



AGENDA
BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING
Tuesday, April 1, 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. Draft Minutes - February 4th, 2025

VI. New Business

- a. VAR-25-001 - 188 Ashworth Avenue
- b. VAR-25-002 - 15 Burrell Avenue

VII. Unfinished Business

VIII. Remarks

IX. Adjourn

Agenda Posted, Website March 25th, 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, February 4th– 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday February 4th, at 3:00 PM.

Members Present: Reid Wood
Tad Fogel, Vice Chair
Jackson Tate
Peter Offen, Chair
Alan Mercaldo

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

Others: Spencer Jones, Elizabeth (Betsy) Watson, Tore Borhaug, Kevin Jones

I. WELCOME

Chair, Peter Offen, called the meeting to order at 3:01 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 T. Foegel second by R. Wood, carried unanimously.

V. APPROVAL OF MINUTES

A. Mercaldo noted a clarification of move of sign as “new” from Nov. minutes, as it is not “new.” The variance only needed be granted for the height, he said. Katherine Buzby offered clarification along with Brian Gulden, regarding expansion of sign face. A. Mercaldo suggested striking the sentence, which was deemed appropriate by Brian Gulden. A

Mercaldo motioned to approve the minutes with the revision to take out that sentence, second J. Tate. The motion carried unanimously.

VI. 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.

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: Spencer Jones and Katherine Buzby

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

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. 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." 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. 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.

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

A. Mercaldo asked K. Buzby about right-of-way setbacks for the potential shed. K. Buzby noted there are no setbacks for accessory structures in the front yard in the UDO, as they are simply not permitted.

R. Wood mentioned rec center road drainage issues.

T. Fogel asked if there had been any commentary from the neighbors, and K. Buzby reported there has been none.

Spencer Jones, Applicant, presented his case. See Exhibit A for full presentation slides. Some notes from his presentation are below.

The applicant noted the actual flood area comes further up the back yard than the GIS mapped floodplain. Notes location of septic tank in rear yard, with NSEW location. Actual “front” of house is the back of the house in practical use, which faces rec center road. Wants to avoid putting shed under power line, which runs over the backyard. Notes potential of Ecusta trail installation bringing worry for theft, citing previously having his children’s bikes stolen. High foot traffic and car traffic area, and want to put a shed in a location behind tree line to deter visibility of it from the road. Old well pump house is currently used as shed. Homeowner also owns the lot at 1180. Presented chair with signatures of support from neighbors. There are mature trees in backyard as well. Unsure how easement of Ecusta trail could make drainage issues worse. Septic line, public access, power line all hardships. Rec center road gets a lot of foot traffic, especially when red cross utilized the area as disaster shelter post-Helene. Potentially security risk. Applicants have lived on property since 2003. Septic line has been there since before the house was built. Applicant stated desire to comply with all city laws. Less visibility could be attractive to city, out of the line of sight from ecusta road. Want to protect family and kids property.

Discussion: J. Tate asked about intentions of house at 1180. Asked about combining parcels. K. Buzby responded, citing it would create nonconformities with more than one principal structure on one parcel. City has reviewed previous plans for house renovations on both properties. A. Mercaldo requested clarity on difference between shed and “garage” specified in UDO as a garage is permitted in a front yard, which K. Buzby clarified a garage must be able to accommodate a vehicle. R. Wood asked about back property line of 1180 influencing setbacks for 1190 parcel, which K. Buzby said would need further review from planning to answer. Least obtrusive location and most protected, that does not compromise any existing trees. Brian Clarified 10 foot property line condition could be imposed, S. Jones agreed that the proposed location is the most practical for shed maintenance and to protect from fallen tree branches.

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

Discussion among board members regarding possible conditions followed, about setback requirements. A condition of 15 feet from the property lines was proposed by R. Wood.

