



AGENDA
BREVARD PLANNING BOARD– REGULAR MEETING
Tuesday, August 16, 2016 – 6:00 PM
Council Chambers

- I. Welcome**
- II. Introduction of Board Members**
- III. Approval of Minutes**
 - a. June 21, 2016
- IV. New Business**
 - a. Residential apiary updates
 - b. Invasive species ordinance changes
 - c. Annual Work Plan
- V. Old Business**
- VI. Other Business**
- VII. Adjourn**

**MINUTES
BREVARD PLANNING BOARD
JUNE 21, 2016**

Brevard Planning Board met for a regular meeting, Tuesday, June 21, 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
Katie Thompson

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

Others: Demetri Baches, Metrocology
John T. Barnes, Urban 3

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. May 17, 2016, motion to approve by F. Porter, seconded by D. Loftis, unanimously carried.

The Board made the decision to amend the agenda to move New Business: Form Based Codes Update to last on the agenda in order to accommodate the public present at the meeting and to move Old Business: a. Annual Sign Chapter Review to be discussed after the Zoning Map Amendment items were heard.

III. New Business-

a. Form Based Codes Update – Demetri Baches gave a presentation and update on the Form Based Codes project. He emphasized that the most important part of the project is the zoning map.

K. Smith asked if there was a timeline. Demetri Baches stated that the document should be written and vetted through the Board along with a draft zoning map by late December, before the holidays. He stated that there are 9 chapters and the Board will be reviewing 6.

D. Cobb announced the first input session on the topic would be held the next day at Brevard College in MG125 from 10AM-12PM and 6-8 PM.

IV. Old Business –

a. Annual Sign Chapter Review – Review of UDO Chapter 12, continued from March 15, 2016 meeting.

D. Cobb stated that a review of the sign ordinance began earlier this year and that recent Supreme Court decisions relating to signs clearly have an impact on local sign regulations.

A. Bland presented his staff report which was a detailed discussion on the Supreme Court's decision on the Reed et al v. Town of Gilbert, Arizona, et al case. He explained that the court's decision clearly invalidated some distinctions based on the message content of signs, which are common in sign ordinances across the country and will require adjustments to many local ordinances, some state statutes, including Brevard's regulations, and that Staff is seeking direction from the Board.

There was discussion by the Board and general consensus that the glaring legal issues need to be addressed by an attorney first, and that if the Board is to undertake the whole sign ordinance that they take a look at the most critical pieces and then look at how it effects everything else.

It was also noted that the Form Based Codes project will take care of part of the problems.

D. Cobb stated that they have what they need to get started.

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.

D. Cobb presented his staff report including presenting maps of current zoning, proposed zoning and recommended zoning and explained the reasoning behind Staff's recommendations. This report is attached hereto, labeled Exhibit "A" for reference.

J. Perkins stated that he had a long discussion with Council Member, Charlie Landreth as to his reasons for recommending this rezoning. C. Landreth explained to J. Perkins that the recommendation was economic development driven because of the new road (Davidson River Village Connector Road). He said that C. Landreth stated that he made the motion for Corridor Mixed Use (CMX) zoning but did not have strong feelings about it. They also discussed the value of the greenway and that new development be aesthetically pleasing and that there was not a big difference between Corridor Mixed Use (CMX) and Neighborhood Mixed Use (NMX) zoning. J. Perkins stated that he would not feel comfortable about some of the uses allowed in CMX for this area and preferred Staff's recommendation of NMX, and further agreed with staff that the west side of the Asheville Highway remain as currently zoned General Residential (GR).

K. Jackson brought up that the new road was located incorrectly on the map and this was duly noted.

D. Loftis made a motion to adopt Staff's recommendation for rezoning, seconded by J. Perkins, unanimously carried.

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.

D. Cobb presented his staff report which is attached hereto and labeled Exhibit "B" for reference. He explained that the use table had been revised with explanation text and listed the current zoning, original recommended conditional zoning and then Opt.1 and Opt. 2 and a blank Opt. 3 for the Board's decision.

Josh Hallingse explained that the Economic Development Alliance is searching for companies within target markets as follows: advanced niche manufacturing, beverage, food and organics, outdoor gear manufacturing, creative services, including manufacturing with a retail component and also, financial services data center would be a good use to bring a high volume of employment to the area. He further said that the property uses need to be restrictive but somewhat flexible to be able to market the property effectively.

