



AGENDA

BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING

Tuesday, April 2, 2024 - 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. February 6, 2024

VI. Approval of Orders

VII. New Business

Consideration of Administrative Appeal, APL-24-001, Sam Wheeler, Agent for Renae Masters to the Administrative Decision of Paul Ray, Planning Director,

- a. requesting Administrative Modification per UDO Chapter 16.9.E.3 the property is located in the General Residential zoning district and further identified by PIN# 8585-88-8335-000.

Consideration of Request of Jason Chewning, Agent for Charlotte Shackleford for a variance from UDO Chapter 2.3.C for a 3' 1" reduction in the rear setback of 10

- b. feet. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential zoning district, further identified by PIN# 8585-58-3764-000.

Consideration of Request of John Koury Agent for Brevard Collective, LLC for a variance from UDO Chapter 14.3.E.5. The property is located in the zoning

- c. jurisdiction of the City of Brevard in the Downtown Mixed Use (DMX) zoning district further identified by PIN# 8585-49-2890-000.

Consideration of Request of Melanie Spreen, Agent for Lenze Real Estate, LLC for a variance from UDO Chapters 14.3.C, 14.3.E.5, 2.3.B, 2.3.C, 5.5 & 5.6. The property is located in the zoning jurisdiction of the City of Brevard in the Downtown Mixed

Use (DMX) zoning district and further identified by tax parcel number 8586-50-7502-000.

VIII. Unfinished Business

IX. Remarks

X. Adjourn

Agenda Posted, Website (March 20, 2024)

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, February 6, 2024– 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, February 6, 2024, at 3:00 PM.

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

Staff Present: Paul Ray, Planning Director
Katherine Buzby, Planner
Janice Pinson, Board Clerk
Brian Gulden, Board 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 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 T. Fogel, second by P. Offen, carried unanimously.

V. APPROVAL OF MINUTES

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

VI. New Business

- i. Election of Officers – K. Jones nominated P. Offen as Chair, second by T. Fogel, unanimously carried. A. Delzell nominated T. Fogel as Vice Chair, second by K. Jones, unanimously carried
- ii. Meeting Schedule – Motion to approve the 2024 meeting schedule by T. Fogel, second by J. Mathews, unanimously carried.
- iii. Board Training, Brian Gulden – Brian Gulden, Board Attorney lead the board in a training session on NCGS 160D changes to composition, duties, and quasi-judicial procedures. Further leading the board through training on the Board of Adjustment procedures and rules.

It was determined during training that P. Offen has been serving as an alternate member and as newly elected Chair should be moved into a member position and that K. Jones be moved to a city alternate position. Staff stated that this would go before City Council at their February 19th meeting.

VII. REMARKS

K. Jones was thanked by the board for a great job as Chair.

VIII. ADJOURN

T. Fogel moved to adjourn the meeting, seconded by A. Delzell. The motion carried unanimously. The meeting was adjourned at 4:22 PM.

Kevin Jones, Chair

Janice H. Pinson, Board Clerk

STAFF REPORT

Board of Adjustment, Tuesday, April 2, 2024

Title: Consideration of Administrative Appeal, APL-24-001, Sam Wheeler, Agent for Renae Masters to the Administrative Decision of Paul Ray, Planning Director, requesting Administrative Modification per UDO Chapter 16.9.E.3 the property is located in the General Residential zoning district and further identified by PIN# 8585-88-8335-000.

Speaker: Mack McKeller

Prepared by: Katherine Buzby, Planner/Assistant Zoning Administrator

Approved by: Paul Ray, Planning Director

The Board will hear an administrative Appeal, by Sam Wheeler on behalf of Renae Masters, for a decision made by Paul Ray on a minor modification request under UDO 16.9.E.3.

Background

Renae Masters owns a parcel at 252 Elm Bend Rd in the General Residential-8 (GR-8) zoning district within the corporate limits of the City of Brevard. The parcel identification number is 8585-88-8335-000.

Ms. Masters is building a single-family house on the property and was issued a Stop Work Order by the City on the construction. It was proven that the current structure and stairs/decks do not meet the required side setbacks (6' from the property line) via a survey received by Freeman-Clinkscapes and Associates.

Mr. Wheeler, on behalf of Ms. Masters, requested that Paul Ray to approve a minor modification to the dimensional standards of the zoning ordinance per Chapter 16.9.E.3(a)iv. A letter was issued by Mr. Ray on February 8, 2024, and it was his administrative decision that Ms. Masters does not meet the existence of this condition based on inspections, conversations, and meetings with Ms. Masters.

Mr. Wheeler is appealing the administrative decision by Paul Ray.

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

Discussion

UDO, Chapter 16.9.E.3 states the following: *"Dimensional standard minor modifications are adjustments to the dimensional standards of the zoning ordinance. Dimensional standards may be modified upon a finding by the administrator, based on evidence from the permit holder, that the modification is needed to address a site characteristic or technical design consideration not known at the time of initial approval. a. The planning director's determination shall be based on the existence of one or more of the following conditions:*

iv. A good faith error was made in the location of a building foundation not exceeding one foot due to either field construction or survey error."

Ms. Masters was present at the initial footer inspection on April 6, 2023 by Katherine Buzby (myself). At this time, the footers on the west side of the property appeared to be very close to the property line. Ms. Masters was advised along with her contractor that there needed to be a full six feet of clearance between the house's exterior wall and the property line. I was assured that there were over six feet of clearance and passed the inspection based on the owner and contractor's testament.

A complaint came in around the end of June 2023, by the adjoining property owner (Jerry Brown), that the new house encroaches into the setback (the house is too close to the property line). Between June 3, 2023 and January 2024, many conversations via phone, in person, and email have taken place about the setback encroachment, see attached timeline. Ms. Masters has stated on many occasions she will have a professional survey completed that shows that the house does meet setback requirements.

Mr. Brown contacted me multiple times and stated that Ms. Masters has now added stairs and decks on the house that encroach into the setbacks as well.

On January 4, 2024, I received a survey from Freeman-Clinkscapes and Associates, requesting a lot line adjustment on the east side of the property (both parcels are owned by Ms. Masters). The survey not only shows that the house is too close to the property line on the west side (it is 5.4" from the property line), but it shows a possible encroachment on the east side as well. The stairs on the west side (not depicted on the survey) and the decks on the east side of the house (depicted on the survey) are not permitted as they were not submitted on the original site plan.

On January 5, 2024, I issued a Stop Work Order and posted it on the house and notified the Transylvania Building Dept.

Mr. Wheeler, a neighbor of Ms. Masters, came in on February 6, 2024, and requested information regarding the Stop Work Order. All the information was given to him as it is public record per general statutes. He asked me to remove the Stop Work Order, which I declined. He later emailed me, asking for a minor modification per 16.9.E.3(a)iv, a decision that is made by the Planning Director. Paul reviewed the request, gathered all related information, and issued a letter stating that he would not approve the minor modification based on the evidence he reviewed. The letter was sent to Mr. Wheeler (see attached), in which he then requested to appeal Mr. Ray's decision. The line lot adjustment on the east side was never completed, despite the surveyor being given the application and information to complete it.

Staff Recommendation

The Planning Dept believes that the situation does not meet the criteria for 16.9.E.3(a)iv, as it states that the error is "not known at time of initial approval" and "based on evidence

from the permit holder”. First, the setback requirement was given to the owner at the time of first inspection (prior to any foundations or walls being built) and discussed multiple times after that. Secondly, stairs were added into the setback (beyond the already encroached setback on the west side) and decks were added to the east side, creating not only setback violations on multiple sides but unpermitted structures. Thirdly, the City has an official complaint against the property that brought light to the issues and requires resolution.

The letter Mr. Ray issued clearly states the next steps that need to be completed to move the project forward.

Attachments:

1. Timeline of Events-252 Elm Bend Rd
2. Letter issued by Paul Ray
3. Survey Jan 2024
4. Stop Work Order
5. Application

Renae Masters, 252 Elm Bend Rd

March 31, 2023- Permitted new house based on the application and site plan submitted.

April 6, 2023- Conducted preliminary inspection, with the owner and Eddie McBride onsite at time. Spoke to both about how dug footers are very close to west side property lines (lines staked out), and to make sure a full 6 feet of clearance exists between new wall and property line. Both assured me that there is plenty of clearance.

End of June 2023- Received complaint from adjoining neighbor (Mr. Brown) that the house is being built too close to the property line and is not meeting setbacks.

July 3, 2023- Called owner and spoke to her about possible violation. Set appointment to come out to house to remeasure and meet with owner on July 12, 2023.

July 12, 2023- Received email that Eddie is sick and they need to reschedule appointment.

August 1, 2023- Revisited the site and found that the house wall appears too close to the west property line. In addition, there is stairs and a landing on the west side past the wall location that is not on the permit. There are unpermitted decks on the east side that are not on the permit and may not meet setbacks either. I spoke to owner who assured me that they do meet setbacks, and are hiring a surveyor to confirm this. I confirmed that I will be unable to complete any further inspections until I receive the survey that confirms setbacks are met. I emailed Mr. Brown to let him know that they have hired a surveyor and that I will not do any further inspections until received.

January 4, 2024- Received the new survey from Joey Allison at Freeland-Clinkscases & Associates via email. They are trying to so a lot line adjustment on the east property side between the two properties she owns. It clearly shows the entire house is in violation of the 6' setback, which means the stairs and landing is also in violation.

January 5, 2024- I issued a Stop Work Order for the house. I emailed the owner and posted the order at the house. I also notified the County Building Dept.

February 6, 2024- Mr. Sam Wheeler came to visit me to discuss her Stop Work Order. Stated he is an attorney and is helping the owner. I explained the owner built a house within a side setback after being warned it looks like it will not meet the requirements. Also explained then she built unpermitted landing with stairs into the setback too and on the east side has unpermitted decks that may not meet setbacks on that side either. Declined to remove the Stop Work Order. He then emailed me asking for an administrative minor modification under UDO 16.9.E(3).

February 8, 2024- Spoke to Paul Ray about Mr. Wheeler asking for the modification. He reviewed the UDO, and did decide that he would decline the request in writing. I emailed the decision to Mr. Wheeler.

February 13, 2024- The attorney emailed again about request for minor modification. I resent the letter Paul made as the attorney said he did not receive it. He then requested the information about next steps for the owner. I explained the variance process and sent applications and timelines. He responded by wanting to appeal Paul's decision, so I sent him the appeal process and timelines.



