



**AGENDA**  
**BREVARD PLANNING BOARD– REGULAR MEETING**  
**Tuesday, June 21, 2016 – 7:00 PM**  
**Council Chambers**

**I. Welcome**

**II. Introduction of Board Members**

**III. Approval of Minutes**

- a. May 17, 2016

**IV. New Business**

- a. Form-Based Code Project Update

**V. Old Business**

- a. Annual Sign Chapter Review – Review of UDO Chapter 12, continued from March 15, 2016 meeting.
- b. Zoning Map Amendment – Asheville Highway Corridor between Morris Road and Ecusta Credit Union; Proposal to rezone properties located on highway frontage from General Residential (GR) and Neighborhood Mixed-Use (NMX) to Corridor Mixed-Use (CMX), continuation from May 17, 2016 meeting.
- c. Zoning Map Amendment – 6.4 Acre site located at 600 Ecusta Road, City of Brevard, PIN 8597-31-5264-000; Proposal to rezone property from Neighborhood Mixed-Use (NMX) to General Industrial Conditional Zoning District (GI CD), continuation from May 17, 2016 meeting.

**VI. Other Business**

- a. Meeting schedule

**VII. Adjourn**

**MINUTES  
BREVARD PLANNING BOARD – SPECIAL CALLED MEETING  
MAY 17, 2016**

Brevard Planning Board met for a regular meeting, Tuesday, May 17, 2016, at 7:00 PM in Council Chambers of City Hall.

**Members Present:** Kimsey Jackson, Chair  
Demi Loftis, Vice Chair  
Jimmy Perkins  
Chris Strassner  
Keenan Smith  
Frank Porter

**Members Absent:** Katie Thompson

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

**I. Welcome and Introduction of Planning Board Members -**

At 7:00 PM Chair, Kimsey Jackson, called the meeting to order and there was a moment of silent reflection. Board members and Staff introduced themselves.

**II. Approval of Minutes –**

- a. March 15, 2016, motion to approve by D. Loftis, seconded by F. Porter, unanimously carried.
- b. April 12, 2016, motion to approve by J. Perkins, seconded by C. Strassner, unanimously carried.

**III. New Business-**

a. Petition requesting a non-contiguous annexation, Challenge Foundation Properties of Brevard, LLC, PIN: 9507-02-3957-000; 1110 New Hendersonville Highway.

A. Bland presented his staff report, which is attached hereto, labeled Exhibit “A” and incorporated herein by reference.

After questions and discussions about the city’s financial obligations to provide utilities, traffic safety, sidewalk requirements and city police staff’s obligations.

D. Loftis made a motion to approve as presented with the addition that applicant appeal to the North Carolina Department of Transportation for a right turn lane for safety reasons, seconded by K. Smith, unanimously carried.

b. Zoning Map Amendment – Challenge Foundation Properties of Brevard, LLC, PIN: 9507-02-3957-000, 1110 New Hendersonville Highway

A. Bland presented his staff report and pointed out that if the property is annexed, the property will need to be zoned and that staff's recommendation is to zone: Institutional Campus (IC). He further pointed out that any motion to approve would need to include a consistency statement because it would not meet the current Land Use Plan because the plan identifies this property as mixed-use boulevard.

F. Porter made a motion to approve zoning as Institutional Campus (IC), referencing the staff recommended Statement of Consistency, which is attached hereto and labeled Exhibit "B", seconded by C. Strassner, unanimously carried.

K. Jackson, Chair made the decision to move item d. to next on the agenda based on the audience present who were there to participate on this topic.

c. Zoning Map Amendment – 6.4 Acre site located at 600 Ecusta Road, City of Brevard, PIN 8597-31-5264-000; Proposal to rezone property from Neighborhood Mixed-Use (NMU) to General Industrial Conditional Zoning District (GI CD).

K. Jackson asked staff if this request originated with City Council.

D. Cobb responded that it did.

Daniel presented his staff report, including the definition of conditional rezoning, stating that this does highlight a couple of goals of the Comprehensive Plan, but is not in total compliance with the Land Use Plan. He further shared a map of how the zoning map would look if this change is approved.

Sandra Bailey, 48 Welcome Street, requested to speak. She stated her concerns about what type of industry uses would be allowed. She and others in the audience were given the proposed use matrix for this conditional rezoning.

J. Perkins stated his concerns about the uses for this property being too broad and the need to limit them.

Josh Hallingse, Executive Director of Economic Alliance, requested to address the board. He stated that in 2015 the Economic Alliance started looking at properties and trying to identify properties for economic development. He stated that there are not a lot of properties with utilities and infrastructure available. He stated that they are in support of this effort and would appreciate the board's consideration of the rezoning.

D. Cobb explained to the board that they could add additional parking, buffer requirements or other requirements to be imposed on the property and also, remove some of the uses.

J. Perkins stated that light manufacturing of low impact would be perfect for this location and that these types of jobs are vital to the community and that the resources need to be provided.

F. Porter asked J. Hallingse if there was already a tenant for the property.

J. Hallingse stated that he could not confirm any economic development but that the property needed to get to the point that it was appealing and so that the product is competitive.

J. Perkins asked if J. Hallingse had any general thoughts on uses that were listed and a narrower or broader scope.

J. Hallingse stated that usually a broader scope is better.

F. Porter suggested adding language that would protect neighboring properties and not negatively affect their quality of life.

J. Perkins stated that he felt very strong about too many uses being included and would like to see it revised.

D. Cobb asked if the board could provide any direction.

They offered staff no specific direction.

K. Smith noted concerns about this conditional district varying from the Land Use Plan and questioned if it would conflict with the Pisgah Forest Small Area Plan.

A. Bland stated that the Pisgah Forest Small Area Plan effected the intersections at Ecusta and Wilson Roads, Ecusta Road and Asheville Highway and Ecusta Road and Old Hendersonville Highway.

J. Perkins made a motion to table the item until next month, seconded by C. Strassner, unanimously carried.

d. Zoning Map Amendment – Asheville Highway Corridor between Morris Road and Ecusta Credit Union; Proposal to rezone properties located on highway frontage from General Residential (GR) and Neighborhood Mixed-Use (NMX) to Corridor Mixed-Use (CMX).

D. Cobb presented his staff report stating that Council unanimously voted to rezone the properties along the Asheville Highway beginning on the southern end at Morris Road, extending north to the planned new road near the Ecusta Credit Union, from General Residential (GR) to Corridor Mixed-Use (CMX). He referred to site map, vicinity map and current zoning map for references. He stated that the zoning could only be Corridor Mixed-Use (CMX) or Neighborhood Mixed-Use (NMX), that the board could not up the zoning.

J. Perkins stated that he liked staff's recommendation of NMX for this area, but that the topography would dictate the uses. He further stated that this area is a nice greenway into our community and that some rezoning is in order on the east side and looking through the permitted uses for Corridor Mixed-Use that it struck him that Neighbor Mixed-Use (NMX) made better sense for the east side of the road.

K. Smith stated he felt the east side was the only developable property.

John Tinsley, Thomas Woods, asked to speak and stated that he owns property directly across from Ecusta Credit Union and wanted to know how his property would be affected. What type of transportation issues will the new road present, such as, will there be a signal light or a stop sign. He stated that the road to his property runs beside the property to be considered for rezoning. He too was given a use matrix by staff to refer to for the allowed uses.

D. Cobb stated that he did not know, but that he thought there was a plan for a stop sign at this location.

F. Porter questioned what the basis was for the rezoning.

D. Cobb stated that Charlie Landreth introduced the motion and it unanimously carried.

F. Porter stated his opposition to the rezoning.

Lynn Davis from Defiance, Ohio, stated that he was there to represent his father-in-law who owns property in the proposed section to be rezoned. He stated that there had been interest in the property in the past for commercial use and that they would have been able to meet the setbacks to build on the lot and for this reason he would like to see the rezoning pass.

Marsha Taylor, stated that she owns property within the section that is proposed to be rezoned. She stated that it is very steep and actually the highest point of the properties being considered and that it would be hard to build anything without extensive grading. She said this section is a very refreshing entrance into Brevard and could only see changing the rezoning to obtain grants to beautify, but not to rezone for commercial or industrial uses. She further stated that she wanted to point out that we are the only town that she knows of that does not have signs stating that there is a noise ordinance against engine brake noise.

The board voiced concerns about the smaller tracts of land being developable.

D. Cobb reminded the board that properties can be recombined to make larger lots.

Josh Hallingse reiterated that smaller tracts could be combined. Stating that transportation needs would be changing with the new road and that Neighborhood Mixed-Use (NMX) is a good use of this property versus general residential.

C. Strassner asked how J. Hallingse felt about staff's recommendation to zone a portion of the property NMX.

J. Hallingse stated he liked the idea better than leaving the property general residential, stating there is a need to maximize density and that this property is a transportation corridor.

D. Cobb stated that there had been a lot of discussion about commercial uses, but that zoning NMX or CMX would allow for residential uses as well, such as an apartment complex.

J. Perkins questioned how driveway cuts change between zoning districts, CMX to NMX.

D. Cobb explained that the City had standards and the State also has standards and the rule is to use whichever standard is strictest.

A. Bland added that access standards are by category of road.

After further discussion, F. Porter made a motion to table for further study by staff, C. Strassner seconded, unanimously carried.

**IV. Old Business – None.**

**V. Other Business –**

K. Jackson, Chair, stated that he was disappointed that Brevard Academy property owners did not make an appearance at the meeting.

D. Cobb stated that they were notified, but did not have a tremendous amount of time to respond and that staff would accept a portion of the responsibility for them not attending the meeting.

F. Porter wanted to recognize the scout in the audience and asked that he introduce himself and state why he was present at the meeting. He introduced himself as Antonio Castro of Scout Troop 701 and stated that he was working on a couple of badges for his Eagle Scout, merit badges in citizenship and community. He was congratulated by the board.

**VI. Adjourn –**

There being no further business, C. Strassner moved to adjourn, seconded by J. Perkins, unanimously carried and the meeting adjourned at 8:58 PM.

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Richard K. Jackson, Chair

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Janice H. Pinson, Board Secretary



# The City of *Brevard* North Carolina

## NEW BUSINESS STAFF REPORT

June 21, 2016

**Title:** Form-Based Code Project Update  
**Speaker:** Daniel Cobb AICP, Planning Director  
**Prepared by:** Daniel Cobb AICP, Planning Director

**EXECUTIVE SUMMARY:** The Board will hear a presentation from Demetri Baches of the consulting firm Metrocology for an update on the development of the City's form-based code.

**BACKGROUND:** Staff has been working with Demetri Baches of the consulting firm Metrocology, and a stakeholder group made of up local citizens since June 2015 reviewing the City's development standards. This review has included an analysis of existing conditions in Brevard specifically related to stormwater management and access to public utilities, among several other aspects as well. Brevard has had a zoning ordinance since May 1946, which has been updated many times over the last several decades. The current version is known as the Unified Development Ordinance, and was adopted in April 2006. This version of amendments will result in a code that is commonly referred to as a "Form-based code."

A joint kickoff meeting of the City Council and Planning Board took place in August of 2015. This meeting served to provide background and context for the project, as well as explain how zoning ordinances and development codes have continued to change and morph over the last 70 years. A follow-up meeting between the Boards took place in December of 2015, this served as an update to the previous presentation. Since that time a significant amount of land use analysis has been completed. Mr. Baches will present a summary of this analysis and answer questions from the Board.

**DISCUSSION:** One of the main objectives of this project is to modify the existing regulations to more precisely fit Brevard. Over the last several years there have been challenges implementing the City's development standards due to inherent conflicts with the built environment and overall development patterns which are slightly different than what the code requires. Many of these challenges are magnified because of Brevard's natural growth restrictions from steep slopes and flood prone areas. Over the next four months there will be numerous opportunities for public input to help guide this project. A schedule of those events is listed below:

- June 22, 2016 – Meyers Dining Hall – Brevard College
  - 10:00AM – 12:00PM
  - 6:00PM – 8:00PM
- August 17, 2016 – Rogow Room – Transylvania County Library
  - 10:00AM – 12:00PM
  - 6:00PM – 8:00PM
- September 13, 2016 – Rogow Room – Transylvania County Library
  - 10:00AM – 12:00PM
  - 6:00PM – 8:00PM

This project will continue throughout the fall of 2016 and spring of 2017. There will be ample opportunity for review and feedback as these amendments make their way through the review process. In addition to the specific dates and times above, a Facebook page has been created to accept comments, as well as a website, [codebrevard.com](http://codebrevard.com), and the city website [cityofbrevard.com/formcodes](http://cityofbrevard.com/formcodes).

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

This process will take an in-depth look at existing development standards and explore ways to modify them, where necessary, to address concerns expressed by citizens and developers over the last decade. This review may not necessarily add or remove specific standards, the goal is to modify what is currently on the books to encourage the type of growth and development the city hopes to achieve.

This project addresses several policies as adopted in the recently adopted Comprehensive Plan, specifically:

2015 Comprehensive Plan

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

**POLICY 3.1.E** – Revise development regulations to encourage and incentive the use of Low Impact Design techniques to manage stormwater.

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

**POLICY 4.1.G** – Modify development ordinance and regulations to incorporate design standards and guidelines that respect existing community character while

*allowing greater residential density and intensity of nonresidential development within mixed use zoning areas.*

**STAFF RECOMMENDATION:** This report is submitted for information only. The Board will hear additional information during Mr. Baches' presentation regarding what has been done to date, and how the project will move forward.

**FISCAL IMPACT:** None at this time.



# The City of Brevard North Carolina

## OLD BUSINESS STAFF REPORT

June 21, 2016

**Title:** Chapter 12 Review – Sign Regulation Presentation: *Reed v. Town of Gilbert*  
**Speaker:** Aaron Bland AICP, Planner & Assistant Zoning Administrator  
**Prepared by:** Aaron Bland AICP, Planner & Assistant Zoning Administrator

**EXECUTIVE SUMMARY:** Planning Board will hear a presentation from Staff regarding a recent Supreme Court case decision regarding a municipality's authority to regulate signs. This is a follow-up discussion which began in January of this year regarding Chapter 12.9.J.14.

**BACKGROUND:** The City's current sign ordinance, Chapter 12 of the Unified Development Ordinance (included as Attachment A), has been in place since the adoption of the UDO in 2006. In the ten years since adoption, sign regulations have seen numerous minor changes through the text amendment process.

Section 12.9.J.14 of the sign ordinance requires the Planning Board review the standards for decorative flags, banners and other moving devices on an annual basis. At the Board's meeting on January 26, 2016 the Board began this review. Following discussions at the January, February, and March meetings, it became apparent to Staff, with input from the Board, that a more wholesale revision of Chapter 12 was due.

In January of 2015 the United States Supreme Court heard arguments in the case of *Reed et al. v. Town of Gilbert, Arizona et al.* and issued its decision June 18, 2015 (see Attachment B). The court's decision clearly invalidated some distinctions based on the message content of signs, which are common in sign ordinances across the country. Thusly, the decision will require adjustments to many local ordinances and some state statutes, including Brevard's sign regulations. The decision, with its four separate concurring opinions, also leaves several legal questions unanswered, which will likely only be clarified through subsequent litigation.

The presentation is designed to provide the Board with basic information about the case, its decisions, and impact on local sign regulations as they relate to the First Amendment of the US Constitution. A blog post from the UNC School of Government is also included as Attachment C for the Board's information.

**DISCUSSION:** The City's current sign ordinance is inconsistent with the *Reed* ruling. A wholesale revision of the sign ordinance concurrent with the development of form-based codes will

provide the City with coordinated ordinances that work towards the same goals of predictable and appropriate development and aesthetics for Brevard.

**POLICY ANALYSIS:** The current sign ordinance’s purpose statement currently reads:

*The purpose of this article is to permit such signs in the City of Brevard and its extraterritorial jurisdiction that will not, by their reason, size, location, construction, or manner of display, endanger the public safety of individuals, confuse, mislead, or obstruct the vision necessary for traffic safety, or otherwise endanger public health and safety; and to permit and regulate signs in such a way as to support and complement land use objectives set forth in the zoning ordinance for the City of Brevard.*

It is clear from this statement that the intent of the City’s regulation of signs is first and foremost a safety concern, particularly in terms of vehicular safety related to visibility. A secondary purpose is to ensure that signs are permitted in a manner that is consistent with land use and zoning objectives and regulations.

Additionally, The City’s 2015 update to the Comprehensive Plan and the 2002 Land Use Plan both make mention of issues such as aesthetics and design standards as they relate to Brevard’s character and sense of place.

2002 Land Use Plan

**Goal 3.3:** *Goal 3.3: Maintain existing and future thoroughfares that are efficient, attractive and safe.*

**Goal 3.9:** *A physically appealing location with a distinctive community character and a respect for its heritage.*

2015 Comprehensive Plan Update

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

Signs are common in every community and necessary – to a certain extent – for advertisement and navigation purposes. While there are safety implications to consider, such as visibility at intersections, the overall amount, location, size, illumination, and other physical characteristics of signs is largely a decision to be made by policy makers depending on the overall sense of community and aesthetic appeal desired.

**STAFF RECOMMENDATION:** This presentation is for the Board’s information only and no action is required. However, given that this is an educational presentation in anticipation of potential comprehensive revisions to the City’s sign regulations, Staff recommends that the Board carefully consider how the implications of this case will impact future sign regulations

discussions and provide Staff with specific questions or requests for further information that will assist the Board's conversations moving forward.

Staff is also seeking direction from the Board as to how the review of Chapter 12 should move forward. The Board could choose to undertake a wholesale review of the sign ordinance, or a more focused course of action such as addressing known inconsistencies or specific types of signs.

Staff recommends a full review of Chapter 12 that will clarify existing contradictions as well as ensure the ordinance aligns with the *Reed* ruling.

**FISCAL IMPACT:** N/A

**ATTACHMENTS:**

- A. Unified Development Ordinance, Chapter 12 – Signs
- B. Slip Opinion: *Reed et al. v. Town of Gilbert, Arizona et al.*, No. 13–502
- C. UNC School of Government Coates' Cannons blog: "Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert"

1    **CHAPTER 12. - SIGNS**

2    **12.1. - Purpose.**

3           The purpose of this article is to permit such signs in the City of Brevard and its extraterritorial  
4 jurisdiction that will not, by their reason, size, location, construction, or manner of display,  
5 endanger the public safety of individuals, confuse, mislead, or obstruct the vision necessary for  
6 traffic safety, or otherwise endanger public health and safety; and to permit and regulate signs  
7 in such a way as to support and complement land use objectives set forth in the zoning ordinance  
8 for the City of Brevard.

9    **12.2. - General regulations.**

10           The following regulations shall apply to all signs in all districts:

11           A. Compliance: No sign of any type shall be constructed, erected, painted, posted, placed,  
12 replaced, or hung in any district except in compliance with this ordinance.

13           1. Repainting of signs:

14                   i. Nonconforming painted signs may be repainted so long as the new coat of paint  
15 is for maintenance purposes and the design of the sign is not altered in any  
16 fashion.

17                   ii. If, during repairing, the design of the sign structure is altered in any way, then  
18 the entire structure shall comply with the provisions of this ordinance. See also  
19 Section 12.2(B).

20           2. Billboards:

21                   i. Billboards existing at on or before May 6, 1991 shall be allowed to be reposted  
22 so long as the structure of the sign itself remains in good repair.

23                   ii. The structure of the billboard shall be subject to all other provisions of this  
24 ordinance, particularly Section 12.2(D).

25                   iii. If at any time an advertising message on a billboard becomes obsolete or in  
26 disrepair, the advertising copy itself shall be subject to subsections 12.2(B) and  
27 12.2(C), without the structure being subject to the provisions, provided it is in  
28 good repair.

29           3. Vandalism and adverse weather:

30                   i. Signs destroyed by vandals or adverse weather conditions shall be allowed to  
31 be replaced even if such signs do not conform to this ordinance provided they  
32 existed before the date of enactment of this ordinance and they are replaced  
33 in the exact same location, in the exact same manner and with the exact same  
34 advertising copy of the same size as the previously destroyed sign.

35                   ii. Adverse weather conditions shall not be interpreted to be normal weathering  
36 of a sign.

37                   iii. If a sign is allowed to deteriorate over time due to exposure to the weather  
38                   elements, then it shall not be deemed as replaceable under this section.

39       B. Maintenance:

40           1. All signs, together with braces, guys and supports, shall at all times be kept in good  
41           repair.

42           2. If at any time a sign should become unsafe or poorly maintained, the administrator  
43           shall notify the owner or lessee of the sign of such condition.

44           3. Upon failure of the owner or lessee to correct such condition within 30 days, the  
45           administrator shall order the removal of such sign.

46           4. The expense of the removal of the sign shall be billed to the owner or lessee of said  
47           sign.

48           5. See Section 12.5(E) and Chapter 18 of this ordinance for collection procedures.

49       C. Removal of obsolete signs:

50           1. Signs identifying establishments no longer in existence, products no longer being  
51           sold, and services no longer being rendered shall be removed from the premises  
52           within 30 days from the date of termination of such activities except that ground  
53           sign supports, braces, and guys which are not easily dismantled and are to be sold  
54           as a portion of the business assets shall remain.

55           2. However, remaining sign supports, braces, and guys shall comply with all other  
56           requirements of this ordinance. If remaining sign supports, braced, and guys are not  
57           used to support signs identifying establishments in compliance with this chapter for  
58           a period of two years or more, such sign supports, braces, and guys shall be  
59           removed in accordance with this chapter.

60           3. Temporary signs and political signs shall be removed within ten days after the  
61           termination of the event or election advertised.

62           4. Upon failure of the owner or lessee of these signs to remove such signs within the  
63           prescribed time period, the administrator shall order their removal subject to the  
64           terms of this article and Chapter 18 of this ordinance and any additional expense of  
65           removal shall be billed to the owner or lessee of said sign(s).

66       D. Nonconforming signs:

67           1. Any sign existing on the date of enactment of this ordinance which does not  
68           conform to the requirements of said ordinance shall be taken down and removed  
69           or brought into compliance by the owner, agent, or person having the beneficial  
70           use of the building, land, or structure upon which such sign may be found within a  
71           period of ten years.

72           2. The amortization period for nonconforming signs is ten years. All signs must be in  
73           compliance by April 1, 2000.

- 74 3. The amortization period for those signs which do not comply with the setback  
75 provisions of this ordinance, but that conform in every other respect, shall be  
76 extended to expire on January 1, 2003.
- 77 4. Signs subject to the provisions of G.S. 136-131.1 are exempt from the requirements  
78 for removal or compliance.
- 79 5. Removal of nonconforming signs: Any sign existing on the date of enactment of this  
80 article shall not be repaired if 50 percent or more of the structure must be restored  
81 in order for it to be deemed in good repair; instead, such a sign shall be removed  
82 and a new sign which conforms to the regulations set forth by this article may be  
83 erected.
- 84 6. Relocation of nonconforming signs: Any nonconforming sign existing on the date of  
85 enactment of this article may be relocated on the same premises of the  
86 establishment having beneficial use of said structure so long as it is the same sign  
87 structure and the nonconformance is not increased in any manner beyond the point  
88 of noncompliance that existed before the movement of said structure.
- 89 7. Replacement of nonconforming sign inserts: The plastic inserts within existing  
90 nonconforming sign frames may be replaced for continued use until the  
91 amortization period expires.
- 92 8. Nonconforming signs within newly annexed areas outside the city's area of  
93 extraterritorial jurisdiction (ETJ):
- 94 i. Nonconforming signs within voluntary annexed areas outside the city's ETJ  
95 must comply with the provisions of this article (the sign ordinance) within one  
96 year from the effective date of annexation.
- 97 ii. Nonconforming signs within involuntary annexed areas outside the city's ETJ  
98 must comply with the provisions of this article by April 2000, or three years  
99 from the effective date of annexation, whichever is greater.

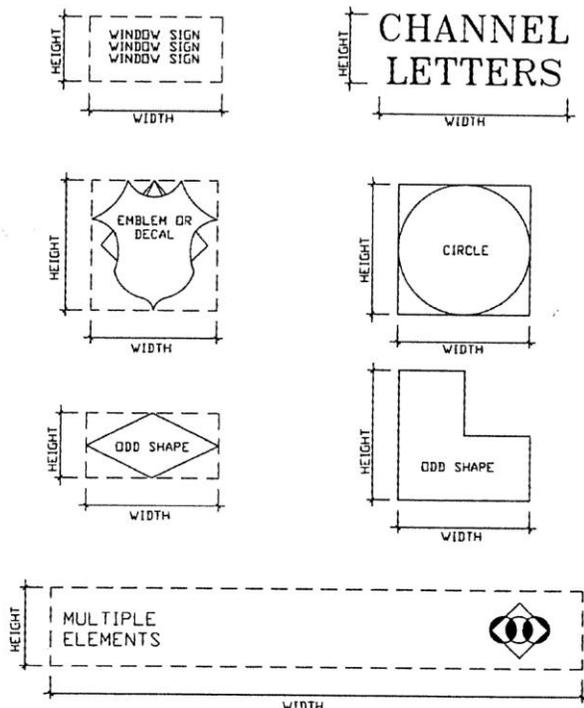
100 **12.3. - Computation of signage area.**

- 101 A. The area of a sign face (which is also the sign area of a wall sign or other sign with only one  
102 face) shall be computed by means of the smallest rectangle that will encompass the extreme  
103 limits of the writing, representation, emblem or other display, together with any material or  
104 color forming an integral part of the background of the display or used to differentiate the  
105 sign from the backdrop or structure against which it is placed, but not including any  
106 supporting framework, base, bracing or decorative fence or wall when such fence or wall  
107 otherwise meets the regulations of this chapter and is clearly incidental to the display itself.
- 108 B. For a single wall on a single-occupant building, all pieces of information or other graphic  
109 representations on that wall shall be measured as though part of one sign, encompassed  
110 within one rectangle, which may not exceed the permitted total wall area to which the sign  
111 is affixed. For a single wall on a multi-occupant building, the area of signs shall be computed

112 using these principles and each individual sign shall not exceed the permitted total wall area  
 113 to which the sign(s) is affixed.

114 C. Where the sign faces of a double-faced sign are parallel or the interior angle formed by the  
 115 faces is 60 degrees or less, only one display face shall be measured in computing sign area.  
 116 If the two faces of a double-faced sign are of unequal area, the area of the sign shall be the  
 117 area of the larger face. In all other cases, the areas of all faces of a multi-faced sign shall be  
 118 added together to compute the area of the sign. Sign area of multi-faced signs is calculated  
 119 based on the principle that all sign elements that can be seen at one time or from one  
 120 vantage point should be considered in measuring that side of the sign.

121 D. Spherical, cylindrical or other three-dimensional signs not having conventional sign faces  
 122 shall be computed from the smallest three-dimensional geometrical shape or shapes which  
 123 will best approximate the actual surface area of such faces.



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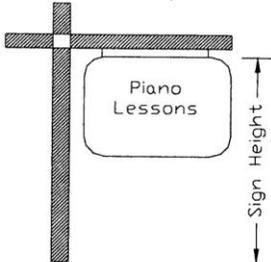
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126 **Signage Area**

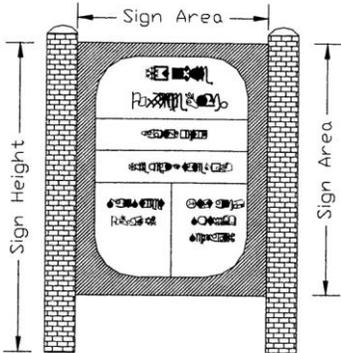
127 **12.4. - Computation of sign height.**

128 A. Sign height shall be measured from the street grade of the closest point in the street the sign  
 129 is located along or the grade at the base of the sign, whichever is higher, to the highest point  
 130 of the sign structure. The maximum height of a ground sign cannot exceed 25 feet unless  
 131 otherwise addressed in this ordinance.

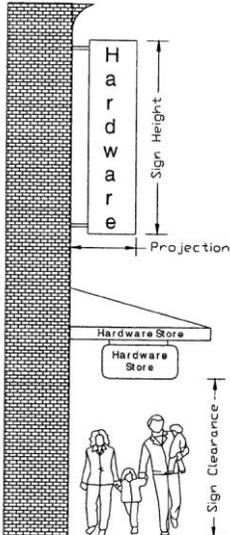
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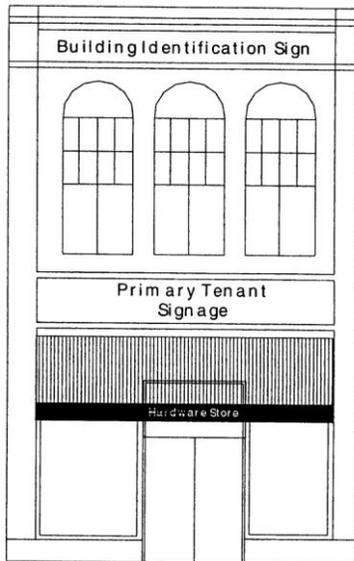


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136 **12.5. - General provisions.**

- 137 A. Building code compliance: All signs shall fully comply with the requirements of the State of  
138 North Carolina building and electrical codes.
- 139 B. Sign setback requirements: No portion of any freestanding sign may be located closer than  
140 ten feet to any street right-of-way except in the DMX district where signs shall be no closer  
141 than five feet to any street right-of-way. No portion of any freestanding sign shall be located  
142 any closer than 12 feet to any side or rear property line. No sign shall be located in such a  
143 manner as to constitute a traffic or safety hazard.
- 144 C. Illumination of signs: Signage shall comply with all applicable provisions of Chapter 11 of this  
145 ordinance. Unless otherwise expressly prohibited, signs may be illuminated provided that  
146 lighting fixtures used to illuminate a sign either shall be by directed ground lighting or  
147 mounted on the top of the sign, and shall comply with shielding requirements of Chapter 11  
148 of this ordinance. Lighting fixtures shall illuminate only the face of the sign, and shall not  
149 project into any portion of the traveled roadway.
- 150 D. Permit required: A permit, issued by the administrator, shall be required for all signs unless  
151 otherwise provided herein. No permit shall be issued until the administrator inspects plans  
152 for such signs and determines that they are in accordance with the requirements contained  
153 in this article. The fee schedule for sign permits shall be determined by city council.
- 154 E. Enforcement of regulations:
- 155 1. Any nonconforming sign constructed after the date of enactment of this chapter or any  
156 sign maintained in a nonconforming manner after the passage of the amortization  
157 period specified in Section 12.2(D) shall be subject to the enforcement procedures as  
158 set forth in Chapter 18 of this ordinance.

