MINUTES
BREVARD BOARD OF ADJUSTMENT
June 12, 2012

The Brevard Board of Adjustment met in regular session on Tuesday, June 12, 2012 at 7:00 PM in Council Chambers of City Hall.

Members Present:	Rick Lasater, Chair
	Frank Pearsall
	Mike Young
	Allen Delzell
	Jeanne Haigis-Pedler, Alternate Member – County
	Carl Brown
	Chris Gandolfo
Staff Present:	Joshua Freeman, Planning Director
	Brad Burton, Assistant Planning Director
	Janice H. Pinson, Board Secretary
	Michael Egan, Board Attorney
Others Present:	Jackson Wine, Applicant
	David Stokely, Applicant

Chairman Lasater called the meeting to order; a quorum was present. Board members, Attorney Egan and City staff were introduced.

Chairman Lasater explained to all present the board is a quasi-judicial board and the necessary procedure one must follow if they desire to be heard by the board, specifically, all testimony given during the meeting shall be sworn testimony. All appeals of the board's decision shall be made to the Superior Court within thirty days from the date of the board's Notice of Decision.

Due notice requirements have been met. Legal notices of the two hearings on tonight's Agenda were placed and letters to neighboring property owners advising of the hearing(s) were mailed.

Approval of minutes - M. Young moved, seconded by A. Delzell, the minutes from the meeting May 8, 2012 meeting be approved as written. Motion carried unanimously.

Election of Officers - R. Lasater, Chair, requested a Motion be made to nominate a Chairperson, A. Delzell nominated F. Pearsall and he declined. F. Pearsall nominated A. Delzell and he declined. A. Delzell nominated Carl Brown, M. Young seconded. Motion carried unanimously. R. Lasater turned Chair over to Carl Brown as new Chairperson. C. Brown requested a Motion for nomination of Vice-Chair, M. Young nominated A. Delzell nominated and J. Pedler seconded. Motion carried unanimously.

Jackson Wine, Agent - Request for time extension for previously-issued Special Use Permit # 12-090 (previously granted permit #11-009) and a request to relocate required off-street parking for his nightclub/music venue.

C. Brown opened the hearing. Chair C. Brown asked board members to disclose if they have (1) Made an on-site visit to the property; (2) Have had conversation with the applicant or representatives regarding the request; and, (3) If they have a fixed opinion, bias or conflict of interest with respect to the request. C. Brown, R. Lasater, F. Pearsall, A. Delzell, M. Young disclosed they have made an on-site visit to the property. Chris Gandolfo recused himself from hearing the case for personal reasons. All board members stated they have not had conversation with the applicant or other parties regarding the request and that they do not have a bias or conflict of interest on the request.

Mike Egan, Board Attorney stated that anyone wishing to give testimony should stand and be sworn in at this time. The following persons stood and were sworn in: Josh Freeman, Planning Director, Brad Burton, Assistant Planning Director, Jackson Wine, Applicant, Mike Ashworth, Citizen, David Dungan, Barbara Bridges, Kitty Winterhalter, Margaret Gravley, Adam Perkins, Joel Graham and Richard Gurtler.

J. Freeman briefly summarized the proposal of the issues surrounding the request for the extension of the permit and the request to amend original proposal for off street parking. He explained the history of the events to date surrounding the matters. He also went over Purpose and General Requirements for Special Use Permits. J. Freeman's Staff Report dated 06/12/2012 is attached hereto and labeled Attachment "1". He also used a digital projector to display exhibits of the proposed parking area and explained same, as well as presented the ordinance (Chapter 10, Section 10.3.F.1 – Satellite Parking) and read the ordinance as it applies to Satellite parking.

J. Pedler asked if there was a TRC review of this proposal. J. Freeman answered yes and the outcome was that they recommended denial of the parking plan as submitted but approval of the extension of the permit.

C. Brown asked if the recommendation for the extension was approved to give time to meet the requirements. J. Freeman answered that assuming that the Board chooses to deny the parking plan the applicant would have to use his approved parking plan for parking behind his building or come up with a new proposal, which would have to be presented before his permit expired.

J. Pedler: You mentioned in your summary that the Planning Board has some intentions of modifying or developing the area along Railroad Avenue, how would it affect that project? J. Freeman responded in the here and now it would have no effect. He further stated that what Ms. Pedler was referring to was that the Planning Board was working on a small area plan for the Railroad Avenue area which has been delayed because of other projects and events but that the project would have a long term affect on the Railroad Avenue area but that it has no bearing on the here and now.

