the City's architectural standards, which are found primarily in Chapter 5 of the City's Unified Development Ordinance (UDO). Since that time, Plusurbia and Planning Staff have been working together researching and defining Brevard's architectural styles and vernacular.

Plusurbia's work has been split into two phases. The first was the creation of building design guidelines. These guidelines are a standalone document that act as the precursor to the new architectural standards for the UDO, and were endorsed by City Council on June 17, 2024. The second phase is actual codification of the design guidelines into the UDO. The standards are now fully developed and ready for the Board's review before being enacted by City Council.

Discussion

At the previous meeting, Planning Staff and Plusurbia introduced the new standards and reviewed the basics of how they are structured. The full draft of the new standards is now available for the Board's review and a recommendation.

Action

The Planning Board's role for any proposed amendment to the City's development regulations (aka a "text amendment") is to review and make recommendations to City Council pursuant to G.S. 160D-604. The BPB shall make one of the following recommendations with regard to a petition to amend the text of a development regulation:

- Adoption of the amendment as written;
- Adoption of the amendment as revised by the Board; or
- Rejection of the amendment.

In accordance with North Carolina General Statutes, the Planning Board must also submit a statement analyzing the consistency and reasonableness of this proposal with regards to existing policies or plans of the City of Brevard. A Statement of Consistency and Reasonableness is included for the Board's review.

Following the presentation, staff opened to questions and discussion from the Board. J. Carli requested further clarity on the definition of porch, which E. Brewer provided. A. Bland noted that there is not currently a definition for the word "façade" in the UDO, but that one will be created. M. Jenkins pointed to a formatting edit needed at 5.6.8.B.1, which E. Brewer agreed with and took note of. J. Carli thanked the Staff for their hard work on this project, highlighting how comprehensive the text amendment is.

M. Jenkins moved to adopt the amendment as advised and in congruence with the consistency statement below. P. Chaveas seconded, carried unanimously.

Consistency Statement: "The Brevard Planning Board forwards this recommendation to City Council with a finding that the proposed zoning map amendment is consistent with the following elements of the City's adopted plans and policies:

Building Brevard Comprehensive Land Use Plan:

- Goal 2: Expand housing opportunities for all residents while preserving the character of Brevard and its neighborhoods.
- Goal 3: Encourage a development pattern that respects Brevard's sense of place and prioritizes livable communities.
- LUH-7: Consider the development of a form-based code for Downtown that supports a human-scaled, pedestrian environment.
- LUH-10: Establish zoning overlay districts for the Asheville Highway Corridor and Pisgah Forest area with form-based elements.
- EDIR-3: Encourage building and site upgrades Downtown and in other key commercial areas. Page

b. Formal Recommendation on TXT-25-003 Related Changes

Aaron Bland, Assistant Planning Director, gave his staff report, a portion of which follows:

Background: Due to changes to the City's zoning authority as a result of Session Law 2024-57, the architectural standards update cannot be adopted exactly as was originally envisioned. Therefore, Staff is proposing some additional changes to the UDO that will help the new architectural standards be implemented within the confines of the new law. Staff introduced the legislation and the need for these changes at the January meeting.

Discussion: The new statutory provision, included as a part of the Disaster Recovery Act of 2024 (SL 2024-57), alters the definition of “down-zoning” to include creating any sort of nonconformity, and provides that local governments cannot adopt down-zoning without written consent from all impacted owners. North Carolina law has limited down-zonings by third parties for some time to prevent an individual from requesting to reduce the development rights on their neighbor’s property without their consent. However, a local government's authority to make decisions about rezoning property and adjusting zoning standards was maintained, and the local governing board could make local legislation decisions to adjust rules according to local needs and priorities. This new law changes that and prohibits local government-initiated down-zoning, as well as broadening the definition of what a "down-zoning" is in North Carolina.

Action: The Planning Board's role for any proposed amendment to the City's development regulations (aka a "text amendment") is to review and make recommendations to City Council pursuant to G.S. 160D-604. The BPB shall make one of the following recommendations with regard to a petition to amend the text of a development regulation:

- Adoption of the amendment as written;
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- Rejection of the amendment.

In accordance with North Carolina General Statutes, the Planning Board must also submit a statement analyzing the consistency and reasonableness of this proposal with regards to existing policies or plans of the City of Brevard. A Statement of Consistency and Reasonableness is included for the Board’s review.

New Construction:

Current Definition: Structures for which the "start of construction" commenced on or after the effective date of this ordinance.

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

- Additions to existing structures that equal or exceed **[50%, two-thirds, 75%, etc.]** of the gross floor area of the existing structure;
- Substantial improvements to existing structure that equal or exceed **[50%, two-thirds, 75%, etc.]** of the value of the existing structure and require the issuance of at least **[two or three]** trade permits from the Transylvania County Building and Inspections Department.

Residential Zoning District:

Current Definition: None

Proposed Definition – Option # 1: A zoning district that is entirely reserved for residential land uses. [Note there are none in our jurisdiction]

Proposed Definition – Option # 2: A zoning district that is primarily intended for residential land uses. This shall apply to the following zoning districts: General Residential-4 (GR4), General Residential-8 (GR8), and Residential Mixed-Use (RMX).

Proposed Definition – Option # 3: Any zoning district that permits residential land uses. This shall apply to all zoning districts except General Industrial (GI).

Following A. Bland's staff report, the board discussed the proposed options. For the "New Construction" item, board agreed to adopt the following definition: "Any newly constructed building or structure. This definition shall also apply to existing buildings that are altered in the following ways: Additions to structures that equal or exceed 75% of the gross floor area of the existing structure; substantial improvements to the structure that equal or exceed 75% of the value of the existing structure and require the issuance of at least two trade permits from the Transylvania County Building and Inspections Department."

For the "Residential Zoning District" item, the board discussed the proposed definitions. The majority of board members favored option #3 proposed by staff: Residential Zoning District to be defined as "Any zoning district that permits residential land uses. This shall apply to all zoning districts except general residential."

Both definitions were to be included in one vote. J. Carli moved to accept the above outlined changes with consideration of the consistency statement, P. Chaevass seconded. A/ Mercaldo voted nay, all others voted in favor, and the motion passed.

c. Green Growth Audit Overview

E. Brewer gave her staff report, a portion of which follows. She presented using the slides attached in Exhibit A. No action from the board was requested.

Background & Discussion: Staff received a grant from the North Carolina Wildlife Resource Commission's (NCWRC) Partners for Green Growth cost-sharing assistance program. This program provides financial and technical assistance to communities that are pursuing planning initiatives that consider midlife and natural resource conservation in land use and development planning, incentives and ordinances. The City of Brevard is conducting a "Green Growth Audit" of the existing Unified Development Ordinance and developing an action plan for implementation.

Policy Analysis: One of the major goals of the Building Brevard Comprehensive Land Use Plan is to One of the major goals of the plan is to: Celebrate Brevard's natural resources through conservation of environmentally sensitive areas, improving access to recreation, and restoration of native ecosystems." This conservation goal is then followed with recommendations, an entire section of which is centered around Parks, Natural Resources & Cultural Resource (PNRC). These include:

- PNRC-5: Require conservation design in areas with sensitive cultural resources.
- PNRC-6: Encourage natural amenities to be preserved as open space in new development.
- PNRC-10: Preserve steep slopes and natural areas adjacent to Pisgah Forest.
- PNRC-11: Preserve and restore natural areas adjacent to the French Broad River.
- PNRC-13: Encourage the use of native species in public projects and private development.
- PNRC-16: Maintain and improve diversity (age and species) of the urban tree canopy.

VIII. Remarks – None

IX. Adjournment

There being no further business, P. Chaveas made a motion to adjourn seconded by J. Carli, the motion carried unanimously, and the meeting adjourned at 7:27 pm.

Greg Hunter, Chair

Madalin Baker, Board Clerk

Green Growth Audit Overview

Planning Board | February 25, 2025



BREVARD
NORTH CAROLINA

Building Brevard 2030

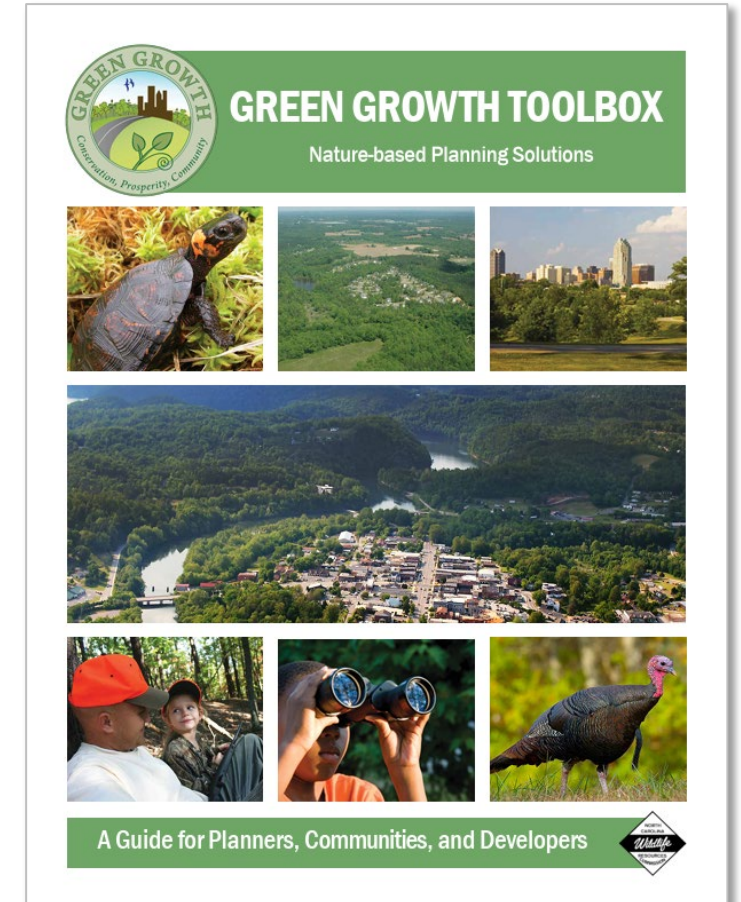
Goal 7: *“Celebrate Brevard’s natural resources through conservation of environmentally sensitive areas, improving access to recreation, and restoration of native ecosystems”*

- PNRC-5: Require conservation design in areas with sensitive cultural resources.
- PNRC-6: Encourage natural amenities to be preserved as open space in new development.
- PNRC-10: Preserve steep slopes and natural areas adjacent to Pisgah Forest.
- PNRC-11: Preserve and restore natural areas adjacent to the French Broad River.
- PNRC-13: Encourage the use of native species in public projects and private development.
- PNRC-16: Maintain and improve diversity (age and species) of the urban tree canopy.