- 159 2. Removal. If the nonconforming sign has not been brought into compliance with the  
 160 provisions of this ordinance or removed within 30 days of having been issued a Notice  
 161 of Decision/Notice of Intent as set forth in Chapter 18, Section 18.3(D), then said sign  
 162 may be removed by the city and the cost of removal shall be billed to the owner or lessee  
 163 of the sign. Furthermore, the city may pursue any other remedy available under Chapter  
 164 18 of this ordinance or State Law.
- 165 3. Failure to pay removal costs. If the owner or lessee of a nonconforming sign that has  
 166 been removed by the city fails to pay for the costs of removal within 30 days of the billing  
 167 date for such action, then the city will collect the cost as a lien on the property in the  
 168 same manner as provided in G.S. 105-355 and 105-356 for delinquent property taxes.  
 169 The amount of such lien may include the actual cost of removal of said sign, plus any  
 170 fines which may have been levied and not paid, plus 15 percent representing penalty  
 171 and interest for cost of collection, plus attorney fees.

## 172 **12.6. - Prohibited signs.**

173 The following signs are prohibited in all districts except as otherwise permitted by this  
 174 section.

- 175 A. Signs constituting traffic hazards: Any sign located in a manner or place so as to  
 176 constitute a hazard to traffic as demonstrated by the administrator.
- 177 B. Signs in public right-of-way or easement: Any freestanding sign located in a public right-  
 178 of-way or easement, or extending over into a public right-of-way or easement, except  
 179 as otherwise allowed by this chapter. The administrator may remove any sign located  
 180 within a public right-of-way.
- 181 C. Signs obstructing passages: Any sign that obstructs or substantially interferes with any  
 182 window, door, fire escape, stairway, ladder or opening intended to provide light, air,  
 183 ingress or egress for any building.
- 184 D. Off-premises advertising signs: Billboards and other types of off-premises advertising  
 185 signs, unless otherwise allowed by this chapter.
- 186 E. Flashing devices: Any flashing device or sign displaying flashing or intermittent lights or  
 187 lights of changing degrees of intensity, except a sign indicating time and/or temperature,  
 188 with changes alternating on not less than a five-second level.
- 189 F. Moving devices: Any moving signs or device to attract attention, all or any part of which  
 190 moves by any means, including motion by the movement of the atmosphere or by  
 191 electrical or other means, including but not limited to pennants, flags, propellers or  
 192 discs, whether or not any said device has a written message. Moving devices may,  
 193 however, be allowed if in compliance with Section 12.8(M) or 12.9(J).
- 194 G. Posted signs: Any sign posted to utility poles, trees, fences, rocks or other signs.
- 195 H. Copies of official signs: Any sign which is a copy or an imitation of an official sign, or  
 196 which purports to have official status.

- 197 I. Portable signs.  
198 J. Roof signs.  
199 K. Signs not permitted: Any sign not expressly permitted elsewhere in this ordinance.

200 **12.7. - Exempt signs.**

201 The following signs are exempt from the provisions of this ordinance:

- 202 A. Governmental agency signs: Signs erected by a governmental agency to regulate,  
203 control or direct traffic including signs indicating bus stops, taxi stands, and similar  
204 transportation facilities. Such signs may be illuminated, flashing, or moving as required  
205 for public safety. Furthermore, signs erected by a governmental agency which convey  
206 information regarding a public service or the location of a public facility may also be  
207 illuminated as is necessary.
- 208 B. Signs required by law: Signs erected pursuant to federal, state, or local laws or  
209 ordinances.
- 210 C. Warning signs: Signs which warn of hazards to life, limb, and property such as high  
211 voltage electrical equipment, explosives and the like.
- 212 D. "No trespassing" signs: "No trespassing" signs not to exceed four square feet in surface  
213 area.

214 **12.8. - Signs permitted without a permit.**

215 The following types of signs shall be permitted in any use district without the issuance of a  
216 sign permit provided they meet the stated requirements:

- 217 A. Temporary real estate signs: Temporary real estate signs advertising a specific piece of  
218 property for sale, lease, rent, or development, located on said property, provided such  
219 signs shall not exceed eight square feet in surface area per side of sign up to a maximum  
220 of 16 square feet of aggregate surface area. Signs shall not be illuminated and shall not  
221 exceed one per parcel of land unless such land is located at an intersection of two  
222 streets; in such case, two signs shall be allowed, one facing each street.
- 223 B. Signs on window glass: Signs on window glass, regardless of size.
- 224 C. Private traffic signs: Private, unofficial traffic signs not exceeding two square feet in  
225 surface area per side of sign up to a maximum of four square feet of aggregate surface  
226 area per sign, which indicate directions, entrances, and exits. Such signs are to be  
227 located entirely on the property to which they pertain, and shall not contain any  
228 advertising message.
- 229 D. Organization signs: Any flag, badge, insignia, or design customarily displayed by any  
230 governmental agency or government, or any charitable, civic, fraternal, patriotic,  
231 religious, or similar organization.

- 232 E. Political party headquarters signs: Signs for political party headquarters shall meet the  
233 requirements set forth for the district in which they are located.
- 234 F. Service station signs: Gasoline service stations or any businesses selling gasoline are  
235 allowed, in addition to other provisions of this ordinance, the following signs:
- 236 1. Price and self-service signs attached to gasoline pumps: Gasoline price/self-service  
237 signs located at and secured to each pump island and not exceeding nine square  
238 feet per side of sign. One gasoline price/self-service sign may be freestanding and  
239 located at a place other than the pump island, but must be on the business site and  
240 meet all other sign regulations. If such signs are freestanding signs, they shall not  
241 exceed 40 inches in height.
- 242 2. Brand name and grade signs: Each brand sign, emblem of the gasoline sold, the  
243 grade of gasoline and any other related signs shall not exceed nine square feet in  
244 total aggregate surface area for each pump island.
- 245 3. North Carolina inspections sign: A North Carolina inspections sign at any location  
246 on the business premises as long as said sign is not placed in any right-of-way. Said  
247 sign shall not exceed 40 inches in height.
- 248 G. Numbers and nameplates: House numbers and nameplates are permitted in accordance  
249 with Brevard City Code, Chapter 62, Article VII, Property Addressing and Road Naming.
- 250 H. Construction signs: One construction sign per construction project not exceeding 32  
251 square feet of sign area in residential districts or 64 square feet in commercial or  
252 industrial districts, provided that such signs shall be erected no more than five days prior  
253 to the beginning of construction for which a valid building permit has been issued, shall  
254 be confined to the site of construction, and shall be removed five days after completion  
255 of construction and prior to occupancy.
- 256 I. Public notice: Official notices posted by public officers or employees in the performance  
257 of their duties.
- 258 J. Commemorative plaques: Commemorative plaques of recognized historic agencies or  
259 identification emblems of such agencies, provided that no plaque or emblem seal  
260 exceeds four square feet in area.
- 261 K. Nonprofit organization signs: Any sign erected by city personnel on behalf of a nonprofit  
262 organization sponsoring a one-time or annual event.
- 263 L. Public-owned ball field fence signs: Nonprofit organizations, i.e., local ball leagues, may  
264 sell advertising signage to merchants for attachment to ball field fences providing the  
265 following requirements are met:
- 266 1. Sign panels must be of uniform size and weather durable material and cannot  
267 exceed three feet by five feet in dimension.

- 268 2. Signage must be attached to the interior (ball field) of the chain link fencing, have  
 269 advertising copy on only the interior (ball field) side of fencing and cannot be self-  
 270 illuminated.
- 271 3. The back (exterior) side of the sign must be a dark solid green color and be uniform  
 272 in color with all the other signs. All signs must be kept clean and in good repair.
- 273 4. Signage cannot exceed one per fence panel. Sign must be uniform in height.
- 274 5. Signage can be erected two weeks prior to the beginning of the ball season and  
 275 must be taken down within two weeks from the conclusion of the season.
- 276 6. The city/county/state agency (owner) or tenant leasing the property will be  
 277 responsible for installing and removing the signs.
- 278 M. Automobile and motorized vehicle dealer signs:
- 279 1. Automobile dealers and motorized vehicle dealers within commercial districts are  
 280 allowed to attach to vehicles for sale small pennants, flags or balloons on antennas  
 281 and/or twirl-ads on hoods/roofs.
- 282 2. Said devices shall not exceed two per vehicle; devices are less than three square  
 283 feet in size; and devices are maintained and secured in a proper manner.
- 284 3. If a device is not secured or maintained to the satisfaction of the administrator such  
 285 device shall be deemed a prohibited moving device and be immediately removed.

286 **12.9. - Signs allowed with permits.**

287 The following types of signs shall be allowed within the City of Brevard upon the issuance of  
 288 a sign permit for each proposed sign and subject to the regulations set forth below:

- 289 A. Signs allowed in GR districts: The following types of signs shall be allowed in all of the  
 290 residential districts subject to the accompanying restrictions and the issuance of a sign  
 291 permit:
- 292 1. Nameplate signs:
- 293 i. Home occupations shall be allowed one nameplate sign for purposes of  
 294 identification.
- 295 ii. Signs shall not exceed four square feet of surface area and shall be attached to  
 296 the residence.
- 297 iii. Signs shall not be illuminated.
- 298 2. Ground signs at neighborhood entrances: Distinct neighborhoods, residential  
 299 subdivisions, residential group developments, residential planned development  
 300 districts, and manufactured home parks are permitted one ground sign at each  
 301 entrance.
- 302 i. Such communities may include those older existing communities that may not  
 303 have been permitted as unified projects (e.g., "Welcome to the Rosenwald

- 304 Community", "Maple Street Community"). However, such signs shall be of a  
 305 uniform design to be approved by the city. Designs and locations shall be  
 306 approved by the administrator in consultation with the public works director  
 307 and the community appearance commission.
- 308 ii. Signs shall be no larger than 32 square feet of surface area per side of sign up  
 309 to a maximum of 64 square feet of aggregate surface area per sign.
- 310 iii. Signs shall not exceed five in height and may be indirectly illuminated in  
 311 accordance with Chapter 11 of this ordinance.
- 312 iv. Such signs may be located within the center median of boulevard streets at  
 313 neighborhood entrances. Such placement shall require an encroachment  
 314 agreement from the North Carolina Department of Transportation or the City  
 315 of Brevard, as applicable.
- 316 3. Nonresidential uses: Nonresidential uses permitted in residential districts shall be  
 317 allowed one ground or wall identification sign per street fronted on by the  
 318 permitted use. Said sign shall be no larger than 32 square feet of surface area per  
 319 side of sign up to a maximum of 64 square feet of aggregate surface area for said  
 320 sign. Signs shall not exceed five feet in height and shall not be illuminated.
- 321 B. Ground signs (non-residential): The following standards shall apply to individual  
 322 businesses on individual parcels. Non-residential group developments, non-residential  
 323 planned development districts, and institutional campuses shall be subject to the same  
 324 dimensional requirements, but the number of allowable ground signs in such  
 325 developments is set forth in Section 12.11, below.
- 326 1. One ground sign not to exceed the following surface area limitations:
- 327 i. DMX, NMX, and RMX districts: 32 square feet in surface area per side of sign,  
 328 up to a maximum of 64 square feet of aggregate surface area for the entire  
 329 sign;
- 330 ii. CMX districts: 85 square feet in surface area per side of sign up to a maximum  
 331 of 170 square feet aggregate surface area for the entire sign;
- 332 iii. IC district: 24 square feet per side of sign up to a maximum of 48 square feet of  
 333 aggregate surface area for the entire sign;
- 334 iv. GI district: 50 square feet per side of sign up to a maximum of 100 square feet  
 335 of aggregate surface area for the entire sign;
- 336 v. Signs shall not exceed 25 feet in height in any district.
- 337 C. [Reader boards:] Reader boards are allowed on ground signs provided that the total area  
 338 of the sign, including the reader board, does not exceed the area allowed by this  
 339 subsection.
- 340 D. Electronic display signs: Electronic display signs may be permitted as ground or wall  
 341 signs, subject to the following additional requirements:

- 342 1. Only one electronic display sign shall be permitted per parcel.
- 343 2. Only one electronic display sign shall be permitted within any group development,  
344 planned development, or institutional campus.
- 345 3. Electronic display signs shall display only non-moving text and images with changes  
346 alternating on not less than a five-second level, and shall display no scrolling,  
347 flashing, blinking, or otherwise moving message.
- 348 4. Electronic display signs shall adhere to all other applicable wall or ground sign  
349 requirements of this chapter, as well as the lighting standards of Chapter 11 of this  
350 ordinance.
- 351 E. [Canopy signs:] Signs may be attached to a canopy provided that the total area of both  
352 the ground signs and all canopy signs does not exceed the amount described in this  
353 subsection.
- 354 F. [Sandwich board signs:] In lieu of ground signs, business establishments within DMX,  
355 NMX, and RMX districts may instead be permitted a single sandwich board sign to be  
356 placed on the sidewalk adjacent to the front of the individual business or on the brick  
357 paved area providing such a location does not pose a safety hazard. A sandwich board  
358 sign is an A-frame or inverted V-shape sign which is portable and usually double-sided.  
359 This sign must comply with Section 46-1 of the City Code and must not exceed four feet  
360 in height or eight square feet in area per side of sign. Business establishments located  
361 in the Times Arcade Alley may also be permitted to collectively place one such sign near  
362 the West Main Street alleyway entrance in the brick paved area, providing such a  
363 location does not pose a safety hazard and providing further that the sign is removed at  
364 the end of each day when the last business in the Times Arcade Alley closes.
- 365 G. Wall signs: Each establishment located in CMX, DMX, NMX, RMX, IC, and GI districts shall  
366 be allowed wall signs in accordance with the following provisions:
- 367 1. Wall sign: One wall sign located on the street frontage side of the building.
- 368 2. Projection sign: One suspended or projection identification sign per business  
369 establishment, not to exceed eight square feet per side of sign up to a maximum of  
370 16 square feet of aggregate surface area for the entire sign. Suspended or  
371 projection identification signs shall be located at the main entrance of the business.
- 372 3. Identification sign: Each establishment located in one of the above-mentioned  
373 districts shall be allowed one small business identification sign not to exceed 16  
374 square feet in surface area. That sign may be located on the rear or side of the  
375 business.
- 376 4. Marquee signs allowed in all commercial districts: Theaters located within  
377 commercial districts shall be allowed a marquee with one or two copy sign surfaces.  
378 Total copy area allowance, for all sign surfaces, shall not exceed five square feet per  
379 linear foot of canopy with a maximum total height limit of no more than five feet at

- 380 any point. A marquee shall not extend more than ten feet from the building nor be  
381 less than nine feet above the ground or sidewalk at the lowest point.
- 382 5. Menu reader board: Each drive-through restaurant establishment shall be allowed  
383 one menu reader board. Menu reader boards shall not be greater than 32 square  
384 feet in area or seven feet in height.
- 385 6. [Aggregate of wall signs:] The aggregate of all wall signs, including building  
386 identification signs, business identification signs, suspended signs, projection signs,  
387 marquee signs, and product information signs, shall not exceed 25 percent of the  
388 total surface area of the front wall space of the building (surface area of said wall  
389 shall be computed excluding windows and doors).
- 390 H. Building identification signs:
- 391 1. Each building located in non-residential districts shall be permitted one building  
392 identification sign in lieu of allowable ground sign attached to the front of said  
393 building, or to the side of the building if the side faces on a street, alley, or other  
394 public right-of-way.
- 395 2. Such building identification signs shall not exceed 32 square feet of aggregate  
396 surface area.
- 397 I. Temporary banners or A-frame signs:
- 398 1. Temporary banners or A-frame signs may be allowed in CMX, DMX, NMX, RMX, GI,  
399 and IC districts, subject to the following requirements:
- 400 i. Temporary banners or A-frame signs advertising the initial openings of business  
401 establishments, special events, or special sales may be permitted provided the  
402 location of such signs is approved by the administrator and meets all other  
403 requirements.
- 404 ii. Banners shall be attached to any part of the building wall.
- 405 iii. Said signs shall not exceed 32 square feet of total aggregate surface area; A-  
406 frame signs shall not exceed 16 square feet per side of sign.
- 407 iv. Said signs may be installed ten days prior to the initial opening, special event,  
408 or special sale and may remain ten days after completion of the promotion.
- 409 v. Permits for these on-premises signs shall be obtained on an annual basis.
- 410 J. Decorative flags, banners and other moving devices: Decorative flags, banners,  
411 pennants, and other moving devices (balloons, windsocks, etc.) may be allowed in all  
412 districts except GR, subject to the following requirements
- 413 1. A plan for all banners, flags, pennants, and devices indicating locations must be  
414 submitted to the administrator. An annual permit is required showing location, size,  
415 style, copy, and manner of installation of said banners, flags, pennants, and devices.
- 416 2. Manner of installation must be based on established safety standards.

- 417 3. No banner, flag, pennant, or moving device shall obstruct any fire escape, window,  
418 or door, or be placed in such a manner so as to interfere with any openings required  
419 for ventilation, nor offer hindrance to fire department equipment or personnel.
- 420 4. All banners, flags, pennants, or moving devices shall be constructed of a fire-  
421 retardant material or be treated to be fire retardant.
- 422 5. All banner, flag, pennant, or moving devices must be well-maintained; frayed,  
423 faded, or worn banners constitute illegal moving devices.
- 424 6. No advertising message from any off-premise business may be contained on the  
425 face of any banner, flag, pennant, or moving device.
- 426 7. No banner, flag, pennant, or moving device may overhang any portion of a vehicular  
427 travelway, except as otherwise allowed by this ordinance.
- 428 8. No illuminated, electric, or motor-powered devices may be allowed; glare cannot  
429 pose a problem to passing motorists.
- 430 9. No banner, flag, pennant, or moving device shall be secured to the wall in such a  
431 manner that the bottom portion is at least seven feet from the sidewalk or does not  
432 interfere in any manner with pedestrian traffic.,
- 433 10. Banners or flags cannot exceed a width of four feet and a length of six feet.
- 434 11. Banners, flags and other devices cannot exceed one per every 20 linear feet of  
435 storefront.
- 436 12. If, in the opinion of the administrator, said devices cause a nuisance or safety  
437 problem, the owner of said devices must relocate or remove them to the  
438 satisfaction of the code [enforcement] officer.
- 439 13. Banners, flags or pennants must be properly designed and engineered to withstand  
440 the average prevailing winds and to meet the minimum wind load requirement of  
441 the North Carolina Building Code.
- 442 14. This provision is subject to annual review by the planning board.
- 443 K. Political signs:
- 444 1. No political sign shall be permitted in the corporate limits or one-mile  
445 extraterritorial boundary of the City of Brevard unless a candidate for a political  
446 office, or the candidate's designee, first deposits \$500.00 to insure the removal of  
447 such signs.
- 448 2. Ten days after the election, the \$500.00 deposit will be refunded to the candidate  
449 or candidate's designee if all the candidate's political signs have been removed.
- 450 3. If the signs have not been removed, the \$500.00 deposit will be forfeited to the city.
- 451 4. Candidates who have made a deposit and are nominated in a primary election may  
452 keep their political signs up until ten days after the general election.

- 453 5. Any political signs of candidates who have not complied with this section shall be  
454 removed subject to the terms of this article.
- 455 6. All political signs must comply with the following standards:
- 456 i. Ground signs may not exceed 16 square feet per side of sign. Maximum height  
457 of sign from grade to top of sign shall be six feet.
- 458 ii. Political signs may not be posted more than 90 days prior to an election or  
459 primary.
- 460 iii. Candidates must remove their signs within ten days after the election or  
461 primary, in compliance with Section 12.9(K).
- 462 iv. Location. All signs must comply with Section 12.6.
- 463 L. Festivals and special events sponsored by government, educational, religious,  
464 charitable, civic, fraternal, or political organizations and institutions: Signs, banners,  
465 balloons, decorative flags and windsocks (hereafter, "special event signage") may be  
466 displayed during festivals and special events by permit during the day(s) of the event,  
467 subject to the following requirements:
- 468 1. Special event signage shall comply with all provisions of Section 12.9(J) except  
469 where modified herein.
- 470 2. Special event signage shall be approved by the administrator before being  
471 displayed. A plan showing the location, type and amount of all decorative signage  
472 and devices, along with the duration of the event, must be submitted to the  
473 administrator for review and approval.
- 474 3. A \$200.00 deposit, per event, must be given to the city insuring removal of all  
475 special event signage.
- 476 4. If the special event signage has not been removed, the \$200.00 deposit will be  
477 forfeited to the City of Brevard.
- 478 5. Any signs or other devices which have not complied with this section shall be  
479 removed subject to the terms of Section 12.2(C).
- 480 6. All special event signage must be firmly secured and well maintained.
- 481 7. No special event signage shall create a traffic hazard or obstruction to motorists or  
482 pedestrians.
- 483 8. The size of the overall special event signage shall not exceed 32 square feet of total  
484 aggregate surface area. However, if said special event signage is located in the DMX  
485 District, the width cannot exceed four feet and the length cannot exceed six feet.
- 486 9. With single sponsorship, the proportion of a sponsor's logo or name shall not  
487 exceed 25 percent of the overall area for any face of special event signage.

- 488 10. No more than three sponsor logos or names may be listed on special event signage.  
489 Sponsors logos or names shall not exceed when added together, 30 percent of the  
490 overall area for any face of special event signage.
- 491 11. Special event signage may not be illuminated, moving, or otherwise constitute a  
492 vehicular or pedestrian safety hazard.
- 493 12. Special event banners may be placed in or along the right-of-way of public streets  
494 in any district subject to the following requirements:
- 495 i. All other provisions of Section 12.9(J) are met; and
- 496 ii. A letter of permission from the proper utility company and/or property owner,  
497 holding the city harmless, must be submitted if a banner, flag or pennant is to  
498 be attached to or erected from any pole owned by the utility company.
- 499 iii. Banners shall contain no commercial advertisement copy or business logos.
- 500 iv. The size of an overhead banner crossing the road shall not exceed 30 feet in  
501 length and four feet in height. All overhead banners crossing the road will be  
502 composed of no more than two dimensions.
- 503 v. Overhead street banners and other banners within a right-of-way may not be  
504 displayed earlier than ten days prior to the event and must be removed within  
505 ten days after the event.
- 506 vi. Fees for the installation of overhead street banners shall be established by city  
507 council.

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510 **12.10. - Off-premises directional signs.**

- 511 A. Ground signs in nonresidential districts. For single establishments in all nonresidential  
512 districts except the DMX district, small self-illuminated ground signs are allowed to indicate  
513 directions to said establishments providing all of the following conditions are met:
- 514 1. Establishments with street frontage on US #64, US #276, and NC #280 cannot qualify for  
515 this type of signage.
- 516 2. Signs cannot exceed eight square feet per side of sign and cannot exceed eight feet in  
517 height.
- 518 3. No more than one directional sign may be allowed for each establishment.
- 519 4. A copy of the property owner's written permission allowing the posting of the sign must  
520 be submitted to the planning department along with a diagram showing location.

- 521 5. Signs cannot carry advertising messages but simply contain the name of the  
 522 establishment or the generic type of business with directions or arrows indicating  
 523 location.
- 524 6. Signs can only be posted within 50 feet of a street intersection with no more than two  
 525 such signs at said intersection.
- 526 7. Signs cannot be posted in residential districts.
- 527 8. Signs shall meet all applicable setback requirements, shall not be located within any  
 528 sight triangle, shall not be located in any public right-of-way, and cannot cause traffic  
 529 visibility problems.
- 530 B. Off-premises emergency room directional signs. Hospitals providing emergency care services  
 531 are allowed small self-illuminated ground signs to indicate directions to said establishments,  
 532 providing all of the following conditions are met:
- 533 1. Signs cannot exceed 24 square feet per side of sign and cannot exceed four feet in  
 534 height.
- 535 2. A copy of the property owner's written permission allowing the posting of the sign must  
 536 be submitted to the planning department along with a diagram showing location.
- 537 3. Signs cannot carry advertising messages but simply contain the name of the  
 538 establishment with directions or arrows indicating location.
- 539 4. Signs can only be posted within 200 feet of a street intersection with no more than two  
 540 such signs at said intersection; signs cannot cause traffic visibility problems.
- 541 5. All other applicable regulations in the [zoning] ordinance must be met, including sign  
 542 setback requirements and prohibition of signs in rights-of-way.
- 543 C. Off-premises parking identification signs. In addition to small traffic directional signs (see  
 544 Section 12.8(C)), owners of off-premise parking lots may have one additional ground sign  
 545 located on the parking lot property provided the following conditions are met:
- 546 1. The ground sign maximum surface area is six square feet per side of sign, up to a  
 547 maximum of 12 square feet of aggregate surface area for the entire sign;
- 548 2. Maximum sign height (from ground to top of sign) is six feet;
- 549 3. A sign permit must be obtained indicating said sign complies with relevant sign setback  
 550 requirements applicable to the district in which the sign is to be located.
- 551 **12.11. - Additional standards for planned development districts, group developments,**  
 552 **institutional campuses, and other similar projects.**
- 553 A. Ground signs visible from a public street. One ground sign may be permitted at each  
 554 development entrance provided that:
- 555 1. No part of any ground sign shall be closer than 500 feet to any part of another ground  
 556 sign within the same development along the same street frontage.

- 557 2. No part of any ground sign shall be closer 250 feet to any part of any other ground sign  
558 within the same development.
- 559 3. A ground sign may be situated at the convergence of two public streets upon which the  
560 development fronts but where no entrance is located. However, signs permitted under  
561 this provision shall be considered as situated upon both converging streets and shall be  
562 separated from all other ground signs within the same development in accordance with  
563 12.11.A.1 and 2., above.
- 564 4. Developments that are divided by a public street shall be considered as separate  
565 developments for the purposes of this subsection.
- 566 5. No other ground signs will be permitted except in accordance with Section 12.11, below.
- 567 6. These requirements shall apply regardless of whether such developments are  
568 subdivided into individual parcels.
- 569 7. All other requirements of this Chapter shall apply to such ground signs. Ground sign size  
570 and height requirements shall be the same as the base district within which the  
571 development is located.
- 572 8. Out-parcels as defined in Chapter 19 of this ordinance shall be allowed one ground sign  
573 in accordance with Section 12.9(B).
- 574 B. Wall signs visible from a public street. Individual businesses and buildings located within  
575 planned development districts, group developments, institutional campuses, and other  
576 similar projects may have the following:
- 577 1. One wall sign which shall not to exceed 50 square feet or 50 percent of the surface area  
578 of the wall upon which the sign is located, whichever is the lesser.
- 579 2. For buildings having frontage on more than one public right-of-way, signs may be placed  
580 on both walls fronting the public right-of-way.
- 581 3. One identification sign not to exceed 16 square feet. That sign may be located on the  
582 rear or side of the business.
- 583 4. One menu reader board for each drive-through restaurant establishment. Menu reader  
584 boards shall not be greater than 32 square feet in area or seven feet in height.
- 585 5. One suspended or projection identification sign per business establishment, not to  
586 exceed eight square feet per side of sign up to a maximum of 16 square feet of aggregate  
587 surface area for the entire sign. Suspended or projected identification signs shall be  
588 located at the main entrance of the business.
- 589 6. The aggregate area of all wall signs, including building identification signs, business  
590 identification signs, identification signs, suspended signs, projection signs, menu reader  
591 boards, and product information signs, shall not exceed 50 percent of the total surface  
592 area of the front wall space of the business (surface area of said wall shall be computed  
593 excluding windows and doors).

- 594 C. Internal development signage.
- 595 1. There shall be no limit to the number signs posted within an Institutional Campus, group  
596 development, planned development district, or other similar developments, when such  
597 signs are in no way visible from any public street or right-of-way, or any adjacent  
598 property.
- 599 2. Ground signs permitted under this provision shall comply with Section 12.11.A.1 and 2.,  
600 above.
- 601 3. Ground signs permitted under this provision shall be no larger than 32 square feet of  
602 surface area per side of sign up to a maximum of 64 square feet of aggregate surface  
603 area per sign, and shall not exceed five [feet] in height.
- 604 D. [Compliance:] Otherwise, signs permitted the development under this section shall comply  
605 with all other requirements of this chapter, and other forms of signage within the  
606 development shall comply with all requirements of this chapter.

(Slip Opinion)

OCTOBER TERM, 2014

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## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

REED ET AL. *v.* TOWN OF GILBERT, ARIZONA, ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

No. 13–502. Argued January 12, 2015—Decided June 18, 2015

Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here. “Ideological Signs,” defined as signs “communicating a message or ideas” that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions. “Political Signs,” defined as signs “designed to influence the outcome of an election,” may be up to 32 square feet and may only be displayed during an election season. “Temporary Directional Signs,” defined as signs directing the public to a church or other “qualifying event,” have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the “qualifying event” and 1 hour after.

Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed, ultimately concluding that the Code’s sign categories were content neutral, and that the Code satisfied the intermediate scrutiny accorded to content-neutral regulations of speech.

*Held:* The Sign Code’s provisions are content-based regulations of

## Syllabus

speech that do not survive strict scrutiny. Pp. 6–17.

(a) Because content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *E.g.*, *R. A. V. v. St. Paul*, 505 U. S. 377, 395. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g.*, *Sorrell v. IMS Health, Inc.*, 564 U. S. \_\_\_, \_\_\_–\_\_\_. And courts are required to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. *Id.*, at \_\_\_. Whether laws define regulated speech by particular subject matter or by its function or purpose, they are subject to strict scrutiny. The same is true for laws that, though facially content neutral, cannot be “‘justified without reference to the content of the regulated speech,’” or were adopted by the government “because of disagreement with the message” conveyed. *Ward v. Rock Against Racism*, 491 U. S. 781, 791. Pp. 6–7.

(b) The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign’s communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government’s justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. Pp. 7.

(c) None of the Ninth Circuit’s theories for its contrary holding is persuasive. Its conclusion that the Town’s regulation was not based on a disagreement with the message conveyed skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of “animus toward the ideas contained” in the regulated speech. *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410, 429. Thus, an innocuous justification cannot transform a facially content-based law into one that is content neutral. A court must evaluate each question—whether a law is content based on its face and whether the purpose and justification for the law are content based—before concluding that a law is content neutral. *Ward* does not require otherwise, for its framework applies only to a content-neutral statute.

