



AGENDA
BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING
Tuesday, August 1, 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. May 2, 2023

VI. Approval of Orders

VII. New Business

- a. Consideration of request of Kasey Canton for a variance from UDO Chapter 4.5 and 4.9, variance from fence height of 2' in the front yard to allow a 6' fence, and
- a. variance of 3.5' in the site triangle requirements. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential zoning district, further identified by PIN #8586-15-9047-000.

VIII. Unfinished Business

IX. Remarks

X. Adjourn

Agenda Posted, Website (July 25, 2023)
J. Pinson, Clerk to the Board

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

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, May 2, 2023 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, May 2, 2023, at 3:00 PM.

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

Members Absent: Kevin Jones, Chair

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

Others: Alan Boroshok, Applicant
Norman Roach, Agent
Scott & Dionne Hodgson, Hodgson Holdings, LLC, Applicants

I. WELCOME

Vice Chair, Peter Offen 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

Vice Chair, Peter Offen 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 J. Mathews, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the February 7, 2023, meeting by A. Delzell, second by T. Fogel, carried unanimously.

VI. NEW BUSINESS:

a. Request of Alan Boroshok VAR-23-002 for a variance from UDO Chapter 2.3.C for a 5 foot reduction of the rear setback requirement of 25 feet. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district, further identified by PIN# 8586-54-3755-000.

Vice Chair Offen explained the protocol for quasi-judicial proceedings.

Attorney Brian Gulden explained that a variance requires a 4/5th majority vote, and that the Applicant would have to have all four board members vote to grant the variance and that he had the option to postpone or proceed. The Applicant chose to proceed with the hearing.

Vice Chair Offen polled the board as to exparte communications and conflicts of interest, and there were none.

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

The following were sworn: Alan Boroshok, Norman Roach and Emily Brewer

Vice Chair Offen opened the hearing.

Emily Brewer, Senior Planner, presented her staff report portion of which follows:

Background

An application for a variance has been submitted by Norman Roach on behalf of Alan Boroshok, owner of 33 Kilpatrick Street. The subject property is a single-family home in the General Residential-8 (GR-8) zoning district within the corporate limits of the City of Brevard. The parcel identification number 8586-54-3755-000.

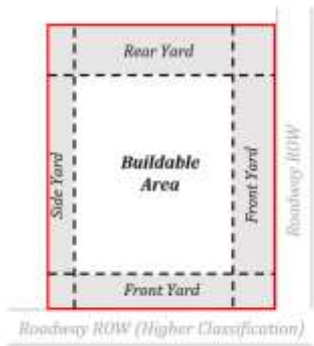
The applicant is requesting a variance from the typical rear setback requirement for the GR-8 zoning district of 25 feet, per Section 2.3.C of the City's Unified Development Ordinance. The request is for a variance of 5 feet which would result in a setback of 20 feet. See Attachment 1 for the application materials and Attachment 2 for a site map.

Notice of the hearing was advertised and posted on the property in accordance with North Carolina General Statute §160D-406.

Discussion

The subject property is considered multi-fronted, with two sides of the property abutting public rights-of-way – Tinsley Road and Kilpatrick Street. According to the Unified Development Ordinance Section 2.3, all lots are required to have a rear yard. For a multi-frontage lot, the rear yard is determined to be the portion of the lot opposite the front yard on the street of higher classification. The illustration of multi-frontage lots in the UDO is included for reference.

Setbacks from Multi-frontage Lots



The administrator is responsible for determining the road of higher classification for setback purposes. When determining the street of higher classification, the administrator considers the following factors:

- The ownership of each of the roads (e.g., State roads are always considered higher classification than local roads.)
- The speed limits on the roads;
- The estimated traffic volumes on the roads;
- The length of the roads (e.g., a road that is 2 miles long in total verses a road that only extends $\frac{1}{4}$ mile); and
- The width of the rights-of-way on the roads.

The administrator determined that Tinsley Road would be considered the street of higher classification. Thus, the rear yard setback of 25 feet applies to the property line facing Kilpatrick Street, despite this being considered the front of the structure by the applicant.