Green Growth

Green growth means conserving wildlife, habitat, and other valuable natural resources as communities continue to grow.

- Leads to all-around healthy communities
- Maintains ecosystem services, which can have significant economic returns
- Mitigates damages from natural disasters, flooding, drought, and climate change
- Avoids environmental conflicts and reduces environmental permit delays
- Attracts new businesses and workers
- Increases property values and economic competitiveness of the community
- Generates nature-based tourism opportunities
- Reduces costs to tax payers with more intentional development
- Responds to public demand and interest
- Leaves a natural, economic and cultural legacy for future generations



Assessment of Environmental Context

- <https://ncnhde.natureserve.org/content/map>

Overview of Green Growth Audit

1. Conservation of developable area with efficient land use patterns and development strategies

- Limit development capability in sensitive areas
- Prioritize infill development in regulations.

2. Mitigation of negative impacts of development

- Environment surveys prior to large-scale construction
- Control sedimentation and erosion
- Stormwater management
- Tree preservation and landscaping requirements
- Heat island management
- Building design standards
- Provision of green infrastructure

3. Preservation of sensitive areas

- Slope development regulations
- Flood damage prevention
- Surface water protection

4. Restoration of natural ecosystems and wildlife habitats

- Open space requirements
- Lighting / dark sky compliance
- Native species in landscaping

STAFF REPORT

Planning Board, Tuesday, March 25, 2025

Title: Consideration of Annexation ANN-25-001 Valenti

Speaker: Aaron Bland, Assistant Planning Director

Prepared by: Emily Brewer, Senior Planner

Approved by: Paul Ray, Planning Director

Background

On February 24, 2025, an application was submitted by John Valenti requesting a voluntary non-contiguous annexation for four of his properties. The properties are located between Reservoir Road and Hampton Road within the City's Extra-Territorial Jurisdiction, identified by PINs 8586-24-2193-000, 8586-24-3036-000, 8586-24-3061-000, and 8586-24-3984-000. The parcels are currently zoned General Residential-4 (GR-4), but the applicant has also submitted a request to rezone these parcels to General Residential-8 (GR-8). . See Attachment 1 for the application materials.

Discussion

The subject properties are located within the City's Extra-Territorial Jurisdiction (ETJ) in close proximity to the corporate limits. The properties currently contain three single-family structures and two garages. Upon annexation, the single-family structures are assumed to be connected to City utilities. The cost of connecting to the City's system will be borne by the property owner.

Policy Analysis

Voluntary annexations are governed by NCGS 160A Article 4A. Upon receipt of a valid petition signed by all the owners of real property in the area described, cities may annex an area that is not contiguous to its primary corporate limits with the following additional standards:

1. The nearest point on the proposed satellite corporate limits must not be more than three miles from the primary corporate limits of the annexing city;
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city;
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits;
4. If the area proposed for annexation is subject to subdivision regulation as described in G.S. 160D-802, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

City staff have confirmed the eligibility of the properties for voluntary non-contiguous or "satellite" annexation under the provisions of NCGS.

Fiscal Impact

The financial and service delivery impacts are estimated to be minimal.

Action

Staff recommends approval of the annexation as requested. Planning Board's role is to make a recommendation to City Council regarding this petition.

Attachments:

1. Petition for Non-contiguous Annexation_John Valenti MTS Properties
2. ANN-25-001 Preliminary Plat

RECEIVED
2/24/2025
dh

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA
CITY OF BREVARD



**PETITION REQUESTING A NON-CONTIGUOUS
ANNEXATION**

G.S. 160A-58.1 (As Amended)

Date: _____

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 non-contiguous to the City of Brevard and the boundaries of such territory are as follows:

Transylvania County Property Identification Number(s): 8586-24-2193;
8586-24-3036; 8586-24-3041; 8586-23-3984

Street Address: 1054 117 Reservoir Rd; 82 & 84 Hampton Road

**(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 John A. Valenti
Address 84 Hampton Rd
Brevard, NC 28712
Telephone 828 342 0204 Email jademvalenti@gmail.com
Signature [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 John A. Valenti
Address 84 Hampton Rd
Brevard, NC 28712
Telephone 828 342 0204 Email jademvalenti@gmail.com
By: [Signature] Managing Member
Type or Print Name and Title (President / Managing Member)
Signature [Signature]

MTS Properties, LLC

b. Name John Valenti
Address 84 Hampton Rd
Brevard NC 28712
Telephone 828 342 0204 Email jadamvalenti@gmail.com
By: John A. Valenti Managing Member
Type or Print Name and Title (President / Managing Member)
Signature [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

CITY ANNEXATION LEGAL DESCRIPTION
FOR PIN#'S 8586-24-2193; 8586-24-3036; 8586-24-3061 AND 8586-23-3984

Beginning at a found rebar with a plastic ID cap 0.1' below grade and having North Carolina NAD 83/2011 grid coordinates of North: 563933.72 East: 882529.34; said rebar standing N 88°15'59" W a distance of 287.74' from NCGS BURL AZ MK which has North Carolina NAD 83/2011 grid coordinates of North: 563925.02 East: 882816.94;

thence S 53°56'47" W a distance of 82.25' to a ½" iron pipe;

thence S 53°45'51" W a distance of 74.75' to a ½" iron pipe;

thence N 41°40'29" W a distance of 103.15' to a 1/2" rebar;

thence N 28°27'17" W a distance of 49.43' to a 3/4" iron pipe;

thence N 28°17'47" W a distance of 48.93' to a 1 ½" leaning iron pipe;

thence N 22°23'09" W a distance of 98.94' to a axle;

thence N 67°29'48" E a distance of 157.61' to a 1 ½" leaning iron pipe;

thence S 33°41'55" E a distance of 98.10' to a ¾" iron pipe;

thence S 29°17'29" E a distance of 44.39' to a ½" iron pipe;

thence S 30°55'47" E a distance of 39.32' to a rebar with a plastic cap;

thence S 28°49'39" E a distance of 78.46' to a rebar with a plastic cap;

which is the place and point of beginning.

2024001279
TRANSYLVANIA COUNTY NC FEE \$26.00
STATE OF NC REAL ESTATE EXT
\$20.00
PRESENTED & RECORDED
03/22/2024 01:16:34 PM
BETH C LANDRETH
REGISTER OF DEEDS
BY: DELIA MCCALL
DEPUTY REGISTER OF DEEDS
BK: DOC 1109
PG: 111 - 113

Please do not place anything in the 3" margin above – (for recording information only)
NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax \$ 20.00
Parcel Identifier No.: 8586-24-2193-000
Mail after recording to: The Van Winkle Law Firm
422 S. Main St., Hendersonville, NC 28792
This instrument was prepared by: Van Winkle, Buck, Wall, Starnes & Davis, P.A. (Michael M. Thompson)
Brief description for the Index:
THIS DEED made this 22 day of March 2024, by and between:

<u>GRANTOR</u>	<u>GRANTEE</u>
Alan Kyle Young, individually and as Executor of the Estate of Wesley Hughes Young aka Wesley H. Young and wife, Teresa Young and Marilyn Elaine Cook nka Marilyn Young Cook, single and Wanda Faye Ackroyd nka Wanda Young Robinson, single	MTS Properties, LLC, A North Carolina limited liability company 84 Hampton Road, Brevard, NC 28712

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e. g. corporation or partnership.

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.

This instrument was prepared by Michael M. Thompson, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.

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

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE
submitted electronically by "Van Winkle Law Firm"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Transylvania County Register of Deeds.

The property hereinabove described was acquired by Grantor by instrument recorded in Deed Book 268 Page 86, Transylvania County Registry and re-recorded February 22, 1985 in Book 274 Page 108, Transylvania County Registry.

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

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

And Grantor covenants with 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 Grantor 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 subject to the following exceptions:

Easements, covenants, conditions, and restrictions of record; 2024 ad valorem taxes; and utilities physically located on the property.