The Ninth Circuit’s conclusion that the Sign Code does not single out any idea or viewpoint for discrimination conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints

## Syllabus

is a “more blatant” and “egregious form of content discrimination,” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829, but “[t]he First Amendment’s hostility to content-based regulation [also] extends . . . to prohibition of public discussion of an entire topic,” *Consolidated Edison Co. of N. Y. v. Public Serv. Comm’n of N. Y.*, 447 U. S. 530, 537. The Sign Code, a paradigmatic example of content-based discrimination, singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.

The Ninth Circuit also erred in concluding that the Sign Code was not content based because it made only speaker-based and event-based distinctions. The Code’s categories are not speaker-based—the restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. And even if the sign categories were speaker based, that would not automatically render the law content neutral. Rather, “laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference.” *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 658. This same analysis applies to event-based distinctions. Pp. 8–14.

(d) The Sign Code’s content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code’s differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. See *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U. S. \_\_\_, \_\_\_. Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code’s distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network, supra*, at 425. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs. Pp. 14–15.

(e) This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner. See *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789, 817. An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—*e.g.*, warning signs marking hazards on private property or signs directing traffic—might also survive strict scrutiny. Pp. 16–17.

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707 F. 3d 1057, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY and SOTOMAYOR, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. KAGAN, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined

Cite as: 576 U. S. \_\_\_\_ (2015)

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## Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

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No. 13–502

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CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF  
GILBERT, ARIZONA, ET AL.ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE THOMAS delivered the opinion of the Court.

The town of Gilbert, Arizona (or Town), has adopted a comprehensive code governing the manner in which people may display outdoor signs. Gilbert, Ariz., Land Development Code (Sign Code or Code), ch. 1, §4.402 (2005).<sup>1</sup> The Sign Code identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions. One of the categories is “Temporary Directional Signs Relating to a Qualifying Event,” loosely defined as signs directing the public to a meeting of a nonprofit group. §4.402(P). The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.

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<sup>1</sup>The Town’s Sign Code is available online at <http://www.gilbertaz.gov/departments/development-service/planning-development/land-development-code> (as visited June 16, 2015, and available in Clerk of Court’s case file).

## Opinion of the Court

## I

## A

The Sign Code prohibits the display of outdoor signs anywhere within the Town without a permit, but it then exempts 23 categories of signs from that requirement. These exemptions include everything from bazaar signs to flying banners. Three categories of exempt signs are particularly relevant here.

The first is “Ideological Sign[s].” This category includes any “sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency.” Sign Code, Glossary of General Terms (Glossary), p. 23 (emphasis deleted). Of the three categories discussed here, the Code treats ideological signs most favorably, allowing them to be up to 20 square feet in area and to be placed in all “zoning districts” without time limits. §4.402(J).

The second category is “Political Sign[s].” This includes any “temporary sign designed to influence the outcome of an election called by a public body.” Glossary 23.<sup>2</sup> The Code treats these signs less favorably than ideological signs. The Code allows the placement of political signs up to 16 square feet on residential property and up to 32 square feet on nonresidential property, undeveloped municipal property, and “rights-of-way.” §4.402(I).<sup>3</sup> These signs may be displayed up to 60 days before a primary election and up to 15 days following a general election. *Ibid.*

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<sup>2</sup>A “Temporary Sign” is a “sign not permanently attached to the ground, a wall or a building, and not designed or intended for permanent display.” Glossary 25.

<sup>3</sup>The Code defines “Right-of-Way” as a “strip of publicly owned land occupied by or planned for a street, utilities, landscaping, sidewalks, trails, and similar facilities.” *Id.*, at 18.

## Opinion of the Court

The third category is “Temporary Directional Signs Relating to a Qualifying Event.” This includes any “Temporary Sign intended to direct pedestrians, motorists, and other passersby to a ‘qualifying event.’” Glossary 25 (emphasis deleted). A “qualifying event” is defined as any “assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization.” *Ibid.* The Code treats temporary directional signs even less favorably than political signs.<sup>4</sup> Temporary directional signs may be no larger than six square feet. §4.402(P). They may be placed on private property or on a public right-of-way, but no more than four signs may be placed on a single property at any time. *Ibid.* And, they may be displayed no more than 12 hours before the “qualifying event” and no more than 1 hour afterward. *Ibid.*

## B

Petitioners Good News Community Church (Church) and its pastor, Clyde Reed, wish to advertise the time and location of their Sunday church services. The Church is a small, cash-strapped entity that owns no building, so it holds its services at elementary schools or other locations in or near the Town. In order to inform the public about its services, which are held in a variety of different loca-

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<sup>4</sup>The Sign Code has been amended twice during the pendency of this case. When litigation began in 2007, the Code defined the signs at issue as “Religious Assembly Temporary Direction Signs.” App. 75. The Code entirely prohibited placement of those signs in the public right-of-way, and it forbade posting them in any location for more than two hours before the religious assembly or more than one hour afterward. *Id.*, at 75–76. In 2008, the Town redefined the category as “Temporary Directional Signs Related to a Qualifying Event,” and it expanded the time limit to 12 hours before and 1 hour after the “qualifying event.” *Ibid.* In 2011, the Town amended the Code to authorize placement of temporary directional signs in the public right-of-way. *Id.*, at 89.

## Opinion of the Court

tions, the Church began placing 15 to 20 temporary signs around the Town, frequently in the public right-of-way abutting the street. The signs typically displayed the Church's name, along with the time and location of the upcoming service. Church members would post the signs early in the day on Saturday and then remove them around midday on Sunday. The display of these signs requires little money and manpower, and thus has proved to be an economical and effective way for the Church to let the community know where its services are being held each week.

This practice caught the attention of the Town's Sign Code compliance manager, who twice cited the Church for violating the Code. The first citation noted that the Church exceeded the time limits for displaying its temporary directional signs. The second citation referred to the same problem, along with the Church's failure to include the date of the event on the signs. Town officials even confiscated one of the Church's signs, which Reed had to retrieve from the municipal offices.

Reed contacted the Sign Code Compliance Department in an attempt to reach an accommodation. His efforts proved unsuccessful. The Town's Code compliance manager informed the Church that there would be "no leniency under the Code" and promised to punish any future violations.

Shortly thereafter, petitioners filed a complaint in the United States District Court for the District of Arizona, arguing that the Sign Code abridged their freedom of speech in violation of the First and Fourteenth Amendments. The District Court denied the petitioners' motion for a preliminary injunction. The Court of Appeals for the Ninth Circuit affirmed, holding that the Sign Code's provision regulating temporary directional signs did not regulate speech on the basis of content. 587 F.3d 966, 979 (2009). It reasoned that, even though an enforcement

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officer would have to read the sign to determine what provisions of the Sign Code applied to it, the “kind of cursory examination” that would be necessary for an officer to classify it as a temporary directional sign was “not akin to an officer synthesizing the expressive content of the sign.” *Id.*, at 978. It then remanded for the District Court to determine in the first instance whether the Sign Code’s distinctions among temporary directional signs, political signs, and ideological signs nevertheless constituted a content-based regulation of speech.

On remand, the District Court granted summary judgment in favor of the Town. The Court of Appeals again affirmed, holding that the Code’s sign categories were content neutral. The court concluded that “the distinctions between Temporary Directional Signs, Ideological Signs, and Political Signs . . . are based on objective factors relevant to Gilbert’s creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign.” 707 F. 3d 1057, 1069 (CA9 2013). Relying on this Court’s decision in *Hill v. Colorado*, 530 U. S. 703 (2000), the Court of Appeals concluded that the Sign Code is content neutral. 707 F. 3d, at 1071–1072. As the court explained, “Gilbert did not adopt its regulation of speech because it disagreed with the message conveyed” and its “interests in regulat[ing] temporary signs are unrelated to the content of the sign.” *Ibid.* Accordingly, the court believed that the Code was “content-neutral as that term [has been] defined by the Supreme Court.” *Id.*, at 1071. In light of that determination, it applied a lower level of scrutiny to the Sign Code and concluded that the law did not violate the First Amendment. *Id.*, at 1073–1076.

We granted certiorari, 573 U. S. \_\_\_\_ (2014), and now reverse.

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## II

## A

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws “abridging the freedom of speech.” U. S. Const., Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dept. of Chicago v. Mosley*, 408 U. S. 92, 95 (1972). Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *R. A. V. v. St. Paul*, 505 U. S. 377, 395 (1992); *Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 115, 118 (1991).

Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g.*, *Sorrell v. IMS Health, Inc.*, 564 U. S. \_\_\_, \_\_\_–\_\_\_ (2011) (slip op., at 8–9); *Carey v. Brown*, 447 U. S. 455, 462 (1980); *Mosley*, *supra*, at 95. This commonsense meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. *Sorrell*, *supra*, at \_\_\_ (slip op., at 8). Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be “justified without reference to

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the content of the regulated speech,” or that were adopted by the government “because of disagreement with the message [the speech] conveys,” *Ward v. Rock Against Racism*, 491 U. S. 781, 791 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

## B

The Town’s Sign Code is content based on its face. It defines “Temporary Directional Signs” on the basis of whether a sign conveys the message of directing the public to church or some other “qualifying event.” Glossary 25. It defines “Political Signs” on the basis of whether a sign’s message is “designed to influence the outcome of an election.” *Id.*, at 24. And it defines “Ideological Signs” on the basis of whether a sign “communicat[es] a message or ideas” that do not fit within the Code’s other categories. *Id.*, at 23. It then subjects each of these categories to different restrictions.

The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke’s *Two Treatises of Government*, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke’s followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke’s theory of government. More to the point, the Church’s signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government’s justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.

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## C

In reaching the contrary conclusion, the Court of Appeals offered several theories to explain why the Town's Sign Code should be deemed content neutral. None is persuasive.

## 1

The Court of Appeals first determined that the Sign Code was content neutral because the Town “did not adopt its regulation of speech [based on] disagree[ment] with the message conveyed,” and its justifications for regulating temporary directional signs were “unrelated to the content of the sign.” 707 F. 3d, at 1071–1072. In its brief to this Court, the United States similarly contends that a sign regulation is content neutral—even if it expressly draws distinctions based on the sign's communicative content—if those distinctions can be “justified without reference to the content of the regulated speech.” Brief for United States as *Amicus Curiae* 20, 24 (quoting *Ward, supra*, at 791; emphasis deleted).

But this analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of “animus toward the ideas contained” in the regulated speech. *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410, 429 (1993). We have thus made clear that “[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment,” and a party opposing the government “need adduce ‘no evidence of an improper censorial motive.’” *Simon & Schuster, supra*, at 117. Although “a content-based purpose may be sufficient in certain circumstances to show that a regulation is content based, it is not necessary.” *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 642 (1994). In other words, an

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innocuous justification cannot transform a facially content-based law into one that is content neutral.

That is why we have repeatedly considered whether a law is content neutral on its face *before* turning to the law’s justification or purpose. See, e.g., *Sorrell, supra*, at \_\_\_\_–\_\_\_\_ (slip op., at 8–9) (statute was content based “on its face,” and there was also evidence of an impermissible legislative motive); *United States v. Eichman*, 496 U. S. 310, 315 (1990) (“Although the [statute] contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government’s asserted *interest* is related to the suppression of free expression” (internal quotation marks omitted)); *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789, 804 (1984) (“The text of the ordinance is neutral,” and “there is not even a hint of bias or censorship in the City’s enactment or enforcement of this ordinance”); *Clark v. Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984) (requiring that a facially content-neutral ban on camping must be “justified without reference to the content of the regulated speech”); *United States v. O’Brien*, 391 U. S. 367, 375, 377 (1968) (noting that the statute “on its face deals with conduct having no connection with speech,” but examining whether the “the governmental interest is unrelated to the suppression of free expression”). Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

The Court of Appeals and the United States misunderstand our decision in *Ward* as suggesting that a government’s purpose is relevant even when a law is content based on its face. That is incorrect. *Ward* had nothing to say about facially content-based restrictions because it involved a facially content-*neutral* ban on the use, in a

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city-owned music venue, of sound amplification systems not provided by the city. 491 U. S., at 787, and n. 2. In that context, we looked to governmental motive, including whether the government had regulated speech “because of disagreement” with its message, and whether the regulation was “justified without reference to the content of the speech.” *Id.*, at 791. But *Ward’s* framework “applies only if a statute is content neutral.” *Hill*, 530 U. S., at 766 (KENNEDY, J., dissenting). Its rules thus operate “to protect speech,” not “to restrict it.” *Id.*, at 765.

The First Amendment requires no less. Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech. That is why the First Amendment expressly targets the operation of the laws—*i.e.*, the “abridg[ement] of speech”—rather than merely the motives of those who enacted them. U. S. Const., Amdt. 1. “The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.” *Hill, supra*, at 743 (SCALIA, J., dissenting).

For instance, in *NAACP v. Button*, 371 U. S. 415 (1963), the Court encountered a State’s attempt to use a statute prohibiting “improper solicitation” by attorneys to outlaw litigation-related speech of the National Association for the Advancement of Colored People. *Id.*, at 438. Although *Button* predated our more recent formulations of strict scrutiny, the Court rightly rejected the State’s claim that its interest in the “regulation of professional conduct” rendered the statute consistent with the First Amendment, observing that “it is no answer . . . to say . . . that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression.” *Id.*, at 438–439. Likewise, one could easily imagine a Sign Code compliance manager who disliked the Church’s

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substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services. Accordingly, we have repeatedly “rejected the argument that ‘discriminatory . . . treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas.’” *Discovery Network*, 507 U. S., at 429. We do so again today.

## 2

The Court of Appeals next reasoned that the Sign Code was content neutral because it “does not mention any idea or viewpoint, let alone single one out for differential treatment.” 587 F. 3d, at 977. It reasoned that, for the purpose of the Code provisions, “[i]t makes no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted.” 707 F. 3d, at 1069.

The Town seizes on this reasoning, insisting that “content based” is a term of art that “should be applied flexibly” with the goal of protecting “viewpoints and ideas from government censorship or favoritism.” Brief for Respondents 22. In the Town’s view, a sign regulation that “does not censor or favor particular viewpoints or ideas” cannot be content based. *Ibid.* The Sign Code allegedly passes this test because its treatment of temporary directional signs does not raise any concerns that the government is “endorsing or suppressing ‘ideas or viewpoints,’” *id.*, at 27, and the provisions for political signs and ideological signs “are neutral as to particular ideas or viewpoints” within those categories. *Id.*, at 37.

This analysis conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints—or the regulation of speech based on “the specific motivating ideology or the opinion or perspective of the speaker”—is a “more blatant” and “egregious form of

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content discrimination.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). But it is well established that “[t]he First Amendment’s hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.” *Consolidated Edison Co. of N. Y. v. Public Serv. Comm’n of N. Y.*, 447 U. S. 530, 537 (1980).

Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. *Ibid.* For example, a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed. See *Discovery Network, supra*, at 428. The Town’s Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination.

## 3

Finally, the Court of Appeals characterized the Sign Code’s distinctions as turning on “the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.” 707 F. 3d, at 1069. That analysis is mistaken on both factual and legal grounds.

To start, the Sign Code’s distinctions are not speaker based. The restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. If a local business, for example, sought to put up

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signs advertising the Church’s meetings, those signs would be subject to the same limitations as such signs placed by the Church. And if Reed had decided to display signs in support of a particular candidate, he could have made those signs far larger—and kept them up for far longer—than signs inviting people to attend his church services. If the Code’s distinctions were truly speaker based, both types of signs would receive the same treatment.

In any case, the fact that a distinction is speaker based does not, as the Court of Appeals seemed to believe, automatically render the distinction content neutral. Because “[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content,” *Citizens United v. Federal Election Comm’n*, 558 U. S. 310, 340 (2010), we have insisted that “laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference,” *Turner*, 512 U. S., at 658. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. See *Citizens United*, *supra*, at 340–341. Characterizing a distinction as speaker based is only the beginning—not the end—of the inquiry.

Nor do the Sign Code’s distinctions hinge on “whether and when an event is occurring.” The Code does not permit citizens to post signs on any topic whatsoever within a set period leading up to an election, for example. Instead, come election time, it requires Town officials to determine whether a sign is “designed to influence the outcome of an election” (and thus “political”) or merely “communicating a message or ideas for noncommercial purposes” (and thus “ideological”). Glossary 24. That obvious content-based

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inquiry does not evade strict scrutiny review simply because an event (*i.e.*, an election) is involved.

And, just as with speaker-based laws, the fact that a distinction is event based does not render it content neutral. The Court of Appeals cited no precedent from this Court supporting its novel theory of an exception from the content-neutrality requirement for event-based laws. As we have explained, a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. *Supra*, at 6. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea. Here, the Code singles out signs bearing a particular message: the time and location of a specific event. This type of ordinance may seem like a perfectly rational way to regulate signs, but a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem “entirely reasonable” will sometimes be “struck down because of their content-based nature.” *City of Ladue v. Gilleo*, 512 U. S. 43, 60 (1994) (O’Connor, J., concurring).

## III

Because the Town’s Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, “which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest,” *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U. S. \_\_\_, \_\_\_ (2011) (slip op., at 8) (quoting *Citizens United*, 558 U. S., at 340). Thus, it is the Town’s burden to demonstrate that the Code’s differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tai-

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lored to that end. See *ibid.*

The Town cannot do so. It has offered only two governmental interests in support of the distinctions the Sign Code draws: preserving the Town's aesthetic appeal and traffic safety. Assuming for the sake of argument that those are compelling governmental interests, the Code's distinctions fail as hopelessly underinclusive.

Starting with the preservation of aesthetics, temporary directional signs are "no greater an eyesore," *Discovery Network*, 507 U. S., at 425, than ideological or political ones. Yet the Code allows unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.

The Town similarly has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not. The Town has offered no reason to believe that directional signs pose a greater threat to safety than do ideological or political signs. If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.

In light of this underinclusiveness, the Town has not met its burden to prove that its Sign Code is narrowly tailored to further a compelling government interest. Because a "law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited," *Republican Party of Minn. v. White*, 536 U. S. 765, 780 (2002), the Sign Code fails strict scrutiny.

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## IV

Our decision today will not prevent governments from enacting effective sign laws. The Town asserts that an “absolutist” content-neutrality rule would render “virtually all distinctions in sign laws . . . subject to strict scrutiny,” Brief for Respondents 34–35, but that is not the case. Not “all distinctions” are subject to strict scrutiny, only *content-based* ones are. Laws that are *content neutral* are instead subject to lesser scrutiny. See *Clark*, 468 U. S., at 295.

The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign’s message: size, building materials, lighting, moving parts, and portability. See, e.g., §4.402(R). And on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner. See *Taxpayers for Vincent*, 466 U. S., at 817 (upholding content-neutral ban against posting signs on public property). Indeed, some lower courts have long held that similar content-based sign laws receive strict scrutiny, but there is no evidence that towns in those jurisdictions have suffered catastrophic effects. See, e.g., *Solantic, LLC v. Neptune Beach*, 410 F.3d 1250, 1264–1269 (CA11 2005) (sign categories similar to the town of Gilbert’s were content based and subject to strict scrutiny); *Matthews v. Needham*, 764 F.2d 58, 59–60 (CA1 1985) (law banning political signs but not commercial signs was content based and subject to strict scrutiny).

We acknowledge that a city might reasonably view the general regulation of signs as necessary because signs “take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation.” *City of Ladue*, 512 U. S., at 48. At the same time, the presence of certain

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signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny. The signs at issue in this case, including political and ideological signs and signs for events, are far removed from those purposes. As discussed above, they are facially content based and are neither justified by traditional safety concerns nor narrowly tailored.

\* \* \*

We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

*It is so ordered.*

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ALITO, J., concurring

**SUPREME COURT OF THE UNITED STATES**

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF  
GILBERT, ARIZONA, ET AL.ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE ALITO, with whom JUSTICE KENNEDY and JUSTICE SOTOMAYOR join, concurring.

I join the opinion of the Court but add a few words of further explanation.

As the Court holds, what we have termed “content-based” laws must satisfy strict scrutiny. Content-based laws merit this protection because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its “topic” or “subject” favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth. See *Consolidated Edison Co. of N. Y. v. Public Serv. Comm’n of N. Y.*, 447 U. S. 530, 537 (1980).

As the Court shows, the regulations at issue in this case are replete with content-based distinctions, and as a result they must satisfy strict scrutiny. This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign regulations. I will not attempt to provide anything like a comprehensive list, but here are some rules that would not be content based:

Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.

Rules regulating the locations in which signs may be

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placed. These rules may distinguish between free-standing signs and those attached to buildings.

Rules distinguishing between lighted and unlighted signs.

Rules distinguishing between signs with fixed messages and electronic signs with messages that change.

Rules that distinguish between the placement of signs on private and public property.

Rules distinguishing between the placement of signs on commercial and residential property.

Rules distinguishing between on-premises and off-premises signs.

Rules restricting the total number of signs allowed per mile of roadway.

Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.\*

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. See *Pleasant Grove City v. Summum*, 555 U. S. 460, 467–469 (2009). They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate esthetic objectives.

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\*Of course, content-neutral restrictions on speech are not necessarily consistent with the First Amendment. Time, place, and manner restrictions “must be narrowly tailored to serve the government’s legitimate, content-neutral interests.” *Ward v. Rock Against Racism*, 491 U. S. 781, 798 (1989). But they need not meet the high standard imposed on viewpoint- and content-based restrictions.

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BREYER, J., concurring in judgment

**SUPREME COURT OF THE UNITED STATES**

No. 13–502

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GILBERT, ARIZONA, ET AL.ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE BREYER, concurring in the judgment.

I join JUSTICE KAGAN’s separate opinion. Like JUSTICE KAGAN I believe that categories alone cannot satisfactorily resolve the legal problem before us. The First Amendment requires greater judicial sensitivity both to the Amendment’s expressive objectives and to the public’s legitimate need for regulation than a simple recitation of categories, such as “content discrimination” and “strict scrutiny,” would permit. In my view, the category “content discrimination” is better considered in many contexts, including here, as a rule of thumb, rather than as an automatic “strict scrutiny” trigger, leading to almost certain legal condemnation.

To use content discrimination to trigger strict scrutiny sometimes makes perfect sense. There are cases in which the Court has found content discrimination an unconstitutional method for suppressing a viewpoint. *E.g.*, *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828–829 (1995); see also *Boos v. Barry*, 485 U. S. 312, 318–319 (1988) (plurality opinion) (applying strict scrutiny where the line between subject matter and viewpoint was not obvious). And there are cases where the Court has found content discrimination to reveal that rules governing a traditional public forum are, in fact, not a neutral way of fairly managing the forum in the interest of all

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speakers. *Police Dept. of Chicago v. Mosley*, 408 U. S. 92, 96 (1972) (“Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say”). In these types of cases, strict scrutiny is often appropriate, and content discrimination has thus served a useful purpose.

But content discrimination, while helping courts to identify unconstitutional suppression of expression, cannot and should not *always* trigger strict scrutiny. To say that it is not an automatic “strict scrutiny” trigger is not to argue against that concept’s use. I readily concede, for example, that content discrimination, as a conceptual tool, can sometimes reveal weaknesses in the government’s rationale for a rule that limits speech. If, for example, a city looks to litter prevention as the rationale for a prohibition against placing newsracks dispensing free advertisements on public property, why does it exempt other newsracks causing similar litter? Cf. *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410 (1993). I also concede that, whenever government disfavors one kind of speech, it places that speech at a disadvantage, potentially interfering with the free marketplace of ideas and with an individual’s ability to express thoughts and ideas that can help that individual determine the kind of society in which he wishes to live, help shape that society, and help define his place within it.

Nonetheless, in these latter instances to use the presence of content discrimination automatically to trigger strict scrutiny and thereby call into play a strong presumption against constitutionality goes too far. That is because virtually all government activities involve speech, many of which involve the regulation of speech. Regulatory programs almost always require content discrimination. And to hold that such content discrimination triggers strict scrutiny is to write a recipe for judicial management

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of ordinary government regulatory activity.

Consider a few examples of speech regulated by government that inevitably involve content discrimination, but where a strong presumption against constitutionality has no place. Consider governmental regulation of securities, *e.g.*, 15 U. S. C. §78l (requirements for content that must be included in a registration statement); of energy conservation labeling-practices, *e.g.*, 42 U. S. C. §6294 (requirements for content that must be included on labels of certain consumer electronics); of prescription drugs, *e.g.*, 21 U. S. C. §353(b)(4)(A) (requiring a prescription drug label to bear the symbol “Rx only”); of doctor-patient confidentiality, *e.g.*, 38 U. S. C. §7332 (requiring confidentiality of certain medical records, but allowing a physician to disclose that the patient has HIV to the patient’s spouse or sexual partner); of income tax statements, *e.g.*, 26 U. S. C. §6039F (requiring taxpayers to furnish information about foreign gifts received if the aggregate amount exceeds \$10,000); of commercial airplane briefings, *e.g.*, 14 CFR §136.7 (2015) (requiring pilots to ensure that each passenger has been briefed on flight procedures, such as seatbelt fastening); of signs at petting zoos, *e.g.*, N. Y. Gen. Bus. Law Ann. §399–ff(3) (West Cum. Supp. 2015) (requiring petting zoos to post a sign at every exit “‘strongly recommend[ing] that persons wash their hands upon exiting the petting zoo area’”); and so on.

Nor can the majority avoid the application of strict scrutiny to all sorts of justifiable governmental regulations by relying on this Court’s many subcategories and exceptions to the rule. The Court has said, for example, that we should apply less strict standards to “commercial speech.” *Central Hudson Gas & Elec. Corp. v. Public Service Comm’n of N. Y.*, 447 U. S. 557, 562–563 (1980). But I have great concern that many justifiable instances of “content-based” regulation are noncommercial. And, worse than that, the Court has applied the heightened

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“strict scrutiny” standard even in cases where the less stringent “commercial speech” standard was appropriate. See *Sorrell v. IMS Health Inc.*, 564 U. S. \_\_\_, \_\_\_ (2011) (BREYER, J., dissenting) (slip op., at \_\_\_). The Court has also said that “government speech” escapes First Amendment strictures. See *Rust v. Sullivan*, 500 U. S. 173, 193–194 (1991). But regulated speech is typically private speech, not government speech. Further, the Court has said that, “[w]hen the basis for the content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, no significant danger of idea or viewpoint discrimination exists.” *R. A. V. v. St. Paul*, 505 U. S. 377, 388 (1992). But this exception accounts for only a few of the instances in which content discrimination is readily justifiable.

I recognize that the Court could escape the problem by watering down the force of the presumption against constitutionality that “strict scrutiny” normally carries with it. But, in my view, doing so will weaken the First Amendment’s protection in instances where “strict scrutiny” should apply in full force.

The better approach is to generally treat content discrimination as a strong reason weighing against the constitutionality of a rule where a traditional public forum, or where viewpoint discrimination, is threatened, but elsewhere treat it as a rule of thumb, finding it a helpful, but not determinative legal tool, in an appropriate case, to determine the strength of a justification. I would use content discrimination as a supplement to a more basic analysis, which, tracking most of our First Amendment cases, asks whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of the relevant regulatory objectives. Answering this question requires examining the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives,

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and whether there are other, less restrictive ways of doing so. See, e.g., *United States v. Alvarez*, 567 U. S. \_\_\_, \_\_\_–\_\_\_ (2012) (BREYER, J., concurring in judgment) (slip op., at 1–3); *Nixon v. Shrink Missouri Government PAC*, 528 U. S. 377, 400–403 (2000) (BREYER, J., concurring). Admittedly, this approach does not have the simplicity of a mechanical use of categories. But it does permit the government to regulate speech in numerous instances where the voters have authorized the government to regulate and where courts should hesitate to substitute judicial judgment for that of administrators.

Here, regulation of signage along the roadside, for purposes of safety and beautification is at issue. There is no traditional public forum nor do I find any general effort to censor a particular viewpoint. Consequently, the specific regulation at issue does not warrant “strict scrutiny.” Nonetheless, for the reasons that JUSTICE KAGAN sets forth, I believe that the Town of Gilbert’s regulatory rules violate the First Amendment. I consequently concur in the Court’s judgment only.

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KAGAN, J., concurring in judgment

**SUPREME COURT OF THE UNITED STATES**

No. 13–502

CLYDE REED, ET AL., PETITIONERS *v.* TOWN OF  
GILBERT, ARIZONA, ET AL.ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June 18, 2015]

JUSTICE KAGAN, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring in the judgment.

Countless cities and towns across America have adopted ordinances regulating the posting of signs, while exempting certain categories of signs based on their subject matter. For example, some municipalities generally prohibit illuminated signs in residential neighborhoods, but lift that ban for signs that identify the address of a home or the name of its owner or occupant. See, *e.g.*, City of Truth or Consequences, N. M., Code of Ordinances, ch. 16, Art. XIII, §§11–13–2.3, 11–13–2.9(H)(4) (2014). In other municipalities, safety signs such as “Blind Pedestrian Crossing” and “Hidden Driveway” can be posted without a permit, even as other permanent signs require one. See, *e.g.*, Code of Athens-Clarke County, Ga., Pt. III, §7–4–7(1) (1993). Elsewhere, historic site markers—for example, “George Washington Slept Here”—are also exempt from general regulations. See, *e.g.*, Dover, Del., Code of Ordinances, Pt. II, App. B, Art. 5, §4.5(F) (2012). And similarly, the federal Highway Beautification Act limits signs along interstate highways unless, for instance, they direct travelers to “scenic and historical attractions” or advertise free coffee. See 23 U. S. C. §§131(b), (c)(1), (c)(5).

