

MINUTES
BREVARD BOARD OF ADJUSTMENT SPECIAL CALLED MEETING
Tuesday, September 10, 2019 – 3:00 PM – Council Chambers

The Brevard Board of Adjustment met for a special called meeting on Tuesday, September 10, 2019, at 3:00 PM in Council Chambers of City Hall.

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

Absent: Paul Welch

Staff Present: Paul Ray, Interim Planning Director
Janice H. Pinson, Board Clerk
Brian Gulden, Board Attorney

Others Josh Vandegrift, Brevard Tennis and Athletic Club
David Whitfield-Cargile, Attorney for Brevard Tennis and Athletic Club
James C. and Lois J. Bollini, Appellants

I. WELCOME

Chair J. Mathews called the meeting to order at 3:02 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS

Board members and staff introduced themselves.

III. CERTIFICATION OF QUORUM

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

IV. APPROVAL OF AGENDA

K. Jones moved, seconded by T. Tartt, to approve the agenda as presented. Motion carried unanimously.

V. APPROVAL OF MINUTES

K. Jones moved, seconded by T. Fogel, that the June 4, 2019, meeting minutes be approved as presented. Motion carried unanimously.

VI. NEW BUSINESS

a. Request of James C. and Lois J. Bollini for hearing on Appeal of Administrative Determination (APL-19-001) made on April 12, 2019 in reference to Special Exception Permit of Brevard Tennis and Athletic Club, SEP-00-022.

It was determined that the following were parties with standing and they were sworn by the Board Clerk:

Paul Ray, Interim Planning Director, City of Brevard
James and Lois Bollini, Appellants
Josh Vandegrift, Brevard Tennis and Athletic Club
Daniel Cobb, former Planning Director, City of Brevard, was subpoenaed to appear to provide testimony.

J. Mathews, Chair, polled the board as to exparte communications and conflicts of interest. There were none.

Davis Whitfield-Cargile, Attorney for Brevard Tennis and Athletic Club, requested that the members of the board who stated past connections with either party, restate them for the record.

Tad Fogel stated that he had a past business relationship with the Brevard Tennis and Athletic Club and that he knows the Bollinis.

After a brief discussion, Mr. Whitfield-Cargile stated that he they had no objection to Mr. Fogel serving on the board for the hearing.

Paul Ray, Interim Planning Director, stated that the matter had been properly advertised, property posted and neighbors notified.

P. Ray presented a history of the case, his staff report is attached hereto and labeled Exhibit "A".

Attorney Whitfield-Cargile presented a motion to dismiss, stating that the appeal was filed untimely and outside of the Board's jurisdiction per UDO Chapter 16-12.C.1. He read this portion of the ordinance and explained that the last sentence is the only part that applies in this matter as follows: "Any other person with standing to appeal shall have 30 days from any source of actual or constructive notice of the decision within which to file an appeal". He asked that the UDO Chapter 16-12.C.1 be labeled Applicant's Exhibit "A".

He presented an email from Daniel Cobb as Exhibit "B", email from Janice Pinson as Exhibit "C", explaining that according to the evidence the only meeting that Daniel Cobb had with the Bollinis was on April 10, 2019, giving them 30 days from that date in which to file their appeal, May 10, 2019. He entered an email from Daniel Cobb as Exhibit "D", email from Daniel Cobb with decision letter attached as Exhibit "E".

Attorney Whitfield-Cargile stated that another reason for his motion is that there is no evidence that the appeal was filed with the City Clerk as required by the ordinance, that it was signed for by Jim Fatland, City Manager.

T. Tartt asked Attorney Whitfield-Cargile for clarification, that the reason for the motion to dismiss is because the Bollinis did not file their appeal within the required 30 days.

Attorney Whitfield-Cargile responded that was correct.

J. Mathews, Chair, asked if Attorney Whitfield-Cargile was stating that the Bollinis were notified of Mr. Cobb's decision on April 10, 2019.

Attorney Whitfield-Cargile testified that based on information he received from Daniel Cobb, Planning Director for the City of Brevard, that he believes the Bollinis were notified on April 10, 2019.

J. Mathews, Board Chair, asked for advice from board attorney, Brian Gulden as to how to proceed.

Brian Gulden, Board Attorney, explained that based on the Unified Development Ordinance and NC General Statute, parties that are determined to have standing have 30 days once an administrative staff decision has been made, and notice provided to said parties, whether actual or constructive. If appeal is not filed within the 30 days, then the appeal would be untimely.

He further advised that the board as an entity could call a witness if they want to verify the emails. He further explained that unless Daniel Cobb, former Planning Director testifies and verifies the emails they are just documents and not evidence.

Chair, Mathews requested that Daniel Cobb, former Planning Director, come forward to testify.

K. Jones asked that if the Bollinis received two notices of decision could the later notice be used to start the 30 day requirement to appeal.

B. Gulden, Board Attorney, explained that it is up to the board to determine when actual or constructive notice was given to the Bollinis and that is when the 30 days would begin.

J. Mathews asked Daniel Cobb to tell the board when he believed that he gave notice to the Bollinis as to what happened at his meeting with the owner of the Brevard Racquet Club and their attorney and further to help answer any questions.

Daniel Cobb, former Planning Director for the City of Brevard stated that he would.

He wanted to first state that he was in the employment as the Planning Director for the City of Brevard when the decision was made. That he is now the Town Manager for Mills River and that he is here to testify as a private citizen not as the Town Manager of Mills River.

B. Gulden added that Mr. Cobb was subpoenaed to appear at the meeting.

Daniel Cobb testified as follows: "To answer your question I would have to defer to the emails because I do not recall specific dates. I do recall meeting with the attorney and his client at the racquet club. They gave me a tour of the facility to help me understand what they do and we walked through the fabric dome, I took some photos with my phone and when I returned to the office I put together a letter and emailed it to the attorney for his review to make sure it matched everything we had discussed and that we understood each other. I crafted the letter on my own and I did not receive any assistance from the attorney except for a small grammatical change if I remember correctly. There was a period of time during which I assumed that the attorney and his client were reviewing the letter and prior to providing it to the Bollinis. There was a lack of communication between me and the attorney and once that was cleared up I finalized the letter and sent it to the Applicant and his attorney. I simply do not recall when I gave a copy to the Bollinis, it could have been April 10th, but I do not remember."

J. Mathews stated that in the June 26, 2019 letter to Mr. Whitfield-Cargile, D. Cobb stated that the Bollinis did not receive a copy of the decision letter until June 20, 2019, but that you met with them on April 10th and verbally made them aware of the attached letter; and that the order was provided to the Bollinis and their attorney by email on March 29, 2019.

Mr. Whitfield-Cargile requested that he be allowed to question Mr. Cobb, which was granted by the Chair.

He asked Mr. Cobb if he met with Josh Vandegrift and himself at the Racquet Club in February or March.

D. Cobb responded that he believed that it was February.

He further asked if on that date Mr. Cobb determined that his client was in compliance with their special use permit.

D. Cobb responded that he stated that he believed that they were, but that he needed to go back to his office and review their permit before giving a final determination before he prepared the letter.

Mr. Whitfield-Cargile asked Daniel Cobb if he currently has access to his City of Brevard calendar and emails.

D. Cobb answered that he does not.

Mr. Whitfield-Cargile asked if the email he received from Mr. Cobb on June 26, 2019 was sent in his official course of business as an employee of the City of Brevard, and if the date of April 10th in the email was correct, he offered a copy of the email for Mr. Cobb's review.

Mr. Cobb responded that yes, he sent the email while in the employment of the City of Brevard, that he would have checked to make sure the information in the email was correct prior to sending, and after reviewing the email said that he did send the email which is marked Applicant's Exhibit "B".

Mr. Whitfield-Cargile questioned D. Cobb about emails between them in reference to the status of the compliance letter, and then admitted emails as Applicant's Exhibits "C-E" into evidence. He further asked D. Cobb when he emailed Mr. Whitfield-Cargile on March 26, 2019 about the preparation of the compliance letter, had he already made the determination that the Racquet Club was in compliance.

D. Cobb responded that he had made his decision by March 26, 2019, but had not yet put it in writing that the Racquet Club was in compliance. He explained that Exhibit "E" was an email from himself to D. Whitfield-Cargile dated March 26, 2019 attaching the draft of the compliance letter, asking that he review to verify that it covered everything they had discussed and apologizing for the delay.

Mr. Whitfield-Cargile asked if all of Mr. Cobb's meetings were reflected on the Outlook calendar and D. Cobb answered all scheduled meetings, not impromptu meetings. When further asked if the only meeting with the Bollini's was April 10, 2019, Mr. Cobb responded that it was, and that he did not recall any impromptu meetings with them.

Lois Bollini asked D. Cobb if he would verify that the Bollinis met with him on April 10, 2019 at 2 PM, and that they told him that they were not happy because there was still fitness equipment in the dome.

She further stated that D. Cobb did not give them any reason to believe that the Racquet Club would be allowed to use the equipment and they received no information that the Racquet Club would be allowed to use the equipment, and that D. Cobb said there was a real tennis court in the dome with a net and everything and that fitness equipment was being stored around the perimeter of the dome.

Ms. Bollini further testified that in their meeting on April 10, 2019, Mr. Cobb told them that he was preparing a letter, and that he would provide them a copy. She further stated that Mr. Cobb gave them no reason to believe that the stored fitness equipment would be allowed to be used and asked several times if only tennis would be allowed, no soccer ball kicking, no volleyball, etc.

Ms. Bollini testified that D. Cobb told them that only tennis would be allowed in the dome. She further explained that they were upset when they left the meeting, because they felt like something was amiss.

Ms. Bollini submitted emails as Appellant's Exhibit "A" and stated that this was their timeline of the events from their perspective.

Ms. Bollini testified that she and Mr. Bollini attended the April 15, 2019 City Council meeting and stood up and told City Council that they had concerns that the Racquet Club was in violation of their special use permit. She asked Mr. Cobb if he recalled them being at the meeting. She asked Mr. Cobb if he called them the next day knowing that they were still clueless as to the letter.

Mr. Cobb responded that in his meeting with the Bollinis he summarized the meeting that he had with the Applicant and his attorney, he told them he was preparing a compliance letter summarizing the visit, and that he would provide them a copy of the letter when it was completed. He did recall that they were at the April 15, 2019 meeting of City Council, but he did not recall what they said during that meeting. He testified that he did not call them after the April 15th City Council meeting.

Mr. Whitfield-Cargile was allowed to review the Appellant's Exhibit "A" emails prior to the Clerk to the Board labeling and entering them into evidence.

Ms. Bollini asked Mr. Cobb if he remembered telling them that equipment was only going to be stored in the dome and that there was a piece of equipment that had no moving parts and therefore would be very quiet when used.

Mr. Cobb answered that he would have to defer to her testimony that he did not recall, but that he did recall stating that the equipment was being stored and describing the piece of equipment that had no moving parts that you would only use your body weight to use.

Jim Bollini asked Mr. Cobb if he recalled what he said at the April 15, 2019 meeting of City Council.

Mr. Cobb said he did not.

Mr. Whitfield-Cargile asked the Chair if he could ask Mr. Cobb further questions. He was allowed to redirect.