The applicant is requesting a variance to construct a new deck, replacing the pre-existing concrete pad accessible from the front of the structure. This new deck would encroach into the 25-foot rear yard setback. The requested variance of 5 feet would allow the applicant to construct the structure.

Ms. Brewer explained that the hearing was properly advertised, notices mailed and property posted, all in accordance with NCGS 160D.

Alan Boroshok testified that he is the owner of 33 Kilpatrick Street, that there is a preexisting concrete pad with steps and a wooden deck, that the structure is unsafe and was constructed without permits before he purchased the property. That due to the cost of removing the concrete he would like to build a deck over the concrete to replace the unsafe deck with a safe and more aesthetically pleasing structure, that will comply with City and State codes.

Norman Roach, Agent explained that the deck would barely encroach into the setback because they want to cover the concrete porch and steps and he explained the proposed construction of the deck.

There being no further questions, the hearing was closed.

P. Offen made the following motion:

With regard to variance request **23-002**, the application of Alan Boroshok, seeking a variance from Chapter 2.3.C of the UDO for property located at 33 Kilpatrick 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 hardship would be that the applicant could not bring the property up to code, make a safe deck that is more aesthetically pleasing and that the cost of removing the concrete would be a financial hardship.

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

The lot is double fronted and variance is required due to the odd application of the UDO setback requirements.

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

The unsafe structure was built by a previous owner without the proper permits.

- 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 to allow for a Five-foot (5') reduction of the rear yard setback requirement creating a Twenty foot (20') 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 unanimously carried.

b. Consideration of Application for Special Use Permit #SUP-23-001 by Scott & Dionne Hodgson, Hodgson Holdings, LLC to allow a Special Event Venue, UDO Section 2.2. revised in the General Residential "GR" zoning district on property owned by Hodgson Holdings, LLC,

within the zoning jurisdiction of the City of Brevard, and further identified by PIN# 8585-60-4875-000.

Vice Chair Offen explained the protocol for quasi-judicial proceedings.

Attorney Brian Gulden explained that a special use permit would require that 3 of the 4 members present vote in favor to grant, that they had the option to postpone or proceed. The Applicant chose to proceed with the hearing.

Vice Chair Offen opened the hearing.

Robert Field – 189 Deerwoode Lane stated that he might want to be sworn as a neighboring property with standing.

Attorney Gulden explained that he would have to prove he is an aggrieved party and that he would suffer special damages, examples being, the likely reduction in property value, noise, traffic, safety, glare. He further explained that traffic concerns would have to be testified to by a traffic engineer. He explained that Mr. Field could testify after the fact if he does not want to be considered to have standing but it was at the board's discretion as to whether they would hear him and that they could not consider his testimony in their decision.

Mr. Field explained that he does have concerns about traffic and safety that he would like to address.

T. Fogel moved that Mr. Field be allowed to testify after the fact, A. Delzell seconded, unanimously carried.

Mr. Field did not seek standing.

Vice Chair Offen polled the board as to exparte communications and conflicts of interest, and there were none.

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

The following were sworn: Dionne and Scott Hodgson, Katherine Buzby and Emily Brewer.

Katherine Buzby, Planner presented her staff report, noting that the property had been advertised, posted and notices sent in accordance with NCGS 160D. A portion of the staff report follows:

Background

Scott and Dionne Hodgson, of Holdgson Holdings LLC submitted an application to the City on March 15, 2023 for a Special Use Permit (SUP) to operate a *Special Event Venue* at Deerwoode Reserve at 395 Riversedge Rd in Brevard. The property is currently zoned General Residential-4 and the proposed use requires a Special Use Permit.

Special Event Venue is defined in the Unified Development Ordinance (UDO) as:

“A multipurpose venue facility designed largely for hosting special events such as graduations, weddings, gatherings, trade shows, corporate function or meetings, and other similar functions. The facility may have a catering kitchen, indoor and outdoor seating, a stage or event area, and meeting/conference facilities.”

The Hodgson’s currently run Deerwoode Reserve as short-term vacation rental cabins and would like to renovate an existing building on their property to be run as a *Special Event Venue*. The goal is to host events such as weddings, family reunions, etc. The property is rather large and the building to be renovated into the *Special Event Venue* is a good distance from any adjoining neighbors.

