

MINUTES
BREVARD BOARD OF ADJUSTMENT
September 9, 2014

The Brevard Board of Adjustment met in regular session on Tuesday, September 9, 2014 at 7:00 PM in Council Chambers of City Hall.

Members Present: Judith A. Mathews, Chair
Dr. Allen Delzell, Vice Chair
Carol Dillingham
Tad Fogel

Members Absent: Mike Young
Josh Burdette

Staff Present: Brad Burton, Asst. Planning Director
Daniel Cobb, Planner
Michael Egan, Board Attorney
Janice H. Pinson, Board Secretary

Others: Ed and Nancy Carroll, Applicants
Steve Arnaudin, Architect
Tony Dalton, Attorney for Transylvania County
Richard Worley, Architect
Charles Parrish, B& L Distributing

Welcome and Introduction of Board Members –

Chair, J. Mathews called the meeting to order at 7:00 PM and Board and Staff Members introduced themselves.

She acknowledged that the Board had a quorum present.

Approval of Agenda

Board Attorney, Mike Egan, recommended that the Board amend the Agenda under Other Business to add: Amendment to the Board's Rules of Procedure. He further explained that the amendments were due to changes enacted by the General Assembly last year as to procedures for the hearing of variances. He explained that the Board had received a Memorandum from him explaining the changes with a draft of the Amended Rules of Procedure for their review and that the by-laws preclude any action until their next meeting.

Motion was made by Tad Fogel to amend the Agenda as recommended, seconded by A. Delzell and unanimously carried.

A. Delzell asks Brad Burton, if the Agenda needed to be amended to change Variance to Architectural Exception Request for Transylvania County.

B. Burton explained that Daniel Cobb would be handling the matter but for the Board's information, Architectural Exceptions stand alone in the ordinance. He further stated that the matter had been properly advertised, property posted and the surrounding property owners' had been notified.

T. Fogel made a motion to approve Agenda as amended, seconded by A. Delzell, unanimously approved.

Approval of Minutes

Motion was made by C. Dillingham to approve Minutes of the June 10, 2014 meeting as amended, seconded by T. Fogel and unanimously carried.

New Business

A. Variance Request – H.E. and Nancy Carroll

Request H.E. and Nancy Carroll for a 9-foot reduction in a 15-foot front yard setback requirement to allow for the construction of a carport. The property is located at 74 Woodlawn Avenue within the corporate limits of the City of Brevard, further identified by PIN 8586-80-3674-000.

Judy Mathews, Chair, explained the quasi-judicial hearing process. She further explained that there was a quorum but that the Applicants would be required to receive all four (4) votes for approval. She gave the Applicants the option to postpone their hearing until the next meeting. Ed and Nancy Carroll stated that they wished to proceed with the hearing.

The Applicants, Ed and Nancy Carroll, 74 Woodlawn Avenue, Brevard, NC; Steve Arnaudin, Architect, 262 Joree Lane, Brevard, NC; and neighbors Richard and Nancy Dowdy, 517 Park Avenue, Brevard, NC; John Welch, 673 Park Avenue, Brevard, NC and Staff, Brad Burton, 95 West Main Street, Brevard, NC 28712 were sworn by Board Secretary, Janice Pinson.

The Chair then polled the Board as to exparte communications and there were none. J. Mathews then polled the parties in the case as to whether or not they had any objections to any of the Board Members, there were none.

A quorum of the Board was present.

Brad Burton, Assistant Planning Director presented his Staff Report which is attached hereto, labeled Exhibit "A" and incorporated herein by reference. He identified the property as 74 Woodlawn Avenue and polled the Board as to their knowledge of the location of the property. He explained that the Applicants were applying for a variance from the required setback of 15

feet and requesting that the setback be reduced to 6 feet, that the lot is a double fronted lot that borders Oak Street which is an unopened City of Brevard street as stated on the State's Powell Bill map and that although it is presently not open that the City might have the need to open the street in the future. The property is located on Oak Street and Woodlawn Avenue. B. Burton presented aerial photos explaining the site and the requested proposed encroachment into the right of way of Oak Street. B. Burton explained the NC General Statutes as they pertain to granting a variance outlined in his report. B. Burton stated that Mr. Carroll had stopped by his office and that they did have a conversation that was procedural in nature but he informed Mr. Carroll that they could not discuss the case. He explained and went over all of the requirements for a variance as stated in his Staff Report and reminded the Board that all of the requirements had to be met to grant a variance. B. Burton stated that he tried to reach Mr. Carroll by phone to discuss the matter before preparing his Staff Report and was unable to reach him because he was out of town. Mr. Burton did reach Steve Arnaudin, Architect for Mr. and Mrs. Carroll and ask him if he was aware of any problem with the area right of the carport such as a septic system, drain field, well, topographic problem or soil problems that would prevent the Applicant from moving the project back and he stated he did not know of any that the Applicants wanted to use that area for garden space. B. Burton stated to the Board that Staff's position was that the Applicant would not suffer any hardship by not granting the variance. That the Applicant was requesting a variance for their convenience and that their request did not meet the requirements of the ordinance as stated in Chapter 16. Section 16.13.D of the Unified Development Ordinance.

