

MINUTES
BREVARD BOARD OF ADJUSTMENT – REGULAR MEETING
Tuesday, September 6, 2016– 3:00 PM – Council Chambers

The Brevard Board of Adjustment met in regular session on Tuesday, September 6, 2016 at 3:00 PM in Council Chambers of City Hall.

Members Present:	Judith A. Mathews, Chair Tad Fogel Tom Tartt, Vice Chair Paul Welch Coty Ferguson Allen Delzell
Members Absent:	Mike Young Kevin Jones
Staff Present:	Daniel Cobb, Planning Director Janice H. Pinson, Board Secretary Brian Gulden, Board Attorney
Others:	Judy Wilson, Applicant

I. Welcome and Introduction of Board Members

Chair, J. Mathews called the meeting to order at 3:00 PM. The Board introduced themselves and the Chair introduced the Applicant, Judy Wilson. Chair, J. Mathews certified that a quorum of the Board was present. She further stated that the alternate member, Coty Ferguson, would be the voting member.

II. Approval of Agenda

J. Mathews requested a motion to approve the agenda. P. Welch moved to approve, seconded by T. Fogel, unanimously carried.

III. Approval of Minutes

J. Mathews requested a motion to approve the Minutes of the August 2, 2016 meeting. Motion by P. Welch to approve minutes as written, seconded by T. Tartt, unanimously carried.

IV. New Business:

a. Request of Judy Wilson for a variance in the front setback from 10' to 4' (UDO 12.5.B). The property is located at 218 Rosman Highway, within the corporate limits of the City of Brevard, further identified by PIN 8585-37-1758-000.

J. Mathews opened the hearing. She explained the quasi-judicial hearing procedures. She polled the board as to ex parte communications and there were none. She polled the board and the applicant for conflicts of interests and there were none.

B. Gulden, Board Attorney, polled Judy Mathews as to whether or not she could be impartial after she stated that she was a friend of the applicant. J. Mathews stated that she could be impartial.

Chair, J. Mathews requested that B. Gulden give a review of the procedure and the voting requirements for a variance hearing. He explained that the variance would have to be approved by a super majority which would require a vote in favor by 4 of the board members.

The following were sworn: Daniel Cobb, Planning Director and Judy Wilson, Applicant.

Daniel Cobb stated that the hearing was properly advertised, the property posted and the neighbors contacted. He presented his staff report which included the following:

BACKGROUND: The Mountain Plaza Shopping Center was constructed in or around 1985, during which time the property was zoned C-4. The sign setback standard for a C-4 zoning district at that time was 10' from the edge of right-of-way.

In 2006 the property was rezoned to Neighborhood Mixed-Use (NMX). This rezoning occurred with the adoption of revised development standards (Unified Development Ordinance) and new zoning districts. While several changes to development standards occurred with the adoption of this ordinance, the same 10' sign setback standard remained.

This type of sign is considered a nonconforming ground sign due to its location, which is 4.68' from the edge of right-of-way, not the required 10'. Chapter 12 of the Unified Development Ordinance regulates size and location of signs and states the following *"The plastic inserts within existing nonconforming sign frames may be replaced for continued use until the amortization period expires [12.2.D.7]."* The amortization period expired January 1, 2003, however this seems to have been an oversight when the ordinance was adopted. The effective date of the ordinance is April 3, 2006.

Staff has issued permits for such signs (panel signs) in the past, however these were for replacing an existing panel, not adding anything additional.

The ordinance allows for the maintenance and repainting of nonconforming signs (no other changes). It appears the intent of this is to allow for the continued use of nonconforming signs as long as they are safe and functional. Any changes to a nonconforming sign requires compliance with current standards.

DISCUSSION: The purpose of sign regulation is to prevent dangerous conditions from occurring due to their size, location, construction, or manner of display or to mislead the public by causing confusion, or obstruct the vision necessary for traffic safety. The intent is also to support and complement land use objectives set forth in the zoning ordinance for the City of Brevard.

Until the nonconforming aspect of the sign is addressed, no additional panels may be added. In order to comply with setback standards the sign must be relocated or the requested variance must be granted.

SUMMARY: The standards governing the reason, size, location, construction, and manner of display of signs have applied, and remained consistent for the last 30 years. While a new ordinance was adopted in 2006, it did not affect sign setbacks. The Board should consider the facts of this case and decide accordingly.

J. Wilson testified that the ground sign had been there since the early 1980's. That she had it surveyed and that it was 4.86' from the street right of way and needed to be 10'. That she just wants her tenants to be able to advertise their businesses. The existing ground sign is 14' 11" tall and she does not want a larger sign, she just wants to be allowed to replace panels with existing businesses occupying her property and that currently there are businesses advertised on the sign that have not occupied spaces in her building for many years.

T. Tartt commented that he did not see any traffic impeding problems with the sign.

P. Welch asked Ms. Wilson how much she had paid for the application fee for this proceeding and the survey and she responded approximately \$1,300.00 for the survey and a \$200.00 application fee.

After questions by the board, Chair, J. Mathews closed the hearing. She went over the 4 requirements that needed to be met to grant a variance as follows:

1. Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

B. Gulden advised the Board that the Unified Development Ordinance Chapter 16.13.A.4. states that an economic hardship shall not constitute an unnecessary hardship.

B. Gulden stated that Daniel Cobb had requested that the hearing be reopened. P. Welch made a motion to reopen the hearing, seconded by T. Fogel, unanimously carried.

D. Cobb testified that the property is located within the 100 year flood plain and that if the sign was relocated that it would most likely have to be moved closer to the source and would have to be built to the current flood plain development standards.

C. Ferguson questioned whether or not a new owner would have to bring the sign into compliance.

B. Gulden advised that if the variance was granted that the sign would be considered conforming and that this follows the property.

T. Fogel made the following motion: With regard to the request by Judy Wilson for a variance in the front setback from 10' to 4' (UDO 12.5.8), I move the Board find (a) that unnecessary hardship would result from the strict application of the regulations; (b) the hardship results from conditions that are peculiar to the property, such as location, size or topography; (c) the hardship did not result from actions taken by the applicant or the property owner; and (d) the requested variance is consistent with the spirit, purpose and intent of the regulations, such that public safety is secured and substantial justice achieved. I further move the Board grant the requested variance in accordance with and only to the extent requested in the application. Allowing the sign to remain in its current location and a panel to be added is in keeping with the spirit and intent of the ordinance, seconded by P. Welch, unanimously carried and the variance was granted.

VI. Old Business

None.

VII. Other Business

A. Delzell was welcomed back as a member to the board.

C. Ferguson questioned if the Board of Adjustment had a role in changing the ordinance.

D. Cobb answered that the code is in the process of being rewritten and that this is the opportunity to fix things, but that the Board of Adjustment is a quasi-judicial board.

B. Gulden explained that the Board of Adjustment has no ability to tell the Planning Board what to do, but that as a citizen you can discuss changes to the ordinance with Planning Board members.

VIII. Adjourn

Motion to adjourn by P. Welch, seconded by C. Ferguson, unanimously carried and meeting adjourned at 3:56 PM.

Judith A. Mathews, Chairman

Janice H. Pinson, Board Secretary