



AGENDA
BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING
Tuesday, May 6, 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 - April 1st, 2025

VI. Approval of Orders

- a. Order - VAR-25-001
- b. Order - VAR-25-002

VII. New Business

- a. VAR-25-003 - 555 W. Probart St.

VIII. Unfinished Business

IX. Remarks

X. Adjourn

Agenda Posted, Website April 29th, 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, April 1st- 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday April 1st, 2025, at 3:00 PM.

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

Members Absent: Alan Mercaldo

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

Others: Linda Curran, Robert Daquila, Andrew Mericle, Benjamin Ho

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 T. Foegel, second by R. Wood, carried unanimously.

V. APPROVAL OF MINUTES

R. Wood motioned to approve the minutes as written, J. Tate seconded. The motion carried unanimously.

VI. New Business

a. VAR-25-001 – 188 Ashworth Avenue

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

None of the public requested to be granted standing.

B. Gulden reminded the board that due to A. Mercaldo's absence, his vote would have to be considered a "no" on all topics, and that the board would have to vote unanimously (4 out of 4) to pass any decisions in the meeting, as required by North Carolina State Law.

P. Offen polled the board as to previous communications with the applicant and conflicts of interest and found 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: Linda Curran and Katherine Buzby

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

The applicant, Linda Curran, owns 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.

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 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.

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

Discussion followed. P. Offen asked K. Buzby if the full 15-foot setback variance was required for the deck to remain in its' current location, to which K. Buzby responded yes. K. Buzby shared that Turnpike Road is at a slope, and she could imagine how drainage might pool in the side yard as described in the application by the property owner, but she had not seen the lot herself in rainy conditions.

L. Curran presented a report to the Board. She noted that Turnpike Road is steep, and the drainage on the property is inadequate, resulting in water pooling in the side yard in question when it rains. She argued the topography of the parcel necessitates a solution to the drainage issue, i.e. the deck.

Robert Daquila, a neighbor of L. Curran, was granted standing and sworn in. He provided his agreement on the fact of drainage from Turnpike Road becoming quite intense during the rain, and shared that he has no issue with L. Curran's deck remaining where it sits at present.

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

B. Gulden reminded the Board that the four standards the applicant is required to meet are explained in the application included in the agenda packet, and should be considered, though L. Curran did not read each of them verbally. R. Wood noted that condition 3, "The hardship did not result from actions taken by the applicant or property owner," was not satisfied by the applicant, pointing out that having the deck constructed was in fact initiated by the applicant.

J. Tate made a motion to re-open the hearing. T. Fogel seconded, the motion passed unanimously, and P. Offen reopened the hearing.

J. Tate asked the applicant, L. Curran, if she was made aware of the dimensional plans for the deck by her contractor before construction began. L. Curran responded yes, she was made aware of the dimensional plans for the deck via phone conversations with her contractor before work began. T. Fogel clarified that no City permits were applied for or issued for the deck or the fence, which K. Buzby

confirmed was correct. P. Offen verified there were no other questions, and seeing none, closed the hearing once again.

J. Tate said it was difficult to see how requirement A or B could be met, to which P. Offen pointed him to the description of drainage concerns in L. Curran's application. R. Wood noted a personal desire to grant a variance, but that the decision would create a concerning precedent for the board to grant a zero-foot setback. B. Gulden reminded the board that they define what exactly "unnecessary hardship" entails.

R. Wood made the following motion:

MOTION: With regard to variance request 25-001, the request of Linda Curran, for a variance from Section 2.7.2 of the UDO to reduce the required setback in the general residential district from 15' to Zero in the front yard of the real property located at 188 Ashworth Avenue, 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 resulted from actions taken by the applicant or the property owner; and
- d) the requested variance is not 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 to allow for a 15-foot variance resulting in a Zero (0) foot setback in the front yard on the subject property.