Following discussion, A. Mercaldo made the following motion:

MOTION: With regard to variance request 24-007, the request of Elizabeth Watson and Spencer Jones, for a variance from Section 2.5.C.2 of the UDO to allow an accessory structure to be located in the front yard of the real property located at 1190 Ecusta Road, I move the Board to make the following findings of fact:

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

There are impacts to safety, access issues with other locations for power, septic, and flooding in the rear and side yards

- b) the hardship results from conditions that are peculiar to the property such as location size or topography;
given location of power lines, new flooding, right of way encumbrance

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

The current owner did not set house in its location, "front" yard is only deemed front on the basis of technicality,

- 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.

With the condition that 15 foot condition from property line at 1180, public safety would remain secure,

Accordingly, I further move the board to **GRANT** the requested variance to allow for an accessory structure to be located in the front yard on the subject property in accordance with and only to the extent represented in the application and plans, with the condition that the proposed shed be located 15 feet set back from the property lines of 1180 Ecusta Road.

Second by R. Wood, unanimously carried.

K. Buzby requested that Order be signed and recorded digitally for ease and speed of the process.

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.

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

The following were sworn: Tore Borhaug, Aaron Bland

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:

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.

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. **Economic hardship or the fact that property may be utilized more profitably with a variance shall not constitute an unnecessary hardship.**

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.

A. Mercaldo requested clarification from the City on the year of the original subdivision. A. Bland responded it had been within the last few years, probably 2023 or 24. R. Wood clarified the setbacks of the structures fronting Victore Ln. P. Offen asked how far the property line is from Osborne road, and A. Bland approximated 10. Feet.

B. Gulden made a note that the name of T. Borhaug's company, Parashift Holdings, had been misspelled on some of the documents as Parkshift Holdings, and to disregard this mistake. All references to Parkshift holdings should be applied to Parashift Holdings.

Following the City's presentation, T. Borhaug presented his case.

T. Borhaug cited improving the appearance of the façade, and that he could create more, better looking units from Osborne road. Cited funding struggles for workforce housing for Parashift employees, opportunity to create workforce housing for other folks from other companies. Applicant says he would be improving land on bigger scale. Total density once developed will not be affected at all. If completed in the nature that ordinance would allow for, it would be another big ugly wall to look at. Current ordinance change made the plans a nonconformity, but that changed recently. Thanked the City for the recent changes to ordinances permitting property usage. T. Borhaug also cited his contributions in the fact that he constructed a street. B. Gulden advised the board on consideration of the hardship. A. Bland reminded board there was never a master plan when the subdivision originally happened. R. Wood and P. Offen asked about the potential of lot line movement. J. Tate asked applicant to clarify the hardship with connecting the buildings with finished space, and T. Borhaug cited community beautification and past complaints regarding his building designs. P. Offen asked for insight from A. Bland about the original motivation for the one building per lot clause in the UDO, to which A. Bland mentioned community continuity and visual cohesion. R. Wood asked about original motivation for subdivision of lots, and T. Borhaug cited future ease should he wish

to sell the lots separately. Additionally, soil conditions in Brevard are expensive and unfavorable from an engineering aspect, and pose a unique and expensive challenge. T. Borhaug again cited aesthetics.

Seeing there were no further questions, P. Offen closed the hearing.

The board discussed the presentations. B. Gulden reminded the board of the requirement for competent material and substantial evidence required to grant a Variance. A. Mercaldo cited the two buildings on a principal lot issue as a self-imposed issue, and that in the case one structure was on the lot, the setback issue would be null. Finances cannot be considered in variance situations. T. Fogel agreed, as did P. Offen, R. Wood, and J. Tate, on the basis that variance requirements are incredibly specific, and T. Borhaug's presentation did not address the requirements specifically. J. Tate acknowledged the need for affordable housing in Brevard and said it was unfortunate that the findings of fact the Board must abide by are so specific. The board thanked Mr. Borhaug for his development contributions to the community. P. Offen also acknowledged the unique challenge and inconvenience suffered by T. Borhaug following the change in the UDO, calling it unfortunate.

