



AGENDA
BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING
Tuesday, August 5, 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. 06.03.2025 Draft Minutes

VI. New Business

VII. Unfinished Business

- a. Consideration of Continued SUP-25-002 - 107 S. Johnson St.

VIII. Remarks

IX. Adjourn

Agenda Posted, Website July 29, 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, May 6th- 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday May 6th, 2025, at 3:00 PM.

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

Staff Present: Katherine Buzby, Planner
Madalin Baker, Board Clerk
Brian Gulden, Board Attorney

Guests: Joseph Kelly & Dawn Altman, Applicants

I. WELCOME

Chair, Peter Offen, called the meeting to order at 3:02 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

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

IV. APPROVAL OF AGENDA

Motion to approve the agenda as written by A. Mercaldo, second by T. Fogel, carried unanimously.

V. APPROVAL OF MINUTES

T. Fogel motioned to approve the minutes as written, R. Wood seconded, carried unanimously.

VI. APPROVAL OF ORDERS

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

Motion to approve both Orders as written by R. Wood, seconded by J. Tate, passed unanimously.

VII. NEW BUSINESS

a. VAR-25-003 – 555 W Probart St.

P. Offen described Quasi-judicial proceedings. No public guests wished to be granted standing as there were none in attendance. B. Gulden refreshed the Board on the applicable rules. No ethical conflicts or conflicts of interest were found. The following were sworn: J. Kelly, Applicant, and K. Buzby, Planner.

P. Offen opened the hearing. K. Buzby gave her staff report, a portion of which follows:

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.

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.

Following the City's presentation, A. Mercaldo asked about tap fees associated with the proposed ADU, which K Buzby described are not typically addressed until after the permitting process, but she shared that the property owner could tie into an existing tap/sewer line on the property without necessarily notifying the City.

P. Offen saw there were no other questions for the City.

J. Kelly, Applicant, gave his presentation (Attached). He described the unique lot lines, the shared driveway, and the sloped topography of the lot all as constraints for the site of the proposed ADU. He described that backing out of the driveway is very

difficult, especially as the driveway is shared with the lot next door, which is rented as an Airbnb and frequently has 3 or more cars parked. He shared that the proposed site of the ADU would maximize the safety for the applicants entering and exiting their driveway. J. Kelly also shared that there are a variety of homes in the neighborhood, on Probart, that have accessory dwelling units and that the proposed project is consistent with the existing character of the neighborhood.

Following the applicant's initial presentation, T. Fogel asked how drainage on the rear of the lot would be impacted by the proposed ADU. J. Kelly mentioned the existing drainage dig-out, pictured in the presentation, was created by him and could be rerouted easily as it is simply attached to the drainage spouts from the gutters attached to the primary house.

J. Tate asked if the applicants had considered an addition to the primary structure as a solution to giving them more space instead of the ADU. J. Kelly said yes, they had and provided additional site plans and context. He said due to the 25ft rear setback for primary structures, adding on to the existing house would also be prohibitive to driveway safety, and not allow for maximum desired functionality of the proposed space. In the event of an addition, J. Kelly cited concerns over disrupting the existing 1930s foundation and provided photos.

K. Buzby made an additional comment, that as she was backing out after taking photos of the site, the neighbor's fencing and shrubbery limited view of oncoming traffic significantly.

B. Gulden informed the room that traffic safety issues must be presented by an expert for consideration in a case, and so should not be used.

T. Fogel made the following motion:

With regard to variance 25-003, the request of Joseph Kelly, for a variance from Section 2.7.3 of the UDO to reduce the applicable setbacks for Accessory Dwelling Units in the rear-yard from 10 feet to 1 foot and in the side-yard from 6 feet to 3 feet in the general residential 8 district on property located at 555 W. Probart St., I move the Board to make the following findings of fact:

- a) that unnecessary hardship would result from the strict application of the regulations; as the unique shape of the parcel narrows to the rear,
- b) the hardship results from conditions that are peculiar to the property such as location, size or topography; as seen by the slope of the driveway and the slope of the rear yard of the parcel,
- c) the hardship did not 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, as evidenced by the increased driveway safety and the letters of support from neighbors.

Accordingly, I further move the board to GRANT the requested variance to allow for a 9-foot variance in the rear yard and a 3-foot variance in the side yard for an Accessory Dwelling Unit on the subject property in accordance with and only to the extent represented in the application and plans.

Seconded by A. Mercaldo, the motion passed unanimously.

VIII. UNFINISHED BUSINESS

B. Gulden, Board Attorney, provided an update on VAR-24-005.

Regarding Case File 24-CV-1545-807, R. Wood moved Peter Offen, as the Board Chair, be given the authority to sign the Settlement Agreement on behalf of the City of Brevard Board of Adjustment.

IX. REMARKS

None.

X. ADJOURN

R. Wood moved to adjourn the meeting, seconded by A. Mercaldo. The motion carried unanimously. The meeting was adjourned at 4:01 PM.

