



AGENDA
BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING
Tuesday, November 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. October 3, 2023

VI. Approval of Orders

- a. APL-23-002 Scardo Order

VII. New Business

- 1. Consideration of Request of William Hathaway for a variance from UDO Chapter 4.9.C.2, variance from fence height of 4' in the front yard to allow for a 6' fence, a two-foot variance. The property is located at 245 S. Rice Street in the General Residential zoning jurisdiction of the City of Brevard, further identified by PIN #8585-59-2459-000.

VIII. Unfinished Business

IX. Remarks

X. Adjourn

Agenda Posted, Website (October 23, 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, October 3, 2023 - 3:00 PM

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

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

Members Absent: Tad Fogel

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

Others: Kim Keifrider, Applicant
Nancy Scardo, Appellant
Brian Stretcher, Attorney for Appellant
Mack McKeller, City Attorney

I. WELCOME

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

IV. APPROVAL OF AGENDA

Motion to approve the agenda by J. Mathews, second by A. Delzell, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the August 1, 2023, meeting by P. Offen, second J. Mathews, carried unanimously.

VI. NEW BUSINESS:

a. Consideration of Request of Kim Keifrider for a variance from UDO Chapter 2.3.C for a 5-foot reduction in the rear setback of 25 feet. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential zoning district, further identified by PIN# 8585-68-4387-000.

K. Jones explained quasi-judicial procedures.

It was established that Kim Keifrider and the City were parties with standing.

The following were sworn Katherine Buzby, Planner, Kim Keifrider, Applicant.

The board was polled as to conflicts of interest and exparte communications, and there were none.

Ms. Keifrider had no conflicts of interest with the board hearing the matter even after it was explained that all four members present would have to vote in favor for the variance to be granted.

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

Background

An application for a variance has been submitted by Kim Keifrider, owner of 161 Wilson Drive. 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 8585-68-4387-000.

The applicant is requesting a variance from the 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 applicant is requesting a variance to construct a new deck on the rear of the house that would allow access from the living room to the back yard. The house currently sits on a slope, so the new deck would be technically on the 2nd story with stairs descending to the rear yard. Ms. Keifrider would like the deck to be 10'x16', and the current allowable building area with the rear setback would only allow a 5' deep deck. She is requesting a variance of 5 feet from the required 25-foot setback.

K. Buzby explained that the hearing was properly advertised, property posted, and neighbors notified as required by NCGS 160D.

Ms. Keifrider testified that she does not have convenient access to her living area from the rear of her home. That the front of her house is at ground level, but the rear is elevated because of the sloping topography. That she wants to build a deck and make a more convenient entrance from the rear of her home for aging purposes and better enjoyment of her home and yard. She also presented pictures of her property and neighboring properties to better explain her request.

Her neighbor Larry Gregory testified that he was not opposed to the deck and that there is a large hedge row that will obscure the deck from the neighboring properties.

There being no further questions, Chair Jones closed the hearing.

After a brief discussion, P. Offen made the following motion:

With regard to variance request **23-006**, the application of Kim Keifrider, seeking a variance from Chapter 2.3.C of the UDO to allow for a 5-foot reduction in the rear setback thereby creating a 20-foot rear setback on property located at 161 Wilson Drive, Brevard, North Carolina, within the General Residential-8 (GR-8) 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;

Applicant would be unable to reasonably access her property; ease of access to her property.

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

The topography is sloped, and the house is situated closer to the rear setback than would allow the applicant to build a deck and rear access and meet the required rear setback.

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

Applicant did not create the hardship it was existing when she purchased the home.

- 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 5-foot reduction in the rear setback thereby creating a 20-foot rear setback on the subject property in accordance with and only to the extent represented in the application and plans.

Second by A. Delzell, motion carried unanimously.

b. Consideration of Administrative Appeal, APL-23-002, by Nancy Scardo to the Order of Paul Ray, Planning Director, requiring compliance with the Flood Damage Prevention Ordinance based on substantial improvement to property located in the 100 year floodplain in the General Residential zoning district and further identified by PIN# 8596-47-5007-000.

K. Jones, Chair, explained quasi-judicial procedures.

It was determined the following have standing the City, Nancy Scardo, as the only officer in the LLC that owns the property, 12 Sals LLC. Attorney for Ms. Scardo Brian Stretcher and it was explained that Mr. Scardo could be called as a witness if she chooses to do so.