Following discussion, A. Mercaldo made the following motion:

With regard to variance request **24-008**, the request of Tore Borhaug, Agent for Parashift Holdings, LLC for a **variance to allow more than one principal building per lot for each lot** located on either side of Victore Lane at its intersection with Osborne Road, I move the Board to make the following findings of fact:

- a) that **no** unnecessary hardship would result from the strict application of the regulations;
- b) the hardship **does not result** from conditions that are peculiar to the property such as location size or topography;
- c) the hardship **did** result from actions taken by the applicant or the property owner; and
- 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 **DENY** the requested variance

Second by J. Tate, unanimously carried.

Following discussion, P. Offen made the following motion:

With regard to variance request **24-008**, the request of Tore Borhaug, Agent for Parashift Holdings, LLC for a 5-foot reduction in the front-yard setback for each lot located on either side of Victore Lane at its intersection with Osborne Road, I move the Board to make the following findings of fact:

a) that **no** unnecessary hardship would result from the strict application of the regulations;

b) the hardship **does not result** from conditions that are peculiar to the property such as location size or topography;

c) the hardship **did** result from actions taken by the applicant or the property owner; and

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 **DENY** the requested variance

Second by R. Wood, unanimously carried.

VII. UNFINISHED BUSINESS

Election of officers – A. Mercaldo nominated P. Offen remain chair, and T. Fogel seconded. Passed unanimously.

P. Offen nominated T. Fogel to remain in his position as chair of vice (Vice Chair). A. Mercaldo seconded, passed unanimously.

The 2025 meeting schedule was approved, motion by P. Offen, second R. Wood, passed unanimously.

VII. REMARKS

T. Fogel officially welcomed R. Wood to the board.

VIII. ADJOURN

P. Offen moved to adjourn the meeting, seconded by T. Fogel. The motion carried unanimously. The meeting was adjourned at 4:52 PM.

Peter Offen, Chair

Madalin Baker, Board Clerk

DRAFT

STAFF REPORT

Board of Adjustment, Tuesday, April 1, 2025

Title: VAR-25-001 - 188 Ashworth Avenue

Speaker: Katherine Buzby

Prepared by: Katherine Buzby, Planner/Assistant Zoning Administrator

Approved by: Paul Ray, Planning Director

STAFF REPORT

Board of Adjustment, Tuesday, April 1, 2025

Background

The applicant, Linda Curran, own property at 188 Ashworth Ave, which is located in the General Residential-8 (GR-8) zoning district and in the City's municipal limits. The parcel identification number is 8585-46-5877-000.

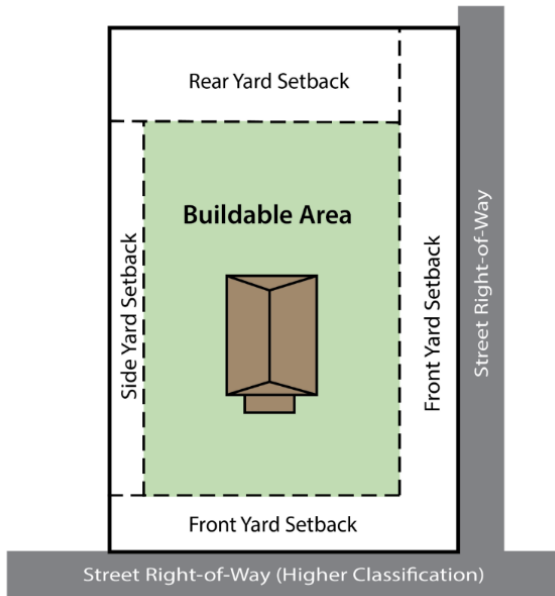
The applicant is requesting a variance of **fifteen (15)** feet from the Unified Development Ordinance's (UDO) Chapter 2.7.2 principal structure setback of 15' in the front yard, resulting in a zero (0) foot setback.