K. Smith asked why indoor and outdoor recreation uses were not listed as an allowed use. J. Hallingse replied that they did not feel that this was a good use for this parcel.

J. Perkins stated that he was initially concerned about too broad of uses being allowed for this property but that he felt that Option 1 or 2 would be acceptable.

D. Loftis questioned the reasoning behind not including hotels, motels, and residential uses in the conditional zoning. J. Hallingse explained that they did not see this as an accommodations space, because the city is deficient in light manufacturing properties.

Josh Hallingse explained that the county is deficient of manufacturing properties and to market the property at the highest level and that they feel that the best use of the property would be light manufacturing because utilities are available to this site, which is not always the case.

F. Porter asked J. Hallingse if Option 1 was in keeping with the overall direction of the county for economic development. He responded, yes.

F. Porter made a motion to adopt Option 1 as presented by Staff, seconded by J. Perkins and unanimously carried.

F. Porter stated that Staff did a good job on the presentation.

V. Other Business –

a. Meeting schedule

D. Cobb proposed that the July meeting be cancelled due to the fact that it is customary that Council does not meet in July. C. Strassner made motion to cancel the July meeting, seconded by F. Porter, unanimously carried.

F. Porter addressed the Chair stating that he had polled a majority of the Board about moving the meeting time to 6:00 PM. F. Porter made a motion to hold all future meetings beginning with the next meeting at 6PM, seconded by D. Loftis. There was discussion as to reservations about this being a possible inconvenience for the public and as to whether or not it was an inconvenience to any present Board members. Upon vote the motion carried unanimously.

VI. Adjourn –

There being no further business, C. Strassner moved to adjourn, seconded by F. Porter, unanimously carried and the meeting adjourned at 8:46 PM.

Richard K. Jackson, Chair

Janice H. Pinson, Board Secretary



The City of
Brevard
North Carolina

NEW BUSINESS STAFF REPORT

August 16, 2016

Title: City Code Amendment – Keeping of Bees
Speaker: Aaron Bland AICP, Planner & Assistant Zoning Administrator
Prepared by: Aaron Bland AICP, Planner & Assistant Zoning Administrator

EXECUTIVE SUMMARY: Planning Board will consider a text amendment to City Code, *Section 14-9 – Keeping Bees*, which will bring Brevard’s local regulations into conformance with statutory requirements.

BACKGROUND: City code currently limits the number of hives on lots 15,000 square feet (0.344 acres) or less to “no more than four” (Sec. 14-9(b)). The North Carolina General Assembly modified a state law in 2015 pertaining to the keeping of bees – *Section 8 of S.L. 2015-246 creates G.S. 106-645* – which includes language regarding limitations of local government regulation of hives (See Attachment A). In an effort to keep ordinances up to date and consistent with State law Staff initiated this amendment upon discovering this discrepancy.

This law clearly states two requirements of local laws that regulate bee hives which the City’s code does not currently conform to:

“Any ordinance shall permit up to five hives on a single parcel within the land use planning jurisdiction of the city.” § 106-645(b)(1)

“Any ordinance shall require that the hive be placed at ground level or securely attached to an anchor or stand. If the hive is securely attached to an anchor or stand, the city may permit the anchor or stand to be permanently attached to a roof surface.” § 106-645(b)(2)

DISCUSSION: The City’s current language regarding keeping bees is inconsistent with state statute. Staff has drafted language (Attachment B) that meets the two requirements outlined above. Further, Staff’s draft also includes language allowed, but not required, by state law which calls for removal of hives that go unmaintained or if removal is necessary to protect the health, safety, and welfare of the public; Staff feels that it is prudent to include this language in order to facilitate enforcement of any unsafe hives.

POLICY ANALYSIS: While not directly related to any specific goals, objectives, or policies of the City's 2015 Comprehensive Plan Update, due to the vital role bees play as pollinators, providing for bee keeping in the city does relate to two goals of the Environmental Health element:

- Successfully preserve our woods and water for future generations.
- Preserve farmland.

STAFF RECOMMENDATION: This amendment is necessary to bring the City's code into compliance with state statutory requirements; Staff recommends approval as presented.