CITY of BREVARD

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

February 8, 2024

Sam Wheeler
Whitfield-Cargile Law, PLLC
Post Office Box 1101
23 South Broad Street, Suite 204
Brevard, NC 28712

Dear Mr. Wheeler:

I am writing to provide an administrative decision in response to your email sent on February 6, 2024, to Katherine Buzby, Planner/Assistant Zoning Administrator in which you requested relief for your client, Margaret Masters, as authorized by Section 16.9.E.3.

After reviewing this case and speaking with Ms. Buzby it is my understanding that zoning permit Z-23-059 was issued to Margaret Masters on March 31, 2023, to construct a “new house” at 252 Elm Bend Road. The site plan depicts a building envelope with a 70-foot front setback off Elm Bend Road, at the northern end of the parcel. Opposite is the rear yard with a 62-foot setback measured off the southernmost property line, a 7-foot side yard setback off the eastern property line and a 6.1-foot side yard setback off the western property line.

According to our records, Katherine Buzby made a preliminary inspection on April 6, 2023, and noted the close proximity of the footing trench to the side property lines. According to her notes, and her recollection of the inspection, she counseled the property owner on the requirement to maintain a 6-foot setback off the side property lines. The house is nearly complete now and there are some issues to resolve as indicated by Ms. Buzby’s Stop Work Order, issued January 4, 2024. The following response is in reference to the corrective measures suggested in your email:

1. Permit Z-23-059 can be amended to include a deck on the eastern side of the house, and a lot-line adjustment can resolve the setback problem. This will need to happen before the City can issue final approval.
2. A Stop Work Order is a general enforcement tool to stop illegal or dangerous work and to prevent exacerbating violations. Abating the unpermitted work by removing the stairs on the western side of the house is permissible with the Stop Work Order in place.
3. According to the survey from Freeland – Clinkscales & Associates, Inc., the house is five-feet six-inches from the western property line despite Ms. Buzby’s warning to

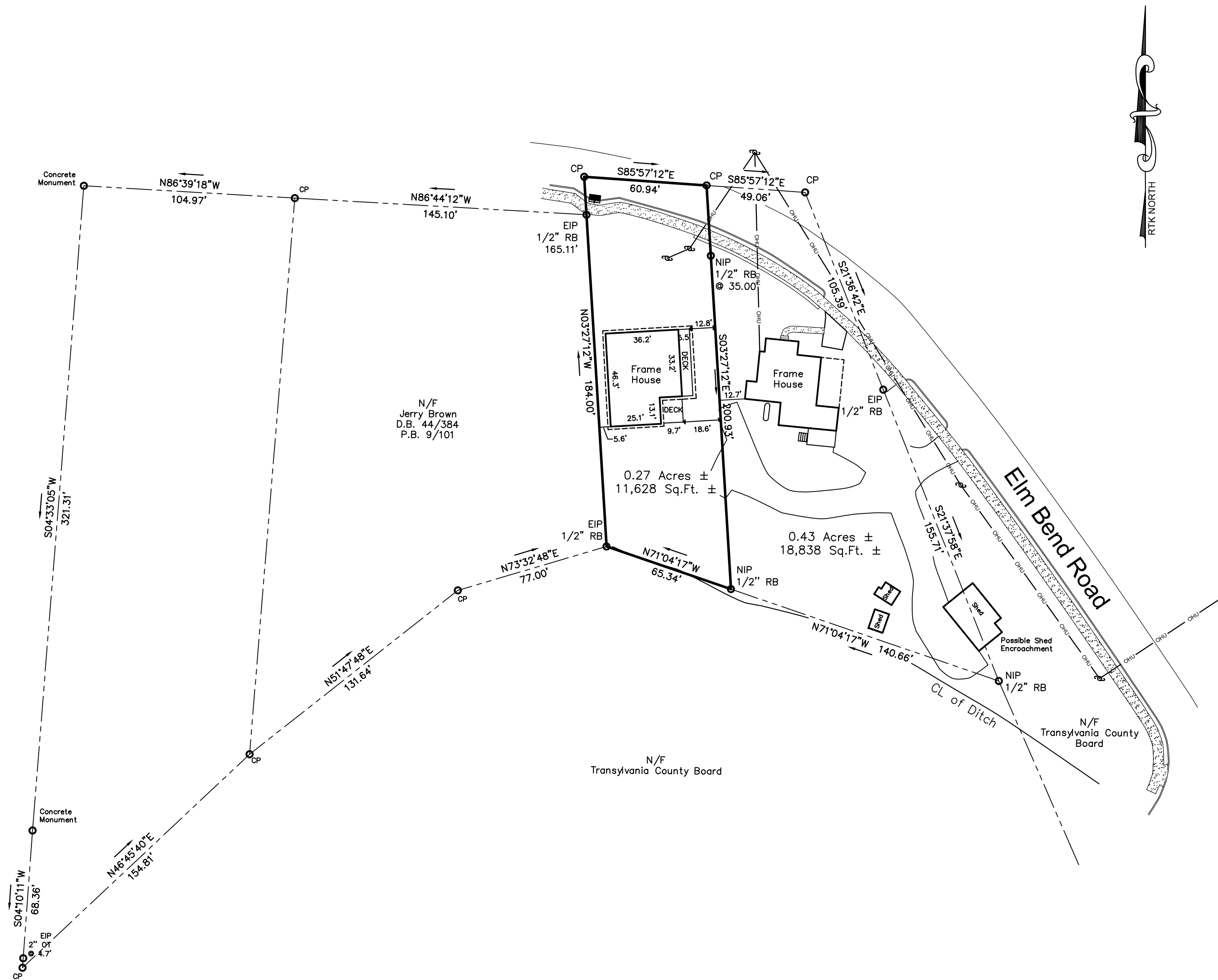
the property owner that side yard setbacks are required to be six-feet. This, coupled with further expansion into the side yard setbacks with unpermitted stairs and deck leave me unconvinced this was a good faith error, and it is my determination this decision is better suited for the Board of Adjustment.

Please work with Katherine Buzby who will provide you with an application for a variance and supplemental information to share with your client. Thank you in advance for helping to resolve this matter in a timely fashion.

Sincerely,

A handwritten signature in blue ink that reads "Paul C. Ray". The signature is fluid and cursive, with the first name "Paul" and last name "Ray" being more prominent than the middle initial "C.".

Paul C. Ray
Planning Director
City of Brevard
(828) 885-5630
Paul.ray@cityofbrevard.com



LEGEND:		
○	NIP	NEW IRON PIN (5/8" REBAR)
●	EIP	EXISTING IRON PIN
○	CP	CALCULATED POINT ONLY
⊙		POWER POLE
⊙		LIGHT POLE
⊙		WATER VALVE
⊙		GAS VALVE
⊙		WATER METER
⊙		FIRE HYDRANT
⊙		SANITARY SEWER MANHOLE
⊙		STORM DRAIN MANHOLE
⊙		CATCH BASIN
⊙		CLEANOUT
⊙		CURB INLET
⊙		TRANSFORMER
⊙		OVERHEAD POWER
⊙		FENCE LINE

1.CERTIFICATE OF SURVEY AND ACCURACY

I, Fulton V. Clinkscales, Jr., certify that this map was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey under my supervision) (deed description recorded in Book ____, Page ____, Book ____, Page ____, etc.) (other); that the error of closure as calculated by latitudes and departures is 1: ____; that the boundaries not surveyed are shown as broken lines plotted from information found in Book ____, Page ____; that this map was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this ____ day of December, A.D., 2023

G.S. 47-30(f)(11)(d) This survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exemption or exception to the definition of subdivision.

F.V. Clinkscales Jr., P.E.
No: L2614

I (officer authorized to take acknowledgments) do hereby certify that (name of registered surveyor) personally appeared before me this day and acknowledged the due execution of this certificate. Witness my hand and (where an official seal is required by law) official seal this ____ day of December, A.D., 2023

Signature of Licensed Surveyor

2. CERTIFICATE OF OWNERSHIP AND DEDICATION

I hereby certify that I am the owner of the property shown and described, which is located in the subdivision jurisdiction of the City of Brevard and that I hereby adopt this plan of subdivision with my free consent, establish minimum building setback lines, preserve and protect all significant trees over 15 inches diameter in the tree and root protection area, and plant supplementary trees as required. Furthermore, I hereby dedicate all streets, alleys, walks, parks, and other sites and easements, to public or private uses as noted. Furthermore, I hereby dedicate all sanitary sewer, storm sewer, and water lines that are located in public utility easements or rights-of-way to the City of Brevard. Furthermore, I hereby set aside in perpetuity for permanent preservation, all Regulatory Floodways, Stream Corridor Protection Areas, and other protected natural areas as shown, described, or otherwise noted hereupon.

Date: _____

Owner(s): _____

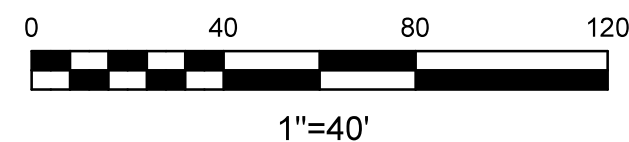
6 REVIEW OFFICER CERTIFICATION

State of North Carolina, County of Transylvania

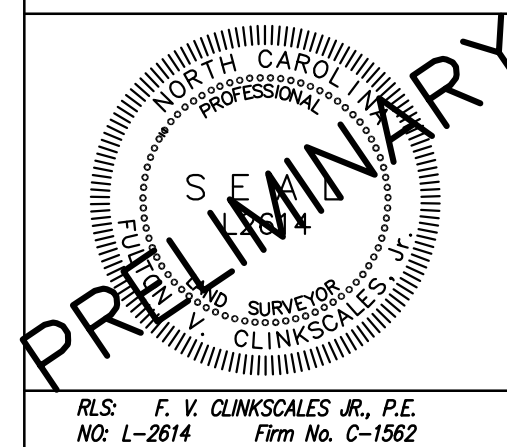
I, _____, Review Officer of Transylvania County, City of Brevard, certify that the map or plat to which this certification is affixed meets all the statutory requirements for recording.

Date: _____

Review Officer: _____



PROPERTY LINE ADJUSTMENT
MARGARET RENEA MASTERS
(Owner)
250 Elm Bend Road
City of Brevard, Transylvania County
North Carolina



FREELAND - CLINKSCALES
& ASSOCIATES, INC. of NC
Engineers * Land Surveyors
201 2nd AVE. EAST
HENDERSONVILLE, N.C. 28792
(828) 697-6539
fcaofnc@outlook.com

REF. PLAT BOOK	9/101
REF. DEED BOOK	610/591
TAX MAP	8585-88-8335
PARTY CHIEF	BLB
DRAWN	BLB
DATE	DECEMBER 11, 2023
DWG. NO.	H43349



The City of
Brevard
North Carolina

ORDER TO STOP WORK

Authorized under Section 18-34(c) of the Code of Ordinance

Name: Renee Masters

Location: 252 Elm Bend Rd, PIN# 8585-88-8335-000

All work (*Grading, General Construction, Electrical, Mechanical, Plumbing, and Equipment installation*) shall **STOP** and shall not resume until authorized by the City of Brevard Code Enforcement Official posting this notice or by the Planning Director.

