

MINUTES
BREVARD BOARD OF ADJUSTMENT
July 12, 2011

The Brevard Board of Adjustment met in regular session on Tuesday, July 12, 2011, at 7:00 PM in Council Chambers of City Hall.

Members Present: Rick Lasater, Chairman
Frank Pearsall, Vice- Chairman
Michael Young
Parker Platt
Alan Delzell
Carl Brown

Members Absent: Fred McCrary

Staff Present: Joshua Freeman, Planning Director
Brad Burton, Planner and Zoning Administrator
Michael Egan, Board Attorney
Callie Nef, Board Secretary

Others Present: William Lapsley, Applicant
Bill O'Cain, Architect
Jackson Wine, Applicant of SUP-11-009A
Michael Eubanks, Attorney at Law

Chairman Lasater called the meeting to order and stated that matters would be heard; a quorum was present. Board members and City Staff were introduced.

Chairman Lasater explained to all present that the Board is a quasi-judicial body and explained the necessary procedure one must follow if one desires to be heard by the Board, and stated that 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.

Approval of Minutes

F. Pearsall moved, seconded by Parker Platt, the minutes from the March 8, 2011, meeting to be approved as written. Motion carried unanimously. F. Pearsall moved, seconded by C. Brown, the minutes from the March 22, 2011, meeting to be approved as written. Motion carried unanimously.

Special Use Permit # 11-007 Reaban Oil Company

Chairman Lasater stated that Reaban Oil Company has applied for a Special Use Permit request

and an Architectural Exception to build a new gas station and convenience store located at 90 Rosman Highway. The proposed location is a Neighborhood Mixed Use Zoning District, which requires a Special Use Permit in this zoning district, in accordance with Chapter 2 of the Unified Development Ordinance. In regards to the Architectural exception, Mr. Waddell, the applicant, is seeking is to allow the gas station canopy in the front yard, pertaining to Chapter 3.15A.1 of the Unified Development Ordinance.

M. Egan announces to the Board that the *use* of the gas station can be heard and moved on, but the Architectural Exception must be decided on at a later time. M. Egan explains the applicant has requested an architectural exception to have the gas canopy located in the front yard of their business, and that this is not a *use* issue but an architectural issue. The Board cannot grant Architectural Exceptions in this matter out of the *use standards* of Chapter 3, because this specific requested exception is not supported in Chapter 16.14. Staff explained that Council has not yet approved the transition of gas station canopies to Chapter 16.14 (Architectural Amendments) section of the Ordinance.

J. Freeman recommended the Board hear and discuss both issues, but table the decision for the architectural exception text amendment until approved by Council, preferably at regular September BOA meeting. He states that Staff has no doubt that Council will approve it, and it is nothing more than a technical change. J. Freeman affirms that Staff recommends approval for the special use permit, as well as the architectural exception.

P. Platt moved that the Board approve Staffs recommendations, seconded by F. Pearsall. Motion carried unanimously.

Chairman Lasater questioned, and J. Freeman clarified that City Council will be presented the Ordinance amendments, in the second meeting in August.

The Board moved on to SUP-11-007. Chairman Lasater reminded the audience that an individual must be considered an expert in order for the Board to hear them and that all testimony is sworn testimony. Chairman Lasater then swore in the following persons: Josh Freeman, Brad Burton, Michael Egan, William Lapsley, Hall Waddell and Bill O'Cain.

Chairman Lasater then asked if any Board members disclose any visits to the property that is the subject of the Special Use Permit application. All members confirmed that they have visited the site. All Board members affirmed that they have no conflict of interest, bias, or fixed opinion as to the outcome of the Special Use Permit request. All Board members affirmed that there had been no ex parte conversations with the Applicant or other individuals relevant to the Special Use Permit application.

B. Burton then entered into the record Staff's Report dated July 12, 2011 totaling 9 pages, as well as the Applicants submittal packet and suggested affirmative motion. A copy of the Staff Report is filed in the case file. B. Burton made specific reference to the appointment of agent form wherein the property owner, Hall Waddell, designates William Lapsley as an agent of the property for the purposes of the Special Use Permit request. The property is located at 90 Rosman Highway. A copy of the Applicant's submittal contained within the case file.

B. Burton presented to the Board the applicants preliminary site plan, summarized applicable Unified Development Ordinance requirements for this district, summarized applicable state or federal requirements, and summarized Staffs markup of the Applicants site plan as shown on page 3 of the Staff Report. B. Burton specifically noted the following:

- The proposed site at 90 Rosman Highway is the current Triangle Stop location.
- The site plan that was shown was preliminary, and the applicant must work closely with Staff in order to submit a master plan.
- The applicant will be purchasing a piece of adjacent property in order to set the convenience store and gas canopy further back away from the Highway.
- One of the purposes of the proposed layout is to save a large Chinese chestnut tree, to the right of the parcel.
- The proposed property is currently zoned Neighborhood Mixed Use.
- Project as proposed incorporates two curb cuts along Rosman Highway, one right-in only and one full-access to the convenience store.
- The City's consulting engineer concurred with the traffic impact analysis as to the proposed curb-cuts.

