

MINUTES
BREVARD BOARD OF ADJUSTMENT – REGULAR MEETING
Tuesday, April 4, 2017– 3:00 PM – Council Chambers

The Brevard Board of Adjustment met in regular session on Tuesday, April 4, 2017 at 3:00 PM in Council Chambers of City Hall.

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

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 and that Kevin Jones, City Alternate 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 November 1, 2016 meeting. Motion by K. Jones to accept the minutes as presented, seconded by T. Tartt unanimously carried.

IV. New Business

a. Consideration of application (V17-000001) request of Chelsea Preciado for a 12.5 foot variance in the rear yard setback and 1.2 foot variance in the side yard setback in accordance with UDO Chapter 2.3.C. The property is Lot #34 West Lane within the corporate limits of the City of Brevard, further identified by PIN 8586-22-3241-000.

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.

J. Mathews, Chair, polled the board as to exparte communications. Coty Ferguson stated that he is friends with the applicant and had discussed the hearing procedures with her. The Chair made the decision that Coty Ferguson would not be allowed to ask questions or participate in the hearing. She polled the Board and the Applicant for conflicts of interests and there were none.

The following were sworn: Daniel Cobb, Planning Director, Chelsea Preciado, Applicant, Robert Young, adjoining property owner, 170 Rosenwald Lane, Morris Avery, adjoining property owner, 168 Rosenwald Lane.

Linda Mackey and Ann Mackey nieces of Janie Lynch, property owner, 54 West Lane, requested to be considered as parties on behalf of their aunt, but had no form of authorization to offer as evidence.

Brian Gulden, Attorney for the Board recommended that Mr. Young or Mr. Avery call them as witnesses on their behalf, if necessary, but that they should not be considered as parties with standing by the Board.

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. Staff Report is attached and labeled, Exhibit "A".

D. Cobb explained that the requested variance, if granted, would not affect anyone else's property, but is simply a reduction in the setback requirement.

P. Welch asked if the waterline was currently in use. D. Cobb explained that it was just replaced and is in use and supplies drinking water for the City of Brevard.

T. Tartt pointed out that the property to the left would be affected by the water line easement.

K. Jones referred to "Attachment B" of the staff report stating that it appeared the structure encroaches into the requested variance setbacks.

D. Cobb explained that a deck and stairs on the rear of the house will encroach, but that the ordinances would allow for these encroachments and that the foundation could not encroach into these setbacks. He further explained that Public Works' primary concern is that the foundation not encroach into the easement area to allow them a repair area if necessary.

D. Cobb explained that Ms. Preciado had come to the Planning Department and met with Staff to go over her drawings, that the City of Brevard's GIS mapping system shows the waterline further to the left; that her plans seemed viable but when utilities were located, the waterline was further into the lot than shown on GIS and larger than originally thought.

T. Fogel, P. Welch both asked if Public Works was satisfied with the location, to which, D. Cobb responded, that Public Works said they can maintain the waterline under these circumstances.

Chelsea Preciado, Applicant, testified that she is asking to build within her own property and that they had done their due diligence prior to purchasing the property. When they went on site and started probing, they found the water line pipe, they had Public Works locate the line and after doing so, found that their small lot was now almost cut in half. The only way they can build their 600 square foot home on the lot is if they can be granted the requested variance in the setback requirements. She further explained that the result was not created by her own actions, and that public safety will be preserved if the variance is granted. She further stated that there will be plenty of room for the City of Brevard to work on the water line.

There were no questions for Ms. Preciado.

Robert Young, 170 Rosenwald Lane, testified that he went to the Register of Deeds to try to determine his property lines. He asked if Ms. Preciado was trying to take land from him.

Ms. Preciado responded that she would not try to take his land.

D. Cobb stated that the variance request by Ms. Preciado pertains to her property and does not affect anyone else's property. The variance request is to allow her to build closer to the property line.

