

MINUTES
BREVARD BOARD OF ADJUSTMENT
July 14, 2015

The Brevard Board of Adjustment met in regular session on Tuesday, July 14, 2015 at 7:00 PM in Council Chambers of City Hall.

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

Members Absent: Mike Young
Josh Burdette

Staff Present: Aaron Bland, Planner
Daniel Cobb, Interim Planning Director
Janice H. Pinson, Board Secretary
Mike Egan, Board Attorney

Others: Stewart Trimble, Applicant
Jim Garrett 78 Morningside Drive
John Waldo, 34 Grandview Avenue
Tom Trawick 20 Grandview Avenue
Carl Cameron 123 Morningside Drive
Jim Furniss 118 Morningside Drive
Wayne Thomas, Agent Cornerstone Presbyterian Church
Howard S. Jones, President of Deacons
Henry A. Silman, Pastor

I. Welcome and Introduction of Board Members

Chair, J. Mathews called the meeting to order at 7:05 PM, Board introduced themselves. Chair, J. Mathews certified that a quorum of the Board was present.

II. Approval of Agenda

J. Mathews requested a Motion to approve the Agenda. C. Dillingham moved to approve, seconded by A. Delzell, unanimously approved.

III. Approval of Minutes

J. Mathews requested a motion to approve the Minutes of the June 9, 2015 meeting. Motion by T. Fogel to approve minutes as written, seconded by T. Tartt, unanimously carried.

IV. New Business:

A. Consideration of Application SUP #15-000005 for a Special Use Permit for Stewart Trimble to allow a medical consultation office. The property is located at 59 Morningside Drive within the corporate limits of the City of Brevard, further identified by PIN 8586-90-3601-000.

Chair, J. Mathews explained the quasi-judicial hearing process.

M. Egan, Board Attorney, explained the process for determining if a party has standing and the rights of party status.

Jim Garrett requested party status. Chair, J. Mathews requested that M. Egan, Board Attorney, question him.

M. Egan, Board Attorney, asked Mr. Garrett what made him feel he should be granted party status, and how he would be affected by this decision more than the general public.

Mr. Garrett stated that he lives directly across the street and is within 200 feet of the property; that this decision could affect his property value and that he was a licensed real estate broker for 15 years.

M. Egan determined that Mr. Garrett does have standing in the matter. The Board voted unanimously to grant him party status.

T. Fogel stated that he needed to recuse himself from the matter because he had family and friends who live in the neighborhood.

M. Egan ask if he could not render an impartial decision and T. Fogel responded that he could not.

A. Delzell made a motion to grant party status to Mr. Garrett, seconded by C. Dillingham, unanimously approved.

John Waldo requested to be granted party status. M. Egan questioned Mr. Waldo. M. Egan gave the Board his opinion that Mr. Waldo did not have party status. T. Tartt made a motion to grant Mr. Waldo party status, motion failed.

The following were sworn: Jim Garrett, John Waldo, Tom Trawick, Carl Cameron, Jim Furniss, Aaron Bland and Daniel Cobb.

J. Mathews polled the Board as to exparte communications. There were none.

J. Mathews gave Dr. Trimble and Mr. Garrett the opportunity to object to any of the Board members hearing the case. There were no objections.

Aaron Bland presented his staff report which is attached hereto, labeled Exhibit “A” and incorporated herein by reference. He further gave a report of the results of the key issues that came about during the neighborhood compatibility meeting: additional traffic, cars parked along Morningside Drive, decline in property values, alter the neighborhood status. He further explained that there had been approximately 6 calls and walk-ins relating to the matter all with similar concerns. James O. Wells, MD, delivered a letter to the Planning Department because he was unable to attend the meeting. A. Bland delivered a copy to the Board for review and a copy is labeled Exhibit “B” attached hereto and incorporated herein by reference.

T. Tartt ask if the special use permit was granted did it stay with the property.

Aaron Bland explained that the Board could put any conditions on the permit and that the exact nature would have to be followed by any future property owners but that it would go with the land.

Dr. Trimble was asked if he had any questions for staff and he did not.

Mr. Garrett was asked if he had any questions and he asked if the special use permit running with the land was a part of the law or statute and could it be limited to the current residence only. A. Bland requested that M. Egan answer the question, he stated that it would run with the land.

Mr. Garrett asked if the use could be expanded to 2 or 3 doctors and could the exterior of the house be altered. M. Egan answered, not without coming before the Board for approval to amend the special use permit.

Aaron Bland stated that section 3.20 of the UDO requires the property to remain residential in character. He further added that Dr. Trimble had requested to see up to 10 patients a day Monday through Friday from 9AM – 5PM.

Mr. Garrett asked if signs were allowed and A. Bland responded that 1 sign up to 8 square feet would be allowed according to UDO Chapter 3.20.

J. Mathews asked if the Board had any further questions of staff and they did not.

Dr. Trimble asked if it was appropriate for him to speak now. He stated that he was happy to let the Board impose any limitations on the application. He offered that no more than 2 cars at a time be parked at the premises, no more than 10 patients a week, no sign. He stated that he appreciated the concerns about property values and that he did not want his residence to look like a busy medical practice either. He further stated that he did not want to be a bad neighbor.

The board asked Dr. Trimble why he wanted to practice out of his home, why he did not get an office in town and if he would be dispensing medications or drawing blood.

Dr. Trimble answered that he wants the ability to see an occasional patient at his home; that he does not need an office, because he now practices out of Dr. Nash's office on Probart Street. He stated that this office is closed on Thursdays. He said he would not be dispensing medications or drawing blood out of his residence office.

Upon cross examination, Mr. Garrett ask Dr. Trimble if he would be willing to limit his practice to 1 day per week. Dr. Trimble responded that he would limit to 10 patients a week but did not want to see them all in one day.

