

ORDINANCE NO. 2022-69

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT
ORDINANCE CHAPTER 2 – DISTRICT PROVISIONS, CHAPTER 4 – GENERAL LOT AND
STRUCTURE PROVISIONS, CHAPTER 9 – CIRCULATION AND CONNECTIVITY, AND
CHAPTER 19 - DEFINITIONS**

WHEREAS, the City of Brevard Planning Board has recommended that Brevard City Code, Unified Development Ordinance, Chapter 2 – District Provisions; Chapter 4 – General Lot and Structure Provisions; Chapter 9 – Circulation and Connectivity; and Chapter 19 – Definitions be amended; 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 Plan:

1. OBJECTIVE 2.1: Expanded tax base. As the City of Brevard's primary source of financial capital, the City will take proactive measures to stabilize and grow the tax base.
 - a. POLICY 2.1.A: Modify zoning regulations to encourage and allow greater density and intensities of land use within its jurisdiction
2. OBJECTIVE 4.1: Increased efficiency of land uses to help stabilize and grow the City's tax base.
 - a. 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.
 - b. 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.
3. OBJECTIVE 4.2: Develop a system of “complete neighborhoods” throughout Brevard. (This is a multi-faceted objective that will rely on objectives and policies from other elements as well.)
 - a. POLICY 4.2.A Modify zoning to increase allowable densities and the mixing of uses in appropriate areas.

and,

WHEREAS, a public hearing was conducted on Monday, October 17, 2022, 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 4, Chapter 9, 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.

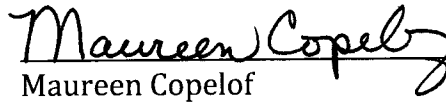
SECTION 03. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of

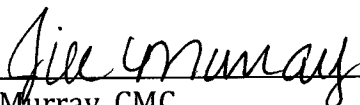
competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

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 7th day of November 2022.




Maureen Copelof
Mayor


Jill Murray, CMC
City Clerk

APPROVED AS TO FORM:

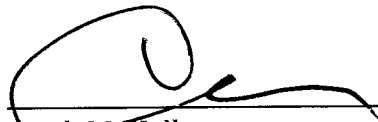

Mack McKeller
City Attorney

EXHIBIT A

1 **2.3. Density and dimensional requirements.**

2 E. *Other structure and lot dimensional requirements.*

| District | Height By Right (1) | Min. Lot Width for Conventional Lot (2) | Min. Lot Width of Irregularly Shaped Lot (3) | Max. Parcel Connector Length of Irregular Lots (4) | Out-Parcels (5) |
|-----------|---------------------|---|--|--|-----------------|
| GR (4, 8) | 35 feet | 30 feet | 20 feet | 300 feet | - |
| RMX | 35 feet | 30 feet | 20 feet | 300 feet | - |
| NMX | 35 feet | 20 feet | - | - | - |
| DMX | 50 feet | 0 feet | - | - | P |
| CMX | 50 feet | 0 feet | - | - | P |
| IC | 50 feet | 60 feet | 20 feet | 300 feet | P |
| GI | 50 feet | 60 feet | 20 feet | 300 feet | P |
| CD | | To be determined by approving authority | | | |