However, the Board does have latitude to consider recommending a version that differs from Staff's recommended language. The Board may elect to alter the language that allows for additional hives on lots larger than 15,000 square feet. Any variation that does not limit hives to less than five per single parcel is acceptable.

Further, Staff has included language that requires removal of hives if the owner no longer maintains the hives or if removal is necessary to protect the health, safety, and welfare of the public; this language is optional and is allowed, but not required, by NCGS 106-645(b)(4).

FISCAL IMPACT: N/A

ATTACHMENTS:

- A. NCGS 106-645
- B. Proposed Amendment

§ 106-645. Limitations on local government regulation of hives.

(a) Notwithstanding Article 6 of Chapter 153A of the General Statutes, no county shall adopt or continue in effect any ordinance or resolution that prohibits any person or entity from owning or possessing five or fewer hives.

(b) Notwithstanding Article 8 of Chapter 160A of the General Statutes, a city may adopt an ordinance to regulate hives in accordance with this subsection. The city shall comply with all of the following:

- (1) Any ordinance shall permit up to five hives on a single parcel within the land use planning jurisdiction of the city.
- (2) Any ordinance shall require that the hive be placed at ground level or securely attached to an anchor or stand. If the hive is securely attached to an anchor or stand, the city may permit the anchor or stand to be permanently attached to a roof surface.
- (3) Any ordinance may include regulation of the placement of the hive on the parcel, including setbacks from the property line and from other hives.
- (4) Any ordinance may require removal of the hive if the owner no longer maintains the hive or if removal is necessary to protect the health, safety, and welfare of the public.

(c) For purposes of this section, the term "hive" has the same definition as in G.S. 106-635(15). (2015-246, s. 8.)

1 **CODE OF ORDINANCES CITY OF BREVARD, NORTH CAROLINA**

2

3 **Chapter 14 – Animals and Fowl**

4

5 **Article I – In General**

6

7 **Sec. 14-9. – Keeping bees.**

8 (a) It shall be unlawful for any person to locate, construct, reconstruct, alter, maintain or use,
9 on any lot or parcel of land within the corporate limits of the city, any hives or other enclosures
10 for the purpose of keeping any bees or other such insects unless every part of such hive or
11 enclosure is located at least 75 feet from a dwelling house located on the adjoining property.

12

13 (b) On lot sizes of 15,000 square feet or less, no more than ~~four~~five hives (colonies of bees) will
14 be permitted. The hives shall be no closer than 15 feet from any property line, and all hives
15 shall be placed at ground level or securely attached to an anchor or stand. On lots larger than
16 15,000 square feet, additional hives will be permitted on the basis of one hive for each 5,000
17 square feet in excess of 15,000.

18

19 (c) This section shall pertain only to honey bees maintained in movable frame hives and it does
20 not authorize the presence of hives with nonmovable frames or feral honey bee colonies
21 (honey bees in trees, sides of houses, etc.).

22

23 (d) The hives (colonies) of bees may not be manipulated between the hours of sunset and
24 sunrise unless the hives are being moved to or from another location.

25

26 (e) The City may require the removal of a hive, or hives, if the owner no longer maintains the
27 hive(s), or if removal is necessary to protect the health, safety, and welfare of the public, as
28 allowed by NCGS 106-645(b)(4).



The City of Brevard North Carolina

NEW BUSINESS STAFF REPORT

August 16, 2016

Title: Invasive Plant Species Changes
Speaker: Daniel P. Cobb, AICP, Planning Director
Prepared by: Daniel P. Cobb, AICP, Planning Director
Paul C. Ray, Senior Code Enforcement Officer

EXECUTIVE SUMMARY: Planning Board will consider an amendment to strike language regarding “invasive plant species” from Chapter 38, of the Code of Ordinances - Health and Sanitation, and to adopt specific language prohibiting the introduction of invasive exotic plant species in Chapter 8, of the Unified Development Ordinance (UDO) - Tree Protection and Landscaping.