Mr. Whitfield-Cargile asked Mr. Cobb if when he met with the Bollinis the letter of April 12th had already been drafted and, therefore, would he not have communicated the contents of the letter to the Bollinis.

Mr. Cobb stated that the compliance letter had been drafted before he met with the Bollinis, and that he did not recall if he shared all the contents of the letter with them on April 10th, but would assume that he had done so. He was also asked if his email to Mr. Whitfield-Cargile on June 26, 2019 indicated that he had verbally informed the Bollinis of the decision that the

equipment in the dome was secondary to the tennis court and that the Racquet Club was in compliance with their special use permit. Mr. Cobb responded that his email was consistent with what he had told the Bollinis.

K. Jones recounted the chronological order of events the draft letter on March 26, meeting with Bollinis on April 10 and final letter on April 12.

Mr. Cobb confirmed the order.

A. Delzell asked Mr. Cobb if the letter was written on April 12, 2019, why did it take so long for the Bollinis to receive a copy of it. He further explained his concerns that due to the need for the Bollinis to file an appeal within 30 days it seemed like it should have been provided to them sooner.

Mr. Cobb responded that there was no particular reason.

Chair Mathews asked if a constructive notice is any kind of notice other than in writing.

Attorney B. Gulden explained that constructive notice is notice of the decision. The board will have to decide when the decision was made, and what the decision was. He further explained that there is no specific meaning for constructive notice. It is general enough that there is no case law. Examples could be: the property being posted, the actual letter, these things can be considered constructive notice. He read the NC General Statute 160A, 388(a1) as to constructive notice. "As used in this section the term "decision" includes any binding order, requirement or determination."

Chair Mathews stated that Mr. Cobb is saying he gave them constructive notice when he spoke with them on April 10th. Mr. Cobb stated that he is not saying that he gave them constructive notice.

Paul Ray, Interim Planning Director, requested that he be allowed to ask a question. He was granted permission and his question was as follows: "Can constructive notice be given on a decision that hasn't been made yet?"

Attorney B. Gulden, stated that he could not answer, that it was the board's decision to make. He further explained that the board needed to decide first when was the final order rendered, when was constructive or actual notice received, and if the appeal was filed within the required 30 days.

P. Ray explained that the letter was dated April 12, 2019, and that Mr. Cobb met with the Bollinis on April 10, 2019 which was prior to the date of the decision. Therefore, constructive notice was not given to them on April 10, 2019, because the decision had not been given.

K. Jones asked Mr. Cobb how the letter was mailed to the Bollinis.

Mr. Cobb stated that he did not recall.

T. Fogel stated that in trying to make a decision he was very uncomfortable by the way things were handled, making it hard to determine the dates required to make a decision. That there is no hard fast rule for the board to make a judgment on.

J. Mathews stated that she felt that all of the board was uncomfortable, but that a decision needed to be made.

J. Mathews asked Mr. Cobb if he recalled when he determined that the Racquet Club was in compliance with their special exception permit.

Mr. Cobb responded that sometime between the meeting with the Applicant and their attorney at the Racquet Club and drafting of the letter.

J. Mathews asked if the decision was made on April 12, 2019, the date of the letter.

Mr. Cobb stated that the letter was drafted before April 12, 2019, and possibly not mailed until April 12, 2019.

K. Jones went over the chronological order of events and stated if the letter was prepared on April 12, but the Bollinis never saw it until June 20, then it is his belief that they responded to something within the required 30 days. He expressed that he did not see how the Bollinis could be expected to respond to a decision that they have not seen. They responded in a timely manner once they were aware of the decision.

There were no more questions for Mr. Cobb.

Mr. Whitfield-Cargile requested to see the Bollini emails again, he requested that an email dated May 21, 2019 from Lois Bollini to Janice Pinson requesting a copy of the compliance letter be entered as an exhibit in support of his motion. The email was entered into evidence as Applicant's Exhibit "F".

He stated that the email is evidence that the Bollinis knew as early as May 21, 2019 that there was a compliance letter.

Mr. Whitfield-Cargile gave his closing argument stating that the board had expressed discomfort with the non-applicant not receiving written notice, but the board cannot take displeasure with the ordinance and is required to follow the Unified Development Ordinance and he feels it is evident that the Bollinis received constructive notice as early as April 10, 2019, when they meet with Mr. Cobb. They did not file their appeal until June 24, 2019 and then did not file it as required by UDO Chapter 16-12 with the City Clerk, but filed it with the City Manager. He requested that the board dismiss the appeal.

Lois Bollini testified that the first time they became aware of the compliance letter was in an email from Daniel Cobb on March 3, 2019, and that this was the first they knew there was such a compliance letter. Mr. Cobb stated that he had been to the Racquet Club and was reviewing whether or not they were in compliance with their original permit and that he

would provide a copy of the letter once it was prepared, but they never got a copy of the letter.

She explained that they met with Mr. Cobb on April 10, 2019 to discuss the matter and to ask the status of the compliance letter. She said in the meeting that they were never told the contents of the letter. That Mr. Cobb told them that there was equipment being stored under the dome. He did not tell us that the equipment would be allowed to be used.

Mr. Whitfeild-Cargile objected stating that Mrs. Bollini was giving new testimony and that he had already made his closing argument.

Ms. Bollini explained that on April 15, 2019 she and Mr. Bollini went before City Council to ask them to please bring the Racquet Club into compliance. At the time it was unknown to them the letter had already been sent to the Applicant.

Ms. Bollini said: "On May 14, 2019 we sent an email to Daniel and Janice asking for a copy of the compliance letter. On May 15, 2019 Janice sent me an email saying that Daniel was out of the office until next week and that she would asked him to forward a copy of his letter. We were trying to get a copy of the letter that we knew existed. On May 21, 2019 I sent another email to Janice asking for a copy of the letter. She responded on May 22, 2019 stating that she had reminded him, and that he said he was aware and that it was on his to-do list. She explained that they could not get a copy of the letter."

"On June 4, 2019 we sent an email to Daniel Cobb stating that we were still waiting on a copy of the letter from the City on the Racquet Club, regarding their compliance. I further explained in my email that the fitness equipment being stored in the dome was being used frequently by individuals, and we would appreciate the City making an effort to bring the club into compliance."

"On June 20, 2019 I sent an email to Daniel Cobb saying please forward us a copy of the compliance letter to the Racquet Club which was sent in April or May regarding the recent board of adjustment rehearing. Your email to us on March 4, 2019 indicated that you would provide us with a copy of the letter once it was prepared. We had requested it numerous times and still have not received it, and that we wanted him to know that the fitness activities in the dome had increased and the fitness equipment in the dome was being used on a daily basis. That they were working out in the dome at 5:45 am that day."

"On June 20, 2019 I sent Daniel Cobb an email congratulating him on his new position and asked him to forward us a copy of the compliance letter, and he sent it on that date."

"On June 24, 2019 we sent a letter of appeal to the City Manager's office."

Mr. Whitfield-Cargile stated that based on the new testimony he wanted to add a follow up to his closing argument. Ms. Bollini acknowledged that as early as before May 21, 2019 in an email that she knew there was a compliance letter. This would be all that is required for

constructive notice. The UDO is written in favor of the property owner so that they can use their property.

J. Mathews addressed the board that they need to determine when notice was given to the Bollinis and in order to determine whether or not their appeal was timely.

K. Jones stated that he had already given his argument and that it was unchanged.

T. Tartt stated that if the city determined compliance was met in mid-May, why wasn't the letter sent, but no matter what that would make the Racquet Club in compliance. A determination had been made before mid-May, the way I understand it, it did not have to be published.

B. Gulden, Board Attorney again explained constructive notice to the board. It has to be a final and binding order, requirement or determination and was notice of that decision given to the Bollinis.

When was the determination or decision made and when was it given to the Bollinis.

J. Vandegrift, Applicant, read from the compliance letter he received from Daniel Cobb. He further explained that once he received the letter he thought the matter was resolved and closed.

There was further discussion by the board.

J. Mathews requested a motion, K. Jones moved that the motion to dismiss the appeal be denied, seconded by A. Delzell, in favor, K. Jones, A. Delzell and Tad Fogel, all opposed were requested to say no, Tom Tartt and Judy Mathews said, "no".

J. Mathews informed Mr. Davis Whitfield-Cargile that his motion to dismiss had been denied.

Mr. Whitfield-Cargile requested that due to a previous commitment of the Applicant that the hearing of the appeal be continued.

K. Jones stated that it was a reasonable request and that he would support the suggestion.

After discussion, motion to continue until a date and time certain. Motion to continue meeting to Tuesday, October 8, 2019 at 2:00 PM by K. Jones, seconded by A. Delzell, unanimously carried.

Mr. Whitfield-Cargile requested that Daniel Cobb's subpoena be in effect for the meeting on October 8, 2019. B. Gulden stated that the subpoena would still be in effect.

VIII. REMARKS

T. Fogel stated that he was uncomfortable with policies and procedures as to communications in writing. That letters should be mailed on the same date to all parties

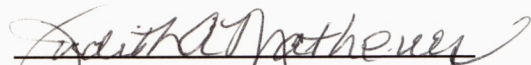
involved and mailed, first class, certified mail and return receipt, if necessary. He further expressed his concerns about how dates were being determined. He asked the Board Attorney if this was a policy and procedure decision that the board could make or did it go to a higher authority.

B. Gulden stated that he felt if there are changes to policies and procedures that it would probably need to be decided by a higher authority, and noted that constructive notice is not defined.

IX. ADJOURN

K. Jones moved, seconded by A. Delzell the meeting be adjourned. Motion carried. Meeting adjourned at 4:43 PM.


Janice H. Pinson, Board Clerk


Judith A. Mathews, Chair



The City of *Brevard* North Carolina

BOARD OF ADJUSTMENT STAFF REPORT

SEPTEMBER 10, 2019

Title:

Appeal of Administrative Determination – SUP-18-004

The Board will hear a request to appeal an administrative determinization made on April 12, 2019 declaring the Brevard Tennis and Athletic Club in compliance with SEP-00-022.

Speaker:

Paul C. Ray, CZO, Interim Planning Director

Prepared by:

Paul C. Ray, CZO, Interim Planning Director

Background

This matter coming before the City of Brevard Board of Adjustment is to hear the Appeal of James C. and Lois J. Bollini of an administrative determination made by the Planning Director on April 12, 2019, finding the Brevard Tennis and Athletic Club in compliance with SEP-00-022. Daniel P. Cobb was the Planning Director at the time of his determination.

Discussion

A quasi-judicial hearing was held on December 4, 2018 and continued to January 8, 2019, January 22, 2019, February 5, 2019 and February 6, 2019 where the Brevard Tennis and Athletic Club applied to amend their original Special Exception Permit and Special Use Permit SEP-00-022, to allow for the use of the existing fabric dome, referred to as "the Fit Dome", to an indoor recreation facility. It was found that sometime in August, 2017 the Brevard Tennis and Athletic Club's use of the steel/fabric dome had changed from tennis to primarily an athletic building where users participated in functional training, strength and cardio training and other exercises. It was determined that a change from tennis to general fitness under the dome would require an amendment to the Special Use/Exception Permit. James and Lois Bollini own property adjoining the fit dome and have complained about loud disruptive noise emanating from the fit dome since its change of use in 2017.