The only additional standard listed in the City’s UDO for this use is no open fires without a permit from the Fire Chief.

A Notice of Hearing was mailed to adjacent property owners, the property was posted, and the meeting was advertised per General Statue 160D-406(b).

Special Use Permits

Special uses are generally compatible with the land uses permitted by right in a zoning district, but require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district. Only those uses enumerated as Special Uses in a zoning district, including but not limited to hours of operation, height, bulk, mass, intensity of use, etc. shall be authorized by the BOA.

There were no questions.

Dionne Hodgson gave a presentation explaining the history of the property, their relationship with the Mayes, their current use of the property and the conservation contract with Conserving Carolina. They explained that they want to improve the current “old gym” on the property to provide an event center to the community. They explained the proposed improvements to the property. They testified that they want to be good stewards of the land and good neighbors. They testified that the appraised value would be raised significantly with the renovation of the building.

Scott Hodgson testified that they were business owners in Florida, too young to retire but wanted to slow down their pace of life. That they found the property and also found an overwhelming sense of community that they never expected and that it has been an eye opening experience. That they want peace and harmony with the neighbors and want to be good stewards of the property until the next people take it over. They want to make sure the noise and traffic concerns are addressed and want to be in harmony with the neighbors.

He stated that he truly believes the event space will be an asset to the community.

Rob Field was allowed to speak, he stated that he is pleased that they have neighbors taking good care of the property. That he and his wife moved to Deerwoode Lane in 1997 and chose it because it was a quiet residential street, but there are no sidewalks and he, his wife and neighbors like to walk in the neighborhood for exercise. He has concerns about the substantial change in the amount of traffic and the speed in which the traffic will travel the road. That the street is one way and the only way in and out of the neighborhood. He requested that a condition be added with reasonable traffic guidelines. That he does not want to be dodging traffic while trying to take walks.

Mr. Hodgson explained that they hosted a motorcycle event and there was a speeding incident that they had to address and the person was evicted from the property and told they could never return. That they held a concert with 300 people in October and had no complaints. That plan to situate events so the noise travels in the opposite direction of Deerwoode Lane, but toward Sugarloaf Road which is a further distance away.

It was discussed that Deerwoode Lane is a NCDOT street and that the Board could not impose conditions on a street that they did not have jurisdiction over.

Mr. Field was asked if he felt like he could work with the property owner if an issues comes up and he replied that he felt that he could, but that he would not hesitate to contact the police if necessary.

The Hodgson's again relayed that they want to be good neighbors and that they would contact NCDOT to ask what their options were to control speeding.

The hearing was closed.

Attorney Gulden reminded the board that any evidence considered had to be competent. Any testimony considered on traffic and safety must be provided by an expert. That the board can impose reasonable conditions but that they cannot impose any conditions on a NCDOT road, that the state governs the road. That there was a lack of evidence and limited authority.

Motion was made by P. Offen as follows:

With regard to Case No. SUP-23-001, seeking a Special Use Permit to allow Special Event Venue in the General Residential-4 (GR-4) zoning district on property located at 395 Riversedge Rd, within the City of Brevard, I move the Board to make the following findings of fact:

- a) The use does meet 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;

Special Event Venue is in harmony with the UDO.

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

The proposed renovation to the building will be visually compatible with the surrounding area, and will provide event space for the community.

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 proposed use will not be injurious and will not be detrimental to the adjoining property owners or affect their property values.

Accordingly, I further move the Board to GRANT the requested special use permit to allow a *Special Event Venue* on property located at 395 Riversedge Rd, within the City of Brevard in accordance with and only to the extent represented in the application and plans.

Seconded by A. Delzell, 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 4:23 PM.

Peter Offen, Vice Chair

Janice H. Pinson, Board Clerk

STAFF REPORT

Board of Adjustment, Tuesday, August 1, 2023

Title: a. Consideration of request of Kasey Canton for a variance from UDO Chapter 4.5 and 4.9, variance from fence height of 2' in the front yard to allow a 6' fence, and variance of 3.5' in the site triangle requirements. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential zoning district, further identified by PIN #8586-15-9047-000.