Given the Court’s analysis, many sign ordinances of that kind are now in jeopardy. See *ante*, at 14 (acknowledging

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that “entirely reasonable” sign laws “will sometimes be struck down” under its approach (internal quotation marks omitted). Says the majority: When laws “single[] out specific subject matter,” they are “facially content based”; and when they are facially content based, they are automatically subject to strict scrutiny. *Ante*, at 12, 16–17. And although the majority holds out hope that some sign laws with subject-matter exemptions “might survive” that stringent review, *ante*, at 17, the likelihood is that most will be struck down. After all, it is the “rare case[] in which a speech restriction withstands strict scrutiny.” *Williams-Yulee v. Florida Bar*, 575 U. S. \_\_\_, \_\_\_ (2015) (slip op., at 9). To clear that high bar, the government must show that a content-based distinction “is necessary to serve a compelling state interest and is narrowly drawn to achieve that end.” *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U. S. 221, 231 (1987). So on the majority’s view, courts would have to determine that a town has a compelling interest in informing passersby where George Washington slept. And likewise, courts would have to find that a town has no other way to prevent hidden-driveway mishaps than by specially treating hidden-driveway signs. (Well-placed speed bumps? Lower speed limits? Or how about just a ban on hidden driveways?) The consequence—unless courts water down strict scrutiny to something unrecognizable—is that our communities will find themselves in an unenviable bind: They will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter.\*

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\*Even in trying (commendably) to limit today’s decision, JUSTICE ALITO’s concurrence highlights its far-reaching effects. According to JUSTICE ALITO, the majority does not subject to strict scrutiny regulations of “signs advertising a one-time event.” *Ante*, at 2 (ALITO, J., concurring). But of course it does. On the majority’s view, a law with an exception for such signs “singles out specific subject matter for

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Although the majority insists that applying strict scrutiny to all such ordinances is “essential” to protecting First Amendment freedoms, *ante*, at 14, I find it challenging to understand why that is so. This Court’s decisions articulate two important and related reasons for subjecting content-based speech regulations to the most exacting standard of review. The first is “to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.” *McCullen v. Coakley*, 573 U. S. \_\_\_, \_\_\_–\_\_\_ (2014) (slip op., at 8–9) (internal quotation marks omitted). The second is to ensure that the government has not regulated speech “based on hostility—or favoritism—towards the underlying message expressed.” *R. A. V. v. St. Paul*, 505 U. S. 377, 386 (1992). Yet the subject-matter exemptions included in many sign ordinances do not implicate those concerns. Allowing residents, say, to install a light bulb over “name and address” signs but no others does not distort the marketplace of ideas. Nor does that different treatment give rise to an inference of impermissible government motive.

We apply strict scrutiny to facially content-based regulations of speech, in keeping with the rationales just described, when there is any “realistic possibility that official suppression of ideas is afoot.” *Davenport v. Washington Ed. Assn.*, 551 U. S. 177, 189 (2007) (quoting *R. A. V.*, 505 U. S., at 390). That is always the case when the regulation facially differentiates on the basis of viewpoint. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995). It is also the case (except in non-public or limited public forums) when a law restricts “discussion of an entire topic” in public debate. *Consolidated*

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differential treatment” and “defin[es] regulated speech by particular subject matter.” *Ante*, at 6, 12 (majority opinion). Indeed, the precise reason the majority applies strict scrutiny here is that “the Code singles out signs bearing a particular message: the time and location of a specific event.” *Ante*, at 14.

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*Edison Co. of N. Y. v. Public Serv. Comm'n of N. Y.*, 447 U. S. 530, 537, 539–540 (1980) (invalidating a limitation on speech about nuclear power). We have stated that “[i]f the marketplace of ideas is to remain free and open, governments must not be allowed to choose ‘which issues are worth discussing or debating.’” *Id.*, at 537–538 (quoting *Police Dept. of Chicago v. Mosley*, 408 U. S. 92, 96 (1972)). And we have recognized that such subject-matter restrictions, even though viewpoint-neutral on their face, may “suggest[] an attempt to give one side of a debatable public question an advantage in expressing its views to the people.” *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 785 (1978); accord, *ante*, at 1 (ALITO, J., concurring) (limiting all speech on one topic “favors those who do not want to disturb the status quo”). Subject-matter regulation, in other words, may have the intent or effect of favoring some ideas over others. When that is realistically possible—when the restriction “raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace”—we insist that the law pass the most demanding constitutional test. *R. A. V.*, 505 U. S., at 387 (quoting *Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 116 (1991)).

But when that is not realistically possible, we may do well to relax our guard so that “entirely reasonable” laws imperiled by strict scrutiny can survive. *Ante*, at 14. This point is by no means new. Our concern with content-based regulation arises from the fear that the government will skew the public’s debate of ideas—so when “that risk is inconsequential, . . . strict scrutiny is unwarranted.” *Davenport*, 551 U. S., at 188; see *R. A. V.*, 505 U. S., at 388 (approving certain content-based distinctions when there is “no significant danger of idea or viewpoint discrimination”). To do its intended work, of course, the category of content-based regulation triggering strict scrutiny must

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sweep more broadly than the actual harm; that category exists to create a buffer zone guaranteeing that the government cannot favor or disfavor certain viewpoints. But that buffer zone need not extend forever. We can administer our content-regulation doctrine with a dose of common sense, so as to leave standing laws that in no way implicate its intended function.

And indeed we have done just that: Our cases have been far less rigid than the majority admits in applying strict scrutiny to facially content-based laws—including in cases just like this one. See *Davenport*, 551 U. S., at 188 (noting that “we have identified numerous situations in which [the] risk” attached to content-based laws is “attenuated”). In *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789 (1984), the Court declined to apply strict scrutiny to a municipal ordinance that exempted address numbers and markers commemorating “historical, cultural, or artistic event[s]” from a generally applicable limit on sidewalk signs. *Id.*, at 792, n. 1 (listing exemptions); see *id.*, at 804–810 (upholding ordinance under intermediate scrutiny). After all, we explained, the law’s enactment and enforcement revealed “not even a hint of bias or censorship.” *Id.*, at 804; see also *Renton v. Playtime Theatres, Inc.*, 475 U. S. 41, 48 (1986) (applying intermediate scrutiny to a zoning law that facially distinguished among movie theaters based on content because it was “designed to prevent crime, protect the city’s retail trade, [and] maintain property values . . . , not to suppress the expression of unpopular views”). And another decision involving a similar law provides an alternative model. In *City of Ladue v. Gilleo*, 512 U. S. 43 (1994), the Court assumed *arguendo* that a sign ordinance’s exceptions for address signs, safety signs, and for-sale signs in residential areas did not trigger strict scrutiny. See *id.*, at 46–47, and n. 6 (listing exemptions); *id.*, at 53 (noting this assumption). We did not need to, and so did not, decide the

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level-of-scrutiny question because the law’s breadth made it unconstitutional under any standard.

The majority could easily have taken *Ladue*’s tack here. The Town of Gilbert’s defense of its sign ordinance—most notably, the law’s distinctions between directional signs and others—does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test. See *ante*, at 14–15 (discussing those distinctions). The Town, for example, provides no reason at all for prohibiting more than four directional signs on a property while placing no limits on the number of other types of signs. See Gilbert, Ariz., Land Development Code, ch. I, §§4.402(J), (P)(2) (2014). Similarly, the Town offers no coherent justification for restricting the size of directional signs to 6 square feet while allowing other signs to reach 20 square feet. See §§4.402(J), (P)(1). The best the Town could come up with at oral argument was that directional signs “need to be smaller because they need to guide travelers along a route.” Tr. of Oral Arg. 40. Why exactly a smaller sign better helps travelers get to where they are going is left a mystery. The absence of any sensible basis for these and other distinctions dooms the Town’s ordinance under even the intermediate scrutiny that the Court typically applies to “time, place, or manner” speech regulations. Accordingly, there is no need to decide in this case whether strict scrutiny applies to every sign ordinance in every town across this country containing a subject-matter exemption.

I suspect this Court and others will regret the majority’s insistence today on answering that question in the affirmative. As the years go by, courts will discover that thousands of towns have such ordinances, many of them “entirely reasonable.” *Ante*, at 14. And as the challenges to them mount, courts will have to invalidate one after the other. (This Court may soon find itself a veritable Supreme Board of Sign Review.) And courts will strike down those democratically enacted local laws even though no

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one—certainly not the majority—has ever explained why the vindication of First Amendment values requires that result. Because I see no reason why such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us, I concur only in the judgment.

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## Coates' Canons Blog: Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert

By Adam Lovelady

Article: <http://canons.sog.unc.edu/sign-litigation-a-brief-analysis-of-reed-v-town-of-gilbert/>

This entry was posted on July 21, 2015 and is filed under Constitutional & Statutory Limitations, General Local Government (Miscellaneous), Land Use & Code Enforcement, Zoning

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Temporary yard signs are springing up all around town. Town council wants to reduce the clutter, but also wants to respect the free speech rights of the community. Council is considering new rules that will allow *campaign signs* during election season, *event signs* within a day of the event, and *ideological signs* anytime. It seems like a reasonable balance—allowing the signs but limiting them to a relevant time-frame. Can the town's regulations distinguish among signs this way?

A recent U.S. Supreme Court decision says no. Such distinctions are unconstitutional content-based regulation of speech.

To be clear, every sign ordinance distinguishes among signs. Ordinances commonly distinguish between locations (commercial property, residential property, public property, etc.), between types of signs (free-standing, wall signs, electronic signs, etc.), and between messages on the signs (commercial, safety, political, etc.). Reasonable distinctions concerning *location* and *types* of signs remain permissible.

The *Reed* decision, though, clearly invalidated some distinctions based on the message content of signs, and it will require adjustments to many local ordinances and some state statutes. The decision, with its four separate concurring opinions, also left open several legal questions.

This blog considers the decision of [Reed v. Town of Gilbert, 576 U.S. \\_\\_\\_ \(2015\)](#), and its impact on local sign ordinances.

### **Context of Free Speech Caselaw**

In thinking about the *Reed* decision it is helpful to recall a few key points about Constitutional protections of free speech and local government sign regulation. This area of the law is complex—far beyond the scope and space of this blog—but some context is helpful in understanding the impact of the new decision.

**Content-Neutral Sign Regulations.** Some sign regulations concern the form and nature of the sign, not the content of the message. These regulations—called *reasonable time, place, or manner restrictions*—include regulation of sign size, number, materials, lighting, moving parts, and portability, among other things. These regulations are allowed, provided they are “[1] justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information” (*Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989)). Over the years the courts have allowed a variety of content-neutral sign regulations.

**Content-Based Sign Regulations.** Some sign regulations, however, restrict the content of the message. The Supreme Court requires that content-based regulation of noncommercial signs must meet strict scrutiny. As phrased in the *Reed* majority opinion, a regulation is content-based if the rule “applies to a particular [sign] because of the topics discussed or the idea or message expressed” (slip op., at 6). The strict scrutiny standard demands that the local government must show that the regulation is (i) designed to serve a *compelling* governmental interest and (ii) *narrowly tailored* to achieve that interest. That is a steep hill to climb, and in practice few, if any, regulations survive strict scrutiny review.

It is worth noting that commercial speech is subject to yet another test—a version of intermediate scrutiny outlined in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987). That test is described in David Owens' blog on [Offensive Signs](#), and as discussed below, the impact of the *Reed* decision on the *Central Hudson*

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test is unclear.

### **Case Summary**

The Town of Gilbert, Arizona, had a sign code requiring permits for signs, but outlining a variety of exemptions. The *Reed* decision focused on the exemptions for three types of signs: Political Signs, Temporary Directional Signs, and Ideological Signs. Under the local code, Political Signs were signs designed to influence the outcome of an election; they could be up to 32 square feet and displayed during political season. Temporary Directional Signs were defined to include signs that direct the public to a church or other qualifying event; they could be up to six square feet and could be displayed 12 hours before and 1 hour after the qualifying event. Ideological signs were defined to be signs that communicate a noncommercial message that didn't fit into some other category; they could be up to 20 square feet.

A local church—after being cited for violation of the rules for Temporary Directional Signs—challenged the sign code as abridging their freedom of speech. The Town argued (and the lower courts found) that its regulations were content-neutral. The distinctions among types of signs, they said, were based on objective factors not the expressive content of the sign. The distinctions did not favor nor censor a particular viewpoint or philosophy. And, the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Court, disagreed. He found that the distinctions were plainly content-based and thus subject to strict scrutiny. The distinctions—between Political Signs, Temporary Directional Signs, and Ideological Signs—“depende[ed] entirely on the communicative content of the sign” (slip op., at 7). “Regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter” (12). And, “an innocuous justification cannot transform a facially content-based law into one that is content neutral” (9).

In its failed attempt to meet the strict scrutiny standard, the Town offered two governmental interests to support its distinctions: aesthetic appeal and traffic safety. Even if these were considered compelling governmental interests (which the Court assumed without ruling), the Town's distinctions were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town's distinctions did “not pass strict scrutiny, or intermediate scrutiny, or even the laugh test” (slip op., at 6, Kagan, J., concurring in judgment).

### **Impact of Local Ordinances**

So what does this decision mean for local ordinances? In the end, some distinctions among signs clearly are allowed and will withstand judicial review. Some code provisions, though, must be revised. And then, there are the open questions.

The Court was unanimous in judgment: The particular provisions of the Town of Gilbert's sign code violate Constitutional protections for free speech. The Court was fractured, though, in the opinions, making it harder to discern the full scope of the decision. Justice Thomas offered the majority opinion of the court with five justices joining. Justice Alito offered a concurring opinion to further clarify the impact of Justice Thomas' opinion. He was joined by Justices Kennedy and Sotomayor. Three justices concurred in judgment only, and they offered two separate opinions to outline their legal reasoning and their concerns with the majority's reasoning.

So we have a split court. Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority's legal reasoning. This three-three-three split, unfortunately, causes even more head-scratching for an already complex topic.

**Content-Based Distinctions.** In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under *Reed*. The government must show that the regulation is designed to serve a *compelling* governmental interest and *narrowly tailored* to achieve that interest.

If your ordinance distinguishes among noncommercial sign types—political v. ideological v. religious—those distinctions are unconstitutional and must be changed.

Justice Thomas did offer some content-based regulations that may survive strict scrutiny if they are narrowly tailored to address public safety. These include warning signs for hazards on private property, signs directing traffic, or street

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numbers associated with private houses.

**Content-Neutral Distinctions.** The several opinions of the court outline some valid distinctions for regulation. In his majority opinion, Justice Thomas noted that local governments still have “ample content-neutral options available to resolve problems with safety and aesthetics” (slip op., at 16). These include regulation of, among other things,

- size
- building materials
- lighting
- moving parts
- portability

Moreover, “on public property the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner” (slip op., at 16). A local ordinance or state statute can prohibit all signs in the public right-of-way. But, if signs are allowed, the regulations must not distinguish based on the content of the message. Regulations that allow some, but not all, noncommercial signs run afoul of the *Reed* decision.

For example, NCGS § 136-32 allows for “political signs” (as narrowly defined) in the public right-of-way of state highways during election season. That statute and similar ordinances will need to be revised to either, prohibit all signs in the right-of-way, or allow compliant signs with any noncommercial message in the right-of-way during election season.

Justice Alito, in his concurring opinion, provided further explanation (although not an exhaustive list) of what distinctions may be valid, content-neutral distinctions. He included:

- Size (including different sizes for different types of signs)
- Location, including distinguishing between freestanding signs and attached signs
- Distinguishing between lighted and unlighted
- Distinguishing between fixed message and electronic signs
- Distinguishing between signs on public property and signs on private property
- Distinguishing between signs on commercial property and signs on residential property
- Restricting the total number of signs allowed per mile of roadway
- Distinguishing between on-premises and off-premises signs\*
- And time restrictions on signs advertising a one-time event\*

\* These last examples—distinguishing between on-premises/off-premises and restricting signs for one-time events—seem to conflict with the majority opinion in *Reed*. Here, we get back to the issue of the fractured court and multiple opinions (discussed below).

### **Open Questions**

#### ***Content-ish Regulations***

Justice Alito’s concurrence (discussed above) listed many regulatory distinctions that are clearly authorized. He listed two distinctions that do not clearly square with the reasoning of the majority opinion. But, if you consider the three justices concurring with Alito plus the three justices concurring in judgment only, there are six justices that took the question of content neutrality with more practical consideration than Justice Thomas’ hard line. Thus, Alito’s opinion may in fact hold the greatest weight of this case. Only time will tell—time and more litigation.

First, Justice Alito listed signs for one-time events. This seems to be precisely what the majority stuck down in this case. It is unclear how a local regulation could structure such regulation without relying on the content of the message itself. But the inclusion on Justice Alito’s list points to some room for defining signs based on function.

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And second, Justice Alito listed the distinction between on-premises and off-premises signs. The enforcement officer must read the sign in order to determine if a sign is off-premises or on-premises. As such, these would seem to be facially content-based and subject to strict scrutiny. But, prior Supreme Court caselaw has upheld the on-premise/off-premise distinction and that precedent is not overruled by the majority opinion.

**Commercial and Noncommercial Speech.** In past decisions the Supreme Court has treated commercial speech to slightly less protection than noncommercial speech. Commercial speech regulation needs to meet a version of intermediate scrutiny, not the strict scrutiny applied to regulation of non-commercial speech (See, generally, *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987)).

Arguably, the *Reed* decision opened the door to challenge a sign ordinance that distinguishes between commercial and noncommercial speech. Justice Alito's concurring opinion noted that distinguishing based on the *type of property*—commercial or residential—would be valid. Regulating based on the *content of the sign*—commercial or noncommercial—arguably is undermined by the *Reed* decision.

Notably, though, the majority in *Reed* did not overrule its prior decisions. The *Reed* decision was focused on the Town code's distinctions among types of noncommercial speech. Presumably the long-held standards for regulation of commercial speech still apply.

### **Conclusion**

In the wake of *Reed*, some things are clear. Governments still have an array content-neutral regulations to apply to signs. But, content-based distinctions such as the ones in the Town of Gilbert's code must survive strict scrutiny to stand. Because of mix of opinions from the Court, there are several open questions. We will not know the full scope and meaning of *Reed v. Town of Gilbert* until the federal courts begin to apply this decision to other sign litigation.

### **Links**

- [www.supremecourt.gov/opinions/14pdf/13-502\\_9olb.pdf](http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf)



The City of  
**Brevard**  
North Carolina

**OLD BUSINESS STAFF REPORT**

**June 21, 2016**

**Title:** Asheville Highway Rezoning – RZ16-000002  
**Speaker:** Daniel Cobb AICP, Planning Director  
**Prepared by:** Daniel Cobb AICP, Planning Director

**EXECUTIVE SUMMARY:** Planning Board will consider and formulate a recommendation to City Council regarding rezoning of properties located on both sides of the Asheville Highway from its intersection with Morris Road, north, to the Ecusta Credit Union.

*This item was originally considered during the Board’s regular meeting on May 17, 2016 and tabled for additional discussion.*

**BACKGROUND:** During the October 19, 2015 meeting of Brevard City Council, a motion was made, and carried unanimously to rezone the properties along the Asheville Highway beginning on the southern end at Morris Road, extending north to the planned new road near the Ecusta Credit Union, from General Residential (GR) to Corridor Mixed-Use (CMX). See Attachment A “Site Map,” Attachment B “Vicinity Map,” and Attachment C “Current Zoning” for reference.

A revised zoning proposal based on the Board’s discussion in May is attached as Attachment J “Alternative NMX.”

**DISCUSSION:** In considering a change of zoning, the Board should consider the following factors and Staff comments:

*Is the request consistent with adopted land use plans?* The proposed rezoning is inconsistent with the Future Land Use Map of the 2002 City of Brevard Land Use Plan. Which classifies this property as mixed-use boulevard, which is defined as:

*A thoroughfare is defined as “a major road or highway; a passage or way through.” In contrast, a boulevard is “a broad avenue in a city, often landscaped or lined with trees.” This Plan recommends that the City embark on a new way of looking at street design and the transport of people, goods and services along its existing major roads, specifically Asheville Highway to the north and Broad St./Rosman Highway to the south. A mixed*

*use-boulevard designation is envisioned with: more transportation choices; better access management; more efficient use of land; landscaping; improved appearance; and design standards which encourage buildings to be close to the street, with parking to the side or rear. Development should be encouraged toward “nodes,” typically at main intersections (see map) while leaving some green/undeveloped areas. Standard strip commercial centers should be discouraged.*

If the Planning Board elects to recommend in favor of the proposed rezoning, then the Board must, in its motion, acknowledge this discrepancy and provide a basis for its recommendation. While the rezoning is inconsistent with the land use plan, it is in keeping with the City’s vision of fostering economic development as illustrated by the statement below which is part of The City of Brevard Vision:

*Strategy: Foster Economic Development : Foster economic diversity while enhancing the quality of life in an environmentally friendly way by creating an environment that promotes and encourages businesses, and business owners, attracted to and utilizing our natural assets of woods and water and our cultural/historic assets of music, arts, and outdoor recreation.*

*What is the relationship between the range of proposed uses and existing uses within the vicinity of the Subject Parcel?* Of the nine properties proposed for rezoning on the east side of the highway (the same side as the Law Enforcement Center), four appear to be single-family dwellings. Three are either currently operating as office/commercial, or are commercial buildings but not occupied. The remaining two properties are vacant. On the west side of the highway there are six properties proposed for rezoning. Three appear to be single-family, one property is a veterinary hospital, and the remaining two properties are vacant.

If each property is rezoned as shown in Attachment D “Proposed Zoning” the single-family home sites will become nonconforming uses. Creating these nonconformities does have bearing on the potential future use of the property, as new single-family homes are not currently permitted within CMX districts. However, an existing nonconforming residential use may be enlarged or altered as long as the enlargement or alteration is in compliance with all yard requirements and other regulations of such structures as required in the specific district. Nonconforming structures and uses may not be reestablished if they are discontinued for 180 days or substantially damaged (fire, collapse, etc.).

*Is the size of the tract “reasonable” within the context of the proposed zoning district, the configuration of adjacent zoning districts, and surrounding land uses?* Allowable uses within the CMX zoning district differ from those uses allowed in general residential or neighborhood mixed-use, as it is a more commercial, automobile-oriented district. See Attachment G “Comparable Uses” for a list of comparable uses allowed in each district. There are some commercial operations within the area proposed for rezoning. Additionally, on the southern end of the project area sits the County’s Law Enforcement Center, to the north is the Ecusta Credit Union, which is next to Jennings Building Supply.

While most of the properties proposed for rezoning are narrow, they do appear to be of sufficient size to accommodate land uses and forms of development that are permitted within the CMX zoning district. Development on steep slopes is strongly discouraged and in some cases prohibited. Much of the area on the west side of Asheville Highway is elevated high above the road elevation, in some cases this elevation difference is upwards of 60 feet. This would make development on this side of the highway difficult without a substantial amount of grading.

There are several areas within the City where such a zoning arrangement exists, CMX-zoned properties along the highway frontage, followed immediately to the rear with GR-zoned properties. Development regulations stipulate in these instances that large vegetative buffers be planted as part of new development to mitigate any potential conflicts between uses. Additionally, there are setback requirements in both districts that ensure sufficient separation between most uses. Those uses that may require additional separation are generally permitted with by way of a Special Use Permit from the Board of Adjustment. For example, a light manufacturing facility – *facilities are typically designed to look and generate impacts like a typical office building, but rely on special power, water, or waste disposal systems for operation. Noise, odor, dust, and glare of each operation are completely confined within an enclosed building, insofar as practical* – is subject to the underlying setback requirements of a CMX district but also further review by the Board of Adjustment who has authority to set site-specific conditions to mitigate any potential conflicts between neighboring properties.

*What is the balance of benefits and detriments to both the Applicant / property owner and the public at large?* Potential benefits of this rezoning as proposed by City Council include additional commercial development along the highway. The majority of land within the City's commercially zoned areas is either built upon, home to abandoned or vacated buildings, or very challenging to develop because of existing site conditions. Further, if properties that are currently vacant or undeveloped within the project area are developed as commercial or dense residential, there could be increased property tax revenue.

Additional commercial development along this stretch of highway will have to be carefully designed so as not to increase the potential for vehicular collisions as site distance is somewhat limited and the more driveways that are added, the more opportunities for collision are created. At the northern end of the project site a new road is under construction. This road has the potential to introduce additional vehicular traffic to the Asheville Highway corridor. The properties along this portion of highway, in their current configuration do not lend themselves very well to residential development. In 2014 the North Carolina Department of Transportation calculated the Annual Average Daily Traffic count near the intersection of the Asheville Highway and Ecusta Road at 24,000 vehicles (this is slightly north of the area under review). Near the intersection of Chestnut Street and the Asheville Highway (south of the area under review) the count was 26,000 vehicles. Compared to more traditional residentially zoned areas of town, this is very high. Elm Bend Road, behind Brevard Elementary, for example, sees 3,200 vehicles on average, while Music Camp Road sees only 860.

Some of the properties within the project area have direct access to city utilities (water/wastewater). However, most properties would require line extensions for new development to accommodate wastewater needs. Typically this is done at the time of development, the cost of which is the responsibility of the developer. See Attachment H “Utilities” for reference.

**POLICY ANALYSIS:** If the Planning Board elects to recommend in favor of the proposed rezoning, then the Board must, in its motion, acknowledge the discrepancies in the land use plan and this rezoning, and provide a basis for its recommendation. Refer to Staff comments within the “Discussion” and “Staff Recommendation” sections of this staff report as well as Attachment F “Land Use Plan Excerpt” for assistance.

The rezoning as proposed addresses several specific policies in the City’s comprehensive plan. Specifically within the “Economic Development” and “Livable Communities” elements:

2015 Comprehensive Plan

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

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

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

NCGS 160A-383 requires that the City's review of the proposed zoning map amendment include a written statement as to the consistency of the amendment with adopted plans and policies of the City. The Board then forwards this recommendation with a finding that the proposed zoning map amendment is consistent or inconsistent with the City's adopted plans and policies. Staff has prepared a draft consistency statement, which is included as Attachment I.

**STAFF RECOMMENDATION:** Staff recommends the Board review the Attachment J “Alternative NMX” and form a recommendation to City Council.

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

1. Recommend approval of the proposed rezoning as requested.
2. Recommend approval of the proposed rezoning with modifications.
3. Recommend the requested rezoning to a more restrictive zoning district.
4. Request additional information from Staff. The Board may take up to 45 days to formulate a recommendation to City Council.

**FISCAL IMPACT:** None at this time. Future development upon the subject parcels will require Staff time for review of NMX uses which is generally more complicated than uses allowed in GR.

**ATTACHMENTS:**

- A. Site map
- B. Vicinity map
- C. Current zoning map
- D. Council-proposed rezoning map
- E. Staff-recommended rezoning map
- F. Future Land Use Plan excerpt
- G. Allowable uses comparison table
- H. Utilities
- I. Consistency statement
- J. Alternative NMX