Reason for Stop Work:

Violation of Permit: House does not meet side setbacks per UDO 2.3(C).

VIOLATION OF A STOP WORK ORDER CONSTITUTES A CLASS I MISDEMEANOR. IT IS UNLAWFUL TO REMOVE THIS NOTICE.

City of Brevard Planning Department
95 W. Main Street
Brevard, NC 28712
Phone: (828) 885-5630

Date: January 4, 2024

Zoning Inspector:

Katherine Buzby



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

RECEIVED
2/15/2024

Appeal File# APL-24-001

BREVARD BOARD OF ADJUSTMENT - APPEAL

APPOINTMENT OF AGENT

I Renee Masters, owner of property located at
(street address) 252 Elm Bend Rd Brevard, NC 28712 and
identified by the Transylvania County Tax Identification Number (PIN#):

8585-88-8335-000, located in Transylvania County, North Carolina, do
hereby appoint Sam Wheeler to represent me in
filing an application for APPEAL DECISION OF ZONING ADMINISTRATOR AND/OR CODE
ENFORCEMENT OFFICER or PETITION FOR AN INTERPRETATION OF THE CITY OF
BREVARD UNIFIED DEVELOPMENT ORDINANCE before the Brevard Board of Adjustment.

I further authorize Sam Wheeler to act as my agent in
all matters, formal and informal, and to receive all official correspondence as it relates to
the APPEAL OR PETITION FOR AN INTERPRETATION request and hearing.

Property Owner Signature: Renee Masters Date: 2-15-24
Mailing Address: 250 Elm Bend Rd Brevard, NC 28712
Phone: 828-553-5579 Email: ceruna1@compurum.net

Agent Name: Sam Wheeler, Whitfield-Cargile Law
Mailing Address: 23 S. Broad St, Suite 204, Brevard, NC 28712
Phone: (828) 884-4529 Email: sam@whitfieldcargilelaw.com



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

APPEAL FILE # APL-24-001

CITY OF BREVARD

**APPLICATION FOR APPEAL FROM DETERMINATION OF THE CODE ENFORCEMENT
OFFICER AND/OR ZONING ADMINISTRATOR - PETITION FOR AN INTERPRETATION
OF THE UNIFIED DEVELOPMENT ORDINANCE**

TO THE BOARD OF ADJUSTMENT:

I, Renee Masters, hereby appeal to the Board of Adjustment from the following adverse determination of a Code Enforcement Officer and/or Zoning Administrator of the City of Brevard: (State the Decision)

See Ex. A - letter / decision from Paul Rey

The adverse decision was made with respect to property described herein or on the attached sheet.

Parcel Identification Number (PIN): 8585-88-8335-000

I, Renee Masters, hereby request an interpretation of:

() City of Brevard Official Zoning Map as specified herein;

☒ the following section(s) of the text of the Unified Development Ordinance:

16.9.E.3

as the map and/or the ordinance relate to the use of the property described herein or on the attached sheet.

STATEMENT BY THE APPELLANT

In the space provided below or on the back of this form, write your interpretation of the UDO provision in question and state your reasons for your interpretation. State the FACTS you are prepared to prove to the Board of Adjustment in support of your interpretation that the determination of the Code Enforcement Officer and/or Zoning Administrator was erroneous. Attach a copy of correspondence from the Code Enforcement Officer and/or Zoning Administrator, with the determination you are appealing.

See Ex A - Decision. See Email, Ex. B, related to stop
Work order, Ex. C, and 6 inch encroachment into setback, as
shown on survey, Ex. D. Interpretation/request sought is in email, Ex. B.

I certify that all of the information presented by me in this Application is true and correct to the best of my knowledge, information and belief.

SIGNATURE OF APPLICANT

Bernie Masters

Date: 2-15-24

Mailing Address

250 Elm Bend Rd Brevard, NC 28712

Phone: 828-553-5579

Email: Cerun1@comporium.net

Appeal filed with the City of Brevard, City Clerk this the 15th day of
February, 2024.

City of Brevard

By:

Denise Hodsdon

City Clerk

Statement Continued

It was unclear from Mr. Ray's letter, Ex. A, whether a decision was made, thus triggering appeal rights, or whether Mr. Ray was referring to the Board of Adjustments for an initial determination. Emails with Mr. Ray's office indicate a decision was made; however, out of an abundance of caution, both an appeal and, if necessary, an interpretation are requested.

Ex. B

Sam Wheeler

From: Sam Wheeler
Sent: Tuesday, February 6, 2024 4:30 PM
To: katherine.buzby@cityofbrevard.com; Paul.Ray@cityofbrevard.com
Cc: rerun1@comporium.net
Subject: Masters; 252 Elm Bend Rd.; PIN# 8585-88-8335; Stop Work Order

Katherine,

Thanks for meeting with me this morning. As discussed, I am emailing you and Paul about Mrs. Masters' Stop Work Order.

To reiterate and for the benefit of Paul, I live on Warren Lane close to Mrs. Masters. She walked over last evening and filled me in about her issues. I told her I would try to help her look into them and see if there is a way to resolve them. I have copied her so everyone can be on the same page.

The Stop Work Order indicates that the construction does not meet side setbacks, which are 6' on each side. The way the home is constructed, the sides of the property are where the front and the back of the home are located. I understood from our conversation that the issues are as follows:

- (1) The deck on the front of the home (side of the property) was not included on your permit, and it further does not comply with 6' setbacks. It is my understanding that Mrs. Masters' is in the process of adjusting the lot line to avoid the setback issue and that she is more than willing to update her permit to reflect the deck. She stands ready to complete both those things with necessary applications/guidance from your office.
- (2) The stairs on the back of the house (other side of the property adjacent to Mr. Brown's vacant lot) were not permitted and are in the 6' setback. Mrs. Masters is prepared to remove those stairs, thus completely alleviating the issue altogether. She does not want to do this work without the Stop Work Order being lifted, as she does not want to be in further violation.
- (3) The side of the house or corner of the house (adjacent to Mr. Brown's lot) is 5'6" from the line, thus 6" into the 6' setback. This is shown on a preliminary survey. I believe Mrs. Masters is exploring whether to get a second opinion from another surveyor, but she is also interested in pursuing relief under 16.9.E.3 of the UDC, which gives your office authority to make minor modifications based on the location of a home being constructed up to one foot into a setback. Your office is authorized to adjust the setback 12" or 20%, which ever is greater. If her home is only 6" into the setback, this provision would be applicable. This is a process that is separate from a potential variance, as stated in 16.9.F

I understand there has been some back and forth between the various parties, but, at this point, Mrs. Masters simply want to have the Stop Work Order lifted, come into compliance, and complete construction. Numbers (1) and (2) above can be achieved with coordination with your office. Again, she does not want to remove the steps with the Stop Work Order in place. The remaining issue would be Number (3), and we are inquiring as to the application process to exercise rights under 16.9.E.3. This provision applies to the situation – the home was constructed less than a foot into the setback - and your office has the authority to modify the requirements to accommodate the error. The UDC considers an application for modification, but I understand from our conversation that you are not aware of a formal application.

Please let us know about clearing all the above issues so she can proceed with the completion of her home.

I am happy to talk at your or Paul's convenience. I am trying to help a neighbor and friend, so I certainly do not have an in-depth knowledge of all the interactions and facts to date.

Thanks.

Best,

Sam

Sam Wheeler
Whitfield-Cargile Law, PLLC
Post Office Box 1101
23 South Broad Street, Suite 204
Brevard, North Carolina 28712
P: 828-884-4529
F: 828-884-4528
E: sam@whitfieldcargilelaw.com

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately notify Whitfield-Cargile Law, PLLC at 828-884-4529 or by reply email to sam@whitfieldcargilelaw.com and delete this message and its attachments, if any.

No employee of Whitfield-Cargile Law, PLLC furnishes tax advice. No contents of this email should be construed as providing tax advice.

STAFF REPORT

Board of Adjustment, Tuesday, April 2, 2024

Title: Consideration of Request of Jason Chewning, Agent for Charlotte Shackleford for a variance from UDO Chapter 2.3.C for a 3' 1" reduction in the rear setback of 10 feet. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential zoning district, further identified by PIN# 8585-58-3764-000.

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

Background

An application for a variance has been submitted by Jason Chewning on behalf of Charlotte Shackleford, owner of 203 Maple 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 is relatively small at 0.157 acres and the identification number 8585-58-3764-000.

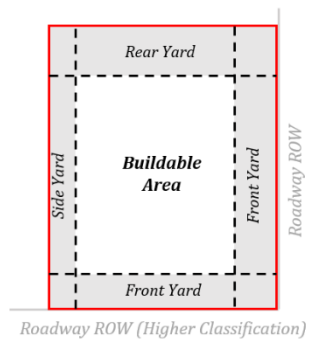
The applicant is requesting a variance from rear setback requirement for accessory structures of 10 feet, per Section 2.3.C of the City's Unified Development Ordinance. The request is for a variance of 3.1 feet into the setback. See Attachments for the application materials and for a site map.

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 – Maple Street and Grove Lane. 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 versus a road that only extends $\frac{1}{4}$ mile); and
- The width of the rights-of-way on the roads.

The administrator determined that Maple Street would be considered the street of higher classification.

The applicant is requesting a variance to construct a new garage and with the current layout of the house and small lot size, it can only be built in the rear yard and creates an encroachment into the setback.

Standards for the Granting of Variances

In order to grant the variance, all 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. VAR-24-001_Variance Attachments



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 # VAR-24-001

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.)

* - ATTACHED - *

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 203 Maple Street

Tax Parcel Number of subject property 8585-58-3764-000

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: Jason Chewing

Address: 50 Commerce St., Suite 7
Brevard, NC 28712

Phone: 828-577-7754 Email: camptownbooks@gmail.com

OWNER INFORMATION

Name: Charlotte Shackleford



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# VAR-24-001

BREVARD BOARD OF ADJUSTMENT - VARIANCE

APPOINTMENT OF AGENT

I Charlotte Shackelford, owner of property located at
(street address) 203 Maple Street and
identified by the Transylvania County Tax Identification Number (PIN#):

8585-58-3764-000, located in Transylvania County, North Carolina, do
hereby appoint Jason Chewing to represent me in
filing an application for Variance before the Brevard Board of Adjustment.