Speaker: Katherine Buzby
Prepared by: Katherine Buzby, Planner/Assistant Zoning Administrator
Approved by: Paul Ray, Planning Director

Background

The applicant, Kasey Canton, owns property at 370 Burrell Mountain Rd, which is located in the General Residential-4 (GR-4) zoning district and in the City's Extra Territorial Jurisdiction (ETJ). The parcel identification number is 8586-15-9047-000.

The applicant is requesting a variance from the requirements of a fence height of 2.5 feet in the site triangle and 4.0 feet in the front yard. The applicant installed a 6.0-foot fence in both locations, therefore asking for a variance of 3.5 feet for the site triangle and 2.0 feet in the front yard.

Discussion

The applicant's fence was observed during an unrelated final inspection of a deck addition to the house. The fence was installed without a permit, and exceeded the height requirement of 2.5 feet in the site triangle of the driveway and 4.0 feet in the front yard per UDO 4.5 and 4.9.

A Notice of Violation was issued on May 24, 2023 stating that there was no permit pulled for the new fence and the fence height is not in compliance with the UDO. The applicant chose to apply for a variance, as he believes he has a unique hardship peculiar to his property, as described by the applicant in the submitted material.

Standards for the Granting of Variances

In order to grant the variance, all of the conditions below 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. Variance Application Packet_Canton_VAR-23-004
2. Fence Pic 1
3. Fence Pic 2
4. UDO 4.5 and 4.9



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.)

See Attachments

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 370 Burrell Mountain Road

Tax Parcel Number of subject property PIN 8586-15-9047-000

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: Kasey Canton, DVM

Address: 370 Burrell Mountain Rd Brevard, NC 28712

Phone: 340.332.2056 Email: kaseycanton@mac.com

OWNER INFORMATION

Name: Owned is the applicant

Address: _____

Phone: _____ Email: _____

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 6/12/23 _____

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: 8/1/23 _____.

Kasey Canton, DVM
370 Burrell Mountain Rd
Brevard, NC 28712
340.332.2056

06/19/23

Re: Application for variance 370 Burrell Mountain Road

City of Brevard Planning Dept.

95 W Main St.

Brevard, NC 28712

Variances requested:

To permit a 6 ft privacy fence (a 2 foot variance) along the front building line above eye level to reduce threats from neighbors at 379 Burrell Mountain Road. 4.9.c.2

To permit the 6" fence to continue in the site triangle to reduce threats and intrusion of pack of dogs. The fence is set back over nine feet from the road so the request is for a 4 foot variance on fence height and/or a 2 foot variance on setback from the intersection. 4.9.c.3 and 4.5

Drawing of site will follow this email.

Cordially,

A handwritten signature in black ink, appearing to read 'K. Canton'.

Kasey Canton, DVM

Kasey Canton, DVM
370 Burrell Mountain Road
Brevard, NC 28712
340.332.2056

6/1/2023

City of Brevard Planning Dept
95 W. Main St
Brevard, NC 28712

To whom it may concern:

I've received notice that the privacy fence erected on my property at 370 Burrell Mountain Rd (PIN 8586-15-9047-000) is a violation of the City of Brevard ETJ. The fence was erected in response to the past year of intrusions, threats and antagonism by the residents of 379 Burrell Mountain road, and our privacy fence only obscures that boundary with our property. Details of the recurring incidents are summarized below.

Dogs –

My first communications with Transylvania animal control were in July 2022. The residents of 379 BMR had 4-5 dogs at the time that roamed my property freely. They created hazards for our guests, their pets, and children. I spoke with Officer Barbara Hall and provided her with documentation of the intrusions as they occurred. I've submitted over 100 videos to her of the animals at large on our property, including biting at my own dog, forcing themselves into our house on 3 occasions, forcing themselves into a guest's car, and biting at one of my painters. Officer Hall has visited the residents repeatedly, but the situation continues. She agreed that the most pragmatic solution was a privacy fence. The residents of 379 now have approximately 14 dogs. There is continuous barking all day and night which is somewhat mitigated by the 6 foot privacy fence. We have filed a noise ordinance complaint with the City but were told that we are not in the City and they cannot help with problem. They also recommended a privacy fence.