- 3
- 4 1. Additional height may be permitted by the board of adjustment (hereinafter BOA)
- 5 as a special use permit. See the requirements for large structures as set forth in
- 6 Chapter 5, Section 5.14. See computation of building height as set forth in Chapter
- 7 5, Section 5.17.
- 8 2. Minimum lot width for conventional lots shall be fulfilled at the right-of-way line.
- 9 3&4. Irregularly shaped lots are permitted to have the reduced minimum lot width at
- 10 the right-of-way line if the lot width reaches the minimum lot width for a
- 11 conventional lot within the maximum allowable parcel connector length.
- 12 Additional standards are levied on these parcels (see Section 4.3.G).
- 13 5. In Zoning Districts where out-parcels are permitted, the minimum lot width at
- 14 the right-of-way for irregular lots may be fulfilled by an exclusive access easement
- 15 for ingress, egress, and utilities. This easement must be at least the width of the
- 16 minimum lot width for irregular lots in the Zoning District.
- 17 a. "P" denotes out-parcels are permitted.
- 18 b. "-" denotes out-parcels are not permitted within the given district.
- 19 6. Front and side yard setbacks for infill structures shall be consistent with or equal
- 20 to the average setbacks for all principal structures within 300 feet or one block
- 21 length (whichever is greater). Where no buildings exist or in new neighborhoods
- 22 the minimum dimensional standards shall be as stated above. Other setback
- 23 modifications are permitted through the provisions of Chapter 16 of this
- 24 ordinance.
- 25 7. Handicapped ramps are permitted to encroach into the front setback and side
- 26 setback in accordance with Chapter 4.
- 27 8. Roof overhangs and gutters may encroach into front, rear, or side yard setbacks by
- 28 up to two feet.
- 29 9. Uncovered porches, stoops, and stairs, intended primarily for means of ingress
- 30 and egress, nominally in line with the first floor above grade or any floor below
- 31 that, may encroach into front, or rear yard setbacks up to one-third of the required
- 32 setback dimension up to a height of four feet above the elevation of the floor being
- 33 served. The area of each porch not including landings between runs of stairs, shall
- 34 be no greater than 50 square feet.
- 35 10. Covered or uncovered balconies and bay windows may encroach into front or
- 36 rear setbacks up to three feet into the required setback dimension. Balconies or
- 37 bay windows may not exceed ten feet in width. Cumulative total of balconies and

38 bay windows projecting into the setback shall not exceed 33 percent of the total
39 width of each elevation.

40 11. Chimneys may encroach into front, rear, or side setbacks by up to two feet. Width
41 of the chimney encroachment shall not exceed that necessary for the fireplace,
42 flue, and the typical building walls enclosing the fireplace or flue.

43 12. No structure or land use shall encroach upon any public or private easement or
44 public or private right-of-way or easement unless otherwise provided for by this
45 ordinance.

46 **4.3. Lot and yard requirements.**

- 47 A. *May not reduce/create lot(s) below minimum requirements:* No yard or lot existing
48 upon adoption of this ordinance shall be reduced in size or area below the minimum
49 requirements of the zoning district in which it is located. Yards or lots created after the
50 effective date of this ordinance shall meet the minimum requirements established by
51 this ordinance. This prohibition shall not be construed to prevent the purchase or
52 condemnation of land for public utilities, substations, street right-of-way, pedestrian
53 facilities, recreational facilities, stormwater management or similar public purposes.
- 54 B. *Dimensional standards for infill lots:* The setback requirements of this ordinance shall
55 not apply to any lot where the average setback on already-built-upon lots located
56 wholly or in part within the same block and zoning district, and fronting on the same
57 street as such lot, is less than the minimum required setback. In such cases, the front
58 and side setbacks on such lot may be less than the required setback but not less than
59 the average of the existing setbacks on the developed lots.
- 60 C. *Right-of-way protection:*
- 61 1. Notwithstanding any other provision of this ordinance, no building or structure
62 shall be permitted within a public street, road right-of-way, or easement, public
63 sidewalk or other pedestrian facility, or within any private right-of-way, except
64 for those encroachments permitted in Chapter 5 of this ordinance.
- 65 2. No portion of any structure shall be placed upon any parcel boundary or within
66 any street right-of-way. New subdivisions of land shall be designed to prevent the
67 placement of a structure on any parcel boundary or within any street right-of-
68 way. This provision shall not prohibit zero lot line structures with common walls
69 situated on one or more lot lines.
- 70 3. Rights-of-way or easements for streets and roads shall not be considered a part of
71 a lot or open space, or front, side, or rear yards for the purpose of meeting yard
72 requirements.
- 73 D. *Civic structures:* Churches and other civic buildings shall be exempt from front yard
74 setback requirements but shall otherwise comply with the standards of Chapter 5.
- 75 E. *Number of principal buildings per lot:*
- 76 1. Except as indicated in paragraph 4.3(E(3)), below, there shall be no limit on the
77 number of principal buildings on an individual lot and provided that all other
78 requirements set forth in this ordinance and other federal, state, or local laws are
79 met.
- 80 2. Multiple principal buildings shall be considered to be group developments in
81 accordance with Section 2.3.
- 82 3. Single-family dwellings. There shall be no more than one single-family dwelling
83 on an individual lot in a residential zoning district. This requirement shall not
84 prohibit the establishment of secondary dwelling units in accordance with Section
85 3.14.
- 86 F. *Irregular lot setbacks:* The location of required front, side and rear yards on irregularly
87 shaped lots shall be determined by the administrator. This determination shall be
88 based on the spirit and intent of this ordinance to continue the appropriate spacing
89 and location of buildings and structures on individual lots.
- 90 1. Lots that do not have an obvious visual relationship with the fronting street,
91 such as "irregular lots," shall be evaluated on the basis of having one setback
92 from neighboring properties. The setback amount shall be equal to the minimum
93 rear setback for the district, unless:
- 94 a. A newly-created irregular lot would convert an existing conforming
95 secondary or accessory dwelling unit to a principal single-family
96 structure. In this case, the setbacks for the principal structure may equal
97 that of an accessory structure of that size in the zoning district.