Josh Vandegrift, owner of the Brevard Tennis and Athletic Club, represented by Attorney Davis Whitfield-Cargile, presented evidence and testimony at the hearing. Lois and James Bollini, who were represented by Attorney Doug Campen, were determined to have standing, were sworn as witnesses and presented evidence and testimony at the hearing. Additionally, Daniel Cobb, who was the City of Brevard's Planning Director, was sworn as a witness and also presented testimony. The testimony in this case is reflected in the minutes of the meetings. Based on the testimony presented, the documentary evidence and related materials submitted along with the application, the Board of Adjustment found that

the Special Use Permit should be denied, based on the Findings of Fact 1 thru 22 in the ORDER; SUP-18-004 (Exhibit A) and in the following Conclusions of Law:

- 1) The use of the Applicant's Property for an indoor recreation facility does not meet all requirements and specifications of the UDO and any adopted land use plans; is not in harmony with the general purpose and intent of the UDO; is not appropriate within a surrounding residential neighborhood; and does not preserve the UDO's spirit to uphold the exception of residential zoning districts.
- 2) The use of the applicant's property for an indoor recreation facility is not, if developed according to the plan submitted, visually compatible with a residential neighborhood and is not functionally compatible with the surrounding area due to the hours, frequency and intensity of the noise from the fit dome.
- 3) The applicant failed to submit or present competent, material and substantial evidence to establish that the proposed use or structure 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.
- 4) That Special Use Permit 18-004 should be denied.

On February 20, 2019, following the Board of Adjustment's decision, the Planning Director, Daniel P. Cobb, met with Josh Vandegrift, owner of the Brevard Tennis and Athletic Club, and his attorney Davis Whitfield-Cargile, and toured the facility. Mr. Cobb drafted a letter to Mr. Vandegrift, dated April 12, 2019, stating in part, *"Following this inspection, I believe the Fit Dome is in compliance with the original purpose and intent of SEP-00-022. More specifically, the tennis courts within the dome are intended to be used for tennis, and the workout equipment along the periphery of the dome will be utilized occasionally as part of tennis players' workout routines. These workouts and workout equipment are a secondary use of the structure."* (Exhibit B) Mr. Cobb's letter contained four photos of the dome depicting a portable tennis net in the middle of the room with weights, dumbbells, benches, racks and other workout equipment along the side walls.

On June 24, 2019, the Bollini's hand delivered a letter to the City Manager's Office stating they were just apprised of the contents of the April 12th letter written by Daniel Cobb after several attempts of obtaining a copy. (Exhibit C) With regards to Mr. Cobb's letter, the Bollini's wrote, *"This letter, in essence, has overturned the ruling of the BOA. The letter gives certain individuals permission to use fitness equipment in space permitted solely for a tennis court."* The concluding paragraph stated, *"We request that the letter of April 12, 2019 from Daniel Cobb to the Brevard Racquet Club be repealed and that the Racquet Club immediately be required to be in compliance with their Special Exception Permit as well as with the ruling of the BOA."*

Daniel Cobb resigned from his position with the City as the Planning Director to accept a position elsewhere. He vacated his office on July 1, 2019, leaving the Bollini's letter behind. Upon transitioning into the role of Interim Planning Director and moving into the office space, I reviewed the Bollini's letter and recognized it as a request for an administrative appeal, under Section 16.12A of the Unified Development Ordinance, and sent the Bollini's a confirmation email advising them of this potential date for a specially called meeting before the Board of Adjustment. (Exhibit D)

Summary:

The Bollini's have appealed, in writing, the former Administrator's decision that the Brevard Tennis and Athletic Club is in compliance with Special Use Permit SEP-00-022 and request the Board to order them into immediate compliance.

Exhibits

- A. Order
- B. Compliance Letter
- C. Appeal Request
- D. Confirmation Email

STATE OF NORTH CAROLINA
TRANSYLVANIA COUNTY

BEFORE THE CITY OF BREVARD
BOARD OF ADJUSTMENT
CASE NO. SUP-18-004

1) Hand delivered EXHIBIT A
DW Cargile 3-28-19
2) email D. Campen
J. Bollini
L. Bollini 3/29/19
JPinson

IN RE: APPLICATION of
BREVARD RACQUET CLUB/
MICHAEL VANDEGRIFT
for a SPECIAL USE PERMIT

ORDER

This matter coming on for hearing before the **City of Brevard Board of Adjustment** ("Board") on the application of **Brevard Racquet Club/Michael Vandegrift** ("Applicant") for a Special Use Permit ("SUP") seeking amendments to the original Special Exception Permits and SEP-00-022 to allow for the use of the existing fabric building to be used as an Indoor Recreation Facility on property owned by the Applicant (the "Property"). The Property is zoned General Residential-4 and is further identified as PIN 8585-31-5597-000 by the Transylvania County Tax Assessor.

A quasi-judicial hearing was held on December 4, 2018 and continued to January 8, January 22, February 5 and February 6, 2019. The Applicant was represented by Attorney, Davis Whitfield-Cargile, and presented evidence and testimony in this matter. The following persons, Lois Bollini and James Bollini who were represented by Attorney Doug Campen, were determined to have standing, were sworn as witnesses and presented evidence and testimony in this matter. Additionally, City of Brevard Planning Director, Daniel Cobb, was sworn as a witness and presented testimony in this matter.

Testimony in this case is accurately reflected in the minutes of the meeting of December 4, 2018, January 8, January 22, February 5 and February 6, 2019 and based upon the testimony presented, the documentary evidence and related materials submitted along with the Application, the Board finds that the SUP should be denied, and in support thereof, does hereby make the following:

FINDINGS OF FACT

- 1) Notice of the quasi-judicial public hearing, pursuant to the City of Brevard Unified Development Ordinance ("UDO") and state law, was duly and timely given.
- 2) The Applicant operates a business on the Property located at 1325 Country Club Rd., Brevard, North Carolina in the General Residential-4 zoning district ("GR4") with the primary purpose being a tennis, fitness and swim club.
- 3) The business had been historically permitted under a Special Exception permit issued in 1977 for the operation of a tennis club. Such permit was thereafter amended by SEP-00-022 which allowed for the expansion of the tennis club to

include an addition to the clubhouse, a new junior Olympic swimming pool, additional tennis courts and a bubble over two of the tennis courts for winter play.

- 4) In 2013, the Applicant had a 65' x 120' steel truss and fabric building installed over a certain clay tennis court at a considerable expense. Thereafter, because of a moisture issue, the Applicant decided to hard surface the courts under the steel/fabric building.
- 5) Sometime in August, 2017, approximately four (4) years after the construction of the steel/fabric building, the Applicant's use of the building changed from tennis to primarily an athletic building where individual users participate in functional training, strength and cardio training among other exercises. This change in use was done to accommodate the majority of the current membership and the steel truss and fabric building came to be known as the "Fit Dome".
- 6) Pursuant to the UDO, Chapter 16.11E – Substantial Changes, the change in use of the Applicant's Property requires an amendment to the current SEP-00-022 so as to allow for an Indoor Recreation Facility, as defined in the UDO.
- 7) The Applicant is aware of noise complaints from the neighbors and have made some rule changes prohibiting members from dropping weights within the Fit Dome.
- 8) Testimony was presented by Coty Ferguson, a licensed realtor, that the use of the Property as an indoor recreation facility would have an effect of increasing surrounding residential property value; however, he further testified that commercial activity, in a residential area, could have an undesirable effect on property values depending on the commercial activity's hours of operation, frequency and intensity.
- 9) The Applicant's exercise classes, on any given day within the Fit Dome, start at 6:30 a.m. and continue to 8:30 p.m. These classes last from 30 minutes to an hour. During the use of the Fit Dome by the Applicant's customers there is often loud music, yelling and the sound of metal weights being dropped on the ground/floor.
- 10) On two occasions, decibel readings were taken by Shawn Miller, Deputy Chief for the City of Brevard Police Department. However, the readings were not taken at times when exercise classes were being conducted in the Fit Dome.
- 11) Since making application for this SUP, the Applicant testified that the dropping of weights inside the Fit Dome has caused damage to the tennis court and, therefore, has moved some of the exercise equipment inside the main recreation building located on the Property.

- 12) The Applicant acknowledged that, within the Fit Dome, dropping weights and playing loud music to encourage its clients during exercise classes would make noise. The Applicant has indicated that it has taken steps to mitigate certain noise emanating from the Fit Dome by moving certain equipment to the main recreation building located on the Property.
- 13) Currently, the use of the Fit Dome has transitioned to more of a tennis facility for use by youth tennis players. Still, there remains some exercise equipment inside the Fit Dome.
- 14) James and Lois Bollini own property adjoining the Applicant's Property and share approximately 100 feet of a common property line. The Bollinis' home is located approximately 150-180 feet from the Fit Dome and is at a higher elevation. In certain areas of the Bollinis' home, the view is directly of the Fit Dome.
- 15) Since the Applicant's change in use in August 2017, the Bollinis have complained about loud, disruptive noise emanating from the Fit Dome at all hours of the day. The noise starts between 5:40 and 6:00 a.m., Monday-Friday, and consists of loud music and/or the sound of metal clanging against metal. The volume and timing of the noise is unpredictable but when it occurs it interferes with the Bollinis' use of their decks attached to their home.
- 16) There is no location in the Bollinis' home that the loud noises from the Fit Dome can't be heard. There is no place on the Bollinis' property that the loud noises from the Fit Dome can't be heard. Often times, the noise is so loud from the Fit Dome in the morning hours that it wakes up the Bollinis from their sleep. Lois Bollini testified that between August and November 2018, she has been awakened, no fewer than 50 times, before 6:30 a.m., due to the loud noise coming from the Fit Dome. Further testimony was elicited that the constant noise has had a detrimental effect on the lives of the Bollinis. The Bollinis are no longer able to enjoy their outdoor decks due to the noise from the Fit Dome.
- 17) Testimony was presented by several witnesses called by the Bollinis that have heard loud noises emanating from the Fit Dome and had to adjust their plans with the Bollinis to avoid interference with their activity from the noise. One witness played an audio recording of music, hand clapping, weights dropping and people yelling which was recorded on December 3, 2018 at or near the common property line of the Applicant and the Bollini property.
- 18) The Bollinis presented evidence through Mary Lisa Patty-Abbey, a licensed realtor, that loud noise, including music, banging and yelling, can prevent the reasonable use of the surrounding property and is not compatible with the surrounding residential neighborhood. Ms. Patty-Abbey testified that she has

heard the noise emanating from the Fit Dome and that its effect on the Bollinis' property would require disclosure on a North Carolina Residential Real Estate Disclosure form.

- 19) The use of the Fit Dome for an indoor recreational facility will have a detrimental effect on the value of adjoining property and associated residential uses.
- 20) The Applicant failed to present sufficient evidence that the use of the Fit Dome for an indoor recreational facility is in harmony with the general intent of the UDO.
- 21) The Applicant failed to present sufficient evidence that the use of the Fit Dome for an indoor recreational facility will be functionally compatible to the surrounding residential area.
- 22) The Applicant failed to present sufficient evidence that the use of the Fit Dome for an indoor recreational facility 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.

