



AGENDA
BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING
Tuesday, February 4, 2025 - 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. November 5th, 2024

VI. Approval of Orders

VII. New Business

- a. *Consideration of Request Application for Variance VAR-24-007 by Spencer Jones and Betsy Watson for a variance from UDO Chapter 2.5.C.2. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district further identified by PIN# 8596-48-9259-000*
- b. *Consideration of Request Application for Variance VAR-24-008 by Tore Borhaug of Parashift Holdings LLC for a variance from UDO Chapters 2.3 A and 2.7.2 A. The property is located in the zoning jurisdiction of the City of Brevard in the Residential Mixed Use (RMX) zoning district further identified by PIN# 8596-26-6331-000.*
- c. Election of Officers
- d. Approval of 2025 Meeting Schedule

VIII. Unfinished Business

IX. Remarks

X. Adjourn

Agenda Posted, Website (January 28th, 2025)
M. Baker, 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, November 5, 2024– 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday November 5, 2024, at 3:00 PM.

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

Staff Present: Aaron Bland, Assistant Planning Director
Katherine Buzby, Planner
Janice Pinson, Board Clerk
Brian Gulden Board Attorney

Others: Shane Atkins, Moss Sign Company, Applicant for Telco Credit Union
Janna Zwerner, Applicant
Witnesses: Judy Tedrick, Jacquelyn Rokonitv, Thomas Jacoby

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 K. Jones second by A. Delzell, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the May 7, 2024, meeting by T. Fogel, second by A. Delzell, carried unanimously.

VI. New Business

- a. Request of Shane Atkins, Moss Sign Co., Agent for Telco Community Credit Union for a variance from UDO Chapter 12.9.C.3.(a)v. The property is located in the zoning jurisdiction of the City of Brevard in the Corridor Mixed Use (CMX) zoning district further identified by PIN# 8586-85-5560-000.

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

None of the public 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: Shane Atkins and Katherine Buzby.

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

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 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.

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 (per North Carolina General Statue 160D-912.1). 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 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.

When asked if there were questions, there were none.

Shane Atkins, Moss Sign Co. thanked the board for their time. He testified that the sign would need to be relocated because of the NCDOT project, and the only desirable place would conceal a clear line of sight at the current height. The visibility will be greater in the new location and at the new height and is good for bank business and marketability.

When asked if the reader board would show from a distance, Mr. Atkins said that it would not, just the Telco sign.

When asked Katherine Buzby explained that the UDO prohibits reader boards but that the NCGS allows the sign to be moved as it was originally permitted due to the circumstances, but that the height allowed by the UDO is a maximum of 20' and they are requesting a variance of 9'6".

T. Fogel asked Mr. Atkins if this was his only option and he stated that it was.

With no further questions, P. Offen closed the hearing.

The board had a brief discussion and T. Fogel made the following motion:

With regard to variance request **24-005**, the request of Shane Atkins, Moss Sign Co., Agent for Telco Community Credit Union for a 9-foot 6-inch variance from the maximum ground sign height of 20-feet and the continuance of an electronic

reader board located at 281 Asheville Hwy, I move the Board to make the following findings of fact:

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

NCDOT has acquired the section of the parcel where the current ground sign is located and they must vacate the site and the only new reasonable location available will have a restricted view without the height variance.

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

The building will restrict the view of the sign if the variance is not granted for the sign height to be increased.

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

NCDOT project is requiring the sign to be relocated.

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

Accordingly, I further move the board to **GRANT** the requested variance to allow for a sign height of 29 feet 6 inches with an electronic reader board on the subject property in accordance with and only to the extent represented in the application and plans.

Second by K. Jones, unanimously carried.

b. Request of Janna Zwerner for a variance from UDO Chapter 9.3.A. The property is located at 390 West Probart Street in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district further identified by PIN# 8586-32-6425-000.

P. Offen explained quasi-judicial procedures. Brian Gulden explained standing requirements.

Aaron Bland and Janna Zwerner were sworn.

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.

Aaron Bland, Assistant Planning Director, presented his staff report a portion of which follows:

Background The Planning Department has received a variance request from Janna Zwerner for her property at 390 W. Probart Street. The request is for a reduction in the driveway separation requirements of Section 9.3 of the City of Brevard Unified Development Ordinance (UDO). The property is located in the zoning jurisdiction of the City of Brevard and located within the General Residential 8 (GR8) district, further identified by PIN 8586-32-6425-000. The house on the property is a recent build, with the application and site plan submitted on September 20, 2023. The site plan showed all UDO requirements for a new single-family house were met, including a single driveway, and the permit was issued. A preliminary footer inspection was done by Katherine Buzby on 10/3/23 and the final inspection was done by Aaron Bland on 5/22/24. After the permit was finalised out following the final inspection, it came to the Planning Department's attention that the builder of the new house had installed a second curb cut for the driveway, despite the approved site plan for only one curb cut. This second curb cut was obscured by a subcontractor's vehicle which was parked on top of it during the final inspection. After becoming aware of the second curb cut, Aaron Bland contacted contractor Zach McCall and informed him that the second cut was not allowed and needed to be closed, and Mr. McCall indicated that the situation would be remedied shortly. Later, during a follow-up phone call, Mr. McCall informed Mr. Bland that the buyer of the house wished for it to remain and would be contacting our office about their options in the matter. A letter was sent to the new owner, Ms. Zwerner, on August 12, 2024, informing her of the violation and providing options for remedying it. After an in-person meeting, Ms. Zwerner chose to pursue a variance. See the included attachments for the application materials, relevant UDO section, and a site map. Page 26 of 70

Discussion The unpermitted second driveway curb cut was installed in violation of the UDO Section 9.3, which states that second driveway curb cuts for single-family houses on streets with a posted speed limit of 25 MPH must have a separation distance of at least 60 feet. The separation distance of the second cut at 390 Probart Street is approximately 22 feet indicating the need for a 38-foot variance. Ms. Zwerner's application indicates a need for the second driveway cut due to traffic issues on Probart Street. Probart Street has been identified as a street in need of "traffic calming" by the City for some time, beginning in earnest in 2022 when the City Manager met residents to hear their concerns about traffic on the street, kick-starting an official traffic-calming request. In 2023, this request made its way through the City's Traffic Calming Policy, which included traffic volume and speed counts by the Police Department, a review and design proposal by consultant traffic engineers, and a public meeting to review the proposed treatments. Ultimately, traffic-calming treatments were approved by City Council and to date have been partially implemented.