C. Brown asked if the Board had any further questions. There were no further questions

M. Egan, Board Attorney asked if Jackson Wine wanted to cross examine and he answered "no".

Jackson Wine explained why he decided to change his parking plan: expense of paving, curbing, lighting etc. to the originally approved parking lot behind his building. He came up with this parking area that is already paved and privately owned and it is currently used as a parking area. City's main concern is safety. He is trying to facilitate the Board's desire for the 4 parking spaces. There is an existing light pole at the parking area that could probably be utilized. He entered into evidence photos of recent parking situations in the proposed parking area and they are attached hereto and labeled Applicant's Exhibits #1, #2 and #3. He also stated that it is important to note that it is legal to park on private property within the City Limits. He also stated that people were traveling to and from their vehicles safely.

There was discussion about a signed lease with Henderson Oil the owner of the parking area and J. Wine stated that he has a verbal agreement and plans to execute a lease but wanted the Board's approval first.

M. Young asked if J. Wine had researched his liability for the people using the parking area and traveling to and from his business. J. Wine answered yes, my insurance will cover all pedestrian traffic.

B. Burton asked J. Wine for the record your application is contingent on these 4 parking spaces and you do not have a signed lease agreement with Henderson Oil at this time. J. Wine responded no I do not but that he had a verbal agreement with a handshake.

Mike Ashworth gave testimony in favor of J. Wine. B. Burton, Asst. Planning Director objected to his testimony due to relevance. C. Brown, Chair, explained that testimony has to be factual as to the parking space application.

Several property owners stated concerns about parking in front of homes, car doors, loud voices, sound check that was performed until late at night without sound proofing of the building. Barbara Bridges read a letter that she sent to J. Freeman, Planning Director about an experience she had at 185 King Street on June 4, 2012. The letter is attached and labeled Attachment "2". M. Egan, Board Attorney asked Barbara Bridges if this was relevant to the extension of the permit. She answered, yes.

C. Brown, Chair explained to everyone that testimony has to be factual to the matters of parking spaces and permit extension.

Adam Perkins testified that he lives at 118 Railroad Avenue which is approximately 50 yards from the smoking area at 185 King. That he leaves his windows open because he has no air conditioning and that he has no complaints of noise pollution.

Ken Brown was sworn in and gave his opinions as a licensed contractor as to how the parking area safety issues should be corrected by the City.

B. Burton, Assistant Planning Director objected to his testimony, as argumentative.

David Robbins was sworn in and testified that there are no jobs in our county.

B. Burton, Assistant Planning Director objected to his testimony due to relevance.

Ronald Gurtler, stated that he is a local businessman and under the cannons of ethics for the State of Louisiana must notify us that he is an Attorney and appearing and giving my own testimony. Stated that 4 parking places are holding up the entrepreneurial efforts in the redevelopment of an area that badly needs development.

B. Burton asked Mr. Gurtler if he was a licensed Attorney in the State of North Carolina and he answered no, Florida and Louisiana but that he was required to let us know that he was an attorney.

Mike Egan, Board Attorney requested a brief recess with C. Brown, Chair.

J. Wine rebutted B. Bridges testimony saying that he was not open for business. He was performing a sound check and checking the sound proofing that has been installed to date. That there was no means of income and that he in no way meant to go behind the City or the Boards back. He cannot open until the parking space issue is resolved. That he has checked many components of the business to date, ice machine, security system, etc. There is a new noise ordinance. There is a decimal meter in place on the property. The City Police will be doing a check with their decimal meters.

As far as the permit extension goes, we are days away from opening if we can just get the parking situation resolved. Wine stated we cannot get Certificate of Occupancy without the parking spaces resolved.

J. Freeman, Planning Director went over the following points: There is no formal lease agreement on the property as stated by the Applicant; people are parking on King Street, Whitmire Street and Railroad Avenue, the purpose of the ordinance is to make sure that the applicant has satisfied the requirements for satellite parking. People can park throughout the City with or without permission. Satellite Parking area as proposed does not meet the ordinance requirements as to striping, lighting, signage and pedestrian safety and the Board needs to keep this is mind that whatever future obligations the City might have for the parking area in the here and now as presented it does not meet the ordinance requirements for satellite parking.