BACKGROUND: Language pertaining to invasive exotic plant species appears briefly in both the City’s Code of Ordinances and the Unified Development Ordinance. Generally speaking, the Code of Ordinance contains a stronger concentration of laws pertaining to public welfare, while the Unified Development Ordinance is geared toward land use and design standards. The City’s intent to control invasive exotic plant species through legislation is currently present in both, but neither mention of invasive exotic species has been carried out to the fullest extent due to the ambiguity of the ordinance. The commonality and popularity of invasive tree and plant species, along with the cost and practicality of implementing certain regulations, should be carefully considered during the decision making process in determining if such language should remain as a nuisance violation within the Code of Ordinance or be placed within the Unified Development Ordinance. This move would prohibit the introduction of such plant species.

DISCUSSION: Code of Ordinance: The purpose and intent of Chapter 38, of the Code of Ordinances is to maintain and ensure an adequate level of Health and Sanitation, whereby the enumerated and described conditions are declared to constitute a detriment, danger and hazard to the health, safety, and general welfare of the inhabitants of the city and declared to be unlawful. Section 38-32(2) prohibits the *accumulation of invasive exotic species*. A violation of this section has two remedies for non-compliance. The City can cause the abatement of invasive exotic plant species, hiring a landscaping contractor to abate the invasive plants from private property and attempt to recover its costs by placing a lien against the property. Alternately, the City can swear a complaint against the property owner charging them with a misdemeanor crime.

Unified Development Ordinance: The purpose and intent of Chapter 8 of the Unified Development Ordinance is to aid in preserving ecological balance by contributing to the preservation of wildlife habitat, the promotion of natural diversity, air quality, groundwater recharge, energy conservation, and stormwater runoff, while reducing noise, glare, and heat. Therefore, natural habitats and trees are protected under this chapter and certain landscaping features are required for responsible, urban development. Generally, all trees on commercial properties, or those being used for commercial purposes, are required to maintain their tree canopy. Removal of any such trees is subject to the permitting requirements in Chapter 8 of the UDO. Section 8.3(B)(2) acknowledges invasive tree species and exempts them from this requirement. The current list of commonly accepted invasive exotic species is as follows: Chinese Elm, Silver Maple, Lombardy Poplar, Paulonia, Mimosa and Tree of Heaven (Ailanthus). This amendment as presented will provide additional clarity in this chapter by referencing a known publication.

POLICY ANALYSIS: Section 38-32(2) of the Code of Ordinance (which falls under nuisance section of City Code) states, "Accumulations of invasive exotic species shall be prohibited." This reference alone is not specific enough to enforce. The Code of Ordinance does not contain a definition or list of prohibited plants necessary for successful abatement or prosecution. The Vagueness Doctrine is a constitutional rule that rests on the due process clauses of the Fifth and Fourteenth Amendments, and it requires criminal laws to state explicitly and definitely what conduct is punishable. Without fair notice of what constitutes an invasive exotic species, the language is too vague for the average citizen to understand.

There is a risk of creating public discord, with the perception of arbitrary enforcement of law. Several non-native invasive species of plants, including privet, kudzu and bamboo, are currently growing in the City's own rights-of-way, parks and other public places and institutions. The eradication of invasive exotic plants within the City's control may be hindered by a lack of funding. Similarly, a fair and active enforcement program, authorized by an amendment to the Code of Ordinance, may be hindered by a lack of staffing required for proper implementation. Lastly, proper training of staff would be necessary to gain proficiency in the identification of a variety of invasive exotic plant species.

Reference to "invasive exotic species" in the Unified Development Ordinance is an exception to the tree protection chapter, exempting species like Chinese Elm, Silver Maple, Lombardy Poplar, Paulonia, Mimosa and Tree of Heaven (Ailanthus) from normal tree protection requirements. There are currently no regulations prohibiting the introduction of invasive exotic plant species into landscaping designs, and the aforementioned list of species are limited to trees.

The North Carolina Cooperative Extension Transylvania County Center provides a list entitled, "Guide To Successful Gardening in Transylvania County." This publication is essentially divided into two categories, "Very Invasive" and "Moderately Invasive."

The common names of “very invasive plant species” are as follows:

Trees: Mimosa, Princesstree, Russian olive, Tree of heaven.

Shrubs: Autumn olive, Chinese privet, Multiflora rose, Winter honeysuckle.

Vines: Chinese wisteria, English ivy, Japanese honeysuckle, Kudzu, Oriental bittersweet.

Herbaceous Plants: Garlic mustard, Japanese knotweed, Japanese Stilt Grass, Korean or Chinese lespedeza, Shrubby lespedeza.