In the submitted folder are videos and complaints of the most egregious examples of the animals intruding, harassing, and biting my guests.

Piles garbage and debris –

The property at 379 is cluttered with piles of garbage including mattresses, tires, and appliances. The privacy fence, at 6 feet, obscures some of the clutter but a lot of it is still visible from our deck and living room. A 4 foot fence would be completely ineffective at obscuring the piles of refuse.

Threats, slurs, trespassing -

Last July as we were renovating our home, my partner Rhea Abramson and our neighbor David Kelber witnessed a loud argument at 379 Burrell Mtn Road. The expletive laden exchange included racial slurs, and it spilled over onto our property when April (one of the residents)

invited herself onto our deck and explained that the fight involved accusations of sex between her and the n..... next door. She continued with more of this language and left my partner in shock and in tears. April also explained that guns had been drawn in the exchange and offered Rhea illegal drugs. She also cautioned Rhea not to "call the law."

On 11/27/22 I got a complaint from my guest, David Luedeka, that the residents of 379 were on the property making noise and with flashlights and that they were startled and afraid. When confronted they refused to leave. A screenshot of the complaint has been provided.

On 4/24/2023 as I departed the property I was stared down by Gracie, also a resident at 379. After I left she screamed racial epithets at Rhea across the road while our gate was still open.

The residents of 379 stare us down regularly. The screaming of violent epithets is terrifying. Our other neighbors are aware of the situation and have supported us. They are aware of the reasons for our privacy fence have not expressed any concerns. They know the history 379 family and have expressed their fears for our safety,. It has similarly been expressed to us by law enforcement that the 379 residents have a history of concern.

The height of the fence, at 6 feet, barely obscures 379 from eye level when standing on our main floor. A 4 foot fence, in compliance with the ETJ, will not protect us from the aggressive stares of these neighbors, and would provide less noise abatement from the barking dogs and screaming neighbors. Photos are included to demonstrate the view from our deck and living room with the 6ft fence in place. The high fence has allowed us to finally enjoy our home, and without it we will be forced to move for our safety.

In regards to the findings essential to granting a variance, my responses are summarized as follows:

- 1) Unnecessary hardship
 - a. Strict application of the rules would mean continued harassment of our family and guests.
 - b. Ongoing noise of fighting neighbors and barking dogs
 - c. Potential danger of escalation by abusive neighbors
 - d. Eyesore of garbage and debris
- 2) Peculiar to the property is the condition and behavior of neighbor property and direct proximity of our home.
- 3) No action has been taken by our family to create this hardship.
- 4) The privacy fence doesn't extend beyond the border facing the 379 BMR neighbor, and isn't intended to be injurious to the neighborhood in any way. It is simply a barrier to a dangerous and abusive neighbor and a situation that we attempted to mitigate unsuccessfully through various channels.

