



AGENDA
BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING
Tuesday, October 1, 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. May 7, 2024

VI. Approval of Orders

VII. New Business

- a. Consideration of Request of Shane Atkins, Moss Sign Co., Agent for Telco Community Credit Union for a Variance from UDO Sections 12.9.C.3.a.v and 12.6.F. and Located in the Corridor Mixed Use Zoning District in the City of Brevard, Further Identified by PIN# 8586-85-5560-000.
- b. Board of Adjustment By-Laws

VIII. Unfinished Business

IX. Remarks

X. Adjourn

Agenda Posted, Website 09.24.2024
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, May 7, 2024– 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday May 7, 2024, at 3:00 PM.

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

Members Absent: Judy Mathews

Staff Present: Katherine Buzby, Planner
Janice Pinson, Board Clerk
Taylor Osborne, Board Attorney – for Brian Gulden

Others: Sean Brady, Fairhaven Meadows, LLC
Mary Martin, M + A Studio, PC

I. WELCOME

Chair, Peter Offen, 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, P. Offen had the Clerk certify that a quorum of the Board was present.

IV. APPROVAL OF AGENDA

Motion to approve the agenda by A. Delzell, second by T. Fogel, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the April 2, 2024, meeting by T. Fogel, second by A. Delzell, carried unanimously.

VI. New Business

a. Consideration of Application VAR-24-004 - Request of Mary Martin, Agent for Fairhaven Meadows, LLC for a variance from UDO Chapter 10.7.C.3. The property is located in the zoning jurisdiction of the City of Brevard in the Neighborhood Mixed Use (NMX) zoning district further identified by PIN# 8597-24-8025-000.

P. Offen, Chair explained quasi-judicial procedures and standing.

None of the public present requested to be granted standing.

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

The Applicant was asked if they had any conflicts with any member of the board and there were none.

The following were sworn: Sean Brady, Mary Martin, and Katherine Buzby.

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

Background

The City has received an application for a variance request from Mary Martin, agent for Kristi Morgan of Fairhaven Meadows LLC, for a variance from Section 10.7.C.3 of the Brevard Unified Development Ordinance. The property is located in the zoning jurisdiction of the City of Brevard in the Neighborhood Mixed Use (NMX) zoning district, further identified by PIN# 8587-24-8025-000.

The applicant is requesting a variance from the requirement that new parking lots shall not be permitted between any principal structure and the street upon which such structure fronts. Specifically, the applicant is requesting to be allowed to have the parking lot in the front of one of the principal structures and the street (Asheville Hwy).

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

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

Discussion

City Council passed a text amendment in 2020 that requires parking lots to be behind principal structure(s). The intent of the amendment was to have principal structures adjacent to the street (in the front) and the parking lots in the rear. The text amendment really does not distinguish group developments from single principal structures.

The applicant has multiple principal structures, with one adjacent to the street and one in the rear of the parcel. The variance is for the rear building to remain where it is with the parking lot in the front. The parcel itself has unique topography (slopes upwards towards

the back of the property, average of 18% slope) that restricts how the buildings can be arranged on the property.

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

There were questions about the location of the property. There was discussion about the property fronting on two streets and it was explained that the street of higher classification Asheville Highway takes precedence in determining the property frontage.

Katherine Buzby was asked to explain the intent of the text amendment limiting parking in the front, which she explained to the satisfaction of the Board.

Mr. Brady presented Exhibits “A-E” and explained each, outlining their hardships such as the need to begin grading the property soon to meet the deadline of completion and not lose the tax credits they have been awarded. That the developer requires that the playground and manager’s office have high visibility. That they have designed the project to avoid steep slope development. There is not ample time to redesign the project and meet the deadlines to still receive tax credits and the project would be unable to move forward.

When asked, Mary Martin answered that she estimates the parking area to begin 90 foot off the highway.

Mary Martin testified that they have a good understanding of what the developer is looking for, such as high visibility playground, moving the parking in the rear brings up safety concerns. That FMHA has requirements for distribution of ADA parking areas. She explained that there would be large trees, shrubs, and a mulched area along the new sidewalk to buffer the development from the Asheville Highway.

They further testified that there are steep slope challenges on the site, requiring some retaining walls, but that they stayed out of the steep slope areas with the design.

It was explained that the State’s Senior Architect, Russ Griffin, does a very thorough, high-level review before approving a project.

T. Fogel asked if neighborhood feedback had been received.

They answered that a Neighborhood Compatibility Meeting was held at the Mary C. Jenkins Community Center and that they met onsite with the neighbors on both sides of the property. The neighbors requested that no balconies be on the back side of the units and that good fencing be installed along the retaining walls.

K. Buzby, Planner explained that the project is a by right project allowed in the zoning district and that the Applicants have gone above and beyond to satisfy the neighbors’ concerns. She explained that they were not required to hold the Neighborhood Compatibility Meeting but chose to do so.

A. Delzell commented that Ms. Martin’s detailed letter included with the application outlining the hardships was very helpful. The letter is attached hereto and labeled, Exhibit “F”.

There being no further questions the Chair closed the hearing.

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

Fairhaven Meadows, LLC: VARIANCE REQUEST #24-004

With regard to variance request **24-004**, the request of Fairhaven Meadows, LLC for a variance from the provisions of Chapter 10.7.C.3 of the City of Brevard Unified Development Ordinance to allow off-street parking between a principal structure and the adjoining street for property identified as tax parcel number 8597-24-8025-000, I move the Board to make the following findings of fact:

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

That the Applicants would lose their tax credits due to the deadline for carryover of December 2024 and the deadline for project completion is December 2026.

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

That the back of the property is steep, and there are strict state and federal requirements limiting design.

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

That the requirements of the state and federal governments were not due to action of the applicant or the property owner.

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

That the project will be approximately 90 ft. off the highway, and that a buffer of trees and shrubs will be installed along the sidewalk shielding the parking lot from the Asheville Highway.

Accordingly, I further move the board to **GRANT** the requested variance to allow for off-street parking between a structure on the subject property and the adjoining street in accordance with and only to the extent represented in the application and plans.

Seconded by T. Fogel, unanimously carried.

T. Fogel further requested that the Order be processed for approval by email to expedite the process for the Applicants.

VII. UNFINISHED BUSINESS - None

VII. REMARKS -None

VIII. ADJOURN

K. Jones moved to adjourn the meeting, seconded by A. Mercaldo. The motion carried unanimously. The meeting was adjourned at 3:30 PM.

Peter Offen, Chair

Janice H. Pinson, Board Clerk

DRAFT

STAFF REPORT

Board of Adjustment, Tuesday, October 1, 2024

Title: Consideration of Request of Shane Atkins, Moss Sign Co., Agent for Telco Community Credit Union for a Variance from UDO Sections 12.9.C.3.a.v and 12.6.F. and Located in the Corridor Mixed Use Zoning District in the City of Brevard, Further Identified by PIN# 8586-85-5560-000.

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 Moss Sign Company on behalf of David Burnette, President of Telco Community Credit Union at 281 Asheville Hwy. The subject property is a bank along Asheville Hwy (PIN#8586-85-5600-000, zoned Corridor Mixed-Use) that will be affected by an NCDOT road widening project R-5800.

The applicant is requesting a 9-foot 6-inch variance from the maximum ground sign height of 20-feet, per Section 12.9.C.3.a.v and the continuance of an electric reader board prohibited under Section 12.6.F of the City's Unified Development Ordinance. The proposed ground sign would be 29-feet, 6-inches tall with an electronic reader board. 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 along Asheville Hwy, which will be part of a major NCDOT Project (R-5800) which is widening its Right-of-Way. The current Telco sign is within the NCDOT right-of-way and must be moved for future road construction.

The Planning Department has made allowances for other pre-existing, non-conforming ground signs affected by NCDOT projects, but only when the pre-existing signs can be moved to another location on the property without expansion or modification. In this case, the applicant is requesting a taller sign of 9-feet, 6-inches over the 20-foot maximum height, measured from the top of the sign to the adjacent grade. Due to this modification, the proposed ground sign would be treated as "new" and must conform to the current standards of the Unified Development Ordinance. The sign regulations also prohibit any electronic sign, signs that include a monitor or TV screen, flashing device, or sign displaying flashing, animated, or intermittent lights or lights of changing degrees of intensity not expressly allowed by Section [12.9.C.6](#).

The applicant has stated they want the taller ground sign because, "The building restricts

the side of the sign facing south” and they will “lose valuable advertising/marketing to the general public” (see variance application).