Ms. Preciado stated that the property was surveyed and that the pins were moved up the hill some because they had moved down the hill due to erosion.

B. Gulden, clarified that Ms. Preciado did not get any additional property that the surveyor placed the stakes where they belonged.

R. Young asked if the variance would affect the Lynch property in any way.

J. Mathews stated that she did not believe that a permit would be issued for building a house that was not on their property. D. Cobb concurred.

Morris Avery, 168 Rosenwald Lane, testified that his biggest issue is to make sure that his property is protected and that no one infringes upon their land. He further asked if the waterline would affect the Lynch property.

D. Cobb explained that the water line is an issue for all of the surrounding properties and that they can contact Public Works and they will locate the waterline for them.

J. Mathews, Chair, suggested that if any issues come up, that Mr. Morris contact Daniel Cobb, Planning Director or his office for assistance.

B. Gulden, pointed out that no land was obtained in this process.

D. Cobb explained that the Planning Department has nothing to do with determining property lines and in order to determine your property lines, you would need to have your property surveyed.

Mr. Morris asked D. Cobb if, in the future, when letters were sent if he would include a diagram so that they could understand things better.

D. Cobb answered, that he could do so.

J. Mathews asked if the Mackey's issues had been addressed. They responded that they were good.

J. Mathews closed the hearing.

J. Mathews introduced the Planning Department's, Intern, Kevin Teater, who was observing the meeting.

The Board discussed the findings of fact:

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

It has been well established that without the variance no reasonably sized structure could be built.

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

The location of the waterline that traverses nearly center of the property is peculiar to the property.

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

No. The applicant performed her due diligence.

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 variance request is consistent with the spirit of the ordinance, public safety is secured, the waterline can be accessed if there are problems that need repair.

P. Welch moved to adopt the suggested motion as found on Page 12, Attachment C of the Staff Report, which is attached, seconded by T. Fogel and unanimously carried.

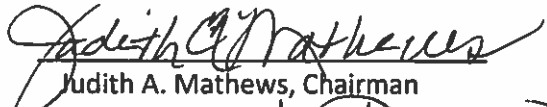
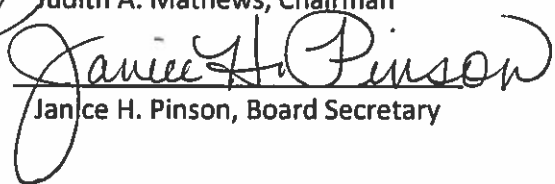
J. Mathews stated that the variance was granted.

VI. Unfinished Business

None.

VII. Adjourn

Motion to adjourn by T. Tartt, seconded by P. Welch, unanimously carried and meeting adjourned at 3:58 PM.


Judith A. Mathews, Chairman

Janice H. Pinson, Board Secretary



The City of *Brevard* North Carolina

BOARD OF ADJUSTMENT STAFF REPORT

April 4, 2017

TITLE: Variance Request 17-000001
SPEAKER: Daniel P. Cobb, AICP, CFM, CZO – Planning Director
PREPARED BY: Daniel P. Cobb, AICP, CFM, CZO – Planning Director

Executive summary: The Board will hear a request by Chelsea Preciado for a 12.5' variance from the rear-yard setback and 1.2' variance from the side-yard setback.

Applicant: Chelsea Preciado
 767 East Main St.
 Brevard, NC 28712
Meeting Date: April 4, 2017 – 3:00PM
Variance: 12.5' rear-yard and 1.2' side-yard
Project Site: Lot #34 – West Lane

Background: On March 17, 2017 Ms. Preciado submitted a variance request for the dimensions stated above. Ms. Preciado has purchased Lot #34 on West Lane (a physical address will be assigned once a building is constructed) with the intention of building a small single-family residence (800 square feet). There is a 14" City waterline running across the southwestern corner of her property.

