

**ORDINANCE NO. 2023-06**

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE  
CHAPTER 15 – BOARDS AND COMMISSIONS AND CHAPTER 16 – ADMINISTRATION**

**WHEREAS**, the City of Brevard Planning Board has recommended that Brevard City Code, Unified Development Ordinance, Chapter 15 – Boards and Commissions and Chapter 16 – Administration ; and,

**WHEREAS**, the City Council of the City of Brevard finds that the proposed amendment is consistent with the following elements of the City of Brevard Comprehensive Plans:

2015 Comprehensive Plan:

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

and,

**WHEREAS**, a public hearing was conducted on Tuesday, January 17, 2023, by the Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Unified Development Ordinance be amended as outlined below.

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

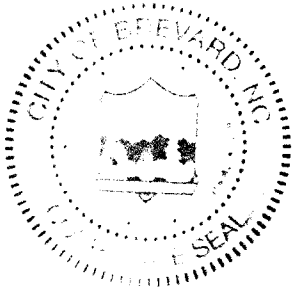
**SECTION 01.** Brevard City Code, Unified Development Ordinance Chapter 2, Chapter 3, Chapter 4, Chapter 10, and Chapter 19 are hereby amended as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

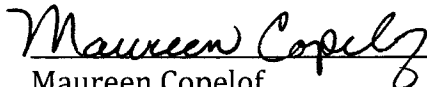
**SECTION 02.** As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this Ordinance shall control.

**SECTION 03.** If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

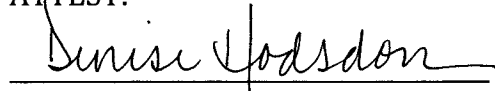
**SECTION 04.** This Ordinance shall be in full force and in effect from and after the date of its adoption and approval.

Adopted and approved upon first reading this the 6<sup>th</sup> day of February 2023.

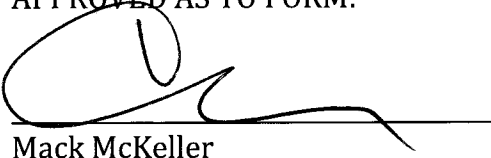


  
Maureen Copelof  
Mayor

ATTEST:

  
Denise Hodsdon, CMC  
City Clerk

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'Mack McKeller', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long, sweeping tail.

Mack McKeller  
City Attorney

**EXHIBIT A**

**15.1. Boards and commissions established.**

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The following boards and commissions are hereby established:

- Brevard Planning Board (BPB).
- Board of Adjustment (BOA).
- Technical Review Committee (TRC).

A. *Brevard Planning Board.* The authority to establish a Planning Board for the City of Brevard is granted under the authority of G.S. 160D-301 and 160D-307.

1. *Authority and responsibility.* The Brevard Planning Board (hereafter BPB) shall have the following duties and responsibilities:

- a. Acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions and forces at work to cause changes in those conditions.
- b. Prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical development of the area.
- c. Establish principles and policies for guiding action in the development of the area.
- d. Prepare and recommend to the city council ordinances promoting orderly development along the lines indicated in the comprehensive plan.
- e. Determine whether specific proposed zoning amendments developments conform to the principles and requirements of the adopted comprehensive plan for the growth and improvement of this area, as well as any other officially adopted plan that is applicable in accordance with G.S. 160D-604(d).
- f. Keep the city council and the general public informed and advised as to these matters.
- g. To review and make a recommendation on development activities and other requests as set forth in Section 16.6 of this ordinance in accordance with G.S. 160D-604(c).
- h. To render opinions and make recommendations on all issues and petitions related to the City of Brevard Code of Ordinances and other land use plans and policies, transportation plans and policies, road closings, and other policies which may be adopted from time to time which require approval by the city council, pursuant to G.S. 160D-604(c).
- i. To review with the city manager and other city officials and report its recommendations to the city council upon the extent, location and design of all public structures and facilities, on the acquisition and disposal of public properties, and on the establishment of building lines, mapped street lines and proposals to change existing street lines. However, in the absence of a recommendation from the board, the city council may, if it deems wise, after the expiration of 30 days from the date on which the question has been submitted in writing to the board for review and recommendation, take final action.
- j. Perform any other duties which may lawfully be assigned to it.