I further authorize Jason Chewing 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: 2/15/24

Mailing Address: 203 Maple St, Brevard, NC 28712

Phone: 704 756-7800

Email: cjshackelford@gmail.com

Agent Name: Jason Chewing

Mailing Address: 50 Commerce St, Suite 7, Brevard, NC

Phone: 828-577-7754

Email: camptownbooks@gmail.com

Address: 203 Maple St
Brevard, NC 28712

Phone: _____ Email: _____

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 02-15-24

APPLICANT'S SIGNATURE Jana Channing

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: 04-02-24

Subject: Variance Request - Encroachment on Rear Yard Setback

According to City Ordinance, Chapter 2, Section 2.3, Setbacks for Accessory Structures

Setbacks for accessory structures.

1.1. Setbacks for accessory structures vary based on the size of the structure and the zoning district.

TABLE 2.3C: SETBACKS FOR ACCESSORY STRUCTURES

District	Side Yard Setback		Rear Yard Setback	
	< 120 sq. ft.	≥ 120 sq. ft.	< 120 sq. ft.	≥ 120 sq. ft.
GR (4, 8)	3 feet	6 feet	3 feet	10 feet

REAR YARD, >120 SQFT - 10 feet

To whom it may concern,

I am writing to request a variance for the construction of a garage on my property located at 203 Maple Street. The proposed garage plan deviates from the required 10-foot setback outlined in the zoning regulations. I would like to provide an explanation as to why this variance is necessary and how it aligns with the intent and purpose of the regulations. We are asking to encroach 3'1" feet into the 10-foot setback.

1. **Need for a Garage:** One of the primary reasons for requesting this variance is the need for a garage. As residents of the neighborhood, we have encountered repeated issues with limited parking options and insufficient storage space. Constructing a garage will address these concerns and provide a secure and convenient place to park our vehicles and store essential items.
2. **Property Constraints:** The unique characteristics of our property pose challenges in adhering to the setback requirement. The lot shape and size, along with existing structures and landscaping, limit the available space for constructing a garage with the required setback. Any attempt to comply with the setback would result in an impractical and inefficient use of the property.
3. **Compatibility with Neighboring Properties:** It is important to note that the proposed garage will be aesthetically and visually harmonious with the surrounding properties. The design and materials will be selected to ensure that the structure blends seamlessly with the architectural character of the neighborhood, mitigating any potential negative impacts on neighboring properties.

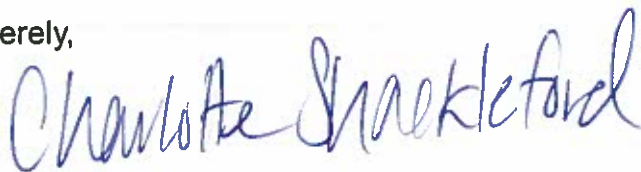
4. Minimal Impact: The encroachment on the setback will have minimal impact on adjacent properties and the overall community. It will not hinder access to neighboring properties, obstruct sightlines, or contribute to any significant changes in the prevailing streetscape. As responsible homeowners, we are committed to minimizing any potential adverse effects resulting from this variance.

In light of the reasons stated above, we kindly request that the planning or zoning authority carefully consider granting the requested variance. The construction of the garage will significantly enhance the functionality and value of our property while maintaining the integrity of the neighborhood and adhering to the broader objectives of the zoning regulations.

We understand that the variance approval process involves thorough evaluation of the proposal, potential impacts, and compliance with local regulations. We are prepared to provide any additional documentation or address any concerns raised during the review process. Our goal is to work collaboratively with the planning or zoning authority to find a mutually beneficial solution.

Thank you for your consideration.

Sincerely,

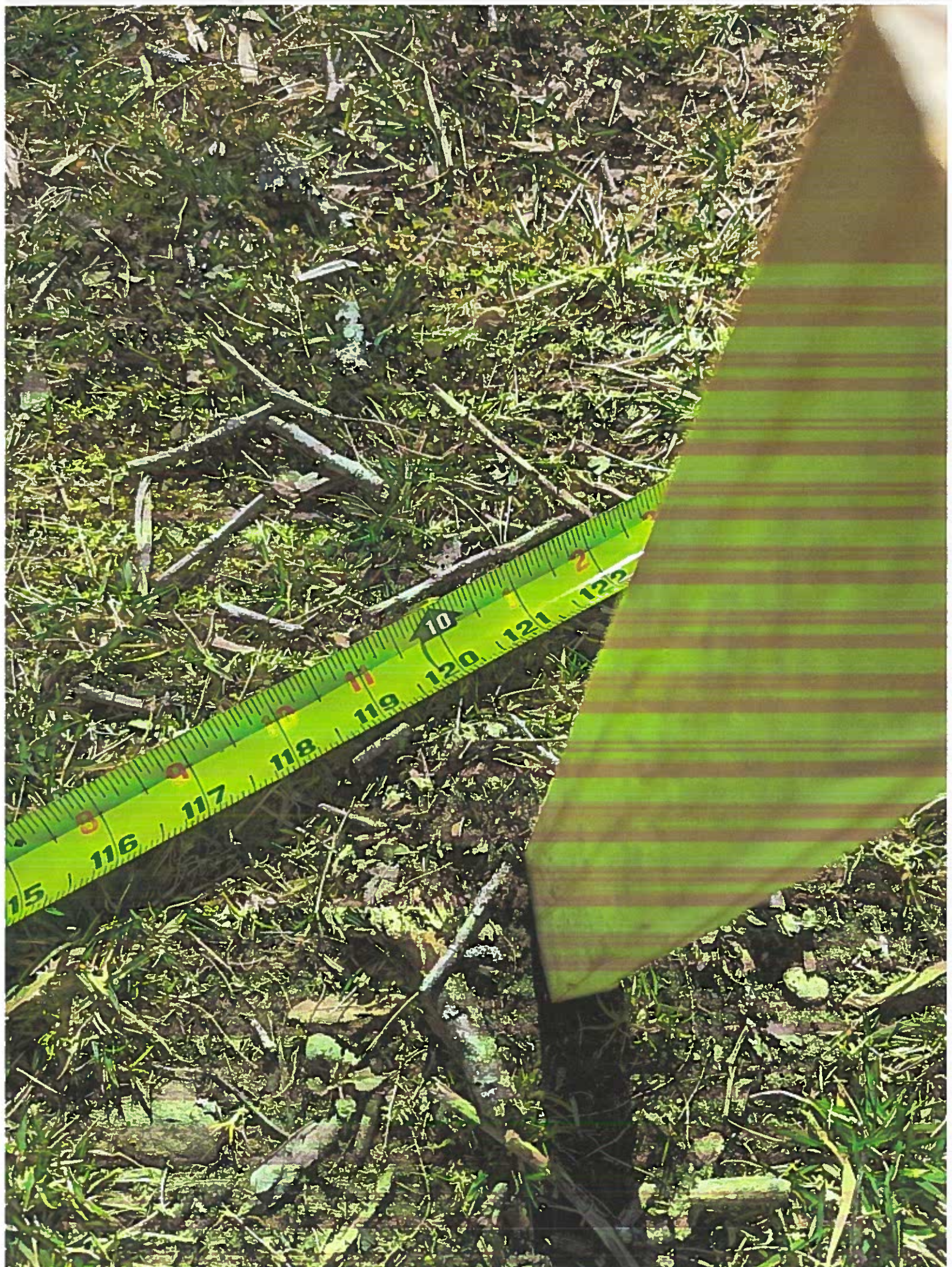
A handwritten signature in blue ink that reads "Charlotte Shackelford". The signature is written in a cursive, flowing style.













STAFF REPORT

Board of Adjustment, Tuesday, April 2, 2024

Title: Consideration of Request of John Koury Agent for Brevard Collective, LLC for a variance from UDO Chapter 14.3.E.5. The property is located in the zoning jurisdiction of the City of Brevard in the Downtown Mixed Use (DMX) zoning district further identified by PIN# 8585-49-2890-000.

Speaker: Aaron Bland, Asst Planning Director

Prepared by: Aaron Bland, Asst Planning Director

Approved by: Paul Ray, Planning Director

Background

The City has received an application for a variance request from John Koury, agent for Brevard Collective, LLC, for a variance from Section 14.3.E.5 of the Brevard Unified Development Ordinance. The property is located in the zoning jurisdiction of the City of Brevard in the Downtown Mixed Use (DMX) zoning district, further identified by PIN# 8585-49-2890-000.

The applicant is requesting a variance from the requirement that a significant improvement to a non-conforming structure shall require the satisfaction of all other requirements of the ordinance and the elimination of all non-conforming conditions. Specifically, the applicant is requesting to be allowed to build a single-story addition to the existing single-story structure. This conflicts with provisions found in UDO Chapter 5 – Building Types and Architectural Standards which requires buildings in the DMX district to be multi-story.

See the included attachments for the application materials, relevant sections of the UDO, and a vicinity map.

Discussion

The requirement for multi-story buildings in DMX is based on the purpose description of the district itself, which reads:

The Downtown Mixed-Use District is coded for the traditional downtown area. Individual buildings are encouraged to be multi-story with uses mixed vertically, street level commercial and upper level office and residential. Higher densities of residential development are encouraged. It is the purpose of these regulations to encourage vitality by excluding certain activities which have a negative effect on the public realm through auto-dominated or non-pedestrian oriented design or uses.

Generally, downtown is expected to be the most densely and intensely developed part of the city, a development pattern that is supported by having primarily multi-story buildings that house a variety of land uses. To this end, the mixed-use building type is required to

have a minimum of two stories (UDO Section 5.13.C.1).

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 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.

Advertising Summary

This variance request was advertised in accordance with NCGS 160D-406 by the placement of a legal advertisement in the Transylvania Times Newspaper for two consecutive weeks and mailing notice of the hearing to the adjoining property owners. A sign advertising the hearing was also posted on the property.

Attachments:

1. Application Materials
2. Selected UDO Sections
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 # VAR-24-002

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.)

The existing building's proposed use is conforming with DMX. The existing building is non-conforming in both aspects of building height and location relative to UDO setback requirements. The proposed building expansion to the south and west at the corner of Oakdale and South Broad will extend only as far possible to maintain the handicapped parking at the corner. The expansion will be at an orthogonal relationship with the rest of the building despite Oakdale Street's angle. Please see attached project description for more detail.