ATTACHMENT A

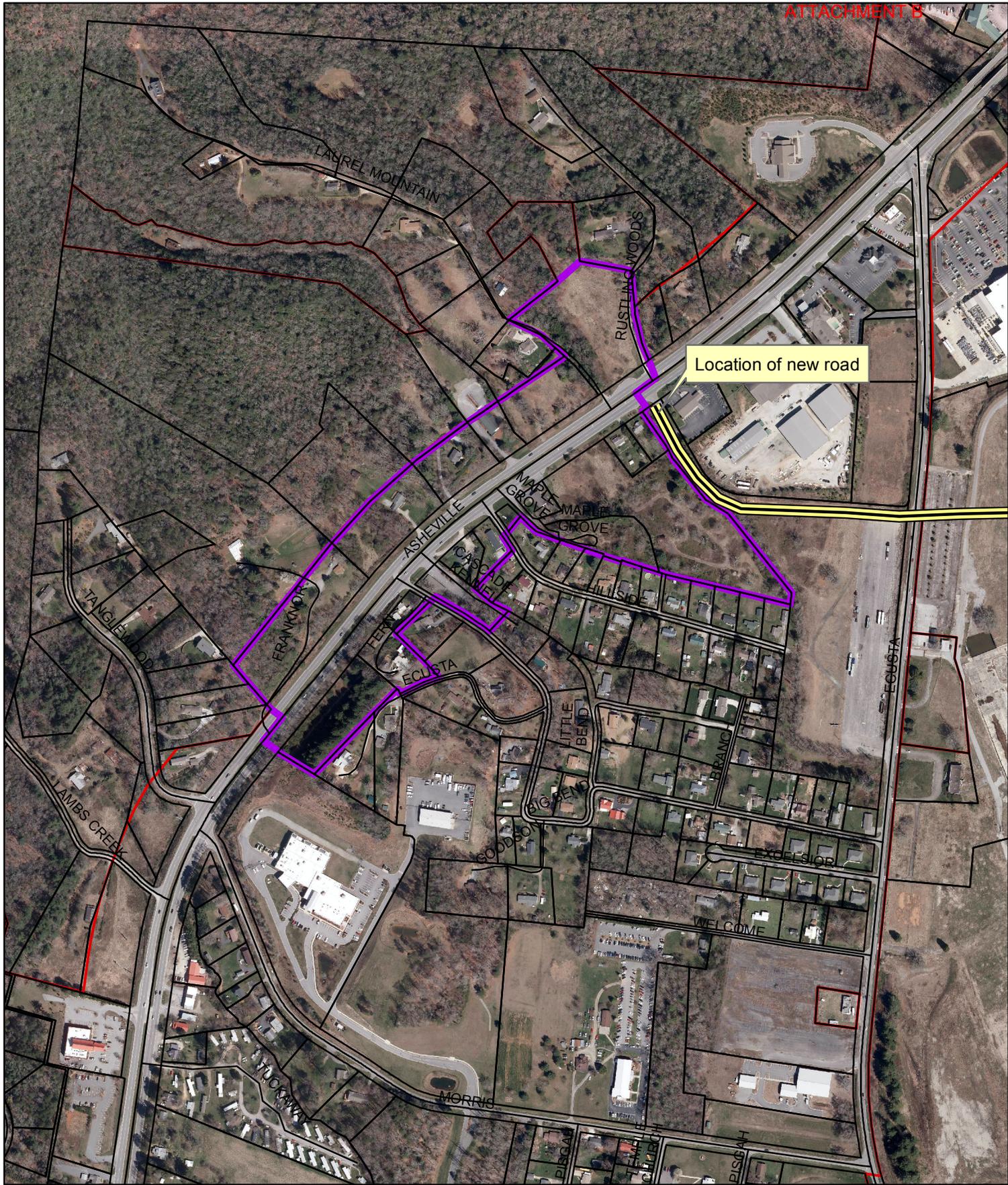
Location of new road

- Streets
- ▭ Parcels
- ▭ Proposed CMX
- ▭ City Limits

# SITE MAP



1 inch = 300 feet

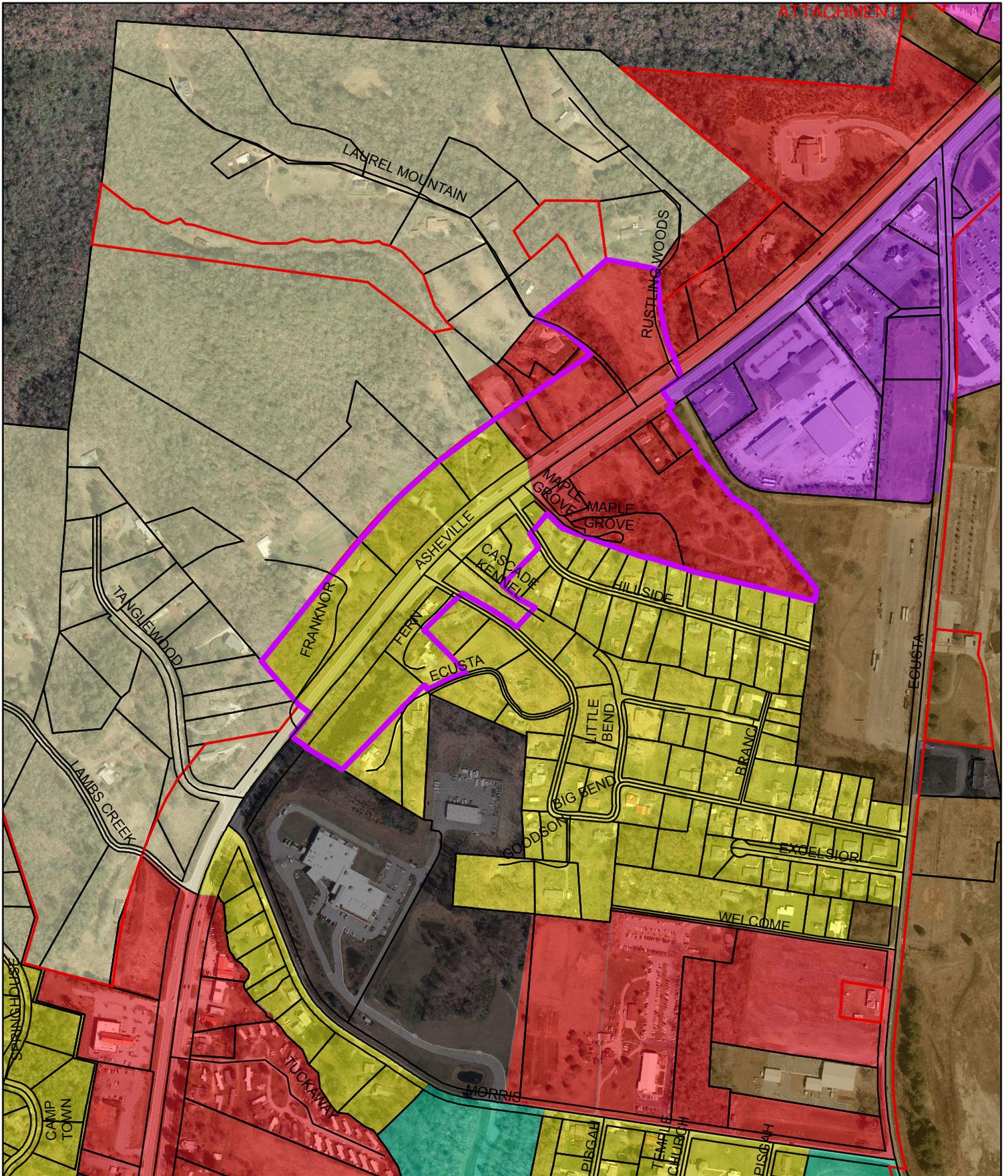


- Streets
- ▭ Parcels
- ▭ Proposed CMX
- ▭ City Limits

# VICINITY MAP



1 inch = 500 feet

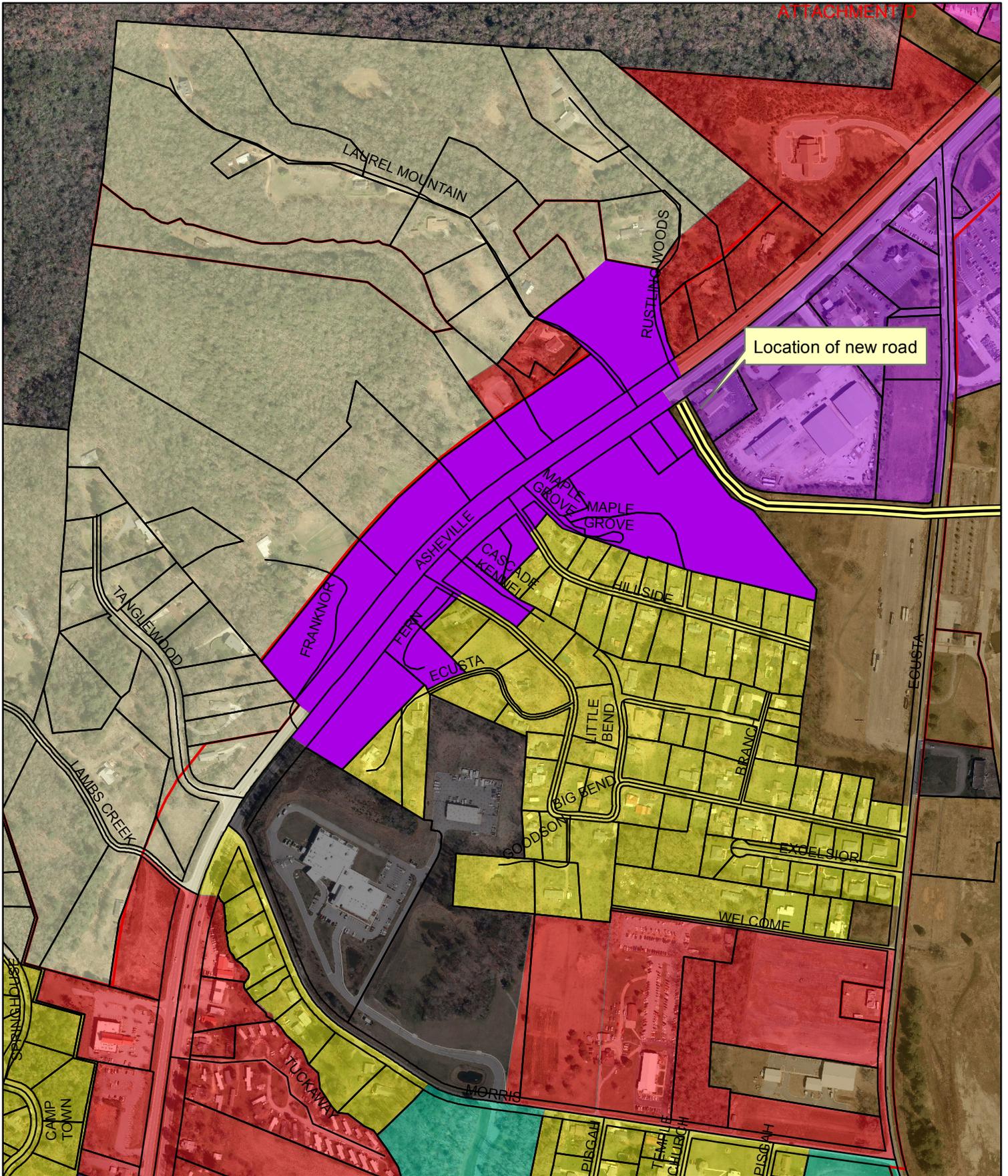


- Streets
- Proposed CMX
- City Limits
- Parcels
- Corridor Mixed Use
- Downtown Mixed Use
- General Industrial
- General Residential (4)
- General Residential (6)
- Institutional Campus
- Neighborhood Mixed Use
- Residential Mixed Use
- Special District
- Manufacture Home Overlay

# CURRENT ZONING



1 inch = 500 feet

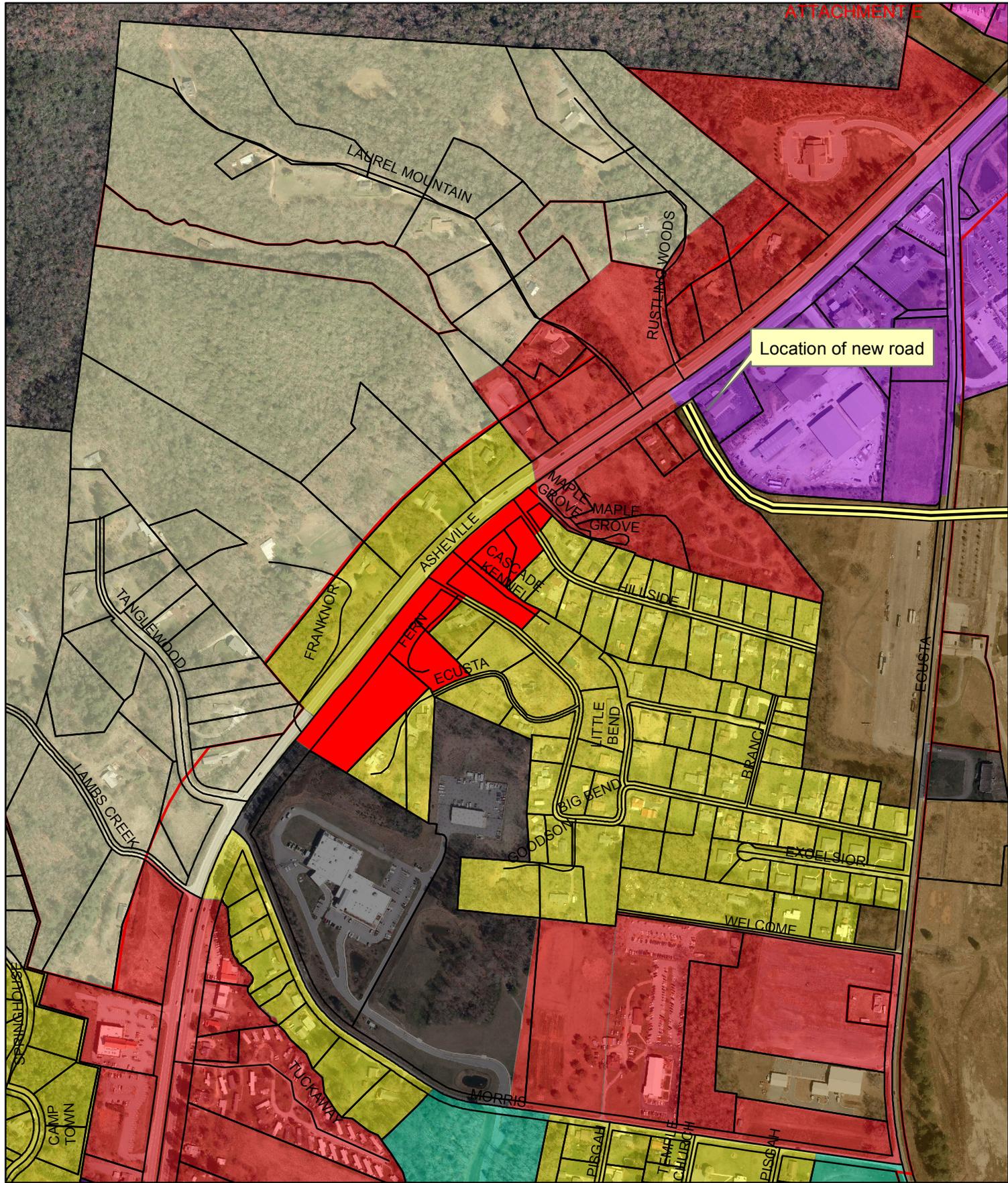


- Streets
- ▭ Parcels
- ▭ Proposed CMX
- ▭ City Limits
- ▭ Corridor Mixed Use
- ▭ Downtown Mixed Use
- ▭ General Industrial
- ▭ General Residential (4)
- ▭ General Residential (6)
- ▭ Institutional Campus
- ▭ Neighborhood Mixed Use
- ▭ Residential Mixed Use
- ▭ Special District
- ▭ Manufacture Home Overlay

# PROPOSED ZONING



1 inch = 500 feet



- Streets
- ▭ Parcels
- ▭ Recommended NMX
- ▭ City Limits
- ▭ Corridor Mixed Use
- ▭ Downtown Mixed Use
- ▭ General Industrial
- ▭ General Residential (4)
- ▭ General Residential (6)
- ▭ Institutional Campus
- ▭ Neighborhood Mixed Use
- ▭ Residential Mixed Use
- ▭ Special District
- ▭ Manufacture Home Overlay

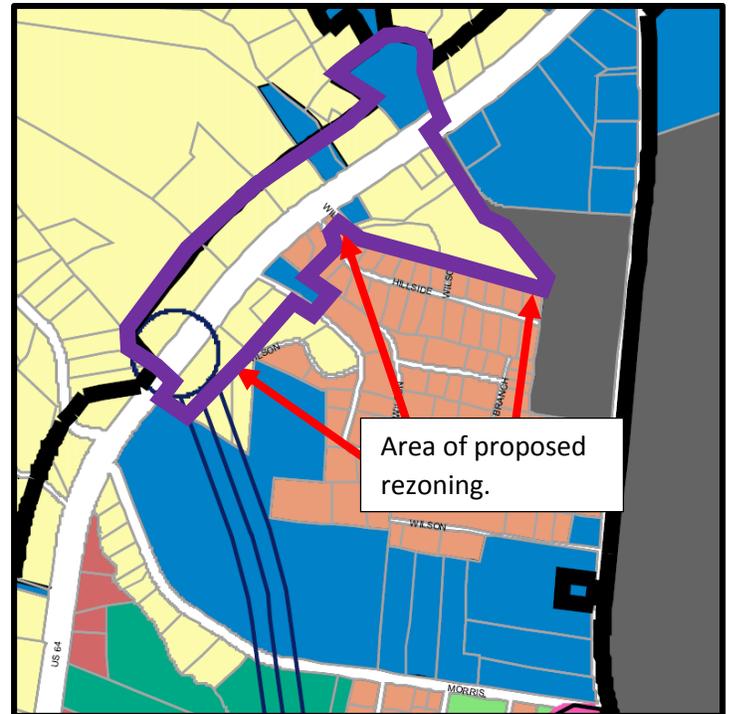
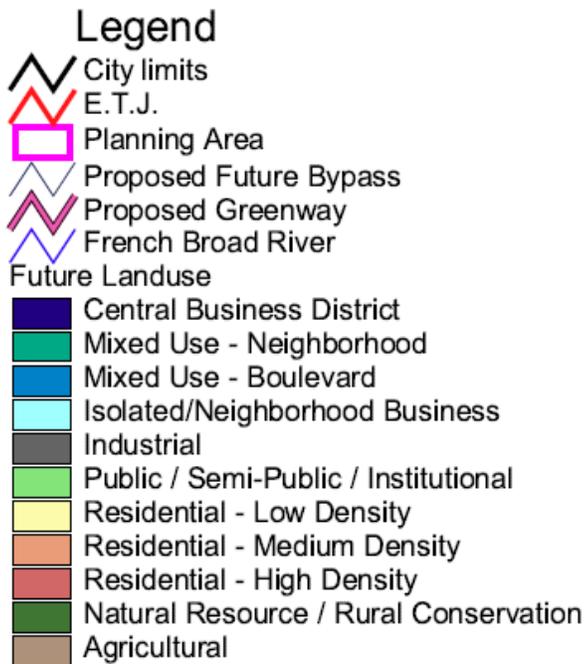
# RECOMMENDED ZONING



1 inch = 500 feet

## City of Brevard Land Use Plan (Excerpt)

Adopted August 19, 2002



### RESIDENTIAL – LOW DENSITY

These areas contain mostly one-family dwellings at an average density of not more than three dwelling units per acre and are mostly zoned R-1. Much of this land may not be served by public water and sewer and lot sizes should be adequate for an individual water supply and on-site sewage disposal. Typical lot sizes are 10,000 square feet or more. Agriculture occurs here and should continue to be allowed. Within this category opportunities for traditional, compact, rural commercial/community centers should be allowed to serve the daily needs of the surrounding community. Some of these areas, with their low-density development are prime candidates for conservation easements or the purchase/transfer of development rights to maintain their rural character.

### RESIDENTIAL – MEDIUM DENSITY

These areas contain mostly one-family and two-family dwellings at an average density of three to six dwelling units per acre and are mostly zoned R-2. These areas should be served by public water and sewer systems. Lot sizes typically range from 8,000 to 10,000 square feet. Most of these lands are residentially developed. Future development within these areas should strive for the same character, convenience and connectivity as the existing development.

### MIXED USE – BOULEVARD

A thoroughfare is defined as “*a major road or highway; a passage or way through.*” In contrast, a boulevard is “*a broad avenue in a city, often landscaped or lined with trees.*” This Plan recommends that the City embark on a new way of looking at street design and the transport of people, goods and services along its existing major roads, specifically Asheville Highway to the north and Broad St./Rosman Highway to the south. A mixed-use boulevard designation is envisioned with: more transportation choices; better access management; more efficient use of land; landscaping; improved appearance; and design

### Comparison of Allowable Uses

Use matrix. The following matrix sets forth the manner by which certain uses may be permitted within the various districts set forth above.

1. "P" denotes those uses that are permitted "by right."
2. "—"denotes those uses that are not permitted within the given district.
3. "SUP" denotes those uses that are permitted upon issuance of a special use permit in accordance with the provisions set forth in Chapter 16. Additional standards for certain uses requiring a special use permit are set forth in Chapters 3 and 5 of this ordinance.
4. "PS" denotes those uses that are permitted with additional standards, which are set forth in Chapter 3.
5. "GD" denotes those uses may be permitted as a Group Development in accordance with the provisions set forth in Chapter 16.
6. "MHD" denotes those uses that are permitted within a Manufactured Housing Overlay District.

BASE DISTRICT	GR	NMX	CMX
Residential			
Dwelling—Single Family (Site-built) <sup>(a)</sup>	P	—	—
Dwelling—Duplex	P	P	—
Dwelling—Town Home or Condominium Structure	GD	P	P
Dwelling—Multifamily 3—4 units/bldg, not including Condominium Buildings or multiple structures	SUP	P	P
Dwelling—Multifamily more than 4 units/bldg	—	P	P
Dwelling—Secondary	PS	PS	PS
Family Care Home (Less than 6 residents)	P	P	P

Home Occupation	PS	P	P
Housing Service for the Elderly	SUP	P	P
Live-Work Units	—	—	—
Manufactured Home (single unit) <sup>(b)</sup>	MHD	MHD	MHD
Manufactured Home Park	SUP	—	—
Recreational Vehicle	—	—	—
Lodging			
Bed and Breakfast Home	PS	PS	PS
Bed and Breakfast Inns	SUP	PS	PS
Accessory Rental Cottage/Cabins <sup>(c)</sup>	PS	PS	—
Hotels/Motels/Inns	—	—	P
Rooming or Boarding House	—	P	P
Recreational Vehicle Park	—	—	—
Office/Service			
Animal Services	—	P	P
Artist Workshop	—	P	P
ATM	—	P	P
Banks, Credit Unions, Financial Services	—	P	P
Business Support Services	—	P	P

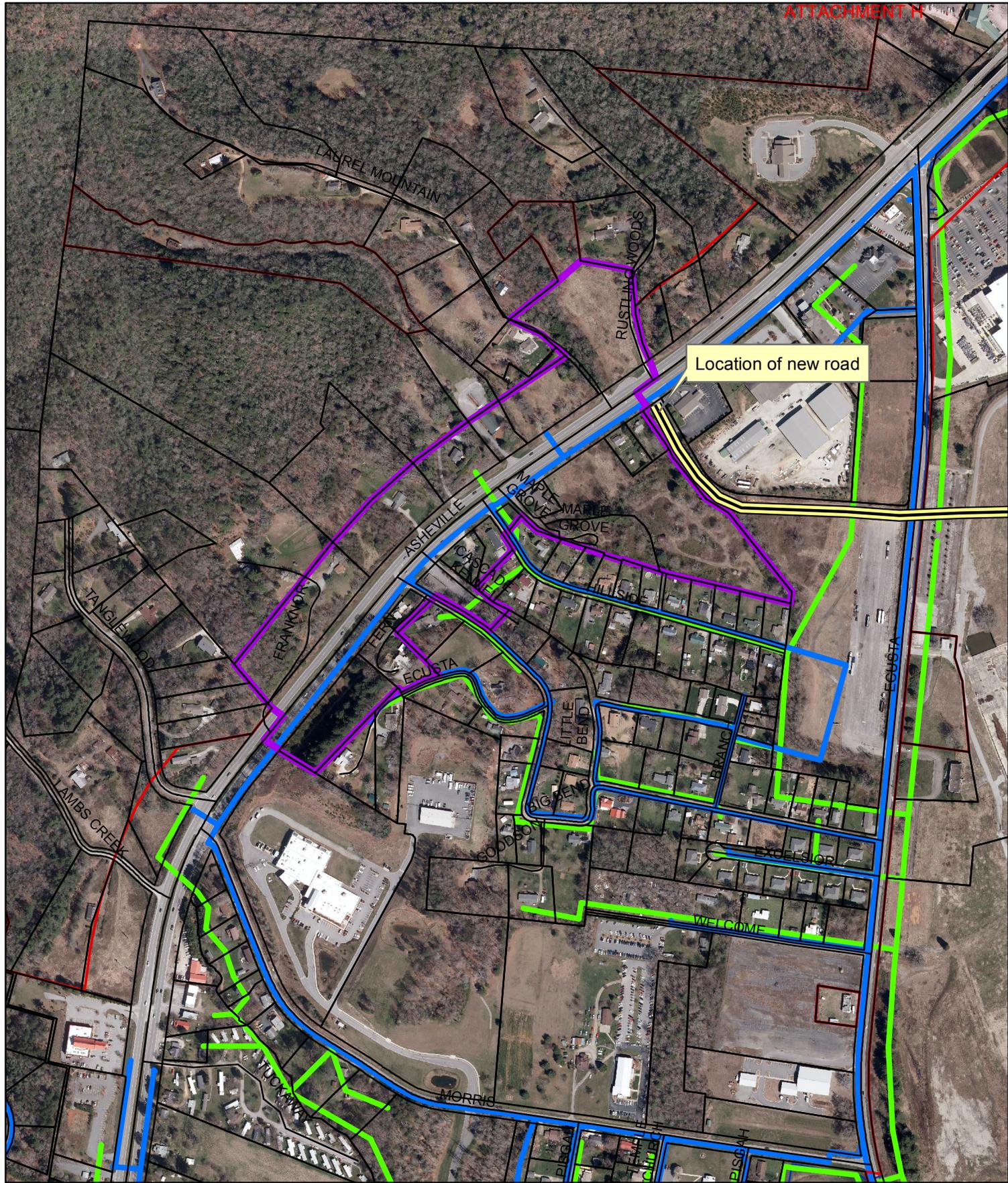
Adult/Child Day Care Home (Less than 6)	PS	PS	PS
Adult/Child Day Care Center (6 or more)	—	PS	PS
Community Service Organization	—	P	P
Drive Thru Service	—	SUP	P
Equipment Rental	—	—	P
Funeral Homes	—	PS	PS
Group Care Facility (6 or more residents)	—	P	P
Government Services	—	P	P
Kennels	—	SUP	PS
Medical Services—Clinic, Urgent Care Center	—	SUP	P
Medical Services—Doctor office	—	P	P
Post Office	—	P	P
Professional Services	SUP	P	P
Personal Services	—	P	P
Studio—Art, Dance, Martial Arts, Music	—	P	P
Vehicle Services—Major Repair/Body Work	—	—	PS
Vehicle Services—Minor Maintenance/Repair <sup>(d)</sup>	—	SUP	PS
Retail/Restaurants			
Accessory Retail	—	—	—

Alcoholic Beverage Sales Store	—	SUP	P
Auto / Mechanical Parts Sales	—	—	P
Bar/Tavern/Night Club	—	SUP	P
Drive-Thru Retail/Restaurants	—	SUP	PS
Gas Station	—	SUP	PS
General Retail	—	P	P
Restaurant	—	P	P
Shopping Center - Neighborhood Center	—	GD	GD
Shopping Center - Community Center	—	—	GD
Vehicle/Heavy Equipment Sales - Outdoor	—	—	PS
Vehicle/Heavy Equipment Sales - Indoor	—	PS	PS
Entertainment/Recreation			
Amusements, Indoor	—	SUP	P
Amusements, Outdoor	—	SUP	P
Cultural or Community Facility	SUP	P	P
Meeting Facilities	—	P	P
Recreation Facilities, Indoor	SUP	SUP	P
Recreation Facilities, Outdoor	SUP	P	P
Theater, Movie	—	—	P

Theater, Live Performance	—	SUP	P
Manufacturing/Wholesale/Storage			
Inert Debris Storage or Disposal Facilities	—	—	—
Junkyard	—	—	—
Laboratory—Medical, Analytical, Research and Development	—	—	SUP
Laundry, Dry Cleaning Plant	—	—	SUP
Manufacturing, Light	—	—	SUP
Manufacturing, Neighborhood	—	P	P
Manufacturing, Heavy	—	—	—
Media Production	—	P	P
Metal Products Fabrication, Machine or Welding Shop	—	SUP	P
Mini-Warehouses	—	—	SUP
Recycling—Small Collection Facility	—	—	SUP
Research and Development	—	—	P
Storage—Outdoor Storage Yard as a Primary Use	—	—	SUP
Storage—Warehouse, Indoor Storage	—	—	SUP
Wholesaling and Distribution	—	—	P
Civic/Institutional			

Campground/Artist Colony/Summer Camp	SUP	SUP	—
Cemeteries	PS	PS	PS
Colleges/Universities	—	SUP	P
Hospital	—	—	P
Jail	—	SUP	P
Public Safety Station	SUP	P	P
Religious Institutions	SUP	P	P
Schools—Elementary and Secondary	SUP	P	P
Schools—Vocational/Technical	SUP	P	P
Infrastructure			
Wireless Telecommunication Facility—Stealth	P	P	P
Wireless Telecommunication Facility—Tower	—	—	SUP
Utilities—Class 1 and 2	P	P	P
Utilities—Class 3	—	—	—
Miscellaneous Uses			
Adult Establishment	—	—	—
Outdoor Firing Range	—	—	—
Indoor Firing Range	—	—	SUP
Agriculture	P	—	P

Parking	PS	P	P
Swimming Pool—Residential Accessory Use	PS	PS	PS
Swimming Pool—Primary Use	—	SUP	PS
Fences	PS	PS	PS
Human Crematories	—	PS	PS
Temporary Uses and Structures			
Carnivals or Circus	—	—	PS
Farmers Market	—	PS	PS
Religious Meeting	PS	PS	PS
Contractor's Office and Equipment Shed	PS	PS	PS
Seasonal Structures	PS	PS	PS
Satellite Real Estate Sales Office	PS	PS	PS
Special Event	PS	PS	PS
Temporary Vendors	—	PS	PS
Vending Pushcarts	—	—	—
Mobile Food Vendors	—	PS	PS



- Water
- Wastewater
- Streets
- Parcels
- Proposed CMX
- City Limits

# UTILITIES



1 inch = 500 feet

## STATEMENT OF CONSISTENCY WITH CITY POLICIES AND PLANS

NCGS 160A-383 requires that the City's review of the proposed zoning map amendment include a written statement as to the consistency of the amendment with adopted plans and policies of the City. The Board forwards this recommendation with a finding that the proposed zoning map amendment is **consistent** with the following elements of the City's adopted plans and policies:

*2015 Comprehensive Plan:*

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

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

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

*2012 City of Brevard Vision Statement:*

Foster economic diversity while enhancing the quality of life in an environmentally friendly way by creating an environment that promotes and encourages businesses, and business owners, attracted to and utilizing our natural assets of woods and water and our cultural/historic assets of music, arts, and outdoor recreation.

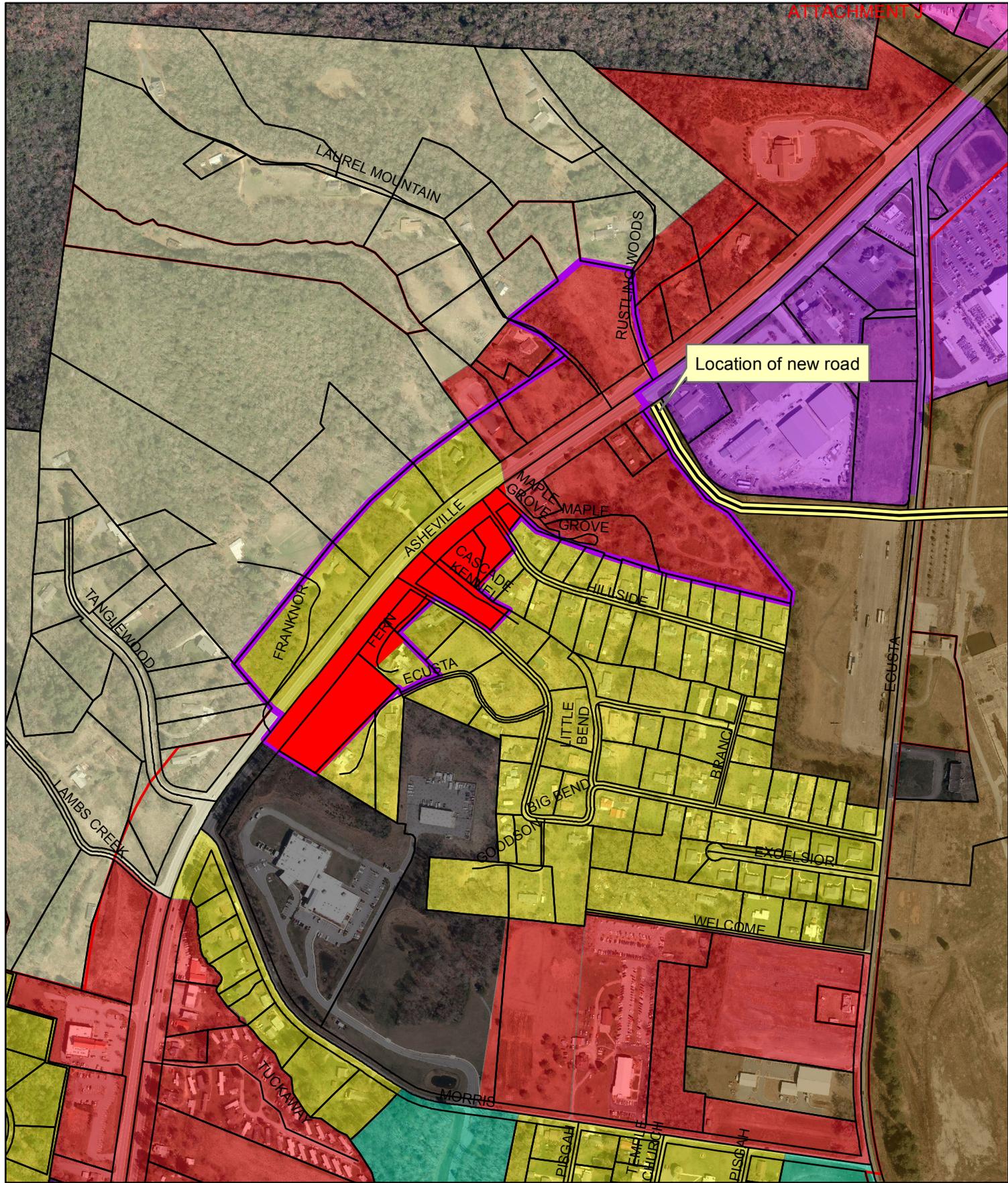
NCGS 160A-383 requires that the City's review of the proposed zoning map amendment include a written statement as to the consistency of the amendment with adopted plans and policies of the City. The Board forwards this recommendation with a finding that the proposed zoning map amendment is **inconsistent** with the following elements of the City's adopted plans and policies:

- a) The *2002 City of Brevard Land Use Plan, Future Land Use Map* recommends use of these properties for boulevard mixed-use properties.