The site map submitted shows the existing sign location and the proposed location and additional sign details. A Google Street View map is attached to further demonstrate the current sign location and the proposed location from the view of Asheville Hwy.

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

Standards for the Granting of Variances

In order to grant the variance, all 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. Amended Application VAR-24-005_Telco
2. Telco Plans_VAR-24-005
3. Telco_Narrative_VAR-24-005
4. Google Earth Pic 1

5. Google Earth Pic 2

City Of Brevard, North Carolina
BREVARD BOARD OF ADJUSTMENT

Application for Variance

Variance Case/File Number: # _____

Property Owner:

Name Telco Community Credit Union
Address 281 Asheville Hwy
City/State/Zip Code Brevard, N.C. 28712
Telephone Number 828-348-3100 Email Address david.burnette@telcoccu.org

Applicant and/or Agent (if different than property owner):

Name MOSS SIGN Company, Inc. Shane Atkins
Address 526 Swannanoa River Rd.
City/State/Zip Code Asheville, NC 28805
Telephone Number 828 299 7766 Email Address Shane@moosesigncompany.com

Location of Property:

281 Asheville Hwy Brevard N.C. 28712

Property Identification Number (PIN): 8586 85 5560 000
Zoning District(s): CMX Within City Limits? Yes ☒ No ☐

Request VARIANCE from City Zoning Ordinance, Section(s) UDC Chapter 12.6.F
and 12.9. Permanent Signs. C. 1, 2, 3, Freestanding ground signs
Zoning Ordinance Requires: Prohibits electronic signs, 20'-0" Overall Height
85 SqFt MAX surface area 10FT off the Right of Way

REQUESTING VARIANCE TO ALLOW: Existing 41" X 87" (24.77 SF)
Electronic Message Center to be relocated with the Freestanding Pylon Sign.

Raise existing Pylon Sign to 29'-6" Overall Height from Grade-
Parking Lot grade-level

Following must be included with Application:

1. ☒ Site Plan
2. ☒ Listing of names and mailing addresses of all property owners within two-hundred feet (200') from the boundaries of the property in question.
3. ☒ Application filing fee - \$250.00

David Burnette
Signature of Property Owner

Date

4/25/24

Shane Atkins: Moss Sign Co.
Signature of Agent (if different than property owner)

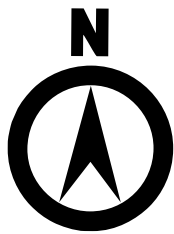
Date

8-8-24

VARIANCE Request to be heard by BOA on: October 1, 2024 3:00 PM

SITE PLAN - AERIAL VIEW - NTS

Sign	Existing
S01	Main ID Pylon
Sign	Proposed
S02	Main ID Pylon



SITE PLAN - EXPANDED VIEW



SITE PLAN SPECIFIC - ENLARGED VIEW



526 Swannanoa River Rd
Asheville, NC 28805
Office: 828.299.7766
Mobile: 828.443.0444



DATE	05-15-2024	DRAWING	1	REV	0	PROJECT ADDRESS	281 Asheville Hwy. Brevard, NC 28712
CLIENT	Telco Community Credit Union	SALES	SA	DESIGN	AS	Client Approval	DATE
FILE	051524 Telco CCU Brevard.cdr	SHEET	1 OF 4			Landlord Approval	DATE

Listed

 **Complies with**
UL 48
File #E212381

Electrical Requirements:

120 Volts

20 AMP Circuit

ELECTRICAL NOTE: IT IS THE BUYERS RESPONSIBILITY TO PROVIDE 120V PRIMARY ELECTRICAL SERVICE WITH DEDICATED 20A CIRCUIT(S), INCLUDING GROUND WIRING DIRECTLY FROM PANEL BOX AND FINAL HOOK UP TO THE SIGN. THIS SIGN IS INTENDED TO BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 600 OF THE NATIONAL ELECTRICAL CODE (NEC) AND/OR OTHER APPLICABLE CODES. THIS INCLUDES PROPER GROUNDING AND BONDING. INSTALLATION TO MEET N.E.C., U.L. AND LOCAL CODES.

COLOR NOTE: DUE TO VARIATIONS IN MONITORS ACTUAL FINISH COLORS MAY VARY UNLESS PANTONE COLOR VALUES ARE SPECIFIED.

COLOR LEGEND

PANTONE / PAINT	DP / VINYL
PMS 357 C	
PMS 377 C	
White	

DRY

DAMP

WET

X

1 EXISTING FRONT / SIDE VIEW 78.77 SqFt
Scale: 1/4" = 1'-0"

2 PROPOSED FRONT / SIDE DETAIL VIEW 78.77 SqFt
Scale: 1/4" = 1'-0"



526 Swannanoa River Rd
Asheville, NC 28805
Office: 828.299.7766
Mobile: 828.443.0444



CERTIFIED
MANUFACTURER

DATE	05-15-2024	DRAWING	1	REV	0	PROJECT ADDRESS	281 Asheville Hwy. Brevard, NC 28712	
CLIENT	Telco Community Credit Union		SALES	SA	DESIGN	AS	Client Approval	DATE
FILE	051524 Telco CCU Brevard.cdr		SHEET	2 OF 4			Landlord Approval	DATE

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1 EXISTING FRONT ELEVATION VIEW
Scale: 3/32" = 1'-0"



2 PROPOSED FRONT ELEVATION VIEW
Scale: 3/32" = 1'-0"

DATE	05-15-2024	DRAWING	1	REV	0	PROJECT ADDRESS	281 Asheville Hwy. Brevard, NC 28712
CLIENT	Telco Community Credit Union	SALES	SA	DESIGN	AS	Client Approval	DATE
FILE	051524 Telco CCU Brevard.cdr	SHEET	3 OF 4			Landlord Approval	DATE

23'-0"±
OAH
AFF
BLDG.

19'-0"
OAH
AFF
BLDG.



19'-6" OAH PYLON SIGN

1 PHOTO SIMULATION A ELEVATION SIDE VIEW
Scale: 1/16" = 1'-0"

VIEWER NOTE:
PYLON SIGN IS D/F

23'-0"±
OAH
AFF
BLDG.



29'-6" OAH PYLON SIGN

2 PHOTO SIMULATION B ELEVATION SIDE VIEW
Scale: 1/16" = 1'-0"

PROPOSED

EXISTING



526 Swannanoa River Rd
Asheville, NC 28805
Office: 828.299.7766
Mobile: 828.443.0444



DATE	05-15-2024	DRAWING	1	REV	0	PROJECT ADDRESS	281 Asheville Hwy. Brevard, NC 28712	
CLIENT	Telco Community Credit Union		SALES	SA	DESIGN	AS	Client Approval	DATE
FILE	051524 Telco CCU Brevard.cdr		SHEET	4 OF 4			Landlord Approval	DATE



526 Swannanoa River Rd. Asheville, NC 28805
828.299.7766

08-06-2024

Moss Sign Company, Inc.
526 Swannanoa River Road
Asheville, NC 28805
828-299-7766

City of Brevard – Planning Department
Board of Adjustment
Category Type III, Variance Request
95 West Main Street
Brevard, NC 28712

Dear Brevard Planning Department,

The North Carolina Department of Transportation (NCDOT) has acquired a parcel: R-5800 040 for the highway project. Telco Community Credit Union located at 281 Asheville Hwy. Brevard, NC 28712 must vacate the portion of the property being acquired.

The Main Identification pylon ground sign must be removed and relocated to the only reasonable new location on the property as the proposed site plan shows.

The hardship is due to the new NCDOT Right of Way & Permanent Utility Easement which has the business owner having to relocate the existing pylon sign and electronic message center to a much closer proximity to the building.

The building will restrict the side of the sign facing south's clear line of sight and viewing time to the on-coming traffic which will cause a loss of valuable advertising / marketing to the general public as well as the Telco brand awareness.

Telco Community Credit Union is respectfully requesting, to no fault of their own, a variance to allow the existing electronic message center remain intact when the overall pylon sign structure is relocated outside of the new NCDOT Right of Way. The existing electronic message center is an extremely integral part of the overall day to day management of the bank's community & customer outreach messaging program.

Additionally, Telco CCU would also request a variance to allow the overall pylon sign height to be increased from 20FT to 29FT 6IN (354in.) overall height from parking lot grade-level. This additional height will help clear the building and provide a longer clear line of sight at a further distance facing south thus giving on-coming traffic a better opportunity to view the Business Name and static message.