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

Discussion

On October 23, 2024, the City was notified that the property had construction underway, a new fence and deck, with no zoning permits for the project. The City verified the complaint and started a Notice of Violation against the property owner, in which a letter the City sent reached the owner.

The applicant's property has street frontage along two Right-of-Ways, Ashworth Ave and Turnpike Rd. Per UDO 2.7.4.A, "any structure on any lot that fronts on more than one street shall comply with the minimum front yard setback requirement for each street upon which the lot fronts."



The UDO establishes setbacks for primary structures (and accessory structures within 6' of the primary structure) as below:

TABLE 2.7.2-B: SETBACKS FOR PRINCIPAL STRUCTURES			
District	Front Yard Setback	Rear Yard Setback	Side Yard Setback
GR (4, 8)	15 feet	25 feet	6 feet
RMX	10 feet	25 feet	6 feet
NMX	Edge of <u>right-of-way</u>	10 feet	0 feet / 10 feet from <u>residential district</u>
PGX	15 feet	10 feet	6 feet
DMX	Edge of right-of-way	0 feet	0 feet
CMX	10 feet	10 feet / 25 feet from residential district	0 feet / 10 feet from residential district
IC	40 feet	40 feet	40 feet
GI	15 feet	10 feet / 25 feet from residential district	10 feet / 25 feet from residential district
CZD	To be determined by approving authority		

The applicant's new deck would require a 15' setback off the property line that faces Turnpike Rd.

During construction of the new house, the City worked with the General Contractor to make sure the deck that was originally built (see pictures attached) was in compliance with the 15' setback.

Upon inspection of the complaint, the new deck was in violation of the 15' setback. The

owner reached out to the Planning Dept to permit the fence and deck, but Planning was unable to issue a permit as the new deck does not meet setbacks.

The applicant is requesting a variance for the full 15' front yard setback. She claims the house has drainage problems due to the slope of the surrounding houses and the path the stormwater flows.

Investigation

Upon inspection, the house does sit slightly at the bottom of a slope, but it was not raining at the time so the drainage issue could not be identified.

Standards for the Granting of Variances

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

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

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

Attachments:

1. VAR-25-001 Application
2. VAR-25-001 Narrative
3. Pics



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 # 25-001

APPLICATION FOR A VARIANCE (VAR)
BREVARD BOARD OF ADJUSTMENT

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

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

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

Please See Attached

Address: 188 Ashworth Ave
Brevard NC 28712

Phone: 239 272-1329

Email: LudyCormio@gmail.com

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 2-10-25

APPLICANT'S SIGNATURE

Ludy Cormio

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

VARIANCE REQUEST TO BE HEARD BY BOA ON:

4/1/25

We purchased the house in Brevard at 188 Ashworth Ave at the end of August 2024. Mid September we visited the house and spoke to a few neighbors about a fence and deck. We were given the name of a fence company, J & M Fencing. J & M had done a few installs on our street, so we were able to see their work. Unfortunately, our stay was cut short as Megan fell down a flight of stairs at the house. I was in CT shipping things from storage to Brevard when I got the call she was taken to the emergency room. I returned to Brevard the following morning. She was diagnosed at the hospital with a concussion. The following day she was in pain so we returned to the emergency room. She was then diagnosed with 3 broken ribs. We decided to head home as she was in pretty rough shape. Once home I spoke to J & M Fence company about the fence and deck. We agreed on a price and put a deposit down. We checked to see if they were licensed and felt comfortable as we had also seen their work. J & M said they would take care of all the requirements for the install. The project was started several weeks later.