The Plan text contains the following language describing the boulevard mixed-use land use category:

*Mixed-Use Boulevard – A thoroughfare is defined as “a major road or highway; a passage or way through.” In contrast, a boulevard is “a broad avenue in a city, often landscaped or lined with trees.” This Plan recommends that the City embark on a new way of looking at street design and the transport of people, goods and services along its existing major roads, specifically Asheville Highway to the north and Broad St./Rosman Highway to the south. A mixed use-boulevard designation is envisioned with: more transportation choices; better access management; more*

*efficient use of land; landscaping; improved appearance; and design standards which encourage buildings to be close to the street, with parking to the side or rear. Development should be encouraged toward “nodes,” typically at main intersections (see map) while leaving some green/undeveloped areas. Standard strip commercial centers should be discouraged.*



- Streets
- ▭ Parcels
- ▭ Alternative NMX
- ▭ Proposed CMX
- ▭ City Limits
- ▭ Corridor Mixed Use
- ▭ Downtown Mixed Use
- ▭ General Industrial
- ▭ General Residential (4)
- ▭ General Residential (6)
- ▭ Institutional Campus
- ▭ Neighborhood Mixed Use
- ▭ Residential Mixed Use
- ▭ Special District
- ▭ Manufacture Home Overlay

# ALTERNATIVE NMX



1 inch = 500 feet



The City of  
**Brevard**  
North Carolina

**OLD BUSINESS STAFF REPORT**

**June 21, 2016**

**Title:** Zoning Map Amendment – 600 Ecusta Road - RZ16-000001  
**Speaker:** Daniel Cobb AICP, Planning Director  
**Prepared by:** Daniel Cobb AICP, Planning Director

**EXECUTIVE SUMMARY:** Planning Board will consider and formulate a recommendation to City Council regarding a conditional rezoning of a City-owned parcel of land approximately 6.4 acres in size, located at 600 Ecusta Road.

*This item was originally considered during the Board's regular meeting on May 17, 2016 and tabled for additional discussion.*

**BACKGROUND:** During the Board's discussion last month, there was debate regarding how wide the ranges of uses should be for the conditional district. One thought was with the intent of providing high volume employers or more traditional manufacturing jobs, uses like banks or credit unions may not be the best fit. On the other hand, keeping the available range of uses wider allows for more flexibility in an end user. It may also allow for mixing of uses that may not otherwise be possible with a narrow scope of allowed uses.

Chapter 19 of the Unified Development Ordinance is attached for reference for definitions of allowable uses.

**DISCUSSION:** A conditional zoning district is established to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses. Conditional zoning affords a degree of certainty in land use decisions not possible when rezoning to a base district. Additional standards and regulations may be attached to a proposed development to ensure compatibility with the surrounding uses and with applicable adopted plans.

In considering a change of zoning, the Board should consider the following factors and Staff comments:

*Is the request consistent with adopted land use plans?* The proposed rezoning is inconsistent with the Future Land Use Map of the 2002 City of Brevard Land Use Plan. Which classifies this property as Mixed-Use – Boulevard, which is defined as:

*A thoroughfare is defined as “a major road or highway; a passage or way through.” In contrast, a boulevard is “a broad avenue in a city, often landscaped or lined with trees.” This Plan recommends that the City embark on a new way of looking at street design and the transport of people, goods and services along its existing major roads, specifically Asheville Highway to the north and Broad St./Rosman Highway to the south. A mixed use-boulevard designation is envisioned with: more transportation choices; better access management; more efficient use of land; landscaping; improved appearance; and design standards which encourage buildings to be close to the street, with parking to the side or rear. Development should be encouraged toward “nodes,” typically at main intersections (see map) while leaving some green/undeveloped areas. Standard strip commercial centers should be discouraged.*

If the Planning Board elects to recommend in favor of the proposed rezoning, then the Board must, in its motion, acknowledge this discrepancy and provide a basis for its recommendation. Staff has prepared a draft statement, which is included as Attachment G.

*What is the relationship between the range of proposed uses and existing uses within the vicinity of the Subject Parcel?* The subject property as well as the properties immediately adjacent to the west and south are all zoned NMX. This district allows for a variety of residential, lodging, office, and commercial uses. Heavy manufacturing and industrial uses are prohibited in this district. Immediately to the north properties are zoned GR, or general residential. This district is strictly residential in nature and allows very few uses outside of traditional residential or civic uses. Some minor commercial/professional offices are allowed subject to very specific conditions. If the subject property is rezoned to a conditional general industrial district, the City may still prohibit those uses that would be in conflict with residential uses. For example, as proposed, the conditional district would prohibit most residential uses but would allow additional commercial uses currently allowed in NMX or corridor mixed-use districts. However, such uses as inert debris storage or disposal facilities, junkyards, or small recycling collection facilities which are currently allowed in general industrial (GI) districts, would still be prohibited.

*Is the size of the tract “reasonable” within the context of the proposed zoning district, the configuration of adjacent zoning districts, and surrounding land uses?* The proposed conditional rezoning is of appropriate size and is reasonable given the surrounding zoning districts. As presented the allowable uses in the new district are more intense than would otherwise be allowed in the base NMX district, but are still subject to all the development requirements related to environmental protection, landscaping buffers, and industrial setbacks.

*What is the balance of benefits and detriments to both the Applicant / property owner and the public at large?* Potential benefits related to the creation of this conditional industrial district

include increased tax revenues, job creation, and use of currently underutilized and dilapidated land, as well as the removal of blight. Potential detriments include the introduction of more intense uses in close proximity to residences as well as the loss land that could otherwise be used for multifamily or other high-density residential uses. While the residential uses may be prohibited, other community support services would still be allowed. Examples include doctor or medical offices, cultural meeting facilities, and art studios.

**POLICY ANALYSIS:** While the rezoning as proposed is inconsistent with the land use plan, it does address several specific policies in the City’s comprehensive plan. Specifically within the “Economic Development” and “Livable Communities” elements:

2015 Comprehensive Plan

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

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

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

And the GOAL of creating an environment that encourages private and public investment built through strategic partnerships and cultivation, Brevard will:

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

This conditional rezoning is also consistent with the City’s Vision of fostering economic development as illustrated by the statement below which is part of the 2012 City of Brevard Vision Statement:

*Strategy: Foster Economic Development: Foster economic diversity while enhancing the quality of life in an environmentally friendly way by creating an environment that promotes and encourages businesses, and business owners, attracted to and utilizing our natural assets of woods and water and our cultural/historic assets of music, arts, and outdoor recreation.*

**STAFF RECOMMENDATION:** Staff recommends the Board review the REVISED TABLE OF COMPARABLE (Attachment F [REVISED]) uses and form a recommendation to City Council.

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

1. Recommend approval of the proposed rezoning as presented.

2. Recommend approval of the proposed rezoning with modifications.
3. Recommend the requested rezoning to a more restrictive zoning district
4. Request additional information from Staff. The Board may take up to 45 days to formulate a recommendation to City Council.

In accordance with N.C.G.S. § 160A-382(b), the Planning Board shall submit a statement analyzing the reasonableness of any proposal for a rezoning to a conditional zoning or planned development district. A draft of this statement is included as Attachment G.

**FISCAL IMPACT:** None at this time. Future development upon the subject parcel will require Staff time for plan review which, depending on the type of development, may be more complicated than uses allowed currently allowed in the base NMX district.

**ATTACHMENTS:**

- A. Site map
- B. Vicinity map
- C. Current zoning map
- D. Proposed conditional district map
- E. Future Land Use Plan Excerpt
- F. Allowable uses comparison table - REVISED
- G. Statement of Reasonableness
- H. Adopting Ordinance
- I. Chapter 19 – Unified Development Ordinance



# SITE MAP

- Streets
- ▭ Subject\_Property
- ▭ City Limits
- ▭ Parcels



1 inch = 150 feet



- Streets
- ▭ Subject\_Property
- ▭ City Limits
- ▭ Parcels

# VICINITY MAP



1 inch = 500 feet



- Streets
- ▭ Subject Property
- ▭ City Limits
- ▭ Parcels
- ▭ Corridor Mixed Use
- ▭ Downtown Mixed Use
- ▭ General Industrial
- ▭ General Residential (4)
- ▭ General Residential (6)
- ▭ Institutional Campus
- ▭ Neighborhood Mixed Use
- ▭ Residential Mixed Use
- ▭ Special District
- ▭ Manufacture Home Overlay

# CURRENT ZONING



1 inch = 500 feet



- Streets
- Conditional District
- Parcels
- City Limits
- Manufacture Home Overlay
- Corridor Mixed Use
- Downtown Mixed Use
- General Industrial
- General Residential (4)
- General Residential (6)
- Institutional Campus
- Neighborhood Mixed Use
- Residential Mixed Use
- Special District

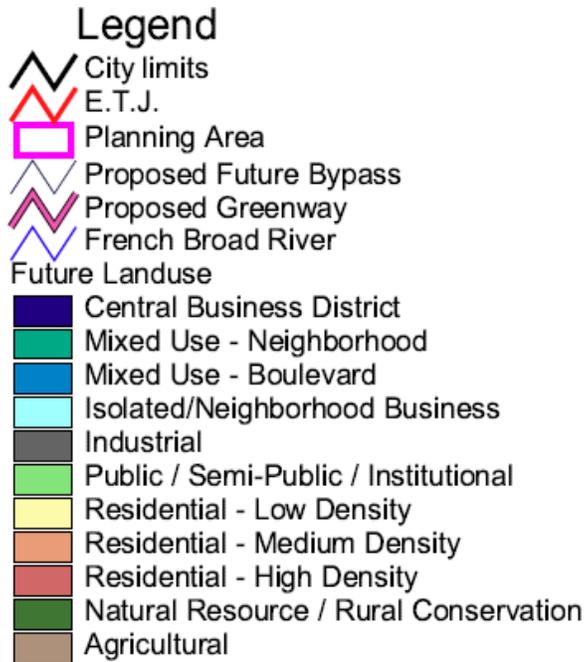
# PROPOSED ZONING



1 inch = 500 feet

# City of Brevard Land Use Plan (Excerpt)

Adopted August 19, 2002



## MIXED USE – BOULEVARD

A thoroughfare is defined as *"a major road or highway; a passage or way through."* In contrast, a boulevard is *"a broad avenue in a city, often landscaped or lined with trees."* This Plan recommends that the City embark on a new way of looking at street design and the transport of people, goods and services along its existing major roads, specifically Asheville Highway to the north and Broad St./Rosman Highway to the south. A mixed-use boulevard designation is envisioned with: more transportation choices; better access management; more efficient use of land; landscaping; improved appearance; and design standards which encourage buildings to be close to the street, with parking to the side or rear. Development should be encouraged toward "nodes," typically at main intersections while leaving some green/undeveloped areas. Standard strip commercial centers should be discouraged.

## Comparison of Allowable Uses

### REVISED FOLLOWING MAY 17, 2016 DISCUSSION

The following matrix sets forth the manner by which certain uses may be permitted within the various districts set forth above.

1. "P" denotes those uses that are permitted "by right."
2. "—"denotes those uses that are not permitted within the given district.
3. "SUP" denotes those uses that are permitted upon issuance of a special use permit in accordance with the provisions set forth in Chapter 16. Additional standards for certain uses requiring a special use permit are set forth in Chapters 3 and 5 of this ordinance.
4. "PS" denotes those uses that are permitted with additional standards, which are set forth in Chapter 3.
5. "GD" denotes those uses may be permitted as a Group Development in accordance with the provisions set forth in Chapter 16.
6. "MHD" denotes those uses that are permitted within a Manufactured Housing Overlay District.

#### INSTRUCTIONS FOR REVIEWING THE TABLE BELOW

- The first column, NMX, is what is *currently* allowed under the existing zoning designation of the property under review.
- The second column, GI CD, was originally proposed by Staff as the allowable uses under the proposed conditional district. The first two columns (NMX and GICD) were presented during the May 17<sup>th</sup> discussion exactly as shown below.
- Opt. 1 is modified to allow fewer uses, tailored to more traditional industrial and manufacturing users.
- Opt. 2 is modified to allow a wider range of uses than was originally proposed.
- Opt. 3 is blank to allow the Board to make notes or their own selections for discussion.

BASE DISTRICT	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3
Residential					
Dwelling—Single Family (Site-built) <sup>(a)</sup>	—	—	—	—	
Dwelling—Duplex	P	—	—	—	
Dwelling—Town Home or Condominium Structure	P		—	—	

Dwelling—Multifamily 3—4 units/bldg, not including Condominium Buildings or multiple structures	P	—	—	—	
Dwelling—Multifamily more than 4 units/bldg	P	—	—	P	
Dwelling—Secondary	PS	—	—	—	
Family Care Home (Less than 6 residents)	P	—	—	—	
Home Occupation	P	—	—	—	
Housing Service for the Elderly	P	—	—	—	
Live-Work Units	P	—	—	—	
Manufactured Home (single unit) <sup>(b)</sup>	MHD		—	—	
Manufactured Home Park	—	—	—	—	
Recreational Vehicle	—	—	—	—	
Lodging	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3
Bed and Breakfast Home	PS	—	—	—	
Bed and Breakfast Inns	PS	—	—	—	
Accessory Rental Cottage/Cabins <sup>(c)</sup>	PS	—	—	—	
Hotels/Motels/Inns	—	—	—	P	
Rooming or Boarding House	P	—	—	—	
Recreational Vehicle Park	—	—	—	—	
Office/Service	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3

Animal Services	P	P	—	—	
Artist Workshop	P	P	—	—	
ATM	P	—	—	—	
Banks, Credit Unions, Financial Services	P	P	—	P	
Business Support Services	P	P	—	P	
Adult/Child Day Care Home (Less than 6)	PS	—	—	—	
Adult/Child Day Care Center (6 or more)	PS	—	—	—	
Community Service Organization	P	P	—	P	
Drive Thru Service	SUP	—	—	SUP	
Equipment Rental	—	P	—	P	
Funeral Homes	PS	—	—	—	
Group Care Facility (6 or more residents)	P	—	—	P	
Government Services	P	—	—	P	
Kennels	SUP	—	—	SUP	
Medical Services—Clinic, Urgent Care Center	SUP	P	—	SUP	
Medical Services—Doctor office	P	P	—	SUP	
Post Office	P	P	—	—	
Professional Services	P	P	—	P	
Personal Services	P	P	—	P	

Studio—Art, Dance, Martial Arts, Music	P	P	—	P	
Vehicle Services—Major Repair/Body Work	—	PS	PS	PS	
Vehicle Services—Minor Maintenance/Repair <sup>(d)</sup>	SUP	PS	PS	PS	
Retail/Restaurants	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3
Accessory Retail	—	PS	PS	PS	
Alcoholic Beverage Sales Store	SUP	—	—	SUP	
Auto / Mechanical Parts Sales	—	P	P	P	
Bar/Tavern/Night Club	SUP	—	—	SUP	
Drive-Thru Retail/Restaurants	SUP	—	—	SUP	
Gas Station	SUP	SUP	SUP	SUP	
General Retail	P	—	—	SUP	
Restaurant	P	—	—	SUP	
Shopping Center - Neighborhood Center	GD	—	—	GD	
Shopping Center - Community Center	—	—	—	GD	
Vehicle/Heavy Equipment Sales - Outdoor	—	P	PS	PS	
Vehicle/Heavy Equipment Sales - Indoor	PS	P	PS	PS	
Entertainment/Recreation	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3
Amusements, Indoor	SUP	—	—	SUP	
Amusements, Outdoor	SUP	—	—	SUP	

Cultural or Community Facility	P	P	—	SUP	
Meeting Facilities	P	P	—	P	
Recreation Facilities, Indoor	SUP	P	—	P	
Recreation Facilities, Outdoor	P	P	—	P	
Theater, Movie	—	—	—	P	
Theater, Live Performance	SUP	—	—	SUP	
Manufacturing/Wholesale/Storage	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3
Inert Debris Storage or Disposal Facilities	—	—	—	—	
Junkyard	—	—	—	SUP	
Laboratory—Medical, Analytical, Research and Development	—	P	P	P	
Laundry, Dry Cleaning Plant	—	P	P	SUP	
Manufacturing, Light	—	P	P	P	
Manufacturing, Neighborhood	P	P	P	P	
Manufacturing, Heavy	—	SUP	P	P	
Media Production	P	P	P	P	
Metal Products Fabrication, Machine or Welding Shop	SUP	P	P	P	
Mini-Warehouses	—	P	P	P	
Recycling—Small Collection Facility	—	—	—	—	

Research and Development	—	P	P	P	
Storage—Outdoor Storage Yard as a Primary Use	—	—	P	P	
Storage—Warehouse, Indoor Storage	—	P	P	P	
Wholesaling and Distribution	—	P	P	P	
Civic/Institutional	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3
Campground/Artist Colony/Summer Camp	SUP	—	—	—	
Cemeteries	PS	—	—	—	
Colleges/Universities	SUP	P	—	P	
Hospital	—	—	—	—	
Jail	SUP	P	—	—	
Public Safety Station	P	P	—	P	
Religious Institutions	P	P	—	—	
Schools—Elementary and Secondary	P	P	—	—	
Schools—Vocational/Technical	P	P	P	P	
Infrastructure	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3
Wireless Telecommunication Facility—Stealth	P	P	P	P	
Wireless Telecommunication Facility—Tower	—	PS	PS	PS	
Utilities—Class 1 and 2	P	P	P	P	
Utilities—Class 3	—	—	—	—	

Miscellaneous Uses	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3
Adult Establishment	—	—	—	—	
Outdoor Firing Range	—	—	—	—	
Indoor Firing Range	—	—	—	SUP	
Agriculture	—	P	—	P	
Parking	P	P	P	P	
Swimming Pool—Residential Accessory Use	PS	—	—	—	
Swimming Pool—Primary Use	SUP	—	—	—	
Fences	PS	PS	PS	PS	
Human Crematories	PS	—	—	PS	
Temporary Uses and Structures	NMX	GI CD	Opt. 1	Opt. 2	Opt. 3
Carnivals or Circus	—	—	—	—	
Farmers Market	PS	—	—	PS	
Religious Meeting	PS	—	—	—	
Contractor's Office and Equipment Shed	PS	PS	—	PS	
Seasonal Structures	PS	—	—	—	
Satellite Real Estate Sales Office	PS	—	—	—	
Special Event	PS	PS	PS	PS	
Temporary Vendors	PS	PS	PS	PS	

Vending Pushcarts	—	PS	—	PS	
Mobile Food Vendors	PS	PS	PS	PS	

## STATEMENT OF REASONABLENESS & CONSISTENCY WITH CITY POLICIES AND PLANS

NCGS 160A-383 requires that the City's review of the proposed zoning map amendment include a written statement analyzing the reasonableness and the consistency of the conditional rezoning with adopted plans and policies of the City. The Board forwards this recommendation with a finding that the proposed zoning map amendment is **consistent** with the following elements of the City's adopted plans and policies:

### *2015 Comprehensive Plan:*

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

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

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

### *2012 City of Brevard Vision Statement:*

Foster economic diversity while enhancing the quality of life in an environmentally friendly way by creating an environment that promotes and encourages businesses, and business owners, attracted to and utilizing our natural assets of woods and water and our cultural/historic assets of music, arts, and outdoor recreation.

NCGS 160A-383 requires that the City's review of the proposed zoning map amendment include a written statement analyzing the reasonableness and the consistency of the conditional rezoning with adopted plans and policies of the City. The Board forwards this recommendation with a finding that the proposed zoning map amendment is **inconsistent** with the following elements of the City's adopted plans and policies:

- a) The *2002 City of Brevard Land Use Plan, Future Land Use Map* recommends use of these properties for boulevard mixed-use properties.

The Plan text contains the following language describing the boulevard mixed-use land use category:

*Mixed-Use Boulevard – A thoroughfare is defined as “a major road or highway; a passage or way through.” In contrast, a boulevard is “a broad avenue in a city, often landscaped or lined with trees.” This Plan recommends that the City embark on a new way of looking at street design and the transport of people, goods and services along its existing major roads, specifically Asheville*

*Highway to the north and Broad St./Rosman Highway to the south. A mixed use-boulevard designation is envisioned with: more transportation choices; better access management; more efficient use of land; landscaping; improved appearance; and design standards which encourage buildings to be close to the street, with parking to the side or rear. Development should be encouraged toward “nodes,” typically at main intersections (see map) while leaving some green/undeveloped areas. Standard strip commercial centers should be discouraged.*

ORDINANCE NO. 2016-\_\_\_\_\_

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP  
OF THE CITY OF BREVARD TO ESTABLISH  
A GENERAL INDUSTRIAL CONDITIONAL REZONING DISTRICT RZ16-000001

WHEREAS, conditional zoning is established to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses; and,

WHEREAS, Brevard City Council requests that the Official Zoning Map of the City of Brevard be amended to establish a General Industrial Conditional Zoning District on property owned by the City of Brevard, which is described below, and which is hereafter referred to as the "Subject Property":

Subject Property Description:

Property Identification Number: 8597-31-5264-000  
Deed Book / Page Reference: DB 395 Pg 378  
Plat Reference: Plat Cabinet 6 Slide 240  
Owner: City of Brevard  
Property Address: 600 Ecusta Road, Brevard, NC  
Location: Off Ecusta Road  
Current Zoning: Neighborhood Mixed Use

and,

WHEREAS, the City of Brevard Planning Board considered RZ16-000001 on Date \_\_\_\_\_ and unanimously recommended LIST RECOMMENDATION \_\_\_\_\_.

WHEREAS, in accordance with North Carolina General Statute 160A-382(b), Brevard City Council finds the following:

1) That RZ16-000001 is consistent with the following polices and goals of the City of Brevard 2015 Comprehensive Plan:

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

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

- POLICY 2.1.A: Modify zoning regulations to encourage and allow greater density and intensities of land use within its jurisdiction.
- POLICY 4.1.A: Evaluate and amend development ordinances to facilitate infill development on vacant and under-developed parcels, as well as revitalization of developed parcels.
- POLICY 4.2.A: Modify zoning to increase allowable densities and the mixing of uses in appropriate areas.

2) That RZ16-000001 is consistent with the following Community Development Strategy of the City of Brevard Vision, which was adopted in February, 2012:

Strategy: Foster Economic Development : Foster economic diversity while enhancing the quality of life in an environmentally friendly way by creating an environment that promotes and encourages businesses, and business owners, attracted to and utilizing our natural assets of woods and water and our cultural/historic assets of music, arts, and outdoor recreation

3) That RZ16-000001 is inconsistent with the Future Land Use Map of the 2002 City of Brevard Land Use Plan, which prescribes “Mixed Use-Boulevard” future land uses:

MIXED USE – BOULEVARD: A thoroughfare is defined as “a major road or highway; a passage or way through.” In contrast, a boulevard is “a broad avenue in a city, often landscaped or lined with trees.” This Plan recommends that the City embark on a new way of looking at street design and the transport of people, goods and services along its existing major roads, specifically Asheville Highway to the north and Broad St./Rosman Highway to the south. A mixed use-boulevard designation is envisioned with: more transportation choices; better access management; more efficient use of land; landscaping; improved appearance; and design standards which encourage buildings to be close to the street, with parking to the side or rear. Development should be encouraged toward “nodes,” typically at main intersections (see map) while leaving some green/undeveloped areas. Standard strip commercial centers should be discouraged.

4) That the size of the tract and the proposed uses are reasonable and appropriate within the context of the existing and proposed zoning districts and the prevalence of uses in the vicinity of the Subject Parcel.

5) That the proposed rezoning fully conforms to all applicable requirements of Brevard City Code.

WHEREAS, Brevard City Council desires to approve RZ16-000001 subject to certain conditions, which are set forth, below.

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

Section 1. The Official Zoning Map of the City of Brevard is hereby amended to establish General Industrial Conditional Zoning District RZ16-000001 on the Subject Property.

Section 2. Future development upon the Subject Property shall be subject to the following development regulations:

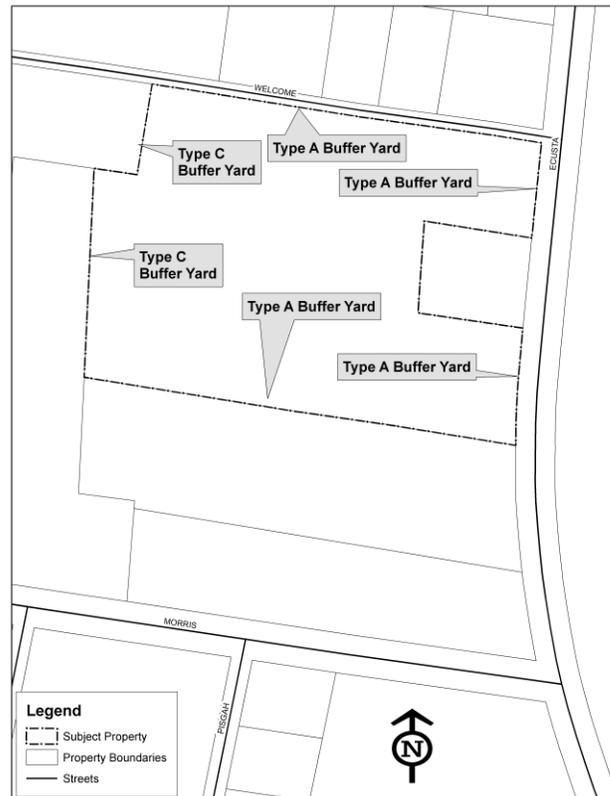
- 1) The Subject Property shall be developed in accordance with all applicable provisions of Brevard City Code, except as modified herein.
- 2) Uses of the Subject Property shall be limited to the following list of land uses:
  - a. "P" denotes those uses that are permitted "by right."
  - b. "SUP" denotes those uses that are permitted upon issuance of a special use permit in accordance with the provisions set forth in Chapter 16 of the City of Brevard Unified Development Ordinance. Additional standards for certain uses requiring a special use permit are set forth in Chapters 3 and 5 of the City of Brevard Unified Development Ordinance.
  - c. "PS" denotes those uses that are permitted with additional standards, which are set forth in Chapter 3 of the City of Brevard Unified Development Ordinance.
  - d. List of Allowable Land Uses:

ALLOWABLE LAND USES	PERMIT TYPE
Animal Services	P
Artist Workshop	P
Adult Daycare Center (6 or more)	PS
Banks, Credit Unions, Financial Services	P
Business Support Services	P
Community Service Organization	P
Equipment Rental	P
Government Services	P

Medical Services—Clinic, Urgent Care Center	P
Medical Services—Doctor office	P
Post Office	P
Professional Services	P
Personal Services	P
Studio—Art, Dance, Martial Arts, Music	P
Vehicle Services—Major Repair/Body Work	PS
Vehicle Services—Minor Maintenance/Repair	PS
Accessory Retail	PS
Auto / Mechanical Parts Sales	P
Vehicle/Heavy Equipment Sales – Outdoor	P
Vehicle/Heavy Equipment Sales – Indoor	P
Cultural or Community Facility	P
Gas Station	SUP
Meeting Facilities	P
Recreation Facilities, Indoor	P
Recreation Facilities, Outdoor	P
Laboratory—Medical, Analytical, Research and Development	P
Manufacturing, Light	P
Manufacturing, Neighborhood	P
Manufacturing, Heavy	SUP
Media Production	P
Metal Products Fabrication, Machine or Welding Shop	P
Research and Development	P
Storage—Warehouse, Indoor Storage	P
Wholesaling and Distribution	P
Colleges/Universities	P
Public Safety Station	P
Religious Institutions	P
Schools—Elementary and Secondary	P

Schools—Vocational/Technical	P
Wireless Telecommunication Facility—Stealth	P
Wireless Telecommunication Facility—Tower	PS
Utilities—Class 1 and 2	P
Agriculture	P
Parking	P
Fences	PS
Contractor's Office and Equipment Shed	PS
Special Event	PS
Temporary Vendors	PS
Vending Pushcarts	PS
Mobile Food Vendors	PS

- 3) Maximum building height: 50 feet.
- 4) Maximum ground floor area of the principal structure: 100,000 square feet.
- 5) Building design and architecture standards shall be consistent with industrial design requirements as set forth in Chapter 5 of the Unified Development Ordinance.
- 6) Environmental protection standards shall be consistent with Chapter 6 of the Unified Development Ordinance.
- 7) Buffer Yards, which are described in Chapter 8 of the City of Brevard Unified Development Ordinance, shall be provided along each boundary of the Subject Property as illustrated below:



- 8) Parking standards shall be consistent with Chapter 10 of the Unified Development Ordinance.
- 9) Exterior lighting shall be restricted to the minimum necessary to provide safe vehicular and pedestrian access to the approved structure.
- 10) [Commercial deliveries shall take place within normal business hours, Monday – Friday.](#)

Section 3. This conditional rezoning will lapse and become invalid unless the work for which it is issued is started within one year of the date of enactment of this Ordinance, or if the work authorized by this Ordinance is suspended or abandoned for a period of at least one year.

Section 4. Violations of this Ordinance or other provisions of Brevard City Code may result in the revocation of this conditional rezoning. The Zoning Administrator shall abate violations of this Ordinance or Brevard City Code in accordance with Chapter 18 of the City of Brevard Unified Development Ordinance, and may refer violations to Brevard City Council who may revoke this conditional rezoning upon determination that a violation of this Ordinance or Brevard City Code has occurred.

Section 5. Ordinance shall become effective upon its adoption and approval.

Adopted and Approved this the \_\_\_\_ day of \_\_\_\_\_, 2016.

