

MINUTES

BREVARD BOARD OF ADJUSTMENT – REGULAR MEETING Tuesday, October 2, 2018 – 3:00 PM – Council Chambers

The Brevard Board of Adjustment met in regular session on Tuesday, October 2, 2018, at 3:00 PM in Council Chambers of City Hall.

Members Present: Judith A. Mathews, Chair
Tom Tartt, Vice Chair
Paul Welch
Kevin Jones
Tad Fogel
Allen Delzell

Staff Present: Daniel Cobb, Planning Director
Brian Gulden, Board Attorney
Janice H. Pinson, Board Clerk

Press Present: Park Baker, Transylvania Times

Others: Chief Phil Harris, Brevard Police Department
Michael K. Pratt, Attorney for City of Brevard
Davis A. Whitfield-Cargile, Attorney for Brevard Racquet Club

I. WELCOME – Chair Mathews called the meeting to order at 3:00 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS - Board members, Board Attorney and Staff, introduced themselves.

III. CERTIFICATION OF QUORUM – Chair Mathews certified a quorum of the Board was present.

IV. APPROVAL OF AGENDA

K. Jones moved, seconded by P. Welch, the Agenda be approved with the elimination of item VII. b. Consideration of Brevard Racquet to amend Special Exception Permit #00-22 (SUP-18-004). Motion carried unanimously.

J. Mathews, Chair noted that the notices were not mailed in a timely manner.

V. APPROVAL OF MINUTES

P. Welch moved, seconded by T. Tartt, the September 4, 2018, meeting minutes be approved as presented. Motion carried unanimously.

VI. NEW BUSINESS

SUP-18-001 City of Brevard Police Department – Request for rehearing by the City of Brevard Police Department for a Special Use Permit to allow for the operation of an Outdoor Firing Range in a General Industrial (GI) District. Subject property is located at 1161 Catheys Creek Road, PIN 8565-93-0873-000.

Michael K. Pratt, Attorney for the City of Brevard stated that his intention was to forecast the evidence to be presented at the rehearing.

M. Pratt offered that the motion by Paul Welch at the September 4th meeting stated denied without prejudice to the applicant and that the legal term, “without prejudice” would mean that the City of Brevard would be given the legal right to a rehearing without the presentation of additional evidence. He requested that the Chair determine whether or not this was the intention when the motion was stated.

J. Mathews, Chair, said that she believed Mr. Welch’s intent was to state that the board would consider a request for a rehearing.

P. Welch explained that at the close of evidence he wanted to be clear that Chief Harris was welcome to come back before the board. He explained that he realizes that the Board does not understand legal terms and his use of the term without prejudice was not used in a legal context but advisedly. P. Welch offered that he is happy to vote in favor of a rehearing.

Mike Pratt thanked Mr. Welch.

M. Pratt said they were prepared to forecast the evidence that they will present at the rehearing, but that they will need some time to complete. The evidence they will present will be as follows: Engineer study of surface water flow so as to demonstrate that the water flow will take any chemicals as well as lead away from the water shed. He further explained that this was very important to him as the City Attorney as well as to you as the Board of Adjustment, he explained that the study had begun but will take some time. There will be a second Engineer study of the bullet trap and this study will show that the bullet trap is sufficient to keep any lead from dissolving and leaching into the soil or into the water shed. There will be a third study a noise study to confirm that the noise level is in compliance with the noise ordinance. These studies will take time, and therefore we are requesting a February rehearing date.

M. Pratt further stated that he will proceed however the Board wishes. That if the Board wishes what he thinks was the intent of Mr. Welch's motion, then his interpretation is that the Board has already told the Applicant that they can have a rehearing. But if the Board wants the forecast of our evidence in more detail, this can be done. Mr. Pratt asked the Chair for her guidance.

J. Mathews, Chair stated that the board always follows the City's ordinance and that the ordinance states that the board will consider a request for rehearing upon the presentation of new evidence.

Brian Gulden. Board Attorney was called upon by the board for his opinion. He stated that his understanding of Mr. Welch's motion was that the Chief of Police could submit a request for rehearing or that he could start over with a new application for something different and the matter would not be prejudiced if he decided to do so. He further explained that due to the Applicant appearing to request a rehearing that this is the direction they have chosen. He explained if new evidence is presented and the board approves a rehearing then the matter will be handled as required in the UDO and that a date certain for the rehearing cannot be determined until the new application and evidence is presented to Staff and the matter is posted, advertised and proper notifications have been mailed.

M. Pratt stated that this gives him the requested direction. He requested that Chief Harris be sworn to testify.

Sworn In - The following people were sworn in: Chief Phil Harris.

M. Pratt, City Attorney explained that they will be looking at the memorandum prepared by Chief Harris, which is included in the Board's agenda packet and that he will ask Chief Harris questions. The Memorandum is attached hereto and labeled, Exhibit "A".

M. Pratt question: Did you prepare the memorandum with the idea to illustrate what you will present to the Board at the next hearing to confirm that you are complying with City Code Section 3.23 which controls outdoor firing ranges. Did you do this point by point referring to the requirements of the ordinance and then explain how you will comply with each requirement.

Chief Harris answer: Yes. He stated that the date in the first line of August 7, 2018 needed to be corrected to September 4, 2018.

J. Phil Harris, Chief of Police provided evidence and conditions in writing and graphically to request a rehearing of the special use application.

M. Pratt, Attorney for the City of Brevard disclosed the contents of his Memorandum in Support of the Request for Rehearing to the Board, which is attached hereto and labeled, Exhibit "B".

B. Gulden, Board Attorney, explained that the Board had received a forecast of evidence but cannot accept what was presented at this request for rehearing as evidence and that it is not to prejudice the board and it is not to be taken as evidence.

B. Gulden offered the evidence that had been handed out to the Board back to Chief Harris and Mike Pratt, City Attorney.

Motion – K. Jones moved that the Board grant the Applicant's request for a rehearing based on the new evidence that has been promised. Motion was seconded by T. Fogel.

Discussion: Rehearing will take place at a meeting time to be determined at a later date.

Vote on the Motion: Motion carried unanimously.

Cindy MacGregor adjoining neighbor requested that the hearing not take place in January, 2019 because she is scheduled to have surgery.

B. Gulden suggested that the Board address the Brevard Racquet Club matter as to a rehearing date.

J. Mathews, Chair asked D. Cobb, Planning Director, what his preference was and he stated it was totally up to the Board, but that he would like a bit of notice. After some discussion it was decided that the new hearing date would be December 4, 2018.

VIII. REMARKS – None

IX. ADJOURN

P. Welch moved, seconded by K. Jones, the meeting be adjourned. Motion carried. Meeting adjourned at 4:11 PM.

Janice H. Pinson Board Clerk

Judith A. Mathews, Chair