Roughly 4-5 weeks later in FL, Megan was experiencing stroke like symptoms. We went to the emergency room. I had the Brevard records sent to the local hospital. With some prompting they finally agreed to run another brain scan. Once the scan was completed, she was rushed into ICU and emergency brain surgery was scheduled that evening to stop the bleeding. She had 10 millimeters of blood on her brain. She remained in ICU for 2 weeks until a second brain surgery was performed to remove the blood from her brain. This procedure involved cutting her head open and drilling through the skull. She remained in ICU for another week, then to a trauma floor for an additional week, before rehab for an additional 2 weeks. She currently has 80% usage of her arms and legs, and her speech is coming along. She has had 2 seizures, cannot drive, and is under the care of in-home PT and OT.

I tell you all of this so you will not think I have avoided a response. We did not have enough time to put a mailbox in. I made sure that the county and city tax bills, as well as the utility bills came to my FL address. I was also told to contact a number to register our address in Brevard, which I did. I was not aware of who else to notify. I was just in Brevard for a few days to check on the house when I was told I had a certified mailing form the city of Brevard at my FL address. I chased it down only to find out our deck is not in compliance, and that our contractor never pulled a permit. It is my understanding that the fence is to code, but I will need to pull a permit, and pay a fine for that. The deck is not in compliance with the cities required setbacks. I would like to request a variance. My reason for asking for a variance would be the water issues on Turnpike Road. Turnpike Road off of Country Club Road is a steep decline. Turnpike ascends after the cross street of Ashworth Ave. Our house sits at the bottom of the decline and the bottom of the ascend. Our

property gets water from all sides that saturates a majority of the land. Two houses up on Turnpike Road had to dig up their driveway and put a drainage pipe in and repave over it. The water had eroded their driveway. They have a deck in the back of their house above where the water flows down to Ashworth Ave. Without that deck the ground would be saturated with ground water and unusable. The house directly behind me is losing their driveway. All of their water is draining on my side and back yard. They too will need to build a retaining wall, or some additional drainage to keep a parking space. They also have a deck that sits above the water flow, which allows for the water to get to the drainage on Ashworth Ave. Water follows the path of least resistance down Turnpike and in the back lots of houses on Turnpike. Those paths go all over my property to the drainage gully on Ashworth. All sides of my house are affected with water going to the drainage area. The deck is above the water that flows down. It allows for water to continue down to the drainage area without disrupting its path. The deck is to create a dry outside space, without affecting the water flow. I'm told there is a French drain around my house which should avoid flooding the crawl space. The house sits up slightly, so the water creates grooves throughout the property slightly lower to get to the drainage area. The deck sits above the drainage grooves and allows for outside space without affecting water flow.

Based on the above, we would like to request a variance based on table 2.7.2-B / setbacks for principal structures. We are in district GR (4,8) Front setback of 15 feet. Although this is actually our side yard on a survey, it is on a frontage street of Turnpike Road. We are seeking a front road variance of 15 feet from the front yard setback, resulting in 0 feet for the deck to the setback line. The variance would allow for us to use some of our outside space.

1. Unnecessary hardship would result from the strict application of the regulation. The hardship is that the land is a wet area on all sides, and the ground is uneven due to the rain creating ruts in the ground. It is unsafe to walk on, and will always remain unsafe even if corrected. Heavy rain will just continue to find paths down the hill on Turnpike Road. The deck would not interfere with drainage.

2. The hardship results from conditions that are particular to the property. The property topography is such that it allows for drainage to the drains on Ashworth. The deck allows for some use of the property and avoids any safety concerns of the property. The rain ruts have caused severe erosion throughout the property. These ruts even if repaired will come back with heavy rain.

3. The hardship did not result from actions taken by the applicant or the property owner. The topography of the property is sloped throughout. A deck does not interfere with drainage or anything environmental. Without a raised structure, the

land is unusable as water creates ruts in the ground that make it unsafe to walk around. 4. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved. The deck is fenced in and allows for drainage below. The deck also allows for a small amount of outside space for someone in a wheelchair. There are no safety issues with having the deck. Adversely, without the deck there are safety issues.