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Jimmy Harris, Mayor

ATTEST:

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Desiree Perry, CMC, NCCMC  
City Clerk

APPROVED AS TO FORM:

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Michael K. Pratt  
City Attorney

## CHAPTER 19. - DEFINITIONS

## 19.1. - Intent.

For the purpose of interpreting this ordinance, certain words, concepts, and ideas are defined herein. Except as defined herein, all other words used in this ordinance shall have their everyday meaning as determined by their dictionary definition.

## 19.2. - Interpretation.

- A. Words used in the present tense include the future tense.
- B. Words used in the singular number include the plural, and words used in the plural number include the singular.
- C. Any word denoting gender includes the female and the male.
- D. The word "person" includes a firm, association, organization, partnership, corporation, trust and company, as well as an individual.
- E. The word "lot" includes the word "plot" or "parcel" or "tract."
- F. The word "shall" is always mandatory and not merely directory.
- G. The word "structure" shall include the word "building."
- H. The word "district map," "Brevard Zoning Map," or "official zoning map" shall mean the Official Zoning Map of Brevard, North Carolina.
- I. The term "planning director" shall mean the "Planning Director of the City of Brevard, North Carolina" or "designee."
- J. The term "administrator" shall mean the Planning Director of the City of Brevard, North Carolina or designee thereof, who is the individual(s) charged with the administration of this ordinance. The administrator may be otherwise referred to as the "zoning administrator," "floodplain administrator," "code enforcement officer," or "subdivision review officer."
- K. The term "city council" shall mean the City Council of the City of Brevard, North Carolina.
- L. The term "planning and zoning board" shall mean the Planning and Zoning Board of the City of Brevard, North Carolina.
- M. The term "planning department" shall mean the Planning Department of the City of Brevard, North Carolina.
- N. The terms "ordinance," "Code," "UDO" and "Unified Development Ordinance" shall be synonymous and refer to the "City of Brevard Unified Development Ordinance."

## 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:]

*Abandoned vehicle:* See Motor Vehicle.

*Abut:* To reach; to touch. To touch at one end or side of something; to be contiguous; join at a border or boundary; terminate on; end at; border on; reach or touch with an end.

*Accessory retail:* The on-premises, retail sale of products directly to customers, where the retail use is incidental to a primary use conducted upon the same premises. Examples include but are not limited to the following: a furniture manufacturer who operates a show floor for the display and sales of furniture produced by

the manufacturer; a bicycle manufacturer who operates a floor for the display and sales of bicycles produced by the manufacturer; a brewery or distillery who operates a tasting room for the sampling and sales of beer or spirituous liquors produced within the brewer or distillery.

*Accessory structure or use:* A structure or a portion of a principal structure or use, which is subordinate to a principal structure or use, on the same lot, and is used for purposes customarily incidental to the principal structure. Garages, carports, and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms and may or may not be located on the same parcel as the farm dwelling or shop building. Also see the definition of concomitant structure.

*Addition (to an existing building):* An extension or increase in the floor area or height of a building or structure.

*Advertising sign:* A sign which directs attention to a business, commodity, service or entertainment conducted, sold, manufactured, or offered. Such signs are further classified according to location, as follows:

- (a) On the same premises as the business, commodity, service, or entertainment advertised by the sign;
- (b) Remote from the business, commodity, service, or entertainment advertised by the sign (see Billboard).

*Adult establishment:* Any establishment having a substantial portion of materials or entertainment characterized by an emphasis on sexual activities, anatomical genital areas, or the female breast as defined in N.C. General Statute, § 14.210.10 (or any successor thereto).

*Agriculture:* These establishments grow crops, raise animals, harvest timber, and harvest fish and other animals from a farm, ranch, or their natural habitats. They may be described as farms, ranches, dairies, greenhouses, nurseries, orchards, or hatcheries. A farm, as an establishment, may be one or more tracts of land, which may be owned, leased, or rented by the farm operator. Farms may hire employees for a variety of tasks in the production process. Subcategories in this dimension differentiate establishments involved in production versus those that support agricultural production. For agricultural research establishments administering programs for regulating and conserving land, mineral, wildlife, and forest use, apply the relevant institutional or research and development categories. (LBCS F9000 and S8000)

*Air lot:* A condominium unit or lot containing both horizontal and vertical dimensions. The air lot generally extends to the inner faces of the walls, floors and ceiling of the condominium unit.

*Alcoholic beverage sales store:* The retail sales of beer, wine, and/or other alcoholic beverages for off-premise consumption as a primary use. (LBCS F2155)

*Amusements, indoor:* Establishments that provide commercial recreation activities completely within an enclosed structure such as pool halls, arcades, movie theaters, skating rinks, roller rinks, and bowling alleys. (LBCS F5320, F5380, F5390 and S3200)

*Amusements, outdoor:* Establishments that provide commercial recreation activities primarily outdoors such as miniature golf establishments, go-cart facilities, theme parks, carnivals, fairgrounds and midways, paintball parks, and water rides. (LBCS F5310 and S4440)

*Animal services:* Establishments that include services by licensed practitioners of veterinary medicine, dentistry, or surgery for animals, boarding services for pets, and grooming. This term does not include outdoor "kennels." (LBCS F2418 and F2720)

*Appeal:* A request for a review of any action of the administrator or any interpretation by the administrator of any provision of this ordinance.

*Area of special flood hazard:* See "Special Flood Hazard Area (SFHA)"

*Artist workshop:* A building room, area, or small establishment where artists such as painters, sculptors, craft-persons, musicians, writers, and others gather to create works of aesthetic value. Artist Workshops may accommodate multiple artists. Artist workshops are differentiated from galleries in that public access for viewing and retail activity is limited and incidental to the primary function of the use as a workshop.

*Assembly/meeting facilities:* Meeting/conference facilities that include room(s) or space(s) used for assembly purposes by 50 or more persons, including fraternal halls (VFW lodges, etc) and banquet facilities. (LBCS 53800)

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

*Automated teller machines (ATM):* Computerized, self-service machines used by banking customers for financial institutions without face-to-face contact with financial institution personnel. These machines may be located at or within banks, or in other locations.

*Auto/mechanical parts sales:* Establishments selling new, used, or rebuilt automotive or mechanical parts and accessories. Examples include parts and supply stores, automotive stereo stores, speed shops, truck cap stores, tires and tube shops, and similar shops for other types of motorized or mechanical equipment. (LBCS F2115)

*Awning:* A roof-like shelter of canvas or other material extending over a doorway from the top of the window, over a deck, etc., in order to provide protection from the weather.

*Awning signs:* A sign constructed of a fabric-like nonrigid material which is part of a fabric or plastic awning. Awning signs constructed of a flammable substance are prohibited in the fire district.

*Banks, credit unions, financial services institutions:* Establishments that engage in financial transactions that create, liquidate, or change ownership of financial services. Banks, credit unions, and savings institutions may perform central banking functions, accept deposits, and lend funds from these deposits. In addition to banks and credit unions, financial services institutions may include: credit agencies, trust companies, holding companies, lending and thrift institutions, securities/commodity contract brokers and dealers, security and commodity exchanges, vehicle finance (equity) leasing agencies, and investment companies. (LBCS F2200 and F2210)

*Banner:* Any sign made of flexible fabric-like material except an awning sign.

*Bar/tavern/nightclub:* A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. This term includes bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. It may also include beer brewing as part of a microbrewery and other beverage tasting facilities. Entertainment including live music, and/or dancing, comedy, etc. may also be included.

*Basement:* Any area of a building having its floor subgrade (below ground level) on all sides.

*Base flood:* The flood having a one percent chance of being equaled or exceeded in any given year.

*Base flood elevation (BFE):* A determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a special flood hazard area, it may be obtained from engineering studies available from a federal or state or other source using FEMA approved engineering methodologies. This elevation, when combined with the freeboard, establishes the "Regulatory Flood Protection Elevation."

*Bay window:* A window assembly whose maximum horizontal projection is not more than two feet from the plane of an exterior wall and is elevated above the floor level of the home.

*Bed and breakfast establishments:* Establishments primarily engaged in providing short-term lodging in facilities known as bed and breakfast inns. These establishments provide short-term lodging in private homes or small buildings converted for this purpose. Bed and breakfast establishments are characterized by a highly personalized service and meet the following requirements:

1. They do not serve food or drink to the general public for pay;
2. They serve only the breakfast meal, and that meal is served only to overnight guests of the business;
3. They include the price of breakfast in the room rate; and
4. They serve as the permanent residence of the owner or the manager of the business.

Bed and breakfast establishments are separated into two distinct categories: "Bed and breakfast home," and "Bed and breakfast inn."

1. "*Bed and breakfast home*" means a private home offering bed and breakfast accommodations to eight or less persons per night for a typical period of less than one week, that does not serve food or drink to the general public for pay, and which is the permanent residence of the owner or manager of the business
2. "*Bed and breakfast inn*" means a business offering bed and breakfast accommodations to not more than 24 persons for a typical period of less than one week and that does not serve food or drink to the general public for pay.

(LBCS F1310)

*Billboard:* An advertising sign used as an outdoor display for the purpose of directing attention to a business, commodity, service, or entertainment conducted, sold, manufactured, or offered at a location other than the location of said sign.

*Building:* See Structure.

*Buildable area:* That portion of any lot which may be used or building [built] upon in accordance with the regulations governing the zoning district within which the lot is located when the front, side, and rear yard requirements for the district have been subtracted from the total area. The required front, side and rear yards shall be measured inward toward the center of said lot from all points along the respective property lines or street right-of-way as appropriate. Buildable area shall be computed by measuring the allotted distances, perpendicular from each property line.

*Building:* A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels, and including tents, lunch wagons, dining cars, trailers, freestanding billboards and signs, fences, and similar structures whether stationary or movable. The term "building" shall be construed as if followed by the words "or parts thereof." Each portion of a building separated by division walls from [the] ground up without openings shall be considered a separate building.

*Building line:* That line determined by meeting respective front, side, [and] rear yard requirements. The required side and rear yards for individual lots shall be measured inward toward the center of the lot from all points along the respective property lines. The required front yard shall be measured inward toward the center of the lot from all points on the street right-of-way line.

*Business support services:* Establishments primarily engaged in rendering services to businesses. Examples of services provided include, without limitation, the following: document preparation, telephone answering, telemarketing, mailing (except direct mail advertising), court reporting, and steno typing. These establishments may operate copy centers, which provide photocopying, duplicating, blueprinting, or other copying services besides printing. They may also provide a range of support activities, including mailing services, document copying, facsimiles, word processing, on-site PC rental, and office product sales. (LBCS 2424)

*Campground/artist colony:* Establishments accommodating campers and/or artists and their equipment, including tents, tent trailers, travel trailers, and recreational vehicles. Facilities and services include cabins, washrooms, food services, recreational facilities and equipment, and organized recreational activities.

*Canopy:* Any shelter or shelter-like structure, freestanding or attached to a building, and projecting over public or private property.

*Cemetery:* A parcel of land used for interment of the dead in the ground or in mausoleums. (LBCS 54700)

*Chemical storage facility:* A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

*Child day care home:* Supervision or care provided on a regular basis, as an accessory use within a principal residential dwelling unit, by a resident of the dwelling for less than six children who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adult.

*Child day care center:* An individual, agency, or organization providing supervision or care on a regular basis for children who are not related by blood or marriage to, and who are not the legal wards or foster children of, the supervising adults. Child day care centers are designed and approved to accommodate six or more children at a time and are not an accessory to residential use.

*City Code:* The Code of Ordinances of the City of Brevard, adopted by the Brevard City Council, and any subsequent amendments.

*Colleges/universities:* Establishments which furnish academic or technical courses and grant degrees, certificates, or diplomas at the associate, baccalaureate, or graduate levels. Examples include junior colleges, colleges, universities and professional schools. (LBCS F6130)

*Community service organization:* A public or quasi-public establishment providing social and/or rehabilitation services, serving persons with social or personal problems requiring special assistance. This term includes counseling centers, welfare offices, job counseling and training centers, vocational rehabilitation agencies, and community improvement and neighborhood redevelopment but does not include any services providing on-site residential or accommodation services. (LBCS F6560)

*Compensatory storage:* Replacement of storage volume that is hydrologically equivalent to lost storage when encroachment occurs in the floodplain or a flood prone area.

*Concomitant structure:* A structure, or a portion of a principal structure, which is subordinate to the principal structure, is situated on the same lot, and is used for purposes that are integral to the use of the principal structure. Examples include gasoline pump canopies associated with service stations, sheds for the storage of

lumber associated with a lumber yard, and other similar structures. Concomitant structures are characterized by their virtual necessity in order to facilitate the permissible use of the principal structure, as opposed to accessory structures, which are clearly incidental.

*Condominium structure or building:*

- (a) A building or complex in which units of property, such as apartments, are owned by individuals and common parts of the property, such as the grounds and building structure, are owned jointly by the unit owners.
- (b) A unit in such a complex, including air lots.

*Condominium lot:* The form of ownership of real property, and any interests therein in which individual owners own or lease separate units but together, or through an owners' association, own the common areas appurtenant to the units.

*Conservation parcel:* A parcel of land that is shown on a recordable subdivision plat that is generally not intended for building and that is intended for a conservation purpose, including but not limited to the protection of sensitive natural areas, water quality, scenic views, working forest or farm lands, wildlife habitat, recreation and open spaces, and which property is subject to limitations upon development by conservation easement, deed, contract or other binding agreement with the United States of America or any agency or subdivision thereof, the State of North Carolina or any agency or subdivision thereof, or with a not-for-profit entity that is authorized to hold conservation easements within the United States of America and the State of North Carolina.

*Copy (as used in conjunction with signs):* The wording on a sign surface either in permanent or removable letter form.

*Cremation:* The technical process, using intense heat and flame that reduces human remains to bone fragments. Cremation includes the processing and may include the pulverization of the bone fragments.

*Critical facility:* A structure used to house a function that is especially vulnerable or essential to the community. Uses include but are not limited to child and adult daycare facilities, nursing homes, schools, hospitals, fire, police and medic facilities and other uses as determined by the administrator.

*Cultural or community facility:* Facilities designed to promote cultural advancement and serve the community. Examples include the following: live theater; dance or music establishments; art galleries, studios and museums; non-profit civic or fraternal organizations; museums; exhibition or similar facilities; libraries; and community centers, such as the YMCA and YWCA. (LBCS S3800, S4400, F5110, F5210, and F56830)

*Dedication:* The reservation for public use of an area of land, usually a strip of land, a street right-of-way or utilities easement, within which there is to be or may be located streets, sidewalks, utility systems and drainage structures, or a lot intended to be used for a public purpose such as a park, playground, or other public facility.

*Default:* Default shall be defined as it is specifically defined in an infrastructure improvement agreement executed pursuant to Chapter 16, Section 16.17.A of this ordinance. If there is no such definition, then the term "default" shall mean failure on the part of the developer to complete improvements in the time allotted, or improvements made that do not meet the city's standards, or improvements made that do not comply with approved development plans, or the ownership of property upon which the improvements are to be made changes without the new owner assuming the obligation to install the required improvements and providing acceptable security to the city.

*Density:* The number of dwelling units per acre or [of] land developed or used for residential purposes. Unless otherwise clearly stated, density requirements in this ordinance are expressed in dwelling units per net acre; that is, per acre of land devoted to residential use exclusive of land utilized for streets, alleys, parks, playgrounds, schoolgrounds, or other public uses.

*Development:* Any man-made use of, or change to, improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

*Disposal:* As defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

*Drive-thru retail/restaurants:* A facility where food and other products may be purchased by motorists without leaving their vehicles. Examples include fast-food restaurants, drive-through coffee, dairy products, photo stores, pharmacies, etc.

*Drive-thru service:* A facility where services may be obtained by motorists without leaving their vehicles. This term includes drive-through bank teller windows, dry cleaners, etc., but do not include automated teller machines (ATMs), gas stations or other vehicle services, which are separately defined.

*Directional sign:* A sign which carries no advertising message or information, but simply the name or the logo of an establishment and information directing persons to the location of said establishment.

*Dwelling:* A building or portion of building arranged to provide living quarters for one or more families.

*Dwelling—Duplex:* A building containing two residential dwelling units that is typically divided horizontally, each unit having a separate entrance from the outside or through a common vestibule. Buildings are typically under one ownership. (LBCS F 1100 and S1121)

*Dwelling—Multifamily (less than four units/building):* A building containing more than one but less than four residential dwelling units. Each unit has a separate entrance from the outside or through a common vestibule. Multi-family dwellings may include duplexes and triplexes (buildings under one ownership with two or three dwelling units in the same structure), as well as town houses (a type of structure that has at least three or more separate dwelling units divided vertically, each unit having separate entrances to a front and rear yard). (LBCS S1121 and S1140)

*Dwelling—Multifamily (more than four units/building):* A building containing more than four residential dwelling units. Each unit has a separate entrance from the outside or through a common vestibule. These structure may include fourplexes (buildings under one ownership with four dwelling units in the same structure), apartments (five or more units under one ownership in a single building), and townhouses (a type of structure that has at least three or more separate dwelling units divided vertically, each unit having separate entrances to a front and rear yard). (LBCS S1121 and S1140)

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

*Dwelling—Single-family:* A free standing building designed for and/or occupied by one household. These residences may be individually owned as residences or owned by rental or management companies. Single-family dwellings are typically site-built structures that comply with the *North Carolina Residential Code*, current

edition, but also include factory-built, modular home units. (LBCS F1100 and S1100)

*Dwelling unit:* A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

*Elevated building:* A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

*Encroachment:* Means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain (including floodway) or surface water protection area (including floodway), which may impede or alter the storage capacity or flow capacity of a floodplain.

*Environmental containment parcel:* A parcel land that is shown on a recordable subdivision plat that is not intended for a building as a result of environmental constraints, and which is subject to limitations upon development by deed, contract or other binding agreement with the United States of America or any agency or subdivision thereof, or the State of North Carolina or any agency or subdivision thereof.

*Equipment rental:* Establishments renting or leasing equipment such as the following: a) office machinery and equipment, such as computers, office furniture, copiers, or fax machines; b) heavy equipment (without operators) used for construction, mining, or forestry, such as bulldozers, earthmoving equipment, etc.; c) other non-consumer machinery and equipment, such as manufacturing equipment and metalworking; d) telecommunications, motion picture, or theatrical equipment; e) institutional (i.e. public building) furniture; and f) agricultural equipment without operators. (LBCS F2334)

*Family:* One or more persons occupying a single dwelling unit, provided that, unless all members are related by blood or marriage, no such family shall contain over six persons, but further provided that domestic servants employed on the premises may be housed in the principal building, not to exceed two domestic servants.

*Family care home:* A home with support and supervisory personnel providing room and board, personal care and rehabilitation services in a family environment for not more than six resident handicapped persons. (NCGS 168-21)

*Farmers markets:* Venues wherein multiple vendors sell or offer for sale, seasonal products directly to consumers on a non-wholesale basis. Farmers markets shall be accessible to the general public and managed by public or non-profit entities. Farmers markets are a form of temporary use.

*Fence:* A barrier intended to prevent escape or intrusion or to mark a boundary.

*Fence, closed:* A fence in which the openings through which clear vision is possible from one side to the other on a horizontal plane comprise 30 percent or less of the total side area of the fence.

*Fence, open:* A fence in which the openings through which clear vision is possible from one side to the other on a horizontal plane comprise 70 percent or more of the total side area of the fence.

*Freestanding sign:* A sign that is not attached to any building structure. Such signs shall include, but not be limited to, signs mounted on poles and A-frame signs.

*Flood or flooding:* A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

*Flood boundary and floodway map (FBFM):* An official map issued by the Federal Emergency Management Agency, on which the special flood hazard areas and the floodways of the City of Brevard and Transylvania County are delineated. This official map is a supplement to, and shall be used in conjunction with, the Flood Insurance Rate Map (FIRM).

*Flood hazard boundary map (FHBM):* An official map issued by the Federal Emergency Management Agency where the boundaries of the special flood hazard areas have been defined as Zone A.

*Flood insurance:* The insurance coverage provided under the National Flood Insurance Program (NFIP).

*Flood insurance rate map (FIRM):* An official map of the City of Brevard and/or Transylvania County, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

*Flood insurance study (FIS):* An examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in the City of Brevard and/or Transylvania County, issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

*Flood prone area:* See Floodplain.

*Floodplain:* Any land area susceptible to being inundated by water from any source.

*Floodplain administrator:* The individual(s) appointed to administer and enforce the floodplain management regulations in accordance with Chapter 34 of Brevard City Code.

*Floodplain development permit:* Any type of permit that is required in conformance with the provisions of this ordinance prior to the commencement of any development activity within a floodplain. For the purposes of this ordinance, "flood plain development permit" shall be synonymous with "land development permit."

*Floodplain management:* The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain. Such program may include, without limitation, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

*Floodplain management regulations:* This ordinance and other building codes, health regulations, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

*Floodproofing:* Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

*Floodway:* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Regulatory floodways are delineated upon the most recently published Flood Boundary and Floodway Map (FBFM) and/or Flood Insurance Rate Map (FIRM).

*Flood zone:* A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

*Freeboard:* The height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. Base flood elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation". Two feet of freeboard shall be required for all residential development within the special flood hazard area, and one foot of freeboard shall be required for all non-residential development within the special flood hazard area, except that in special flood hazard areas where no BFE has been established, three feet of freeboard above the highest adjacent grade shall be required for all development.

*Functionally dependent facility:* A facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

*Funeral homes and services:* Establishments for preparing the dead for burial or interment and for conducting funerals (i.e. providing facilities for wakes, arranging transportation for the dead, and selling caskets and related merchandise). (LBCS F6700-6702)

*Garage, private:* An accessory building or portion of a principal building used for the storage of private motor vehicles and in which no business, occupation, or service for profit is in any way connected. The term "garage" shall include the term "carport."

*Gas station:* An establishment that primarily retails automotive fuels. These establishments may also provide services such as automotive repair, automotive oils, and/or replacement parts and accessories. Gas stations include structures that are specialized for selling gasoline with storage tanks, often underground or hidden. Bays for car washes may also be included. (LBCS F2116 and S2270)

*General retail:* A use category allowing premises to be available for the commercial sale of merchandise and prepared foods. Such use category does not include manufacturing. (LBCS F2100)

*Ground water:* As opposed to surface water, this term refers to water that does not run off, and is not taken up by plants, but soaks beneath the surface of the earth and forms a natural reservoir in soils and geologic formations.

*Group care facilities:* A facility that provides resident services to more than six individuals, at least one of whom is unrelated to the others. These individuals are handicapped, aged, or disabled, [or] are undergoing rehabilitation, and are being provided services in the group care facility to meet their needs. This category includes uses licensed or supervised by any federal, state, or county health/welfare agency, such as group dwellings (all ages), halfway houses, nursing homes, resident schools, resident facilities, and foster or boarding homes. (LBCS F6520)

*Group development:*

- [1.] Groupings of two or more principal structures or principal uses built on a single lot, tract or parcel of land (or grouping thereof) not subdivided into the customary streets and lots and designed for occupancy by separate families, businesses or other enterprises normally permitted within the underlying district (Examples may include, but are not limited to, summer camps, school campuses and hospitals, shopping centers, industrial parks, and apartment complexes, or any other combination of primary structures).
- [2.] Individual structures designed to accommodate a variety of distinct uses may be considered as a group development at the discretion of the administrator.

*Government services:* This term includes federal, state, and local government agencies that administer, oversee, and manage public programs and have executive, legislative, and judicial authority. (LBCS F6200)

*Hazardous waste facility:* As defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

*Highest adjacent grade (HAG):* The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

*Historic structure:* Any structure that meets one or more of the following criteria:

1. Is listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
2. Has been certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Is individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program;" or
4. Has been certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program."

Certified Local Government (CLG) Programs are approved by the U.S. Department of the Interior in cooperation with the North Carolina Department of Cultural Resources pursuant to the National Historic Preservation Act.

*Home occupation:* An occupation or profession conducted within a dwelling unit by a residing family member that is incidental to the primary use of the dwelling as a residence. Home occupations are small and quiet non-retail businesses which generally cannot be discerned from the frontage, are seldom visited by clients, require little parking, little or no signage, have only one or two employees and provide services such as professional services, music instruction, and hair styling. Home occupations include child day care homes as defined herein.

*Hospital:* A health care facility the purpose of which is to provide for care, treatment and testing for physical, emotional, and/or mental injury, illness, or disability, and overnight boarding of patients, either on a for-profit or not-for-profit basis. This term does not include group homes. (LBCS F6530 and S4110)

*Hotels/motels/inns:* Establishments providing lodging and short-term accommodations for travelers. They may offer a wide range of services including overnight sleeping space, food services, convention hosting services, and/or laundry services. Entertainment and recreation activities may also be included. Extended-stay hotels are included in this category. (LBCS F1300 and F1330)

*Housing services for the elderly:* Establishments which offer a wide range of housing services for those, such as the elderly, who cannot care for themselves. This term includes uses such as retirement housing, congregate living services, assisted living services, continuing care retirement centers, and skilled nursing services. (LBCS F1200)

*Human crematory or human crematorium:* The building or buildings or portion of a building on a single site that houses the cremation equipment, the holding and processing facilities, the business office, and other parts of the crematory business. A crematory must comply with all applicable public health and environmental laws and rules and must contain the equipment and meet all of the standards established by the standards set by the North Carolina Board of Funeral Service and the North Carolina Cremation Authority.

*Impervious area:* Any man-made surface which restricts the percolation of rain water into the soil including, but not limited to, areas covered by roofs, roof extensions, patios, porches, driveways, sidewalks, parking areas and athletic courts.

*Inherited property:*

1. An inherited property is defined for this ordinance specifically, as a zoned parcel to be subdivided per the terms of a document described in (2), following the death of the owner or person who executed the document, and which is to be divided by the terms of such document into two or more separate tracts, to the end that each heir or devisee is to receive a separate tract.
2. Documents requiring the division of inherited properties include wills, trusts, deeds subject to life estates, deeds with rights of survivorship, or other documents requiring that the property be divided upon the death of the owner or person who executed the document. Such documents shall have been executed on or before July 16, 2013.

*Identification sign:* A sign which carries no advertising message and is used to identify only the following:

1. The name of an institutional use or organization occupying the premises on which the sign is located;
2. The name, title and/or occupation or profession of the occupant of the premises on which the sign is located;
3. The name and the type of nonretail business occupying the premises on which the sign is located; or
4. The name of the building on which the sign is located, including names and types of firms occupying the building.

*Illuminated sign:* A sign that is illuminated by electric or other devices mainly for clear visibility at night.

*Illumination of signs:* The lighting of a sign or exposing of a sign to artificial light either from within or without. In no instance shall the illumination of a sign interfere with adjacent traffic or disturb residential neighborhoods.

*Incidental sign:* A sign which carries no advertising message, and is clearly incidental to other major advertising signs on-site, and which is used to do one or more of the following:

1. Direct traffic flow, either vehicular or pedestrian;
2. Indicates clearly the location of ingress or egress points;
3. Direct certain activities to certain areas (i.e., parking, waiting, etc.);
4. Provide other incidental information.

*Junk:* The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

*Junked motor vehicle:* See "Motor Vehicle."

*Kennels:* A use or structure intended and used for the breeding or accommodation of small domestic animals for sale, training, or overnight boarding for persons other than the owner of the lot. This term does not include veterinary clinics or other "animal services" in which the overnight boarding of animals is necessary for, or accessory to, the testing and medical treatment of the physical disorders of animals. (LBCS F2700)

*Laboratory—Medical, analytical, research, and development:* A facility for testing, analysis, and/or research. Examples include medical labs, soils and materials testing labs, and forensic labs.

*Laundry, dry cleaning plant:* A service establishment engaged primarily in high volume laundry and garment services, including, without limitation, carpet and upholstery cleaners, diaper services, dry-cleaning and garment pressing, commercial laundries and linen supply. These facilities may include customer pick-up but do not include coin-operated laundries or dry cleaning pick-up stores without dry cleaning equipment.

*Letter of map change (LOMC):* A determination document issued by FEMA that officially revises the FIRM based on updated information, which may include improved data or topography changes created by fill placement. The term LOMC includes Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), and Letters of Map Revision based on Fill (LOMR-F).

*Live-work unit:* An attached residential building type with a non-residential enterprise on the ground floor and a residential unit above or behind.

*Loading space, off-street:* Space conveniently located for pickups and deliveries, scaled to the delivery vehicles expected to be used, and accessible to such vehicles even when required off-street parking spaces are filled.

*Lot width:* The distance between side lot lines.

*Lowest adjacent grade (LAG):* The elevation of the ground, sidewalk or patio slab immediately next to the building or deck support after completion of the building.

*Major subdivision:* The division of an established parcel of land into more than 25 parcels of land. This term includes the establishment of condominium lots.

*Manufactured home:* A dwelling unit fabricated in an off-site manufacturing facility for installation or assembly on the building site which also meets the following requirements:

1. It is at least eight feet in width and 32 feet in length;
2. It bears a seal certifying that it was built to the standards adopted pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," 42 U.S.C. Sec. 5401, et seq.;
3. It is placed upon a permanent foundation which meets the installation and foundation requirements adopted by the N.C. Commissioner of Insurance;
4. It is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site; and
5. It does not have any wheels or axles permanently attached to its body or frame.

Dwelling units built to, or utilizing any of, the following as primary construction standards are NOT considered manufactured homes suitable for use as permanent dwelling units: National Electrical Code Article 551; National Fire Protection Association No. 1192; and American National Standards Institute No. 119.5. Such construction standards are applicable to recreational vehicles.

*Manufactured home park:* The location of two or more manufactured homes or manufactured home spaces on a single parcel of land, or a grouping of two or more manufactured homes on at least two contiguous parcels when such parcels are under common ownership and/or management as a park for the rental of manufactured homes or manufactured home spaces.

*Manufactured home subdivision:* A parcel (or contiguous parcels) of land divided into two or more parcels and intended for the placement of manufactured homes for rent or sale.

