

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, November 2, 2021 – 3:00 PM – Council Chambers

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, November 2, 2021, at 3:00 PM in Council Chambers of City Hall.

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

Staff Present: Paul Ray, Planning Director
Katherine Buzby, Planner
Janice Pinson, Board Clerk
Brian Gulden, Board Attorney

Others: William Earl Newman, Jr. and wife, Pam Newman – Applicants

I. WELCOME

Chair J. 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

Mr. Jones moved seconded by Mr. Fogel, to approve the agenda as presented, carried unanimously.

V. APPROVAL OF MINUTES

Mr. Jones moved, seconded by Dr. Delzell that the September 7, 2021, minutes be approved as presented. Motion carried unanimously.

VI. NEW BUSINESS

a. Consideration of Application for Special Use Permit #SUP-21-005 by William Earl Newman, Jr. to allow an existing landscaping business to operate as legally conforming in a General Residential zoning district as allowed per UDO Chapter 3.35 with a special use permit, property is located at 1692 Old Hendersonville Highway, Pisgah Forest, NC within the Extraterritorial Jurisdiction of the City of Brevard, in a General Residential (GR) zoning district and further identified by PIN# 8596-67-3396-000.

Chair Mathews opened the hearing and explained quasi-judicial procedures.

The following were sworn by the Board Clerk: Paul Ray, Planning Director, Pam and William Newman, Applicants

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

Chair Mathews asked the Applicants if they had any objections to the board seated to hear the matter. There were none.

Paul Ray, Planning Director, stated that the matter had been properly advertised, the property posted and the neighbors notified. He presented his staff report which is attached hereto and labeled, Exhibit "A".

Pam Newman, Applicant, testified that they applied for the special use permit in order to come into compliance with the use of their property that has been in existence for 12 years. If the special use permit is granted they want to move forward with the hearing of a variance request to place an accessory structure on their property in an area that is less prone to flooding. She explained that their business tries to recycle all of their products, wood, wood chips, etc.

Mr. Ray instructed the Board that UDO Chapter 3.35, 1-9 must be in compliance by the Applicants before moving forward with their decision to grant the special use permit.

Mr. Jones led the Board in a discussion of items 1-9 and asked the Applicants if they could comply.

The Applicants responded that they could comply.

There being no further questions. Chair Mathews closed the hearing.

Mr. Jones made the following motion:

With regard to Case No. SUP-21-005, the application of William Earl Newman, Jr., seeking a Special Use Permit, to allow an existing landscaping business to operate in a General Residential zoning district, on property located at 1692 Old Hendersonville Highway, Pisgah Forest, North Carolina within the Extraterritorial Jurisdiction (ETJ) of the City of Brevard, I move the Board to **GRANT** the application based upon the following findings of fact:

a) The use meets all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit;

The business has been in operation for 12 years and can comply with UDO Chapter 3.35 1-9 to continue operations.

b) The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible with the surrounding area; and

The business has been in operation for 12 years without any known complaints from neighbors.

c) 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.

The business meets the UDO requirements to continue operations and has not been injurious to the public health, safety or welfare, nor detrimental to the value of adjoining properties and associated uses.

Accordingly, I further move the Board to grant the requested special use permit in accordance with and only to the extent represented in the application and plans.

Mr. Fogel seconded, the motion carried unanimously.

b. Request of William E. Newman, Jr. for a variance from UDO Chapter 4.8.F.2 Accessory Structure location on a lot with a non-residential use. The property is located in the General Residential (GR) zoning district with the address of 1692 Old Hendersonville Highway within the Extraterritorial Jurisdiction of the City of Brevard, further identified by PIN# 8596-67-3396-000.

Chair Mathews opened the hearing.

Paul Ray, Planning Director stated that the property was posted, advertised and letters mailed to adjoining property owners as required by state law. He then presented his staff report which is attached hereto and labeled, Exhibit "B".

Mr. Ray and Attorney Gulden explained how front setbacks are determined. Also, noting that the floodplain development standards would still need to be met and cannot be varied.

Mr. Ray explained that any new structure if allowed, would be required to meet the current setback requirements. 15' front from the edge of the right of way and 6' side from property line.

Mr. Newman stated that they plan to remove a structure to comply with the ordinance and plan to clean up the property.

Mr. Fogel made the following motion:

With regard to variance request VAR-21-004, the application of William E. Newman, Jr., for a variance from UDO, Chapter 4.8.F.2, which regulates the location of accessory buildings on lots with non-residential uses, for property located at 1692 Old Hendersonville Highway, Pisgah Forest, North Carolina within the Extraterritorial Jurisdiction (ETJ) of the City of Brevard, I move the Board to **GRANT** the application based upon the following findings of fact:

- a) that unnecessary hardship would result from the strict application of the regulations; that hardship would result because the property is located in the 100 year floodplain.
- b) the hardship results from conditions that are peculiar to the property such as location size or topography;
that the only portion of the property that does not flood is located in the front of the primary structure; the property is almost totally located in the 100 year floodplain.
- c) the hardship did not result from actions taken by the applicant or the property owner;
and
the property is located in the 100 year floodplain
- d) the requested variance is consistent with the spirit purpose and intent of the regulations such that Public Safety is secured and substantial Justice achieved.

Accordingly, I further move the board to Grant the requested variance in accordance with and only to the extent represented in the application and plans and subject to the following conditions:

Applicant is required to meet the current UDO setback requirements for the new structure, 15' front from the edge of the right of way and 6' side from property lines, and to be in compliance with existing floodplain development regulations.

Applicant is required to tear down and remove existing accessory structure within a reasonable amount of time after the new structure is built in order to comply with the UDO requirement that there only be one (1) primary and two (2) secondary structures on the parcel. See attached Exhibit "C".

K. Jones seconded the motion. The motion carried unanimously.

VII. UNFINISHED BUSINESS – None.

VIII. REMARKS –

Pam Newman complimented Paul Ray and Janice Pinson for helping them through the process.

Attorney Gulden advised the Board to add the approval of Orders to their future Agendas to make sure they are in compliance with NCGS 160D.

IX. ADJOURN

Mr. Jones moved, seconded by Mr. Tartt that the meeting adjourn. Motion carried. Meeting adjourned at 3:50 PM.

Janice H. Pinson, Board Clerk

Judith A. Mathews, Chair