Sincerely,
Lindy Curran



Pic 1- Original deck built at time of house construction, in compliance with setbacks



Pic 2- New deck and fence built without permits, deck does not meet setbacks.



Pic 3- Street view of slope on Turnpike Rd, 188 Ashworth on left side of pic.

STAFF REPORT

Board of Adjustment, Tuesday, April 1, 2025

Title: VAR-25-002 - 15 Burrell Avenue

Speaker: Stephanie Holland

Prepared by: Stephanie Holland, Planner

Approved by: Paul Ray, Planning Director

STAFF REPORT

Board of Adjustment, Tuesday, April 1, 2025

Background

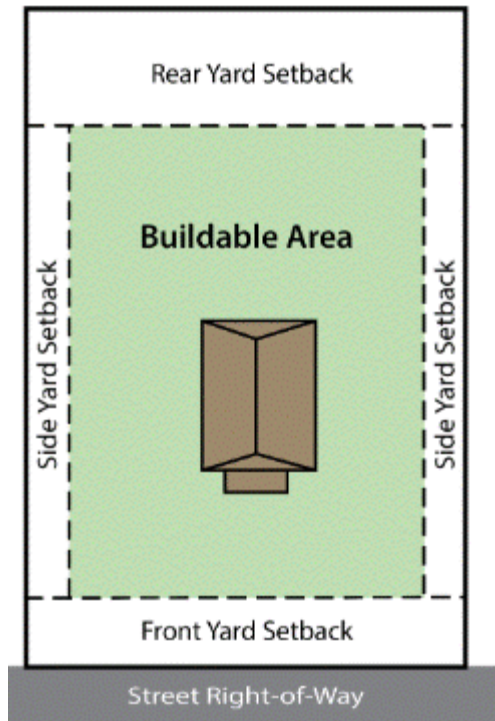
The applicant, Andrew Mericle, owns a property at 15 Burrell Ave, which is in the General Industrial (GI) zoning district in Brevard's corporate limits. The parcel identification number is 8586-53-2891-000.

The applicant is requesting an 11-foot variance in the setback off the northern property line. The Unified Development Ordinance, Chapter 2.7.2, requires a 25-foot setback from adjoining General Residential (GR) zoned property.

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 an existing building, constructed in approximately 1979. The location of the building encroaches into the northern setback, violating current setback requirements stated in 2.7.2 of the UDO. The owner would like to make repairs to the North wall and maintain the current size and location of the existing building.



(UDO Figure 2.7.1-A)



(Aerial photo of property, showing the side yard facing Peace Dr. The gray indicates the GI district and the yellow indicates GR8)

The UDO establishes setbacks for principal structures for GI zoned properties as shown in the figure below:

TABLE 2.7.2-A: SETBACKS FOR PRINCIPAL STRUCTURES			
District	Front Yard Setback	Rear Yard Setback	Side Yard Setback
GR (4, 8)	15 feet	25 feet	6 feet
RMX	10 feet	25 feet	6 feet
NMX	Edge of right-of-way	10 feet	0 feet / 10 feet from residential district
PGX	15 feet	10 feet	6 feet
DMX	Edge of right-of-way	0 feet	0 feet
CMX	10 feet	10 feet / 25 feet from residential district	0 feet / 10 feet from residential district
IC	40 feet	40 feet	40 feet
GI	15 feet	10 feet / 25 feet from residential district	10 feet / 25 feet from residential district
CZD	To be determined by approving authority		

Investigation

A visit to the property showed that the applicant's building is at a much lower elevation than the adjacent Peace Dr on the northern end, which has things like homes, a parking area and playground on the other side of Peace Dr.

Staff cannot determine the structural integrity of the North wall from an exterior visual inspection.

There is a fair amount of trees and naturalized vegetation growing on the northern side of the property, creating a visual buffer from Peace Drive.



