

MINUTES
BREVARD BOARD OF ADJUSTMENT
April 9, 2013

The Brevard Board of Adjustment met in regular session on Tuesday, April 9, 2013, at 7:00 PM in Council Chambers of City Hall.

Members Present: Carl Brown, Chair
 Allen Delzell, Vice Chair
 Mike Young
 Jean Haigis-Pedler
 Judy Mathews
 Carol Dillingham

Staff Present: Brad L. Burton, Assistant Planning Director
 Joshua S. Freeman, Planning Director
 Janice H. Pinson, Board Secretary
 Michael Egan, Board Attorney

Others: John Taylor
 Doug Harris, Harris Architecture
 Tom Brogan, The Carrols Corporation
 Derek McKissock, The Transylvania Times

Carl Brown called the meeting to order at 7:00 PM. There was a quorum present and the meeting was properly advertised. The Board members were introduced.

Approval of Minutes

Carl Brown, Chair requested a motion to approve the minutes of the March 12, 2013 meeting. Motion by A. Delzell to approve as written, seconded by J. Haigis-Pedler, and passed unanimously.

Approval of Agenda

J. Haigis-Pedler moved that the proposed agenda be approved, which was seconded by C. Dillingham and unanimously carried.

New Business – SUP-13-160 John S. Taylor, Agent for KB Group, LLC Special Use Application for Indoor Recreation Facility in GR 4 Zoning District

C. Brown polled the Board as to whether or not there had been any exparte communications and there were none. Brad Burton, Assistant Planning Director, 95 W. Main Street, Brevard, NC and John Taylor, Applicant, 171 Probart Street, Brevard, NC, were sworn.

John Taylor explained that the property was formerly a skate park for approximately 11 years, changing for a short period of time to a church. He wants to change the property to a recreational facility, primarily an indoor soccer field, basically taking the property back to its original recreational use. There was further discussion about parking, lighting and signage requirements.

B. Burton, Assistant Planning Director presented his Staff Report, giving a brief history of the property's prior uses. He directed the Board to Page 3 for staff comments. The Staff Report is labeled Exhibit "A", attached hereto and incorporated herein by reference.

Upon motion by A. Delzell, seconded by M. Young, the Board unanimously voted to grant the special use permit.

Appeal of Interpretation of Zoning Official and VAR 13-166 Variance Request for Relief of Wall Sign Dimensional Requirements.

The following were sworn:

Tom Brogan, The Carrols Corporation, 968 James Street, Syracuse, NY.
Doug Harris, Harris Architects, 153 Franklin Street, Brevard, NC
Josh Freeman, Planning Director, City of Brevard, 95 W. Main Street, Brevard, NC.

The Board determined that there had been no exparte communications and that there were no conflicts of interest.

J. Freeman explained to the Board the Appeal process and explained to the Board that their job was to provide clarity and to determine Council's intent in the interpretation of the ordinance.

He explained that the purpose of the hearing is to discuss two (2) signs: the "Burger King" circular sign and the "Home of the Whopper" linear sign. The appeal is to the staff's opinion that neither of these signs meets the requirements of the ordinance. The first hearing is on VAR-13-166 involving the "Home of the Whopper" linear sign. The Board is being asked whether this sign is sitting on the structure and whether it is a canopy sign or a wall sign. The opinion of the staff is that the sign is a wall sign.

J. Freeman presented his Staff Report to the Board. The Staff Report is attached hereto, labeled Exhibit "B" and incorporated herein by reference. He then explained that there were two (2) questions before the Board is the sign sitting on the structure and is it a canopy sign? The appeal of the interpretation is due to the fact that Staff's opinion is that it is just another wall sign not a canopy sign.

J. Freeman read the ordinance as it applies to identification signs. He explained that the circular sign variance request is for a 9 foot variance so that the total sign could be a total of 25 square feet. The ordinance would only permit a 16 square foot sign.

There was discussion as to the ordinance definition of a canopy sign and as to the size of the linear sign.

Tom Brogan testified that his company acquired the Brevard location in the late 90's, that they own 60-70 stores in North Carolina, and that the Corporation had made application for building permits to renovate this location, hired a company to execute the renovations and found quickly that they needed a local person to interpret things. Doug Harris was hired to fill this need. He stated that some signs had been removed and downsized.

Doug Harris, Harris Architects, gave a presentation stating the underlying issue is that Staff or anyone should be able to read the ordinance and interpret the ordinance as to what it says on the piece of paper, not what you thought the intent was or what you think but what it says on the piece of paper. He read the definition of a canopy as it is stated in the ordinance. He also referred to Chapter 5 of the ordinance under architectural guidelines. He further stated the total area of wall signs was below the allowed amount. He stated after reading the ordinance his interpretation is that the canopy most resembles a wall sign not a ground sign.

Doug Harris next gave a presentation as to the reason for the request for the variance. He stated that he wanted the Board to consider the location and setting of the building and the traffic flow as it relates to the site of the building.

There was detailed discussion between the Board, Doug Harris and Tom Brogan as to the existing and proposed signs and their sizes.

J. Freeman stated that after hearing Doug Harris' argument and his reference to Chapter 5 of the UDO that he felt his interpretation would have been different if he would have used a broader interpretation of the ordinance. Therefore, he is now inclined to agree with the Applicant as to the relevance that the linear sign could be considered a canopy sign but that it is still the Board's decision to determine. He further stated that Chapter 12.9.E only refers to ground signs and makes no other reference and directed the Board to consider this in their decision.

M. Young moved to reverse the decision of the Administrator in Appeal #13-171, which was seconded by A. Delzell and unanimously carried.

J. Haigis-Pedler moved that the Board accept the linear sign as a canopy sign and that the canopy sign be grouped with the ground sign as pursuant to 12.9.E of the ordinance. The motion was seconded by A. Delzell and the motion failed. J. Haigis-Pedler voted in favor, C. Brown, M. Young, A. Delzell and C. Dillingham opposed.

As suggested by M. Egan, A. Delzell moved that the dimensions of all signs be included per 12.9.E. of the ordinance. The motion was seconded by C. Dillingham and carried, J. Haigis-Pedler voting against.

Applicant withdrew the application for request for variance #13-166.

Old Business – None.

Adjourn

There being no further business the meeting adjourned at 9:57 PM upon motion made by J. Haigis-Pedler, seconded by A. Delzell and unanimously carried.

Carl Brown, Chair

Janice H. Pinson, Board Secretary