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

Alan Kyle Young (Seal)
Alan Kyle Young, individually and as Executor of the Estate of Wesley Hughes Young aka Wesley H. Young

Teresa Young (Seal)
Teresa Young

Marilyn Elaine Cook (Seal)
Marilyn Elaine Cook nka Marilyn Young Cook

Wanda Young Robinson (Seal)
Wanda Faye Ackroyd nka Wanda Young Robinson

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, MORGAN E. GORDON, a Notary Public of the County and State aforesaid, certify that Alan Kyle Young, individually and as Executor of the Estate of Wesley Hughes Young aka Wesley H. Young and wife, Teresa Young and Marilyn Elaine Cook nka Marilyn Young Cook, single and Wanda Faye Ackroyd nka Wanda Young Robinson, single, personally appeared before me this day and acknowledged the execution of the foregoing instrument for the purposes therein expressed. Sworn and subscribed to before me. Witness my hand and official stamp or seal, this 22 day of March 2024.

SEAL / STAMP

Morgan E. Gordon
Notary Public
My Commission Expires: 10-19-2024

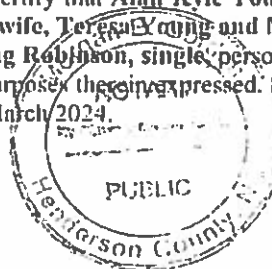
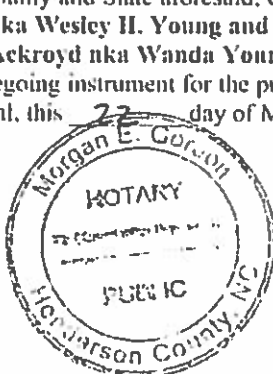


EXHIBIT A

WHEREAS, the subject property was conveyed to Wesley Hughes Young and wife, Mary Joyce Young by deed recorded June 25, 1984 in Deed Book 268 Page 86, Transylvania County Registry and re-recorded February 22, 1985 in Book 274 Page 108, Transylvania County Registry; and

WHEREAS, Mary Joyce Young died June 20, 2021 and title to the subject property passed to her surviving spouse Wesley H. Young, by right of survivorship; and,

WHEREAS, Wesley H. Young aka Wesley Hughes Young died testate in Transylvania County, NC on June 1, 2023, and pursuant to the terms of his Last Will and Testament duly admitted to probate in Transylvania County Clerk of Superior Court File 23-E- 209, the subject property was devised to his devisees, his children, namely Alan Kyle Young, Marilyn Elaine Cook now known as Marilyn Young Cook, Wanda Faye Ackroyd now known as Wanda Young Robinson; and,

WHEREAS, Alan Kyle Young was qualified and duly appointed as Executor of said estate; and,

WHEREAS, the spouses, if any, join in this instrument to convey their marital interests in and to the subject property.

NOW THEREFORE THIS CONVEYANCE:

BEGINNING on an iron stake standing on the east side of Hampton Road, the same being Clarence Holden's corner, and runs with Clarence Holden's line, North 66 deg. 30 min. East 176 feet to an iron stake at the Reservoir Road; thence with said Reservoir Road, South 30 deg. 30 min. East 42½ feet to an iron stake; thence South 63 deg. 30 min. West 182 feet to a stake at the Hampton Road; thence with the Hampton Road, North 23 deg. West 50 feet to the BEGINNING.

As surveyed and platted by T. N. Davis, RLS, on May 24, 1947.

BEING all of that same real property as deed recorded June 25, 1984 in Deed Book 268 Page 86, Transylvania County Registry and re-recorded February 22, 1985 in Book 274 Page 108, Transylvania County Registry

This property is conveyed together with and subject to the terms and conditions of that right of way agreement recorded in Book 316 Page 296, Transylvania County Registry, reference to which is hereby made and incorporated herein for greater certainty of description.

2024001294

TRANSYLVANIA COUNTY NC FEE \$26.00
STATE OF NC REAL ESTATE EXTX

\$300.00

PRESENTED & RECORDED
03/25/2024 10:49:06 AM

BETH C LANDRETH

REGISTER OF DEEDS

BY: KARIN SMITH

ASSISTANT

BK: DOC 1109

PG: 160 - 162

Please do not place anything in the 3" margin above - for recording information only

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax \$ 300.00

Parcel Identifier No.: 8586-24-2193-000

Mail after recording to: The Van Winkle Law Firm
422 S. Main St., Hendersonville, NC 28792

This instrument was prepared by: Van Winkle, Buck, Wall, Starnes & Davis, P.A. (Michael M. Thompson)

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submitted electronically by "Van Winkle Law Firm"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Transylvania County Register of Deeds.

The property hereinabove described was acquired by Grantor by instrument recorded in Deed Book 185 Page 505, Transylvania County Registry.

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

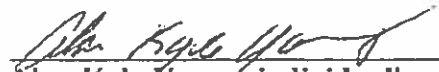
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to Grantee in fee simple.

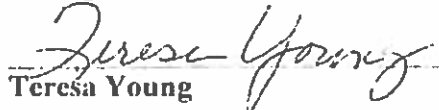
And Grantor covenants with Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and Grantor will warrant and defend the title against the lawful claims of all persons whomsoever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

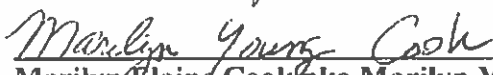
Title to the property hereinabove described is subject to the following exceptions:

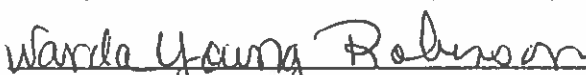
Easements, covenants, conditions, and restrictions of record; 2024 ad valorem taxes; and utilities physically located on the property.

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

 {Seal}
Alan Kyle Young, individually and as Executor of the Estate of Wesley Hughes Young aka Wesley H. Young

 {Seal}
Teresa Young

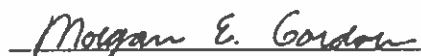
 {Seal}
Marilyn Elaine Cook aka Marilyn Young Cook

 {Seal}
Wanda Faye Ackroyd aka Wanda Young Robinson

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, MORGAN E. GORDON, a Notary Public of the County and State aforesaid, certify that Alan Kyle Young, individually and as Executor of the Estate of Wesley Hughes Young aka Wesley H. Young and wife, Teresa Young and Marilyn Elaine Cook aka Marilyn Young Cook, single and Wanda Faye Ackroyd aka Wanda Young Robinson, single, personally appeared before me this day and acknowledged the execution of the foregoing instrument for the purposes therein expressed. Sworn and subscribed to before me. Witness my hand and official stamp or seal, this 12 day of March 2024.

SEAL / STAMP


Notary Public
My Commission Expires: 10-19-2024

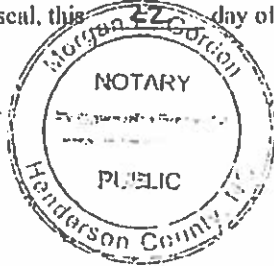


EXHIBIT A

WHEREAS, the subject property was conveyed to Wesley H. Young and wife, Mary Joyce Young by deed recorded July 17, 1970 in Deed Book 185 Page 505, Transylvania County Registry; and

WHEREAS, Mary Joyce Young died June 20, 2021 and title to the subject property passed to her surviving spouse Wesley H. Young, by right of survivorship; and,

WHEREAS, Wesley H. Young aka Wesley Hughes Young died testate in Transylvania County, NC on June 1, 2023, and pursuant to the terms of his Last Will and Testament duly admitted to probate in Transylvania County Clerk of Superior Court File 23-E- 209, the subject property was devised to his devisees, his children, namely Alan Kyle Young, Marilyn Elaine Cook now known as Marilyn Young Cook, Wanda Faye Ackroyd now known as Wanda Young Robinson; and,

WHEREAS, Alan Kyle Young was qualified and duly appointed as Executor of said estate; and,

WHEREAS, the spouses, if any, join in this instrument to convey their marital interests in and to the subject property.

NOW THEREFORE THIS CONVEYANCE:

BEGINNING on an iron pin in the Eastern margin of Hampton Road, formerly known as Subdivision Drive and runs thence with the Eastern margin of said road North 25 degrees 40 minutes West 98.30 feet to an iron pin; thence North 64 degrees East (passing an iron pin at 151.74 feet) 158.63 feet to a stake in the Western margin of Reservoir Road; thence with the Western margin of said road South 35 degrees 29 minutes East 100 feet to a stake; thence leaving said road South 64 degrees West 176 feet to the point of **BEGINNING** as surveyed and platted by P.R. Paxter, R.L.S., July 8, 1970.

It is intended to convey by this Deed all of the property included in the conveyance from Hilliard Pressley and wife, Mariska Pressley to Clarence Holden and wife, Marv Holden dated November 13th, 1940 and recorded in Deed Book 90, Page 284 of the Deed records of Transylvania County.

BEING all of that same real property as recorded in Book 185 Page 505, Transylvania County Registry.

This property is conveyed together with and subject to the terms and conditions of that right of way agreement recorded in Book 316 Page 296, Transylvania County Registry, reference to which is hereby made and incorporated herein for greater certainty of description.