Cordially,

Kasey Canton, DVM

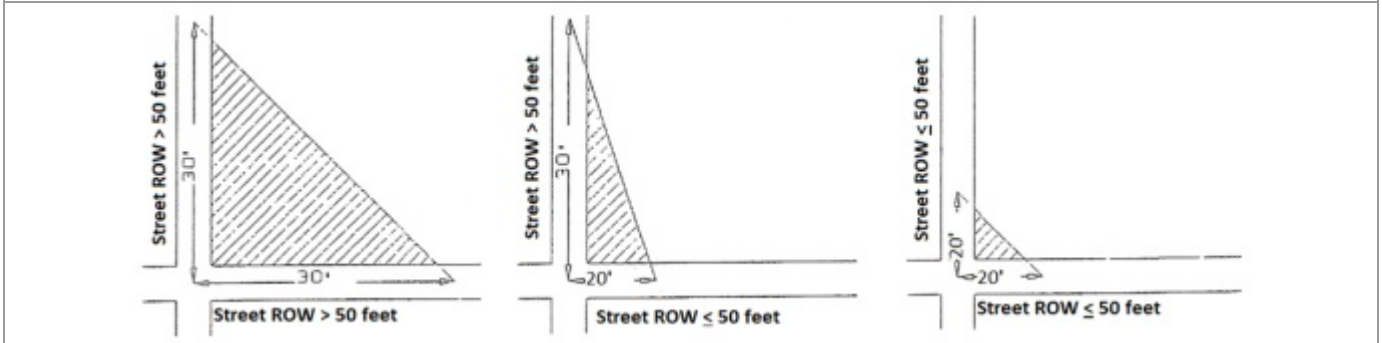




4.5. Visibility at street intersections and driveways; sight triangle.

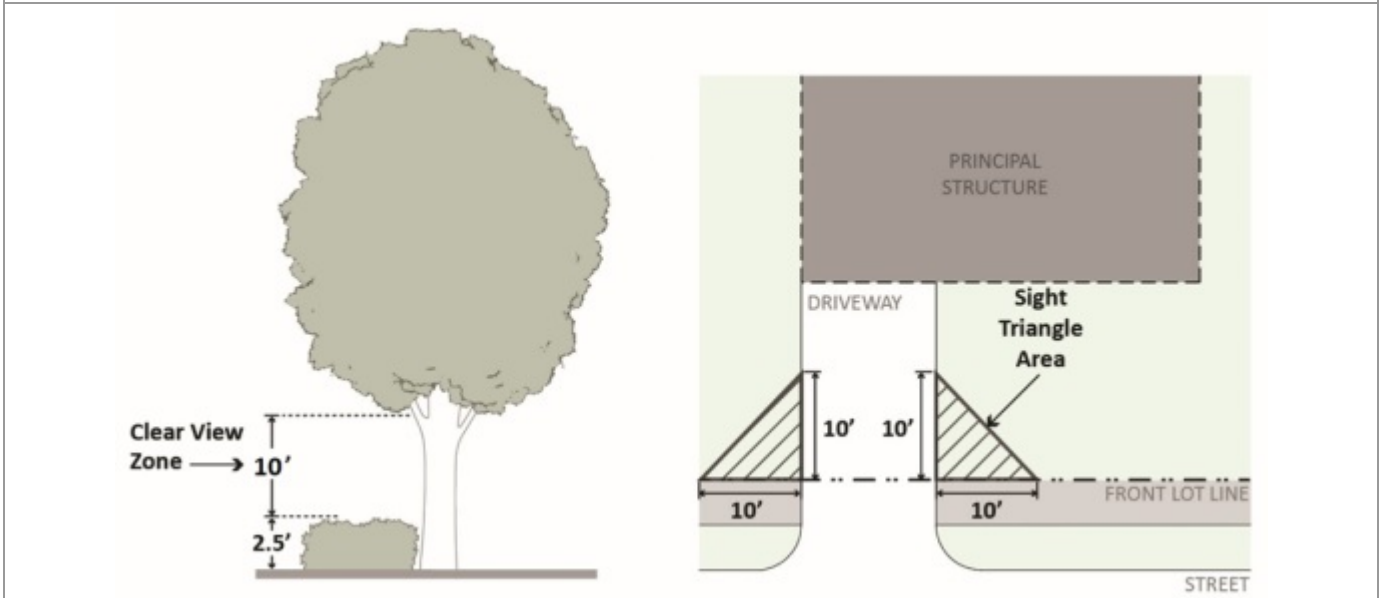
- A. On corner lots in all districts, no planting shall be placed or maintained and no closed fence, building, wall or other structure shall be constructed if such planting or structure thereby obstructs vision at any point between a height of two-and-a-half and ten feet above the upper face of the nearest curb (or street centerline if no curb exists) and within the sight triangle area bounded on two sides by the two street right-of-way lines and on the third side by a straight line connecting points on the street right-of-way lines measured as follows:
1. On streets having a right-of-way width of 50 feet or less, a point located 20 feet from the intersection of the right-of-way lines.
 2. On streets having a right-of-way width of more than 50 feet, a point located 30 feet from the intersection of the right-of-way lines.

FIGURE 4.5A: SIGHT TRIANGLES AT RIGHT-OF-WAY INTERSECTIONS



- B. At the intersection of any private drive, entrance or exit with a public street, no closed fence, wall, hedge, or other planting or sign forming a material impediment to visibility over a height of two-and-a-half feet shall be erected, planted, placed or maintained within the sight triangle area bounded by the street right-of-way, the edge of the private driveway, and a straight line connecting points ten feet from the intersection of the right-of-way and driveway.