(View of corner of Peace Dr. and Burrell Ave looking at the North wall)



(View from Burrell Ave looking at the existing side yard, vegetation and existing North wall)



(View from Peace Ave of the North wall and NW corner of the existing building)

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 existing building from the closest property lines.**>**

Attachments:

1. Brevard - Zoning Variance Application - 3.19.2025
2. Revised Site for TRC - 25 0312



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 # _____

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.)

See Exhibit A

See Exhibit 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 15 Burrell Ave, Brevard, NC 28712

Tax Parcel Number of subject property Parcel PIN: 8586-53-2891-000

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: 1700 LLC

Address: 2601 South Bayshore Drive, Suite 1700 Miami, Florida 33133

Phone: 1-804-240-1911 Email: americle@voltaglobal.com

OWNER INFORMATION

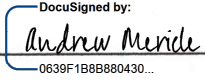
Name: Yole Properties LLC

Address: 133 McLean Rd
Brevard, NC 28712

Phone: 865-6444 Email: Watkins@keirmfg.com

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 3/7/2025

APPLICANT'S SIGNATURE  Andrew Mericle
0639F1B8B880430...

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

VARIANCE REQUEST TO BE HEARD BY BOA ON: April 1st 2025.



The City of
Brevard
North Carolina

City of Brevard Planning Department
95 West Main Street
Brevard, North Carolina 28712
Phone (828) 885-5630
Fax (828) 885-5625
cityofbrevard.com

VAR File# _____

BREVARD BOARD OF ADJUSTMENT - VARIANCE

APPOINTMENT OF AGENT

I Yole Properties LLC, owner of property located at
(street address) 15 Burrell Ave, Brevard, NC 28712 and
identified by the Transylvania County Tax Identification Number (PIN#):

8586-53-2891-000, located in Transylvania County, North Carolina, do
hereby appoint 1700 LLC to represent me in
filing an application for Variance before the Brevard Board of Adjustment.

I further authorize 1700 LLC, Andrew Mericle to act as my agent in
all matters, formal and informal, and to receive all official correspondence as it relates to
the VARIANCE request and hearing.

Property Owner Signature: [Signature] Date: 3-6-25
Mailing Address: 133 McLean Road Brevard, NC 28712
Phone: 828-865-8444 Email: watkins@keivmfg.com

Agent Name: Andrew Mericle
Mailing Address: 2601 South Bayshore Drive, Suite 1700 Miami, Florida 33133
Phone: 1-804-240-1911 Email: amercle@voltaglobal.com

Exhibit A

Reasons for Variance Request

The Applicant is seeking to purchase and improve the subject property for conversion into a self-storage facility. During due diligence, inspections revealed that the existing CMU bearing wall located along the rear of the building (**the “North-Facing Wall”**) is structurally compromised and requires reconstruction to prevent further degradation and potential collapse. Due diligence also revealed that the North-Facing Wall currently encroaches into the **25-foot side setback** by approximately 11-feet. The required setbacks in the **General Industrial (GI) zoning district** are defined in **UDO Chapter 2.7.2 (Setbacks for Principal Structures)**.

To maintain the existing building footprint while addressing structural safety concerns, the Applicant requests a variance to **reduce the required 25-foot side setback to 14 feet**, which would allow the Applicant to safely reconstruct the North-Facing Wall in its current location. Granting this variance will not introduce a new nonconformity, because the North-Facing Wall as-built today currently encroaches into the required setback. If the variance is not granted, the practical use of the property would be severely limited because the existing building footprint would need to be reduced and the existing building structure would need to be re-engineered.

1. Unnecessary hardship would result from the strict application of the regulations.

The strict application of UDO Chapter 2.7.2 would impose an unnecessary hardship by requiring the Applicant to relocate the North-Facing Wall further into the building footprint, reducing usable square footage and creating major structural complications. The North-Facing Wall was identified in an engineering inspection as structurally deficient and requires reconstruction to maintain safety. However, relocating the wall to comply with the 25-foot setback requirement would significantly impact the structural integrity of the building, result in disproportionate financial burdens, and negatively affect the viability of the proposed self-storage facility.