Discussion: Ms. Preciado's lot is located at the end of West lane (Figure 1). Prior to purchasing this lot Ms. Preciado met with Staff several times to ensure she would be able to utilize it as she planned. During these discussions she was made aware of the typical setbacks for general residential zoning districts (front – 15', side 6', rear 25'). As well as the 20' easement requirement for public utility lines which is a requirement to ensure access is available in the event of a repair.



Figure 1

Note in the image above the "Original assumed location..." and "Actual location..." The City's data presented to Ms. Preciado during these initial meetings turned out to be inaccurate. Under

the original assumption of the location of the waterline Ms. Preciado had room available for construction.

Subsequent to her purchase of the lot and prior to construction it was discovered the waterline was not only located in a different area but it was also larger than originally thought, which increased the size of the required easement from the normal 20' to 30'. The waterline across her property is a 14" transmission line coming directly from the City's reservoirs on Reservoir Road. This additional 10' of easement area made her site very challenging to utilize for any purpose.

In order to grant the variance *all* of the conditions below must be met:

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.

Summary: The applicant is requesting a 12.5' variance from the required 25' rear-yard setback and 1.2' variance from the required 6' side-yard setback.

Attachments:

- A. Application
- B. Site plan
- C. Suggested motion

**City Of Brevard, North Carolina
BREVARD BOARD OF ADJUSTMENT**

Application for Variance

Variance Case/File Number: # V17-000001

Property Owner:

Name Chelsea Preciado
 Address 767 East main st. 7
 City/State/Zip Code Brevard NC 28712
 Telephone Number 655450861 Email Address chelsea.n.preciado@gmail.com

Applicant and/or Agent (if different than property owner):

Name _____
 Address _____
 City/State/Zip Code _____
 Telephone Number _____ Email Address _____

Location of Property:

Lot #34 West Lane Rosenwald District

Property Identification Number (PIN): 8586-22-3241-000
 Zoning District(s): GRL Within City Limits? Yes ☒ No ☐

Request VARIANCE from City Zoning Ordinance, Section(s) Ch. 2 unified development
sect. 2.3.C

Zoning Ordinance Requires: Rear yd: 25 ft, Front yd: 15 ft
Side yd: 6 ft

REQUESTING VARIANCE TO ALLOW: 50% Variance into
rear yd, 20% variance into side yd.

Following must be included with Application:

1. ☒ Site Plan
2. ☒ Listing of names and mailing addresses of all property owners within two-hundred feet (200') from the boundaries of the property in question.
3. ☒ Application filing fee - \$200.00

Chelsea Preciado
 Signature of Property Owner

 Signature of Agent (if different than property owner)