Aaron Bland handed out a map (Exhibit “A”) and explained that traffic calming speed cushions are to be installed. When asked he explained that the speed cushions are deep.

Janna Zwerner testified that she just found out about the speed humps yesterday or she would have been prepared to discuss.

She submitted a list of 12 neighbors who signed a petition in favor of her request (Exhibit “B”).

She submitted evidence of safety facts and photos in support of her testimony that there is a sight distance issue pulling out of her driveway because there is a hill, a curve and other items that make it hard to back out of her driveway safely. (Exhibit “C”). She stated that most of the residents on Probart Street are aware of the safety study results. That speeds are 40, 45 and 50 mph in a 25 mph zone. She went over traffic data obtained from Brevard Police records.

Judy Tedrick, 415 Probart Street testified that she had an accident when she backed out of her driveway and a truck backed into her car causing 5 thousand dollars in damages.

Jacquelyn Rokotnity a friend who visits Ms. Zwerner testified that she finds the regulation perplexing and that backing into Probart Street is dangerous. That the Applicant has given up a nice front yard to have a safe driveway. Further, in her opinion the regulation is misplaced and an error of judgment.

Thomas Jacoby is a neighbor on White Oak Lane. He testified that it is very clear that the speeding on Probart Street is a problem. He described a telephone pole that is directly in his front yard that causes sight issues, and believes Ms. Zwerner’s driveway significantly provides safety and better visibility.

K. Jones asked Ms. Zwerner if she understood that the board cannot invalidate city regulations and that her request applies to her property alone.

J. Zwerner explained that she understood and further explained that her property is more obstructed because of the curve.

P. Offen asked if Ms. Zwerner had any idea that the site plan submitted for the permit for her home did not reflect the circular driveway and she answered that she did not.

Ms. Zwerner was further questioned by the board about other options available without the second curb cut and about the possibility of a drive in the back.

She explained there was a fence in the front inches from her property line and that she believed when she was viewing the property for sale that she saw everything on the ground that was approved on the site plan.

P. Offen asked A. Bland what the reason is for the distance between driveways and A. Bland answered fewer conflicts.

P. Offen closed the hearing.

Members of the board complimented the Applicant on a good presentation of her case.

Motion by A. Mercaldo as follows:

With regard to variance request **24-006**, the request of Janna Zwerner, for a reduction in the driveway separation requirements for property located at 390 W. Probart Street, 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 it would difficult to find properties that would meet the UDO driveway separation requirements because of the higher density development currently happening in the City.

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

the limited site visibility due to the curve and hill

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

The Applicant had no prior knowledge of the UDO driveway requirements.

- 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.

Public Safety is achieved not only for the Applicant but for all who travel Probart Street

Accordingly, I further move the board to **GRANT** the requested variance to allow for allow a reduction in the driveway separation requirements on the subject property in accordance with and only to the extent represented in the application and plans.

Second by T. Fogel, unanimously carried.

c. Board of Adjustment By-Laws

Brian Gulden approved the new format of the by-laws.

Motion to approve by. P Offen, seconded by A. Delzell, unanimously carried.

VII. UNFINISHED BUSINESS – None

VII. REMARKS – Janice Pinson, Board Clerk, announced to the board that she would be retiring December 31, 2024. She stated that it has been an honor to serve the board.

VIII. ADJOURN

P. Offen moved to adjourn the meeting, seconded by A. Mercaldo. The motion carried unanimously. The meeting was adjourned at 4:10 PM.

Peter Offen, Chair

Janice H. Pinson, Board Clerk

STAFF REPORT

Board of Adjustment, Tuesday, February 4, 2025

Title: *Consideration of Request Application for Variance VAR-24-007 by Spencer Jones and Betsy Watson for a variance from UDO Chapter 2.5.C.2. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district further identified by PIN# 8596-48-9259-000*

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

STAFF REPORT

Board of Adjustment, Tuesday, February 4, 2024

Background

The applicants, Betsy Watson and Spencer Jones, own property at 1190 Ecusta Rd, which is located in the General Residential-4 (GR-4) zoning district and in the City's municipal limits. The parcel identification number is 8596-48-9529-000.

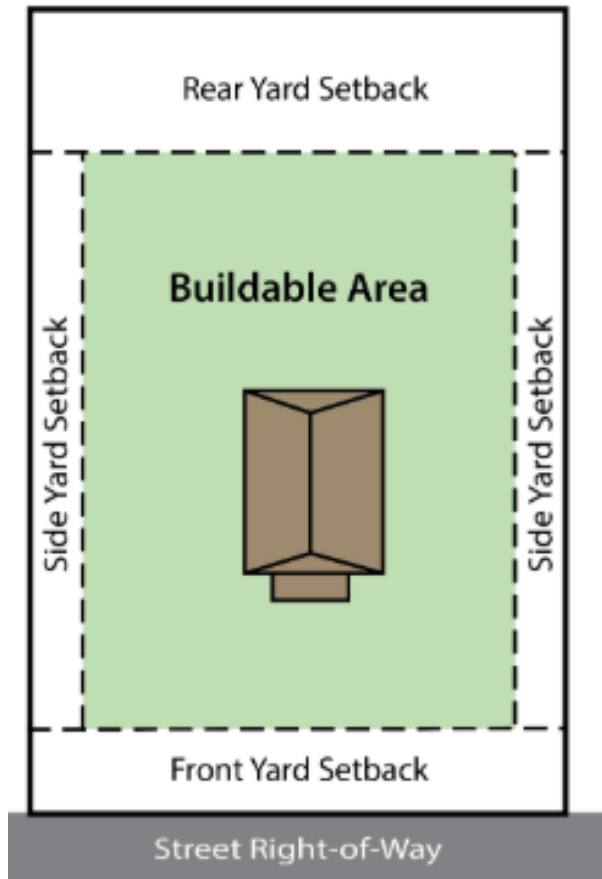
The applicant is requesting a variance from the Unified Development Ordinance, Chapter 2.5.C.2, which requires residential accessory buildings (a shed-160' sq ft) to be located in the side or rear yard.