Thank you in advance Board of Adjustment for your review and consideration.

Respectfully,

Shane Atkins
General Sales Manager
Moss Sign Company, Inc.

City Of Brevard, North Carolina
BREVARD BOARD OF ADJUSTMENT

Application for Variance

Variance Case/File Number: # _____

Property Owner:

Name Telco Community Credit Union
Address 281 Asheville Hwy
City/State/Zip Code Brevard N.C. 28712
Telephone Number 828-348-3100 Email Address david.burnette@telcoccu.org

Applicant and/or Agent (if different than property owner):

Name Mass Sign Company, Inc. Shane Atkins
Address 526 Swannanoa River Rd.
City/State/Zip Code Asheville, NC 28805
Telephone Number 828 299 7766 Email Address Shane@masssigncompany.com

Location of Property:

281 Asheville Hwy Brevard N.C. 28712

Property Identification Number (PIN): 8586 85 5560 000
Zoning District(s): CMX Within City Limits? Yes ☒ No ☐

Request VARIANCE from City Zoning Ordinance, Section(s) 12.9. Permanent signs, c. 1, 2, 3,

Freestanding ground signs:
Zoning Ordinance Requires: 20'-0" Overall Height 85 Sq Ft Max
Surface area 10 FT OFF THE RIGHT OF WAY

REQUESTING VARIANCE TO ALLOW: 29'-6" Overall Height
85 Sq Ft MAX EXISTING Electronic Message Center

Following must be included with Application:

1. ☒ Site Plan
2. ☒ Listing of names and mailing addresses of all property owners within two-hundred feet (200') from the boundaries of the property in question.
3. ☒ Application filing fee - \$250.00

David Burnette
Signature of Property Owner

Date

4/25/24

Shane Atkins Mass Sign Co.
Signature of Agent (if different than property owner)

Date

4/25/24

VARIANCE Request to be heard by BOA on: September 3, 2024

Brevard Planning Department
Brevard, North Carolina

APPOINTMENT OF AGENT

I, David Burnette ^{President/CEO} Telco Community Credit Union, owner of property
located at (street address) 281 Asheville Hwy, Brevard, N.C. 28712
and identified by the Transylvania County Tax Assessor's Office as PIN: 8586 85 5560 000
_____, located in Transylvania County, North Carolina, do hereby
appoint MOSS SIGN COMPANY, INC. to represent me in filing an
application for CATEGORY TYPE III, VARIANCE REQUEST with the Brevard Planning
Department and before the Brevard Board of Adjustment.

I further authorize MOSS SIGN COMPANY, INC. to act as my
agent in all matters, formal and informal, and to receive all official correspondence as it relates to
the CATEGORY TYPE III, VARIANCE REQUEST and hearing.

David Burnette
Property Owner Signature 828/252/6458

1137 Smokey Park Hwy, Candler NC 28715
Property Owner Mailing Address and Telephone Number

4/25/24
Date of Signature

Agent's Information: Name MOSS SIGN COMPANY, INC. Shane Atkins
Address 526 Swannanoa River Rd.
Asheville, NC 28805
Telephone & Fax 828-299-7766
Email shane@masssigncompany.com

BOA Case Number _____

BOA Hearing Date: _____

Form-Appt of Agent-Category Type III Variance Request



281 N Broad St

Brevard, North Carolina

 Google Street View

Mar 2024 See more dates

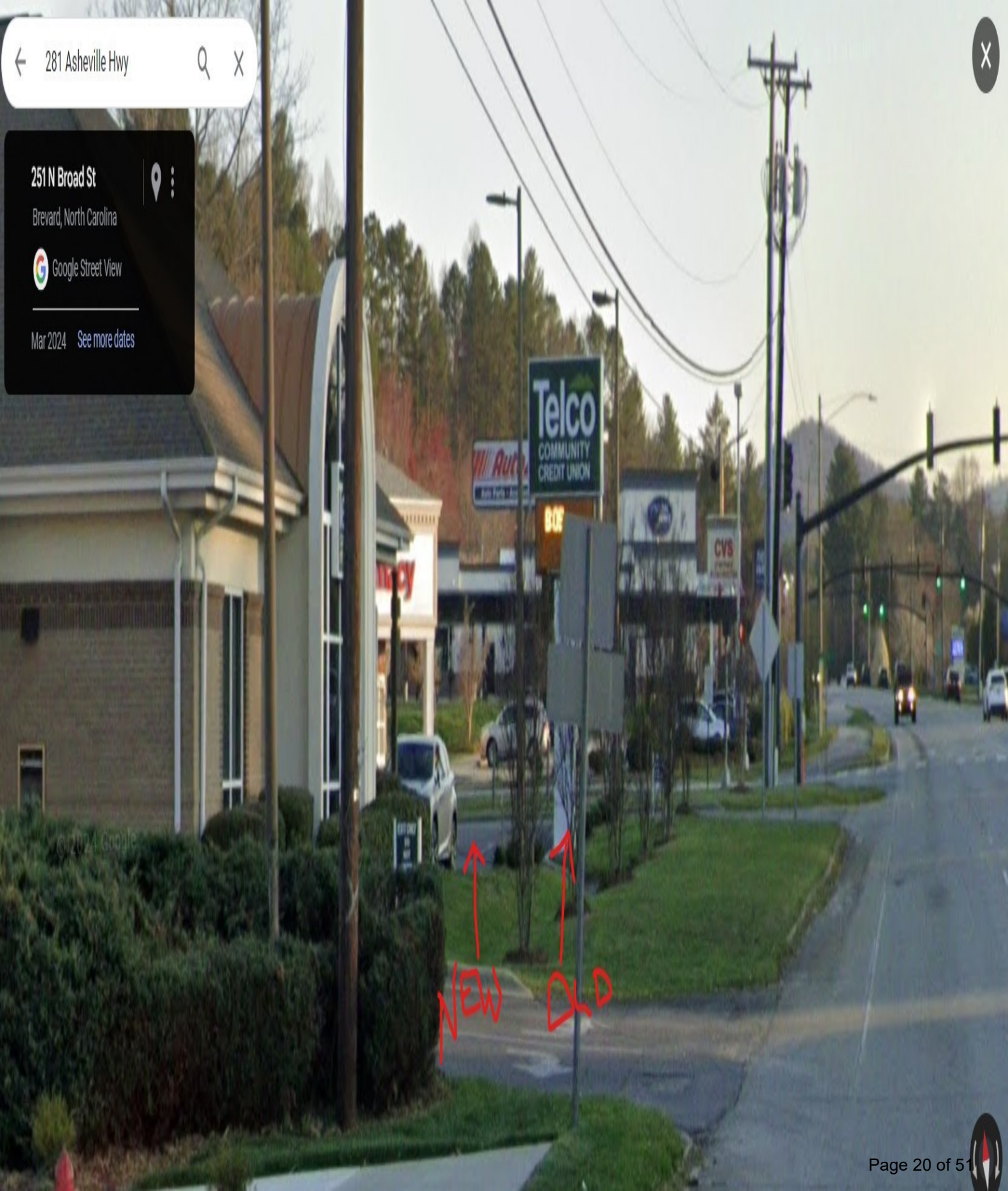


251 N Broad St

Brevard, North Carolina



Mar 2024 See more dates



STAFF REPORT

Board of Adjustment, Tuesday, October 1, 2024

Title: Board of Adjustment By-Laws

Speaker: Katherine Buzby

Prepared by: Katherine Buzby, Planner/Assistant Zoning Administrator

Approved by: Paul Ray, Planning Director

The Board of Adjustment Bylaws has not been completely updated to reflect all the General Statute updates from Chapter 160D.

Two formats are attached for your review: one is the old format that has been adopted previously, and one is a new format which is consistent with the format used by the Planning Board (preferred for uniformity).

The old format has had the General Statute references updated to be compliant with GS 160D.

The new format includes updated information in the old format, plus the UDO language for hearings, and an amendment that was approved in 2017 to limit the wait time for the applicant to appear once the case has been called.

Approval is needed for either the old format (as an update) or the new format (as newly adopted).

Attachments:

1. BOA Bylaws_Updated Old Format
2. BOA Bylaws_New Format

BYLAWS
OF THE CITY OF BREVARD
BOARD OF ADJUSTMENT

REVISED AND READOPTED: 1 OCTOBER 2024

ARTICLE I

Name

The name of this Board shall be the City of Brevard Board of Adjustment ("Board").