98 2. For irregular lots, the Zoning Administrator will determine the termination of
99 the "parcel connector" based on the definition and will measure front-yard
100 setbacks from that point.

101 G. *New Irregularly shaped lots:*

102 1. An irregular lot shall only be permitted if necessary to allow a property owner
103 reasonable use and benefit from their land or to alleviate situations which would
104 otherwise cause a hardship as determined by the Zoning Administrator, including
105 but not limited to the following:

- 106 a. Where necessary to eliminate access onto arterials
- 107 b. To reasonably utilize irregularly shaped land
- 108 c. To reasonably utilize land with extreme topography
- 109 d. To reasonably utilize land with limited sites suitable for septic tank
110 nitrification fields
- 111 e. Where it is unlikely that a road created in lieu of an irregular lot would
112 ever be extended, or otherwise needed to provide access to adjoining parcels
- 113 f. To provide for the protection of significant natural or cultural resources

114 2. Irregular lots shall not be permitted:

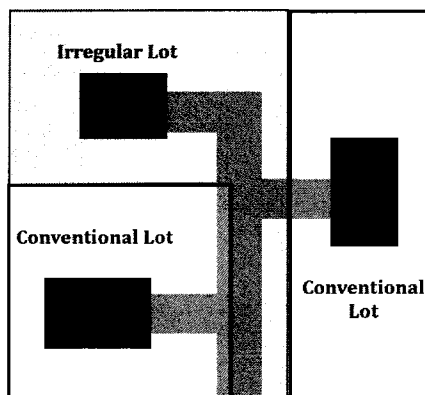
- 115 a. If the dimensional requirements or other element of the definition is not
116 met.
- 117 b. If the irregular lot does not appear to have reasonable development
118 potential.
- 119 c. If the irregular lot is a clear circumvention of other provisions of this
120 ordinance.

121 3. The Zoning Administrator may grant exceptions to the requirement that the
122 "parcel connector" provide functional access with an exclusive access easement
123 for ingress, egress, and utilities. This easement must be at least the width of the
124 minimum lot width for irregular lots in the Zoning District. All other
125 requirements for irregular lots shall be fulfilled by the exclusive access easement.
126 This exemption may only be granted in instances where:

- 127 a. The property is located in zoning districts where out-parcels are permitted.
- 128 b. The Administrator determines that an easement is necessary to reduce the
129 number of driveways on a public street where the posted speed limit is 25 miles
130 per hour or greater.
- 131 c. The Administrator determines that extreme site conditions preclude the
132 property owner from reasonably achieving functional access.

133 4. Use of a shared private drive to serve an irregular lot and adjoining lot(s) is
134 permitted and encouraged. The shared private drive shall be constructed in
135 accordance with Section 9.3.B.

**Illustrative Diagram of
Shared Private Drives**



Revised 8/22

137 5. The development standards of the zoning district in which a property is located
138 shall apply to the irregular lot development, except that the required minimum lot
139 width for a conventional lot is replaced by the minimum lot width for irregular lots in
140 the zoning district (Section 2.3.E).

141

142 H. *Corner lots and double frontage lots:* Any structure on any lot that fronts on more than
143 one street shall comply with the minimum front yard setback requirement for each
144 street upon which the lot fronts. Where a structure faces two streets having different
145 setback requirements, the structure shall comply with the applicable front yard
146 setback requirements for each street. The administrator may grant a 50 percent
147 reduction in front yard setbacks to structures fronting upon more than one street
148 upon a determination that the normal setback requirements would render the lot
149 unusable. Such reduction shall only be applied to the street or streets of lowest
150 classification, and shall not be applied to any street when such would conflict with
151 adopted plans for the improvement of a street or pedestrian facility, or other utilities
152 and infrastructure lying adjacent to the street. Other setback deviations shall be
153 considered as a variance by the BOA in accordance with the provisions set forth in
154 Chapter 16 of this ordinance.