Pursuant to the foregoing FINDINGS OF FACT and UDO Chapter 16.11, the Board makes the following:

CONCLUSIONS OF LAW

- 1) The use of the Applicant's Property for an indoor recreation facility does not meet all requirements and specifications of the UDO and any adopted land use plans; is not in harmony with the general purpose and intent of the UDO; is not appropriate within a surrounding residential neighborhood; and does not preserve the UDO's spirit to uphold the expectation of residential zoning districts.
- 2) The use of the Applicant's Property for an indoor recreation facility is not, if developed according to the plan submitted, visually compatible with a residential neighborhood and is not functionally compatible with the surrounding area due to the hours, frequency and intensity of the noise from the Fit Dome.
- 3) The Applicant failed to submit or present competent, material and substantial evidence to establish that the proposed use or structure 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.
- 4) That Special Use Permit 18-004 should be denied.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the application of **Brevard Racquet Club/Michael Vandegrift** for a Special Use Permit seeking amendments to the original Special Exception Permit, and SEP-00-022, to allow for the use of the existing steel/fabric building to be used as an indoor recreation facility on property located at 1325 Country Club Rd., in the General Residential -4 zoning district, is hereby **DENIED**.

ORDERED this 14TH day of March, 2019

CITY OF BREVARD BOARD OF ADJUSTMENT

By: Judith A. Mathews
Judith A. Mathews, Chair

Attest:

Janice H. Pinson
Janice Pinson, Clerk to the Board



CITY of BREVARD

The mission of the City of Brevard is to promote a high quality of life, support economic prosperity, and cultivate community while honoring its heritage and culture

April 12, 2019

Josh Vandegrift, Owner
Brevard Tennis and Athletic Club
1325 N. Country Club Rd.
Brevard, NC 28712

Dear Mr. Vandegrift,

The Brevard Tennis and Athletic Club's request to amend its existing Special Exception Permit (SEP-00-022) was denied by the City of Brevard Board of Adjustment February 6, 2019. This request and records of the hearings is filed under Special Use Permit 18-004.

Following the Board's decision, I met with you and your attorney, Davis Whitfield-Cargile, February 20, 2019. The purpose of this meeting was to review changes made to the Fit Dome intended to bring it into compliance with SEP-00-022.

The meeting consisted of a general tour of the main buildings and a detailed review and inspection of the Fit Dome. A thorough explanation was provided describing the intended use of the Fit Dome as a tennis facility. Evidence of the changes made to the Fit Dome (see reverse) support this explanation.

Following this inspection, I believe the Fit Dome is in compliance with the original purpose and intent of SEP-00-022. More specifically, the tennis courts within the dome are intended to be used for tennis, and the workout equipment along the periphery of the dome will be utilized occasionally as part of tennis players' workout routines. These workouts and workout equipment are a secondary use of the structure.

March 15, 2019 an official copy of the Order and Findings of Fact supporting the Board's decision was mailed to you. Upon further review an error was discovered in this Order. The final Order references the previous Special Exception Permit as SEP-00-002. The correct reference to the existing and valid permit is SEP-00-022. A revised Order has been signed and provided to you and your attorney. If you have not received a copy of the revised Order, please let me know as soon as possible.

For purposes of zoning compliance this matter is now closed as the property is compliant with SEP-00-022.

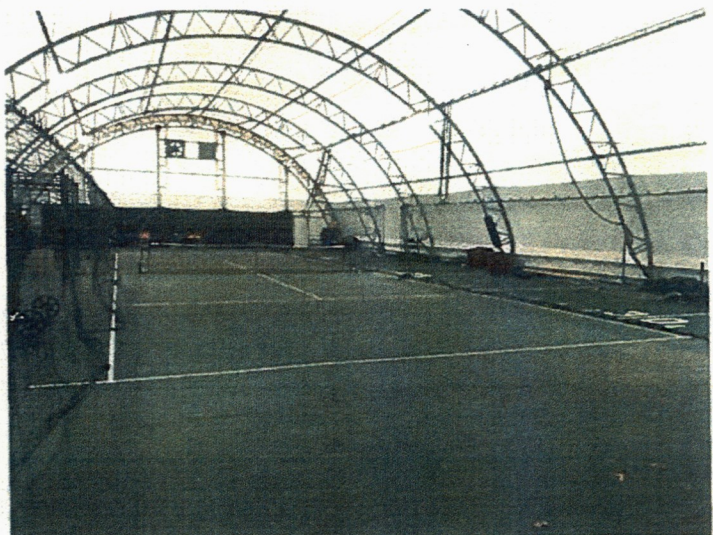
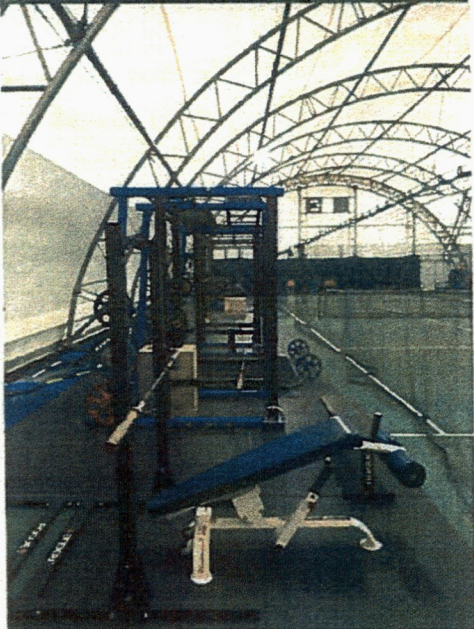
Page 1 of 2

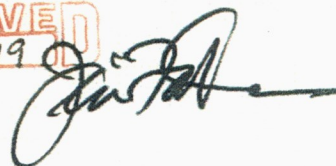
If you have any questions or would like to speak to me directly please do not hesitate to contact me at (828) 885-5630 or Daniel.cobb@cityofbrevard.com.

Sincerely,



Daniel Cobb, AICP, CFM, CZO
Planning Director



RECEIVED
6/24/19

June 24, 2019

James R. Fatland
City Manager, City of Brevard
95 W. Main Street
Brevard, NC 28712

Dear Mr. Fatland,

This is to inform you of a gross mishandling of the **Special Exception permit denial by the BOA on Feb. 6th**. The request was presented by the Brevard Racquet Club and heard by the Brevard Board of Adjustment between the months of August 2018 and February 2019. The BOA denied the Racquet Club's request to allow the existing fabric tennis court cover to be used as an Indoor Recreational Facility. By denying this request the Racquet Club was denied the ability to use the covered court for anything other than tennis. Tennis is what is permitted in that space thru their Special Exception Permit SEP-00-022.

We were just apprised of the contents of a letter written to the Racquet Club on April 12, 2019 by Daniel Cobb, City Planner. We had asked for a copy of this letter numerous times as we were concerned about the continued fitness activity next door. We finally received a copy of the letter on Thursday, June 20th. This letter, in essence, has overturned the ruling of the BOA. The letter gives certain individuals permission to use Fitness Equipment in the space permitted solely for a tennis court. The UDO clearly lists "Athletic Equipment" as an example of usages for an Indoor Recreational Facility. Again, an Indoor Recreational Building/Fitness was DENIED by the BOA on February, 6, 2018.

The letter states that individuals using the fitness equipment along the periphery of the dome can do so *occasionally* as part of a tennis players' workout routine. Please be advised that this equipment is being used by Adults on a daily basis, often three to four times a day. Often at 6:00am. This is in direct opposition to the ruling of the BOA, no matter if these individuals are tennis players or not. As a close neighbor and person in standing, we find the use of the Fitness Equipment to be a daily nuisance as was the premise of the two BOA hearings.

The Dome was erected in 2013. For four years it covered a regulation sized tennis court. The current court is a smaller version of a regulation tennis court thus allowing space along the perimeter for fitness equipment...a lot of fitness equipment. Attached are recent photos of the inside of the Dome with tennis court and fitness equipment, including medicine balls, large tractor tire, kettle bells, a rouge sled on AstroTurf, disc weights, mats, jump boxes, dumbbells (on and off the rack), free weights (on and off the rack), punching bag, rings, arm curl machine, etc.

Incidentally, to play a game of tennis, a tennis court requires a "run off area" on all four sides. This is a safety feature for the players. That distance is typically 16 feet on each of the four sides of the court. *See photos.*

We request that the letter of April 12, 2019 from Daniel Cobb to the Brevard Racquet Club be repealed and that the Racquet Club immediately be required to be in compliance with their Special Exception Permit as well as with the ruling of the BOA. We are requesting that you or someone from the planning department (who is familiar with the game of tennis) consider making a visit to this Dome to determine for yourself if this space if being used as permitted.

Attached is a copy of the letter we reference above.

