MINUTES
BREVARD BOARD OF ADJUSTMENT – REGULAR MEETING
Tuesday, November 1, 2016– 3:00 PM – Council Chambers

The Brevard Board of Adjustment met in regular session on Tuesday, November 1, 2016 at 3:00 PM in Council Chambers of City Hall.

Members Present:	Judith A. Mathews, Chair Kevin Jones Coty Ferguson Allen Delzell Tad Fogel
Members Absent:	Mike Young Paul Welch Tom Tartt, Vice Chair
Staff Present:	Daniel Cobb, Planning Director Paul Ray, Senior Code Enforcement Officer Janice H. Pinson, Board Secretary Brian Gulden, Board Attorney
Others:	Nathan Bauman, Applicant Joe Fennessy, Finnessy Group, Inc., Agent, St. Philips Episcopal Church Mary Lee Finnessy, St. Philips Episcopal Church Parker Platt, Platt Architecture, Agent, Oskar Blues Platt Architecture: Jessica Gallagher Rhett Pace Oskar Blues: Brian Spotts Jim Weatherwax Thomas Transue

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.

II. Approval of Agenda

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

J. Mathews requested a motion to modify the Agenda to hear Old Business prior to New Business, T. Fogel moved to modify the agenda, seconded by A. Delzell, unanimously carried.

III. Approval of Minutes

J. Mathews requested a motion to approve the Minutes of the October 18, 2016 meeting. Motion by T. Fogel to accept the minutes as presented, seconded by A. Delzell, unanimously carried.

IV. Old Business:

a. Consideration of application (V16-000003) Request of Nathan Bauman for a 2 foot variance in the front yard fence height requirement from 4' to 6' in accordance with UDO Chapter 3.30.D. 2. The property is located at 14 Eastview Drive within the corporate limits of the City of Brevard, further identified by PIN 8585-97-5858-000.

J. Mathews opened the hearing. She explained the quasi-judicial hearing procedures.

Brian Gulden, Board Attorney, explained party status, who has standing and is allowed to testify at the hearing. He explained that a super majority would be required to grant a variance.

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.

The following were sworn: Daniel Cobb, Planning Director and Nathan Bauman, Applicant

D. Cobb stated that the hearing was properly advertised, property posted and neighbors were notified. He presented his staff report and gave a history of the case.

N. Bauman explained that he only wants a fence from the back corner of his house on the Elm Bend Road side. He further stated that he lost his wife in April and that he has 3 children. One of his children has ADHD and a four (4) foot fence would not be sufficient to contain him. He contracted to purchase the house and ordered the fence before he knew he would only be allowed a 4 foot fence. He is concerned for the safety of his family and this is his only concern. N. Bauman stated that he could provide a letter from his son's physiatrist that a four (4) foot fence would not contain his son, and stated again he is just concerned for his children's safety.

A. Delzell asked Mr. Bauman if the fence was already in place. He responded that it was.
T. Fogel said he lives in the neighborhood and sees the intersection daily and never even realized a fence was there because the trees hide the fence.
K. Jones said that he had to drive by the property twice to see the fence.
J. Mathews asked D. Cobb if the fence was below the road on the Elm Bend Road side.

D. Cobb stated that due to the topography that the fence was below the road and explained where the fence is located.

C. Ferguson asked D. Cobb what the spirit, purpose, intent of the ordinance was as to the four (4) foot fence rule.

D. Cobb explained that there is no guidance in the ordinance, but the thoughts are that walkability, neighborhood appeal, visibility, traffic safety and otherwise privacy were factors.

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

After discussion by the board, C. Ferguson made the following motion:

With regard to variance request 16–000003, the application of Nathan Bauman for a variance to the UDO, Chapter 3.30.D.2 to allow for an additional two (2) feet of height for a fence located in front of the building line on property located at 14 Eastview Drive, I move the Board make the following findings of fact:

a) that unnecessary hardship would result from the strict application of the regulations;

   Due to child endangerment.

b) the hardship results from conditions that are peculiar to the property such as location size or topography;

   Due to the lot's elevation and double frontage.

c) the hardship did not result from actions taken by the applicant or the property owner; and

   Purchaser was not properly notified by his Agent upon purchasing.

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.

   Walkability remains intact and safety is preserved.

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.

Motion was seconded by K. Jones, and unanimously carried.

IV. New Business:

a. Consideration of application (V16-000004) request of St. Philips Episcopal Church for a 5 foot variance in the front yard setback of 10 feet for a ground sign as required by Unified Development Ordinance Chapter 12.5.B. The property is located at 256 East Main Street within the corporate limits of the City of Brevard, further identified by PIN 8586-60-3131-000.