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 280 South Broad

Tax Parcel Number of subject property 8585-49-2890-000

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: John Koury, AIA

Address: 170 South Broad, Suite 2B

Phone: 828.866.3104 Email: john@designwithmay.com

OWNER INFORMATION

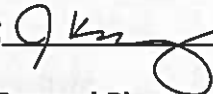
Name: Lou Rubino

Address: 218 Bald Rock Rd
Brevard, NC 28712

Phone: 631- 517-0667 Email: tat2lou@gmail.com

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 2.13.2024

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: 4.2.2024



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 Lou Rubino Manager of Brevard Collective LLC, owner of property located at
(street address) 280 South Broad and
identified by the Transylvania County Tax Identification Number (PIN#):

8585-49-2890-000, located in Transylvania County, North Carolina, do
hereby appoint John Koury, AIA to represent me in
filing an application for Variance before the Brevard Board of Adjustment.

I further authorize John Koury, AIA 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:  Date: 2.13.2024
Mailing Address: 1220 Broadside rd, York SC 29745
Phone: 631- 517-0667 Email: Founders@Brevardcollective.com

Agent Name: John Koury
Mailing Address: 170 South Broad St. 2B Brevard, NC 28712
Phone: (828) 866-3104 Email: john@designwithmay.com



The City of *Brevard* North Carolina

Variances “Unnecessary Hardship”

North Carolina General Statutes, 160D-705, authorizes the local Board of Adjustment to grant a variance from certain zoning regulations, such as setbacks and dimensional standards, under limited circumstances. The burden of proof is on the applicant seeking the variance to show an “unnecessary hardship.” That term is outlined in the General Statutes and all of the criteria must be met in order for the Board of Adjustment to grant a variance, but what is an unnecessary hardship?

§ 160D-705. When unnecessary hardships would result from carrying out the strict letter of a zoning regulations, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the regulation. 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(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 is not a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

This literature is meant to provide general knowledge about variances. Please call (828) 885-5630 to make an appointment with a City Planner if you require further information.



Application For A Variance (VAR) Brevard Board Of Adjustment
280 South Broad Street, Brevard

February 14, 2024

Reasons for Variance Request:

The proposed project includes renovating an existing non-conforming structure to accommodate a conforming use per the City of Brevard's Unified Development Ordinance within the Downtown Mixed-use District. The existing building is a single-story, former retail store set back from corner of South Broad and Oakdale. The proposed renovation and reuse of the building is as a food hall. To accommodate the proposed uses, expanding and enclosing the existing porch along Oakdale is required. The proposed location provides desirable adjacencies for deliveries and new restrooms, keeping services from crossing front of house and guest seating areas. The Owner is requesting a variance to construct the single-story addition.

A. Building / Property Information

Parcel ID:	8585-49-2890-000
Calculated Acreage:	0.419 Acres
Land Value:	\$240,000
Building Value:	\$203,470
Assessed Value:	\$443,470
Existing Building Area:	3,992 SFB

Adjacent Property Owners

263 South Caldwell Street

Parcel ID:8585491952000

Melrose Linda W Trustee 190 Speckled Trout Run Brevard, NC 28712

250 South Broad

Parcel ID 8585493865000

Feaster Properties LLC 1160 Old Mill Ln Wyomissing, PA 19610

253 South Caldwell St

Three Lees LLC (Lou Rubino) PO Box 40 Sapphire, NC 28774

Parcel ID: 8585492924000

B. Text from Unified Development Ordinance specific to nonconforming principal structures:

14.3. - Nonconforming principal structures.

- A. A nonconforming principal structure containing a use permitted in the district may continue only in accordance with the provisions of this chapter.*
- B. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures and any nonconforming use contained therein.*
- C. A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.*
- E. If a nonconforming structure is significantly damaged or significantly improved, the following requirements shall apply in the issuance of any permit:*
 - 5. Significant damage and/or significant improvement to any non-conforming structure that is located within a lot containing any other non-conforming condition shall, to the maximum extent possible, require the satisfaction all other requirements of this ordinance and the elimination of all non-conforming conditions. Examples include, but are not limited to, the provision of sufficient parking, landscaping and buffering, and public improvements (i.e., sidewalks and other), and full compliance with all applicable signage, flood hazard reduction, surface water protection, and stormwater management provisions.*
- F. If a nonconforming structure is substantially damaged or substantially improved, the structure, all nonconforming uses contained therein, and all non-conforming conditions within the same property (i.e., parking, landscaping, signage, flood hazard issues, and etc.) shall be brought into full compliance with the requirements of this ordinance.*

Definitions.

4. **Downtown Mixed-Use (DMX).** The Downtown Mixed-Use District is coded for the traditional downtown area. Individual buildings are encouraged to be multi-story with uses mixed vertically, street level commercial and upper-level office and residential. Higher densities of residential development are encouraged. It is the purpose of these regulations to encourage vitality by excluding certain activities which have a negative effect on the public realm through auto-dominated or non-pedestrian oriented design or uses.

Substantial improvement: 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. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either of the following:

1. Any correction of existing violations of state, city, or county health, sanitary, or safety code specifications which have been identified by the administrator or other authorized official of the State of North Carolina or Transylvania County, and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a historic structure provided it meets the following criteria: such alteration is necessary to maintain, retain or restore historically significant characteristics; the alteration will not preclude the structure's continued designation as a historic structure; and the alteration does not result in the expansion of a non-conforming condition.

C. Reasons for Variance Request

The Owner requests a variance in order to renovate the existing building to support reuse with conforming uses such as restaurant, retail, and/or outdoor seating. The proposed uses within the building and use of the outdoor space for seating will promote pedestrian-oriented design and uses of the property as desired for the DMX district.

The proposed portions of the structure to be reused will include the existing foundation, slab, exterior wall, windows along north wall, and existing roof decking and structure. New work will include exterior finishes, doors, floor finishes, building expansion, South Broad façade improvement, electrical, mechanical, and plumbing services.

The existing parking lot at the corner of Oakdale and Broad will remain as handicapped parking. The rear of the building will be redeveloped from the existing concrete to landscaped exterior beer garden. The property owner also owns 253 South Caldwell, which is currently an unimproved gravel parking lot. This lot will be improved per City standards to serve as parking for 280 South Broad.

The scope of proposed improvements relative to the tax value of the structure will constitute a *substantial improvement* as defined by the UDO. As required by Section 14.3.E.5, elimination of all nonconforming conditions would result in an unnecessary hardship, requiring small but expensive expansion in footprint with the addition of a second floor.

The requested variance is consistent with the spirit, purpose, and intent of the regulations, seeking to promote pedestrian-oriented uses along in DMX. The proposed project will improve the aesthetics of the existing building, bringing its façade to the R.O.W. on South Broad and add building height. The proposed single-story addition along South Broad will be compatible with the UDO requirements in everything but height, which will be approximately 18' a.f.f.

The proposed expansion along Oakdale will maintain an orthogonal relationship with the existing building extending south as close to the R.O.W. as possible while maintaining the existing handicapped parking at the Oakdale & South Broad Streets. Proposed expansion along Oakdale to the west will use the same parameters, but be limited by clearance required for new grease trap between the expansion and the R.O.W. The facades along Oakdale Streets will be of UDO compliant materials and approximately 17' a.f.f.

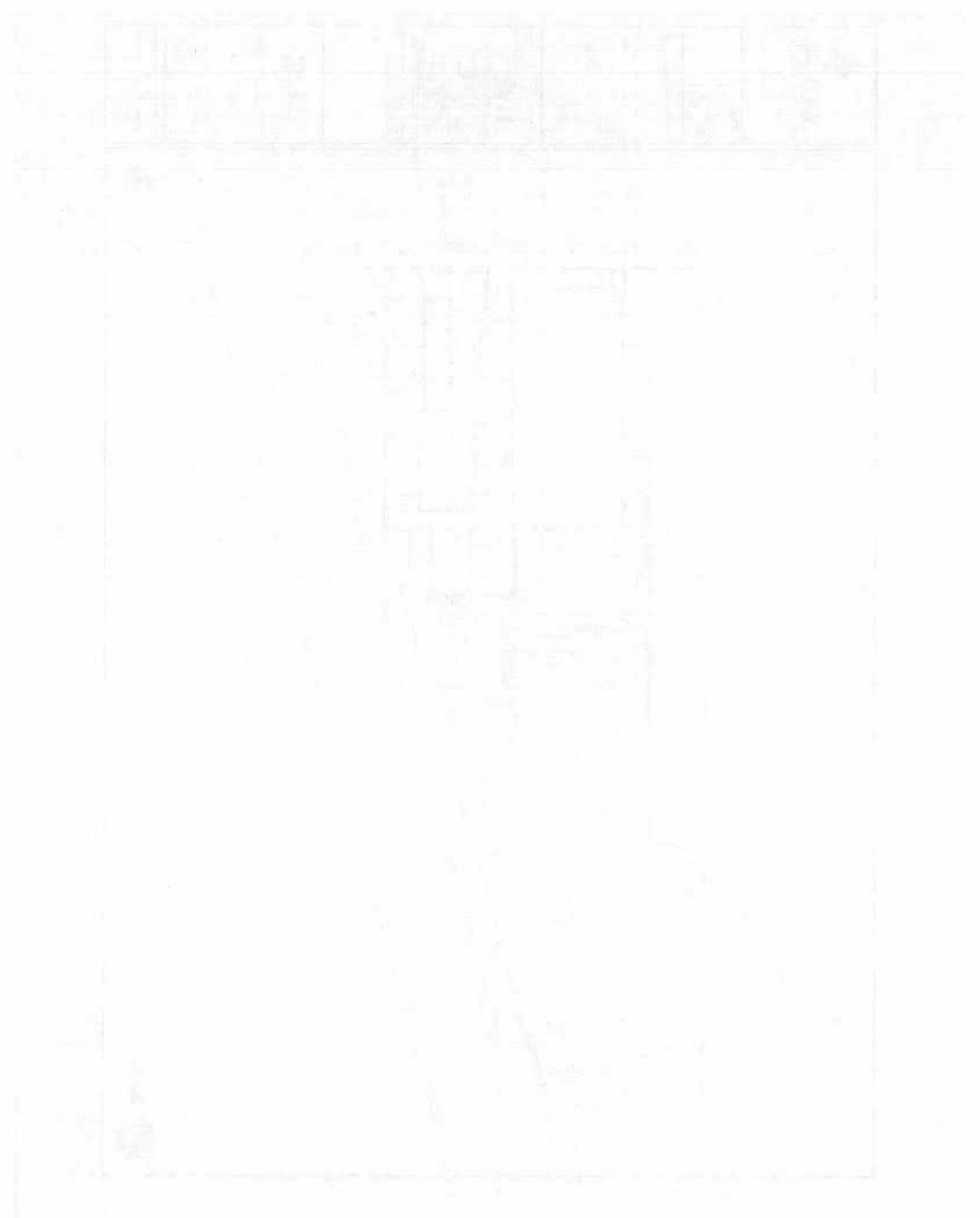
D. Existing Photos – Context



a. View at Corner of Oakdale (left) and South Broad Streets



b. View at South Broad Street





UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 5. BUILDING TYPES AND ARCHITECTURAL STANDARDS

5.6. Permitted building type by district.

The following table indicates the permitted building type requirements by district. An "X" indicates that the specific building type and its requirements are applicable.