J. Tate seconded the motion, and it passed unanimously.

b) VAR-25-002

P. Offen explained quasi-judicial procedures.

The following were sworn: Andrew Mericle, Benjamin Ho, Stephanie Holland, and Paul Ray

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

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

P. Offen opened the hearing.

Stephanie Holland, Planner, gave her staff report, a portion of which follows:

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. 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.

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

Following the staff report, P. Offen asked if the board had questions for the City. B. Gulden clarified with the City that a variance is necessary for the proposed work, and P. Ray confirmed that yes, a variance would be necessary due to the UDO's "substantial improvement" definition and guidelines.

The applicants, A. Mericle and B. Ho, gave a presentation. They detailed the scope of the proposed work on the property and emphasized that the grade and slope of the lot, combined with existing vegetation, provide satisfactory visual separation from the adjoining General Residential lot in question.

P. Offen clarified that the applicants are not proposing to change the height of the wall, which B. Ho confirmed was correct, that the wall would be rebuilt to its existing dimensions. R. Wood asked if the existing soil covering a portion of the side of the existing North wall would be replaced, and A. Mericle shared that the answer is both yes and no; that some of the existing land on the existing slope of the North wall of the building was never intended to be there, and is causing the current structural issues with the wall.

P. Offen asked about potential square footage lossage if the applicants are required to bring the building into compliance, which A. Mericle and B. Ho calculated could be up to 6,000 square feet.

P. Offen saw there were no further questions and closed the hearing.

R. Wood explained she sees the unnecessary hardship in the strict application of the UDO, and mentioned adding the condition that the applicant would have to replace the landscaping interrupted by the work. The board seemed to look favorably upon this suggestion. B. Gulden clarified that the City requiring the applicant to lose a portion of their existing building due to their effort to bring the building to a structurally sound state is an unnecessary hardship.

R. Wood made a motion to approve the variance with the condition that the existing landscaping on the North wall of the building is replaced if it is damaged. In an effort to clarify the conditions with the applicant, R. Wood made a motion to reopen the hearing, seconded by J. Tate, passed unanimously.

P. Ray and S. Holland confirmed that a Type B buffer would be appropriate due to the nature of the building. A. Mericle and B. Ho sought specifics from the City regarding buffer requirements and types.

Following discussion, R. Wood made the following motion:

With regard to variance request 25-002, the request of 1700, LLC by Andrew Mericle, for an 11-foot variance from Section 2.7.2 of the UDO to reduce the required side-yard setback in the general industrial district from 25' to 14' on the northern portion of the real property located at 15 Burrell Avenue, I move the Board to make the following findings of fact:

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

reducing the usable square footage of the existing building,

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

the building already exists as a legal non-conforming structure and was built in the 70s.

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

the building was constructed before current zoning regulations were in place and the North wall is not currently structurally sound.

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.

Granting the setback variance will not increase the nonconformity and will bring the North wall of the building to a structurally sound state, Accordingly, I further move the board to GRANT the requested variance to allow for an 11-foot variance resulting in a 14 -foot side yard setback on the northern portion of the subject property in accordance with and only to the extent represented in the application and plans, and subject to the following conditions: that all landscaping damaged or eliminated during the construction process would be replaced with equivalent replacements.

Second by T. Fogel, unanimously carried.

VII. UNFINISHED BUSINESS

None.

VII. REMARKS

None.

VIII. ADJOURN

T. Fogel moved to adjourn the meeting, seconded by R. Wood. The motion carried unanimously. The meeting was adjourned at 4:14 PM.