The common names of “moderately invasive plant species” are as follows:

Trees: Bradford pear, Japanese privet, Norway maple, Paper mulberry, Thorney olive, White mulberry, White poplar.

Shrubs: Amur honeysuckle, Common privet, Glossy privet, Japanese Barberry, Japanese spiraea, Morrow’s honeysuckle, Tatarian honeysuckle, Sacred bamboo Nandina, Winged burning bush, Winter creeper.

Vines: Bigleaf periwinkle, Common periwinkle, Cypressvine Morningglory, Fiveleaf akebia, Japanese Wisteria, Porcelain berry, Sweet Autumn Virginsbower.

Herbaceous Plants: Bamboo, Chinese silvergrass, Crownvetch Securigera, Golden bamboo, Johnsongrass, Oregon Grape, Purple loosestrife, Queen Anne’s lace.

While there are no specific references to invasive or exotic species in any adopted plans or policies of the City of Brevard, there are *Goals* listed in the 2015 Comprehensive Plan related to the subject, specifically within the Environmental Health Element:

Goals

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

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

Further, as a recognized Tree City USA by the Arbor Day Foundation, Brevard should take steps to maintain and protect the native plant species within the City.

STAFF RECOMMENDATION: Existing regulations on invasive exotic species are unclear and ambiguous under the Code of Ordinance, and would be costly and difficult to enforce on private property. Staff believes the City should adopt specific language in the Landscaping Chapter of the Unified Development Ordinance prohibiting the introduction of invasive exotic plant species, and encourage the use of landscaping with native plants as recommended by the NC Cooperative Extension for Transylvania County Center. The eradication of existing invasive species would be encouraged but not required under the penalty of law. The administrator would be responsible for maintaining a current list of plants and trees commonly accepted to be “invasive exotic species” as determined by the Board. Site plans for development would

continue to be reviewed by the Planning Department for landscaping requirements, and the use of invasive exotic tree and plant species would be strictly prohibited.

Staff recommends approval of the amendments as shown in attachments A and B.

FISCAL IMPACT: None at this time. However, should the Board wish to maintain the ordinance as it is currently written, the language should be modified to include the specific list describe above. Doing so would allow for legal and fair enforcement. If this is the case additional staff, training, and funding for abatement is necessary. An entry-level code enforcement officer salary is \$38,000.

ATTACHMENTS

- A. Proposed Amendment – Chapter 38 Brevard City Code
- B. Proposed Amendment – Chapter 8 Unified Development Ordinance
- C. Statement of Consistency

1 **CODE OF ORDINANCES CITY OF BREVARD, NORTH CAROLINA**

2
3 **Chapter 38 – Health and Sanitation**

4
5 **Article II – Nuisances**

6
7 **Sec. 38-32 – Enumeration**

8
9 The following enumerated and described conditions are hereby found, deemed and
10 declared to constitute a detriment, danger and hazard to the health, safety, and general
11 welfare of the inhabitants of the city, and the same are found, deemed and declared, to be
12 public nuisances wherever the same may exist and are hereby declared unlawful; however,
13 this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive.

- 14
15 1) Any condition which constitutes a breeding ground or harbor for rats, mosquitoes,
16 harmful insects, or other pests.
- 17
18 2) Any growth or overgrowth of grass, weeds or other vegetation that is greater than
19 18 inches on the average, or any accumulation of dead weeds, grass, brush or
20 undergrowth. This section shall not apply to lots that are natural area lots unless the
21 lot is found to violate section 38-32(1) or 38-32(6). Natural area lots are lots that
22 have never been cleared in anticipation of development, or lots that have been
23 landscaped or replanted to appear as natural, undeveloped areas. ~~Accumulations of~~
24 ~~invasive exotic species shall be prohibited.~~ If a natural area lot is adjacent to a
25 property occupied by a dwelling or other structure, and that dwelling or other
26 structure is located within 50 feet of the natural area lot, then the natural area lot
27 shall comply with the requirements of this subsection to a depth of ten feet from
28 said adjacent property line, however, this requirement shall not apply to property
29 that consists of a ravine, creek bank or other severe slope where maintenance
30 would be unsafe and the chance of erosion would increase if the vegetation were
31 decreased.
- 32
33 3) Any concentration of combustible items including but not limited to mattresses,
34 boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes
35 and rags.
- 36
37 4) Any collection of garbage, food waste, animal waste, or any other rotten or
38 putrescible matter of any kind.
- 39
40 5) Any indoor furniture, indoor appliances, or metal products of any kind or nature
41 openly kept which are broken or inoperable or have jagged edges of metal or glass,
42 or areas of confinement.
- 43

