MINUTES
BREVARD BOARD OF ADJUSTMENT – REGULAR MEETING
Tuesday, October 4, 2016– 3:00 PM – Council Chambers

The Brevard Board of Adjustment met in regular session on Tuesday, October 4, 2016 at 3:00 PM in Council Chambers of City Hall.

Members Present:	Judith A. Mathews, Chair Kevin Jones Tom Tartt, Vice Chair Coty Ferguson Allen Delzell
Members Absent:	Mike Young Tad Fogel Paul Welch
Staff Present:	Daniel Cobb, Planning Director Janice H. Pinson, Board Secretary Brian Gulden, Board Attorney
Others:	Imran Iqbal, Applicant Farhan Iqbal, Agent for Applicant Scott Thomason, Henderson Oil Co.

I. Welcome and Introduction of Board Members

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

II. Approval of Agenda

J. Mathews requested a motion to approve the agenda. C. Ferguson moved to approve, seconded by T. Tartt, unanimously carried.

III. Approval of Minutes

J. Mathews requested a motion to approve the Minutes of the September 6, 2016 meeting. Motion by K. Jones to approve minutes, T. Tartt made a correction and then seconded, unanimously carried.

IV. New Business:

a. Request of Imran Iqbal for a 95 sq. ft. variance to allow for canopy signage, exceeding the maximum ground sign limit of 32 square feet in the Downtown Mixed Use (DMX) zoning district in accordance with Unified Development Ordinance Chapter 12.9.B.1.i and 12.9.E. The property is located at 20 Hendersonville Highway within the corporate limits of the City of Brevard, further identified by PIN 8597-45-8002-000.

J. Mathews opened the hearing of Variance 16-000002. She explained the quasi-judicial hearing procedures.

B. Gulden, Board Attorney, was asked by Chair, Judy Mathews, whether it was permissible to allow Farhan Iqbal to serve as Agent and testify for Imran Iqbal. B. Gulden said that he served as Agent for the Applicant at the last hearing and that he could do so, and that Scott Thomason could serve as a witness.

The following were sworn: Daniel Cobb, Planning Director, Imran Iqbal, Applicant, Farhan Iqbal, Agent, Scott Thomason, Henderson Oil Co., Witness.

She polled the board as to exparte communications and there were none. She polled the Board and the Applicant for conflicts of interests and there were none.

D. Cobb had the Applicant clarify that the total request was for an additional 95 square feet in addition to the currently allowed 32 square feet, a total of 127 total square feet of allowed signage. He asked that the record reflect this, because his staff report had stated an additional 63 square feet because the application did not reflect the request that it was only verbally stated.

B. Gulden, Board Attorney was asked if in his opinion the advertising was adequate to move forward with the hearing and did he feel he could adequately defend the Board against any potential litigation if they moved forward with the hearing.

There was a discussion on how the variance was advertised.

B. Gulden stated that in his opinion the advertising was minimally adequate to move forward with the hearing but that he could defend the Board against any potential litigation.

K. Jones stated that he thought if someone had a problem with the additional signage square footage being allowed, that they would be present at the meeting and further, that he felt comfortable defending his position in moving forward with the hearing.

J. Mathews stated that if the Board Attorney could defend the matter, she was willing to move forward with the hearing.

K. Jones made a motion that the advertising was sufficient for the board to consider the variance for an additional 95 square feet in signage in addition to the 32 square feet maximum allowed, seconded by C. Ferguson, unanimously carried.

D. Cobb presented his staff report which is attached hereto and labeled, Exhibit “A”.

C. Ferguson compared this service station to the Marathon on Hospital Drive.

D. Cobb explained that the Marathon on Hospital Drive is in a different zoning district.

T. Tartt asked D. Cobb if there were any other variances for larger signs in this area.

D. Cobb explained that some of the signage in this area had probably been there since before this area became a part of the City of Brevard’s jurisdiction. He further explained that Pilot Cove applied for and were granted a variance for a larger ground sign.