2. *Membership and terms of office.*

- a. The BPB shall consist of a total of seven members with four members residing within the city and three members residing in the extraterritorial jurisdiction. The members residing in the ETJ shall have equal rights, privileges and duties with other members of the board in all matters pertaining to the Unified Development Ordinance both within the corporate limits of the city and within its ETJ.
- b. In accordance with G.S. 160D-307(a), the total membership of the BPB shall be proportional to the population of residents of the city and residents in the ETJ area. At a minimum, the membership of the board shall be examined following every decennial census, and changes shall be made as necessary to maintain an appropriate balance of city and ETJ board membership.
- c. Representatives from within the corporate limits shall be appointed by the Brevard City Council. Representatives from the ETJ area shall be appointed by the Transylvania County Board of Commissioners.
- d. The term of office shall be three years staggered. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.
- e. The BPB shall elect the board chair and vice-chair from among its members. They each shall serve a one-year term.

B. *Board of adjustment.* The authority to establish a board of adjustment is granted under the authority of G.S. 160D-302.

62 1. *Authority and responsibility.* The board of adjustment (hereinafter BOA) shall have the  
63 following duties and responsibilities:

- 64 a. To hear and decide appeals from any order, decision, determination, or  
65 interpretation made by the administrator pursuant to or regarding these  
66 regulations and in accordance with G.S. 160D-405.  
67 b. To hear and decide petitions for variances from the requirements of these  
68 regulations.  
69 c. To hear and decide petitions for special use permits.  
70 d. To make an interpretation of any portion of this ordinance.  
71 e. To change the use of, or expand certain nonconformities.

72 2. *Membership and terms of office.*

- 73 a. The BOA shall consist of a total of five members with three members residing in the  
74 city limits and two members residing in the ETJ. In addition, two alternate members  
75 residing in the city limits and one alternate member residing in the ETJ shall be  
76 appointed. Alternates shall serve on the board in the absence of a member and while  
77 serving shall have and may exercise all of the powers and duties of a regular  
78 member. The members residing in the ETJ shall have equal right, privileges and  
79 duties with other members of the board in all matters pertaining to the Unified  
80 Development Ordinance both within the corporate limits of the city and within its  
81 ETJ.  
82 b. In accordance with G.S. 160D-307(a), the total membership of the BOA shall be  
83 proportional to the population of residents of the city and residents in the ETJ area.  
84 At a minimum, the membership of the board shall be examined following every  
85 decennial census, and changes shall be made as necessary to maintain an  
86 appropriate balance of city and ETJ board membership.  
87 c. Representatives from within the corporate limits shall be appointed by the Brevard  
88 City Council. Representatives from the ETJ area shall be appointed by the  
89 Transylvania County Board of Commissioners.  
90 d. The term of office shall be three years, although initial appointments shall be made  
91 for one, two and three years so the terms may be staggered. Vacancies occurring for  
92 reasons other than expiration of terms shall be filled as they occur for the period of  
93 the unexpired term.  
94 e. The BOA shall elect the board chair and vice-chair from among its members. They  
95 shall each serve a one-year term.

96 C. *Technical review committee.*

97 1. *Authority and responsibility.* The technical review committee (hereinafter TRC) shall  
98 have the following duties and responsibilities:

- 99 a. To review and offer recommendations regarding all applicable local, state, and  
100 federal codes and regulations in response to all land development applications or  
101 projects in accordance with Section 16.6 of this ordinance.  
102 b. At the request of the planning director, to review and offer recommendations  
103 regarding all applicable local, state, and federal codes and regulations in response to  
104 any land development application or project that has been deemed, in the opinion of  
105 the planning director, because of its potential impact to the city, due to the  
106 development project's size, scope, mass, number of dwelling units, or complexity.  
107 The planning director shall provide written justification for such review of these  
108 applications.  
109 c. At the direction of the administrator, to review and render opinions and make  
110 recommendations on issues and petitions related to the City of Brevard Code of  
111 Ordinances and other land use plans and policies which may be adopted and require  
112 approval by the city council.  
113 d. To make recommendation and/or approve any other item as requested by the  
114 administrator, the planning board, or city council.