The following were sworn by the Clerk to the Board: Katherine Buzby, Planner, Paul Ray, Planning Director, and Nancy Scardo.

Peter Offen, explained that Mack McKeller, City of Brevard Attorney, is his father in law and that he wanted to disclose this information.

Brian Gulden read 160D-109(d) as follows: "Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter."

He further stated that this was being disclosed out of an abundance of caution so that if Attorney Stretcher wanted to make an argument that Mr. Offen recuse himself, he would have the opportunity to do so.

After a brief discussion with his client, Mr. Stretcher stated that Ms. Scardo had no issues with Mr. Offen hearing the case.

The board was polled as to exparte communications and conflicts of interest and there were none.

It was further explained that a majority vote (3 board members) would be required for a decision, and Ms. Scardo through her attorney disclosed that she wanted to proceed with the hearing.

Chair Jones opened the hearing.

Katherine Buzby, Planner presented her staff report and gave a history of the case to date. She stated that neighbors were notified, property posted, and the hearing was properly advertised according to NCGS 160D.

A portion of the staff report follows:

Background

The applicant, Nancy Scardo, is the managing member of 12 SALS LLC, which owns property at 12 Sal's Lane, which is located in the General Residential-4 (GR-4) zoning district and in the City's Extra Territorial Jurisdiction (ETJ). The parcel is located in the 100-year (1% chance) floodplain and the identification number is PIN# 8596-47-5007-000.

The applicant is appealing the administrative decision of Paul Ray, the Planning Director, to elevate the house per the Substantial Improvement regulations under the City's Floodplain Damage Prevention, Chapter 34. An order was sent to the owner on July 3, 2023.

Discussion

On July 25, 2022, Ms. Scardo submitted a floodplain development permit application to the planning dept. stating that she wanted to do \$50,000 worth of renovations to the existing house at 12 Sal's Lane. The application was denied as it did not meet the City's ordinance. Chapter 34-32 states "New construction and *substantial improvement* of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 34-5 of this chapter."

The ordinance states the definition of *Substantial Improvement* as "any combination of repairs, reconstruction, rehabilitation, addition, or other modification or improvement of a structure taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure as of the date the improvement was permitted (or, in the absence of any permit, before the date of start of construction of the improvement). In the absence of any information pertaining to market value, the administrator shall utilize the assessed value of the structure."

Market Value is defined as "means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (actual cash value); or adjusted tax assessed values. The income capitalization approach of appraisal shall not be utilized to determine market value.

On July 27, 2022, Ms. Scardo met in my office and resubmitted the floodplain development permit application but did not possess any documentation required by the ordinance to determine market value. The Planning Department used the Transylvania County Tax Assessor's assessed tax value of the main structure (house). Per their website, the structure was valued at \$54,260. A permit was issued that states that renovations are **not to exceed \$27,000** (approximately 49% of the value). The Substantial Improvement requirements were discussed at length in person and via email to Ms. Scardo. A copy of the permit was given to the applicant and the building dept.

On March 13, 2013, I observed major renovations being completed from the right-of-way and sent a letter to the owner requesting receipts supporting that the work has not exceeded \$27,000 (Per Corrective Procedures 34-24). The requested information was not received.

A hearing was held on June 23rd at 11am, with Ms. Scardo, Brian Stretcher (Attorney for Ms. Scardo), Mack McKeller (City Attorney), Katherine Buzby (Floodplain Administrator) and Paul Ray (Planning Director) in the Planning Dept. The owner submitted copies of bank statements & receipts that show she had spent **\$79,812.68**, exceeding the permitted amount of \$27,000. It was the determination of the Planning Director that she needed to come into compliance with the ordinance by elevating the house.

An Order to elevate the house was sent to the owner, her attorney, and the City attorney on July 3, 2023. The Order gave the homeowner until December 23, 2023 to come into compliance.

The Planning Department received an official request for appeal dated July 18, 2023 from Ms. Scardo's attorney. The original BOA hearing was set for September 5th but the homeowner rescheduled it for October 5, 2023.

Staff Recommendation

The Planning Director's determination to elevate the house is based on the regulations stated in Chapter 34, Floodplain Damage Prevention. A permit was issued with the condition that it could not exceed \$27,000 in renovations. The permit was violated and staff took steps to get the homeowner to come into compliance with the ordinance's regulations.