Farhan Iqbal testified, he held up pictures of gas stations and stated that they were in the surrounding area of his brother’s station. He stated that they just wanted to be treated fairly and to be able to advertise their gas station. He testified and showed photos of their gas station prior to their ownership with canopy signage and that they just want to put Citgo canopy signs on three (3) sides of the canopy. He further testified that it would make the gas station look better for the City instead of blank canopy signage.

T. Tartt asked if the signs would fit on the canopy.

Scott Thomason testified that they would but that the tri-mark would be the only sign that would extend above the canopy by approximately one (1) foot. He further testified that 32 sq. ft. is the smallest Citgo sign that is allowed.

J. Mathews asked if the signage was discussed with Planning Staff prior to permitting the business.

Farhan Iqbal testified that it was but that there were some misunderstandings.

C. Ferguson asked if they would lose their Citgo branding if the variance was not granted.

S. Thomason testified that they would not, but it would mean a great competitive disadvantage. He further stated that the Marathon station down the street within the same zoning district has canopy signage.

J. Mathews asked D. Cobb if he had any questions for the applicant. He had none.

Farhan Iqbal offered the photos to the Board for review.

J. Mathews asked the Board if they had a need to see the photos, the Board responded they did not.

K. Jones requested that Scott Thomason, Henderson Oil Co., explain why Citgo feels that signage is important.

S. Thomason, testified that it is a very competitive market with small profit margins. That Citgo is a top tier fuel and that they have to pay more for the fuel and branding brings value to the product and that you have to brand as much as possible to keep a competitive advantage.

T. Tartt asked D. Cobb if the previous owner's signs were within the allowed limits.

D. Cobb stated that he was not in a position to answer that question, but that there were no previous variances of record for this property and that each case is viewed separately.

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.

C. Ferguson made the following motion: With regard to variance request 16 – 00002, the application of Imran Iqbal for a 95 sq. ft. variance to allow for canopy signage exceeding the maximum ground sign limit of 32 square feet in the Downtown Mixed Use ("DMX") zoning district, I move the Board make the following findings of fact:

a) that unnecessary hardship would result from the strict application of the regulations;
They would lose their competitive advantage if they cannot brand their product.

b) the hardship results from conditions that are peculiar to the property such as location size or topography;
The Marathon station adjacent to the property in the same zoning district has canopy signage.

c) the hardship did not result from actions taken by the applicant or the property owner; and
The property was a preexisting gas station when acquired by the current property owner, with existing canopy signage.

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.
The signage would in no way obstruct any view, the space is already in existence, and in no way conflicts with the spirit or purpose of the ordinance. The canopy signage would add legitimacy to the operation therefore providing for better public safety.

Accordingly, I further move the board to Grant the requested variance in accordance with and only to the extent represented in the application and plans, seconded by A. Delzell and unanimously carried.

<u>VI. Other Business</u>

C. Ferguson stated that in the past couple of months the board have twice addressed common sense issues and requested that the board consider a joint meeting with the Planning Board because as they review the rewrite of the UDO, they need to understand the practical application, since this board sees the effects of the ordinance.

J. Mathews stated that it is not our job to do, and that Daniel as Staff can handle the matter. That each of the board members can as citizens make suggestions.

A. Delzell stated that we cannot change the ordinances, and concurred that it was not our place to tell the Planning Board what to do.

T. Tartt shared from the last minutes that the Board of Adjustment has no ability to tell the Planning Board what to do, and that he does not feel comfortable in doing so, but would be happy to go to a meeting as a private citizen and share his thoughts.

C. Ferguson stated that he was just trying to be proactive in the matter.

The board was encouraged to give Planning Board feedback as private citizens, but not as Board of Adjustment members.

VII. Other Business

None.

VIII. Adjourn

Motion to adjourn by K. Jones, seconded by C. Ferguson, unanimously carried and meeting adjourned at 4:00 PM.

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Judith A. Mathews, Chairman

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Janice H. Pinson, Board Secretary