Respectfully,

James C. Bollini
James C. Bollini

Lois J. Bollini
Lois J. Bollini

Attchments: Photos, letter

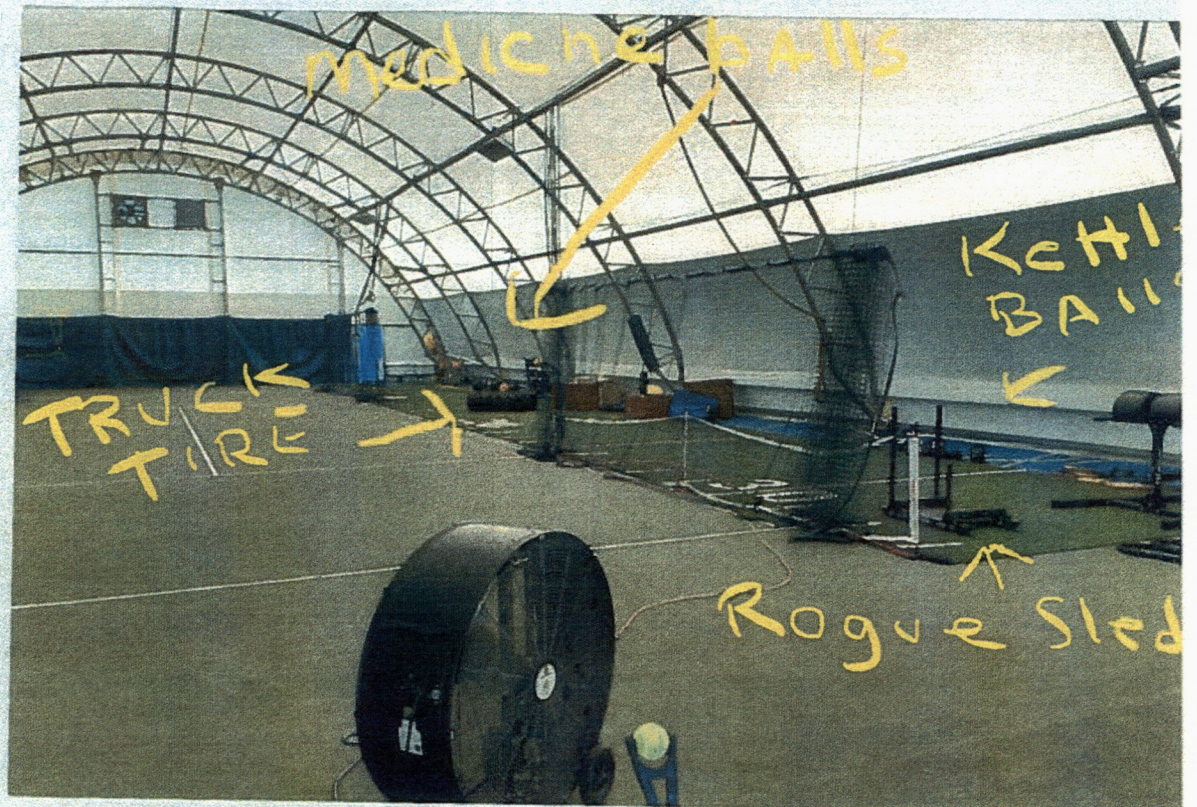
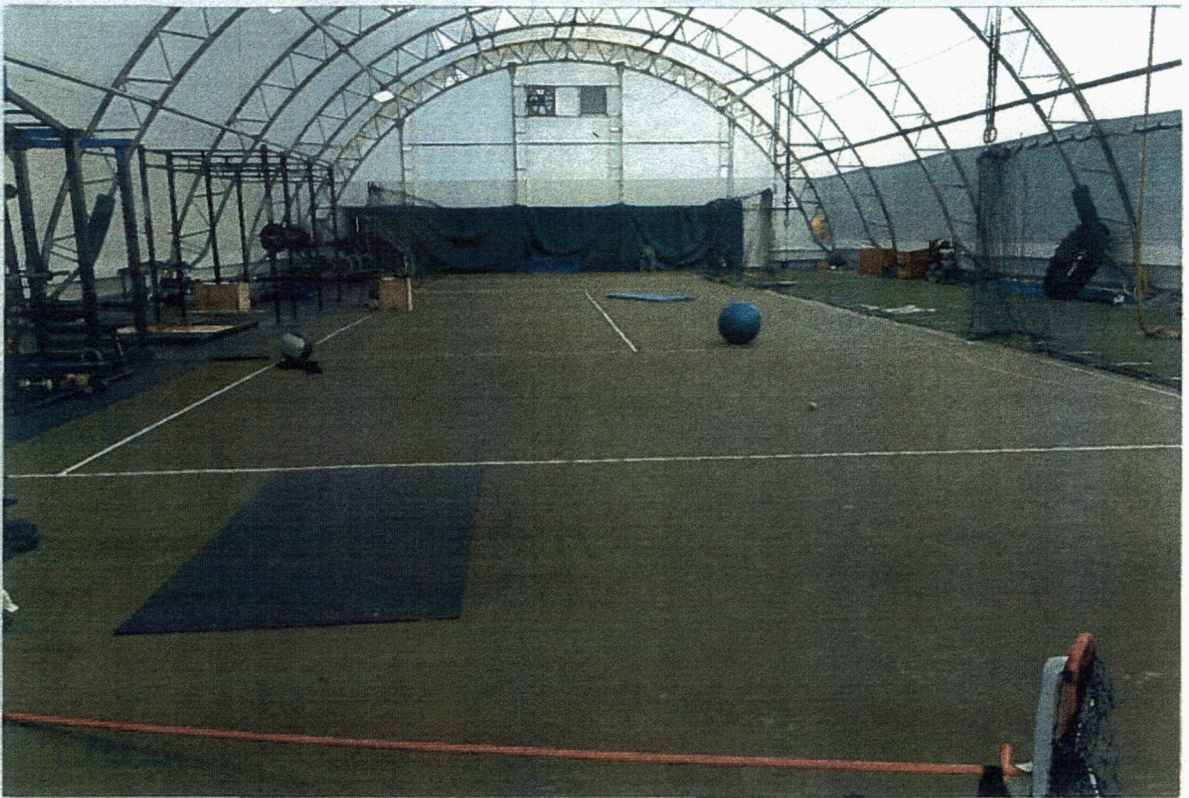
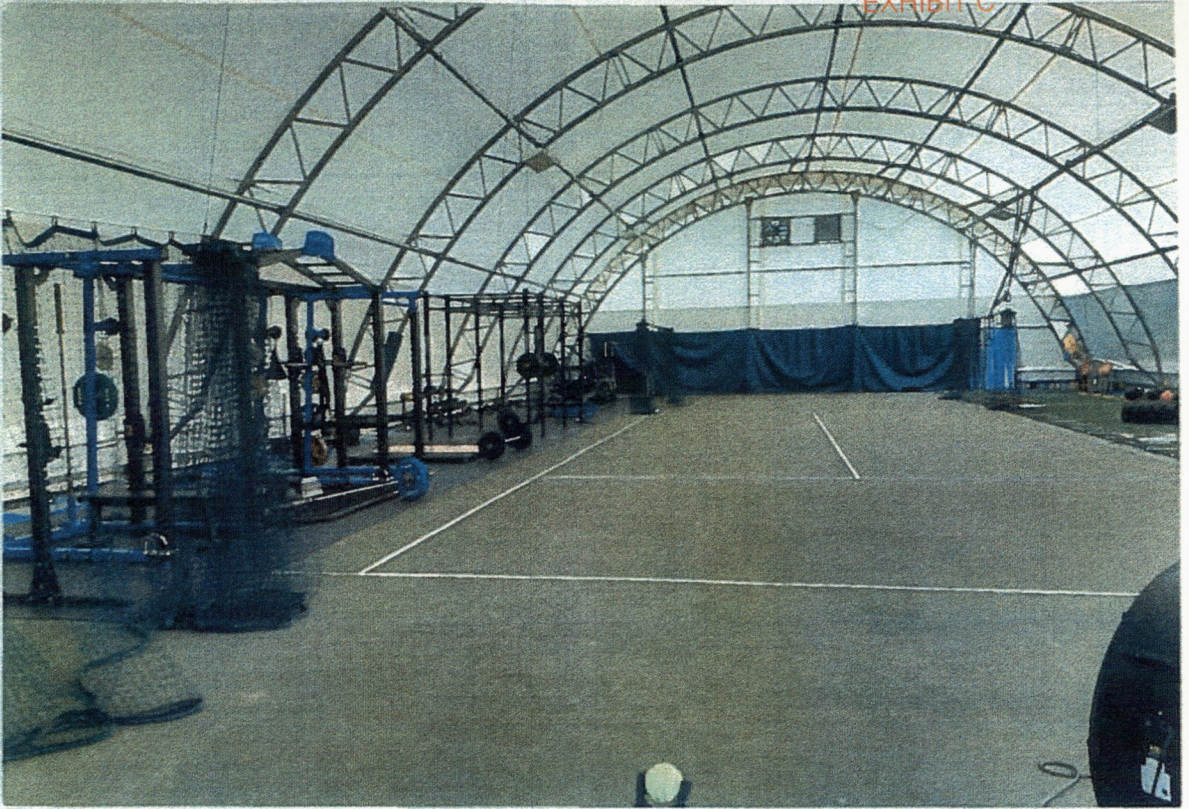




EXHIBIT C



Paul Ray

From: Paul Ray
Sent: Friday, August 16, 2019 4:25 PM
To: 'jbollini@comporium.net'
Cc: Jill Murray; Janice Pinson; Denise Hodsdon
Subject: Appeal
Attachments: Daniel_Cobb_Letter_Vandergrift_2019.04.12.pdf; Request for an Appeal.pdf

Mr. & Mrs. Bollini-

The City Clerk, via the City Manager's Office, received your letter dated June 24, 2019 requesting that Daniel Cobb's compliance letter to Josh Vandergrift, Brevard Racquet Club, dated April 12, 2019 be repealed on the grounds that the Racquet Club is not in compliance with their Special Use Permit, SEP-00-022. The Planning Department and the City Clerk's Office is considering your letter a formal request for an Administrative Appeal, under [Section 16.12A of the Unified Development Ordinance](#). The Planning Staff has reached out to the Board of Adjustment to see if a quorum can be met for a September 10th special called meeting.

If the intent of your letter was not a request for an Administrative Appeal, or if you no longer desire an Administrative Appeal, please let Jill Murray, City Clerk, know as soon as possible by U.S. Mail or by emailing her at jill.murray@cityofbrevard.com. We will get back to you soon with confirmation about the September 10th Board of Adjustment date and will provide you with more specific information.

Thank you,

Paul C. Ray
City of Brevard
Planning Director, Interim
828-885-5630

16.12. - Administrative appeals.

- A. *Applicability.* The BOA shall hear and decide appeals of decisions of administrative officials charged with enforcement of the UDO, including denials of category I and II land development permit applications. Any person who has standing under N.C.G.S. 160A-393(d) or the city may appeal a decision to the BOA. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
- B. *Notice of decision.* The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail and shall communicate the official's decision as well as the means whereby an appeal of that decision may be taken.
- C. *Administrative appeal procedure.*
1. The owner of the property or such other party as has received written notice of the decision, pursuant to subsection 16.12B., above, shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from any source of actual or constructive notice of the decision within which to file an appeal.
 2. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Unified Development Ordinance Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property for at least ten days. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.
 3. The official who made the decision shall transmit to the BOA all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
 4. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the BOA after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the regulations. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed.

Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the regulations shall not stay further review of an application for permits or permissions to use such property; in these situations the appellant may request, and the board may grant, a stay of a final decision of permit applications or building permits affected by the issue being appealed.

5. Subject to the provisions of paragraph (4), above, the board shall hear the appeal within 45 days of the date of filing such appeal, and shall render its decision within a reasonable time thereafter.
6. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all powers of the official who made the decision.
7. When hearing an appeal pursuant to N.C.G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in N.C.G.S 160A-393(k).
8. The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

(Ord. No. 8-07, § 1(K), 5-21-07; Ord. No. 15-08, §§ 43, 45, 12-5-08; Ord. No. 20-09, § 4(Exh. B(8)), 9-21-09; Ord. No. 2013-14, § 4, 11-18-13)

Editor's note— Ord. No. 2013-14, § 4, adopted Nov. 18, 2013, renumbered § 16-11 as § 16-12.



Davis Whitfield-Cargile <whitfieldcargilelaw@gmail.com>

Brevard Racquet Club - SUP 18-004

Daniel Cobb <Daniel.Cobb@cityofbrevard.com>
To: Davis Whitfield-Cargile <whitfieldcargilelaw@gmail.com>

Wed, Jun 26, 2019 at 3:44 PM

Davis:

As a follow up to our discussion this afternoon, attached are the photos which accompanied the letter addressed to Jim Fatland that I provided to you this afternoon. The letters and photos were received June 25, 2019.

While the Bollini's did not receive written notice of the City's decision (attached) until June 20, 2019, I met with both of them April 10, 2019 at 2:00 pm and verbally made them aware of the decision in the attached letter. Furthermore, the Bollini's and their attorney were provided a copy of the attached Order via email March 29, 2019.

Please let me know if you have questions.

Daniel Cobb, AICP, CFM, CZO

Planning Director

City of Brevard

95 West Main Street

Brevard, NC 28712

(828) 885-5630

daniel.cobb@cityofbrevard.com

www.cityofbrevard.com/planning

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized City or Law Enforcement official.