Staff recommends denying the appeal and requiring the homeowner to comply with the Order dated July 3, 2023.

When asked, Katherine Buzby explained that to comply, the house would need to be raised 2 foot above the base flood elevation, an estimated 6 foot above where the house is today.

City Attorney, McKeller asked to question Ms. Buzby. He asked if there was a range of possible actions that could be taken other than raising the house.

Ms. Buzby responded the only other option would be to demolish the house. That any house built there would be required to meet the 2 foot above base flood elevation requirement.

Attorney Stretcher stated that he felt the City's report to be thorough, but that one page of the permit submitted to the board did not have things filled in on page 3 and 4. That the tax value was shown as \$54,000.00. He further argued that an appraisal was completed listing the value of the house only at \$250,000.00 which with her expenditure of \$79,000.00 would be within the correct amount. He noted that the permit had now expired. He said the estimated amount to raise the house will be \$35,000.00, but then she estimates it will take a total of \$75-100 thousand dollars to have electrical, plumbing, etc. corrected. Also, the chimney will have to be removed if the house is elevated. He explained that the house is 107 years old, he again noted missing information on page 3 of the permit and stated that a value can change during the terms of a permit. He argued that the City had access to better information as to the value of the property other than the tax assessed value. He stated that

it would be a hardship to Ms. Scardo to raise the house and that if the actual value had been presented, we would not be here today. The house as it stands is not a public safety issue. He requested that the Board allow her to obtain a new permit. He then submitted the following evidence: Closing Statement from purchase of property, appraisal, copy of estimate to raise the house. (Exhibits are attached and labeled Exhibits "A-C").

Attorney Gulden reminded the board that the purpose of the hearing is to hear an appeal. That the board could affirm the decision, reverse the decision, or modify the decision made by Paul Ray, Planning Director. He further explained that the Appellant, Ms. Scardo had not presented evidence and the hearing could not be closed until she did so.

Ms. Scardo, Chief Officer of 12 Sals Lane, LLC the owner of the property testified that the house was listed for \$250,000.00 and that she got into a bidding war and paid \$310,000.00 in April 2022. Soon after the purchase she proceeded with the application process to obtain permits to make modifications to the house, that she completed the application and signed it, including entering an amount of \$27,000.00 as the estimated amount to be spent keeping the amount invested at 49% to avoid having to comply with current floodplain development requirements. She testified that she did spend more than \$27,000.00. That she trusted that the realtors were marketing the house at the correct value. She proceeded to try to obtain an appraisal to show the home's value but had problems finding an appraiser that would perform the appraisal without the land. She had also pulled the electrical permit and that offered another problem. She had an appraisal done with the repairs and the appraised value was \$415,000.00 and eventually she obtained an appraisal from James Wilson for the home only of \$250,000.00.

Ms. Scardo further testified that to raise the home is estimated to be \$35,000.00 the chimney would have to be destroyed because it could not be raised. The foundation and utilities would all require redoing, the contractor will charge her to design and a 20% fee. She believes the cost would be \$100,000.00. That the deadline to comply is December 2023 and that there is no way she can meet that deadline.

She explained that she loves old houses and that the Barnett's owned the house and that it is part of local cultural heritage and should be preserved.

Attorney McKeller questioned Ms. Scardo saying you purchased the land in April 2022, you obtained permit for electrical work in June 2022 in the amount of \$20,000.00 which was inspected and approved, the end of July you came to the City to get a permit for the other renovations and were told you had to establish the value to obtain the permit. Why did you not get an appraisal then.

Ms. Scardo explained that she paid cash for the house. She testified that she was guilty, was wrong and was bad for not doing that.

When asked if she had applied for a variance to the floodplain development ordinance, she answered, no.

When asked at what point she realized she had exceeded the permit limitation, she responded in November, 2022. When asked if she questioned the City as to how the property was valued, she responded that she thought she could bring another appraisal to the City, but she could not find anyone to do the appraisal.

When asked who entered the amount of \$27,000.00 on the floodplain development permit she responded that she did.

Katherine Buzby explained that the tax appraised value was used at the time of application because there was no appraisal submitted, and that the ordinance requires that the appraisal be done prior to any improvements. The appraisal was performed after improvements were done and therefore does not meet the ordinance requirements.

Ms. Scardo was asked did you let them know you did not understand or did you not comply. She responded; she did not comply.