P. Platt questioned, and J. Freeman clarified, that currently Chapter 3 of the U.D.O. only allows gas canopies on the side or behind buildings.

Delzell questioned and B. Burton clarified that the gas canopy is in the front yard of the existing building is because it was built before the UDO was adopted in 2006.

B. Burton stated that the City held a neighborhood compatibility meeting on June 30, 2011. There was no one in the audience in attendance for this matter.

B. Burton certified that all property owners within 200 feet of the subject property properly were noticed at the public hearing in accordance with state law and City code, and at the same property owners were invited to attend the neighborhood compatibility meeting.

B. Burton stated that the City of Brevard Technical Review Committee met on July 6, 2011 in the Administrative Conference Room to consider this Special Use Permit request. The Committee voted to approve the application.

W. Lapsley, consulting engineer, explained that in order to save to tree that is located directly to the left of the existing building, and to stay out of the flood plain, the gas canopy must be placed in the front yard. He presented the basics of the layout.

Chairman Lasater closed the public hearing and called for deliberation.

M. Egan offered a prepared motion for the Board's consideration. Chairman Lasater reminded the Board that it is the Board's practice to formulate a motion in the positive to approve the request.

A. Delzell made the following motion:

In the matter of Special Use Permit Application SUP-11-007, based upon the sworn testimony and evidence presented before the City of Brevard Board of Adjustment at a hearing on July 12, 2011, I move the Board of Adjustment to find the following:

- 1. that the proposed use, a gas station and convenience store, meets all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit;*
- 2. that the proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible to the surrounding area; and*
- 3. the proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.*

Based upon these Findings of Fact, I move the Board to grant Special Use Permit SUP-11-007 [with the following conditions] (strike all that do not apply, or add any additional):

- 1) The applicant shall install a Knox Box Firefighter's Rapid Entry System upon the subject structure at a location to be determined by the City of Brevard Fire Department (required).*
- 2) Subject to the granting of an architectural exception from the prohibition against placing automobile pumps, canopies, and associated service areas in any established front yard that abuts a street.*
- 3) Final site plan shall demonstrate compliance with all applicable requirements of the Unified Development Ordinance.*

Chairman Lasater called for, and F. Pearsall offered, the second to the motion. The motion carried unanimously.

Chairman Lasater stated that the architectural exception decision will be continued until September 12, 2011 at 7:00 PM in the Council Chambers. C. Brown called for, and P. Platt offered, the second to the motion. The motion carried unanimously.

Chairman Lasater called for a five minute recess for the Board.

Special Use Permit Amendment # 11-009A

Chairman Lasater stated that Jackson Wine was granted a Special Use Permit by the City of Brevard Board of Adjustment for a bar/ tavern/ nightclub, on March 22, 2011. He continued that it was the applicant's request to amend the location of the Board's approved satellite parking to a different area.

Chairman Lasater explained that this was not a public hearing. Lasater noted to provide sworn testimony an individual must be considered an expert in order for the Board to hear them. Chairman Lasater then swore in the following persons: Josh Freeman, Brad Burton, Jackson Wine, Anna Robinson, and Charlie Almond.

Chairman Lasater asked if anyone is representing Mr. Wine. Michael Eubanks, attorney at law, stated he was representing Mr. Wine. Chairman Lasater then asked if any Board members disclose any visits to the property that is the subject of the Special Use Permit application. All members confirmed that all have visited site. All Board members affirmed that they have no conflict of interest, bias, or fixed opinion as to the outcome of the Special Use Permit request. All Board members affirmed that there had been no ex parte conversations with the Applicant or other individuals relevant to the Special Use Permit application.

B. Burton then entered into the record Staff's Report dated July 12, 2011 totaling 9, pages, as well as the Applicants submittal packet, amended design for the parking area, and suggested affirmative motion. A copy of the Staff Report is filed in the case file. The property is located at 185 King Street. A copy of the Applicant's submittal contained within the case file.

B. Burton read Chapter 16, Section 16.10.E of the City of Brevard Unified Development Ordinance:

E. Substantial changes: Any substantial change to a special use permit that results in the increase of the intensity, density, or character of the use shall be approved or denied by the BOA as an amended special use permit. Minor field alterations or minor revisions to approved special use permits may be approved by the administrator if the special use still meets the intent of the standards established with the original approval.

Burton explained that Staff conducted a neighborhood compatibility meeting on June 30, 2011 which was attended by twelve citizens who live or own property within close proximity to the proposed bar/ tavern/ nightclub. Questions were asked of the Administrator and the applicant. At the end of the meeting, the administrator asked for a show of hands of those present that had some sort of concern (without being specific) about the proposed amendment. Approximately eight members of the audience raised their hands.

Burton certified that all property owners within 200 feet of the subject property properly were noticed at the public hearing in accordance with state law and City code, and at the same property owners were invited to attend the neighborhood compatibility meeting.