The requested variance would allow the reconstruction of the wall in its existing position, reducing the required setback from 25 feet to 14 feet, thereby maintaining the functional use of the structure while ensuring safety and stability.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. The hardship arises from the existing placement of the building and its structural design, which are unique to this property. Unlike a vacant parcel where new construction could be planned to meet setback requirements, this property contains a pre-existing, legally nonconforming structure that was built before the adoption of the current zoning ordinance. The North-Facing Wall encroachment predates the zoning setback requirements, meaning the issue is not common to all properties in the area. Additionally, the unexpected structural failure of the wall is a condition unique to this site, rather than a general concern affecting surrounding properties.

3. **The hardship did not result from actions taken by the Applicant or the property owner.** The Applicant did not create the hardship. The North-Facing Wall was constructed prior to the adoption of the current zoning ordinance and was only identified as structurally compromised during recent inspections. The need for reconstruction is based on safety concerns rather than any voluntary modifications, expansions, or intentional acts by the Applicant. Furthermore, the Applicant did not knowingly construct an encroachment or take actions that necessitated this variance request. The variance is solely requested to facilitate the reconstruction of the wall in its current location due to structural necessity.
4. **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 intent of UDO Chapter 2.7.2 (Setbacks for Principal Structures) is to regulate building placement to prevent overcrowding, maintain uniform development patterns, and ensure adequate access between structures.

Granting this variance would not increase the existing encroachment or create new nonconformities. Instead, it simply allows for the safe reconstruction of an already existing structure that has become compromised due to age and structural deficiencies. Denying the variance would not serve any public benefit but would instead create an unnecessary hardship for the Applicant, requiring costly and impractical structural alterations. By permitting the variance, the Applicant can restore the structural integrity of the building while maintaining the overall zoning objectives.

N/F
BREVARD HOUSING AUTHORITY
TM# 8586-54-2119-000
DB 241 PG 412

TOP=2162.2'
IE=2154.4'

16.5' ALLEY SHOWN ON PF 6 SLIDE 213

TBM
TBM MAG
N=563,995.6742'
E=885,260.8635'
ELEV.=2,184.15'
(NAD83/NAVD88)

CMP
18"
TERMINUS
UNKNOWN

PEACE DR
PRIVATE

Existing
North
Facing Wall

25ft side
zoning
setback

TURN AROUND
AREA

OFFICE
ENTRANCE

ADA
SPACE

ELEVATOR

ELEVATOR

PEDESTRIAN
RAMP INTO
BUILDING
LOADING DOCK

LOADING SPACES

LOADING DOCKS

EXTERIOR STORAGE

1 STORY
BRICK/BLOCK
41,611 SQ.FT. ±

AREA
106,526 SQ.FT.
2.446 ACRES

BUILDING HEIGHT 23.7' ±

N07°08'41"E
266.28'(M)

N05°49'00"E
266.47'(R)

DROP INLET
GRATE=2169.6'
IE=

ZONE X
ZONE X SHADED

S03°40'07"W
311.77'(M)

S02°22'00"W
311.90'(R)

BURRELL AVENUE
PUBLIC

TBM
TBM MAG
N=563,698.7108'
E=885,406.4389'
ELEV.=2,160.57'
(NAD83/NAVD88)

N71°31'00"W
217.67'(M)

N72°50'00"W
217.71'(R)

N/F
STEVEN E STOUT TRUSTEE
TM# 8586-53-2526-000
DB 998 PG 522

N82°08'28"W
154.94'(M)

N83°26'00"W
124.75'(R)

N83°26'00"W
30.00'(R)

TBM
TBM MAG
N=563,577.5462'
E=885,441.4645'
ELEV.=2,158.95'