- 44 6) Any condition which blocks, hinders, or obstructs in any way the natural flow of
45 branches, streams, creeks, surface waters, ditches, or drains, to the extent that the
46 premises is not free from standing water.
47
- 48 7) Any improper or inadequate drainage on private property which causes flooding or
49 interferes with the use of or endangers in any way the streets, sidewalks, parks or
50 other city-owned property of any kind; provided, the notices required and powers
51 conferred by this article by and on the code enforcement officer in abating the
52 nuisances defined by this subsection shall be given and exercised by the director of
53 public works.
54
- 55 8) Any and all grass or weeds growing in any sidewalk and any hedges or plantings
56 bordering thereon not properly trimmed.
57
- 58 9) Any and all trees or bushes dead, diseased or not properly trimmed, or any object or
59 growth within the sight distance, on private property adjacent to city street rights-
60 of-way that constitute a hazard to city property or to the health or safety of
61 motorists or pedestrians. "Sight distance" shall be defined as the area required to
62 provide a ten-foot by 70-foot unobstructed view across property primarily located at
63 street intersections, driveways, and along sharp horizontal curves in the roadway.
64 No owner, lessee or occupant, or any agent, servant, representative or employee of
65 any such owner, lessee or occupant, having control of any lot or land in the city,
66 regardless of whether the lot is occupied or not, shall permit or maintain on such lot
67 or land, or on or along the sidewalk, street or alley adjacent to the same between
68 the property line and the curb or middle of the alley or for ten feet outside the
69 property line if there is no curb, any of the conditions described in this subsection. It
70 shall be the joint and several duty of any owner, lessee and occupant of any lot or
71 land to cut and/or remove or cause to be cut and/or removed all causes of such
72 conditions as often as may be necessary to comply with the provisions of this
73 chapter.
74
- 75 10) Any other condition specifically prohibited in this article, or any other condition
76 specifically declared to be a nuisance or a danger to the public health, safety, morals
77 and general welfare of inhabitants of the city and a public nuisance by the city
78 council.

1 **UNIFIED DEVELOPMENT ORDINANCE CITY OF BREVARD, NORTH CAROLINA**

2
3 **Chapter 8 – Tree Protection and Landscaping**

4
5 **Sec. 8.2 – General Provisions**

- 6
7 A. *Maintenance of existing built and vacant lots:* Every owner, occupant, agent or person in
8 control of property shall cut down and remove from the property all weeds, grass, vines
9 and other growth which endangers the property or any other property, or which is likely
10 to burn. This requirement shall not require the clearance of surface water protection
11 areas or the removal of significant or protected tree and shrub species.
12
- 13 B. *Pre-construction conference:* Prior to the commencement of any new development
14 activities an on-site pre-construction conference shall take place with the developer and
15 the administrator to review procedures for the protection and management of all
16 protected landscape elements identified on the landscape protection plan.
17
- 18 C. *Existing vegetation, fences, walls, and berms:* The use of existing trees or shrubs to
19 satisfy the landscaping requirements of this section is strongly encouraged. Existing
20 significant vegetation within the landscaped area shall be preserved and credited
21 toward standards for the type of perimeter landscaping required, unless otherwise
22 approved by the City of Brevard at the time of site plan approval. Existing berms, walls,
23 or fences within the landscaped area but not including chain link fencing, may be used
24 to fulfill the standards for the type of perimeter landscaping required, provided that
25 these elements are healthy and/or in a condition of good repair. Other existing site
26 features within the required perimeter landscaped area which do not otherwise
27 function to meet the standards for the required landscaping shall be screened from the
28 view of other properties or removed, as determined during review and approval of the
29 site plan.
30
- 31 D. *Installation of new vegetation and other features:* New plant material should
32 complement existing vegetation native to the site. If existing significant vegetation and
33 other site features do not fully meet the standards for the type of landscaping required,
34 then additional vegetation and/or site features (including fences) shall be planted or
35 installed within the required landscaping area. The use of indigenous, native and/or
36 regionally grown species of trees, shrubs, vines, groundcovers and perennials is
37 encouraged in order to make planted areas compatible with existing native habitats.
38 [The introduction of non-native, invasive, or exotic species shall be prohibited. The](#)
39 [Administrator shall maintain a copy of the North Carolina Cooperative Extension Office’s](#)
40 [“Guide to Successful Gardening in Transylvania County” as reference for this section.](#)
41
- 42 E. *Grading and development in required landscape areas:* The required landscaping shall
43 not contain any development, impervious surfaces, or site features that do not function
44 to meet these standards or that require removal of existing significant vegetation. No