ARTICLE II

Powers and Duties

The Board shall have those powers and duties set out in North Carolina General Statutes ("N.C.G.S.")§160D-302, and elsewhere in the General Statutes, and in the Unified Development Ordinance ("UDO") of the City of Brevard, as well as those powers not inconsistent therewith as set forth herein.

ARTICLE III

Members

Section 1. *Composition.* The Board shall be composed of five regular members and three alternates as provided by Section 15.1.B of the City of Brevard Unified Development Ordinance.

Section 2. *Term of Office.* Members shall serve three-year terms as provided by Section 15.1.B of the City of Brevard Unified Development Ordinance.

Section 3. *Vacancies.* Vacancies shall be filled as soon as deemed advisable by the applicable appointing authority.

Section 4. *Removal of Members.* Any member of the Board may be removed by the applicable appointing authority for neglect of duty, malfeasance, or conflict of interest.

ARTICLE IV

Officers of the Board

Section 1. *Designated Officers.* The officers of the Board shall consist of a Chair and a Vice-Chair.

Section 2. *Nomination and Election.* The Board shall hold elections for officers at its January meeting each year. Should the Board fail to meet in January of any year, elections shall be held at the next meeting of the Board. Nominations for officers shall be made from among the regular members of the Board. Officers shall be elected by a majority vote of the members, both regular and alternate, present at the meeting.

Section 3. *Term.* Officers shall be elected for a term of one year or until a successor is elected and assumes office. There shall be no limit to the number of terms an officer may serve.

Section 4. *Vacancy in Office.* A vacancy in office shall be filled by the Board not later than seventy days after the occurrence of the vacancy, by a majority vote of the regular and alternate members attending the meeting at which the vote is taken.

Section 5. *Duties of the Chair.* The Chair shall have the following duties:

- A. Preside at meetings of the Board;
- B. Provide general supervision of the conduct of the affairs of the Board and assigned staff members;
- C. Advise the Zoning Administrator of member concerns;
- D. Perform such other duties as determined by the Board, the bylaws, policies, and procedures adopted by the Board from time to time.

Section 6. *Duties of the Vice-Chair.* The Vice-Chair shall serve as acting chair in the absence of the Chair and, at such times, shall have the same powers and duties as the Chair.

ARTICLE V

Delegation of Duties; Clerk

The Board may delegate duties or functions to staff members as needed to carry out its assigned duties. The Brevard Planning Department Administrative Staff shall serve as the Clerk to the Board of Adjustment and shall keep the minutes and do other tasks as assigned by the Board. The Clerk shall have the following responsibilities:

- A. Attend all regular and special meetings and hearings, as well as any committee meetings, and keep a record thereof, which shall be transcribed in the minute book of the Board.
- B. Send notices of all meetings of the Board required to be sent by law, under these bylaws, or as directed by the Chair.
- C. Have charge of all books, papers and records of the Board and attend to all correspondence of the Board.

If for any reason the Clerk is unable to attend a meeting of the Board or is temporarily unable to otherwise fulfill the responsibilities of that office, the Chair may appoint a substitute on an interim basis.

ARTICLE VI

Meetings

Section 1. *Regular Meetings.* Regular meetings of the Board shall be held at 3:00 p.m. on the first Tuesday of each month in the Council Chambers of City Hall, except when otherwise decided by the Board, with due notice to the press. If a day scheduled for a regular meeting is a holiday for which the offices of the City of Brevard are closed, the regular meeting shall be held at 3:00 p.m. on a date agreed to by the Board.

Section 2. *Special Meetings.* Special meetings of the Board may be called at any time by the Chair provided that at least 48 hours written notice of the time and place of a special meeting be given, to each regular and alternate member of the Board and to the Clerk. In addition, members of the press shall be notified of each meeting in accordance with law. Special meetings may include Board retreats and like meetings held to conduct internal business of the Board.

Section 3. *Cancellations.* If there is no business for the Board, or if it is apparent a quorum will not be available, the Chair or Clerk may dispense with a regular or special meeting by giving written or oral notice to all members not less than 24 hours prior to the time set for the meeting.

Section 4. *Quorum.* A quorum shall consist of four members of the Board (including alternates); provided, however, when hearing an application for a variance, the Board shall, upon the request of the applicant, continue the hearing when less than five members of the Board are present. Notwithstanding the foregoing, a quorum shall not be necessary to do any of the following:

- A. Set a date, time, or place for any subsequent meeting;
- B. Discuss general internal Board business; provided, however, in no event may the Board without a quorum hear or discuss the merits of any matter brought or to be brought before the Board as part of a hearing.

Section 5. *Voting.* Except as otherwise provided in these bylaws, including the policies and procedures attached hereto, a majority of all regular and alternate members eligible to vote shall be necessary to transact any official business. Except as otherwise provided herein, any regular member in attendance at any meeting shall be eligible to vote on all matters brought before the Board at that meeting. If there are more alternates present than regular members missing, the Chair shall select which alternate(s) shall be eligible to vote. The Chair may empower alternates to vote at any portion of a meeting where a regular member is absent or excused, including any hearing.

Section 6. *Records.* The Board shall keep minutes and records of all proceedings, including resolutions, transactions, findings and determinations, shall record the

number of votes for and against each question presented, and shall indicate whether any member is absent or abstains from voting. All such records shall be filed in the office of the Clerk to the Board.

Section 7. *Open Meetings and Hearings.* Board meetings and hearings shall be open to the public as required by N.C.G.S. Chapter 143 Article 33C.

Section 8. *Order of Business.* The order of business at regular meetings shall be as follows:

- A. Roll call; determination of quorum;
- B. Approval of the Agenda;
- C. Approval of Minutes of previous meeting;
- D. Approval of Orders;
- E. Hearing of cases;
- F. Other business;
- G. Adjourn.

ARTICLE VII

Parliamentary Authority

The Board shall follow-N.C.G.S. §160D-406 Quasi-judicial procedure.

ARTICLE VIII

Amendment

These bylaws may be amended or rescinded from time to time by a vote of a majority of the members, regular and alternate, of the Board present at the meeting at which the matter is voted upon; provided, however, the Board shall under no circumstance have the authority to modify any provisions or requirements of the North Carolina General Statutes or the Code of Ordinances of the City of Brevard. Any proposed amendment may be read at any meeting. Final vote thereon shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.

ARTICLE IX
Employment of Attorneys at Law

Subject to budgetary limitations, the Board may employ attorneys at law for assistance in the prosecution of its purposes. Any such counsel, including any counsel whose representation of the Board may be funded by the City of Brevard or by any other entity, shall nevertheless be independent of the directives of any person or entity other than the Board.

ARTICLE X
Governing Law, Construction and Definitions

These bylaws, including any policies and procedures adopted hereunder, shall be, so far as reasonable, construed to be in harmony with the statutes and case law of the State of North Carolina and the ordinances of the City of Brevard. Where such construction is unreasonable, these bylaws shall be subject to and superseded by such statutes, case law and ordinances.

As used in the Bylaws and in the Policies and Procedures the following words have the indicated meanings:

“Appeal” means an appeal from the ruling of the Zoning Administrator.

“Application” shall mean any matter brought before the Board for ruling upon quasi-judicial hearing, including any appeal.

“Board” shall mean the City of Brevard Board of Adjustment.

“City” shall mean the City of Brevard, a municipal corporation.

“Entity” shall mean an individual human being, unincorporated association, limited liability company, corporation, partnership, or governmental body.

“Final Vote” shall mean any vote legally sufficient to carry the will of the Board (though not necessarily a majority of the Board, as in the case of a super-majority requirement) into effect. An initial vote may be a final vote.

“Person” shall mean an individual human being.

“Initial Vote” shall mean the first full vote resulting in an initial decision of the board, not including a final written decision including findings of facts and conclusions of law.

“Zoning Administrator” shall mean either the Zoning Administrator for the City or the designee of such person, but in any case, being an employee of the City.

ARTICLE XI

Preservation

If any court of competent jurisdiction declares any of these bylaws, policies, or procedures to be invalid or unenforceable, the remaining bylaws, policies and procedures shall remain nevertheless in full force and effect.

ARTICLE XII

Repeal of Previous Bylaws, Rules and Policies

All bylaws, rules, policies, and procedures heretofore adopted by the Board are REPEALED by the adoption of these Bylaws.