Chair, J. Mathews ask if the Board had any questions for Brad Burton. There were none.

Mr. Carroll asked B. Burton to define hardship as defined by a planning perspective. B. Burton explained that he defines hardship as stated by the ordinance which is based on NC General Statutes. B. Burton went over Chapter 16. Section 16.13.D of the Unified Development Ordinance for Mr. Carroll and explained to the Applicant that he was not an attorney and could not give him an opinion. Mr. Carroll understood.

Mr. Carroll asked Mr. Burton if anyone in the zoning department agreed with or approved his report. Mr. Burton responded no and then gave a summation of his experience with Board of Adjustment hearings and Planning and Zoning.

Mr. Carroll gave a brief overview of he and his wife's careers and when they retired and moved to Brevard. He testified that Oak Street was unopened and that he was told that the City had no plans to open it. He stated that it is a 30 foot right of way and that the UDO now requires a 50 foot right of way to meet standards. He stated that they currently have a carport that is metal with an aluminum top and they want to build a nicer carport that would enable them to access their home during inclement weather. He explained they wanted to make major improvements to the home within the footprint of the home.

Steve Arnaudin, Architect read a prepared statement. He went over the total plan for the property and that it was not only for a carport but for better accessibility to the home and to allow for the use of the yard that has superior sun exposure for the Applicants to enjoy as a barrier free livable space. He further stated that prior to application that Staff would support the Carroll's acquisition for right of way because the City had no plans to open Oak Street. He

further stated the UDO's standards for a 50 foot right of way. He said that Oak Street and Woodlawn Avenue are both 30 foot right of ways and that it would be almost impossible to create roads 50 foot in width including an intersection and for this reason that Oak Street should be considered a side street.

Mr. Carroll then stated that he wanted to address Mr. Burton's points about the variance standards. He stated that it would be a hardship to place the carport on another portion of the property due to the topography, location of the house on the odd shaped lot. The hardship was not created by an action of the applicant. We contend that this proposed variance is consistent with the intent and spirit of the ordinance and that we are not aware of any threat to public safety by the granting of the variance. We are requesting a 6 foot variance from the setback which would not encroach into the right of way and would improve the property by removing the existing metal carport. He then offered as evidence letters written by neighbors, the neighbors presented the letters and they were accepted and labeled as Applicant's Exhibit "A" and Applicant's Exhibit "B".

Mr. Carroll further explained that he felt that their request for a side setback variance was reasonable and within the spirit of the ordinance and that they request the Board approve the variance.

B. Burton gave a short visual presentation and discussed utility easements across the area and the possibility that the City might need to reopen Oak Street at some point in the future. He further discussed the Hernandez property drainage problem that the City had to address and that the possibility was considered to reopen Oak Street. He did state that the City does not have any plans at this time to reopen Oak Street but with acquisition of right of way they could in the future.

Allen Delzell had questions about front and side setback requirements. Mr. Carroll explained that front setback was 15 foot and side was 6 foot and B. Burton explained that the Carroll's property is considered a double fronted lot so the Oak Street setback would be 15 foot.

S. Arnaudin stated that when a right of way acquisition was discussed it was suggested that a utility easement be honored.

Mr. Carroll on rebuttal stated that Oak Street would be very difficult to open and that Planning and Zoning Staff have indicated that they would support the homeowners acquiring the right of way.

B. Burton objected to Mr. Carroll's testimony stating that he is not a civil engineer and that he keeps referring to Planning and Zoning Staff and further for transparency Mr. Freeman the Planning Director did meet with Mr. Carroll and Mr. Arnaudin and would be handling this matter but due to work load constraints as the Planning Director he assigned the matter to me. I was not privy to Mr. Freeman's conversations and if Mr. Freeman gave the Applicant some ray of hope he is not here to speak to those conversations.

J. Mathews ask if there were any further questions. The Chair then closed the hearing. She

further suggested that the Board look at the questions that they needed to answer to make a decision.

M. Egan, Board Attorney, notified the Chair that he had prepared a suggested Motion.

Allen Delzell presented the Motion in the affirmative. T. Fogel seconded the Motion.

After discussion by the Board upon vote the variance was denied. T. Fogel voted in favor with J. Mathews, A. Delzell and C. Dillingham voting nay.

B. Variance Request – Transylvania County

Request of Transylvania County for an architectural exception to Chapter 5 Section 8.C.3 – EFIS as an exterior finish on a building façade facing a public street. The property is located at 20 E. Morgan Street within the corporate limits of the City of Brevard, further identified by PIN 8586-40-8293-000.