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

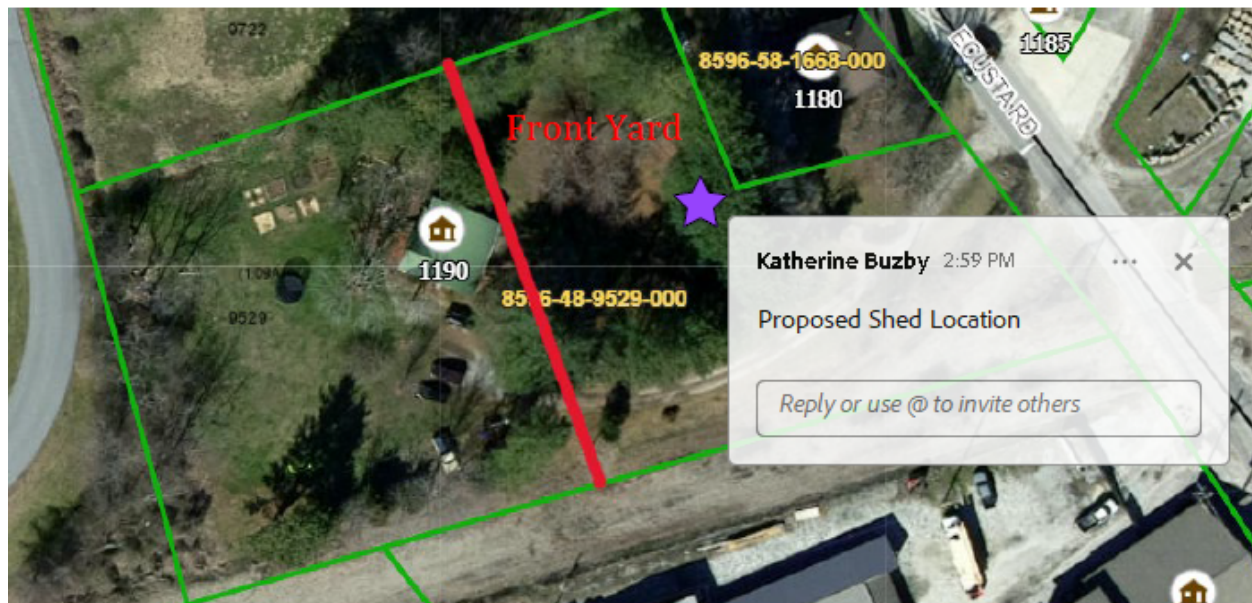
Discussion

The applicant's property has street frontage on Ecusta Rd. The determined front yard is in relation to the public Right-of-Way, not related to the way the actual structure faces.

The applicant is requesting to place a 10' x 16' accessory building in their front yard (eastern yard), which is prohibited per Chapter 2.5.C.2 of the UDO: "Accessory structures shall be located only in the side or rear yards, except for gazebos, private garages, and carports."



(UDO Figure 2.7.1-A)



(Aerial photo of property, showing front yard faces Ecusta Rd)

The UDO establishes setbacks for accessory structures for GR-4 zoned properties as shown in the figure below:

TABLE 2.7.3-A: 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
RMX	0 feet	3 feet	0 feet	3 feet
NMX	0 feet	3 feet	0 feet	3 feet
PGX	0 feet	3 feet	0 feet	3 feet
DMX	0 feet	0 feet	0 feet	0 feet
CMX	0 feet	0 feet	0 feet	0 feet
IC	40 feet along all external boundaries			
GI	10 feet/25 feet from residential district	10 feet/25 feet from residential district	10 feet/25 feet from residential district	10 feet/25 feet from residential district
CZD	To be determined by approving authority			

The applicants have stated that they have flooding issues in several areas of the property, and are also concerned about security for the new shed in alternative locations (which will be presented as evidence by the applicant). The property contains 500-year floodplain, which is currently not regulated by the City's Floodplain Ordinance. They also state that an existing orchard with apple trees, sewer lines, and overhead power lines make finding a viable location in the side and rear yards difficult.



(500-year Floodplain Map, area in green hashing)

Investigation

A visit to the property showed that the applicant's house faces toward the future Ecusta Trail location, which will run south of their property. The lot is large (see pictures in attachment) and it may be possible to locate the shed to another location. When the property was investigated it was not flooded so conditions may be different during heavy rain storms. An option of elevating the shed could also be considered if located in a flood prone area.

Staff could not find evidence that supports the applicant's claim that the proximity of the future Ecusta Trail would create a security risk.

There are multiple trees on the property, and overhead power lines run on the south side of the property. Staff is unable to tell where the sewer lines are located on the property.

Standards for the Granting of Variances

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

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

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

****The granting of this variance will require the Board to establish a setback requirement for the shed from the closest property lines.****

Attachments:

1. Application
2. Pictures of Property
3. UDO Chapter 2.5

\$ 250



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 # 24-007

Feb 4th 2025
3pm

APPLICATION FOR A VARINACE (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.)

We are seeking a variance to place a shed (10' x 16' feet) on our property in the front yard. We do not want to put this in the back yard because it will be directly next to the proposed Ecusta Trail and public access points making it vulnerable to theft. The backyard is also next to a existing orchard w/ apple trees, underneath power lines, and above septic lines.