Peter Offen, Chair

Madalin Baker, Board Clerk

STATE OF NORTH CAROLINA
TRANSYLVANIA COUNTY

BEFORE THE CITY OF BREVARD
BOARD OF ADJUSTMENT
CASE NO. Variance #25-001

IN RE: APPLICATION of
LINDA CURRAN
for a VARIANCE

ORDER

This matter coming on for hearing before the **City of Brevard Board of Adjustment** ("Board") on the application of **Linda Curran** ("Applicant") requesting a variance from Chapter 2.7.2 of the City of Brevard Unified Development Ordinance ("UDO") to reduce the front yard setback from Fifteen (15) feet to Zero (0) feet for property with an address of 188 Ashworth Avenue, Brevard, North Carolina ("Property"). The Property is in the General Residential 8 (GR-8) Zoning District within the zoning jurisdiction of the City of Brevard.

A quasi-judicial hearing was held on April 1, 2025. The Applicant represented herself. The following persons were sworn as witnesses and presented testimony in this matter: City of Brevard Planner, Katherine Buzby, and Linda Curran.

Testimony in this case is accurately reflected in the minutes of the April 1, 2025 meeting and based upon the testimony presented, the documentary evidence and related material submitted along with the Application, the Board does hereby make the following:

FINDINGS OF FACT

- 1) Notice of the quasi-judicial public hearing, pursuant to the UDO and state law, was duly and timely given. The Property was properly posted and the hearing was properly advertised.

- 2) The Property is identified as tax parcel numbers 8585-46-5877-000 in Brevard, North Carolina within the GR-8 Zoning District and a property address of 188 Ashworth Avenue, Brevard, North Carolina.
- 3) The Applicant applied for a variance from Chapter 2.7.2 of the UDO to allow a reduction in the front yard setback from Fifteen (15) feet to Zero (0) feet on the Property.
- 4) The witness failed to offer competent, material and substantial evidence that unnecessary hardship would result from the strict application of the UDO.
- 5) The witness failed to offer competent, material and substantial evidence that hardship results from conditions that are peculiar to the Property and that the hardship did not result from actions taken by her, as the Property owner.
- 6) No competent, material and substantial evidence was presented that the requested variance is consistent with the spirit, purpose and intent of the UDO and that the variance, if granted, would not be injurious to the public health, safety and welfare nor that it would achieve substantial justice.
- 7) No competent, material or substantial testimony was presented to show that the use of the subject properties satisfies all the requirements of the UDO for the granting of a variance.

Pursuant to the foregoing FINDINGS OF FACT and UDO Chapter 16.8.E, the Board makes the following:

CONCLUSIONS OF LAW

- 1) The Board has jurisdiction to hear and decide this Application for a Variance under the UDO.
- 2) The Applicant did not present competent, material or substantial testimony to show that the requested variances on the subject property satisfy all the necessary requirements of the UDO for granting a variance.
- 3) Variance 25-001 should be denied.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the application of **Linda Curran** requesting a variance from Chapter 2.7.2 of the City of Brevard Unified Development Ordinance to reduce the front yard setback from Fifteen (15) feet to Zero (0) feet for property with an address of 188 Ashworth Avenue, Brevard, North Carolina and identified as tax parcel numbers 8585-46-5877-000 in Brevard, North Carolina is hereby **DENIED**.

ORDERED this _____ day of _____, 2025

CITY OF BREVARD BOARD OF ADJUSTMENT

By: _____
Peter Offer, Chair

Attest:

Madalin Baker, Clerk to the Board

STATE OF NORTH CAROLINA
TRANSYLVANIA COUNTY

BEFORE THE CITY OF BREVARD
BOARD OF ADJUSTMENT
CASE NO. Variance #25-002

IN RE: APPLICATION of
1700, LLC on behalf of
YOLE PROPERTIES, LLC
for a VARIANCE

ORDER

This matter coming on for hearing before the **City of Brevard Board of Adjustment** ("Board") on the application of **1700, LLC**, ("Applicant") on behalf of **Yole Properties, LLC** requesting a variance from Chapter 2.7.2 of the City of Brevard Unified Development Ordinance ("UDO") to allow for a reduction of the required side-yard setback from 25' to 14' on the northern portion of the real property identified as tax parcel number 8586-53-2891-000 with an address of 15 Burrell Avenue, Brevard, North Carolina ("Property"). The Property is in the General Industrial (GI) Zoning District within the zoning jurisdiction of the City of Brevard.