2013005335
TRANSYLVANIA CO, NC FEE \$26.00
NO TAXABLE CONSIDERATION
PRESENTED & RECORDED
09-25-2013 02:56:52 PM
CINDY M OWNBEY
REGISTER OF DEEDS
BY: KARIN SMITH
DEPUTY REGISTER OF DEEDS
BK: DOC 671
PG: 244-246

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$0.00

Parcel Identifier No. 8586-23-3984-000 & 8586-24-3061-000 Verified by _____ County on the 25 day of Sept, 2013
By: [Signature]

Mail/Box to: H. Paul Averette, Attorney, P.C., P. O. Box 348, Brevard, NC 28712

This instrument was prepared by: H. Paul Averette, Attorney at Law (NO TITLE SEARCH PERFORMED)

Brief description for the Index: 2 Tracts – Brevard Township

THIS DEED made this 24th day of September, 2013, by and between

GRANTOR	GRANTEE
ALAN VALENTI and wife, MARY VALENTI	JOHN VALENTI
37 Huntcliff Drive Taylors, SC 29687	84 Hampton Road Brevard, NC 28712

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

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 _____ Township, Transylvania _____ County, North Carolina and more particularly described as follows:

Being all of that property as described in Exhibit "A" attached hereto and incorporated herein by reference.

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

The property hereinabove described was acquired by Grantor by instrument recorded in Book _____, page _____.

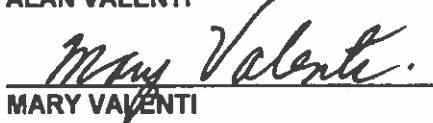
A map showing the above described property is recorded in Plat Book _____ page _____.

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:

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

 (SEAL)
ALAN VALENTI

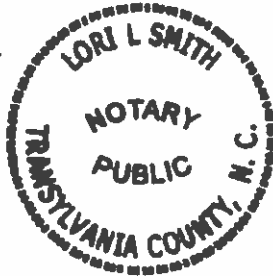
 (SEAL)
MARY VALENTI

State of North Carolina - County of Transylvania

I certify 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: ALAN VALENTI and MARY VALENTI.

Date: September 24, 2013

My Commission Expires:
09/10/2016




Lori L. Smith, Notary Public

EXHIBIT "A"

All of our undivided one-half (1/2) interest in and to the following described parcels:

TRACT I:

Being all of that property as described in a deed from Carolyn J. Gillespie and husband, Alvin B. Gillespie to John Valenti and Alan Valenti, recorded on October 4, 2002 in Document Book 123 at Page 547 of the Transylvania County Registry.

TRACT II:

Being all of that property as described in a deed from Carolyn J. Gillespie, acting Individually and as Administrator of the Estates of Vessie Stamey and Clara Louise Stamey and husband, Alvin B. Gillespie; Dawn D. Sentelle and husband, Kerry Sentelle; and Forrest Duane Stamey, (a divorced and unremarried man) to John Valenti and Alan Valenti, recorded on October 4, 2002 in Document Book 123 at Page 550 of the Transylvania County Registry.

TOGETHER WITH and subject to all rights of way, easements and restrictions appurtenant to the Grantors.

CITY OF BREVARD
CASH RECEIPT
DUPLICATE

Receipt No: 700074
Date: 2/24/2025
Time: 1:58:12PM

Received From:
JOHN VALENTI

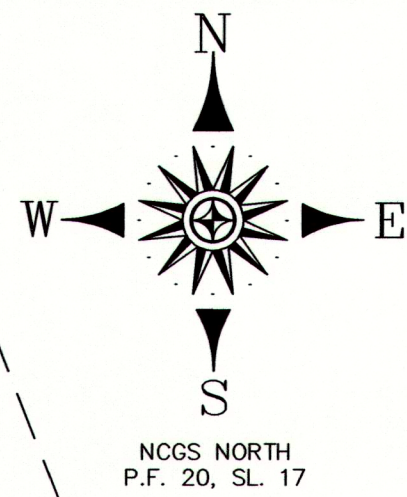
Received: 500.00

For
ZONING ADMIN 500.00
105 RESERVOIR RD-S

Credit 500.00

V 0517

RECEIVED BY WINDOW



JAMES SCOTT CLARK &
JESSICA HUNTER BACHAR
DOC. BK. 1015, PG. 307
PIN: 8586-24-2251

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)

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: _____

LEGEND

PIN	TAX PARCEL IDENTIFICATION NUMBER
NTS	NOT TO SCALE
SR	5/8" SET REBAR WITH IDENTIFICATION CAP
FIP	FOUND IRON PIPE
FR	FOUND REBAR
FIR	FOUND IRON ROD
CP	CALCULATED POINT
C.F.	COMBINED SCALE FACTOR
P.F. SL.	PLAT FILE, SLIDE
DOC. BK., PG.	DOCUMENT BOOK, PAGE
D.B., PG.	DEED BOOK, PAGE
O/A	OVERALL
LEAN	LEANING OVER, LOCATED AT BASE
ABG	ABOVE GRADE
@G	AT GRADE
BG	BELOW GRADE

P	UTILITY POLE
S	SANITARY SEWER MANHOLE
C	SEWER CLEAN OUT
G	GAS METER
H	HVAC PUMP
M	H2O METER

	CONCRETE
	ASPHALT
	GRAVEL
	ANNEX AREA

	BUILDING WALL
	OVER HEAD WIRE
	PRIVACY FENCE
	WIRE FENCE
	ADJOINING LINE NOT SURVEYED
	TIE LINE
	INTERNAL LINES

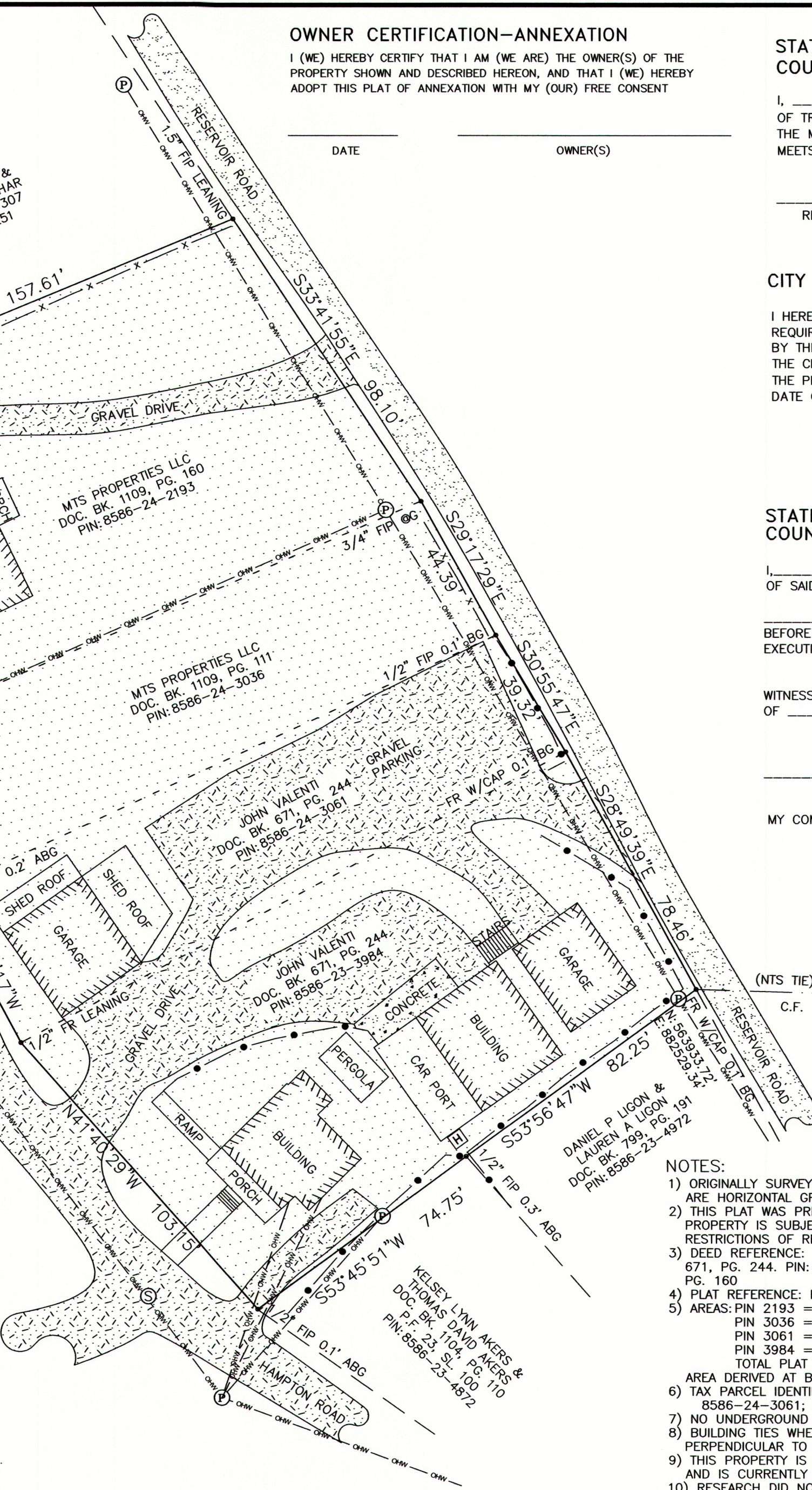
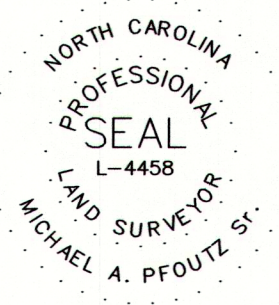
THIS PLAT WAS PREPARED FOR MTS PROPERTIES LLC AND JOHN VALENTI AND IS PROVIDED AS PART OF THE WORK PRODUCT TO OUR CLIENTS. THIS PLAT IN PART OR IN WHOLE IS NOT TRANSFERABLE AND SHALL NOT BE ALTERED IN ANY WAY OR REUSED IN ANY FORM BY ANY INDIVIDUAL OR ENTITY WITHOUT WRITTEN AUTHORIZATION BY MICHAEL A. PFOUTZ SR. AND IS INTENDED SOLELY FOR THE USE OF THE ORIGINAL CLIENT.
THIS DRAWING IS NOT VALID UNLESS THE ORIGINAL SIGNATURE AND STAMP OF THE SURVEYOR ARE ATTACHED. ANY REPRODUCTION OR VARIANCE TO THIS SURVEY BY ELECTRONIC OR ANY OTHER MEANS ARE NOT TO BE CONSIDERED ISSUED BY THE LICENSED SURVEYOR.