APPENDIX I

POLICIES AND PROCEDURES

1. Board Policies.

- A. Policies shall be adopted by a majority vote of the regular and alternate members attending the meeting at which the vote is taken.
- B. Policies may be amended or rescinded from time to time by a vote of a majority of members, regular and alternate, of the Board present at any lawful meeting of the Board in a manner consistent with the procedures for amending the bylaws of the Board. Any proposed amendment may be read at any meeting. Final vote thereon, shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.
- C. Policies may be suspended temporarily by a majority vote of those present, for reasons declared clearly and specifically and placed upon the minutes.

2. Administration.

The Clerk shall house all official books, papers and records of the Board and shall be responsible for all official correspondence relative to hearings, meetings, resolutions and decisions of the Board, if any such delegation of duties is not specifically set forth in the Bylaws.

3. Filing appeals and other applications.

- A. Applications for variances, special use permits, and architectural exceptions shall be filed with the Zoning Administrator.
- B. All appeals shall be filed with the City Clerk in accordance with the procedure set forth in Section 16.13.C of the City of Brevard Unified Development Ordinance. Appeals must be filed within 30 days of the receipt of notice, either actual or constructive, of the decision being appealed. Actual notice includes written, and in that event, notice will be adjudged to have been received on the earliest of any of the following dates:

- (1) in the case of hand delivery, on the date of delivery to the appellant or any person reasonably adjudged to be capable of forwarding it in a timely manner to the appellant or any director, officer or manager of the appellant;
 - (2) in the case of delivery sent return receipt requested, on the date of signing of the return receipt unless the appellant can demonstrate to the Board's satisfaction that such person was neither an appellant nor any person capable of forwarding it in a timely manner to the appellant or any director, officer or manager of the appellant;
 - (3) in the case of any other delivery sent through the U.S. mails, three days after the date of deposit in the U.S. mails, sufficient postage prepaid, and upon the credible sworn statement of the sender or any designee that the notice was so deposited and was not returned;
 - (4) in the case of any nationally or regionally recognized private courier, on the date shown to have been delivered on a standard receipt or delivery form issued by the courier;
 - (5) in the case of delivery by electronic mail, on the date of delivery indicated on an electronic delivery receipt form to an electronic address designated by the appellant to receive such notice, accompanied by a printed version of the receipt introduced by the credible sworn statement of the sender or any designee that the electronic receipt is genuine.
- C. No application for a variance shall be accepted for Board action within one year of Board action on an application on the same, or substantially the same tract of property, unless the Board finds and resolves that either (1) substantial land use, economic or social changes affecting the property have occurred in the interim or (2) the new application differs significantly from the original application.

For purposes of this Policy, "differs significantly" shall mean (1) that the issue is substantially different from an issue that was or might have been raised in the original application or (2) that the new application contains any other difference that the Board finds to constitute a significant change from the original application.

Applications made by governmental agencies shall not be subject to this policy nor shall governmental applications affect the filing of subsequent non-governmental applications under this provision.

4. Docket procedures.

- A. The filing deadline for docketing cases for any Board meeting shall be 5:00 p.m. on the day that is 30 days before the Board meeting; however, no more than ~~four~~ three cases shall be docketed for hearing at any regular meeting of the Board. Except as otherwise directed by the Chair, cases shall be docketed in the order in which applications were received.
- B. The agenda of cases to be considered at any Board meeting shall be posted in the office of the Planning Department not less than three days before such meeting.

5. Hearings.

- A. Hearings shall be held in the Council Chamber of the City of Brevard or such other place as the ~~Chair~~ Board Clerk from time to time designates.
- B. Cases set for hearing on a given day shall be heard in the order in which they appear on the agenda unless the Chair directs otherwise. Once a case is called for hearing by the Chair, the Applicant shall have fifteen (15) minutes to appear and present its case. After the fifteen (15) grace period expires, the Board may, in its discretion, take any action allowed by its Bylaws and Policies including deferring action on the case to a subsequent meeting.
- C. The Chair shall rule on any matter of law before the Board, including the admissibility of evidence and the competence of any witness. In addition, the Chair may limit testimony by an examination of a witness for reasonable cause. On motion of the Chair or any Board member, the Chair's ruling may be reversed by an affirmative vote of three members of the board present for the entirety of the hearing to that point and eligible to vote on the application. In these bylaws and policies, a member may be absent from the meeting for a very brief period, as determined by the Chair under all the circumstances, and still be present for "the entirety of the hearing."

- D. Rulings of the Chair or the Board on the admissibility of evidence, the competence of witnesses and like matters shall not be strictly bound by the North Carolina Rules of Evidence; however, these rules shall be a guide to rulings on such matters, which rulings shall be made with the intention of preserving both the credibility of the evidence and the public policies of the State of North Carolina with respect to judicial and quasi-judicial hearings.
- E. Within a reasonable time before the hearing, any person who has the right to introduce evidence may subpoena witnesses.
- F. Each person who testifies at any hearing shall first furnish his name and address to the Board.
- G. Each matter in the hearing shall be heard in the following order. In each case, after testimony is presented, the witness may be cross examined.
- (1) The Chair of the Board, or other presiding officer, shall read the notice of the hearing.
 - (2) The Zoning Administrator, or their designee, shall present a summary of the history of the application and contents of the file. The entire file shall be made part of the record of the case without the necessity of a motion by any person.
 - (3) The applicant, or the applicant's designee, may make a statement giving reasons for the request.
 - (4) Other persons in favor of the application shall be heard.
 - (5) Those persons neither in favor of nor opposed to the application, may be heard.
 - (6) The Zoning Administrator or other representative of the City may present evidence.
 - (7) Those persons opposed to the application shall be heard.

- (8) Parties shall have an opportunity to offer evidence in rebuttal.
- (9) The Chair shall close the hearing, after which no testimony shall be allowed unless the Board votes to reopen the hearing.
- (10) For good cause the Chair may continue the hearing.

H. Following the hearing, the Board may take any of the following actions:

- (1) Approve the application as submitted or modified. The Board may attach reasonable conditions to the approval of any application.
- (2) Deny the application.
- (3) Close the hearing and defer action on the case to a subsequent meeting, subject to its bylaws and procedures.

I. The following may appear before the Board to present or oppose an application:

- (1) Individual persons representing their own interests, if deemed by the Board to have a sufficient interest in the application.
- (2) Individual persons representing groups of persons of whom they are a member, if the group is deemed by the Board to have a sufficient interest in the application.
- (3) Individual employees or members of an association, corporation, partnership, or limited liability company, or any officer or director thereof, if the entity so represented is deemed by the Board to have a sufficient interest in the application.
- (4) Any official representing a governmental body, if the government so represented is deemed by the Board to have a sufficient interest in the application. The City, whose ordinances are necessarily the subject of

every application, shall be deemed to have a sufficient interest to appear before the board at every hearing.

- (5) Persons possessing a current valid license to practice law in North Carolina may represent any of the persons or entities mentioned above.

No person, group or entity may be represented by more than one person at any one hearing. This provision is not intended to limit the number of witnesses called.

- J. No licensed attorney not appearing on his or her own behalf may both (1) offer testimony and (2) question any witness or argue (or both) at any one hearing.

- K. The burden of proof in each case shall be as follows:

- (1) In the case of an appeal, on the appellant.

- (2) In any other case, on the applicant.

6. Decisions.

- A. The granting of a variance shall require an affirmative vote of four board members or alternates present at the entire hearing and eligible to vote. All other decisions of the Board shall require an affirmative vote of a majority of the members present at the entire hearing and eligible to vote. Votes shall be made upon a motion to grant the relief requested. The movant is under no obligation to vote in favor of the motion. If the motion fails to achieve the required number of votes, the application shall be deemed denied without further action by the Board.
- B. Written decisions containing findings of fact and conclusions of law may be approved at any time within forty-five (45) days after the initial vote. Any written decision presented to the board for final vote more than seventy days after the initial vote shall be accompanied by a written statement articulating clearly and specifically the reasons for the delay.
- C. The final vote, if approving the written decision, shall be held on the following issue: "Do the findings of fact, conclusions of law and ruling contained in the

written decision accurately reflect the sense of those who voted with the decision reached in the initial vote?" Subject to the Board's bylaws and procedures, this final vote may be approved by a majority of those members attending the meeting at which the final vote is held and eligible to vote.

