



AGENDA
BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING
Tuesday, February 7, 2023 - 3:00 PM
City Council Chambers

I. Welcome

II. Introduction of Board Members

III. Certification of Quorum

IV. Approval of Agenda

V. Approval of Minutes

- a. January 3, 2023

VI. Approval of Orders

VII. New Business

Consideration of application #VAR-23-001 by Trent Hardin, Agent, for a variance from UDO Chapter 10.5.G.2 to allow parking in the front. The property is located

- a. in the zoning jurisdiction of the City of Brevard in the Corridor Mixed Use (CMX) zoning district, further identified by PIN# 8597-43-0528-000.

VIII. Unfinished Business

IX. Remarks

X. Adjourn

Agenda Posted, Website, Sunshine List (February 1, 2023)
Janice H. Pinson, Board Clerk

To review Agenda materials, go to the City's website www.cityofbrevard.com. Select "Your Government" tab followed by "Council Agenda Packet" tab. Agenda packet materials are posted on Friday afternoon prior to the Board of Adjustment's Tuesday afternoon meeting.

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, January 3, 2023 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, January 3, 2023, at 3:00 PM.

Members Present: Kevin Jones, Chair
Judith Mathews, Vice Chair
Allen Delzell
Peter Offen
Tad Fogel

Staff Present: Katherine Buzby, Planner
Janice Pinson, Board Clerk
Brian Gulden, Board Attorney

Others: Mr. and Mrs. Hiro Fukai, Crossroads Property Solutions, LLC

I. WELCOME

Chair K. Jones 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 K. Jones had the Clerk certify that a quorum of the Board was present.

IV. APPROVAL OF AGENDA

Motion to approve the agenda by T. Fogel, second by P. Offen, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the November 1, 2022, meeting by J. Mathews, second by A. Delzell, carried unanimously.

VI. NEW BUSINESS:

a) New Business

a. Request of Hiro Fukai, Crossroads Property Solutions, LLC, VAR-22-010 for a variance from UDO Chapter 2.3.C for a reduction of the rear setback requirement of 25' to allow an 8' setback on the rear property line. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district, further identified by PIN# 8586-75-7159-000.

Chair Jones went over the protocol for quasi-judicial proceedings.

He polled the board as to exparte communications and conflicts of interest, and there were none. Three board members viewed the property separately, A. Delzell, T. Fogel and K. Jones, and all spoke with no one.

Applicant was polled as to conflicts with any board members, and there were none.

Mr. and Mrs. Fukai, Applicants and Katherine Buzby, Planner were sworn.

Chair Jones opened the hearing.

Katherine Buzby, Planner, presented her staff report a portion of which follows:

Background

The applicant, Hiro Fukai, owns a house and a parcel of land at 82 Poplar Street, which is located in the General Residential-8 (GR-8) zoning district within the corporate limits of the City of Brevard. The parcel identification number is 8586-75-7159-000.

The current Unified Development Ordinance (UDO) rear yard setback requirement is 25 feet in the GR-8 zoning district. The applicant is asking for a 17' variance, as he is building a 16'x30' deck with an ADA ramp that will encroach' into the current rear yard setback, which will leave an 8' setback to the current rear yard property line.

Discussion

A plat recorded in 2008 at the Register of Deeds indicates that the rear yard (at the time of recording) was determined to be on the east side of the property. The applicant is constructing a deck (16'x30') with an ADA ramp on the east side of the property that extends into south side of the property.

The current UDO standards determine the rear yard is the opposite yard to the street frontage, making his rear yard the south side of the property. At the time of the survey recording, the ordinance standards may have been different, and the rear yard was determined to be the east side of the parcel.

Under current regulations, the new deck and ramp will require a variance of 17' leaving the current rear yard setback at 8'. The deck will also be built in the 100-year floodplain but will follow all UDO and FEMA standards.

Ms. Buzby stated that the property was posted, letters mailed to neighbors and properly advertised according to NCGS 160D. She further stated that the Applicant was in the process of following the required floodplain development regulations.

Mr. Fukai testified as follows: He began with a rendering of the proposed deck and handicap ramp. He stated that his father is handicapped and because they want him to be able to visit their home, they need the ramp. He further testified that the deck would help them enjoy their yard because presently the water drains and collects in their yard and keeps it very moist, and that the deck would provide them with a place to park their bicycles. He explained the design and that the ramp will be in the side yard and will not be seen from the road.

He explained that when he purchased the property the plat from 2008 was how he understood the property lines and setbacks to be. He had contacted two (2) surveyors to survey the property, but they were months out, but told him that they thought he would just need a floodplain development permit to add the deck and ramp.

Mr. Fukai stated that he had nothing further to say and thanked the board for hearing his case.

After some brief questions by the board the hearing was closed.

Motion by P. Offen:

With regard to variance request **22-010**, the application of Hiro Fukai, Crossroads Property Solutions, LLC, seeking a variance from Chapter 2.3.C of the UDO for property located at 82 Poplar Street, Brevard, North Carolina, within the General Residential (GR) Zoning District, I move the Board to make the following findings of fact:

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

The Applicants father is disabled and cannot access the property without the ramp. The yard is not usable because of drainage from road.