A quasi-judicial hearing was held on April 1, 2025. The Applicant represented itself and presented evidence through its agent, Andrew Mericle. The following additional persons were sworn as witnesses and presented testimony in this matter: City of Brevard Planner, Stephanie Holland, and Benjamin Poe, witness for the Applicant.

Testimony in this case is accurately reflected in the minutes of the April 1, 2025 meeting and based upon the testimony presented, the documentary evidence and related material submitted along with the Application, the Board does hereby make the following:

FINDINGS OF FACT

- 1) Notice of the quasi-judicial public hearing, pursuant to the UDO and state law, was duly and timely given. The Property was properly posted and the hearing was properly advertised.
- 2) The Property is identified as tax parcel number 8586-53-2891-000 with an address of 15 Burrell Avenue, Brevard, North Carolina within the General Industrial (GI) Zoning District.
- 3) The Applicant submitted an application for a variance to allow for a reduction of the required side-yard setback from 25' to 14' on the northern portion of the Property.
- 4) The Applicant offered testimony that unnecessary hardship would result from the strict application of the UDO in that:
 - a) Complying with the side-yard setback would prevent the renovation of a structurally unsafe building;
 - b) Complying with the side-yard setback would prevent the use of approximately 3250 square feet of an existing building.
- 5) The Applicant testified that hardship results from conditions that are peculiar to the Property in that:
 - a) The existing building was constructed prior to zoning in that area being adopted by the City of Brevard;
 - b) The location of the Property next to a General Residential zoning district is the reason for the increase in the side-yard setback on the northern portion of the Property.
- 6) The Applicant testified that the hardship did not result from actions taken by the Property owner in that:
 - a) The hardship is not the result of the Applicant, as it did not designate the zoning district for the Property; and
 - b) Since the construction of the building on the Property, the City of Brevard has adopted the Property into its zoning jurisdiction.
- 7) Competent testimony was presented that the requested variance is consistent with the spirit, purpose and intent of the UDO, with the spirit of the UDO preserved.

Further, the requested variance will not be injurious to the public health, safety and welfare and achieves substantial justice in that:

- a) The reduction in the side-yard setback will allow the building to be renovated to repair its unsafe condition; and
 - b) Adequate trees and shrubbery will be planted if necessary.
- 8) The Applicant and parties with standing were all given the opportunity to offer oral testimony and documentary evidence as well as submit questions to each other, City staff and Board members.

Pursuant to the foregoing FINDINGS OF FACT and UDO Chapter 16.8.E, the Board makes the following:

CONCLUSIONS OF LAW

- 1) The Board has jurisdiction to hear and decide this Application for a Variance under the UDO.
- 2) That without the proposed variance unnecessary hardship would result from the strict application of the regulations.
- 3) The hardship results from conditions that are peculiar to the Property.
- 4) The hardship did not result from actions taken by the Applicant.
- 5) The requested variance is consistent with the spirit and intent of the regulations such that public safety is secured and substantial justice achieved.
- 6) All applicable standards within the UDO have been satisfied.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the application of application of **1700, LLC** on behalf of **Yole Properties, LLC** requesting a variance from Chapter 2.7.2 of the City of Brevard UDO to allow for a reduction of the required side-yard setback from 25' to 14' on the northern portion of the real property identified as tax parcel number 8586-53-2891-000 with an address of 15 Burrell Avenue, Brevard, North Carolina Brevard, North Carolina is hereby **GRANTED** to the extent represented in the Application and plans included therewith and subject to the following:

CONDITION

Existing landscape on the Property adjacent to the General Residential district on the northern portion of the Property is to be documented by the City planning department and the same is to remain intact; however, if any such landscape is damaged or removed, it is to be replaced with a sufficient amount of vegetative buffer as determined by City planning staff.