The following were sworn by Board Secretary, Janice Pinson, Richard Worley, Architect and Charles Parrish, B & L Distributing and Daniel Cobb, Staff. Tony Dalton, Attorney for Transylvania County stated that he would be an Advocate for the Applicant.

The Chair then polled the Board as to exparte communications and there were none. J. Mathews then polled the parties in the case as to whether or not they had any objections to any of the Board Members, there were none.

Daniel Cobb requested a continuance due to the fact that the Applicant was represented by Counsel and that Staff did not have representation by Counsel.

Upon discussion with Board Attorney and argument by Tony Dalton, Attorney, the Board agreed to proceed with the hearing.

Daniel Cobb presented his Staff Report which states the ordinance requirements for the use of EFIS (exterior finishing insulation system) along with visuals of the existing building and the future plan. His Staff Report is attached hereto, labeled Exhibit “B” and incorporated herein by reference. His summation being that the application as submitted failed to meet any of the determinations stated and which are requirements of the City of Brevard’s Unified Development Ordinance, Chapter 16, and Section 16.15 to grant an architectural exception. He further explained that to grant an Architectural exception only one condition was required to be met not all as in a variance.

T. Dalton questioned D. Cobb as to his knowledge of the use of EFIS at different locations within the City’s jurisdiction. Stating that there have been changes in technology since the ordinance was written in 2006 and stating that the Community Appearance Commission approved the use of this product on this building at their meeting.

Richard Worley, Agent and Architect for the project stated his resume for the Board. He stated the many uses the building had served the community over the years and that the building was constructed in 1938 as a school. He stated that EFIS looks identical to stucco; has a better insulation quality and therefore will save money in energy cost; that it is easily maintained and the use of the product would save tax dollars and improve insulation.

T. Dalton asked R. Worley if there were any negatives to which he responded if the product is not installed properly there can be drainage problems around windows but that it most often occurs in residential installations.

R. Worley showed the Board samples of stucco and EFIS. He continued to discuss the insulation benefits to using EFIS and gave information about the insulation requirements mandated by current NC Building Code.

Daniel Cobb asked if any other finishes were explored other than EFIS that would still allow for the insulation value required.

R. Worley stated, as far as I know, there are not any products that could match the insulation value. We could fur out and try to match the value and apply stucco but EFIS is a much better insulation product.

C. Dillingham asked if this was not going to be the only county building that will look like this because all of the others are beautiful brick. She asked if it was too expensive to keep the brick and not use this system.

R. Worley responded that this was the perfect product for this older building. He further stated that he did not know how they could insulate well and keep the current brick façade on the building.

C. Parrish, B&L Distributing, distributor of EFIS stated that renovating an old building has special challenges and that stucco would have to be fastened to the building and would cause more destruction than the use of the EFIS product which is installed with adhesive. He further stated the challenges of renovating the building while it is occupied and open for business. He stated that his company had been specializing in these systems for over 30 years.

D. Cobb's closing argument was that the ordinance language is as it is stated and it is the Board's decision whether or not to grant this exception.

T. Dalton, Attorney for Applicant gave a closing argument that there are no real differences in the appearance of stucco and EFIS. 5. b. states that changes in technology make impractical or infeasible not to allow the use of new technology and that changes in technology have made this the superior product and I think we have proved this to you. We have done the research and Rich Worley is a very qualified architect.

J. Mathews ask R. Worley how is this new technology if it was in existence in the 1980's and

used on the Comporium building.

R. Worley responded that building codes require more insulation value than is currently in the building and this can be met by the use of this product and further that the chemical makeup and strength of the product has been improved over the years.

B. Burton asked R. Worley for clarification on his statement as to insulation requirements for new construction and ask if the building was considered new construction.

R. Worley responded no, but stated that you should try to meet current building codes if possible.

J. Mathews closed the hearing.

C. Dillingham read the Motion to approve, seconded by T. Fogel. T. Fogel, J. Mathews, A. Delzell voted in the affirmative and C. Dillingham voted nay.

Other Business

M. Egan, Board Attorney, Amended Rules of Procedure:

M. Egan, Board Attorney turned the Board's attention to the Memorandum and Amended Rules of Procedure stating that all changes were highlighted in the document. The changes are due to NC General Statue changes. He further explained to the Board that the By-laws preclude any action until their next meeting.

J. Mathews ask Mr. Egan if their procedure of using affirmative motions be included in the By-laws and he replied that he would have language prepared at the next meeting to address.

Adjourn

There being no further business the meeting adjourned at 9:18 PM upon motion made and unanimously carried.

Judith A. Mathews, Chairman

Janice H. Pinson, Board Secretary