ASKING FOR EXCEPTION FOR UDO 2.5.C.2

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 1190 ECUSTA RD

Tax Parcel Number of subject property 8596-48-9529-0000

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: Spencer Jones

Address: 1190 Ecusta Rd
Brevard, NC 28712

Phone: 828-748-8507 Email: jonesse20@msu.com

OWNER INFORMATION

Name: Spencer Jones & Elizabeth Watson



RESIDENTIAL SITE PLAN FORM

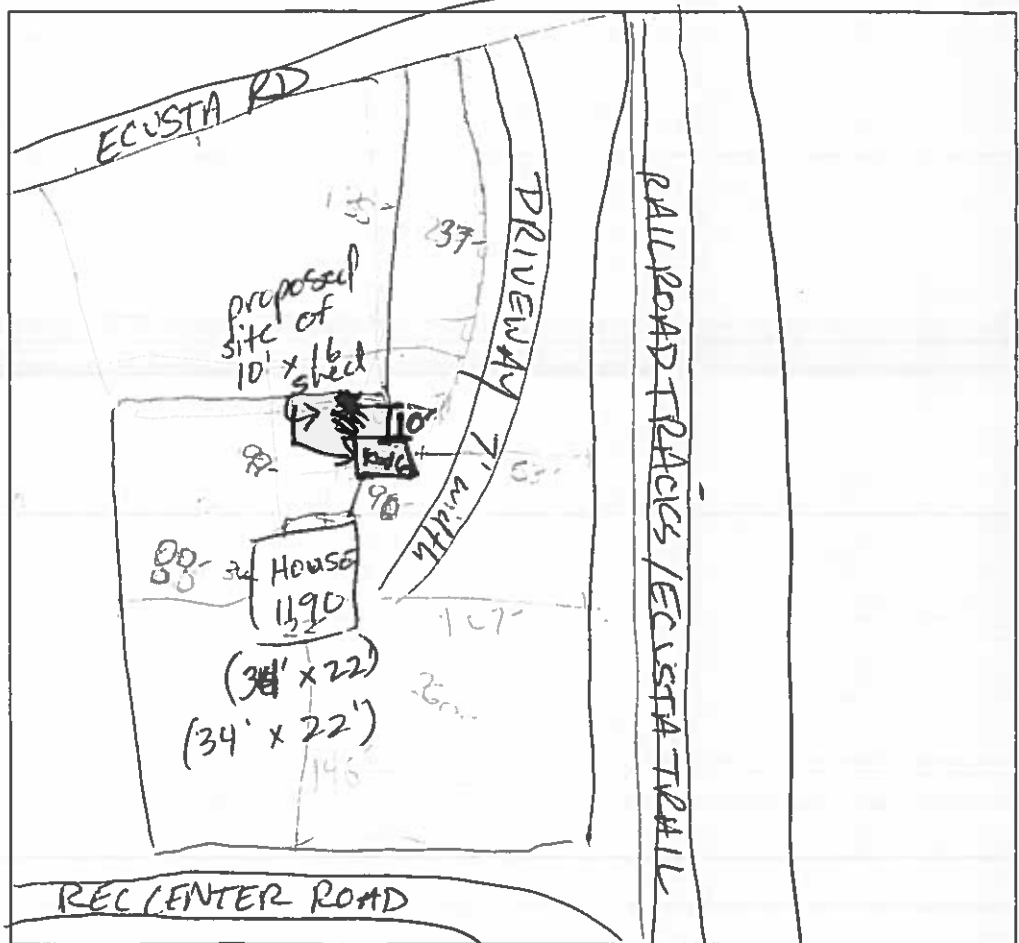
PROPERTY INFORMATION
Property Address: <u>1190 Ecusta Rd</u>
Property PIN (Tax ID #): <u>8596-48-9521-000</u>
Zoning District:

All residential zoning permit applications require an accompanying site plan. A site plan may be sketched in the space provided or on a separate document. The site plan must include:

- Your property lines;
- The location of all applicable streets and the location of the right-of-way of these streets;
- The location of any easements affecting your property, if applicable;
- The location of any special flood hazard areas, if applicable;
- The location and width of driveways;
- The location / footprint of all existing structures;
- The location / footprint of proposed construction;
- The distance between structures; and
- The distance to the property lines from proposed construction.

Additional information may be required as each lot is unique.

A survey may be required by the administrator when the proposed structure is in close proximity to a property line, flood hazard area, or other unique lot condition.



10' FROM PROPERTY LINE





(View of house from South, facing North)



(View of location of proposed shed, technical front yard, facing East)



(View of West yard)



(View of driveway off of Ecusta Rd & front yard)

2.5. Accessory structures.

- A. *Principal buildings required.*** The construction of an accessory structure or building is not permitted unless a principal building is located on the lot, except as set forth below or as otherwise provided in this ordinance. Accessory structures shall be incidental and subordinate to the principal structure(s). Accessory and principal buildings may be constructed concurrently.
1. Accessory structures utilized for agricultural purposes in association with agricultural primary uses may be permitted in the absence of a principal structure.
 2. Garden sheds may be permitted in the absence of a principal structure subject to the following requirements:
 - a. Garden sheds shall be no larger than 120 square feet in size;
 - b. Garden sheds shall be single-story;
 - c. Garden shed shall not be connected to water, sewer, or electricity; and
 - d. Garden sheds shall be utilized only for the storage of lawn equipment, garden utensils, and other implements necessary for the maintenance of gardens and grounds.
- B. *Dimensional requirements.***
1. Accessory structures shall meet the yard and setback requirements of Section 2.7.
 2. Accessory structures shall not exceed two stories in height.
- C. *Accessory structures on lots with single-family dwellings and duplexes.***
1. Maximum number permitted. No more than two accessory structures shall be permitted per lot. Beehives and chicken coops shall not count toward the maximum number of accessory structures on a lot.
 2. Accessory structures shall be located only in the side or rear yards, except for gazebos, private garages, and carports. Such structures shall comply with the front yard setbacks for primary structures in Section 2.7.2. The administrator shall make a determination as to the side or rear yard for accessory structures proposed to be located on lots fronting more than one street.
 3. Under no circumstances shall the use of a shipping container be permitted for the purpose of providing permanent storage as an accessory use.
- D. *Accessory structures on lots with non-residential uses, multi-family uses, and group developments.***
1. Maximum number permitted. No more than two accessory structures shall be permitted per lot, except in General Industrial (GI). In all other zoning districts, additional structures shall be considered as principal structures in a group development.
 2. Accessory structures shall be located only in side or rear yards except for bona-fide agricultural enterprises.
 3. Accessory structures shall comply with the applicable landscaping requirements of CHAPTER 8 of this ordinance.
 4. Accessory structures shall be clad in materials similar in appearance to the principal structure in accordance with CHAPTER 5, except when such material is non-conforming with this ordinance.
- E. *Exempt structures.***
1. Structures including but not limited to mailboxes, newspaper boxes, birdhouses, flagpoles, pump covers, garden boxes and planters, doghouses, and any other similar small or ornamental structures shall not be considered principal or accessory structures and shall not require a permit.