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 REFERENCED HEREON; AND THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION REFERENCED HEREON; THAT THE RATIO OF PRECISION 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.

WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER, AND SEAL THIS THE 12th DAY OF

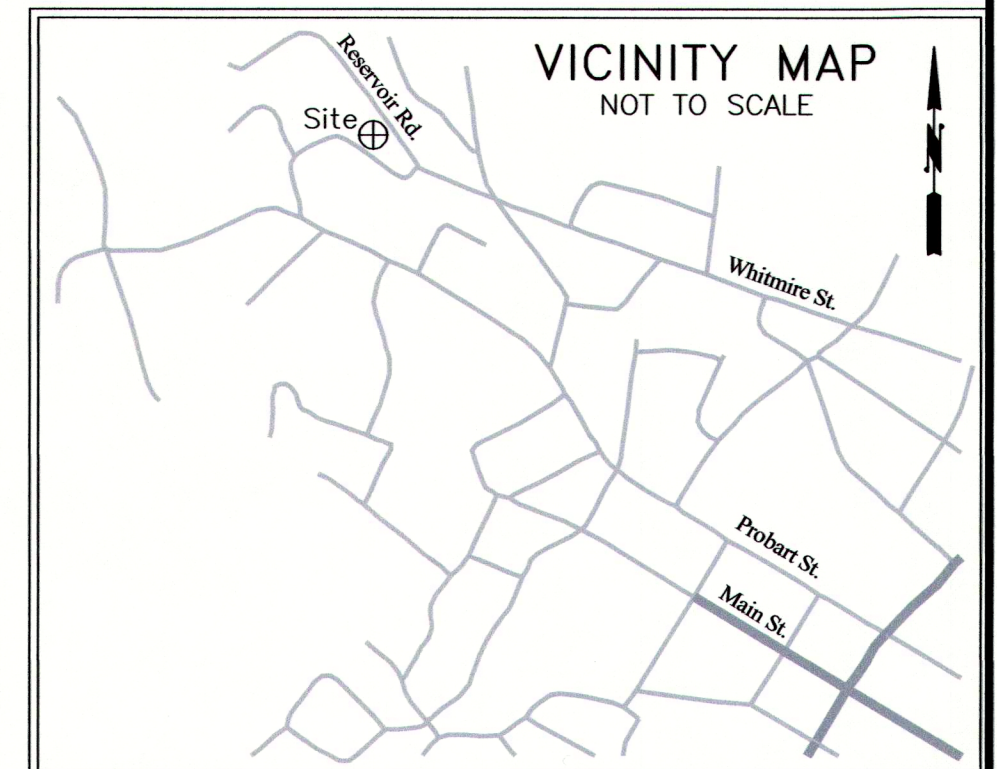
NOVEMBER, 2024, A.D.

MICHAEL A. PFOUTZ Sr.
PROFESSIONAL LAND SURVEYOR
LICENSE NUMBER L-4458



NOTES:

- 1) ORIGINALLY SURVEYED IN MARCH AND APRIL 2024. DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND UNLESS NOTED OTHERWISE.
- 2) THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE SEARCH. THIS PROPERTY IS SUBJECT TO ALL RIGHT-OF-WAYS, COVENANTS, EASEMENTS, AND RESTRICTIONS OF RECORD BOTH SHOWN AND NOT SHOWN HEREON.
- 3) DEED REFERENCE: PIN: 3984; DOC. BK. 671, PG. 244. PIN: 3061; DOC. BK. 671, PG. 244. PIN: 3036; DOC. BK. 1109, PG. 111. PIN: 2193 DOC. BK. 1109, PG. 160
- 4) PLAT REFERENCE: P.F. 9, SL. 832
- 5) AREAS: PIN 2193 = 0.375 OF AN ACRE (SURVEY)
PIN 3036 = 0.189 OF AN ACRE (SURVEY)
PIN 3061 = 0.181 OF AN ACRE (SURVEY)
PIN 3984 = 0.346 OF AN ACRE (SURVEY)
TOTAL PLAT AREA = 1.091 ACRES
AREA DERIVED AT BY COORDINATE COMPUTATION
- 6) TAX PARCEL IDENTIFICATION NUMBERS: 8586-24-2193; 8586-24-3036; 8586-24-3061; 8586-23-3984.
- 7) NO UNDERGROUND UTILITIES WERE MARKED OR LOCATED FOR THIS SURVEY.
- 8) BUILDING TIES WHERE SHOWN ARE TO THE STRUCTURAL WALLS AND ARE PERPENDICULAR TO PROPERTY LINE
- 9) THIS PROPERTY IS NOT WITHIN THE BREVARD CITY LIMITS, IT IS WITHIN THE ETJ, AND IS CURRENTLY ZONED GR4.
- 10) RESEARCH DID NOT REVEAL A DOCUMENT DELINEATING A DEFINED WIDTH OF A R/W FOR EITHER HAMPTON ROAD OR RESERVOIR ROAD. THE ROAD R/W WIDTH VARIES BETWEEN PROPERTY LINES AND CORNERS ON BOTH SIDES OF THE ROADS.



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

ORDINANCE No. _____
105,117 RESERVOIR RD & 82,84 HAMPTON RD
and
PIN's 8586-24-3036 & 8586-24-3061
PROPERTY SITUATE IN
BREVARD TOWNSHIP
TRANSYLVANIA COUNTY, NORTH CAROLINA
OWNERS OF RECORD: MTS PROPERTIES LLC
and JOHN VALENTI

CITY ANNEXATION PLAT
PREPARED FOR
**MTS PROPERTIES LLC and
JOHN VALENTI**

DATE

NOVEMBER 12, 2024

FIELD RECORDS

DATA COLLECTOR

DRAWING

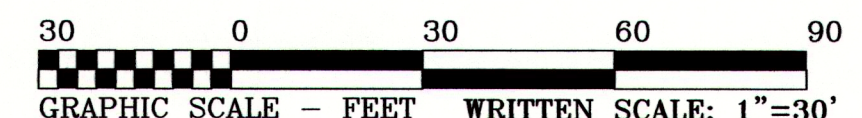
CMS24017-ANNEX

COORD. FILE

CMS24017.CRD

PROJECT NUMBER

CMS24017



STAFF REPORT

Planning Board, Tuesday, March 25, 2025

Title: Consideration of Rezoning REZ-25-001: Valenti

Speaker: Aaron Bland, Assistant Planning Director

Prepared by: Emily Brewer, Senior Planner

Approved by: Paul Ray, Planning Director

Background

On February 24, 2025, an application was submitted by John Valenti requesting a map amendment (rezoning) for four of his properties. The properties are located between Reservoir Road and Hampton Road outside the City's corporate limits (note the applicant has also applied for a non-contiguous annexation), identified by PINs 8586-24-2193-000, 8586-24-3036-000, 8586-24-3061-000, and 8586-24-3984-000. The parcels are currently zoned General Residential-4 (GR-4). The request is to rezone these parcels to General Residential-8 (GR-8). The properties abut GR-4 on all sides but are in close proximity to GR-8 within the corporate limits. See Attachment 1 for the application materials and Attachment 2 for the map of the current zoning.

Discussion

The General Residential zoning district is described by the Unified Development Ordinance as follows:

General Residential (GR-4 and GR-8). The General Residential District is intended for the city's existing predominately-residential neighborhoods as well as provide for new primarily-residential development in accordance with this pattern. These districts are differentiated only by the density of the overall development relative to the planning goals of the city as set forth in the Comprehensive Land Use Plan.

The requested rezoning only changes maximum dwelling unit density and the maximum ground floor area for principal structures. All other standards, including setbacks, maximum height, and allowable uses, are not affected by this rezoning. Typically, properties located within the corporate limits of the City of Brevard are zoned GR-8 instead of GR-4.

Requirement	GR-4	GR-8
Maximum dwelling unit density	4/acre	8/acre
Maximum ground floor area for principal structures	10,000 SF	8,000 SF
Minimum setbacks for principal structures (front/side/rear)	15/6/25	15/6/25
Minimum setbacks for accessory structures < 120 square feet (side/rear)	3/3	3/3
Minimum setbacks for accessory structures ≥ 120 square feet (side/rear)	6/10	6/10
Maximum height by right	35 feet	35 feet

Minimum lot width	30 feet	30 feet
-------------------	---------	---------

Policy Analysis

The *Building Brevard 2030 Comprehensive Land Use Plan* designates the properties as "Traditional Neighborhood." The Traditional Neighborhood character area is designed to maintain the character of established neighborhoods while allowing some flexibility in housing types. According to the Future Land Use Character Area Table, GR-8 is an applicable zoning district for Traditional Neighborhood but GR-4 is not. With this in mind, the proposed rezoning is consistent in regard to the City's long-range plans.