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

The recorded plat indicates different setbacks than the current ordinance; water drainage from street collects in the yard.

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

The Applicant did not change the UDO.

d) the requested variance is consistent with the spirit purpose and intent of the regulations such that Public Safety is secured and substantial Justice achieved.

The additional deck and ramp will improve the owners use of their property and provide a more attractive view from the public street.

Accordingly, I further move the board to **GRANT** the requested variance to allow for 17-foot (17') reduction of the rear yard setback creating an Eight foot (8') setback on the rear property line of the subject property in accordance with and only to the extent represented in the application and plans.

Second by A. Delzell carried unanimously.

b. Election of Officers

K. Jones stated that everyone should take a chance at being chair. J. Mathews nominated K. Jones as Chair, second by A. Delzell, carried unanimously.

J. Mathews nominated P. Offen as vice-chair, second by K. Jones, carried unanimously.

c. Meeting Schedule 2023

T. Fogel made a motion to approve the 2023 meeting schedule, second by P. Offen, unanimously carried.

VII. UNFINISHED BUSINESS

None.

VIII. REMARKS

None.

IX. ADJOURN

A. Delzell moved to adjourn the meeting, seconded by T. Fogel. The motion carried unanimously. Meeting adjourned at 3:37 PM.

Kevin Jones, Chair

Janice H. Pinson, Board Clerk

DRAFT

STAFF REPORT

Board of Adjustment, Tuesday, February 7, 2023

Title: Consideration of application #VAR-23-001 by Trent Hardin, Agent, for a variance from UDO Chapter 10.5.G.2 to allow parking in the front. The property is located in the zoning jurisdiction of the City of Brevard in the Corridor Mixed Use (CMX) zoning district, further identified by PIN# 8597-43-0528-000.

Speaker: Aaron Bland, Asst Planning Director

Prepared by: Aaron Bland, Asst Planning Director

Approved by: Paul Ray, Planning Director

Background

The applicant, Trenton Hardin, agent for Todd Allen, owner of Midgard Self Storage, has applied for a variance for a parcel of land on Ecusta Road, which is located in the Corridor Mixed Use (CMX) zoning district within the corporate limits of the City of Brevard, further identified by the parcel identification number 8597-43-0528-000.

The applicant is requesting a variance from the requirement that off-street parking shall not be permitted between any principal structure and the street upon which the structure fronts, per Section 10.5.G.2 of the City's Unified Development Ordinance (UDO). The request is for a variance to allow parking between a future expansion of the storage facility and Ecusta Road. The subject parcel is a recombination of what was once three separate lots. The existing storage facility was built in two phases and now the owners desire to expand with a third phase built on the vacant portion of the land.

See Attachment 1 for the application materials and site plan, Attachment 1 for Section 10.5.G.2 of the UDO, and Attachment 3 for a vicinity map.

Discussion

The specific requirement that this request focuses on is 10.5.G.2 of the UDO. However, to fully understand the request and the development of this site, it is necessary to look at the context and history of this section of the UDO.

When the existing parking in the front of the building was permitted, there was an exemption in then-Section 10.5.G.3 for properties in the Corridor Mixed Use zoning district, which this property is in. This is the same exemption that allowed the Aldi development to have parking in the front. At that time, Section 10.5.G.3 read as follows (emphasis added):

Except for properties located in the Corridor Mixed Use (CMX) zoning district, off-street parking shall not be permitted between any principal structure and the street upon which

such structure fronts. Where a structure fronts upon two or more streets, parking may be permitted between the principal structure and the adjacent street of lesser classification when parking cannot reasonably be placed in another location.

Following the Aldi development, City Council instructed Planning Staff to initiate a text amendment to remove the CMX exemption in Section 10.5.G.3. This was completed in September of 2021 by Ordinance No. 2021-41, which removed the CMX exemption and combined Sections 10.5.G.2 and 10.5.G.3 into the 10.5.G.2 that exists today. The applicant's request is, in essence, a request to develop Phase III of the building so that it may match previously built phases.

There are also some physical characteristics of the subject parcel that are of note. There is a city sewer line with raised manholes running the length of the parcel to the rear of the existing building, as well as a steep slope rising from this property to the adjoining rear parcels. There is also an existing stormwater retention system on the site that the owner wishes to utilize to control the additional runoff created by the development of Phase III.

As a reminder, the Board may consider adding conditions of approval that are reasonably related to the variance and the standards for its approval.

Standards for the Granting of Variances

In order to grant the variance, all of the following conditions must be met:

1. Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

Economic hardship or the fact that property may be utilized more profitably with a variance shall not constitute an unnecessary hardship. In its motion the Board should include Findings of Fact to support each of the items listed above.