(Ord. No. 2021-28 , § 1(Exh. A), 6-21-21, Ord. No. 2023-07, § 1(Exh. A), 2-6-23; Ord. No. 2023-61, § 1(Exh. A), 12-18-23; Ord. No. 2024-23, § 1(Exh. A), 6-3-24; Ord. No. 2024-46, § 1(Exh. A), 12-2-24)

Effective on: 12/2/2024

STAFF REPORT

Board of Adjustment, Tuesday, February 4, 2025

Title: *Consideration of Request Application for Variance VAR-24-008 by Tore Borhaug of Parashift Holdings LLC for a variance from UDO Chapters 2.3 A and 2.7.2 A. The property is located in the zoning jurisdiction of the City of Brevard in the Residential Mixed Use (RMX) zoning district further identified by PIN# 8596-26-6331-000.*

Speaker: Aaron Bland, Asst Planning Director

Prepared by: Aaron Bland, Asst Planning Director

Approved by: Paul Ray, Planning Director

Background

An application for a variance has been submitted by Tore Borhaug of Parashift Holdings LLC for two properties at the corner of Osborne Road and Victore Lane. The subject properties are vacant lots that are a part of Mr. Borhaug's small subdivision that is currently being developed. The lots are zoned Residential Mixed-Use (RMX) and identified by the Property Identification Numbers 8596-26-6493-000 and 8596-26-8323-000.

The applicant is making two requests:

1. To be allowed to have no more than two principal buildings on each lot, representing a variance from UDO Section 2.3.A which limits lots to only having one principal building.
2. To be allowed to have a front yard setback of 5 feet on the portions of the lots facing Osborne Road, representing a 5-foot variance from UDO Section 2.7.2.A which requires a front setback of 10 feet in RMX.

* Note that each request is for **both** lots.

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

Discussion

Mr. Borhaug's application materials indicate that the intent for this request is to be able to provide more housing units in the new development than originally planned. When the neighborhood was initially subdivided, the Applicant stated an intent for all the new lots to have a duplex building built on them, and the first two developed lots have had duplexes built on them.

With this request, the Applicant hopes to build two duplex buildings on each of the two subject lots instead of the initial single duplex building on each lot. It is important to note that a variance is not required to build 4 dwelling units on each of these lots, as the RMX

district allows the development of a quadplex. If the desired dwelling units for these lots is 4, then Staff believes that can be achieved following the UDO requirements for RMX without a variance.

The Applicant's submittal also mentions the aesthetics of the two existing structures in the development as part of the rationale for the variance requests. The Board is reminded that under North Carolina state law, the City cannot regulate the architectural style or aesthetics of structures built under the residential building code (i.e. single-family home, duplex, triplex, or quadplex) and that aesthetics are not an appropriate basis for a variance.

It should also be noted that the need for the setback variances could be alleviated with a lot line adjustment, which is possible as all the lots in the subdivision are owned by the Applicant.

Standards for the Granting of Variances

In order to grant the variance, **all** the following conditions outlined in the North Carolina General Statutes must be met:

1. An 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 cannot be self-created. That is, the hardship does 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.

Action

In its motion the Board should include Findings of Fact to support each of the items listed above.

Attachments:

1. Application
2. Application Attachment A

3. Site Plan
4. Site Photos



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-24-008

APPLICATION FOR A VARIANCE (VAR)
BREVARD BOARD OF ADJUSTMENT

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

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

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

SEE ATTACHMENT A

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 VICTOR E LN, BREVARD, NC 28712

Tax Parcel Number of subject property 8596-26-6331, 8596-26-8323

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: TOR E BORHAFU, PARADISE HOLDINGS, LLC

Address: P.O. Box 362

BREVARD, NC 28712

Phone: 828-553-2533 Email: TOR E W TORRESHOME.COM

OWNER INFORMATION

Name: SAME AS ABOVE.

Address: _____

Phone: _____ Email: _____

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: _____

APPLICANT'S SIGNATURE Tore Borhaag

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

VARIANCE REQUEST TO BE HEARD BY BOA ON: Feb. 4, 2025

Attachment A

Date: December 18, 2024 Revised 1/4/2025
To: Board of Adjustments
From: Tore Borhaug, Parashift Holdings, LLC
Re: Variance request for Victore Lane, Lot No. 1 and Lot No. 6, Brevard, NC 28712

Dear Board of Adjustments:

I am requesting the following variances to the Unified Development Ordinance (UDO):

1. Section 2.3 A. I am requesting that you allow me to have no more than two principal buildings for Lot 1 and 6 on the attached site plan.
2. Section 2.7.2.A. I am requesting that you allow me to reduce the required set back from 10 feet to 5 feet on Lot 1 and 6 on the side that is facing Osborne Road.