45 grading, development, or land-disturbing activities shall occur within this area if forest
46 canopy, specimen trees, or significant vegetation exists within the buffer yard, unless
47 approved by the administrator. If grading within a buffer yard is proposed, slopes of 3:1
48 or less are encouraged to ensure the proper transition of grades to the adjacent
49 property and to facilitate landscaping and maintenance.

- 50
- 51 F. *Easements and rights-of-way*: Nothing shall be planted or installed within an
52 underground or overhead utility easement or a drainage easement without the consent
53 of the city and the easement holder at the time of site plan approval.
- 54
- 55 G. *Protection during surveying*: No tree greater than 12 inches in diameter at breast height
56 (DBH) located on public property or within a required tree protection area shall be
57 removed for the purpose of surveying without an approval from the administrator.
- 58
- 59 H. *Tree trimming*: Every owner of any tree overhanging any street or right-of-way within
60 the city shall trim the branches so that such branches shall not obstruct the light from
61 any street lamp or obstruct the view of any street intersection and so that there shall be
62 a clear space of eight feet above the surface of the street or sidewalk. Said owners shall
63 remove all dead, diseased or dangerous trees, or broken or decayed limbs which
64 constitute a menace to the safety of the public. The public works director and utilities
65 director are authorized to remove and/or trim trees and shrubs from public properties
66 and public rights-of-way. North Carolina Department of Transportation is authorized to
67 remove and/or trim trees and shrubs in the public rights-of-way owned by the State of
68 North Carolina. Approval is required to trim a tree in a tree protection area, required
69 landscaping area, or buffer yard more than 25 percent of its overall canopy.
- 70
- 71 I. *Trimming and removal by utility companies*: Trees to be removed from the public right-
72 of-way by electric utilities and other overhead utilities must be replaced by such entity
73 in equal quantity and minimum caliper size with an approved species.
- 74
- 75 J. *Tree topping*: Tree topping shall be prohibited on all trees on public property,
76 designated rights-of-way, required tree protection areas, landscaping, and buffer yards
77 unless otherwise approved by the administrator. Trees severely damaged by storms or
78 other causes, or certain trees under utility lines or other obstructions where other
79 pruning practices are impractical may be exempted from this article at the
80 determination of the administrator.
- 81
- 82 K. *Removal of dead trees on public property*: Approval by the administrator shall be issued
83 for trees that are dead, infected by disease, or determined to be a hazard to public
84 safety and welfare. Should any tree designated in a tree protection area, required
85 landscaping area, or buffer yard die, the agency shall replace it within 180 days with a
86 tree(s) [of] equal size.
- 87

- 88 L. *Tree removal on private property:* The city may require removal of any dead or diseased
89 trees or trees harboring insects, on private property when such trees constitute a threat
90 to public property. The administrator will notify in writing the owner(s) of such trees.
91 Removal shall be done at the owner(s) expense within 60 days after the date of service
92 of notice. In the event of failure of the owner(s) to comply with such provisions, the city
93 shall have the authority to remove such trees and charge the cost of removal as a lien
94 on the owner's property taxes.
95
- 96 M. *Stumps:* All stumps of trees and park trees shall be removed so that the top of the
97 stump does not project above the surface of the ground.
98
- 99 N. *Use of off-site landscape easements:* Permanent off-site landscape easements may be
100 used to meet required buffer yards provided that the size or shape of the parcel
101 significantly restricts the ability to reasonably use the property and meet the buffer yard
102 requirements. These easements must be recorded prior to or in conjunction with the
103 approval of the site or subdivision plan.
104
- 105 O. *Protective measures during construction:* Protective barricades shall be placed around
106 all protected trees designated to be saved prior to the start of development activities or
107 grading. Barricades shall be erected five feet past the drip line for any tree to be saved
108 or tree save areas. Protective barricades shall remain in place until development
109 activities are completed. The area within the protective barricade shall remain free of all
110 building materials, dirt or other construction debris, construction traffic, storage of
111 vehicles and materials, and grading shall not take place within five feet of the drip line of
112 the existing trees to be protected.
113
- 114 P. [Non-native plant species: The introduction of non-native, invasive, or exotic species shall](#)
115 [be prohibited. The Administrator shall maintain a copy of the North Carolina](#)
116 [Cooperative Extension Office's "Guide to Successful Gardening in Transylvania County"](#)
117 [as reference for this section.](#)
118