Attachments:

1. Application Materials
2. UDO Section 10.5.G
3. Site Map



The City of
Brevard
North Carolina

City of Brevard Planning Department
95 West Main Street
Brevard, North Carolina 28712
Phone (828) 885-5630
Fax (828) 885-5625
cityofbrevard.com

VAR File # _____

APPLICATION FOR A VARIANCE (VAR)
BREVARD BOARD OF ADJUSTMENT

PURPOSE OF VARIANCE – A variance is the official allowance of a variation from the dimensional requirements of the City of Brevard Unified Development Ordinance or other development regulations. An applicant for a variance must demonstrate valid reasons which create a need for a Variance. These reasons cannot be strictly economic in nature and must generally involve some physical problem with the subject property which will not allow it to be developed in a reasonable manner if City development regulations are followed literally, such as a lot which is substandard in area or width.

BOARD OF ADJUSTMENT - The Board of Adjustment or BOA, is the official City Board that considers request for variances. The BOA receives sworn testimony at its meetings and issues decisions on variance requests based on this testimony. It is the responsibility of each applicant for a variance to attend the BOA meeting and present sworn testimony in support of the request. Authority to grant a variance is found in 16.8.E of the City of Brevard's Unified Development Ordinance pursuant to North Carolina General Statute's 160D-705. The Unified Development Ordinance requires that the Brevard Board of Adjustment, when granting a variance must find that all four (4) of the following standards found in UDO Chapter 16.8.E.2. exist. In the spaces provided below, indicate the standards that you intend to show and the arguments that you intend to convince the Brevard Board of Adjustment that it can properly reach the four (4) required conclusions:

REASONS FOR VARIANCE REQUEST - Explain in your own words why you are requesting a Variance. Be sure to clearly indicate the problem(s) you will experience in complying with the City development regulations. (Attach additional sheets if needed.)

Variance from Section 10.5.G 2
See Attached / Flush Drive provided

The BOARD OF ADJUSTMENT is required to make the following four (4) findings before granting a Variance. Write a thorough response to each of these items.

1. Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

4. The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

ATTACH SITE PLAN DESCRIBING VARIANCE REQUEST

PROPERTY LOCATION INFORMATION

Street address of subject property 196 Ecusta Rd. Brevard, NC 28712

Tax Parcel Number of subject property #8597-43-0528-00

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: Trenton Hardin

Address: 175 Red Fox Dr

Pisgah Forest, NC 28768

Phone: 225-937-1818 Email: lanewoodbuilder@gmail.com

OWNER INFORMATION

Name: Todd Allen

Address: 1146 Canton St.

Roswell, GA 30075

Phone: 770-609-8276 Email: accounting@storesmart.org

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 12/22/2022

APPLICANT'S SIGNATURE 

Please refer to the City of Brevard Planning Department Board of Adjustment Category III Application Timeline for Variances.

VARIANCE REQUEST TO BE HEARD BY BOA ON: Feb



The City of
Brevard
North Carolina

City of Brevard Planning Department
95 West Main Street
Brevard, North Carolina 28712
Phone (828) 885-5630
Fax (828) 885-5625
cityofbrevard.com

VAR File# _____

BREVARD BOARD OF ADJUSTMENT - VARIANCE

APPOINTMENT OF AGENT

I Todd Allen, owner of property located at
(street address) 196 Ecusta Road, Brevard, NC 28712 and
identified by the Transylvania County Tax Identification Number (PIN#):

8597-43-0528-00, located in Transylvania County, North Carolina, do
hereby appoint Trenton Hardin - Lanewood Construction, LLC to represent me in
filing an application for Variance before the Brevard Board of Adjustment.

I further authorize Trenton Hardin - Lanewood Construction, LLC to act as my agent in
all matters, formal and informal, and to receive all official correspondence as it relates to
the VARIANCE request and hearing.

Property Owner Signature: [Signature] Date: 12/15/22
Mailing Address: 1146 Canton Street
Phone: 770-609-8276 Email: please use: jbrooks@reliant-mgmt.com

Agent Name: Trenton Hardin
Mailing Address: 175 Red Fox Dr. Pisgah Forest, NC 28768
Phone: 225-937-1818 Email: lanewoodbuilder@gmail.com

10.5 – General off-street parking area design standards

G. Location of off-street parking:

1. Off-street parking shall not be permitted within any public right-of-way.
2. Off-street parking shall not be permitted within any front yard setback area and shall not be permitted between any principal structure and the street upon which such structure fronts. Where a structure fronts upon two or more streets, parking may be permitted between the principal structure and the adjacent street of lesser classification when parking cannot reasonably be placed in another location.
3. The following uses and parking types shall be exempt from Section 10.5(G.2) above:
 - a. Single-family and duplex residential structures in GR, RMX and NMX districts, except those which are subject to Chapter 2, Section 2.3(E.2).
 - b. Handicapped parking spaces as required by the North Carolina Accessibility Code or other federal, state, or local regulations.
 - c. Bicycle parking spaces required by this ordinance.
 - d. Existing non-residential and multi-family development undergoing significant or substantial improvement or change of use as defined in Chapter 19 of this ordinance, provided that all newly created parking spaces associated with such redevelopment shall conform with Section 10.5(G.2) unless the approving authority deems that compliance would be impractical due to existing site constraints.