Unnecessary Hardship concerns:

1. In order to maximize the current RMX density allowance for this property it would be an unnecessary hardship to comply with the current UDO of only having one building on these two lots for the following reasons:
 - a. The UDO was changed AFTER I started developing this property.
 - b. To change the layout of the property at this time would be a hardship for the following reasons:
 - i. Floorplan designs would need to change.
 - ii. The engineered utility infrastructure would either need to be changed or not utilized the way the current infrastructure is intended to be used.
 - iii. I have limited time to start and finish the construction due to the timing issues of the commercial construction loan that was just approved.
 - iv. Making the changes as outlined above would entail significant extra cost.
2. When the current plan was developed, I had to make these lots larger due to the required distance from Osborne Road to the first curb cut on Victore Lane. Therefore, to be able to utilize these two lots to its fullest extent to accommodate more workforce housing I need to be able to have two principal buildings on each lot.
3. The hardship by only being allowed one building on these two lots was not created by me, the applicant, but the fact that the UDO changed AFTER I finalized and started the development of this property. Please keep in mind that I am very pleased with the recent changes to the ordinance and it will benefit me tremendously as I am contemplating developing my other property in Brevard.
4. The intent of the new UDO was in part, to increase density for some properties in Brevard to meet increased demand for housing which my proposal will allow.
It is my opinion that safety and neighbors are not compromised by this request as these two lots are facing a corn field and the overall density of the whole property will not be compromised.

Description of the request:

1. I am requesting to place 2 duplexes on each of the two corner lots at the intersection of Osborne Road and Victore Lane in Brevard. See attached site plan for Lot 1 and 6.
2. The ground floor area of each building will not to exceed 1,400 square feet.
3. I would like to have parking positioned on other parts of the property. This temporary parking will be gravel.
4. Once I construct the underground storm water panels where the storm water pond is currently positioned, I plan to have parking on top of the storm water panels.
5. I am not able to comply with the current Cluster Home Development ordinance due to the greenspace/common area requirements along with the requirement of needing 3 buildings on each lot since the current ordinance was not adopted until after I started developing the property.

The reasons for the variance request:

The benefits of placing two duplexes on these corner lots as opposed to four unit apartment buildings (the UDO would allow this options) are as follows:

1. Due to the numerous complaints about how ugly the current buildings are to many residents of Brevard the new configuration will allow me to make the buildings twice as wide which will be more esthetically pleasing/compatible with other buildings in Brevard. When people come down Old Hendersonville Hwy toward Brevard they do not have to look at the obtrusive wall of the current building or the size of a four unit apartment building.
2. The roof will be less obtrusive as opposed to a 4 plex due to not needing a longitudinal roof for the duplexes.
3. The cost of finishing the interior will be less which will allow us to keep the apartments more affordable.
4. Doing two duplexes will allow for more light inside each apartment.
5. It will allow for a higher density and therefore better utilization of the land.
6. We will still be able to stay well within the current RMX zoning requirement for the whole property once it is fully developed.
7. **If the current ordinance had been in place when we started developing this property this request would not have been needed as the whole site plan would have been different and more economical to develop.**

Thank you for considering this request.

Sincerely yours,

Tore Borhaug
President
Parashift Holdings, LLC

LEGEND
CMP CONCRETE MONUMENT FOUND
IPF IRON PIPE FOUND
UP UNMARKED POINT
--- OVERHEAD UTILITY LINES
N/A NOT APPLICABLE
TM TRANSFORMER
TTP TELEPHONE PEDSTAL
W WATER METER
D.B. DEED OR DOCUMENT BOOK
P.F. PLAT FILE
S SEWER STUBOUT
O OIL VALVE
W WATER VALVE
M MANHOLE
DI DROP INLET
E FIRE HYDRANT
--- WATER LINE 4"
CMP CORRUGATED METAL PIPE
UBI ACHERT UNIT
CP COVERED PORCH



MAD 83 2011

NCGS NORTH

GPS CONTROL DATA
Class of Survey : B
Positional Accuracy : 0.03'
Type of GPS field procedure : RTK NETWORK ROVER
Date of Survey : 11/14/2023
Datum Epoch : NAD 83 (2011)
Published/Fixed control use : NC VRS NETWORK
Geoid mode GEOD 128 (CONUS)
Combined Factor: 0.999715
NAVD 1988 VERTICAL DATUM
Unit : US SURVEY FEET

I, E. Roger Raxter, Professional Land Surveyor, certify that this plat was drawn under my supervision from information not surveyed are shown as broken lines and are platted from information noted hereon. That the ratio of precision as calculated does not exceed 1 in. 7,500'. That this plat was prepared in accordance with G.S. 47-30 as amended. Witness my hand and official seal this 28th day of November, 2023.

SURVEYOR L-2938 REGISTRATION NUMBER

DEDICATION PLAT OF :

VICTORE LANE

LOCATED IN :
CITY OF BREVARD
BREVARD TOWNSHIP
TRANSYLVANIA COUNTY
NORTH CAROLINA
DEED REFERENCE : D.B. 1028, PAGES 505-507.
PLAT REFERENCE : P.F. 18, SLIDE 73.
SURVEY DATE : NOVEMBER, 2023.