TABLE 5.6A: PERMITTED BUILDING TYPE BY DISTRICT							
Building Type	Zoning District						
	GR	RMX	NMX	DMX	CMX	IC	GI
Civic	X	X	X	X	X	X	
Institutional	X	X				X	
House	X	X	X				
Townhome	X	X	X	X	X	X	
Apartment		X	X	X	X	X	
Mixed-Use			X	X	X	X	
Commercial					X		
Note: Because of the unique characteristics of group developments, they may be exempted from the permitted building type by district above, and instead may include all building types for all zoning districts, as determined by the administrator.							

(Ord. No. 2020-24 , § 1(Exh. A), 10-19-20; Ord. No. 2020-25 , § 1(Exh. A), 10-19-20; Ord. No. 2022-40, § 1(Exh. A), 6-20-22)



UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 5. BUILDING TYPES AND ARCHITECTURAL STANDARDS

5.13. Building type: Mixed-use.

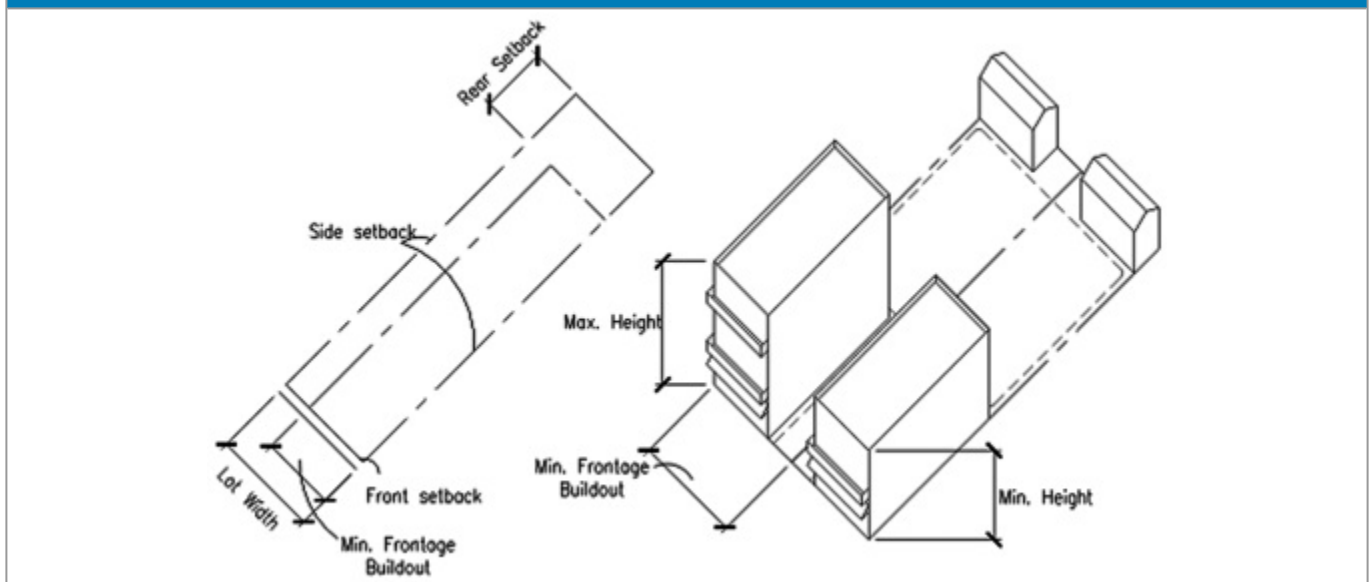
- A. *Description:* A multi-story small scale structure which can accommodate a variety of uses. A group of mixed-use buildings can be combined to form a mixed-use neighborhood center. Individual mixed-use buildings can be used to provide some commercial services, such as a neighborhood store, in close proximity to homes. The uses permitted within the building are determined by the regulations for the zoning district in which it is located.



FIGURE 5.13A: EXAMPLES OF MIXED-USE BUILDINGS

Office Over Retail / Restaurant	Office Over Retail / Office
	
Residential / Office Over Retail	Office Over Office / Retail
	
Residential Over Residential / Office / Retail	
	

- B. *Public space* :** A mixed-use building may include a small front plaza or courtyard to provide public space for outdoor seating as well as a building with complete lot coverage where parking is handled in a manner other than on-site surface parking.

**FIGURE 5.13B: ILLUSTRATION OF MIXED-USE BUILDING****C. General requirements:**

1. Mixed-use buildings shall have a minimum of two stories.
2. Street walls: The first floors of all mixed-use buildings shall be designed to encourage and complement pedestrian-style interest and activity by incorporating the following elements:
 - a. The first floor of all buildings fronting directly on a street shall include transparent windows and doors arranged so that the uses inside are visible from and/or accessible to the street on at least 40 percent of the length of the first floor building elevation.
 - b. Expanses of blank walls may not exceed 20 feet in length. (A "blank wall", in this context, is a facade that does not contain transparent windows or doors).
 - c. Window dimensions:
 - i. Maximum sill height (1st floor): 42 inches (as measured from the finished floor elevation).
 - ii. Minimum area: 16 square feet.
 - iii. Minimum width: 3 feet.
 - iv. Minimum height: 4 feet.
3. Ventilation grates and emergency exit doors located at the first floor level in the building facade, which are oriented to any public street, shall be decorative.
4. Building entrances: A primary entrance facade shall be oriented toward the street, designed for the pedestrians, and distinguishable from the rest of the building. Such entrances shall provide a sense of entry and add variety to the streetscape. Additional entrances may be oriented toward side or rear parking lots. Service entrances for shipping and receiving shall be oriented away from the public street.
5. A building canopy, awing, or similar weather protection may be provided and should project a minimum of three—five feet from the facade.

D. Materials:



1. Mixed-use building walls shall be brick, stone, cementitious fiber board, stucco, or wood clapboard. Regular or decorative concrete block and EIFS-type stucco may be used on building walls not visible from a public street or as an accent material only. All accessory buildings shall be clad in materials similar in appearance to the principal structure.
2. Pitched roofs shall be clad in wood shingles, standing seam metal, corrugated metal, slate, or asphalt shingles.

(Ord. No. [2023-61](#), § 1(Exh. A), 12-18-23)

Effective on: 12/18/2023



UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 14. NONCONFORMITIES

14.3. Nonconforming principal structures.

- A. A nonconforming principal structure containing a use permitted in the district may continue only in accordance with the provisions of this chapter.
- B. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures and any nonconforming use contained therein.
- C. A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.
- D. Subject to the provisions of Section 14.3(E) and 14.3(F), when a nonconforming structure is moved on lot upon which it is located, it shall, if possible, be moved so as to make the structure conforming. Otherwise, the moved structure shall be placed on the lot in as conforming a manner as possible.
- E. If a nonconforming structure is significantly damaged or significantly improved, the following requirements shall apply in the issuance of any permit:
 - 1. Where modifications are proposed to repair damages to a structure, a permit for reconstruction of such structure must be secured no later than 180 days from the date of its destruction.
 - 2. If the structure can be rebuilt on the same lot and meet all district and building type requirements, it shall be.
 - 3. If the structure cannot be rebuilt at the same size (ground floor area) in accordance with the minimum standards of the district in which it is located or building type, then it shall be placed on the lot in as conforming a manner as possible.
 - 4. A nonconforming structure shall not be rebuilt in a manner which increases its nonconformity.
 - 5. Significant damage and/or significant improvement to any non-conforming structure that is located within a lot containing any other non-conforming condition shall, to the maximum extent possible, require the satisfaction all other requirements of this ordinance and the elimination of all non-conforming conditions. Examples include, but are not limited to, the provision of sufficient parking, landscaping and buffering, and public improvements (i.e., sidewalks and other), and full compliance with all applicable signage, flood hazard reduction, surface water protection, and stormwater management provisions.
 - 6. In no case shall significantly damaged structure be rebuilt so as to encroach upon any public right-of-way, easement, regulatory floodway, surface water protection area or except as allowed by [CHAPTER 6](#) of this ordinance or Chapter 34 of Brevard City Code.
 - 7. A non-conforming use which existed within the structure to which modifications are made may reoccupy such structure upon issuance of certificate of occupancy provided that:
 - a. Modifications do not result in an expansion of the nonconforming use.



- b. The nonconforming use is reestablished within the structure within 60 days of the issuance of a certificate of occupancy.
 - c. Any use requiring the issuance of a special use permit shall not be reestablished in a district within which such special use is not permitted.
- F. If a nonconforming structure is substantially damaged or substantially improved, the structure, all nonconforming uses contained therein, and all non-conforming conditions within the same property (i.e., parking, landscaping, signage, flood hazard issues, and etc.) shall be brought into full compliance with the requirements of this ordinance.