Action

Staff recommends approval of the rezoning as requested. Planning Board's role is to make a recommendation to City Council. The Board's options are as follow:

1. Recommend approval as requested;
2. Recommend approval with a change in the area as described by the Board (if the change in area is an expansion of the area requested, the Board shall hold a second meeting discussing the expanded area); or
3. Recommend denial.

In accordance with North Carolina General Statutes, the Planning Board must also submit a statement analyzing the consistency and reasonableness of this proposal with regards to existing policies or plans of the City of Brevard. A Statement of Consistency and Reasonableness is included for the Board's review (Attachment 3).

Attachments:

1. Rezoning Application
2. Current Zoning Map
3. Consistency and Reasonableness Statement



The City of
Brevard
North Carolina

REQUEST FOR ZONING MAP AMENDMENT (REZONING)

Applicant Information:

Name: John A. Valent
Address: 84 Hampton Rd Brevard, NC 28712
Phone: 828 342-0204

Property Owner Information (if different than applicant):

Name: _____
Address: _____
Phone: _____

Location of Property: 105 + 117 Reservoir Rd., 82, 84 Hampton Rd

Property Identification Number (PIN): 8586-24-2193; 8586-24-3036
8586-24-3061; 8586-24-3984

Present Zoning District: GR4

Request District to be Changed to: GR8 (attach additional explanation if necessary)

Existing Use of Adjacent Properties:

North RESIDENTIAL
West RESIDENTIAL

South RESIDENTIAL
East RESIDENTIAL

[Signature]
Signature of Applicant

6/26/24
Date

* * * * *

Planning Department must receive the following prior to placement on BPB agenda:

☒ Completed Application Form
☒ Survey of Property
☒ Application Fee (\$500.00) - Date Paid 2/24/25 Receipt # 700073

Heard by Planning Board on: _____

Planning Board's Recommendation: Approval Denial

Heard by City Council on: _____

City Council Action: Approval - Ord. Number _____ Effective Date _____
Denial



**STATEMENT OF CONSISTENCY AND REASONABLENESS WITH
ADOPTED PLANS AND POLICIES OF THE CITY OF BREVARD
REZ-25-001**

NCGS 160D-604 and NCGS 160D-605 requires that the Planning Board shall advise and comment on whether the proposed amendment is reasonable and consistent with any comprehensive plan prior to consideration by the Governing Board. The Planning Board shall provide a written recommendation to the Governing Board that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Governing Board.

The Brevard Planning Board forwards this recommendation to City Council with a finding that the proposed zoning map amendment is **reasonable and consistent** with the following elements of the City's adopted plans and policies:

Comprehensive Land Use Plan

The *Building Brevard 2030 Comprehensive Land Use Plan* designates the properties as "Traditional Neighborhood." The Traditional Neighborhood character area is designed to maintain the character of established neighborhoods while allowing some flexibility in housing types. According to the Future Land Use Character Area Table, GR-8 is an applicable zoning district for Traditional Neighborhood but GR-4 is not. With this in mind, the proposed rezoning is consistent in regard to the City's long-range plans.

STAFF REPORT

Planning Board, Tuesday, March 25, 2025

Title: Consideration of Text Amendment TXT-25-004: Changes to Abandoned Use and Retail Definitions

Speaker: Aaron Bland, Asst Planning Director

Prepared by: Aaron Bland, Asst Planning Director

Approved by: Paul Ray, Planning Director

Background

This is a staff-initiated text amendment intended to clarify the Unified Development Ordinance (UDO) to help property owners, business owners, and city staff understand the intent and interpretation of the City's zoning regulations. This amendment focuses on several key definitions that pertain to: 1) the abandonment of a land use, and 2) retail land uses.

Discussion

Abandonment

This is a critical definition that is currently not included in the definitions chapter of the UDO. The importance of defining the word "abandoned" is due to its use as a trigger for compliance with nonconforming land uses. Section 14.2 of the UDO is the section that discusses nonconforming land uses, stating: "If a nonconforming use is abandoned for 180 consecutive calendar days or more, the use shall not be allowed to be re-established. All new uses subsequently established shall be conforming." Simply put, if a land use that is grandfathered due to being in operation before the use was disallowed ceases for 180 days, it loses its grandfathered status.

It is common for zoning ordinances to provide that a nonconforming use status is lost if that use is inactive for a specified period, often six months or a year, after which whatever use is resumed must comply with the zoning ordinance in effect at the time. The courts have upheld this limit on nonconformities, noting there is a legitimate governmental interest in eventually phasing out nonconformities.

Because the continuance of a nonconforming land use hinges on whether it was "abandoned for 180 consecutive calendar days," the definition of what it means to "abandon" a use is important. Staff believes such a definition needs to be added to the UDO to help ensure consistent interpretation of the UDO by the City and expectations by citizens and landowners. The recommended definition was created after reviewing other cities' ordinances and guidance from the UNC School of Government (see attachments).

Retail Land Uses

Currently, the UDO groups most retail land uses into one "catchall" use and definition. This definition is open to including temporary outdoor-based retail uses that are markedly different from typical brick-and-mortar retail uses. In fielding questions about potential

retail uses, the need to add a definition for outdoor or "pop-up" retail uses became clear. To this end, the "Flea Market" land use has been added to the use matrix. The Board should consider what zoning districts this new use would be appropriate.

Policy Analysis

How an ordinance deals with nonconformities poses an important policy choice for local governments. The ordinance has to balance several legitimate interests. One interest is that of the landowner or business owner who did something legal at the time but now is a nonconformity due to no action of their own. The interest of the neighbors expecting the protections offered by the ordinance's current restrictions. The community as a whole in having everyone abide by the same rules. A zoning ordinance should give careful thought to how to balance these interests; the benefits to the neighbors and community from uniform compliance with current regulations have to be considered in conjunction with the burden on the owner of the nonconformity.

While these specific amendments are not contemplated by the Comprehensive Land Use Plan, it is always a best practice to ensure that the zoning regulations are as clear and unambiguous as possible. This is another in a long line of staff-initiated text amendments aimed at doing just that.

Action

The Board shall make one of the following recommendations:

- Adoption of the amendment as written
- Adoption of the amendment as revised by the Board
- Rejection of the amendment.

Attachments:

1. Draft Amendments - Abandoned
2. Draft Amendments - Retail Uses
3. Research from Other Cities
4. Coates' Canons NC Local Government Law
5. Consistency Statement

CHAPTER 14. NONCONFORMITIES

14.2. Nonconforming uses.

- A. Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses may continue only in accordance with the provisions of this section, but this section shall only apply to the extent these or such nonconformities fully and clearly meet the definition of "non-conforming use" in CHAPTER 19 of this ordinance.
- B. A nonconforming *non-residential* use shall not be expanded, changed to another nonconforming use, or enlarged, nor shall such a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located (either attached or detached). However, if a nonconforming non-residential use can expand within the existing structure, it may do so as long as the administrator determines that the interior expansion will not have a negative impact upon surrounding conforming uses. Any occupation of additional lands beyond the boundaries of the lot on which the nonconforming use is located is prohibited.
- C. An existing nonconforming residential use may be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements and other regulations of such structures as required in the specific district.
- D. Once a nonconforming use has been changed to a conforming use, it shall not revert or be used for any nonconforming use.
- E. If a nonconforming use is abandoned for 180 consecutive calendar days or more, the use shall not be allowed to be re-established. All new uses subsequently established shall be conforming.

CHAPTER 19. DEFINITIONS

19.3. Definitions.

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

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

2.2. Use categories and tables of permitted uses.

TABLE 2.2.A: LAND USE MATRIX											
Commercial											
			GR	RMX	NMX	PGX	DMX	CMX	IC	GI	
Retail	3.7.4	All retail and sales establishments except as listed below	—	—	P	P	P	P	P	—	
		Alcoholic Beverage Sales Store	—	—	SUP	P	P	P	—	—	
		Auto/Mechanical Parts Sales	—	—	—	P	P	P	—	P	
		Gas Station	—	—	SUP	PS	SUP	PS	—	PS	
		Gunsmiths and Weapon Sales	—	—	SUP	SUP	PS	PS	—	PS	
		Flea market	—	—	—	—	—	SUP	—	—	

3.7. Commercial uses.

3.7.4. Retail use category.

A. Retail.

1. Definition: Facilities involved in the sale, lease, or rental of new or used products, merchandise and prepared foods to the general public. Retail uses are conducted primarily indoors within an enclosed building. Retail sales include, but are not limited to, the following:
 - a. alcoholic beverages for off-premises consumption;
 - b. auto/mechanical parts;
 - c. art supplies, crafts and fabric;
 - d. bicycles and recreational goods;
 - e. clothing and secondhand goods;
 - f. computers, electronic equipment;
 - g. convenience and pharmaceuticals;
 - h. flowers, plants, and garden supplies;
 - i. gifts and novelties;
 - j. groceries, produce, dry goods; and baked goods;
 - k. home improvement items, hardware, and appliances;
 - l. household products;
 - m. medical supplies;
 - n. music and musical instruments; and
 - o. office supplies and package shipping.

F. Flea market.

1. Definition: An occasional or periodic sales activity held in an open area, semi-open facility, or temporary structure, where individual merchants offer goods, new and used, for sale to the general public. This definition shall not include private yard sales or garage sales that are conducted on a residentially developed lot by members of the household.