NOTES

- 1) This property is located in Zone X, areas determined to be outside the 500-year flood plain per FIRM with the area dated October 12, 2008.
- 2) This property is subject to easements found by a title examination and also subject to all restrictions, setback lines, roadways, zoning ordinances and right of ways appearing on this property and/or of record.
- 3) Area computed by coordinate method, including all right of ways.
- 4) This map is not transferable, and may not be used by any person or entity without written authorization from E. Roger Raxter, PLS. This plat is provided for the use of the parties named herein.
- 5) The corners found and set are one inch to twelve inches above the ground, unless otherwise noted.
- 6) This survey does not certify legal title to the land itself or to the boundaries within the boundaries of this plat.
- 7) The calls around the boundary were taken from the recorded plat referred to above, not an actual field survey. This data has not been field verified by me.
- 8) The location of the buried water and sewer lines is approximate only, as located by The City Of Brevard Public Works Department.
- 9) See the appropriate utility company's for exact location of utilities.
- 10) A portion of this property is located in Flood Zone "X", areas of 500-Year floods.
- 11) This property is located in Flood Zone "X", areas of 500-Year floods.
- 12) The right of way width of Old Hendersonville Highway and Osborne Road is unknown.
- 13) The right of way width of Old Hendersonville Highway and Osborne Road is unknown.
- 14) All corners for Lots No. 1-3 are 6" iron rods set. (Set in September, 2022)
- 15) The improvements for Lots No. 1-3 have been located as of November 16, 2023.
- 16) This property is zoned RMX.
- 17) This is an active construction site and all utility locations are subject to change.

PRESENT OWNER :
PARASHIFT HOLDINGS, LLC
P.O. Box 362
Brevard, N.C. 28712

Certificate of Ownership and Dedication

I hereby certify that I am the owner of the property shown and described, which is located in the County of Brevard, North Carolina, and that this plat has been approved by the City of Brevard for recording in the Office of the Register of Deeds of Transylvania County, North Carolina. I hereby dedicate all streets, alleys, walks, parks, and other site and easements to public or private uses as noted. Furthermore, I hereby dedicate all sanitary sewer, stormwater, and other utility easements to the City of Brevard. 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 hereon.

Date _____ Owner(s) _____

Certificate of Approval for Recording

I hereby certify that the dedication plat shown hereon has been found to comply with the Regulating Ordinance for Brevard, North Carolina, and that this plat has been approved by the City of Brevard for recording in the Office of the Register of Deeds of Transylvania County, North Carolina. I hereby certify that the plat is in compliance with the open space as shown, if such parts are located within the corporate limits of Brevard, but assume no responsibility to open or maintain the dedicated open space until, in the opinion of the City Council it is in the public interest to do so.

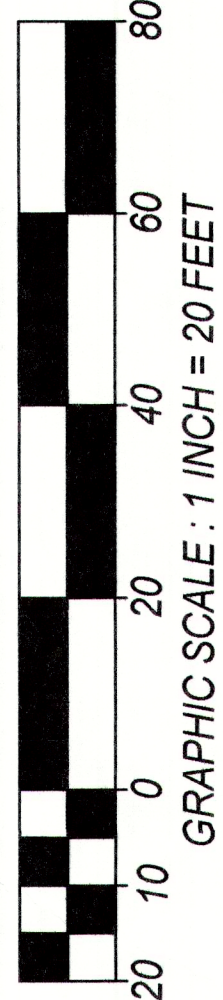
Date _____ Review Officer, City of Brevard _____

Review Officer Certification.

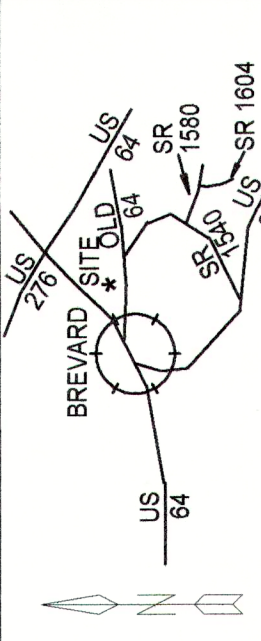
State of North Carolina, County of Transylvania