(Ord. No. 20-09, § 4(Exh. B(6)), 9-21-09)

UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 19. DEFINITIONS

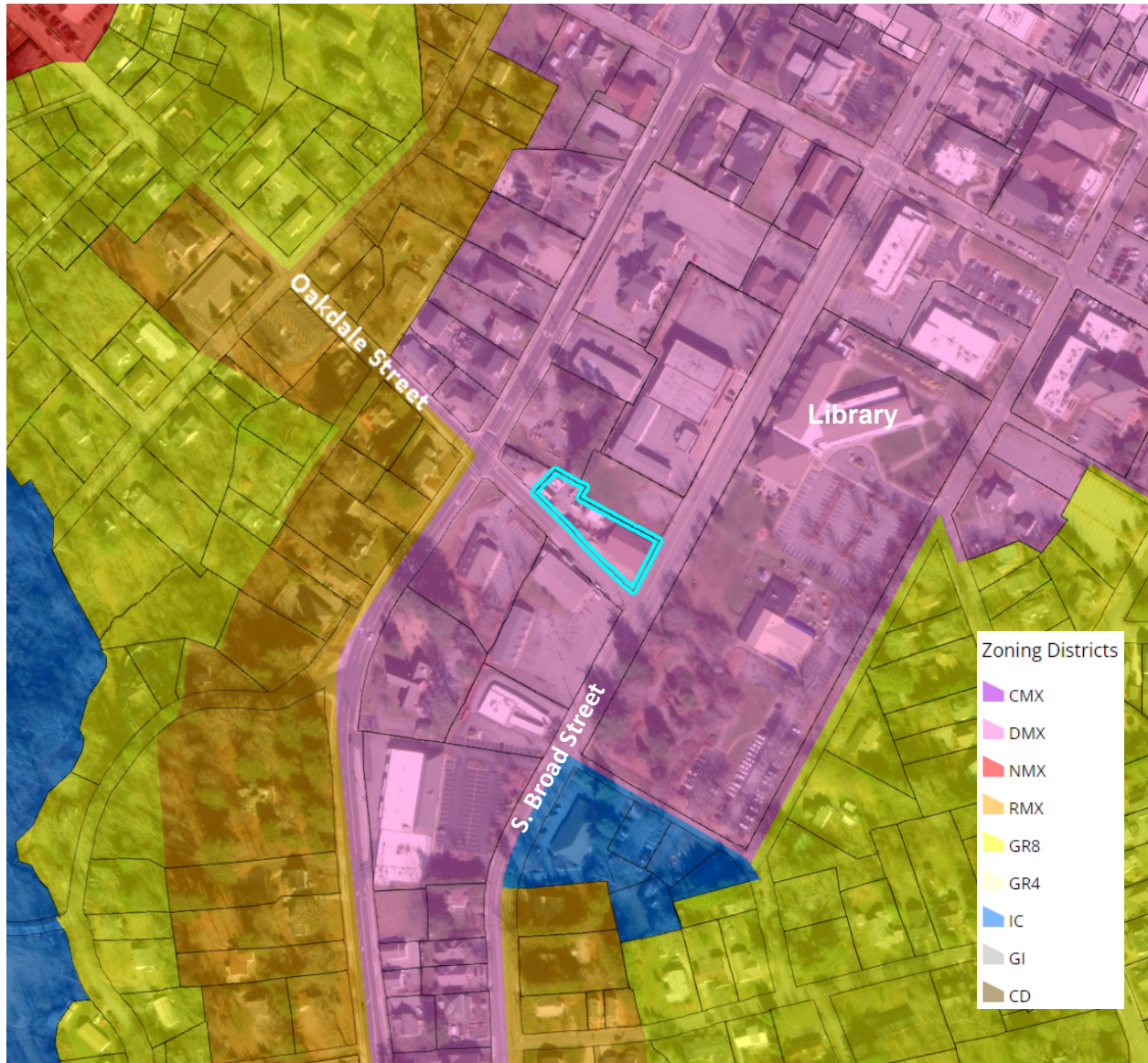
19.3. Definitions.

The following words, terms and phrases, when used in this UDO, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Significant improvement: 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 25 percent of the market value of the structure as of the date the improvement was permitted (or, in the absence of any permit, as of 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. This term includes structures which have incurred significant damage regardless of the actual repair work performed. The term does not, however, include either of the following:

- A. Any correction of existing violations of state, city, or county health, sanitary, or safety code specifications which have been identified by the administrator or other authorized official of the State of North Carolina or Transylvania County, and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a historic structure provided that: such alteration is necessary to maintain retain or restore historically significant characteristic; the alteration will not preclude the structure's continued designation as a historic structure; and the alteration does not result in the expansion of a non-conforming condition.

SITE MAP



STAFF REPORT

Board of Adjustment, Tuesday, April 2, 2024

Title: Consideration of Request of Melanie Spreen, Agent for Lenze Real Estate, LLC for a variance from UDO Chapters 14.3.C, 14.3.E.5, 2.3.B, 2.3.C, 5.5 & 5.6. The property is located in the zoning jurisdiction of the City of Brevard in the Downtown Mixed Use (DMX) zoning district and further identified by tax parcel number 8586-50-7502-000.

Speaker: Paul C. Ray, Planning Director

Prepared by: Paul Ray, Planning Director

Approved by: Paul Ray, Planning Director

Background

Lenze Real Estate, LLC, intends on remodeling and enlarging a non-conforming building downtown and making other site improvements that require conformance with numerous sections of the UDO, as listed in their variance application. The property is located at 120 E. Main Street and further identified by tax parcel number 8586-50-7502-000. Correcting nonconformities that would otherwise be grandfathered is triggered by the proposed level of improvements, and enlarging or altering a nonconforming structure in a way that increases its non-conformity is prohibited.

Discussion

As stated in the beginning of Chapter 14, "Nonconformities", the purpose of that chapter is to regulate and limit the continued existence of uses and structures established prior to the effective date of the ordinance that do not conform to the current ordinance. This includes nonconformities created by a change in the classification of property, such as zoning map amendments, or the text of the regulations, such as text amendments. Many nonconformities may continue, but the provisions of this section are intended to limit substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses to preserve the integrity of the area in which it is located.

The subject property is in the Downtown Mixed Use (DMX) zoning district, which allows for a variety of uses typical of downtown environments, such as retail, restaurants, bars, professional services, multifamily residential and much more, but a Special Use Permit would be required to allow the former use of the building, which was a gas station. Staff believes the applicant intends to establish a use that is allowed by right in the base zoning district.

As previously stated, the building was formerly a gas station and was single story. The types of buildings currently allowed in DMX, for new construction, are limited to Civic, Townhome, Apartment and Mixed-Use. It is Staff's understanding that the adaptive re-use of the building would be consistent with needing a mixed-use building type, which is

described in the UDO as having a minimum of two-stories. However, a new building is not being proposed, merely the remodeling and expansion of an existing one. Staff concurs the existing foundation was not likely designed to support two-stories with increased load bearing pressure on clay type soil but would defer to an architect or engineer to make that determination. Staff also concurs that in order to comply with the NC Building Code, and provide handicap accessible bathrooms, the building would require substantial remodeling and enlarged, modern bathroom facilities.

Standards for the Granting of Variances

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.

The Board may consider adding conditions of approval that are reasonably related to the variance and the standards for its approval.

Advertising Summary

This variance request was advertised in accordance with NCGS 160D-406 by the placement of a legal advertisement in the Transylvania Times Newspaper for two consecutive weeks and mailing notice of the hearing to the adjoining property owners. A sign advertising the hearing was also posted on the property.

Attachments:

1. Variance Application Packet_120 E Main_revised 2.20.24
2. Advertising



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.)

The proposed project includes renovating an existing non-conforming structure to accommodate a conforming use per the City of Brevard's Unified Development Ordinance within the Downtown Mixed-use District. The existing building is a single-story, former gas station set back from the street on a corner lot in DMX. In order to accommodate future uses, a building addition for restrooms and storage is required. The Owner is requesting a variance to construct the single story addition. See additional attached description.

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__120 East Main Street_____

Tax Parcel Number of subject property __8586-50-7502-000_____

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: __Melanie Spreen - May Collaborative_____

Address: __170 S. Broad Street, Suite 2B_____

Phone: __828-866-3104_____Email: __melanie@designwithmay.com_____

OWNER INFORMATION

Name: __George Lenze_____

Address: 107 Friendship Lane

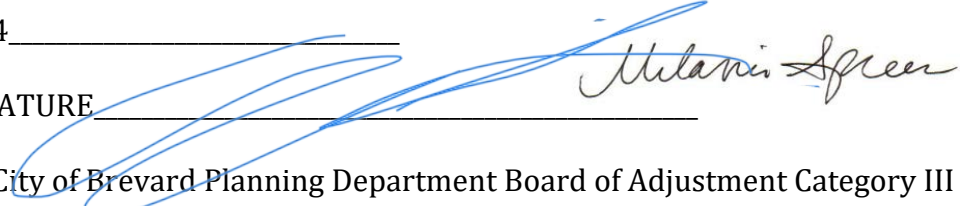
Pisgah Forest, NC 28768

Phone: 828-577-0302 Email: george.lenze@icloud.com

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 2/15/2024

APPLICANT'S SIGNATURE

A handwritten signature in blue ink, appearing to read "Melanie Green", is written over a horizontal line. The signature is fluid and cursive.

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: April 2, 2024.



VAR File# _____

BREVARD BOARD OF ADJUSTMENT - VARIANCE

APPOINTMENT OF AGENT

I _____, owner of property located at
(street address) _____ and
identified by the Transylvania County Tax Identification Number (PIN#):

_____, located in Transylvania County, North Carolina, do
hereby appoint _____ to represent me in
filing an application for Variance before the Brevard Board of Adjustment.

I further authorize _____ 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: _____ Date: _____
Mailing Address: _____
Phone: _____ Email: _____

Agent Name: _____
Mailing Address: _____
Phone: _____ Email: _____



The City of *Brevard* North Carolina

Variances “Unnecessary Hardship”

North Carolina General Statutes, 160D-705, authorizes the local Board of Adjustment to grant a variance from certain zoning regulations, such as setbacks and dimensional standards, under limited circumstances. The burden of proof is on the applicant seeking the variance to show an “unnecessary hardship.” That term is outlined in the General Statutes and all of the criteria must be met in order for the Board of Adjustment to grant a variance, but what is an unnecessary hardship?

§ 160D-705. When unnecessary hardships would result from carrying out the strict letter of a zoning regulations, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the regulation. 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(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 is not a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

This literature is meant to provide general knowledge about variances. Please call (828) 885-5630 to make an appointment with a City Planner if you require further information.



Application For A Variance (VAR) Brevard Board Of Adjustment
120 E. Main Street, Brevard

February 20, 2024

Reasons for Variance Request:

The proposed project includes renovating an existing non-conforming structure to accommodate a conforming use per the City of Brevard's Unified Development Ordinance within the Downtown Mixed-use District. The existing building is a single-story, former gas station set back from the street on a corner lot in DMX. In order to accommodate future uses, a building addition for restrooms and storage is required. The Owner is requesting approval of variance from the following sections of the UDO:

- Section 14.3.C.: *A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.*
- Section 14.3.E.5: *Significant improvement to any non-conforming structure...shall, to the maximum extent possible, require the satisfaction of all other requirements of this ordinance and the elimination of all non-conforming conditions.*
- Section 2.3.B: *Minimum Front Yard Setbacks for DMX = Edge of Right-of-Way*
- Section 2.3.C: *Side and Rear Year Setbacks = 0 feet*
- Section 5.5: *Permitted use by building type* - (applicable to requested building addition only) in conjunction with Section 5.6: *Permitted building type by district – new building required to be Mixed-Use with minimum of 2 stories* (applicable to requested building addition only)

Per Sections 5.5 and 5.6, the permitted uses by building type and permitted building type by district only apply to new construction. Adaptive re-use of existing buildings need only comply with the district standards.

