

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

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

Members Present:	Judith A. Mathews, Chair Paul Welch Kevin Jones Tad Fogel Allen Delzell
Members Absent:	Tom Tartt, Vice Chair Coty Ferguson
Staff Present:	Daniel Cobb, Planning Director Janice H. Pinson, Board Secretary Brian Gulden, Board Attorney
Media:	Matt McGregor, Transylvania Times
Other:	Jodi Joanne Miller, Applicant

I. Welcome and Introduction of Board Members

Chair, J. Mathews called the meeting to order at 3:00 PM.

II. Certification of Quorum

The Chair, J. Mathews certified that a quorum of the Board was present.

III. Approval of Agenda

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

IV. Approval of Minutes

J. Mathews requested a motion to approve the Minutes of the August 1, 2017 meeting. Motion by T. Fogel to accept the minutes as presented, seconded by A. Delzell unanimously carried.

V. New Business

a. Consideration of Application for Special Use Permit #SUP-17-002 by Jodi Joanne Miller for Dog Training Classes and Dog Daycare Facility on property located at 340 Greenville Highway within the corporate limits of the City of Brevard, in a NMX zoning district and further identified by PIN# 8585-77-9731-000.

J. Mathews opened the hearing and polled the Board as to conflicts of interest and ex parte communications; there were none.

T. Fogel explained that he had responded to a post on the Facebook, "We are Brevard" page, that he liked the proposed business and stating that it was good to see the property being used. He stated that at the time he had no idea that Ms. Miller would be coming before the board.

B. Gulden, Board Attorney, asked T. Fogel if he could hear the case without being biased based on the Facebook interaction.

T. Fogel stated that he could.

The following were sworn: Daniel Cobb, Planning Director, Jodi Miller, 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. Staff Report is attached and labeled, Exhibit "A".

The Board had no questions for Daniel Cobb.

J. Mathews asked Ms. Miller if she was familiar with the findings of fact that the Board had to have answered in order to make a decision in the case. Ms. Miller replied that she was not. J. Mathews read the findings of fact for her benefit prior to her testimony.

Ms. Miller testified that she is a licensed nurse practitioner and has lived in the area approximately 3 years; that she lived in Alaska for 33 years and has numerous years of experience training dogs in obedience and service work. She stated that she has done volunteer work training dogs for women's shelters, service work for people with PTSD and trauma. She currently volunteers for the Boys and Girls Club and has approximately 25 children that read to the dogs that are training to be service dogs.

She further stated that she has done a lot of work on the property with an investment of \$8,000.00 to date; and that the neighboring property also belongs to the Marcum's and that it is a rental property.

Her plans include training classes of approximately 8-10 dogs per class, with hopes of approximately 35 dogs per day.

She will offer doggy day care for her clients, once or twice a week, and may offer to others at a later date, but will need to consider the liability involved in doing so. She wants to use the side yard as the "potty yard" and the rear yard as a play area. She testified that the dogs will not be outside for more than 15-20 minutes at a time; and that the dogs will not be allowed to bark incessantly.

When asked if the barking could be heard when outside the building, she responded that she had only had her two (2) dogs in the building and did not notice the sound when outside. She has asked the neighbors if they have been bothered by barking and they have not. She further explained that the dogs may bark some when outside and during training, but that incessant barking will not be allowed. She explained to the board that she has been training dogs down the street for three (3) years and there have been no complaints.

B. Gulden, Board Attorney, pointed out a portion of Attachment F of the Staff Report, UDO Chapter 3.6.A as follows:

- A. Outside runs, holding pens, exercise areas or other open-air type enclosures and shelters shall be located at least 200 feet from any dwelling, other than that of the owner/operator, and at least 50 feet from adjoining property lines.

There was discussion as to whether or not the parcel was a single parcel or two (2) separate parcels.

D. Cobb explained that they were two (2) separate parcels. He further explained that in his discussions with the Applicant that she had stated that all activities would be inside, and that the outside would only be used for restroom purposes.

B. Gulden explained that the board needed to make sure that the Applicant met both dimensional requirements of the UDO and that the board needed to address the matter.

P. Welch moved that the board find as fact that the commercial and dwelling are under common ownership and for that reason the 200 foot standard does not apply, seconded by T. Fogel.

B. Gulden, explained that the Board could approve the special use permit with conditions limiting use of the outside space and then if there are violations, staff could address them.

J. Mathews restated the motion as follows: Motion to not hold the applicant to 3.6.A, as to the 200 foot standard and 50 foot standard, she confirmed with P. Welch that this was the correct motion, he agreed and she further stated that the motion had been seconded.

The board voted as follows: J. Mathews, nay; K. Jones, abstained and P. Welch, A. Delzell and T. Fogel voted, yes. J. Mathews stated that the motion carried.

It was determined that the motion was originally only for the 200 foot standard and K. Jones stated that is why he abstained from voting.

J. Mathews said that City Council passed this ordinance and that they need to revisit it.

T. Fogel stated that he did not see any problem with it as it relates to kennels.

P. Welch noted that it was troubling that the measurements are taken from the property line and not the actual dwellings, feeling it unnecessarily restrictive. He further stated that there were not any structures to be offended by the aroma of dog poop.

A. Delzell stated that it is hard to say that it meets all the requirements of the ordinance. He added that the ordinance is restrictive, but the future of the airport property is unknown.

There was discussion about the airport property being in the floodplain.

P. Welch stated that if the board makes a mistake in granting the special use permit that there are enforcement measures in place to remedy.

B. Gulden advised the board that he felt they had already addressed the 200 and 50 foot separation requirements of the ordinance, waiving the requirements due to the fact that the adjoining property is of common ownership.

J. Mathews, Chair, stated it was necessary to discuss the standards that need to be met to issue a special use permit.

J. Mathews closed the hearing.

P. Welch made the following findings of fact:

I move that we find as fact that the adjoining properties are used as a Boys and Girls Club on the north side and as an airport on the south side and that based on the adjoining uses, this proposed use is functionally compatible with the uses visually and functionally surrounding it.

That if used as proposed with most of the activities occurring indoors, the proposed use 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, because most of the work involving the animals will be inside.

J. Mathews asked if any conditions should be noted about the 200 foot and 50 foot requirement in the ordinance.

P. Welch stated no.

P. Welch moved the Board grant the requested special use permit in accordance with and only to the extent represented in the application and plans.

J. Mathews asked Attorney, B. Gulden if they needed to be advised of anything before the vote.

A. Delzell, seconded, and the motion granting the special use permit, unanimously carried.

b. By-Laws Amendment

B. Gulden explained the amendment to the by-laws to add the following language to Paragraph 5. Hearings. Subparagraph B.

“Once a case is called for hearing by the Chair, the Applicant shall have fifteen (15) minutes to appear and present its case. After the fifteen (15) minute grace period expires, the Board may, in its discretion, take any action allowed by its Bylaws and Policies including deferring action on the case to a subsequent meeting.”

P. Welch moved to approve, seconded by A. Delzell, unanimously carried.

VII. Unfinished Business - None.

VIII. Remarks – None.

X. Adjourn

There being no further business, P. Welch moved to adjourn, seconded by A. Delzell, unanimously carried. The meeting adjourned at 4:03 PM.

Judith A. Mathews, Chairman

Janice H. Pinson, Board Secretary