The following were sworn: Paul Ray, Senior Code Enforcement Officer, Joe Finnessy and Mary Lee Finnessy, St. Philips Episcopal Church.

P. Ray presented his staff report, giving a history of the case. The case was properly advertised, property posted and neighbors notified of hearing.

There were no exparte communications or conflicts of interest.

J. Finnessy stated that they had acquired some old stone for the sign columns in order to make the sign look as though it had always been there. He explained that meeting the setbacks would place the sign too far back and it would not be visible from the road until you were almost upon it. Also, that the sign would not block visibility for traffic using circular driveway. He further stated that they were taking Paul Ray's advice and would be placing one-way traffic signs at each end of the circular drive.

Mary Lee Finnessy stated that the sign would also serve to advertise special events and therefore, they would not have a need for temporary banners in the future.

After discussion and questions by the Board, it was determined that the church and bell tower are over 100 years old and on the historical registry. That the episcopal symbol and church are not identified to the downtown area.

K. Jones made the following motion:

With regard to variance request 16–000004, the application of St. Philips Episcopal Church for a 5 foot variance to the setback requirement of 10 feet from the street right of way, as set out in the UDO, Chapter 12.5.B, for placement of a ground sign on property located at 256 East Main Street, I move the Board make the following findings of fact:

a) that unnecessary hardship would result from the strict application of the regulations;

Signs not visible from the road are not useful and there is a need to know where the Episcopal Church is located.

b) the hardship results from conditions that are peculiar to the property such as location size or topography;

The turn in the road makes sign placement difficult.

c) the hardship did not result from actions taken by the applicant or the property owner; and

The bell tower and church have been in place for over 100 years.

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 church has indicated that the sign will be aesthetically pleasing and that one way signs will be installed at the circular drive as recommended by the City of Brevard Planning Department.

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.

After discussion by the board it was determined that no conditions were necessary.

Motion was seconded by C. Ferguson and unanimously carried.

b. Consideration of application (V16-000005) request of Red Clay, LLC, for a thirty-two (32') by fifteen (15') foot encroachment into the 40 foot required setback per Unified Development Ordinance Chapter 2.3.B. The property is located at 342 Mountain Industrial Drive within the corporate limits of the City of Brevard, further identified by PIN 8596-37-7910-000.

D. Cobb noted that the case was properly advertised, property posted, and neighbors notified. He presented his staff report which is attached hereto and labeled Exhibit "A". He explained the history of the property and the future requirements of the applicant in order to develop in the floodplain.

Parker Platt, Agent for the Applicant, presented his testimony a part of which is included in the staff report as Attachment "C". He explained the advantages of the expansion, and noted that the LOMR was done by the previous owner/developer, Jennings. He also testified that Andrew Bick, engineer, had been hired to provide the "no rise", "no adverse impact" statements for the project and had assured the Applicant that there would be no problem obtaining same.

P. Platt explained the previous layout of the building by Jennings and all of the renovations to date. He stated that they had studied the site extensively and their goals are to separate the industrial production area from the customer area; to get the trucks out of the public right of way; and to provide better access for trucks entering the loading area. He further said that the new addition will allow all loading and unloading to be in the interior of the building which will create a reduction in noise. He stated that one (1) dock will encroach into the setback.

After questions by the board, P. Platt presented his findings of fact, which are attached and labeled, "Exhibit B".

There were no further questions and J. Mathews closed the hearing.

J. Mathews requested a motion and C. Ferguson presented the motion as follows, stating that the motion will echo the findings of fact as presented by Parker Platt.

With regard to variance request 16–000005, the application of Red Clay LLC for a thirty-two (32’) by fifteen (15’) foot variance for encroachment into the minimum front yard setback of 40 feet from the street right of way, as set out in the UDO, Chapter 2.3.B, on property located at 342 Mountain Industrial Drive, I move the Board make the following findings of fact:

a) that unnecessary hardship would result from the strict application of the regulations;

Refer to Exhibit “B”

b) the hardship results from conditions that are peculiar to the property such as location size or topography;

Refer to Exhibit “B”

c) the hardship did not result from actions taken by the applicant or the property owner; and

Refer to Exhibit “B”

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.

Refer to Exhibit “B”

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, T. Fogel, motion carried unanimously.

VI. Other Business

After a discussion with B. Gulden, Board Attorney, about possible training at the December 6th meeting. The Board approved training, if there are no cases to be heard.

VII. Adjourn

Motion to adjourn by C. Ferguson, seconded by A. Delzell, unanimously carried and meeting adjourned at 4:13 PM.

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Judith A. Mathews, Chairman

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Janice H. Pinson, Board Secretary