J. Wine stated that there are other places where he could facilitate the parking requirement if not approved but requested that his satellite parking be approved as submitted. If denied he stated that he did not want it to affect the decision to extend his permit.

M. Young requested that the Board reopen the meeting for his question.
Why are the 4 parking places needed?

J. Freeman answered that the UDO was adopted in 2006 by City Council. Parking has always been required for commercial businesses which are not zoned Downtown Mixed Use. Downtown businesses are not required to provide off street parking because the City offers it to the downtown area as a service but does not provide in any other area of the City. Any new business located in the City outside has to provide parking spaces. This business went from retail establishment (which requires 1 parking space for every 500 square feet) bars, nightclubs, restaurants are required to have parking based on the number of seats, but the ordinance does allow for credit for new businesses assuming that the prior business had met the required parking requirements. J. Wine was given the proper credit and only required to obtain 4 parking spaces on private property to accommodate his new establishment.

B. Burton, I want to make it clear that the requirement of 4 parking spaces was a requirement of the Board, based on the ordinance.

J. Wine explained that he must be mistaken about his understanding of the UDO as it applies to his parking requirements.

Mike Egan, Board Attorney explained that there is no request before the Board to do away with the 4 parking spaces that if that is in fact what the Applicant wants to do we will have to notice a meeting to hear the matter. The issue of whether or not the 4 spaces are required or not, are not before this Board, the parking spaces are required.

Chair C. Brown asked if there were any further questions, there being none, the meeting closed for deliberation by the Board.

Chair C. Brown read the Motion to the suggested Motion which is attached hereto and labeled Attachment “3”. C. Brown made Motion and Frank Pearsall seconded. The Board decided to vote on the matters separately, first voting on the 6 month extension of the permit. The Board voted unanimously to extend the permit for 6 months. The Board then discussed the 4 parking space Motion to grant the parking spaces with the conditions 30 days from date of approval that Applicant will provide lease agreement granting Applicant exclusive use of the property for parking purposes. Parking spaces must be delineated with striping, signage and appropriate lighting.

J. Freeman requested a 5 minute recess with M. Egan as Board Attorney to discuss legal issues which go beyond the Special Use Permit being discussed that I need to advise you on. Motion by C. Brown to recess, seconded by A. Delzell, voted on unanimously by the Board to take a recess.

M. Egan, Board Attorney advised Board that the crosswalk striping could not be a matter imposed by the Board as a condition and it needed to be dropped and he then explained this to the meeting as a whole.

The conditions that we placed on the Motion for approval of the 4 parking spaces were as follows: The following conditions must be met within 30 days of approval of the Board, an exclusive lease agreement for the proposed parking area, striping, signage and adequate lighting are required.

Motion made by A. Delzell, seconded by M. Young and the following Board members voted in favor of C. Brown, A. Delzell, M. Young and R. Lasater, Board member F. Pearsall did not vote.

David Stokely, Agent – Request to expand a pre-existing, non-conforming business; SUP-104.

Meeting called to order. Chair C. Brown polled the Board as to site visit and ex parte communications. All Board members had made a site visit and there were no ex parte communications.

M. Egan explained that all Board members could sit on the Board and ask question but that alternate members would not be voting because there was a quorum of members available to vote. The Board introduced themselves and J. Pedler and C. Gandolfo, Alternate members stated that they would not be voting.

C. Brown, Chair read the proposed Motion which is attached and labeled Attachment “4”.

B. Burton, Staff, David Stokely, Applicant, Terry McCracken, Property Owner, Ken Brown were sworn in by M. Egan.

B. Burton gave a brief overview of the application and presented his Staff Report which is attached hereto and labeled Attachment “5”. He also referred to his Staff Report about the issue of cars parked on the sidewalks and how traffic arrives and leaves during the course of the day. He went over the nonconforming issues that need to be corrected in order to approve the special use permit. He stated that there were missing items from the site plan presented with the permit and went over same.

David Stokely, Applicants stated that his reason for wanting to expand to the additional location were obvious space limitations. He stated that he has been working the last 2 months cleaning up his existing site. He presented the site plan and went over his plans to address the nonconforming issues to comply with the current ordinance requirements.

The Board asked many questions regarding parking, traffic patterns in and out of the new location as well as the existing location, tire storage, fencing and paving.