Katherine Buzby explained that if Ms. Scardo were to apply for a variance from the Floodplain Development Ordinance, she would be required to prove a hardship.

The Board was reminded that they are present to hear an appeal.

Ms. Scardo was asked who was acting as her general contractor and she stated that she was, and when asked if she had a contractor's license, she responded that she did not.

There being no further questions, Chair Jones closed the hearing.

Closing Arguments were made as follows:

Mack McKeller, City Attorney, stated that he wanted to point out a couple of things. The City cannot change the flood ordinance, flood insurance program rules exist as it pertains to substantial improvements to protect the flood insurance providers. The rules did not exist in 1916, application was made using a \$54,000.00 value with \$27,000.00 in improvements indicated. Another application for a permit could have been made with legitimate value but instead it was decided to move forward and maybe pick that up later. There are procedures in place that should be followed and after being warned procedures were not followed.

Permits were issued, no appeal was made, they made a wrong decision and went ahead and did the work. Evidence shows value went from \$54,000.00 to \$450,000.00 so when the great flood comes and the house washes away the insurance company will have a major claim. The whole point of the floodplain development procedures is to protect. Paul Ray's decision followed the ordinance and procedures required. Mr. McKeller asked that the Board uphold Mr. Ray's decision.

Attorney Stretcher argued that Ms. Scardo would look to the board for some kind of compromise. He stated that he and his client offered information at the time of the hearing and in the end, Ms. Scardo seems to still be stuck with a \$54,000.00 value which is unfortunate and that he would like the board to consider some type of compromise. To be

allowed to apply to the City for a variance to allow her more time seems a reasonable compromise. His client would like to correct the mistakes if possible, without having to spend \$100,000.00.

Attorney Gulden reminded the board that they can approve, reverse, or modify the decision. Look at the flood damage prevention ordinance and put yourself into the shoes of Paul Ray.

The board deliberated.

Judy Mathews made the following motion: With regard to APL-23-002, the administrative appeal by Nancy Scardo from the Order of Paul Ray, Planning Director, requiring compliance with the Flood Damage Prevention Ordinance based on substantial improvement to her property located at 12 Sal's Lane, Brevard, North Carolina which is in a special flood hazard area within the jurisdiction in the City of Brevard, I move the Board make the following findings of fact and conclusions of law:

That the violation of the Flood Damage Prevention Ordinance, at property located at 12 Sal's Lane, should be affirmed, in whole due to:

The Director followed the flood damage prevention ordinance when he made the decision and used the property value available to him which was the tax value, and he used the material available to him when he made his decision.

Second by A. Delzell.

There were further questions and suggestions of ways to hold the affirmation and let the Appellant agree that the permit was wrong and what options might be available to her.

Upon vote affirmation carried unanimously.

VII. UNFINISHED BUSINESS

None.

VIII. REMARKS

There was discussion about obtaining new members for the board.

IX. ADJOURN

A. Delzell moved to adjourn the meeting, seconded by P. Offen. The motion carried unanimously. The meeting was adjourned at 5:00 PM.

Kevin Jones, Chair

Janice H. Pinson, Board Clerk

STATE OF NORTH CAROLINA
TRANSYLVANIA COUNTY

BEFORE THE CITY OF BREVARD
BOARD OF ADJUSTMENT
CASE NO. Appeal 23-002

IN RE: APPEAL of Nancy Scardo

ORDER

This matter coming on for hearing before the **City of Brevard Board of Adjustment** ("Board") upon the appeal of **Nancy Scardo** ("Appellant") of the Order of Paul Ray, Planning Director, requiring compliance with the Flood Damage Prevention Ordinance based on substantial improvement to her property located at 12 Sal's Lane, Brevard, North Carolina which is in a special flood hazard area within the jurisdiction in the City of Brevard and further identified by PIN 8596475007000 (sometimes hereafter called the "Subject Property").

A quasi-judicial evidentiary hearing was held on October 3, 2023. The Appellant, Nancy Scardo, was present and represented by her attorney, Brian Stretcher. The following additional persons were sworn as witnesses and presented testimony in this matter: City of Brevard Planning Director, Paul Ray, and City of Brevard Planner, Katherine Buzby, both of whom were represented by City Attorney Charles "Mack" McKeller.