- D. If upon an attempted final vote no majority can be reached upon the issue, the Chair shall request of the members who voted with the decision reached in the initial vote to indicate as clearly as possible for the minutes, if in the Chair's opinion they did not do so at the time of the initial vote, the criteria of the ordinance, met or unmet, upon which they based their vote, and the facts adduced at the hearing that support their conclusions.
- E. When the applicant / appellant has been granted the relief requested and there has not been a third party granted standing who opposed such relief, the Chair shall have the authority to approve and execute the decision without further action by the Board.

7. Public Records.

The Board shall conform to the requirements of N.C.G.S. Chapter 132 regarding public records. Board public records are located in the offices of the Zoning Administrator, 95 West Main Street, Brevard, NC. The official custodian of the public records shall be the Board Clerk.

8. Ethics.

- A. No member of the board shall participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. A member who has been recused shall not sit with the Board and shall not participate in any further discussion on the matter. Refer to N.C.G.S. §160D-109 *Conflicts of Interest*.

- B. Every member sitting at any hearing shall announce before the beginning of testimony of the first witness any contacts concerning the application that are not already included in the file. The announcement or inclusion in the record will include the name of the person or persons with whom the contact occurred and the substance of the entire contact; provided, however, that no member need announce such general contacts concerning the hearing itself as may be general to all members in their capacity as members.

9. Reconsideration and Rehearing.

- A. No appeal, application, or other matter acted upon by the Board may be reconsidered or reheard (other than as directed by a court of competent jurisdiction), except upon motion for reconsideration by a member of the Board who voted with the prevailing side. The motion must be seconded by any member of the Board either for reconsideration or rehearing. Motions for reconsideration shall be made at the meeting, whether regular or special, immediately following the initial vote.

Provided, however, that a motion for reconsideration based on (1) presence or absence of subject matter jurisdiction or (2) a timely and credible allegation of an unreported conflict of interest may be made at any time before (a) the running of the time to file a petition for certiorari, if no such petition is filed within that time, or (b) the ruling of a superior court judge on a timely filed petition for certiorari based in whole or any part on either or both of the objections listed above.

Rehearings shall follow UDO 16.8.B.6.

10. Judicial Review.

Petitions for judicial review of any ruling of the Board shall be in accordance with N.C.G.S. § 160D-406 or its successor statute.

Read, approved, and adopted by the Board of Adjustment of the City of Brevard, North Carolina, in a meeting duly called, noticed and held in Brevard, North Carolina the 1st day of October, 2024.

The following Board members voted AYE:

The following Board members voted NAY:

These bylaws shall become effective upon their adoption.

Peter Offen, Chair

ATTEST:

Janice Pinson, Clerk

BYLAWS AND RULES OF PROCEDURE
OF THE CITY OF BREVARD
BOARD OF ADJUSTMENT

REWRITTEN AND ADOPTED: OCTOBER 1, 2024

Article I. Name

The name of this organization is the City of Brevard Board of Adjustment, hereinafter referred to as the “Board” or “BOA”.

Article II. Purpose and Powers

The Board shall have those powers and duties set out in North Carolina General Statutes (“N.C.G.S”) 160D-302, and elsewhere in the General Statutes, and in the Unified Development Ordinance (“UDO”) of the City of Brevard, as well as those powers not inconsistent therewith as set forth herein.

Article III. General Rules

The Board shall be governed by the Ordinances of the City of Brevard and the Laws of the State of North Carolina. The Board shall follow the procedures outlined in these rules of procedure.

Article IV. Jurisdiction

The Board’s jurisdiction shall apply equally within the City limits and the City’s area of Extraterritorial Jurisdiction (“ETJ”).

Article V. Organization

Section 1. Membership. The Board shall consist of a total of five members with three members residing in the city limits and two members residing in the ETJ. In addition, two alternate members residing in the city limits and one alternate member residing in the ETJ shall be appointed. Alternates shall serve on the Board in the absence of a member and while serving shall have and may exercise all of the powers and duties of a regular member. The members residing in the ETJ shall have equal right, privileges, and duties with other members of the Board in all matters pertaining to the UDO both within the corporate limits of the city and within its ETJ.

In accordance with N.C.G.S 160D-307(a), the total membership of the BOA shall be proportional to the population of residents of the city and residents in the ETJ area. At a minimum, the membership of the Board shall be examined following every decennial census, and changes shall be made as necessary to maintain an appropriate balance of city and ETJ Board membership.

Representatives from within the corporate limits shall be appointed by the Brevard City Council. Representatives from the ETJ area shall be appointed by the Transylvania County Board of Commissioners.

The term of office shall be three years, although initial appointments shall be made for one, two and three years so the terms may be staggered. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

Any member of the Board may be removed by the applicable appointing authority for neglect of duty, malfeasance, or conflict of interest.

Section 2. *Officer Election.* At its January meeting each year, the Board shall elect a Chair and Vice-Chair for the coming year. The Chair and Vice-Chair shall hold office for one year and shall be eligible for reelection.

Section 3. *Chair.* The Chair shall have the following duties:

- A. Preside at meetings of the Board;
- B. Provide general supervision of the conduct of the affairs of the Board and assigned staff members;
- C. Advise the Zoning Administrator of member concerns;
- D. Appoint any committees and committee Chairs;
- E. Perform such other duties as determined by the Board, the bylaws, policies and procedures adopted by the Board from time to time.

Section 4. *Vice-Chair.* The Vice-Chair shall serve as acting Chair in the absence of the Chair and, at such times, shall have the same powers and duties as the Chair.

Section 5. *Clerk.* The Board may delegate duties or functions to staff members as needed to carry out its assigned duties. The Brevard Planning Department Secretary Administrative Staff shall serve as the Clerk to the Board of Adjustment and shall keep the minutes and do other tasks as assigned by the Board. The Clerk shall have the following responsibilities:

- A. Attend all regular and special meetings and hearings, as well as any committee meetings, and keep a record thereof, which shall be transcribed in the minute book of the Board.
- B. Send notices of all meetings of the Board required to be sent by law, under these bylaws, or as directed by the Chair.
- C. Have charge of all books, papers and records of the Board and attend to all correspondence of the Board.

If for any reason the Clerk is unable to attend a meeting of the Board or is temporarily unable to otherwise fulfill the responsibilities of that office, the Chair may appoint a substitute on an interim basis.

Section 6. *Attendance at Meetings.* Members are expected to attend all meetings of the Board. In accordance with Chapter 15.4 of the UDO, any member who attends less than 75% of the regular and special meetings held by the Board during any one-year period may be removed from the Board by City Council. The Board Clerk shall notify the Chair and proper appointing authority if a member fails to abide by this requirement.

Section 7. *Conflict of Interest.* No Board member shall take part in the hearing, consideration, or deliberation of any case or matter before the Board in which the Board member, or any member of the Board member's family, either directly or indirectly, is a

party or has any financial interest per N.C.N.C.G.S 160D-109. A member who wishes to be excused from voting shall so inform the Chair, who shall take a vote of remaining members present on the request.

Article VI. Meetings

Section 1. *Open Meetings.* All meetings shall be open to the public and properly noticed as provided by state law.

Section 2. *Regular Meetings.* Regular meetings of the Board shall be held at 3:00 p.m. on the first Tuesday of each month in the Council Chambers of City Hall, except when otherwise decided by the Board, with due notice to the press. If a day scheduled for a regular meeting is a holiday for which the offices of the City of Brevard are closed, the regular meeting shall be held at 3:00 p.m. on a date agreed to by the Board.

Section 3. *Special Meetings.* Special meetings of the Board may be called at any time by the Chair provided that at least 48 hours written notice of the time and place of a special meeting be given, to each regular and alternate member of the Board and to the Clerk. In addition, members of the press shall be notified of each meeting in accordance with law. Special meetings may include Board retreats and like meetings held to conduct internal business of the Board.

Section 4. *Cancellation of Meetings.* If there is no business for the Board, or if it is apparent a quorum will not be available, the Chair or Clerk may dispense with a regular or special meeting by giving written or oral notice to all members not less than 24 hours prior to the time set for the meeting.

Section 5. *Quorum.* A quorum shall consist of four members of the Board (including alternates); provided, however, when hearing an application for a variance, the Board shall, upon the request of the applicant, continue the hearing when less than five members of the Board are present. Notwithstanding the foregoing, a quorum shall not be necessary to do any of the following:

- A. Set a date, time, or place for any subsequent meeting;
- B. Discuss general internal Board business; provided, however, in no event may the Board without a quorum hear or discuss the merits of any matter brought or to be brought before the Board as part of a hearing.