DRAFT

Retail Definitions

- **BREVARD'S CURRENT DEFINITION:**
 - Retail uses: Facilities involved in the sale, lease, or rental of new or used products, merchandise and prepared foods. Retail sales include, but are not limited to, those listed in Section 3.7.D.
- **Atlantic Beach**
 - The Retail Sales Use Category includes use types involved in the sale, lease, or rent of new or used products to the general public.
- **Black Mountain**
 - Mobile retail vendor: A motor vehicle, or trailer towed by another vehicle, designed and equipped to sell goods directly to consumers, excluding firearms, ammunition, tobacco and vaping products.
 - Mobile retail vendor, artisan: Artists or craftspersons who produce originally designed unique hand-crafted products and of high-quality, including crafts, inedible products, beauty and body products, excluding firearms, ammunition, tobacco and vaping products, and sell using a motor vehicle, or trailer towed by another vehicle.
 - Retail sales: Establishments engaged in selling goods or merchandise to the general public and rendering services incidental to the sale of such goods including tailoring or repair. This includes, but is not limited to, specialty shops and stores as well as:
 - Flea market: An occasional or periodic market held in an open area or structure where groups of individual sellers offer goods for sale to the public.
- **Carolina Beach**
 - Outdoor display means the displaying of goods, merchandise, or products outdoors such that the items are readily available for sale at retail on the same lot and in conjunction within a permanent fully-enclosed building. Under no circumstance shall displayed items be available for purchase at any location other than the designation point of transaction inside the permanent fully-enclosed building.
 - Retail sales means use types involved in the sale or lease of new or used products to the general public. Accessory uses may include offices, display of goods, limited assembly, processing, or repackaging of goods for on-site sale.
- **Chapel Hill**
 - Retail sales: Establishments engaged in selling of goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.
- **Fayetteville**

- Outdoor Display and Sales: The placement of products or materials (other than vehicles) for sale outside the entrance of a retail or wholesale sales establishment.
- Retail Sales Establishment: Commercial enterprises that provide goods and/or services directly to the consumer, where such goods are available for immediate purchase and removal from the premises by the purchaser. Examples include stores selling, leasing, or renting consumer, home, and business goods such as art, art supplies, bicycles, cameras, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries and food sales, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary, and videos.
- Flea Market: A market held in an open area or structure where individual sellers offer goods for sale to the public. Such sellers may set up temporary stalls or tables for the sale of their products. Such sales may involve new and/or used items and may include the sale of fruits, vegetables, and other edible items. A farmer's market, where food items predominate, is different than a flea market. This also differs from a garage sale or yard sale that is conducted on a residentially developed lot by members of a household, or civic groups selling primarily donated items.
- Garner
 - Sales. The wholesale or retail sale, lease, or rental of new or used products. Sale or rental of items with customary service of rented items is allowed but excludes those services and sales classified more specifically by another category.
 - Temporary outdoor retail sales refers to the sale of goods or merchandise that are not generally sold as part of the principal use's inventory. Sales for the temporary outdoor retail operation shall be separate and apart from sales for the principal use.
- Gastonia
 - Retail: A building, property, or activity the principal use or purpose of which is the retail sale of goods, products, or merchandise directly to the consumer. Such a retail establishment shall not be classified as a "Retail" use, if listed elsewhere in the Table of Uses of this Ordinance. Examples of excluded uses include: restaurants, convenience store - fuel marts and convenience stores.
- Hendersonville
 - Retail sales, outdoor: The use of an area not in an enclosed building or under a permanent roof structure for the display of inventory.
 - Retail sales, seasonal outdoor: Temporary outdoor use of an area for the display of inventory related to a holiday, season of the year or otherwise not offered on a regular basis.
 - Retail storage, outdoor: Outdoor storage of goods for retail sale.

- Retail store: An establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. Such use may process some of the products which it sells so long as such processing is incidental to such retail sales. The term shall not be deemed to include establishments in which the sale of goods or merchandise is incidental to another use, such as junk yards and wrecking yards as defined by G.S. 136-143.
- Lake Lure
 - Retail business means establishments selling commodities directly to the consumer.
- Morehead City
 - Flea market. An occasional or periodic sales activity held within a building, structure, or open area where groups of individual sellers offer goods, new and used, for sale to the public, not to include private yard sales.
 - Retail and wholesaling, indoor. An establishment which sells items at retail or wholesale wholly within an enclosed building.
- Mount Airy
 - Flea Market. An open-air market for new and/or second-hand articles and goods sold by one or more merchants, which is conducted on an open non-residential lot. Permanent flea markets can only be located in the M-1 zoning district. A detailed site plan must be presented to the Planning Director or his designee prior to a Zoning Permit being issued. Occasional yard sales conducted by individuals or non-profit organizations shall not be deemed flea markets, provided such yard sales are not conducted on more than six (6) days per year or, in the case of non-profit organizations, not more than fourteen (14) days per year.
- New Bern
 - Flea market: An occasional or periodic sales activity held within a building, structure, or open area where groups of individual sellers offer goods, new and used, for sale to the public, not to include private yard sales.
- Oak Island
 - Flea market: An occasional or periodic market held in an open area or structure where goods are offered for sale to the general public by individual sellers from open or semi-open facilities or temporary structures.
- Statesville
 - Retail - the use of land, buildings or structures for the sale of merchandise to the consumer of the merchandise which may include, but not be limited to, convenience goods, shoppers' goods, bicycle sales, gas stations, liquor stores,

lumber and other building material sales, mail order pickup facilities, mobile home sales, motor vehicle sales, service stations, and sales of used merchandise.

- Topsail Beach
 - Retail sales. Use types involved in the sale or lease of new or used products to the general public. Accessory uses may include offices, display of goods, limited assembly, processing, or repackaging of goods for on-site sale, concessions, and ATM machines. Retail sales does not include the following:
- Washington
 - Retail sales means establishments engaged in selling merchandise for personal or household consumption, and rendering services incidental to the sale of goods. Retail sales establishments are classified by kind of business according to the principal lines of commodities sold (apparel), or the usual trade designation (shoe store). Characteristics of retail trade is engaged in activities to attract the general public to buy; the establishment buys or receives merchandise as well as sells; the establishment may process its products but such processing is incidental or subordinate to selling; the establishment is considered as retail in the trade; and the establishment sells to customers for personal or household use.
- Waynesville
 - Outside Sales. The sale of goods and products outside of a permanent structure such as landscape materials, lawn and garden supplies, and produce. This definition includes farmer's markets and flea markets.
- Wilmington
 - Retail, general: Establishments engaged in the sale with incidental service of commonly used goods and merchandise for personal or household use but excludes those uses specifically listed in this article.
- Winston-Salem
 - Retail store: An establishment primarily engaged in general retail sales, where the majority of display and/or storage of merchandise being sold occurs within an enclosed structure.

Abandoned Definitions

- Charlotte
 - Where a nonconforming use is visibly discontinued for 12 consecutive months, the use shall not be reestablished or resumed, and any subsequent use of the land or structure shall conform to the requirements of this Ordinance
- Fayetteville
 - Discontinuance or Abandonment: A nonconforming use shall not be re-established after discontinuance for a period of 365 consecutive calendar days or more. Efforts to renovate or repair the use are not considered a vacancy, abandonment, or discontinuance, provided all appropriate development approvals are obtained, and provided the renovation or repair is completed within 365 days from commencement or repair or renovation, and the use is re-established within 30 days from the time the renovation or repairs are completed. Failure to complete the repairs or renovation within 365 days or re-establish the use within 30 days following repairs or renovation shall constitute discontinuance, and a nonconforming use shall not be re-established.
- Garner
 - Abandon. To cease, either intentionally or unintentionally, from actively using land, structures, or any premises for the intended or previous use, but excluding temporary periods of inactivity due to remodeling, maintaining, or otherwise improving a facility. Abandonment is often referenced to a specified time period. This definition includes “abandon”, “abandonment”, and any other tense or version of the word “abandoned.”
- Gastonia
 - A use becomes an abandoned use when it is discontinued for a continuous period of one year or more or when the premise on which it is located is devoted to another use.
- Greensboro
 - Discontinuance
 - A nonconforming use that ceases operations for any reason for a continuous period of more than one year may not be reestablished. Any subsequent use of such land must be a use permitted in the district.
 - The resumption of a nonconforming use is not permitted if the nonconforming use is replaced by an allowed use for any period of time.
- High Point

- Cessation 1.General (a)If a nonconforming use of land ceases operation for a continuous period of more than 180 days, any subsequent use of the land shall be a use permitted in the district by right.
- CESSATION: Ending of the use of land, structure, operation, or activity, permanently or for a period of time, as defined by this Ordinance.
- Morehead City
 - Abandonment. To visibly cease or discontinue a use or activity, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal period of vacation or seasonal closure.
- Rutherfordton
 - Abandonment means to cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure. (See section 30-406.)

Coates' Canons NC Local Government Law

What Do You Mean I Can't Start Up My Business Again?

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Author: David Owens



Rick Grimes is a sheriff's deputy residing in a crossroads community out in the county. For a number of years he has supplemented his income with a small business repairing RVs. He usually has three or four old RVs parked in his back yard where he fixes them on nights and weekends. A few years ago the county extended zoning to Rick's community. His home was placed in a single-family residential zoning district that does not allow commercial uses such as his RV repair operation. But the county zoning staff told him when zoning was adopted that he could continue his backyard business since he had all required permits and was in operation prior to adoption of the ordinance.

About eight months ago Rick was seriously injured in the line of duty. He spent two months in the hospital. After an additional few months of rehab he was able to return to work. Given his lack of stamina, however, he put his moonlighting RV repair work aside.