ORDERED this _____ day of _____, 2025.

CITY OF BREVARD BOARD OF ADJUSTMENT

By: _____
Peter Offer, Chair

Attest:

Madalin Baker, Clerk to the Board

We consent to the conditions stated herein:

1700, LLC - Applicant

Yole Properties, LLC - Owner

By: _____

By: _____

Its _____

Its _____

STAFF REPORT

Board of Adjustment, Tuesday, May 6, 2025

Title: VAR-25-003 - 555 W. Probart St.

Speaker: Katherine Buzby

Prepared by: Katherine Buzby, Planner/Assistant Zoning Administrator

Approved by: Paul Ray, Planning Director

Board of Adjustment, Tuesday, May 6, 2025

Background

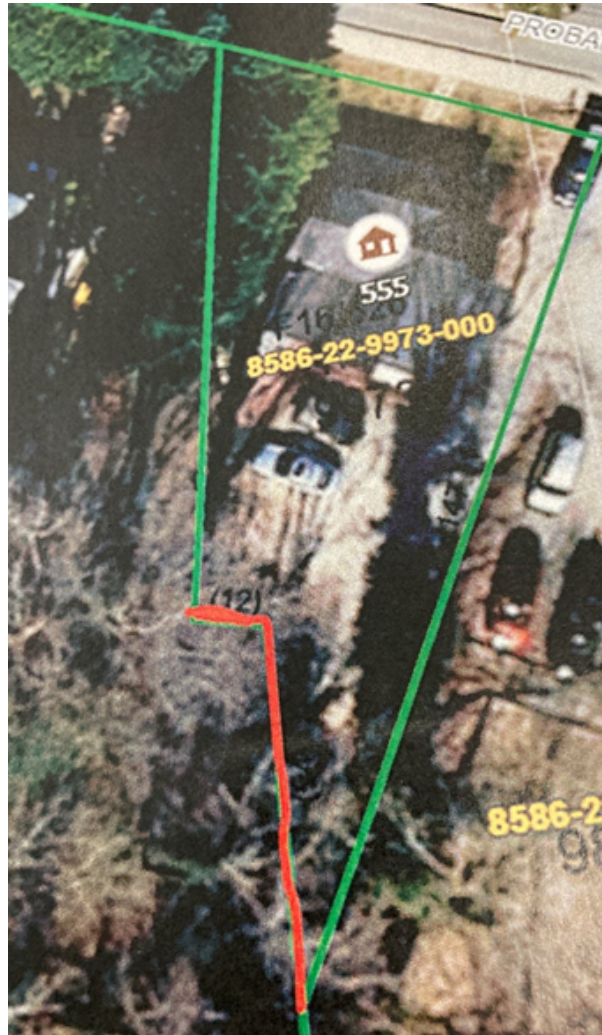
The applicant, Joesph Kelly, owns property at 555 W Probart Street, which is located in the General Residential-8 (GR-8) zoning district and in the City's corporate limits. The parcel identification number is 8586-22-9973-000.

The applicant is requesting a variance from the Unified Development Ordinance's (UDO) Chapter 2.7.3 for accessory structure setbacks. He is building an Accessory Dwelling Unit (ADU) and is requesting a nine (9) foot variance from the ten (10) foot setback in the rear yard, resulting in a one (1) foot setback. He is also requesting a variance of three (3) feet from the side yard setback of six (6), resulting in a three (3) foot setback.

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 along W Probart Street, and he would like to build an ADU (10'x20') behind his current primary structure (house). The property is unique as the shape of the property is a triangle which narrows towards the rear yard. The applicant spoke with the Planning Dept to determine where his rear yard setbacks would be measured from and was provided with the following image, which highlights in red the technical rear yard:



The UDO establishes setbacks for accessory structures as below:

2.7.3. Setbacks for accessory structures.

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

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			

B. Accessory structures to residential uses located within 6 feet of the principal structure are considered attached for the purpose of setbacks, and shall comply with the setback requirements of the principal structure.