Testimony in this case is accurately reflected in the minutes of the October 3, 2023 meeting and based upon the testimony presented, the documentary evidence and related material submitted along with the Application, the Board does hereby make the following:

FINDINGS OF FACT

- 1) Notice of the quasi-judicial hearing, pursuant to City's Unified Development Ordinance ("UDO") and state law was duly and timely given, the hearing was properly advertised, and the Subject Property was properly posted.
- 2) The hearing was held pursuant to Section 16.8D. of the UDO and N.C.G.S. §160D-405, on the appeal of Nancy Scardo and the matter is properly before the Board, is within the Board's jurisdiction under the UDO and is ripe for consideration.

- 3) The Subject Property is approximately 0.69 acres containing a single-family residence and currently located in City's Extra Territorial Jurisdiction within the General Residential-4 (GR-4) zoning district as the same is defined in the UDO.
- 4) The Subject Property was purchased by 12 Sals, LLC, a North Carolina limited liability company on April 29, 2022 for Three Hundred and Ten Thousand Dollars 0/100 (\$310,000.00) which included the value of both the land and the structure located thereon. Appellant, Nancy N. Scardo, is the manager/member of 12 Sals, LLC.
- 5) In and around July 25, 2022, the Appellant applied for a permit to make improvements to the Subject Property in the amount of Fifty Thousand Dollars (\$50,000.00). Such permit was denied because the amount of the improvements appeared to exceed Fifty percent (50%) of the structure's value located on the Subject Property.
- 6) In and around July 27, 2022, the Appellant reapplied for a floodplain development permit application but was not able to document the market value of the structure on that date. The City and Appellant used the Transylvania County Tax Assessor's assessed value of the structure located on the Subject Property. On such date, a floodplain development permit was issued to Appellant limiting renovation to no more than \$27,000.00 or approximately Forty-Nine percent (49%) of the market value of the structure.
- 7) In March 2023, City Planner, Katherine Buzby, noticed major renovation to the Subject Property which appeared to exceed the value of improvements for the development of the structure located on the Subject Property.
- 8) A written request was sent to Appellant seeking supporting documentation that the work did not exceed the value of what was permitted on the floodplain development permit.
- 9) At a hearing on June 23, 2023, receipts were received from the Appellant estimating the improvements to the structure located on the Subject Property exceeded Seventy-Nine Thousand, Five Hundred Dollars 0/100 (\$79,500.00).
- 10) The Appellant, at that time, also produced an appraisal showing the value of the structure after the improvements had been made. Such appraisal was not accepted by the City as evidence of the value of the structure as of the date the permit was issued.
- 11) As a result of Appellant's evidence presented at the June 23, 2023 hearing the City's Planning Director, Paul Ray, made a determination that the structure on

the Subject Property needed to be raised to come into compliance with the City's Flood Damage Prevention Ordinance.

- 12) Appellant timely appealed the determination of Paul Ray to the Board of Adjustment.
- 13) The Appellant offered additional testimony acknowledging that she spent more on the improvements to the structure on the Subject Property than the permitted amount and that she hadn't brought an appraisal to the City showing the value of the structure as of the date the permit was issued.
- 14) The Appellant introduced a May 2023 retrospective appraisal which valued the structure on the Subject Property at Two-Hundred, Fifty Thousand (\$250,000.00).
- 15) The Appellant did not file for a variance from flood damage prevention.

Therefore, based upon the foregoing FINDINGS OF FACT and considering the City's UDO and Chapter 34 of the Brevard Code of Ordinances, the Board hereby makes the following:

CONCLUSIONS OF LAW

- 1) The BOA has jurisdiction to hear and decide appeals of development decisions under Section 16.8D of the UDO and Sect. 34-24(d) of the Flood Damage Prevention Ordinance and the appeal of 12 Sals, LLC is within its jurisdiction to review pursuant to such Section.
- 2) The Appellant had standing to appeal the decision of the Planning Director and have the BOA render a decision.
- 3) The Planning Director was correct in determining that substantial improvements were made to the structure on the Subject Property that exceeded Fifty percent of the structure's value based on the value presented to him on June 23, 2023.
- 4) The review authority was correct in determining that Appellant must bring the Subject Property into compliance with the Flood Damage Prevention Ordinance.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law it is decided by the Board of Adjustment for the City of Brevard that the decision of the Planning Director requiring compliance with the Flood Damage Prevention Ordinance regarding the Subject Property be and is hereby **AFFIRMED**.