Rick is now feeling much better and recently decided to restart his RV repair business. He mentioned this in passing to the county planner in the courthouse parking lot yesterday as they were leaving work. She told Rick there might be space to open his business in an abandoned state prison the county had recently acquired and was converting to a small business incubator and start-up industrial park.

Rick, his meager savings already depleted by his hospitalization and recovery expenses, thanked her for the tip, but quickly said he preferred to pick up the work in his backyard. She reminded him that while his neighbors had been very supportive during his recovery, there had been

complaints before he got hurt about all the “junk” piled up in his yard. Some of the neighbors might well not welcome the reappearance of a half-dozen broken-down RVs in his backyard. She told Rick that re-starting the work at his home might not be allowed under the county zoning.

Could it possibly be true that Rick cannot resume his backyard business? Well, it depends.

Nonconformities

The first question is whether Rick’s business qualifies as a lawful “nonconformity” under the county zoning. Nonconformities are those land uses, structures, or lots that were legal when established but that do not conform to the requirements of subsequently adopted regulations.

How an ordinance deals with nonconformities poses an important policy choice for local governments. The ordinance has to balance several legitimate interests. One interest is that of the landowner who did nothing wrong in creating what is now a nonconformity. There is the interest of the neighbors in receiving the benefits of the protections offered by the ordinance’s current restrictions. Another interest is that of the community in having everyone abide by the same rules. Those crafting the ordinance should give careful thought as to how these interests should be balanced. The benefits to the neighbors and community from uniform compliance with current regulations have to be considered in conjunction with the burden on the owner of the nonconformity.

While not required by state statute in North Carolina, virtually all zoning ordinances allow for the continuance of nonconformities. In this instance, the county ordinance does allow for continuation of nonconformities. Since Rick’s repair business pre-dates the application of county zoning restrictions to his property it was at the time of his injury a lawful nonconformity.

Virtually all ordinances, however, strictly limit nonconformities. An earlier **blog post** explored how these limits apply to proposed repair or replacement of a nonconformity. Rick’s situation raises a second common limit on nonconformities. Zoning ordinances typically provide that nonconforming use status is lost if that use is inactive for a specified period, often six months or a year. After that, whatever use is resumed must comply with the zoning ordinance in effect at the time of resumption. The courts have upheld such limits on nonconformities, noting there is a legitimate governmental interest in eventually phasing out nonconformities. Williams v. Town of Spencer, 129 N.C. App. 828, 500 S.E.2d 473 (1998).

Limits Based on Inactivity

Assume the county ordinance provides that nonconforming use status is lost if there is a six month period of inactivity. Did Rick's RV repair business lose its lawful nonconforming status because it has been closed for the last eight months?

Whether this limit applies to Rick depends on the precise wording of the county ordinance.

Different results may obtain depending upon whether the term used is abandonment, cessation of use, or discontinuance. Unless more specific definitions are provided in the ordinance, the courts have interpreted *abandonment* to mean that the use has stopped and that there is no intent to restart it in the future and *discontinuance* to simply mean that the use is not active, regardless of any intent to resume. The cases also explore just what is a *cessation of use*. This can involve an examination of situations where the work stops for repairs, securing new tenants, or there is inactivity but an ability to restart it on short notice is retained. Of course in all of the cases the courts are examining a specific ordinance and attempting to discern the underlying intent of the board that adopted it, as well as applying it to a particular set of facts.

The choice of which term to use is to some degree based on how the local government chooses to strike the balance noted above. Using "abandon" is most protective of the interests of the owner as it provides the nonconforming protection is not lost unless the owner intends to give it up. By contrast, using "discontinued" may speed removal of incompatible uses that harm the neighbors and community.

Abandonment

In many respects use of the term "abandonment" is the easiest of these terms to apply. When an ordinance uses the term "abandonment," this introduces an element of intent on the part of the owner. In Forsyth County v. Shelton, 74 N.C. App. 674, 329 S.E.2d 730, *review denied*, 314 N.C. 328, 333 S.E.2d 484 (1985), the ordinance provided that nonconforming status was lost if the use was abandoned, abandonment being defined as "the voluntary discontinuance of a use, when accompanied by an intent not to reestablish such use." The case involved a nonconforming commercial recreation facility in a residential zoning district. After the owner became ill, there was an extended period during which the facility was not open to the public. For a time the property was leased to others who ran the facility. It was then used for several years only by family and friends of the owner. The defendant contended that there had been no abandonment of the use,

citing several grounds—among them, the physical facilities had remained in place even if they were not actually in commercial use, illness had made the cessation of use involuntary, some recreational use had always been made of the property, and there had always been an intent to reopen. The court however found sufficient evidence to conclude that there was an intent to forgo use of the property as a commercial recreation business, thus losing its nonconforming status.

So in our case, if the county ordinance says nonconforming use status is lost if the use is abandoned, Rick would have a good case for being allowed to resume operations in his backyard. He would need to meet with the planner and show her evidence that he was out of operation due to his injuries, but that he had no intent to permanently close his business. This could include indicators such as retention of his tools, keeping the repair materials he had on hand, and the like.

Discontinuance or Cessation of Use

If on the other hand the county ordinance uses ‘discontinued’ or ‘cessation of use’ rather than ‘abandonment,’ Rick may have a problem if he really wants to resume work in his backyard rather than relocating.

A typical case upholding a limit on resumption of a discontinued nonconformity is Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451, *review denied*, 338 N.C. 309, 451 S.E.2d 635 (1994). Under the town’s zoning ordinance, nonconforming status was lost if the nonconforming activity was discontinued for a consecutive period of 180 days or was discontinued for any period of time without a present intention of resuming that activity. The landowner had offered topless dancing on the site on an occasional basis from 1983 through 1989, the frequency ranging from once a week at times to once every two to three months. In 1990 the zoning ordinance was amended to remove adult entertainment from the zoning district involved.

The court held that because adult entertainment had not been offered on site for a period of eleven months at the time the restriction was enacted, no valid nonconforming use was present. Likewise, in CG & T Corp. v. Board of Adjustment of Wilmington, 105 N.C. App. 32, 411 S.E.2d 655 (1992), a case involving an inactive oil refinery where oil storage continued while the refinery was inactive, the court ruled that as defined in the ordinance, the term “discontinue” was not synonymous with the term “abandon” because intent was not a factor to be considered in the discontinuance of a use. The court upheld a determination that the facility’s use as an oil refinery had been discontinued, whereas its use as an oil storage terminal had been maintained.

In Rick's case, RV repair work was discontinued in the backyard for eight months. His intentions to resume do not matter, as this is just a factual question of whether or not any of the repair work continued at his home during the time in question. So if the ordinance used this terminology, it is probably time for Rick to take a close look at the old prison site or some other appropriately zoned location for his business.

The issue gets a bit more complicated if the term used in the county ordinance is "cessation of use." Flowerree v. City of Concord, 93 N.C. App. 483, 378 S.E.2d 188 (1989), illustrates the complexities this creates. The plaintiff owned a nonconforming duplex in a single-family zoning district. After tenants moved out and the units could not be leased, the owner took them off the market and renovated both units. Since the units were vacant for more than the time period allowed in the ordinance, the city contended there has been a cessation of use as a duplex. The court however held that occupancy alone could not be used to determine the use. As long as the owner was making an attempt to use the property as a duplex (as evidenced by advertisements and renovations), there was no cessation of use as a matter of law. In Diggs v. City of Wilson, 25 N.C. App. 464, 213 S.E.2d 443 (1975), the court similarly held a restaurant closed for renovations over a thirteen-month period had not been discontinued. Rick could also point to Southern Equipment Co. v. Winstead, 80 N.C. App., 342 S.E.2d 524 (1986), a case involving a nonconforming concrete-mixing facility. Because of a business slump the plant was out of operation for more than six months, but it was maintained throughout the period and could have resumed operation very quickly if any business materialized. The court held that even though no work was done on site, the use had not ceased. But here Rick had not stopped for renovations or repair. While he was incapacitated to a degree he could not have resumed RV repair work at any point during the six months limit for cessation of use. So it is not clear these cases will help his cause.

Conclusion

Whether Rick can resume this work at his home or must relocate his business depends on the exact wording of the ordinance and the details of his situation. In our case it is clear that Rick's RV repair business was not abandoned as he had no intent to permanently close it. But the use may well have been discontinued or even ceased to be used. So before he resumes his business, he needs to carefully review the exact language in the ordinance and go by the planner's office for a detailed review of his circumstances.

If he is fortunate, the ordinance will clearly spell out the intent of the local government on just what type of inactivity will result in loss of nonconforming use status. For example, does the inactivity require an intent not to resume? What about inactivity due to illness, bankruptcy or other financial difficulty? It is helpful if the intent of the limit is spelled out in the ordinance rather than leaving this to guess-work by the zoning administrator, the land owner, and the courts. While the courts can sort this out, there is no substitute for clarity in the ordinance itself.

**COMMENT OF CONSISTENCY WITH COMPREHENSIVE PLAN
AND ANY OTHER OFFICIALLY ADOPTED APPLICABLE PLANS
TXT-25-004**

NCGS 160D-605 requires that the Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan prior to consideration by the Governing Board. The Planning Board shall provide a written recommendation to the Governing Board that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Governing Board.

The Brevard Planning Board forwards this recommendation to City Council with a finding that the proposed zoning map amendment is **neither consistent nor inconsistent** with the City's adopted plans and policies.