115 2. *Actions by the TRC.*

- 116 a. Upon receiving notices of a land development application which requires TRC  
117 review from the planning director, members of the TRC must take the following  
118 action:
- 119 • Review the development application and related plan documents in  
120 relation to all applicable local, state, and federal codes and  
121 regulations.
  - 122 • Recommend major and/or minor changes to the application to be  
123 considered by the developer or property owner.
  - 124 • Each member of the TRC shall provide written comments to the  
125 planning director within 15 days of having received notification from

126 the planning director of a land development application requiring  
 127 their review.

128 3. *Members.*

129 a. The TRC shall consist of the following members:

- 130 • City planning director
- 131 • City zoning administrators
- 132 • Chief of Brevard Police Department, or designee
- 133 • Chief of Brevard Fire Department, or designee
- 134 • City public works director
- 135 • City wastewater treatment plant ORC
- 136 • City water treatment plan ORC
- 137 • Transylvania County Building Permitting and Inspections  
 138 Department Director, or designee
- 139 • Transylvania County Fire Marshall, or designee

140 b. Other appropriate city, county, state, or federal officials may be invited to  
 141 participate in the TRC review when deemed necessary by the administrator.  
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143 **16.6. Development approval review procedure in general.**

144 A. Planning department staff, also referred to as the administrator, and the approving authority  
 145 shall have the discretion to refer any land development permit application to a body of greater  
 146 authority for consideration and approval or denial consistent with this section.

147 B. The administrator shall provide advisory review and comment to all boards and city council  
 148 regarding the application's compliance to this section. The administrator may determine that  
 149 additional review is required and request review and/or a recommendation by a board  
 150 beyond the required process described herein.

51 C. Designation of approving authority:

Category	Development Activities	Review / Recommendation	Approving Authority	Appeal Authority
<b>Annexation &amp; Dedication</b>	Annexations	Planning Board	City Council	Superior Court
	Plats of Dedication	Technical Review Committee	Staff	Board of Adjustment
	Street / Right-of-Way/Easement Abandonment	Technical Review Committee	City Council	Superior Court
<b>Land Use &amp; Development</b>	All Land Use and Development Activity for which No Higher Review is Required	-	Staff	Board of Adjustment
	Group Developments	Technical Review Committee	Staff	Board of Adjustment
	Temporary Uses	-	Staff	Board of Adjustment
	Special Use Permits	-	Board of Adjustment	Superior Court
	Development Agreements	-	City Council	Superior Court
	Vested Rights Determination	-	City Council	Superior Court
<b>Regulations</b>	Adoption, Amendment, or Repeal of Development Regulations	Planning Board	City Council	Superior Court
	Official Zoning Determinations and Other Interpretations of this Ordinance	-	Staff	Board of Adjustment
<b>Subdivision</b>	Major Subdivisions	Technical Review Committee and Planning Board	City Council	Superior Court
	Minor Subdivisions for which New Public Infrastructure is Proposed	Technical Review Committee	Staff	Board of Adjustment
	Minor Subdivisions Creating No New Public Infrastructure	-	Staff	Board of Adjustment

	Recombination Plats	-	Staff	Board of Adjustment
<b>Zoning</b>	Rezoning / Zoning Map Amendments	Planning Board	City Council	Superior Court
	Conditional Zoning Districts	Technical Review Committee and Planning Board	City Council	Superior Court
	Final Master Plan Approval for Conditional Zoning Districts	-	Planning Board	Superior Court
	Variances	-	Board of Adjustment	Superior Court

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D. In addition to any findings that may be otherwise required by this chapter, the approving authority shall only approve a land development application upon determination that the application meets the following requirements:

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1. All applicable requirements of this ordinance and Brevard City Code are satisfied.
2. All other applicable federal, state, and local requirements and plans are satisfied.
3. All applicable policies and plans of the City of Brevard are satisfied.

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4. All required system development fees, performance guarantees, or other dedications have been or will be secured.

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5. Approval of the application will not otherwise endanger the health, safety, or welfare of the public.

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6. The applicant agrees to adhere to all reasonable conditions and requirements imposed in accordance with this chapter.

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E. The approving authority shall consider impacts upon traffic conditions, public safety, public infrastructure and services, and other relevant factors, including any proposed project's likely effect on the public health or safety in determining whether to approve or reject any land development application, and may impose such reasonable conditions as are allowed under G.S. 160D noting the applicable approval process. Findings as to such factors made by any reviewing entity shall not bind the city officer, committee, board, or council acting as the approving authority, which shall consider such factors de novo.