IT IS NOW THEREFORE ORDERED, ADJUDGED AND DECREED that Nancy Scardo is required to comply with the City of Brevard's Flood Damage Prevention Ordinance as contained in Chapter 34 of the City's Code of Ordinances.

ORDERED this _____ day of _____, 2023

CITY OF BREVARD BOARD OF ADJUSTMENT

By: _____
Kevin Jones, Chair

Attest:

Janice Pinson, Clerk to the Board

STAFF REPORT

Board of Adjustment, Tuesday, November 7, 2023

Title:

1. Consideration of Request of William Hathaway for a variance from UDO Chapter 4.9.C.2, variance from fence height of 4' in the front yard to allow for a 6' fence, a two-foot variance. The property is located at 245 S. Rice Street in the General Residential zoning jurisdiction of the City of Brevard, further identified by PIN #8585-59-2459-000.

Speaker:

Katherine Buzby

Prepared by:

Katherine Buzby, Planner/Assistant Zoning Administrator

Approved by:

Paul Ray, Planning Director

Background

The applicant, William Hathaway, owns property 245 S Rice 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 8585-59-2459-000.

The applicant is requesting a variance from the UDO Chapter 4.9.C.2, which requires a fence height of 4 feet in the front yard. He would like to install a 6-foot fence, so he is requesting a 2-foot variance in height.

Discussion

The property sits at the corner of S Rice Street and Johnson Street, so it is considered a "double-fronted" lot. Per the UDO, Chapter 4.9, any fence within a residential district must not exceed 4 feet in height in the front yard.

The applicant is requesting a variance of 2 feet in fence height for both safety and usability issues. Please see the attached letter addressed to the board.

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

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.

1. 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.

1. 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.

1. 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
2. UDO Chapter 4.9



VAR File # 23-007

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.)

This application is in request for a variance to ordinance 49C2 (with also reference 193 regarding what is considered a front yard). In the following request I will address the four findings that are pertinent to our case. Please see attached document for details.

The variation being requested is for an increase in the allotted 4 feet in height for a fence by two Feet for a total 6 feet in height in an area considered front yard due to it being a multifronted lot.

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 245 S Rice St

Tax Parcel Number of subject property 8585-59-2459-000

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: William Hathaway

Address: 245 S Rice St

Brevard NC 28712

Phone: 3866891818 Email: whathaway81@gmail.com

OWNER INFORMATION

Name: Same as applicant

Address: _____

Phone: _____ Email: _____

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 10/8/2023

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: 11/7/2023.

Members of the Board of Adjustments:

This application is in request for a variance to ordinance 4.9.C.2 (with also reference 19.3 regarding what is considered a front yard). In the following request I will address the four findings that are pertinent to our case.

1. Unnecessary hardship would incur due to the height restriction placed on a fence in what is by the ordinance's description (19.3) considered a front yard. What by conventional standards would be considered a side and/or back yard has been deemed a front yard by the lot being considered a multi-fronted. This area would only be permitted for a 4-foot fence (a section along Johnson St). Such a fence would limit the use and safety of these yard spaces. As we have four children, all 8 years old or less, a four foot fence may be easily climbed over, balls can easily go over this height and end up in roadways (Johnson street) thus leading to possible harm to persons or damage to property. Currently we do have on Rice St. (our conventional front yard) a 4 ft fence which extends around the corner and down Johnson St. 25 feet. Thus, the portion of fencing we are applying for a variance would not create any visual barrier or obstruction for traffic purposes, maintaining safety from that perspective.

2. This hardship results from the specific condition of this property being multi-fronted and developed with the primary backyard/outdoor space in the side yard area along Johnson street. This hardship is specific to the section of frontage along Johnson Street, a street that is used a cut through. Thus, traffic has a tendency to travel at speeds in excess of the speed limit, which is a condition that is uncommon to the rest of the neighborhood.

3. The hardship in question was in place prior to the purchase of property due to the design of the lot, how the home is situated on it and the number of speeding vehicles down Johnson street.

4. The variance that is being requested is done so for the purpose of maintaining safety within the neighborhood, both from the perspective of allowing for a safe yard space for our children to play in, as well as, the prevention of objects (balls, toys, children, etc) from entering the roadway (Johnson St). Granting of this variance has the significant possibility of preventing injury and damage to persons and/or property.

Thank you for your time and consideration in this matter.

Sincerely,

Will Hathaway



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), 6-4-23)

Effective on: 6/4/2023

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