Mr. Garrett stated his concerns about devaluing of properties in the neighborhood if this special use permit is granted. He stated that he was a licensed real estate broker for 15 years. Mr. Garrett ask Dr. Trimble questions about his personal life and stated his concerns that Dr. Trimble might move away and that the use would be in place for someone else. Mr. Garrett presented a petition signed by the neighborhood opposing the special use permit. The petition is attached hereto, labeled Exhibit "C" and incorporated herein by reference.

Chair, J. Mathews ask M. Egan if they could accept the petition. M. Egan responded that they could, but that it is hearsay and cannot be used in making their decision in the case.

Mr. Garrett stated that there would be no winners in the situation if the special use permit is approved.

C. Dillingham asked if Dr. Trimble could do consult work from Dr. Nash's office on Thursday when the office is closed. Dr. Trimble stated that he could use the office.

Tom Trawick read a prepared statement, it is attached hereto, labeled Exhibit "D" and incorporated herein by reference. The statement repeated some of the same concerns, excessive traffic, decreased safety, devaluation of property values.

M. Egan ask if Mr. Trawick was a transportation specialist or an appraiser. He responded that he was neither.

John Waldo stated his concerns about traffic, stating his experience with traffic accidents in the neighborhood. He also stated his concerns about declining property values if the use were allowed.

Carl Cameron spoke as to the quiet neighborhood character being changed if the use is allowed. Stating further that if there is no sign that people will be confused and turn into the wrong property.

Mr. Garrett asked if Dr. Trimble were to move, could he rent his residence to another business for medical use.

M. Egan responded that he could if the permit were approved.

J. Mathews, Chair, asked if there was any further testimony and then ask Dr. Trimble if he had any rebuttal.

Dr. Trimble stated that his intent was not to stir up trouble and that if it was within his legal rights, that he would like to formally withdraw his application.

M. Egan, Board Attorney, stated to let the record reflect that the Petitioner took a voluntary dismissal.

J. Mathews closed the hearing.

There was a brief recess.

B. Consideration of Application SUP #15-000003 for a Special Use Permit for Cornerstone Presbyterian Church, PCA, to allow construction of a fellowship hall next to the existing church. The property is located at 645 Burt Lane Road, within the regulatory jurisdiction of the City of Brevard, further identified by PIN 8595-16-8267-000.

It was established that T. Fogel would participate in this hearing.

J. Mathews reminded the board that the hearing was a quasi-judicial proceeding and that it is a public meeting but not a public hearing. She polled the Board as to exparte communications and there were none.

The following were sworn: Wayne M. Thomas, Agent; Howard S. Jones, President of Deacons, Henry A. Silman, Pastor and Aaron Bland, Staff.

J. Mathews polled the Applicants as to whether or not they had any problems with any of the Board Members that were to hear the case. There were none.

Aaron Bland gave a brief history. He stated that they were applying for the same special use permit that they applied for and received in 2008. The building permit expired before they went to construction, therefore requiring them to reapply for the special use permit. The proposed addition meets the current land use plan and meets current use standards.

There were no questions from Mr. Thomas or the Board for Aaron Bland.

Wayne Thomas offered a full set of plans for the Board's review. He stated that they have amended the original plan since 2008. He further explained that they had gone to great pains to match the existing structure. He also gave examples of how they work very hard to be a good neighbor.

Allen Delzell ask if the neighborhood compatibility meeting is required.

D. Cobb responded that the meeting is held at the Administrator's discretion and is not required and because the current use is a religious institution and there is no real change to the use, they made the decision that the meeting was not necessary in this case.

T. Tartt ask if the restrooms were still the same as in original plans.

Wayne Thomas responded that they were and that they had gone to extra measures, such as instant hot water, to protect the environment.

Howard Jones testified that the septic area was already in place, soil was compacted and ready. Current septic and well, storm system and retention pond are already in place and adequate to accommodate the new fellowship hall.

J. Mathews ask if anyone had questions. There were none.

Henry A. Silman, Pastor, thanked the Board and Staff for their work.

Hearing was closed for the Board's deliberation.

J. Mathews polled the Board with regard to the standards and guiding principles for consideration as follows:

1. Has the applicant demonstrated that the use meets all requirements and specifications of the UDO?
2. Has the applicant demonstrated that the use is in harmony with the general intent of such ordinance and preserves its spirit?
3. Does the use meet all requirements and specifications of any adopted land use plans, and is the use in harmony with the general intent of such land use plans and preserve their spirit?
4. Has the applicant demonstrated that the proposed use or structure will be visually and functionally compatible to the surrounding area?
5. Will the proposed use be injurious to the public health, safety and welfare?
6. Will the proposed use be detrimental to the value of adjoining property and associated uses?

T. Tartt made the following motion: With regard to Case No. SUP-15-000003, the application of Cornerstone Presbyterian Church for a special use permit to operate a religious institution in a residential zoning district at 645 Bert Lane Road, I move the Board to make the following findings of fact:

- a) The use 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;
- b) The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible with the surrounding area; and
- c) 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.

Accordingly, I further move the Board to grant the requested special use permit in accordance with and only to the extent represented in the application and plans, “and subject to the following conditions:

Seconded by A. Delzell,

J. Mathews stated that the staff had made a request that the motion include the condition that the special use permit be in compliance with all site-related UDO requirements.

T. Tartt amended motion to include the condition that the special use permit be in compliance with all site-related UDO requirements, seconded by A. Delzell, motion carried unanimously.

VI. Other Business –

None.

Adjourn

Motion to adjourn by A. Delzell, seconded by C. Dillingham, unanimously carried and meeting adjourned at 8:42 PM.

Judith A. Mathews, Chairman

Janice H. Pinson, Board Secretary