Burton stated that the City of Brevard Technical Review Committee met on July 6, 2011 in the Administrative Conference Room to consider this amendment request. The committee, with one vote dissenting, recommended approval of the application to the Board of Adjustment with the conditions as recommended in the Staff Report and that the Board also considers the following conditions as suggested by the Fire Marshal:

- 1) The two-way drive shall be a minimum of 20 feet in width to accommodate emergency vehicle access

- 2) The drive, if over 150 feet in length, shall provided a turnaround area sufficient for the largest emergency vehicles

Burton specifically noted from the Staff report the following:

- The proposed amended satellite parking is a parcel located at 134 Railroad Avenue, adjacent to the parcel where the bar/ tavern/ nightclub is to be located.
- Mr. Wine states the parcel will be used for “overflow” parking only (no more than once a month).
- Staff feels the applicant should pave the proposed amended parking area, and install opaque fencing and vegetation at entire south and southeastern side of the parcel boundary.
- If the Board so chose to approve the amended application, then Staff feels strongly the Board should consider the proposed “overflow” parking area as a commercial parking area.
- It is Staff’s and City’s position that the proposed parking will need to contain fifteen parking spaces.

R. Lasater questioned, Burton clarified, and that not included in the new proposed “overflow” parking area, and the applicant does meet City code on the required number of parking spaces needed.

Michael Eubanks asked Burton if the applicant is required to have fifteen parking spaces, in which needed to be paved. Burton responded that the applicant is not required in having fifteen spaces and is not required to pave any overflow parking, and that it is a recommendation.

Michael Eubanks asked Burton if he believes that there are twenty-nine parking spaces on the street in front of the club. Burton responded that he has not inventoried the parking on the street.

Michael Eubanks asked Burton if the applicant has met all requirements of the Unified Development Ordinance. Burton responded that the applicant is meeting the minimum requires of City code.

J. Wine introduced himself to the Board and explained he is meeting City requirements and also stated that the overflow parking will only be used once a month and if concerns arise then he understands his permit can and will be pulled.

J. Wine submitted applicants Exhibit A to the Board (Exhibit A in case file). Exhibit A shows on street parking, estimating 29 spaces available.

J. Wine submitted applicants Exhibits B to the Board (Exhibit B in case file). Exhibit B is a picture that shows the back yard of the bar, and the proposed overflow parking area. J. Wine then submitted applicants Exhibits C1 and C2 showing the original proposed overflow parking area in the Westall-Chandley, Brevard Lumber (Exhibits C1 and C2 are in case file). J. Wine states that

the structure on the parcel he is proposing for overflow parking, has not been lived in for over twenty-five years.

Chairman Lasater asked, and J. Wine explained that the proposed amended overflow parking area will be controlled by movable barriers or a fence.

Anna Robinson and Charlie Almond were sworn-in and introduced themselves to the Board. They testified their concerns of the proposed amended parking being close to their adjoining property. They voiced their concerns of possible effects of the parking area financially affecting their property values.

Chairman Lasater closed the public hearing and called for deliberation.

Chairman Lasater stated that it appears that the Applicant is complying with the Unified Development Ordinance. He continued that with Staffs review, the Board and City Staff can determine if the overflow parking needs to be paved after Mr. Wine's business opens.

M. Egan offered a prepared motion for the Board's consideration. Chairman Lasater reminded the Board that it is the Board's practice to formulate a motion in the positive to approve the request.

A. Delzell made the following motion:

In the matter of Special Use Permit Application SUP-11-009A, based upon the sworn testimony and evidence presented before the City of Brevard Board of Adjustment at a hearing on July 12, 2011, I move the Board of Adjustment to find the following:

- 1. that the proposed use, new location for a satellite parking area, meets all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit;*
- 2. that the proposed use will, if developed according to the plan submitted and approved, be visually and functionally compatible to the surrounding area; and*
- 3. the proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.*

Based upon these Findings of Fact, I move the Board to grant Special Use Permit SUP-11-009A [with the following conditions] (strike all that do not apply, or add any additional):

- 1) The applicant shall install opaque fencing and vegetation at the entire southern and southeastern side of the parcel boundary that is of sufficient height and opacity to buffer the adjoining property from the parking area to mitigate the potential impacts as identified by the Board and the community, specifically darkness of the area and noise, to the greatest extent possible.*

- 2) *Lighting for the satellite parking area shall be required, UDO compliant, and provide adequate security to that area with no impacts to the neighbors.*
- 3) *The two-way drive shall be a minimum of 20 feet in width to accommodate emergency vehicle access.*
- 4) *The drive, if over 150 feet in length, shall provided a turnaround area sufficient for the largest emergency vehicles.*
- 5) *Applicant shall place one or more barriers and signage to insure the overflow parking will not be used more than once a month. Reviewed in one year by Board of Adjustment.*

A. Delzell called for, and F. Pearsall offered, the second to the motion. Motion carried unanimously.

Other Business:

P. Platt moved that the meeting be adjourned, which was seconded by C. Brown. The motion carried unanimously.

The meeting adjourned at 9:00 PM.

Rick Lasater, Chairman

Callie Nef, Board Secretary