*Manufacturing, heavy:* A nonresidential use that requires an NPDES permit for an industrial or stormwater discharge or involves the use or storage of any hazardous materials or substances or that is used for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity. Typically the largest

facilities in a community which have complex operations, some of which may be continuous (24 hours a day/seven days per week). (LBCS S2620)

*Manufacturing, light:* A non-residential use that requires a NPDES permit for an industrial or stormwater discharge or involves the use or storage of any hazardous materials or substances or that is used for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity. Facilities are typically designed to look and generate impacts like a typical office building, but rely on special power, water, or waste disposal systems for operation. Noise, odor, dust, and glare of each operation are completely confined within an enclosed building, insofar as practical. (LBCS S2613)

*Manufacturing, neighborhood:* The assembly, fabrication, production or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of a building which is visually undifferentiated from an office building. This term includes medical and testing laboratories but does not include more intensive uses that require frequent deliveries by trucks with more than one axle. (LBCS S2610))

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

*Marquee signs:* A sign affixed to a hood, canopy, or projecting roof structure over the entrance to a building, store, or place of public assembly.

*Media production:* Facilities for motion picture, television, video, sound, computer, and other communications media production. These facilities include the following types:

1. Back lots/outdoor facilities;
2. Indoor support facilities; and
3. Soundstages-warehouse-type facilities providing space for the construction and use of indoor sets, including supporting workshops and craft shops.

*Medical clinic:* Facilities that provide ambulatory or outpatient health care such as physician offices, dentist offices, emergency medical clinics, outpatient family planning services, and blood and organ banks. (LBCS F6510, F6512, and F6514)

*Metal products fabrication, machine or welding shop:* An establishment engaged in the production and/or assembly of metal parts, including the production of metal cabinets and enclosures, cans and shipping containers, doors and gates, duct work forgings and stampings, hardware and tools, plumbing fixtures and products, tanks, towers, and similar products. Examples of these include, without limitation, the following: blacksmith and welding shops; plating, stripping, and coating shops; sheet metal shops; machine shops; and boiler shops.

*Mini-warehouses:* A building containing separate enclosed storage spaces the sizes of which may vary, which are leased or rented on an individual basis.

*Minor subdivision:* The division of an established parcel of land into 25 or fewer parcels of land. This term shall also include the establishment of condominiums, townhomes, and any other subdivision proposing common area, condominium space, or zero-lot line development that, when completed, would result in less than 100,000square feet of combined ground floor surface area, that would not require the issuance of any special use permit.

*Modular home:* A factory-built dwelling unit, other than a manufactured home, that is labeled as a *North Carolina Modular Home* and built and set up in accordance with the *North Carolina Residential Code*, current edition. Such structures include varieties commonly delivered onsite in modules, as well as "on-frame" structures delivered completely pre-assembled.

*Moped:* North Carolina law (G.S. 105-3.22) defines a moped as a vehicle with two or three wheels with a motor of no more than 50 cubic centimeters of piston displacement and no external shifting device, not to exceed 30 mph.

*Motor vehicles:* All machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

*Motor vehicle, abandoned:* A motor vehicle that meets one or more of the following criteria:

1. It has been left upon a street or highway in violation of a law or ordinance prohibiting parking;
2. It has been left on property owned or operated by the city for longer than 24 hours;
3. It has been left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or
4. It has been left on any public street or highway for longer than seven days.

*Motor vehicle, junked:* An abandoned motor vehicle which also meets one or more of the following criteria:

1. It is partially dismantled or wrecked;
2. It cannot be self-propelled or moved in the manner in which it was originally intended to move;
3. It is more than five years old and worth less than \$100.00; or
4. It does not display a current license plate.

*Nuisance vehicle:* A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and/or unlawful. Without limitation, this term includes a vehicle found to meet one or more of the following criteria:

1. It is a breeding ground or harbor for mosquitoes, other insects, rats or other pests;
2. It is a point of heavy growth of weeds or other noxious vegetation over eight inches in height;
3. It is a point of collection of pools or ponds of water;
4. It is a point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;
5. It is one which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.;
6. It is so situated or located that there is a danger of it falling or turning over;
7. It is one which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind;
8. It is one which has sharp parts thereof which are jagged or contain sharp edges of metal or glass;
9. It is a vehicle no longer commonly being used for personal or commercial transportation or conveyance of goods, but is stationary, either temporarily or permanently, and being utilized as an advertising platform, storage facility, dwelling, animal shelter or other use not of its original primary design; or
10. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

*Recreational vehicle:* A vehicular-type unit meeting the following criteria:

1. It is primarily designed not for use as a permanent dwelling but as temporary living quarters for recreational, camping, or travel use;
2. It either has its own motive power or is mounted on or drawn by another vehicle;
3. It is built upon a single chassis; and
4. It is 400 square feet or less when measured at the largest horizontal projection.

The basic types of recreational vehicles are travel trailers, camping trailers, truck campers, and motor homes.

1. A park trailer (park model) is a unit that is (a) built upon a single chassis mounted on wheels and, (b) has a gross trailer area not exceeding 400 square feet in the set-up mode.
2. A park model recreational vehicle is a small mobile home, typically built in accordance with the construction requirements of the HUD Manufactured Housing Code which, because of their limited size (400 square feet or less of living space), are neither labeled nor regulated under the jurisdiction of the HUD program but are typically built, labeled, and sold as a recreational vehicle.

In no case shall any type of recreational vehicle as defined above be classified as any other type of structure except as follows:

1. Park model recreational vehicles that are built and labeled in accordance with the *HUD National Manufactured Housing Construction and Safety Standards Act of 1974* shall be considered a manufactured home.
2. Park model recreational vehicles that are built in accordance with the *North Carolina Regulations for Modular Construction* and labeled as a *North Carolina Modular Home* shall be considered a modular home.

*Nameplate sign:* A sign identifying only the name and occupation or profession of the occupant of the premises on which the sign is located. When nameplates are used to identify more than one occupant, each nameplate shall be attached to one freestanding master identification sign.

*Natural grade:* The highest elevation where the base of a sign and the ground meet.

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

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

1. Non-conforming lots: lots of improper size, shape, or structural density; or lots lacking frontage upon a public street.
2. Non-conforming structures: structures located within a right-of-way, or that exceed height or setback limitations, or that are located within setback areas, floodways, or streamside protection areas.
3. Non-conforming uses of land: industrial activity within residentially zoned areas, hazardous chemical storage in flood-prone areas, open storage in a improperly zoned area.
4. Non-conforming conditions: insufficient parking, landscaping, or buffering for an otherwise conforming use or structure; cleared vegetation in a streamside protection area; inadequate stormwater control measures.

*Non-encroachment area:* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated in the flood insurance study report.

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

*Nuisance vehicle:* See "Motor Vehicle."

*Opaque:* The characteristic of not being able to be seen through or not allowing light to show through.

*Out-parcel:* A parcel within a group development, institutional campus, or planned development district (hereafter, "development") that is separate and distinct from the main portion of the development due to separation by a public street or major topographical feature, such that it cannot reasonably be considered to be part of the same development. A parcel or parcels subject to the same conditions imposed and/or benefits granted by the approving authority of the City of Brevard by means of the same development approval as contiguous parcel or parcels, shall not be considered an out-parcel.

*Off-premises sign:* A sign that advertises goods, products, services, or facilities, or directs persons to a different location from where the sign is installed.

*Open storage:* The placement or storage of materials or products (such as construction materials or raw materials or products of a manufacturing process) on a lot, outside of a structure which is enclosed by walls and a roof.

*Outdoor advertising device:* A device consisting of twirlings, balloons, flags, flashing lights and other similar materials used to attract attention.

*Parcel:* An area designated as a separate and distinct parcel of land on a legally recorded subdivision plat or in a legally recorded deed as filed in the official records of Transylvania County, as maintained in the Transylvania County courthouse. The terms "lot," "lot record," "lot of record," "plot," "parcel," "property," or "tract," whenever used in this ordinance, are interchangeable.

*Park:* A public facility for recreation, which may have commercial activities for recreational uses only.

*Parking lot:* Any public or private open area used for the express purpose of parking automobiles and other vehicles, with the exemption of areas on the premises of single-family dwellings used for parking purposes incidental to the principal use. Otherwise, parking lots may be the principal use on a given lot or an accessory use to the principal use on a given lot.

*Personal services:* An establishment primarily engaged in providing services that are generally related to the care of a person. Such personal services include, but are not limited to, the following: hair salons and barbershops, massage and bodywork therapists, spas, and tanning salons. Personal services shall not include any use which may be defined as an adult establishment.

*Political sign:* A sign attracting attention to political candidates or issues.

*Portable sign:* A sign which rests on the ground or other surface, and is not directly attached to such surface, and which is designed and/or constructed to be mobile or movable.

*Poster:* Any sign made of a rigid or semirigid, nondurable material, such as paper or cardboard, other than advertising copy applied to a permanent sign structure.

*Post-FIRM:* Construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map for the area.

*Post office:* Establishments conducting operations of the National Postal Service. (LBCS F4170).

*Pre-existing lot:* Any parcel of land, the boundaries of which were on record within the Transylvania County Register of Deeds prior to the date of the enactment of this ordinance.

*Pre-existing (or "existing") manufactured home park or manufactured home subdivision:* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of this ordinance.

*Pre-FIRM:* Construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map for the area.

*Principally above ground:* This term signifies that at least 51 percent of the actual cash value of a structure is above ground.

*Principal building or structure:* A building in which is conducted the principal use of the parcel on which it is situated.

*Product information sign:* An on-premises, advertising sign which denotes a particular commodity, service, or entertainment offered by said establishment. Identification signs and reader boards shall not be construed as product information signs.

*Professional services:* Services provided that make available the knowledge and skills of their employees to sell expertise and perform professional, scientific, and technical services to others. Such services include, without limitation, the following: legal services; accounting, tax, bookkeeping, and payroll services; architectural, engineering, and related services; graphic, industrial, and interior design services; consulting services; research and development services; advertising, media, and photography services; real estate services; investment banking, securities, brokerages and insurance-related services; and medical services such as physician's and dentist's offices. (LBCS F2230, F2240, F2300, F2410-2417, and F6511)

*Projection sign:* A sign projecting out from and attached to the exterior wall of any building, and forming an angle of 30 degrees or more to said wall.

*Property line:* The legally established boundary of a lot, which boundary shall be considered coincident with any abutting public street right-of-way line unless the metes and bounds description contained in.

*Public safety [contrary to] and/or nuisance:* Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any street, sidewalk, or other public travel way, navigable lake, or river, bay, stream, canal, or basin.

*Public safety facility:* A facility operated by a public agency the purpose of which is public safety. This term includes, without limitation, fire stations, other fire prevention and fire fighting facilities, police and sheriff substations and headquarters, including incarceration facilities.

*Reader boards:* A permanent sign, affixed either to the wall of a structure or to an existing freestanding identification sign, which is comprised of a surface to which letters may be attached on a temporary basis thereby forming messages advertising special sales or services offered. Reader boards may not serve in substitution for identification signs.

*Recreation facilities, indoor:* Uses or structures for active recreation including, without limitation, gymnasiums, natatoriums, athletic equipment, indoor running tracks, climbing facilities, court facilities and their customary accessory uses. This definition is inclusive of both non-profit and for-profit operations.

*Recreation facilities, outdoor:* Parks and other open space used for active or passive recreation such as ball fields, playgrounds, greenway trails, tennis courts, riding stables, campgrounds, and golf courses, and their customary accessory uses including, but not limited to, maintenance sheds, clubhouses, pools, restrooms, and picnic shelters. This definition is inclusive of both non-profit and for-profit operations.

*Recreation, public:* All recreational facilities including parks and ballfields which are open to the public at large without membership fees and are funded by nonprofit organizations or government entities.

*Recycling—Small collection facility:* A center where the public may donate, redeem or sell recyclable materials, which occupies an area of 350 square feet or less. Such facility may include the following: a mobile unit; bulk reverse vending machines or a grouping of reverse vending machines occupying more than 50 square feet; and kiosk-type units that may include permanent structures.

*Regulatory jurisdiction:* The geographic area encompassed by the City of Brevard, North Carolina, and its extra-territorial jurisdiction.

*Real estate sign:* Any sign pertaining to the sale, lease, or rental of land or buildings.

*Religious institution:* Any facility such as a church, temple, monastery, synagogue, or mosque used by a non-profit organization for worship and, if applicable customary related uses such as education (pre-schools, religious education, etc.), recreation (gymnasiums, activity rooms, ball fields, etc.), housing (rectory, parsonage, elderly or disabled housing, etc.) and accessory uses such as cemeteries, mausoleums, soup kitchens, and bookstores. (LBCS F6600 and S3500)

*Remedy a violation:* To bring a structure or other development into compliance with applicable regulations. For the purposes of floodplain regulations, to remedy a violation may mean to reduce the impacts of noncompliance if compliance is not possible due to pre-existing conditions. Ways that impacts may be reduced include protecting the structure or other affected development from flood damage, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

*Research and development (R&D):* A facility for scientific research and the design, development, and testing of electrical, electronic, magnetic, optical, and computer and telecommunications components in advance of product manufacturing. Such facility may include the assembly of related products from parts produced off-site, where the manufacturing activity is secondary to the research and development activities. Includes pharmaceutical, chemical, and biotechnology research and development.

*Restaurant:* A retail business selling ready-to-eat food and/or beverages for on or off-premise consumption. Customers may be served from an ordering counter (i.e. cafeteria or limited service restaurant), at their tables (full-service restaurant), and at exclusively pedestrian-oriented facilities that serve from a walk-up ordering counter (snack and/or nonalcoholic bars). (LBCS F2510, F2520, and F2530)

*Right-of-way:* A dedicated strip of land reserved for a specific use, such as for a street, pedestrian, or utility easement.

*Riverine:* Relating to, formed by, or resembling a river. This term includes tributaries of a river, such as streams, brooks, branches, etc.

*Roof sign:* A sign erected, constructed, or maintained upon the roof of the building.

*Rooming or boarding house:* Short or long-term accommodations that serve a specific group or membership such as a dormitory, fraternity or sorority house, youth or adult hostel, or similar tourist accommodations, or single room occupancy units that provide a number of related services including, but not limited to housekeeping, meals, and laundry services. (LBCS F1320, S1320, and S1340)

*Salvage yard:* Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, including but not limited to vehicles, appliances and related machinery.

*School, elementary and secondary:* A public or private institution for education or learning which does not include lodging. This term includes any school licensed by the state and that meets the state requirements for elementary and secondary education and also includes any accessory athletic, recreational or other facilities. (LBCS F6100)

*School, vocational/technical:* A public or private institution for education or learning of a vocational or technical nature which does not include lodging. This term includes any accessory athletic, recreational or other facilities. These schools offer vocational and technical training in a variety of technical subjects and trades. Training may lead to job-specific certification. (LBCS F6100 and F6140)

*Sedimentation pollution:* Any movement of earth (sand, silt, stone, debris, etc.) from one point to another where the potential exists for moving earth to enter surface water, to move in an uncontrolled or uncontained manner within a property or from one property to another, or otherwise be discharged or deposited in a manner that is unnatural. Sedimentation pollution is considered a nuisance and a hazard to life, property, and the environment. Sedimentation pollution is generated by land disturbance activity such as agriculture, unsurfaced driveways and parking lots, grading, excavation, improperly stabilized cut or fill slopes and road shoulders, and other activities. Natural levels of earth discharged from undisturbed land in a naturally vegetated state shall not be considered sedimentation pollution. Sedimentation pollution is moved by means of mechanical action, as well as by gravity, wind, water, and other forces of nature.

*Setback:* The distance from the street right-of-way to the closest edge of a structure or sign.

*Shelter:* A temporary residence operated by a nonprofit organization meeting the needs of citizens temporarily in crisis such as: family violence, natural disaster, fire, economic distress, neighborhood violence, homelessness, and unwed pregnant teens.

*Shopping—Neighborhood center:* A form of non-residential or mixed use development which typically serves immediate neighborhoods (a three-mile primary trade area radius) with convenience shopping and which is often anchored by a supermarket or drugstore. Neighborhood centers shall have a maximum combined ground floor area of less than 100,000 square feet.

*Shopping center—Community center:* A shopping center serving a wider market with a wider range of goods than a neighborhood center, and serving a primary trade area radius of three or more miles. Community shopping centers may have a combined ground floor area equal to or exceeding 100,000 square feet. Anchors

include supermarkets, super drug stores, and discount department stores. Some centers may also contain off-price retail stores selling toys, electronics, sporting goods, and home improvements and furnishings. Community centers shall be considered as a planned development.

*Sign:* Any words, lettering, numerals, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, graphic depiction of a product and/or process, trade names or trademarks by which anything is known, including any surface fabric or other material or structure designed to carry such devices, such as are used to designate or attract attention to an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which are exposed to public view, and used to attract attention. This definition shall not include the flag, badge, or insignia of any governmental unit.

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

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

1. Any correction of existing violations of state, city, or county health, sanitary, or safety code specifications which have been identified by the administrator or other authorized official of the State of North Carolina or Transylvania County, and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a historic structure provided that: such alteration is necessary to maintain retain or restore historically significant characteristic; the alteration will not preclude the structure's continued designation as a historic structure; and the alteration does not result in the expansion of a non-conforming condition.

*Solid waste disposal facility:* Any facility meeting the definition of NCGS 130A-290(a)(35), as well as any facility involved in the storage or disposal of non-liquid, non-soluble materials ranging from municipal garbage to industrial wastes that contain complex and sometimes hazardous substances. Solid waste also includes sewage sludge, agricultural refuse, demolition wastes, mining wastes, and liquids and gases stored in containers.

*Solid waste disposal site:* As defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

*Special flood hazard area (SFHA):* The land in the floodplain subject to a one percent or greater chance of being flooded in any given year, as determined in Section 6.8(B) of this ordinance.

*Start of construction:* The date of issuance of a building permit, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement occurred within 180 days of the permit date. The actual start of construction means either (1) the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or (2) the placement of a manufactured home on a foundation. Permanent construction does not include any of the following: land preparation, such as clearing, grading, and filling; the installation of streets and/or walkways; excavation for a basement, footings, piers, or foundations or

the erection of temporary forms; the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement (as distinguished from new construction), the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

*Stealth:* Equipment that is unobtrusive in its appearance such as the co-location of antennas on existing tower facilities, and the placement of equipment on flagpoles, buildings, silos, water tanks, pole signs, lighting standards, steeples, billboards and electric transmission towers.

*Storage—Storage yard:* The open storage of various materials outside of a structure as a principal use.

*Storage—Warehouse, indoor storage:* Facilities for the storage of furniture, household goods, or other commercial goods of any nature. This term includes cold storage but does not include the following: warehouse, storage, or mini-storage facilities offered for rent or lease to the general public; warehouse facilities primarily used for wholesaling and distribution; or terminal facilities for handling freight.

*Stormwater (or stormwater):* Runoff generated by rain, melting snow, and other precipitation events. Stormwater is that portion of precipitation that flows across a surface to down-slope properties, the storm drain system, or receiving waters. Stormwater often carries pollutants and can cause damage to property and stream channels and can impair natural aquatic systems.

*Stormwater control and treatment measure:* A physical device designed to accomplish one or more of the following: trap, settle out, or filter pollutants from stormwater runoff; alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; approximate the pre-development hydrology on a developed site. Structural best management practices (BMPs) include physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Stormwater control and treatment measure" is synonymous with "stormwater bmp," "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," "low impact design," and similar terms used in this ordinance.

*Street:* Any alley, avenue, circle, highway, lane, road, street, or other way, whether public or private.

*Street, public:* Any street situated within a dedicated public right-of-way and which has been accepted by the appropriate governmental agency for continuing maintenance and upkeep.

*Structure:* Any walled and roofed building or other physical object, whether temporary or permanent, that is designed for human habitation or to uphold, house, contain, or bear other objects or materials. Examples of structures include but are not limited to permanently affixed signs, swimming pools, houses, telecommunication towers, manufactured homes, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

*Studio—Art, dance, martial arts, music, etc.:* Small facilities which provide individual and/or group instruction and training in the arts, including the martial arts. This term also includes the processing of photographs produced only by users of the studio facilities, yoga and similar instruction, and aerobics and gymnastics studios with no other fitness facilities or equipment. Also see "Artist Workshop."

*Subdivision:* All divisions of a tract or parcel of land or building into two or more lots, building sites, or other divisions for the purposes of sale or building development (whether immediate or future) and shall include the following:

- 1.

All divisions of land involving the dedication of a new streets, infrastructure or easements, or a change in existing streets, infrastructure or easements;

2. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the city as shown in the subdivision regulations;
3. The division of land into parcels greater than ten acres where no new street right-of-way dedication is involved;
4. The public acquisition by purchase of strips of land for the widening and opening of streets and pedestrian ways; and
5. The establishment of condominium buildings or lots, or the creation of condominium spaces within existing buildings or parcels.

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

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

1. Any correction of existing violations of state, city, or county health, sanitary, or safety code specifications which have been identified by the administrator or other authorized official of the State of North Carolina or Transylvania County, and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a historic structure provided it meets the following criteria: such alteration is necessary to maintain, retain or restore historically significant characteristics; the alteration will not preclude the structure's continued designation as a historic structure; and the alteration does not result in the expansion of a non-conforming condition.

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

*Surface area:* The entire area of a sign as measured by the square, rectangle, semicircle, or parallelogram thereof, and comprising the entire sign inclusive of any border or trim and all of the elements of the matter displayed, but excluding the base or apron, supports and other structural members. In the case of three-dimensional letters or painted letters directly on the wall surface, the surface area shall be defined as the area encompassing the individual letters themselves including any trim or border and excluding the background that supports the three-dimensional letters.

*Surface water:* Any body of water, perennial or intermittent stream (including any "blue line stream" as indicated on a United States Geological Survey Topographical Map), river, brook, wetland as identified by means of the Cowardin wetland classification system or other appropriate classification system as employed by agencies of the United States or the State of North Carolina), swamp, pond, lake, branch, creek, reservoir, waterway, or other body or accumulation of water, whether surface or temporarily underground by means of a man-made conveyance, public or private, permanent or intermittent, or natural or artificial, that is contained in, flows through, or borders upon any portion of the City of Brevard and its Extra-Territorial Jurisdiction.

*Suspended sign:* A sign which is suspended from the underside of a horizontal plane surface, such as a canopy or marquee, and is supported by such surface.

*Temporary structure:* A structure intended to serve a specific event and to be removed upon the completion of that event. This term includes, but is not limited to, bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailers, portable toilets, sound/video equipment, stages, platforms, and other impermanent devices, which do not involve grading or landform alteration for installation, and which are not permanently affixed to the ground.

*Temporary sign:* A banner or A-frame sign used for advertising purposes as set forth in Section 1105.6 of this ordinance.

*Temporary use:* An activity or use of land which, having met certain requirements and conditions, may be permitted for a period of limited duration, and which may utilize "temporary structures" for the duration of the event.

*Theater, live performance:* A building or space in which plays and other dramatic performances are given. This term includes concert halls and other structures with fixed seats arranged on a sloped or stepped floor; may seat 300 to 3,000 people. (LBCS S3110)

*Theater, movie:* A specialized theater for showing movies or motion pictures on a projection screen. This category also includes cineplexes and megaplexes, complex structures with multiple movie theaters, each theater capable of an independent performance. (LBCS S3120)

*Total suspended solids:* A measure of the amount of small, particulate solid pollutants that are suspended in wastewater or stormwater. Suspended solids in water reduce light penetration in the water column, can clog the gills of fish and invertebrates, and are often associated with toxic contaminants because organics and metals tend to bind to such particles.

*Tower:* Any tower or structure, including those erected for the purpose of transmitting or receiving signals (i.e., telephonic, radio, television or microwave), and including the construction of new free-standing facilities or facilities that extend more than 20 feet above the normal height of the building or structure on which they are placed. The following shall not be included in this definition:

1. Amateur radio facilities with antennas mounted on supporting structures less than 100 feet in height;
2. Residential antennas for receiving television or AM/FM radio broadcasts;
3. Residential satellite dishes; and
4. Commercial or industrial satellite dishes that are less than 20 feet in height.

*Traffic sign:* A sign indicating federal, state, or city regulations for automobile, truck, bicycle, and pedestrian traffic.

*Trailer:* Any vehicle or structure capable of moving or being moved over streets and highways on its own wheels or on flatbeds or other carriers, which is designed to be utilized to:

1. Provide temporary or permanent quarters for the conduct of a business, profession, trade or occupation;
2. Serve as a carrier of people, new or used goods, products, or equipment;
3. Be used as a selling, advertising, or display device.

*Utilities:* Publicly- or privately-owned facilities or systems for the provision of public services, including, without limitation, the following: the distribution of gas, electricity, steam, or water; the collection and disposal of sewage or refuse; and the transmission of communications. Radio transmission facilities for use by ham radio operators or two-way radio facilities for business or governmental communications shall be deemed accessory uses and not utilities, provided no transmitter or antenna tower exceeds 180 feet in height. Utilities are divided into the following classes:

*Class 1.* Transmission lines (above and below ground) including electrical, natural, gas, and water distribution lines, pumping stations, lift stations, and telephone switching facilities (up to 200 square feet in area).

*Class 2.* Elevated water storage tanks, package treatment plants, telephone switching facilities (over 200 square feet in area), substations, or other similar facilities in connection with telephone, electric, steam, and water facilities.

*Class 3.* Generation, production, or treatment facilities such as power plants, water and sewage plants, and landfills.

*Variance:* A grant of relief from the requirements of this ordinance.

*Vehicle/heavy equipment sales—Indoor:* Establishments which may have indoor showrooms for selling vehicles or heavy equipment. This term includes, without limitation, dealers for compact automobiles and light trucks, buses, trucks, bicycles, motorcycles, mopeds, ATV's and boat and marine craft.

*Vehicle/heavy equipment sales—Outdoor:* Establishments which may have indoor showrooms or open lots for selling vehicles or heavy equipment. This term includes, without limitation, dealers for compact automobiles and light trucks, buses, trucks, mobile homes, bicycles, motorcycles, mopeds, ATV's and boat and marine craft.

*Vehicle services—Major repair/body work:* The repair, servicing, alteration, restoration, towing painting, cleaning, or finishing of automobiles, trucks, recreational vehicles, boats and other vehicles as a primary use, including the incidental wholesale and retail sale of vehicle parts as an accessory use. Major repair and body work encompasses towing, collision repair, other body work vehicle painting services, and tire recapping.

*Vehicle services—Minor maintenance and repair:* The repair, servicing, alteration, restoration, towing painting, cleaning, or finishing of automobiles, trucks, recreational vehicles, boats and other vehicles as a primary use, including the incidental wholesale and retail sale of vehicle parts as an accessory use. Minor maintenance and repair facilities provide limited repair and maintenance services. Examples include, but are not limited to, car washes (attended and self-service), car stereo and alarm system installers, detailing services, muffler and radiator shops, quick-lube services, and tire and battery sales and installation (not including recapping).

*Vending pushcart:* Any self-contained, wheeled vehicle used for displaying, keeping or storing any article by a vendor or peddler (other than a motor vehicle, bicycle or trailer) which may be moved without the assistance of a motor and does not require registration by the state department of motor vehicles. Vending pushcarts are a form of temporary use.

*Violation:* The failure of a structure, use, or other development to be fully compliant with this ordinance, other applicable provisions of the Brevard City Code, other applicable laws and regulations, or any conditions attached to any permit or approval issued by the City of Brevard or Transylvania County. A structure, use, or other development without a valid and current land development permit, zoning permit, floodplain development permit, elevation certificate or other certification, zoning permit, subdivision approval, or any other form of approval as required by this ordinance, the Brevard City Code, and other applicable state and federal regulations.

*Visible:* Capable of being seen without visual aid by a person of normal visual acuity.

*Wall sign:* A sign affixed to the surface of, and whose plane is parallel to, the exterior wall of a building, or which forms an angle of less than 30 degrees with said wall and does not project out from the wall more than 24 inches from said wall. No wall sign shall extend above the roofline of the building upon which it is located. In cases of flat roofs, no sign shall extend above the parapets. Mansard roofs with an angle of 60 degrees or more from horizontal shall be considered as wall space for the placement of signs.

*Water surface elevation (WSE):* The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

*Watercourse:* A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

*Wetland:* Areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

*Window sign:* Any sign oriented toward and visible from the exterior of a building which is placed directly on a glass window.

*Wireless telecommunication facility:* Equipment constructed in accordance with Section 332(c)(7) of the Telecommunications Act at a single location by a private business user, governmental user, or commercial wireless service provider to transmit, receive, or relay electromagnetic signals (including microwave). Such facility includes one or more of the following: antennas or antenna arrays, wireless telecommunication towers, support structures, transmitters, receivers, base stations, combiners, amplifiers, repeaters, filters, or other electronic equipment; together with all associated cabling, wiring, equipment enclosures, and other improvements.

*Wholesaling and distribution:* Establishments engaged in selling merchandise to retailers; to contractors, industrial, commercial, institutional, farm or professional business users; to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. Examples of these establishments include, without limitation, the following:

1. Agents, merchandise or commodity brokers, and commission merchants;
2. Assemblers, buyers and associations engaged in the cooperative marketing of farm products;
3. Merchant wholesalers; and
4. Stores primarily selling electrical plumbing, heating, and air conditioning supplies and equipment.

*Yard:* A space on the same lot with a principal building, open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings and structures are expressly permitted.

*Yard, front:* A yard situated between the front building line and the front lot line extending the full width of the lot.

*Yard, rear:* A yard situated between the rear building line and the rear lot line extending the full width of the lot.

*Yard, side:* A yard situated between a side building line and side lot line and extending from the required front yard to the required rear yard. In determining the situation of accessory structures, the side yard shall be assumed to extend through the rear yard to the rear lot line.

*Zoning district:* The term applied to various geographical areas of the City of Brevard for the purpose of interpreting the provisions of the ordinance. The districts are designated with the use of symbols on the official zoning map. Regulations controlling land use in the various districts within the City of Brevard are set forth in article VII of this ordinance. The terms "district" and "zoning district" are synonymous and are used interchangeably throughout this ordinance.

(Ord. No. 3-07, § 10, 2-5-07; Ord. No. 3-08, § 1, 3-17-08; Ord. No. 14-08, § 3, 11-17-08; Ord. No. 15-08, § 51, 12-5-08; Ord. No. 20-09, § 4(Exh. B(14), (15)), 9-21-09; Ord. No. 03-10, § 3(Exh. C), 2-15-10; Ord. No. 07-10, § 3(Exh. C), 4-5-10; Ord. No. 19-2011, § 1(Exh. A), 8-1-11; Ord. No. 24-2011, § 3(Exh. A), 9-19-11; Ord. No. 2012-21, §§ 1-d(Exh. A), 2-c(Exh. B), 7-16-12; Ord. No. 2012-25, § 1(Exh. A), 11-5-12; Ord. No. 2014-24, § 05(Exh. E), 11-17-14)