Section 6. *Voting.* Except as otherwise provided in these bylaws, including the policies and procedures attached hereto, a majority of all regular and alternate members eligible to vote shall be necessary to transact any official business. Except as otherwise provided herein, any regular member in attendance at any meeting shall be eligible to vote on all matters brought before the Board at that meeting. If there are more alternates present than regular members missing, the Chair shall select which alternate(s) shall be eligible to vote. The Chair may empower alternates to vote at any portion of a meeting where a regular member is absent or excused, including any hearing.

Article VII. Agenda

Section 1. *Order of Business.* The order of business at regular meetings shall be as follows:

- A. Roll call; determination of quorum;
- B. Approval of the Agenda;
- C. Approval of Minutes of previous meeting;
- D. Approval of Orders;
- E. Hearing of cases;
- F. Other business;
- G. Adjourn.

Article VIII. Rules and Policies

Section 1. *Board Policies.* These rules may be amended at any meeting after the meeting at which the amendment is first presented upon an affirmative vote of not fewer than four members of the Board. These rules should be reviewed annually.

- A. Policies shall be adopted by a majority vote of the regular and alternate members attending the meeting at which the vote is taken.
- B. Policies may be amended or rescinded from time to time by a vote of a majority of members, regular and alternate, of the Board present at any lawful meeting of the Board in a manner consistent with the procedures for amending the bylaws of the Board. Any proposed amendment may be read at any meeting. Final vote thereon, shall take place, if at all, not earlier than ten days nor later than seventy days following the initial reading.
- C. Policies may be suspended temporarily by a majority vote of those present, for reasons declared clearly and specifically and placed upon the minutes.

Section 2. *Administration.* The Clerk shall house all official books, papers and records of the Board and shall be responsible for all official correspondence relative to hearings, meetings, resolutions, and decisions of the Board, if any such delegation of duties is not specifically set forth in the Bylaws.

Section 3. *Filing appeals, variances, and special use permits.* Notices of appeal shall be filed with the city Clerk. Applications for variances, special use permits, and architectural special use permits shall be filed with the administrator in accordance with Chapter 16.5 of the UDO.

- A. Notice of Evidentiary hearings. Notice of evidentiary hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal or application is the subject of the hearing; to the owner of the property that is the subject of hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by these regulations. In the absence of evidence to the contrary, the city may rely on the Transylvania County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time

period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The Board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

B. Administrative materials. The administrator or staff to the Board shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the Board prior to the hearing if at the same time they are distributed to the Board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

C. Docket procedures. The filing deadline for docketing cases for any Board meeting shall be 5:00 p.m. on the day that is 45 days before the Board meeting; however, no more than three cases shall be docketed for hearing at any regular meeting of the Board. Except as otherwise directed by the Chair, cases shall be docketed in the order in which applications were received. The agenda of cases to be considered at any Board meeting shall be posted in City Hall not less than three days before such meeting.

D. Hearings. The Board shall conduct an evidentiary hearing on the appeal or application. It shall determine contested facts and make its decision within 45 days of the conclusion of hearing. The Board's decision shall be based upon competent, material, and substantial evidence in the record of the hearing.

1. Hearings shall be held in the Council Chamber of the City of Brevard or such other place as the Chair Board Clerk from time to time designates.
2. Cases set for hearing on a given day shall be heard in the order in which they appear on the agenda unless the Chair directs otherwise. Once a case is called for hearing by the Chair, the Applicant shall have fifteen (15) minutes to appear and present its case. After the fifteen (15) minute grace period expires, the Board may, in its discretion, take any action allowed by its Bylaws and Policies including deferring action on the case to a subsequent meeting.
3. The Chair shall rule on any matter of law before the Board, including the admissibility of evidence and the competence of any witness. In addition, the Chair may limit testimony by an examination of a witness for reasonable cause. On motion of the Chair or any Board member, the Chair's ruling may be reversed by an affirmative vote of three members of the board present for the entirety of the hearing to that point and eligible

to vote on the application. In these bylaws and policies, a member may be absent from the meeting for a very brief period, as determined by the Chair under all the circumstances, and still be present for “the entirety of the hearing.”

4. Rulings of the Chair or the Board on the admissibility of evidence, the competence of witnesses and like matters shall not be strictly bound by the North Carolina Rules of Evidence; however, these rules shall be a guide to rulings on such matters, which rulings shall be made with the intention of preserving both the credibility of the evidence and the public policies of the State of North Carolina with respect to judicial and quasi-judicial hearings.
5. Within a reasonable time before the hearing, any person who has the right to introduce evidence may subpoena witnesses.
6. Each person who testifies at any hearing shall first furnish his name and address to the Board.
7. Each matter in the hearing shall be heard in the following order:
 - a) In each case, after testimony is presented, the witness may be cross examined.
 - b) The Chair of the Board, or other presiding officer, shall read the notice of the hearing.
 - c) The Zoning Administrator, or their designee, shall present a summary of the history of the application and contents of the file. The entire file shall be made part of the record of the case without the necessity of a motion by any person.
 - d) The applicant, or the applicant’s designee, may make a statement giving reasons for the request.
 - e) Other persons in favor of the application shall be heard.
 - f) Those persons neither in favor of nor opposed to the application, may be heard. The Zoning Administrator or other representative of the City may present evidence.
 - g) Those persons opposed to the application shall be heard.
 - h) Parties shall have an opportunity to offer evidence in rebuttal.
 - i) The Chair shall close the hearing, after which no testimony shall be allowed unless the Board votes to reopen the hearing.
 - j) For good cause the Chair may continue the hearing.
8. Following the hearing, the Board may take any of the following actions:
 - a) Approve the application as submitted or modified. The Board may attach reasonable conditions to the approval of any application.
 - b) Deny the application.
 - c) Close the hearing and defer action on the case to a subsequent meeting, subject to its bylaws and procedures.
9. The following may appear before the Board to present or oppose an application:
 - a) Individual persons representing their own interests, if deemed by the Board to have a sufficient interest in the application.

- b) Individual persons representing groups of persons of whom they are a member, if the group is deemed by the Board to have a sufficient interest in the application.
- c) Individual employees or members of an association, corporation, partnership, or limited liability company, or any officer or director thereof, if the entity so represented is deemed by the Board to have a sufficient interest in the application.
- d) Any official representing a governmental body, if the government so represented is deemed by the Board to have a sufficient interest in the application. The City, whose ordinances are necessarily the subject of every application, shall be deemed to have a sufficient interest to appear before the board at every hearing.
- e) Persons possessing a current valid license to practice law in North Carolina may represent any of the persons or entities mentioned above.
- f) No person, group or entity may be represented by more than one person at any one hearing. This provision is not intended to limit the number of witnesses called.
- g) No licensed attorney not appearing on his or her own behalf may both (1) offer testimony and (2) question any witness or argue (or both) at any one hearing.

E. Burden of persuasion. In all quasi-judicial hearings, the applicant or appellant, as the case may be, shall have the burden of persuasion.

F. Rehearings.

1. An application for a rehearing shall be made in the same manner as provided for an original hearing within a period of 15 days after the date of the Board's decision. In addition, specific information to enable the Board to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented in writing or graphically. A rehearing shall be denied by the Board, if, in its judgment, a prima facie case for such change has not been alleged. A quasi-judicial hearing shall not be required to be held by the Board to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least four-fifths of the Board for a variance and a simple majority for all other matters. In the event that the Board finds that a rehearing is warranted, it shall proceed as in the original hearing except that the application fee shall be waived.

2. Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one year after the date of denial of the original application.

G. Appeals of the BOA's decisions. Every quasi-judicial decision of the BOA under this section shall be subject to review by the Superior Court Division of the General

Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. A petition for review shall be filed with the Clerk of superior court within the times specified in N.C.G.S 160D-1405(d).

Section 4. *Procedures for special use permits.* Special uses are generally compatible with the land uses permitted by right in a zoning district but require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district. Only those uses enumerated as special uses in a zoning district shall be authorized by the BOA. Applications for special use permits shall be processed, considered, and decided upon using the same procedures and subject to the same requirements as those established in Chapter 16.8.A of the UDO, except as provided below.

A. Application required.

1. The applicant shall submit a sketch plan, in accordance with Chapter 17.4 of the UDO.
2. The applicant shall submit a description or narrative stating why the special use is requested.
3. The administrator may request an environmental survey.
4. The administrator may require any other documentation, such as construction documents and building elevations, deemed necessary by the administrator in order to provide a complete and accurate description of the proposed use.