155 I. *Reserve strips:* There shall be no reserve strips platted in any subdivision.

156 **4.4. Street frontage required.**

- 157 A. A public street is any road, street, alley, or other travel lane that is under the
158 ownership, control, and maintenance of the City of Brevard, the State of North
159 Carolina, or the United States of America.
- 160 B. Access, utility, service, or other easements under the ownership, control, or
161 maintenance of the City of Brevard, the State of North Carolina, or the United States of
162 America shall not be considered public streets for the purposes of satisfying street
163 frontage requirements.
- 164 C. Public rights-of-way under the ownership and control of the City of Brevard, the State
165 of North Carolina, or the United States of America, which are not open and operable as
166 a travel lane for motorized vehicles shall not be considered public streets for the
167 purposes of satisfying street frontage requirements, but shall be protected from
168 encroachment in accordance with Section 4.3(C), above.
- 169 D. All subdivisions of land (i.e., parcels, lots, tracts, or other subdivisions of land), shall
170 directly abut and have direct frontage upon a publicly-maintained street. Street
171 frontage shall meet the minimum requirements set forth in Chapter 2.
- 172 E. In no case shall a new parcel, lot, tract, condominium, lot or space, or other subdivision
173 of land be created that does not conform to the public street frontage requirements of
174 this ordinance, except as otherwise provided herein. Private streets, rights-of-way or
175 access easements shall not be permitted in lieu of public street frontage requirements
176 contained herein except as allowed below.
- 177 1. *Residential single-family developments in General Residential—4 (GR4) zoning*
178 *districts.*
- 179 a. Privately-maintained streets, rights-of-way, or access easements of less than 100
180 linear feet in length may satisfy frontage requirements for up to three single-
181 family lots, provided they consist of a drivable surface of at least 16 feet in width.
- 182 b. Privately-maintained streets 100 linear feet or greater in length may satisfy
183 frontage requirements for up to eight single-family lots, provided they consist of
184 a paved surface of at least 20 feet in width.
- 185 c. All such privately-maintained streets, rights-of-way, or access easements must
186 remain adequately maintained to afford a reasonable means of ingress and
187 egress of emergency vehicles.
- 188 F. Exceptions to street frontage requirements: Following are standards whereby certain
189 uses are excepted from the street frontage requirements contained herein:
- 190 1. *Residential multi-family developments:* Private streets, right-of-way, and access
191 easements may be permitted within the foregoing developments proposing no
192 more than four principal structures, each containing no more than four dwelling
193 units in each structure, and for which no subdivision activity or condominium
194 buildings or lots are proposed.
- 195 2. *Condominium lots and condominium buildings:*
- 196 a. Condominium lots may be separated from a public street by common space,
197 maintained by a property owner's association, that is permitted within the same
198 phase of the same subdivision within which the condominium lot is located.
- 199 b. No condominium lot shall be situated more than 100 feet from a public street.
200 This distance shall be considered a maximum distance that is in keeping with the
201 public health and safety, which shall not be varied or extended.
- 202 c. Condominium lots that are separated from a public street by common space
203 shall be serviced by a private access easement or private right-of-way that
204 directly connects to the nearest public street. No more than four condominium
205 lots or spaces shall be serviced by the same private access easement or right-of-
206 way.
- 207 d. Private streets, right-of-way, and access easements serving condominium lots
208 and buildings shall be no longer than 100 feet as measured from the intersection
209 of the centerlines of the public street and the private easement or right-of-way.
210 Parking for condominium lots not accessed by a public street shall be accessed
211 by such private access easements or private rights-of-way.