J. Freeman, Planning Director stated that the Board could not make exception to the ordinance requirement for paving but that they could give Applicant a time frame in which to have the paving completed.

M. Egan reminded the Board that this is an application for a Special Use Permit and that it has to meet all the requirements and specifications of the ordinance to be granted.

J. Freeman stated that if the tire racks become enclosed that would comply with the ordinance.

R. Lasater asked if a rolling rack that was rolled out during the day and under roof at night would meet the requirement of the ordinance. J. Freeman answered, yes.

Terry McCracken, part owner of the property, requested time to take care of the paving due to the expense. He also stated his willingness to help bring the property into ordinance compliance for his tenant.

C. Brown asked B. Burton questions about the buffer requirements. B. Burton stated that a Type A buffer is required and that he felt like other than one small section the existing vegetation would take care of the buffer requirements according to the ordinance.

C. Brown, Chair, ask if Staff had anything further.

B. Burton, there are ordinance requirements that need to be meet and Mr. Stokely needs to understand that he is expanding his use and he has to meet the requirements of the ordinance. I feel that he understands that he needs a plan and has to address the outstanding issues to comply with the ordinance.

R. Lasater asked B. Burton if there were any other shortcomings that he had found that were not listed in his Staff Report A – K. B. Burton replied no sir.

A. Delzell asked B. Burton if K. should not read that buffer would be on the west not north. B. Burton answered yes.

R. Lasater read the Motion and moved the Board to approve the Special Use Permit contingent on the following conditions being in compliance with the ordinance:

A. All areas where vehicles are stored temporarily shall be considered as parking lots and must comply with the provisions of Chapter 10. All such vehicle storage areas shall be located at the rear or side of the building.
A section of the proposed expansion area is in gravel and must be paved. The site plan as submitted currently indicates cars to be parked along the front yard area of French Broad Street as "cars to be fixed or picked up." This statement indicates an area proposed for vehicle storage and is in direct conflict with this ordinance requirement.

B. No outdoor automobile work areas shall be located in front of the building.
The site plan does not indicate any work areas in front of any buildings. Currently vehicles *are* being worked on in these areas.

C. All auto work areas shall be screened from adjacent properties.
The plan appears to indicate work areas will be contained in the respective buildings.

D. Storage of vehicles for 15 days or more or junking of vehicles is prohibited.
Mandatory ordinance requirement.

E. Vehicles in storage shall be covered or fenced off and not visible from the public right-of-way.
Mandatory ordinance requirement.

F. Tires, equipment, replacement parts and/or accessories shall be stored inside. Discarded parts shall not be stored outside.
The "wooden rack for tires" as denoted on the plan will have to be relocated indoors, as well as any other outside storage.

G. Vehicles associated with the use shall not be stored or repaired within federal, state, or local public rights-of-way, including streets and sidewalks.
Currently this is an ongoing problem at this site and must stop immediately.

H. The sale of vehicles is prohibited except as part of an approved vehicle sales establishment in appropriate districts as set forth in Chapter 2 of this ordinance.
Mandatory ordinance requirement.

I. Vehicles stored on-site for more than 60 days shall be stored within or behind the principal structure or other structures,
covered or screened, and not visible from the public right-of-way.
Mandatory Ordinance requirement.

J. Any fuel island shall conform to the requirements of Section 3.4.11, above.
Not applicable.

K. Service areas shall be screened from visibility from adjacent residential properties or districts by a type A buffer yard.
The plan indicates a Type A buffer on the north end of the parcel.

The area required to be paved be completed within one year of approval of the Special Use Permit.

Motion was seconded by A. Delzell and voted on and unanimously approved by the Board.

M. Egan prepared a Resolution Amending Section 4 of the Rules of Procedure of the City of Brevard Board of Adjustment. The amendment would allow the Board with the approval of the applicant or appellant to have the matter heard by four members. Resolution is attached hereto and labeled "Attachement 6".

M. Young made a motion to adopt the amendment, seconded by A .Delzell, Board voted, F. Pearsall voting not to adopt the amendment but it the Amendment passed by majority vote.

Motion to adjourn was made by F. Pearsall, seconded by C. Brown and the meeting was adjourned at 9:39 PM.

Carl Brown, Chair

Janice H. Pinson, Board Secretary