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

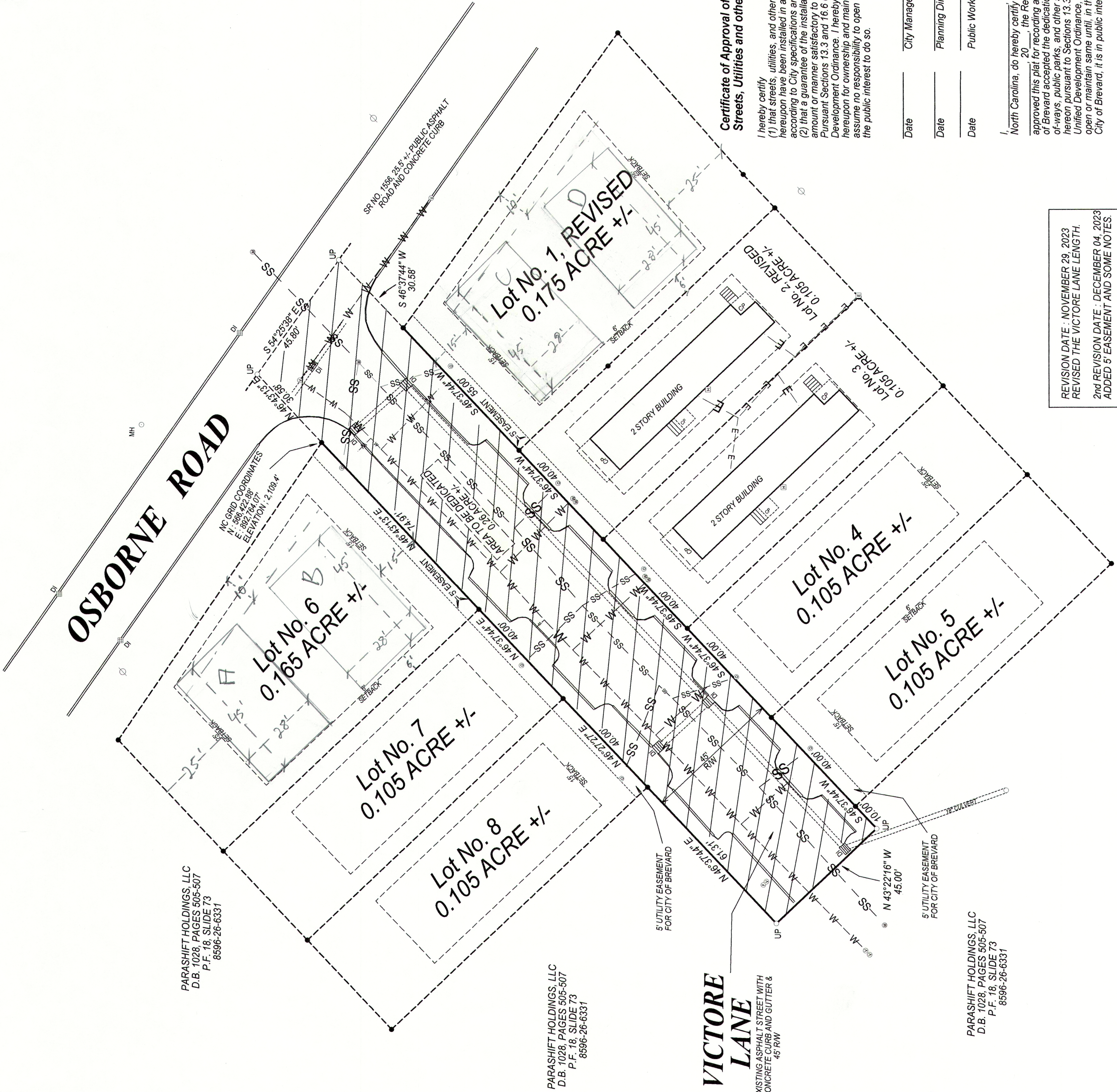
Date _____ Review Officer _____



GRAPHIC SCALE : 1 INCH = 20 FEET



Surveyed By :
E. ROGER RAXTER, N.C. PLS L-2938
1101 SILVERSTEEN ROAD
LAKE TOXAWAY, N.C. 28747
PHONE : (828) 966-4395 OR
CELL : (828) 226-0251
E-MAIL : erraxter@gmail.com
DATE NOVEMBER 28, 2023 DRAWING NUMBER 17024H



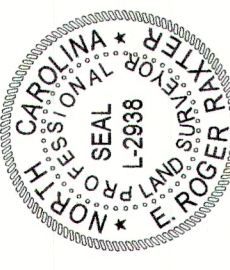
VICTORE LANE

EXISTING ASPHALT STREET WITH CONCRETE CURB AND GUTTER & 45' RW

PARASHIFT HOLDINGS, LLC
D.B. 1028, PAGES 505-507
P.F. 18, SLIDE 73
8596-26-6331

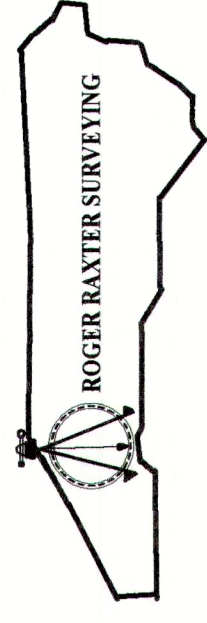
PARASHIFT HOLDINGS, LLC
D.B. 1028, PAGES 505-507
P.F. 18, SLIDE 73
8596-26-6331

PARASHIFT HOLDINGS, LLC
D.B. 1028, PAGES 505-507
P.F. 18, SLIDE 73
8596-26-6331



I, E. Roger Raxter, N.C. PLS certify that this is a plat of an existing parcel or parcels of land and does not create a new street or change an existing street.
E. ROGER RAXTER, NC PLS November 28, 2023 DATE
(@Copyright E. Roger Raxter 2023)

REVISION DATE: NOVEMBER 29, 2023
REVISED THE VICTORE LANE LENGTH.
2nd REVISION DATE: DECEMBER 04, 2023
ADDED 5' EASEMENT AND SOME NOTES.



Date _____ City Clerk _____

Date _____ City Manager _____
Date _____ Planning Director _____
Date _____ Public Works Director, City of Brevard _____

I hereby certify
(1) that streets, utilities, and other required improvements depicted hereupon have been installed in an acceptable manner and according to City specifications and standards or
(2) that a guarantee of the installation of the required improvements in an amount or manner satisfactory to the City of Brevard has been received.
Pursuant Sections 13.3 and 16.6 of the City of Brevard Unified Development Ordinance. I hereby accept the public improvements depicted hereupon for record and maintenance by the City of Brevard and assume responsibility to open or maintain same until I deem it to be in the public interest to do so.

North Carolina do hereby certify that on the _____ day of _____, 20____, the Review Officer of the City of Brevard approved this plat for recording and that the City Manager of the City of Brevard accepted the dedication of the streets, easements, right-of-ways, public parks, and other sites for public purposes as shown hereon pursuant to Sections 13.3 and 16.6 of the City of Brevard Unified Development Ordinance, but assume no responsibility to open or maintain same until, in the opinion of the City Manager of the City of Brevard, it is in public interest to do so.



Northern lot



Southern lot



BREVARD BOARD OF ADJUSTMENT

2025 MEETING SCHEDULE

MEETINGS ARE HELD THE FIRST TUESDAY OF EACH MONTH

MEETINGS ARE HELD WHEN THERE ARE MATTERS TO BE HEARD

Date	Time	Type	Location
January 7, 2025	3:00 PM	Regular Meeting	Council Chambers
February 4, 2025	3:00 PM	Regular Meeting	Council Chambers
March 4, 2025	3:00 PM	Regular Meeting	Council Chambers
April 1, 2025	3:00 PM	Regular Meeting	Council Chambers
May 6, 2025	3:00 PM	Regular Meeting	Council Chambers
June 3, 2025	3:00 PM	Regular Meeting	Council Chambers
No meeting July	3:00 PM	Customary to cancel	Council Chambers
August 5, 2025	3:00 PM	Regular Meeting	Council Chambers
September 2, 2025	3:00 PM	Regular Meeting	Council Chambers
October 7, 2025	3:00 PM	Regular Meeting	Council Chambers
November 4, 2025	3:00 PM	Regular Meeting	Council Chambers
December 2, 2025	3:00 PM	Regular Meeting	Council Chambers

Adopted:

Distribution: Posted