- 212 e. These provisions shall only apply to subdivisions of land for the creation of
213 condominium lots and condominium buildings, and shall not be applied to any
214 other form of subdivision of land.
- 215 3. *Pre-existing lots without adequate street frontage:*
- 216 a. On parcels of land that do not front upon a public street ("landlocked parcels")
217 or that otherwise do not meet frontage requirements of this ordinance, only one
218 "by right" use or structure, along with related accessory uses or structures, shall
219 be. No subdivision activity shall be permitted on parcels of land that do not meet
220 the street frontage requirements of this ordinance. This requirement shall apply
221 regardless of the size of the landlocked or otherwise non-compliant parcel.
- 222 b. In such cases the administrator shall require evidence of the presence of a
223 deeded right-of-way or other access easement prior to the issuance of any
224 permit.
- 225 c. The administrator may permit the establishment of a private right-of-way or
226 access easement in order to facilitate access to pre-existing land-locked parcels.
227 However, the provision of such private access shall not be considered
228 satisfaction of the requirement that all lots front upon a public street.
- 229 4. *Additional private access, when all frontage requirements are met:* The
230 administrator may permit the establishment of additional private rights-of-way or
231 access easements to properties that otherwise conform to public street frontage
232 requirements of this ordinance.
- 233 5. *Rolling services:* The point of contact for "rolling services" of the city (i.e., garbage,
234 recycling, etc.) shall be at the public street, i.e., the intersection of the public street
235 and private right-of-way or easement. Rolling services shall not be provided along
236 newly created private streets, right-of-way, or access easements created after the
237 enactment of this ordinance.
- 238 6. *Designed and built in accordance with public street standards:* All newly created
239 private streets, right-of-way, and access easements except those authorized under
240 Section 4.4(F(4)), above, shall be designed and built in accordance with public
241 street standards set forth in Chapter 13 of this ordinance.
- 242 7. *Relation to private streets:* Buildings shall be oriented and situated in relation to
243 private streets so that they conform to all applicable requirements for public
244 streets, such that private streets could be accepted as public streets.
- 245 8. *Additional requirements/conditions:* In addition to any other applicable
246 requirements set forth in this ordinance, the approving entity may impose such
247 conditions, including but not limited to, the provision of access easements to the
248 City of Brevard, as are necessary to ensure the adequate provision of public
249 services.

251 **9.3. Access management.**

252 Access management standards that regulate the connection of new driveways to the
 253 street system shall be as follows. NCDOT must approve the design and location for the
 254 connection of new driveways when located on state-maintained roadways.

255 A. New driveways, on public streets with curbing, shall be limited in accordance with
 256 the following standards:

| Posted Speed Limit (mph) | Minimum Distance Between Driveways and Cuts* | Minimum Distance Between Driveways and Intersections* |
|--------------------------|--|---|
| 15 | 20 feet | 40 feet |
| 20 | 40 feet | 80 feet |
| 25 - 35 | 60 feet | 120 feet |
| 40 | 120 feet | 240 feet |
| 45 | 140 feet | 280 feet |
| 50 | 160 feet | 320 feet |
| 55 | 180 feet | 360 feet |

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 258 Note: Access separation between driveways shall be measured from inside edge
 259 of curb cuts. Access separation between a driveways and intersecting streets
 260 shall be measured from the nearest inside edge of the driveway curb cut to the
 261 intersecting right-of-way lines.
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263 B. *Shared Private Drives:* Whenever feasible in the interests of access management
 264 the administrator shall encourage the establishment of shared private drives and
 265 entrances with adjacent properties, and may require that driveways and
 266 entrances be situated along property lines. The approving authority may require
 267 the establishment of access easements along property lines to be reserved for
 268 future use by adjacent properties as part of any development.

269 1. Capacity - No more than 3 properties or 6 dwelling units shall use the same
 270 driveway. At all times, the shared private drive shall be maintained in a good,
 271 safe and usable condition, in good repair, and in compliance with all
 272 applicable state, county and local ordinances.

273 2. Easement - The minimum width of the easement for shared private drives
 274 shall be 30 feet.

275 3. Minimum Design and Construction - The minimum design and construction
 276 standards which apply to a public street (Section 13.5) shall apply to a
 277 shared private drive except that:

278 a. All shared private drives are to be paved to City standards with a
 279 minimum width of 20 feet.

280 b. Street names shall not be allowed for shared private drives. The
 281 properties with ingress and egress on the shared private drive are
 282 required to have an address on the abutting public street.

283 c. Pedestrian and bicycle infrastructure shall not be required, but it is
 284 encouraged. This also includes multi-use paths and other similar
 285 types of infrastructure.