2 attachments

Letter_of_Compliance_SUP_18_004.pdf

<https://mail.google.com/mail/u/0?ik=42b713a49b&view=pt&search=all&permmsgid=msg-f%3A1637433576522381504&simpl=msg-f%3A16374335765...> 1/2

8/27/2019

Gmail - Brevard Racquet Club - SUP 18-004

 540K

 **Order_Brevard_Racquet_Club_SUP_18_004.pdf**
224K



CITY of BREVARD

The mission of the City of Brevard is to promote a high quality of life, support economic prosperity, and cultivate community while honoring its heritage and culture.

April 12, 2019

Josh Vandegrift, Owner
Brevard Tennis and Athletic Club
1325 N. Country Club Rd.
Brevard, NC 28712

Dear Mr. Vandegrift,

The Brevard Tennis and Athletic Club's request to amend its existing Special Exception Permit (SEP-00-022) was denied by the City of Brevard Board of Adjustment February 6, 2019. This request and records of the hearings is filed under Special Use Permit 18-004.

Following the Board's decision, I met with you and your attorney, Davis Whitfield-Cargile, February 20, 2019. The purpose of this meeting was to review changes made to the Fit Dome intended to bring it into compliance with SEP-00-022.

The meeting consisted of a general tour of the main buildings and a detailed review and inspection of the Fit Dome. A thorough explanation was provided describing the intended use of the Fit Dome as a tennis facility. Evidence of the changes made to the Fit Dome (see reverse) support this explanation.

Following this inspection, I believe the Fit Dome is in compliance with the original purpose and intent of SEP-00-022. More specifically, the tennis courts within the dome are intended to be used for tennis, and the workout equipment along the periphery of the dome will be utilized occasionally as part of tennis players' workout routines. These workouts and workout equipment are a secondary use of the structure.

March 15, 2019 an official copy of the Order and Findings of Fact supporting the Board's decision was mailed to you. Upon further review an error was discovered in this Order. The final Order references the previous Special Exception Permit as SEP-00-002. The correct reference to the existing and valid permit is SEP-00-022. A revised Order has been signed and provided to you and your attorney. If you have not received a copy of the revised Order, please let me know as soon as possible.

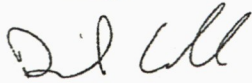
For purposes of zoning compliance this matter is now closed as the property is compliant with SEP-00-022.

Page 1 of 2

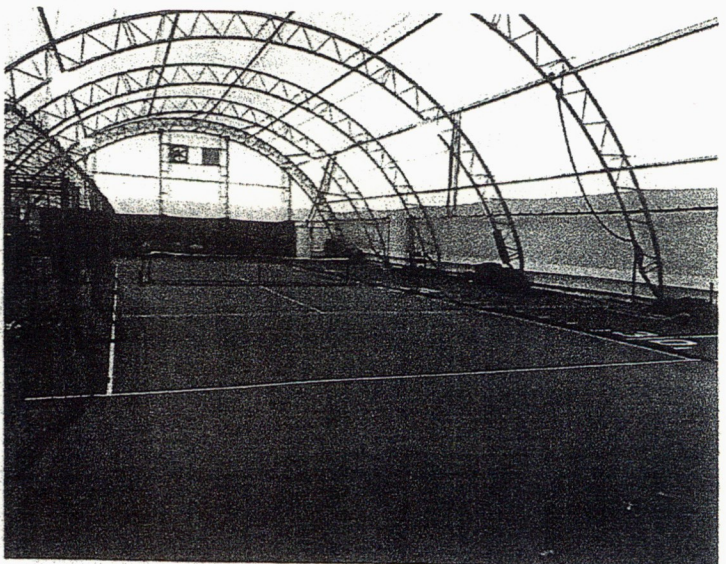
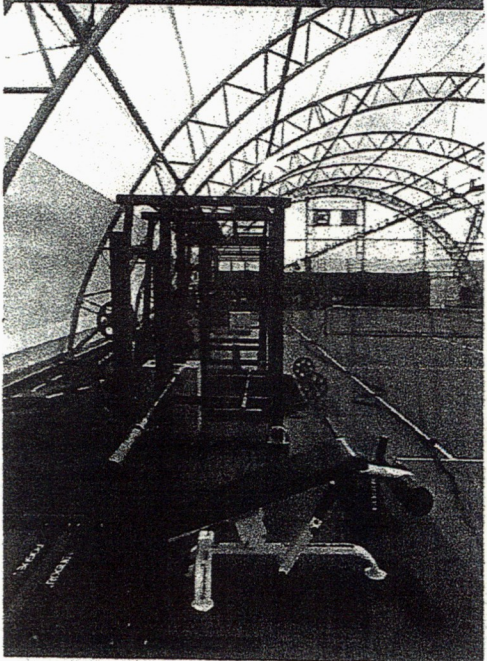
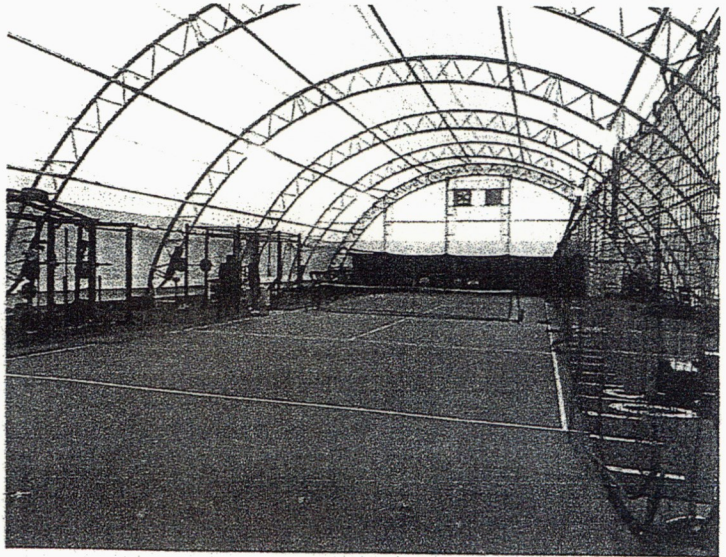
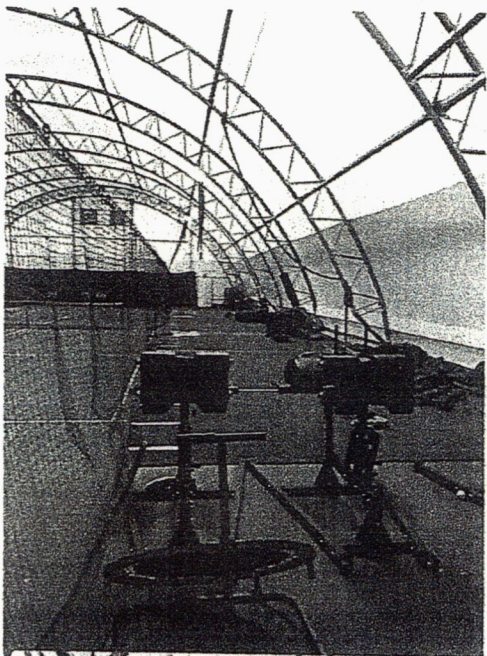
Planning Department | (828) 885-5630
95 West Main Street | Brevard, North Carolina 28712 | www.cityofbrevard.com

If you have any questions or would like to speak to me directly please do not hesitate to contact me at (828) 885-5630 or Daniel.cobb@cityofbrevard.com.

Sincerely,



Daniel Cobb, AICP, CFM, CZO
Planning Director



RECEIVED
6/24/19



June 24, 2019

James R. Fatland
City Manager, City of Brevard
95 W. Main Street
Brevard, NC 28712

Dear Mr. Fatland,

This is to inform you of a gross mishandling of the **Special Exception permit denial by the BOA on Feb. 6th**. The request was presented by the Brevard Racquet Club and heard by the Brevard Board of Adjustment between the months of August 2018 and February 2019. The BOA denied the Racquet Club's request to allow the existing fabric tennis court cover to be used as an Indoor Recreational Facility. By denying this request the Racquet Club was denied the ability to use the covered court for anything other than tennis. Tennis is what is permitted in that space thru their Special Exception Permit SEP-00-022.

We were just apprised of the contents of a letter written to the Racquet Club on April 12, 2019 by Daniel Cobb, City Planner. We had asked for a copy of this letter numerous times as we were concerned about the continued fitness activity next door. We finally received a copy of the letter on Thursday, June 20th. This letter, in essence, has overturned the ruling of the BOA. The letter gives certain individuals permission to use Fitness Equipment in the space permitted solely for a tennis court. The UDO clearly lists "Athletic Equipment" as an example of usages for an Indoor Recreational Facility. Again, an Indoor Recreational Building/Fitness was DENIED by the BOA on February, 6, 2018.

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We request that the letter of April 12, 2019 from Daniel Cobb to the Brevard Racquet Club be repealed and that the Racquet Club immediately be required to be in compliance with their Special Exception Permit as well as with the ruling of the BOA. We are requesting that you or someone from the planning department (who is familiar with the game of tennis) consider making a visit to this Dome to determine for yourself if this space is being used as permitted.

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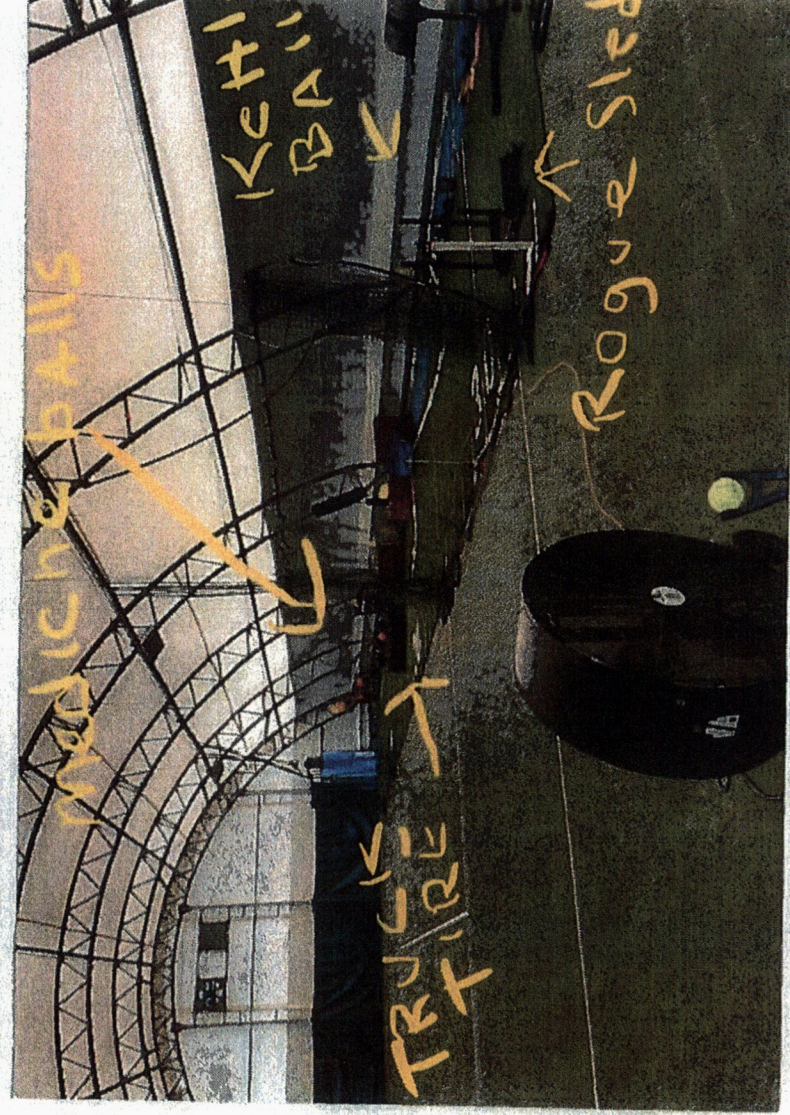
Respectfully,