B. Administrative review procedure.

1. The applicant shall submit the completed application, pursuant to Chapter 16.5 of the UDO at least 45 days prior to the BOA meeting at which it will first be reviewed. For urgent matters, the administrator may request the BOA to review the application at an earlier meeting if processing time permits.
2. The administrator shall review and comment on the application and supporting materials in accordance with Chapter 16.6 of the UDO.
3. The administrator may require that the application and supporting materials be reviewed by the technical review committee (TRC) in accordance with Chapter 15.1 of the UDO.
4. The administrator may require that the application be circulated to other relevant city, county, and state agencies and officials for comment(s) as to the proposed development's conformance to all applicable standards and requirements and whether approval is recommended.
5. The administrator may require a neighborhood compatibility meeting in order to gather neighborhood feedback, and may require the person proposing the special use permit to report on any communication with neighboring property owners and residents.

6. Once the administrator has reviewed the application and circulated it to other relevant agencies, committees, and officials, the administrator shall transmit the application to the BOA for action.

C. Hearings.

1. The evaluation and approval of the special use permit shall be based upon the sworn testimony and evidence presented at the hearing relevant to the following findings of fact:

- a. The use meets all requirements and specifications of the ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and
- b. The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible to the surrounding area; and
- c. The proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.

2. The BOA may require a traffic impact study, an environmental survey or impact statement, and any other additional information or evidence as necessary to properly consider the application.

D. Permit approval.

1. In approving an application for a special use permit, the BOA may attach reasonable and appropriate conditions on the location, nature, and extent of the proposed use, which support the required findings of fact. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. These conditions shall not include requirements for which the city does not have the statutory authority to impose or for which the courts have held to be unenforceable if imposed directly the city. Only those conditions mutually approved in writing by the BOA and the applicant shall be incorporated into the permit requirements.

2. The BOA may not require the landowner to waive a vested right as a condition of the special use permit approval. The burden of proof of producing evidence to support these findings and to overcome any challenges that approval of the plan would be contrary to one or more of these findings shall rest entirely with the applicant or landowner.

3. Following the approval of the special use permit by the BOA, the applicant shall submit to the administrator all construction documents and any other documents specified by Chapter 17 of the UDO for project development approval and administration. The administrator shall require evidence of approval of any other permit required by any other federal, state, or local

agency (i.e., NCDOT permits, NCDENR permits, Army Corps of Engineers permits, etc.).

E. Effect of approval.

1. If an application is approved, the special use permit that is established and all conditions which may have been attached to the approval are binding on the property. All subsequent development and use of the property must be in accordance with the approved plan and conditions. The approved special use permit shall be recorded with the Transylvania County Register of Deeds and a copy of the recordation be submitted to the city, pursuant to N.C.G.S 160D-705(c).

F. Modifications.

1. Modifications to an approved special use permit shall be in accordance with Chapter 16.9 of the UDO.

G. Revocation of special use permits.

1. Revocation of special use permits shall be conducted pursuant to Chapter 16.8 of the UDO.

2. In addition to the reasons for revocation outlined in Chapter 16.13 of the UDO, the applicant must secure a valid building permit within a 12-month period from date of approval of the special use permit unless otherwise specified.

Section 5. Procedures for administrative appeals. Appeals of administrative decisions and development approvals shall follow the same procedures and be subject to the same requirements as those established in Chapter 16.8.A of the UDO except as provided below:

A. Applicability. In accordance with N.C.G.S 160D-405, the BOA shall hear and decide appeals of final and binding decisions made by administrative officials charged with enforcement of any development regulations, including administrative modifications and denials of development permits. Any person who has standing under N.C.G.S 160D-405 or the city may appeal a decision to the BOA. The owner of the property or any other party with standing shall have 30 days from receipt of notice, pursuant to Chapter 16.4 of the UDO, within which to file a notice of appeal stating the grounds for appeal.

B. Stays.

1. An appeal of a notice of violation or other enforcement order stays enforcement of the decision appealed from and accrual of any fines assessed unless the official who made the decision certifies to the BOA after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulations. In that case, enforcement proceedings shall not be

stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after such a request is filed.

2. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulations shall not stay further review of an application for development approvals to use such property; in these situations, the appellant or city may request and the BOA may grant, a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

C. Hearings. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all powers of the official who made the decision.

D. Alternative dispute resolution. The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

Section 6. Procedures for variances. Except as limited herein, the Board of adjustment shall have the authority to vary provisions of the UDO in accordance with this section. Applications for variances shall follow the same procedures and be subject to the same requirements as those established in Chapter 16.8.A of the UDO except as provided below.

A. Administrative review procedure:

1. The applicant shall submit the completed application, pursuant to Chapter 16.5 of the UDO at least 45 days prior to the BOA meeting at which it will first be reviewed. For urgent matters, the administrator may request the BOA to review the application at an earlier meeting if processing time permits.
2. The administrator shall review and comment on the application and supporting materials in accordance with Chapter 16.6.
3. The administrator may require that the application and supporting materials be reviewed by the technical review committee (TRC) in accordance with Chapter 15.1 of the UDO.
4. The administrator may require that the application be circulated to other relevant city, county, and state agencies and officials for comment(s) as to the proposed development's conformance to all applicable standards and requirements and whether approval is recommended.
5. Once the administrator has reviewed the application and circulated it to other relevant agencies, committees, and officials, the administrator shall transmit the application to the BOA for action.

B. Standards for granting variances. Except as limited by alternate dispute resolution, when unnecessary hardships would result from carrying out the strict letter of the UDO, the BOA shall vary such regulations upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the regulations. It is not 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 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.

C. Guiding principles. In judging a request for a variance, the BOA shall be guided by the following principles:

1. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
2. The hardship relates to the applicant's land, rather than personal circumstances;
3. The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
4. The hardship is not the result of the applicant's own actions; and
5. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not constitute an unnecessary hardship.
6. Hardships for the following regulations are shared across many properties, are broadly required for public safety and general welfare, and are unlikely to create a situation warranting a variance:
 - a. To provide relief from the requirements of Chapter 4.5 of the UDO for visibility at street intersections and driveways. In order to

ensure that the requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured and substantial justice is achieved, the following additional requirements shall apply:

- i. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, ordinances.

- ii. The variance shall only be issued upon the inclusion of the following determinations:

- (1) The variance will not pose a danger to the public safety based on competent evidence. As used in this subsection, competent evidence shall not be deemed to include the opinion testimony of lay witnesses as to vehicular safety resulting from the reduction of visibility of the sight triangle.

- (2) The variance is the minimum necessary to afford relief.

- b. To provide relief from the surface water protection requirements of Chapter 6.7 of the UDO pertaining to encroachments into surface water protection areas other than that portion lying in the regulatory floodway may be considered. In order to ensure that the requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured and substantial justice is achieved, the following additional requirements shall apply:

- i. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, ordinances.

- c. Variances shall only be issued upon the following determinations:

- i. The granting of the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws ordinances.

- ii. The variance is the minimum necessary to afford relief.

- iii. Variances shall only be issued prior to floodplain development approval.

D. *Conditions.* The BOA, in granting a variance, may prescribe appropriate conditions and safeguards on any variance, provided that the conditions are reasonably related to the variance. Violation of such conditions and safeguards, when made a part of the

terms under which a variance is granted, shall be deemed a violation of this ordinance and shall be punishable as prescribed in Chapter 18 of the UDO.

E. Limitations on Board's authority. The BOA shall not have authority to grant variances in the following situations:

1. To change the permitted uses for any property.
2. To provide relief from the environmental protection requirements in Chapter 6 of the UDO including, but not limited to, steep slope, sedimentation and erosion prevention, stormwater runoff, surface water protection, and flood damage prevention, except those surface water protection areas of Section 6 outlined in subsection C above.
3. To provide relief from the water, sewer, and utility requirements of Chapter 13.4 of the UDO.

F. Conformance with City Code. Structures and uses permitted by means of a variance from a provision of this ordinance shall otherwise conform to all other applicable provisions of this ordinance and the Brevard City Code of Ordinances.

G. Recording. The approved variance shall be recorded with the Transylvania County Register of Deeds and a copy of the recordation be submitted to the city, pursuant to N.C.G.S 160D-705(c).

Adopted by vote of the Board this the 1st day of October, 2024.

Peter Offen
Board Chair

Attested to:

Janice Pinson
Board Clerk