286 3. Plats - All shared private drives must be shown as such on all affected plats.

287 4. Through Streets - Through streets connecting 2 public streets may not be
 288 designated as a shared private drive.

289 5. Connections to Public Streets - All shared private drives connecting with
 290 public streets require approved driveway applications from the city (or
 291 NCDOT, if applicable).

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 293 C. Additional provisions:

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1. The administrator shall require the closure of any nonconforming driveway or curb cut as a condition of approval of any land development application.
 2. Single-family, duplex, and secondary dwellings on existing lots of record and new infill development lots on roads 35 MPH and under shall be exempt from the "Minimum distance between driveways" standards for the first driveway, but shall meet minimum separation requirements for additional driveways. Additionally, driveway separation distances on new dead-end streets posted 30 MPH and under and with no on-street parking may also be exempted by the administrator. Further modification of these requirements shall be considered by the Board of Adjustment.
 3. The Board of Adjustment may modify these requirements only after the following are satisfactorily provided by an applicant:
 - a. A transportation assessment performed by an engineer licensed in the State of North Carolina containing sufficient detail to demonstrate that the modification request does not adversely impact public safety or traffic operation; and
 - b. Evidence that the modification request represents the minimum necessary to address existing site constraints or to improve site circulation stemming from urban infill and/or redevelopment.
 4. Appeals from any adverse decision by the administrator shall be made to the Board of Adjustment.

321 **19.3. Definitions.**

322 *Lot, Conventional:* Conventional Lot shall refer to any lot where the minimum lot width
323 for conventional lots (See Section 2.3) is met at the right-of-way line.

324 *Lot, Irregular:* Irregular Lot shall refer to any lot where the functional access to a road
325 is provided along a long narrow “parcel connector” and the “buildable area” is typically
326 situated, at least in part, behind adjoining lots which front on a public street.

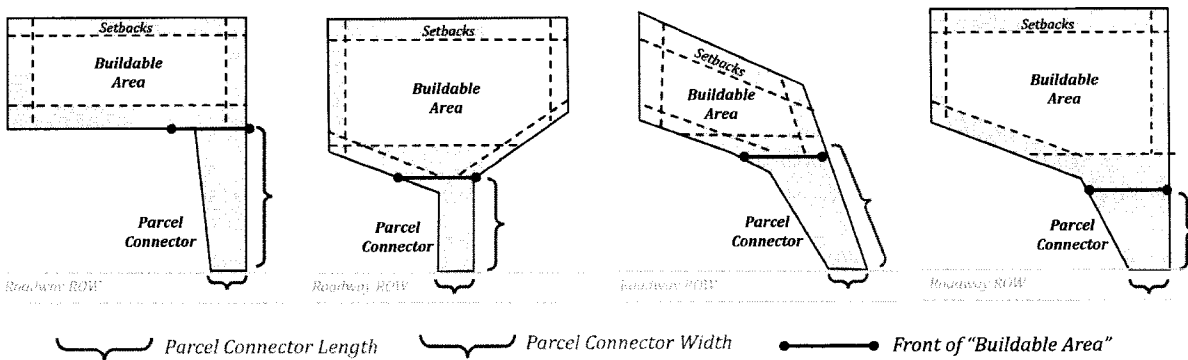
327 *“Buildable Area”:* The largest portion of an irregular lot where development is
328 intended.

329 *“Parcel Connector”:* The long narrow strip of property that provides functional
330 access for ingress, egress, and utilities.

331 a. The width of the “parcel connector” is measured along the right-of-way line, and
332 must be at least minimum lot width for irregular lots and does not exceed that
333 for conventional lots (see Section 2.3).

334 b. The length of the “parcel connector” is measured from the right-of-way until the
335 property width reaches the minimum lot width for conventional lots and shall
336 not exceed the maximum parcel connector length for irregular lots (see Section
337 2.3).

Illustrative Diagrams of Irregular Lots



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339 *Out-parcel:* A parcel of land associated with and located within a shopping center,
340 campus or multi-tenant non-residential development, which is designated on an approved
341 site plan as a location for a structure.

342 *Shared Private Drive:* A driveway shared by multiple parcels for exclusive access
343 (ingress, egress, and utilities). See Section 9.3.B for additional standards.

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