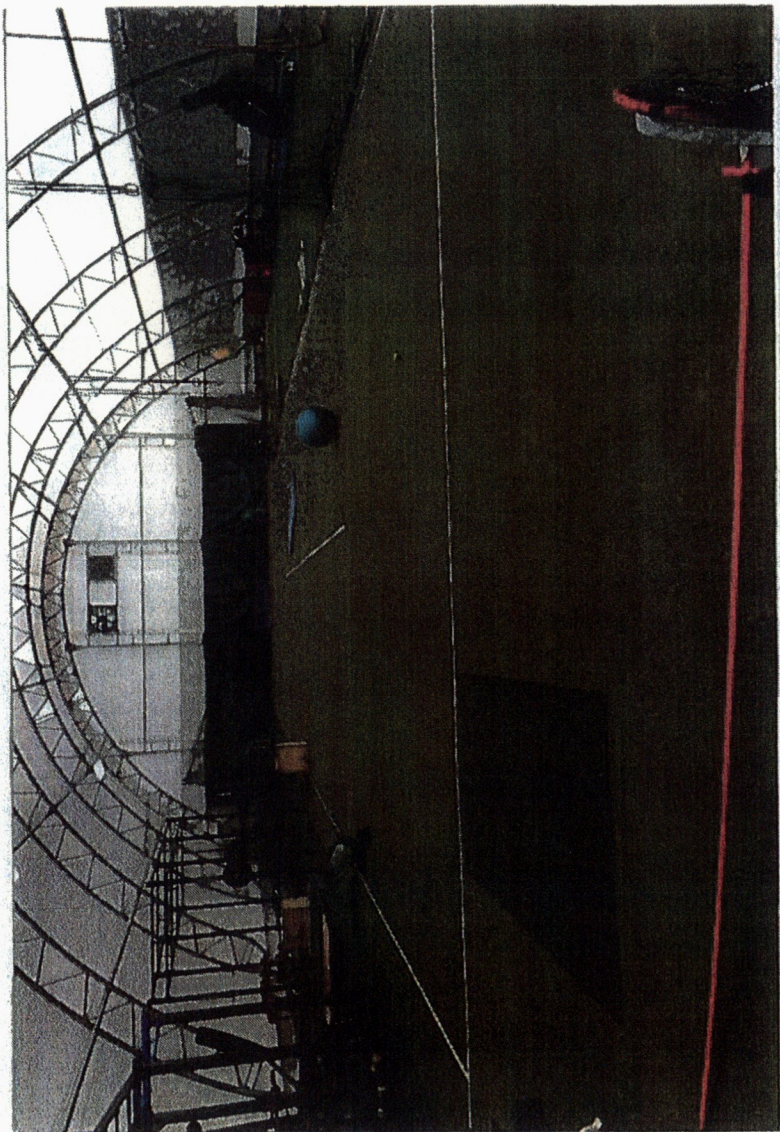
James C. Bollini
James C. Bollini

Lois J. Bollini
Lois J. Bollini

Attachments: Photos, letter

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Davis Whitfield-Cargile

From: Janice Pinson <Janice.Pinson@cityofbrevard.com>
Sent: Wednesday, August 28, 2019 2:20 PM
To: Davis Whitfield-Cargile
Cc: Aaron Bland; Bryan Brightbill; Paul Ray
Subject: RE: BHRC

Davis,

I am happy to set up a meeting with Paul for next week. Please let me know what dates and times work best for you. The office will be closed on Monday for Labor Day.

The only meeting I show this year between Daniel and the Bollini's was April 10, 2019. I do not show meetings in May and/or June on our outlook calendar.

I will be in touch about the emails.

Thank you,

Janice H. Pinson
 Administrative Services Manager
 City of Brevard Planning Department
 95 West Main Street
 Brevard, NC 28712

828.885.5630
 828.885.5625 (fax)

email: janice.pinson@cityofbrevard.com
 web: www.cityofbrevard.com/planning

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized City or Law Enforcement official.

From: Davis Whitfield-Cargile [mailto:whitfieldcargilelaw@gmail.com]
Sent: Tuesday, August 27, 2019 5:05 PM
To: Paul Ray <paul.ray@cityofbrevard.com>; Janice Pinson <Janice.Pinson@cityofbrevard.com>
Subject: BHRC

Paul/Janice:

I hope you are both well. I have two requests: First, I'd like to set up a meeting with Paul next week if possible to discuss the Bollini's appeal of Daniel's determination. Also, I understand Daniel had meeting(s) in April, May

Davis Whitfield-Cargile

From: Daniel Cobb <Daniel.Cobb@cityofbrevard.com>
Sent: Tuesday, March 26, 2019 8:47 AM
To: Davis Whitfield-Cargile; Janice Pinson
Subject: RE: BHRC

Hi Davis,

The decision remains the same. I will prepare a letter today and send it over for your review. I apologize for the delay.

Thanks,
Daniel

From: Davis Whitfield-Cargile <whitfieldcargilelaw@gmail.com>
Sent: Wednesday, March 20, 2019 7:11 AM
To: Daniel Cobb <Daniel.Cobb@cityofbrevard.com>; Janice Pinson <Janice.Pinson@cityofbrevard.com>
Subject: BHRC

Daniel:

When you and I met with Josh Vandegrift at the Racquet Club facility in February, you agreed that the activities under the Domed Tennis Court were within the existing SUP for the facility and were going to write a letter to that effect. I have not seen a copy of that letter yet. I wanted to drop you a letter to make sure you were still going to do that, and that your decision that day has not changed.

Thank you.

Davis

Davis Whitfield-Cargile

From: Daniel Cobb <Daniel.Cobb@cityofbrevard.com>
Sent: Tuesday, March 26, 2019 4:15 PM
To: Davis Whitfield-Cargile
Subject: Racquet Club Letter
Attachments: Letter_of_Compliance_SUP_18_004.pdf

Davis,

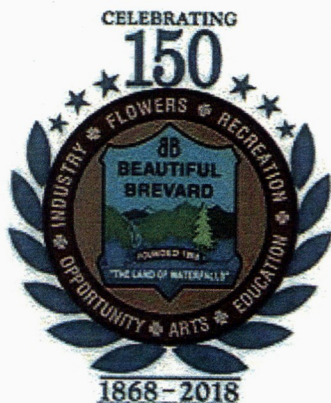
The IT wizards did their thing. Attached is a draft letter for the Racquet describing its compliance with SEP-00-22.. If you feel this summary reflects our conversations let me know and I will print a final copy on letterhead for everyone's files.

Thanks,

Daniel Cobb, AICP, CFM, CZO
Planning Director
City of Brevard
95 West Main Street
Brevard, NC 28712
(828) 885-5630
daniel.cobb@cityofbrevard.com

www.cityofbrevard.com/planning

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized City or Law Enforcement official.



March 26, 2019

Josh Vandegrift, Owner
Brevard Tennis and Athletic Club
1325 N. Country Club Rd.
Brevard, NC 28712

Dear Mr. Vandegrift,

The Brevard Tennis and Athletic Club's request to amend its existing Special Exception Permit (SEP-00-022) was denied by the City of Brevard Board of Adjustment February 6, 2019. This request and records of the hearings is filed under Special Use Permit 18-004.

Following the Board's decision, I met with you and your attorney, Davis Whitfield-Cargile, on February 20, 2019. The purpose of this meeting was to review changes made to the Fit Dome to bring it into compliance with SEP-00-022. The meeting consisted of a tour of the facilities and explanation of the courts within the Fit Dome were designed to be utilized.

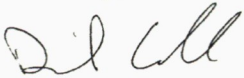
Upon inspection I believe the Fit Dome is in compliance with the original purpose and intent of SEP-00-022. Evidence of this compliance is included on the reverse of this letter in a series of photographs. The workout equipment included in the photos is a secondary use to the tennis courts and will and use on occasion as part of tennis players workout routine.

On March 15, 2019 an official copy of the Order and Findings of Fact supporting the Board's decision was mailed to you. Upon further review an error was discovered in this Order. The final Order references the previous Special Exception Permit as SEP-00-002. The correct reference to the existing and valid permit is SEP-00-022. A revised Order is being prepared.