FIGURE 4.5B: OTHER SITGHT TRIANGLE DIMENSIONS



- C. Required sight distances for driveway connections along state-maintained roadways shall be approved by NCDOT. Where the NCDOT Driveway Manual conflicts with these standards, the stricter of the two standards shall prevail.

(Ord. No. 2021-30 , § 1(Exh. A), 6-21-21)

4.9. Fences and walls.

- A. All fences and walls shall be constructed so that the best face faces outward from the parcel upon which it is constructed and towards adjacent properties. The "best face" shall generally mean the side opposite to framing members.
- B. Fences and walls shall not be placed within public utility easements or public right-of-way without first securing an encroachment agreement from the City of Brevard, the North Carolina Department of Transportation, or other appropriate entity.
- C. Fence or wall height shall be measured from the side of the fence or wall that is exterior to the property as the vertical distance between the lowest adjacent ground level, natural or filled, and the top of the fence material. Fence heights are restricted as follows:
1. In industrial districts, and public safety and other critical facilities. Fences or walls shall be no greater than six feet in height before the front building line and no greater than eight feet in height in the side or rear yard.
 2. All other districts and uses. Fences or walls shall be no greater than eight feet in height behind the front building line or four feet in height before the front building line.
 3. No closed fence or wall shall be greater than two-and-a-half feet in height when placed within the sight triangle of any intersection as specified in Section 4.5 of this ordinance. Open fences are exempt from this provision.
- D. Fence and wall materials shall conform to the following requirements:
1. Residential districts:
 - a. All fences and walls must be of brick, stone, stucco, wrought iron, wood, or other materials similar in appearance and durability, except that chain link or woven wire may be used in the side and rear yard behind the front building line.
 - b. All other wire fences, including barbed wire or concertina wire, are prohibited.
 - c. Nothing in this chapter shall prevent the administrator from approving architecturally variant uses of material to allow creative fence design, such as the contemporary look of heavy-gauged welded wire panels framed in timber.
 - d. The use of plastic plumbing pipe is a prohibited fence material.
 2. Commercial districts:
 - a. All fences and walls must be of brick, stone, stucco, wrought iron, wood, or other materials similar in appearance and durability.
 - b. Chain link wire fences may be used as secure enclosures internal to the property or site subject to the following requirements:
 - i. Chain link fences shall not be visible from a public right-of-way,
 - ii. Chain link fences shall not serve as a perimeter fence or property line fence unless buffered by a type A buffer yard on all sides, and then only in the side or rear yard behind the front building line.
 - c. All other wire fences, including barbed wire or concertina wire, are prohibited.
 - d. All walls and fences shall be materially similar to other walls and fences in the same block or general vicinity.
 3. Industrial districts, public safety facilities, and other critical facilities:
 - a. All fences and walls must be of brick, stone, stucco, wrought iron, wood, or other materials similar in appearance and durability, and shall be materially similar to other walls and fences on the same block or general vicinity.
 - b. Vinyl coated, chain link fencing may be approved by the administrator as perimeter fencing with additional filtering through openings using opaque or semi opaque slats or screening or by installing a type A landscaping buffer between incompatible uses, between different zoning districts or where visible from a public street.

4. *Barbed wire*: Barbed wire may be permitted within bona-fide agricultural operations within any zoning district.

E. Retaining walls shall also conform to the following requirements:

1. Retaining walls should minimize the impacts of cut and fill on a site.
2. The height of any retaining wall should not exceed five feet unless required to be higher for engineering reasons.
 - a. An increase in retaining wall height may be allowed if the proposed design minimizes the cut and fill impacts and enhances the existing landscape.
3. In areas where cuts are steeper, a stepped or terraced wall should be used. Large, unbroken retaining walls in a uniform plane should be avoided.

(Ord. No. 2022-76, § 1(Exh. A), 12-5-22; Ord. No. [2023-22](#), § 1(Exh. A), 6-5-23)

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