119 8.3. - Tree protection

120

121 A. *Applicability:*

- 122 1. The provisions of the tree protection section of this chapter shall be applicable to
123 any tree that falls within one or more of the following categories:
- 124 i. Any tree which has a trunk six inches or more in diameter at one foot above
125 the ground; or is of a horticultural variety or is highly ornamental (such as a
126 dogwood, redbud, crab apple, sourwood, flowering cherry, holly or any like
127 or similar such plant) and has a trunk diameter of three inches or more at
128 one foot above the ground.
- 129 ii. Any tree that is noted as part of a development plan or that is required as
130 part of a special use permit, group development, planned development,
131 Conditional Zoning District, or other development approval.

- 132 iii. Any tree located within a historic district or any property containing a
133 historically designated structure.
- 134 iv. Any tree located within an RMX, NMX, DMX, CMX, GI, GR, or IC Zoning
135 District or associated Conditional District, and any other property containing
136 a non-residential use.
- 137 v. Any tree subject to D, below.

138

139 *B. Exemptions:*

- 140 1. Trees located on properties developed for single family or duplex uses located
141 within GR districts shall be exempt from the tree protection provisions of this
142 chapter, except for those trees subject to A.1.ii.—iii., above, and trees and other
143 vegetation in protection areas set forth in Chapter 6 and listed as Tier 1 trees in
144 Section 8.3(D), below.
- 145 2. The following trees are exempt from the provisions of this Chapter: ~~Chinese Elm,~~
146 ~~Silver Maple, Lombardy Poplar, Paulonia, Mimosa and Tree of Heaven (Ailanthus).~~
147 ~~The administrator shall maintain a list of plant and tree species that are commonly~~
148 ~~accepted to be invasive exotic species that that should be controlled or eradicated,~~
149 ~~which shall be exempted from these requirements.~~ Mimosa, Princesstree, Russian
150 olive, Tree of heaven, Bradford pear, Japanese privet, Norway maple, Paper
151 mulberry, Thorney olive, White mulberry, White poplar. The Administrator shall
152 maintain a copy of the North Carolina Cooperative Extension Office's "Guide to
153 Successful Gardening in Transylvania County" as reference for this section.
- 154 3. Pruning trees as normal maintenance provided such pruning does not result in the
155 mutilation, death or destruction of the tree.
- 156 4. All trees which are grown by a licensed plant or tree nursery or tree farm, provided
157 such trees are planted and grown on the licensee's premises for the sale or intended
158 sale to the general public in the ordinary course of the licensee's business.
- 159 5. All trees which have been destroyed or harmed by a storm or similar act of nature or
160 casualty loss; provided the administrator is notified of such intended removal,
161 replacement or relocation at least two business days prior to removal, replacement
162 or relocation of any tree. The administrator shall approve or deny the request within
163 the two-day period, and may require replacement subject to the requirements of
164 this ordinance. There shall be no fee for this inspection and review.

**STATEMENT OF REASONABLENESS &
CONSISTENCY WITH CITY POLICIES AND PLANS:
INVASIVE PLANT SPECIES PROHIBITION**

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

2015 Comprehensive Plan – Element 3 – Environmental Health:

Goals

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

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

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.

This document is a true and accurate representation of the findings and recommendations of the Brevard Planning Board. This matter was discussed on August 16, 2016 and recommended for approval.

Kimsey Jackson, Chair
Brevard Planning Board

Date