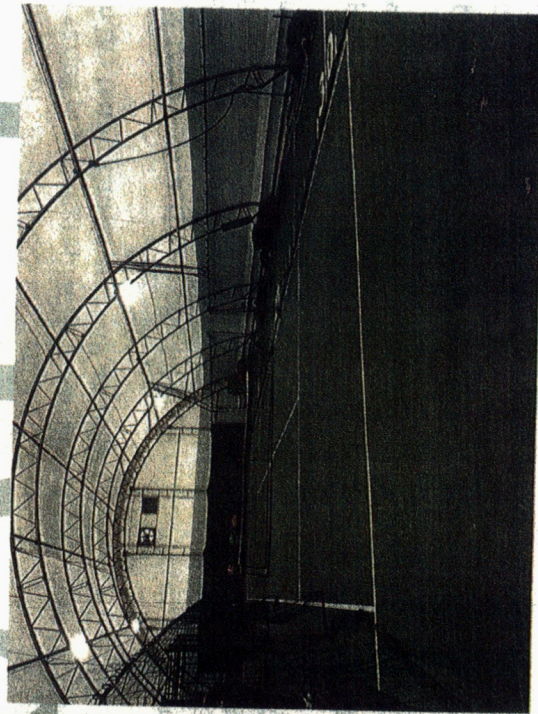
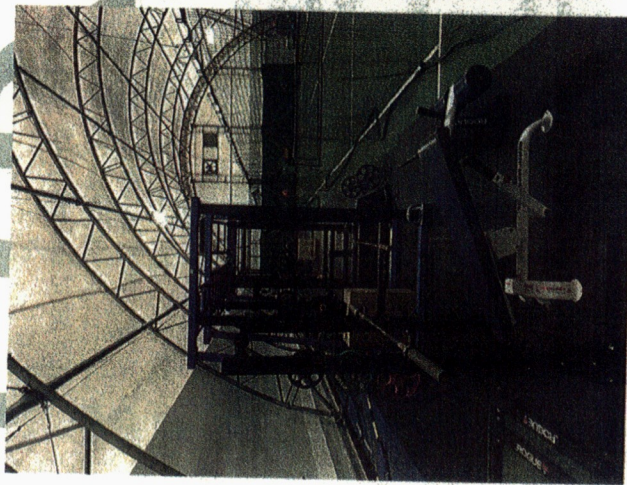
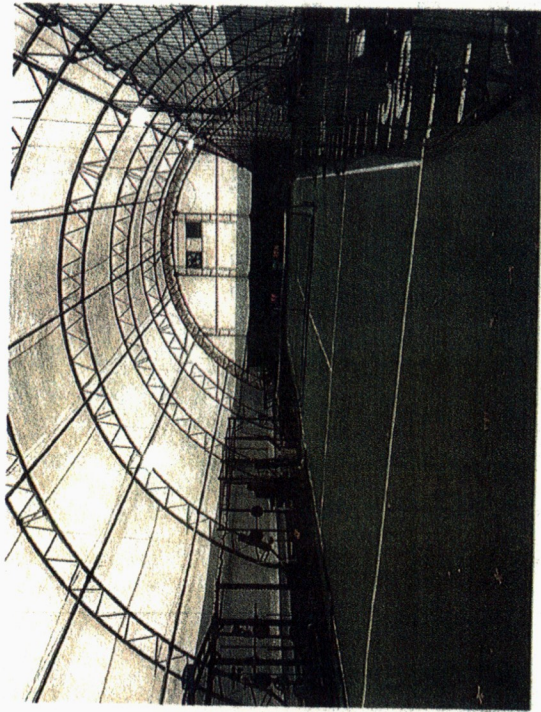
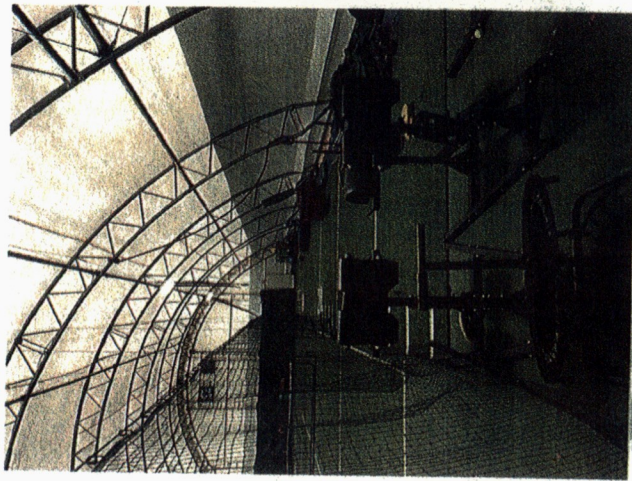
For purposes of zoning compliance this matter is now closed as the property is compliant with SEP-00-022.

If you have any questions or would like to speak to me directly please do not hesitate to contact me at (828) 885-5630 or Daniel.cobb@cityofbrevard.com.

Sincerely,



Daniel Cobb, AICP, CFM, CZO
Planning Director



DRIFT AREA

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> <BOA_Adopted_Minutes_2018.12.04.pdf>
> <Exhibits_BOA_2018_12_04.pdf>
> <Adopted_BOA_Minutes_2019.01.08.pdf>
> <BOA_Adopted_Minutes_2019.01.22.pdf>
> <Adopted_BOA_Minutes_2019.02.05.pdf>
> <Adopted_BOA_Minutes_2019.02.06.pdf>

APPLICANT'S EXHIBIT "F"

Lois Bollini <lois25@gmail.com>

Tue, May 21, 2019 at 4:20 PM

To: Janice Pinson <Janice.Pinson@cityofbrevard.com>

Janice,

When he has time, we'd like a copy of the compliance letter from Daniel to RClub as mentioned in his March 4 email.

Thanks for reminding him.

Lois

You never know when you're making a memory.

[Quoted text hidden]

[Quoted text hidden]

Janice Pinson <Janice.Pinson@cityofbrevard.com>

Wed, May 22, 2019 at 10:17 AM

To: Lois Bollini <lois25@gmail.com>

c: Daniel Cobb <Daniel.Cobb@cityofbrevard.com>

Lois,

I have reminded Daniel that you have requested the letter and he said that he is aware and it is on his to-do list.

Enjoy the day!

[Quoted text hidden]

[Quoted text hidden]

Daniel Cobb <Daniel.Cobb@cityofbrevard.com>

Mon, Mar 4, 2019 at 10:04 AM

To: Lois Bollini <lois25@gmail.com>, Janice Pinson <Janice.Pinson@cityofbrevard.com>

Hi, Lois,

Janice is out for a couple days.

I met with the Racquet Club a few days ago. They did not say anything about an appeal and have made changes to the arrangement of the dome. I am reviewing those changes and will provide a letter stating whether or not they are now in compliance with their original permit. If they are in compliance an appeal is likely unnecessary.

I will provide a copy of the letter once it is prepared.

Daniel Cobb, AICP, CFM, CZO
Planning Director
City of Brevard
95 West Main Street
Brevard, NC 28712
(828) 885-5630
daniel.cobb@cityofbrevard.com
[Quoted text hidden]

Lois Bollini <lois25@gmail.com>

Mon, Mar 4, 2019 at 12:18 PM

To: Daniel Cobb <Daniel.Cobb@cityofbrevard.com>
Bcc: dcampen@brevardnclaw.com

Thank you.

Hopefully they will be no louder than a tennis match.

Lois n Jim

You never know when you're making a memory.

[Quoted text hidden]

Lois Bollini <lois25@gmail.com>

Wed, Mar 13, 2019 at 12:23 PM

To: Daniel Cobb <Daniel.Cobb@cityofbrevard.com>
Cc: Janice Pinson <Janice.Pinson@cityofbrevard.com>

Hi, Daniel and Janice.

Any news on the Superior Court possibility?

Lois and Jim Bollini

Sent from my iPad

> On Mar 4, 2019, at 10:04 AM, Daniel Cobb <Daniel.Cobb@cityofbrevard.com> wrote:
>

[Quoted text hidden]

April 10 meeting w/ Daniel 4/10

- 1.) Fitness ^{Eq.} being used.
- 2.) Asked about the compliance letter.
- 3.) HE said Fitness Equipment was being stored.



Lois Bollini <lois25@gmail.com>

It was about a year ago that we were here asking that our complaint...

1 message

Lois Bollini <lois25@gmail.com>
To: Jim Bollini <jbollini@comporium.net>

City Council

Mon, Apr 15, 2019 at 4:15 PM

It was about a year ago that we were here asking that our complaint about the Fitness Activities being used in an approved covered tennis court be expedited.

A lot has happened since that time. The Racquet Club was found out of compliance with their Special Exception Permit which led to their applying to the Board of Adjustment to make the Dome a Recreational Building. The Board of Adjustment turned the application down at their meeting in August. In September, the Board granted a request for a rehearing on the topic of Recreational Building.

The rehearing was quite lengthy, with a total of five meetings, lasting over 20 hours from early December thru early February. The Board of Adjustment, a panel of dedicated citizens, deserve much credit for their many hours of service. In the end, the Board again denied the request for Fitness inside the FitDome. The Dome was to remain a covered tennis court.

A full two months after the Ruling, we returned to our home from Florida and were disappointed to still hear fitness activities coming from the Covered Tennis Court. We met with Daniel Cobb to express our concerns. He informed us he had toured the Racquet Club facility with the owner and his attorney. In the Dome, he saw a tennis court as well as some Fitness Equipment that is being stored.

We are hopeful that the Planning Department will be diligent in the enforcement of "tennis only". We are concerned that there are Racquet Club members who still use the Dome for fitness. The Board of Adjustment has made their ruling. We ask that the Planning Department require the Racquet Club to stay in total compliance with their Special Exception Permit.

Sent from my iPad

Daniel WAS at this meeting. He heard Jim's plea to City Council.

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> <BOA_Adopted_Minutes_2018.12.04.pdf>
> <Exhibits_BOA_2018_12_04.pdf>
> <Adopted_BOA_Minutes_2019.01.08.pdf>
> <BOA_Adopted_Minutes_2019.01.22.pdf>
> <Adopted_BOA_Minutes_2019.02.05.pdf>
> <Adopted_BOA_Minutes_2019.02.06.pdf>

Lois Bollini <lois25@gmail.com>

Tue, May 21, 2019 at 4:20 PM

To: Janice Pinson <Janice.Pinson@cityofbrevard.com>

Janice,

When he has time, we'd like a copy of the compliance letter from Daniel to RClub as mentioned in his March 4 email.

Thanks for reminding him.

Lois

You never know when you're making a memory.

[Quoted text hidden]

[Quoted text hidden]

Janice Pinson <Janice.Pinson@cityofbrevard.com>

Wed, May 22, 2019 at 10:17 AM

To: Lois Bollini <lois25@gmail.com>

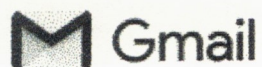
Cc: Daniel Cobb <Daniel.Cobb@cityofbrevard.com>

Lois,

I have reminded Daniel that you have requested the letter and he said that he is aware and it is on his to-do list.

Enjoy the day!

[Quoted text hidden]



Lois Bollini <lois25@gmail.com>

RClub

1 message

Lois Bollini <lois25@gmail.com>
To: Daniel.Cobb@cityofbrevard.com
Bcc: jbollini@comporium.net

Tue, Jun 4, 2019 at 7:45 AM

Daniel,

We are still waiting for a copy of the letter from the City to the Racquet Club regarding their compliance. We are trying to complete our file on the recent hearing to file away.

Please be advised that the Fitness Equipment that is stored inside the Dome is being used frequently by individuals. We would appreciate the City making an effort to bring the Club into compliance. A phone call may be all that's needed. Last night between 7:00 and 7:45 is one example, as well as weekend afternoons.

Thank you Daniel. We appreciate your assistance.

Lois and Jim Bollini

You never know when you're making a memory.



Lois Bollini <lois25@gmail.com>

Racquet Club

4 messages

Lois Bollini <lois25@gmail.com>

Thu, Jun 20, 2019 at 8:00 AM

To: Daniel.Cobb@cityofbrevard.com

Cc: janice.pinson@cityofbrevard.com

Bcc: gdaniel@comporium.net, jbollini@comporium.net

Daniel,

Please forward to us a copy of the Compliance Letter to the Racquet Club that was sent by the City in April or in May regarding the recent BOA rehearing. Your email to us on March 4 indicated you would provide us with a copy of the letter once it was prepared. We have requested it numerous times and still have not received it.

We also want you to know that the fitness activities in the Tennis Dome has increased and has become a daily occurrence. There are individuals using the fitness equipment in the Dome on a daily basis. They were working out in the Dome at 5:45 this morning.

Thanking you in advance for your cooperation.

Lois and Jim Bollini

P.S. We wish you well in your new position in Mills River.

You never know when you're making a memory.

Daniel Cobb <Daniel.Cobb@cityofbrevard.com>

Thu, Jun 20, 2019 at 8:44 AM

To: Lois Bollini <lois25@gmail.com>

Cc: Janice Pinson <Janice.Pinson@cityofbrevard.com>

Attached.

Thank you for the congratulations.

Daniel Cobb, AICP, CFM, CZO

Planning Director

City of Brevard

95 West Main Street

Brevard, NC 28712