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F. If the administrator or approving authority requires the application to be reviewed by the technical review committee (TRC) in accordance with Section 15.1, its members shall provide written comments to the planning director within 15 days of having received notification from the planning director of a land development application requiring their review, unless otherwise stated in this Chapter.

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G. A permit or development approval shall be in writing, and may be issued in print or electronic form pursuant to G.S. 160D-403. Any permit or approval issued exclusively in electronic form shall be protected from further editing once issued. The permit or approval may contain a provision that the development shall comply with all applicable state and local laws. If an application is denied, the reasons for denial shall be stated in writing.

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H. Typical procedures following issuance of land development permit:

1. Upon issuance of a land development permit, the applicant may proceed to the Transylvania County Health Department and/or Transylvania County Building Permitting and Enforcement for any necessary permits.

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2. Upon creation of structural footers or the pouring of the first-floor slab of any building or structure, the applicant shall contact the administrator for a preliminary setback inspection. The administrator shall inspect for compliance with applicable dimensional requirements and shall issue preliminary setback approval or require modifications, as applicable.

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3. Upon completion of all land development activity and the installation of all approved improvements the applicant shall contact the administrator to arrange for a final inspection. As authorized by G.S. 160D-403(e) and -1113, the administrator shall inspect for compliance with all applicable requirements of this ordinance and Brevard City Code. The administrator shall deny final inspection approval if full compliance with this ordinance and Brevard City Code, approved development plans, and all other requirements, is not observed. The administrator may issue conditional approval. Conditional approval shall be extended for a defined period of time and all conditions

199 shall be clearly set forth in writing. The administrator may require the submission of final  
200 "as built" construction documents as a condition of final written approval.

201 4. Upon issuance of final approval by the administrator, the applicant shall contact the  
202 Transylvania County Building Inspection Department to request issuance of a certificate  
203 of occupancy in accordance with G.S. 160D-403(g).

204 5. The administrator shall, from time to time, inspect the building, structure, use,  
205 subdivision, or other approved activity for continued compliance with this ordinance,  
206 Brevard City Code, the approved land development plan, and any other applicable  
207 requirement, and shall take such action as is necessary to ensure continued compliance,  
208 including any remedy as set forth in Chapter 18 of this ordinance.

209 I. Final zoning approval and certificate of occupancy:

210 1. No structure shall be used or occupied until final zoning approval has been issued by the  
211 City of Brevard and a certificate of occupancy has been issued by the Transylvania County  
212 Building Inspection Department pursuant to G.S. 160D-403(g). Such approval shall be  
213 issued with the presumption that the structure or portion of a structure is in compliance  
214 with Brevard City Code, all applicable provisions of this ordinance, any specific conditions  
215 and requirements of the city, and the information stated on the development permit.

216 2. A record of all final zoning approvals shall be kept on file in the office of the administrator,  
217 and a record of all certificates of occupancy shall be kept on file in the office of the  
218 Transylvania County Building Inspection Department. Copies shall be furnished, on  
219 request, to all interested parties.

220 3. If final zoning approval or a certificate of occupancy is denied, the reasons for such denial  
221 shall be specified in writing and provided to the applicant.

222 4. Where certain infrastructure elements have not been installed (i.e. landscaping due to time  
223 of year), a temporary final zoning approval may be issued by the administrator, and a final  
224 certificate of occupancy may be issued by Transylvania County with permission from the  
225 administrator.

226 J. Right of appeal:

227 1. If a request for a development permit is denied or if a ruling of the administrator is  
228 questioned, any aggrieved party may appeal such ruling to the board of adjustment  
229 (hereafter, "BOA") in accordance with this chapter and G.S. 160D-405.

230 2. Appeals of a ruling of the BPB, the BOA, or city council shall be heard by the Superior  
231 Court of Transylvania County. In accordance with G.S. 160D-1402, the aggrieved party  
232 may request a stay of execution or enforcement of the decision of the quasi-judicial board  
233 pending superior court review. If in the absence of a stay, an applicant proceeds with  
234 development, the person does so at his or her own risk.