A. Text from Unified Development Ordinance (UDO)

Relevant sections of the UDO have been included below for reference specific to nonconforming principal structures and district provisions for new construction in DMX district.

14.3. - Nonconforming principal structures.

A. A nonconforming principal structure containing a use permitted in the district may continue only in accordance with the provisions of this chapter.

B. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures and any nonconforming use contained therein.

C. A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.

E. If a nonconforming structure is significantly damaged or significantly improved, the following requirements shall apply in the issuance of any permit:

5. Significant damage and/or significant improvement to any non-conforming structure that is located within a lot containing any other non-conforming condition shall, to the maximum extent possible, require the satisfaction all other requirements of this ordinance and the elimination of all non-conforming conditions. Examples include, but are not limited to, the provision of sufficient parking, landscaping and buffering, and public improvements (i.e., sidewalks and other), and full compliance with all applicable signage, flood hazard reduction, surface water protection, and stormwater management provisions.

F. If a nonconforming structure is substantially damaged or substantially improved, the structure, all nonconforming uses contained therein, and all non-conforming conditions within the same property (i.e., parking, landscaping, signage, flood hazard issues, and etc.) shall be brought into full compliance with the requirements of this ordinance.

5.5. - Permitted use by building type.

The following table cross references the various categories of uses and the corresponding building types in which they may be established within new development. This table is to be used in conjunction with the table in Section 5.6. **These apply to new construction only. Adaptive re-use of existing buildings need only comply with the district standards.**

5.6. - Permitted building type by district.

Allowable Building Types for DMX include Civic, Townhomes, Apartments, and Mixed Use.

5.13. - CHAPTER 5. - BUILDING TYPES AND ARCHITECTURAL STANDARDS

Building type: Mixed-use.

A. Description: A multi-story small scale structure which can accommodate a variety of uses. A group of mixed-use buildings can be combined to form a mixed-use neighborhood center. Individual mixed-use buildings can be used to provide some commercial services, such as a neighborhood store, in close proximity to homes. The uses permitted within the building are determined by the regulations for the zoning district in which it is located.

Definitions.

4. **Downtown Mixed-Use (DMX).** The Downtown Mixed-Use District is coded for the traditional downtown area. Individual buildings are encouraged to be multi-story with uses mixed vertically, street level commercial and upper-level office and residential. Higher densities of residential development are encouraged. It is the purpose of these regulations to encourage vitality by excluding certain activities which have a negative effect on the public realm through auto-dominated or non-pedestrian oriented design or uses.

Substantial improvement: 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. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either of the following:

- 1. Any correction of existing violations of state, city, or county health, sanitary, or safety code specifications which have been identified by the administrator or other authorized official of the State of North Carolina or Transylvania County, and which are the minimum necessary to assure safe living conditions; or*
- 2. Any alteration of a historic structure provided it meets the following criteria: such alteration is necessary to maintain, retain or restore historically significant characteristics; the alteration will not preclude the structure's continued designation as a historic structure; and the alteration does not result in the expansion of a non-conforming condition.*

B. Building / Property Information

PIN 8586-50-7502-000

Calculated Acreage 0.333 Acres

Land Value \$372,600

Building Value \$26,790

Assessed Value \$408,680

Existing Building Area: 1,371 SF, plus
 1,054 SF former canopy (no longer extant)

C. Reasons for Variance Request, continued

The Owner requests a variance in order to renovate the existing building to support adaptive reuse with conforming uses such as restaurant, retail, and/or outdoor seating. The proposed uses within the building and use of the outdoor space for seating will promote pedestrian-oriented design and uses of the property as desired for the DMX district.

This property was purchased simultaneously with the formerly vacant lot behind the gas station, fronting on Jordan Street. The overall design was conceived as a microneighborhood of mixed uses including residential, commercial, and open space with the primary goal of increasing density, walkability, and an enhanced pedestrian experience for downtown in a vacant, underutilized property. The property behind the gas station has been developed, and is nearing

completion, with nine townhomes in keeping with the goals of traditional neighborhood design defined in the UDO. The renovation of the subject property on Main Street will similarly enhance the vitality of downtown and pedestrian experience along this section of Main Street.

The proposed portions of the structure to be reused will include the existing foundation, slab, exterior wall, existing interior partitions as structurally required, and existing roof decking and structure. All exterior finishes, windows, doors, floor finishes, electrical, mechanical, plumbing, and roofing will be replaced due to poor condition. The existing storefront on the corner will be reconfigured to provide the main entry for the building.

The existing parking lot in front of the building will remain. An awning, approximately 1,054 square feet in area, was damaged by a delivery vehicle and subsequently removed. A new awning, across the front and along the east side of the building of approximately 900 SF is proposed in lieu of the original location.

The tax value of the structure is so low, that any amount of renovation work will constitute a *substantial improvement* as defined by the UDO. As required by Section 14.3.E.5, elimination of all nonconforming conditions would result in an unnecessary hardship, and would require complete demolition of the existing building, parking area, and full redevelopment of the site with a new building, minimum of two stories in height, built up to the property line along the sidewalk on Main Street and Johnson Street.

The unnecessary hardship results from peculiar conditions to the property and its initial development. Originally constructed circa 1952 as a gas station, the building typology of a detached, single-story structure set back from the street is contrary to the current standards of the UDO for the DMX district. The building was specifically set back from the street to allow for vehicular access to gas pumps. The gas tanks were removed in 1989 and the property has been underutilized since. The existing block exterior bearing walls and foundations will not support the addition of a second floor, making conversion of this building into a multi-story mixed-use building technically infeasible.

The original building was constructed with two toilets with exterior side access, typical of gas stations at the time. One of the toilet rooms remains, although the other has been previously removed. To most effectively provide ADA-compliant restrooms, two new restrooms are proposed as part of an addition to the west side of the building. A "build-to line" encompassing approximately 663 SF is indicated on the proposed site plan for the proposed addition. Locating the new restrooms and future kitchen and/or storage within a building addition outside of the existing building footprint allows for more effective installation of new plumbing and sanitary sewer connection which will not require removal of the existing slab within the footprint of the main building and modification to an existing interior partition (potentially structural in nature).

By definition, *individual buildings [in DMX district] are encouraged to be multi-story*, though not explicitly required. Chapter 5 of the Ordinance does not require adaptive reuse of buildings to meet the architectural standards, only the district provisions. Enforcing adherence of the new architectural standards and district provisions on a small addition to an existing building that cannot be modified to meet all the district provisions would be an unnecessary hardship.

While technically infeasible to alter the structure to meet all the requirements of the UDO, the requested variance is consistent with the spirit, purpose, and intent of the regulations, seeking to promote pedestrian-oriented uses along Main Street, improve the aesthetics of an underutilized corner lot, provide landscaping, and much desired outdoor seating to promote the vitality of the downtown area. The proposed single-story addition will be compatible with the UDO requirements to the maximum extent feasible, including selected exterior finishes, entrances, and window openings.

D. Photos – Context



1. Campbell's Esso Station ca. 1961



2. Campbell's Esso Station ca. 1963



3. Former Canopy (damaged by delivery vehicle and removed)



4. Current Conditions – view from corner of Johnson and Main Streets



5. Current Conditions – view looking southeast



6. Current Conditions – front elevation



7. Context – East Main Street



8. Context – South Corner of Main and Johnson Streets



9. Context – North Corner of Main and Johnson Streets



10. Context – North Corner of Main and Gaston Streets



11. Context – South Corner of Main and Gaston Streets

E. Tax Parcel & Ownership Information For Adjacent Properties

PIN 8586506537000

Ruth Sams Family Limited Partnership

% Wyatt Charles

90 Park Ave

Brevard, NC 28712

PIN 8586506422000

Lenze Real Estate LLC

107 Friendship Lane

Pisgah Forest, NC 28768



CITY of BREVARD

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

Date: March 15, 2024

To: Neighbors in proximity of 120 East Main Street

From: City of Brevard – Paul Ray, Planning Director

Re: Variance – City of Brevard Board of Adjustment

Greetings:

There will be a regular meeting of the City of Brevard Board of Adjustment held in City Council Chambers located at 95 West Main Street, Brevard, at 3:00 pm, April 2, 2024.

The purpose of this meeting is to discuss the VARIANCE APPLICATION of Melanie Spreen, Agent for Lenze Real Estate, LLC. Public Notice Announcement as published in the *Transylvania Times*:

VARIANCE Request #VAR-24-003-Melaine Spreen, Agent for Lenze Real Estate, LLC

Request of Melanie Spreen, Agent for Lenze Real Estate, LLC for a variance from UDO Chapters 14.3.C, 14.3.E.5, 2.3.B, 2.3.C, 5.5 & 5.6. The property is located in the zoning jurisdiction of the City of Brevard in the Downtown Mixed Use (DMX) zoning district further identified by PIN# 8586-50-7502-000.

The submitted application and accompanying information regarding the above-described request is available for review within the City Planning Department, 95 West Main Street, Brevard, NC 28712.

If you have any questions, please feel free to contact the City of Brevard Planning and Zoning Department at 828.885.5630.

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



The City of
Brevard
North Carolina

Please run the following ad in the Legal Notices section of the Transylvania Times. Thank you.

NOTICE OF PUBLIC HEARING

There will be a meeting of the City of Brevard Board of Adjustment held in City Council Chambers located at 95 West Main Street, Brevard, at 3:00 pm, April 2, 2024.

The purpose of this meeting is to discuss the VARIANCE APPLICATION of Melanie Spreen, Agent for Lenze Real Estate, LLC. Public Notice Announcement as published in the *Transylvania Times*:

VARIANCE Request #VAR-24-003-Melaine Spreen, Agent for Lenze Real Estate, LLC

Request of Melanie Spreen, Agent for Lenze Real Estate, LLC for a variance from UDO Chapters 14.3.C, 14.3.E.5, 2.3.B, 2.3.C, 5.5 & 5.6. The property is located in the zoning jurisdiction of the City of Brevard in the Downtown Mixed Use (DMX) zoning district further identified by PIN# 8586-50-7502-000.

If you have any questions, please feel free to contact the City of Brevard Planning and Zoning Department at 828-885-5630.

Please advertise: Thursday, March 21, 2024
 Thursday, March 28, 2024

*Editor: Please provide an Affidavit of Publication for the above legal notice. Thank you.
Emailed to the T-Times, March 14, 2024, jhpinson.*