The applicant's new ADU (200sqft) would require a six (6) foot setback from the side property line and a ten (10) foot setback from the rear property line. The ADU will serve as office space for the applicant and an additional habitable space for family and friends.



Site Plan for New ADU

The applicant is requesting reduced setbacks, citing the required setbacks will make the parking and maneuvering of vehicles too difficult due to driveway size and topography restrictions. Additionally, the house next door is a Short-Term Rental and has a shared driveway entrance with the applicant.

Investigation

Upon inspection, the driveway entrance is shared with the adjacent neighbors and does slope towards the rear of the property. The slope of the driveway and the neighbor's front yard fence both attributed to reduced visibility reversing a vehicle out of the driveway onto Probart Street.

The location of the proposed ADU is already level and cleared of any trees and debris.

The applicant will provide evidence of the site restrictions when he presents his case to the Board.

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. Application
2. Proposed ADU Site Plan
3. Site Pictures



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.)

We, the owners of the subject property are seeking a variance to section 2.7.3, setbacks for accessory structure. We are requesting a 3 foot variance on the westerly side lot line and a 9 foot variance on the rear lot line for a 200 square foot accessory structure with its primary use as a home office and secondary use as guest space for our out of state adult children (see site plan attached).

We love our home and our community, but our 1930, 1 bedroom, 1 bath home will not accommodate our growing family.

We will explain the validity of our request on the attached sheets.

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: 555 West Probart St. , Brevard, NC 28712

Tax Parcel Number of subject property: 8586-22-9973-000

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT

PROPERTIES APPLICANT INFORMATION

Name: Joseph A. Kelly & Dawn S. Altman

Address: 555 West Probart St. , Brevard, NC 28712

Phone: (941) 809-1410

Email: dmaltman6@gmail.com

OWNER INFORMATION

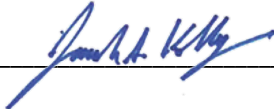
Name: Joseph A. Kelly & Dawn S. Altman

Address: 555 West Probart St. , Brevard, NC 28712

Phone: (941) 809-1410 Email: dmaltman6@gmail.com

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 3/12/2025_____

APPLICANT'S SIGNATURE _____

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

VARIANCE REQUEST TO BE HEARD BY BOA ON: May 6, 2025.



VAR File# _____

BREVARD BOARD OF ADJUSTMENT – VARIANCE

APPOINTMENT OF AGENT

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

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

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

Property Owner Signature: _____ Date: _____
Mailing Address: _____
Phone: _____ Email: _____

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



The City of *Brevard* North Carolina

Variances “Unnecessary Hardship”

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

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

(1) Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as

location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

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

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

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

In response to the Board of Adjusters requirements of the following for findings we offer these arguments:

1. With strict adherence to the current UDO Sec. 2.7.3, it will not be feasible or practical without extraordinary measures, to be able to construct or erect enough additional living space to allow for a home office as required for Joseph's current employment and provide adequate accommodations for our out of state family. We have two adult children and wish to add two additional bedrooms to accommodate their growing families. Our current floor plan has one bedroom and a small spare room that is currently used as a home office, and doubles as a guest room via a Murphy bed. The addition of a 200sqft out building will allow us to move the office out of the spare room dedicating it as a guest room. The outbuilding will then double as additionally guest space.
The narrow triangular shape of the lot will not allow enough space to accommodate the proposed outbuilding at the current 6' side and 10' rear setback requirements. The 10' rear setback leaves 22' from the face of the outbuilding to the existing deck, approximately 27' from the existing structure which is not enough room to park and maneuver our vehicles. The length and narrowness of the driveway on the east side of the house and steep slope makes it extremely difficult to back out of the driveway making it necessary to turnaround to safely exit the driveway. At the 6' side setback the area required to turn a vehicle around is severely diminished.
2. This unnecessary hardship is the result of the irregular shape and size of the lot, exacerbated by the topography along the east and rear property boundaries. The jog in the westerly lot line creates two "rear lot lines" requiring a 10' rear setback for accessory structures and 25' rear setbacks for primary structures which burdens the lot with less usable space for improvements. Steep slopes on the easterly lot line and the rear portion render those area unusable for egress and parking. The narrow common driveway makes it unusable for parking, vehicle must be stored in the parking area behind the home. The steep grade of the driveway makes backing out dangerous due obscured line of site of oncoming vehicles and pedestrians. The neighboring driveway often has multiple vehicles due to it being an Airbnb which also makes ingress and egress difficult without the ability to turn our cars around behind the home.
3. The size and configuration of the lot, topography, and existing structure are of no fault of the homeowner. Contrary, the homeowner wishes to improve upon these conditions to the best of their ability and in the spirit of the UDO and the community.
4. We believe the granting of this variance is within the spirit of UDO section 2.7.3 and consistent with the community. We have the consent and support of our adjoining neighbors. It is my understanding of the reduced setback for accessory structures is to lessen the burden to the homeowner within smaller city lots and allow for accessory structures for purposes consistent with our request. Granting this variance will allow this while posing no harm or safety risk to the community and will enhance the property in a manner that is consistent with the community.



1 STORY STRUCTURE

DECK

GRAVEL
DRIVE

6' SETBACK

25' SETBACK

32.4

8'x20'

6.0

3.0

1.0

10' SETBACK

PROP.
10'x20'
(200 sqft)

15.2

6' SETBACK

STEEP SLOPE

STEEP SLOPE

25.3



8586-22-9973



Show search results for 8586-2...

(1 of 2)

Foley Chris

PIN 8586-22-7849-000

Owner Foley Chris

Appraisal Card [Click Here](#)

Tax Bill [Click Here](#)

Basic Tax Search [Click Here](#)

Township 0B

Calculated Acreage 2.880 Acres

Land Value \$340,750

Building Value \$565,800

Assessed Value \$906,550

Sale Price \$

Sale Date

Fire District BREVARD FIRE DEPARTMENT

Deed Book , Page

Print Layout [Click Here](#)

[Zoom to](#)