March 17, 2017
 Date

 Date

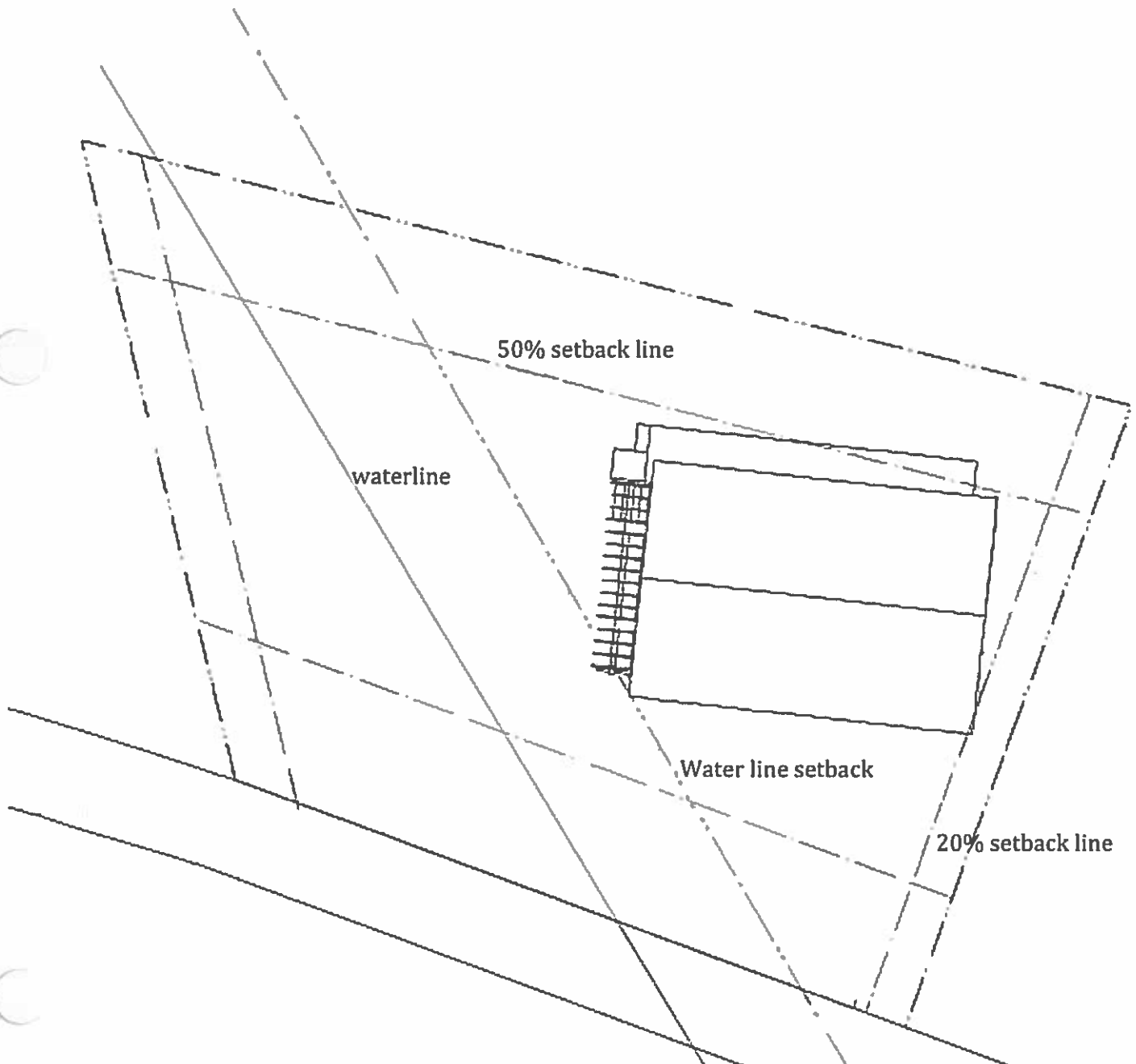
VARIANCE Request to be heard by BOA on: April 4, 2017

Preciado West Lane House

Current Proposal

50% Rear Yard setback
12' 6"

20% Side Yard Setback
4' 8"



CITY OF BREVARD ZONING BOARD OF ADJUSTMENT

SUGGESTED MOTION: Chelsea Preciado: VARIANCE REQUEST #17-000001

Considering variance request 17-000001, the application of Chelsea Preciado for a 12.5 foot variance to the rear yard setback requirement and 1.2 foot variance to the side yard setback requirement, as set forth in the UDO, Chapter 2.3.C, for property located in the General Residential (6) Zoning District and identified as Lot #34 West Lane, Brevard, North Carolina, I move the Board make the following findings of fact:

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

(LIST FINDINGS OF FACTS FOR THIS ELEMENT PER THE TESTIMONY)

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

(LIST FINDINGS OF FACTS FOR THIS ELEMENT PER THE TESTIMONY)

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

(LIST FINDINGS OF FACTS FOR THIS ELEMENT PER THE TESTIMONY)

- 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.

(LIST FINDINGS OF FACTS FOR THIS ELEMENT PER THE TESTIMONY)

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

(IF, AND ONLY IF, YOU WISH TO ADD CONDITIONS, THEN STATE THE FOLLOWING)

and subject to the following conditions: (LIST THE CONDITIONS)