8586-23-4055-000

8586-22-3915-000

40



29



631

8586-23-8210-000



584

8586-33-0106-000

8586-23-9159-000

8586-33-0039-000



560

8586-33-0095-000



546



573



555



541



533

8586-22-9896-000

8586-32-0725-000

0725

8586-32-0725-000



94

ROSEMARY LN

PROBART ST



16710



99

0688

MACKEY LN

100ft

-82.743 35.239 Degrees

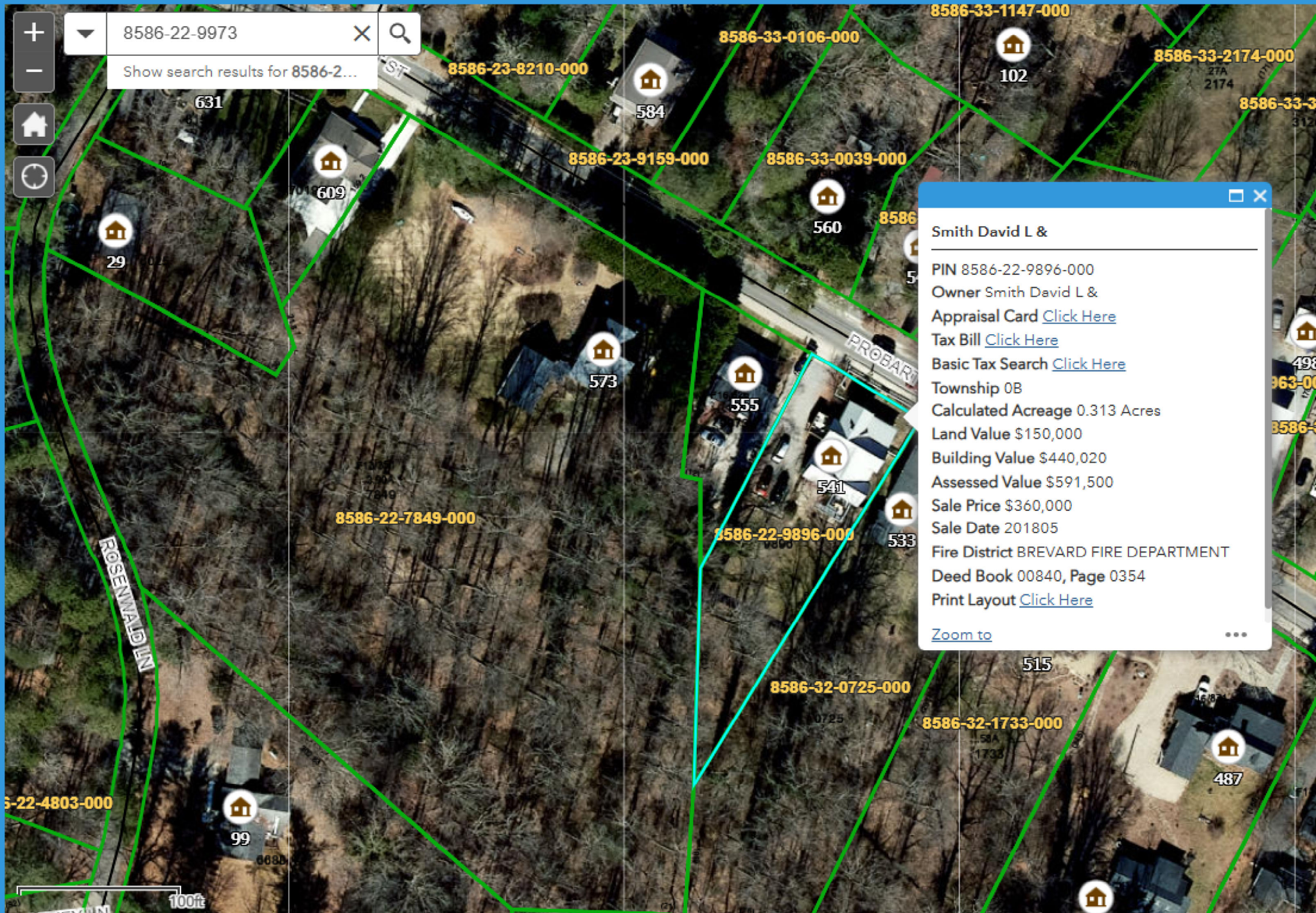


8586-22-9973

×

🔍

Show search results for 8586-2...



Smith David L &

PIN 8586-22-9896-000

Owner Smith David L &

Appraisal Card [Click Here](#)

Tax Bill [Click Here](#)

Basic Tax Search [Click Here](#)

Township 0B

Calculated Acreage 0.313 Acres

Land Value \$150,000

Building Value \$440,020

Assessed Value \$591,500

Sale Price \$360,000

Sale Date 201805

Fire District BREVARD FIRE DEPARTMENT

Deed Book 00840, Page 0354

Print Layout [Click Here](#)

[Zoom to](#)



1 STORY STRUCTURE

DECK

GRAVEL
DRIVE

6' SETBACK

25' SETBACK

32.4

8'x20'

6.0

3.0

1.0

10' SETBACK

PROP.
10'x20'
(200 sqft)

15.2

6' SETBACK

STEEP SLOPE

STEEP SLOPE

25.3

10' SETBACK

Site Pictures 04.16.25



Shared driveway with house on left



Visible slope of driveway leading to rear of house



Rear of house- parking area with proposed ADU area behind cars



Proposed area for new ADU



Visible topography changes on left of existing driveway