Peter Offen, Chair

Madalin Baker, Board Clerk

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, June 3rd – 3:00 PM

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

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

Staff Present: Katherine Buzby, Planner
Madalin Baker, Board Clerk
Brian Gulden, Board Attorney

Guests: Emily Lowery, Director of The Haven, Applicant
Davis Whitfield-Cargile, Attorney representing The Haven
Melanie Spreen, of May Collaborative, Applicant
Charles Taylor, property owner at Wolf Pen Cove Rd.
Tracy Harvey, property owner at 123 S. Johnson St. and
member/manager of 123 S. Johnson St. LLC
Robert “Bob” Hornik, Attorney representing 123 S. Johnson St. LLC

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

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

IV. APPROVAL OF AGENDA

P. Offen asked if Board members had any proposed changes to the agenda.

B. Gulden, Board Attorney, mentioned the attorney for The Haven, had expressed interest in getting a continuance. B. Gulden recommended the Board consider moving item B in new business to item A, out of respect for the time of the applicants.

Motion to move SUP-25-002 to be heard first under new business made by A. Mercaldo, seconded by R. Wood, passed unanimously.

V. APPROVAL OF MINUTES

P. Offen, Chair, noted May draft minutes were not included in the agenda packet for the Board's review, and so approval of minutes would be skipped. The May minutes will be voted on at the next meeting.

VI. APPROVAL OF ORDERS

P. Offen noted order approval was completed prior to meeting via email.

VII. NEW BUSINESS

P. Offen looked to B. Gulden for procedural clarity entering the New Business portion of the agenda.

B. Gulden advised P. Offen that, should Mr. Whitfield-Cargile request a continuance, it should happen before the board opens the case for SUP-25-002.

B. Hornik stood and introduced himself. He requested clarity on the status of SUP-25-002.

P. Offen shared the case had not yet been continued, but rather the board was still confirming with D. Whitfield-Cargile what exactly the applicant was requesting of the Board and where it fits into the proceedings.

A. Consideration of SUP-25-002 – 107 S. Johnson St.

D. Whitfield-Cargile stood and introduced himself. He moved to continue the hearing to the August meeting date, citing the need for additional time to work with staff on the nature of the application.

B. Hornik noted he and his client came prepared for the case to be heard today.

B. Gulden introduced himself to B. Hornik. B. Gulden stated he was not aware that B. Hornik would be at the meeting. He shared D. Whitfield-Cargile, who was recently retained by the applicant, had reached out the B. Gulden prior to the meeting sharing his intentions to motion to continue the matter. B. Gulden noted the Board had not received any indication of parties with standing.

B. Gulden instructed that the Board could do one of two things: hear evidence on standing for B. Hornik's client and then take up the motion to continue the case, or continue the motion and push everything out, standing and the evidentiary presentation.

The Board considered their course of action. D. Whitfield-Cargile cited he was unaware that T. Harvey had retained an attorney and noted the continuance would allow the applicant time to review the nature of the SUP application with City staff.

D. Whitfield-Cargile asserted it seemed premature to establish T. Harvey's standing on the case.

B. Hornik expressed intention to oppose the applicant's request for a continuance, in the event his client was granted standing. He noted the desire to respect his client's time and money.

P. Offen expressed concern that if the nature of the application is going to change, it could change the nature of everything—the standing, the proposed harm, etc. He expressed hesitation to grant a party standing before the decision was made by the applicant on the nature of the application.

B. Hornik stated that if the applicant were to withdraw their application, there would be nothing for the Board to hear, which would not warrant a continuance request by the applicant but a request to withdraw their application and potentially re-apply if the nature of the applicant's requests would be significantly different. He cited having already spent many hours preparing for the case and driving to the meeting, calling it unusual and unfair to him and his client for the applicant, on the day of the hearing, to request a continuance.

D. Whitfield-Cargile noted the party arguing against continuing the hearing had not been determined to have standing in the case. D. Whitfield-Cargile noted that in his experience, the applicant's request is not unusual. D. Whitfield-Cargile expressed frustration with the suggestion that the applicant should withdraw their application.

P. Offen looked to his fellow Board members for their guidance and opinions. A. Mercaldo noted that their task as Board members is to review the applications brought before them, and that if the nature of the application could become different, it doesn't make sense for the board to have any procedure or hearing at all until the nature of the application is clarified. T. Fogel and R. Wood expressed their agreement. P. Offen shared given the nature of the potential changes to the application, he was inclined to grant the continuance.

A. Mercaldo made a motion to continue the hearing for SUP-25-002 to the August meeting, to allow the applicant time to meet with staff and revise. J. Tate seconded. The motion passed unanimously.

P. Offen offered his apologies to B. Hornik for having to make the trip.

B. Consideration of SUP-25-001 – Wolf Pen Cove Road

P. Offen explained quasi-judicial procedures and standing.

The following were sworn: Melanie Spreen, Aaron Bland

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.

P. Offen opened the hearing.

A. Bland, Assistant Planning Director, gave his staff report, a portion of which follows:

Background: Melanie Spreen, as agent for Charles Taylor, has submitted an application to the City on for a Special Use Permit (SUP) to operate a Campground and Special Event Venue on a parcel located off of Wolf Pen Cove Road. The Campground/Recreational Vehicle Park use is defined by the City's Unified Development Ordinance (UDO) as "Establishments accommodating campers and their equipment, including tents, tent trailers, travel trailers, and recreational vehicles. Facilities and services may include washrooms and food services. The property shall be used for recreational purposes and retain an open air or natural character. This definition shall not include manufactured homes, manufactured home parks, or the storage of recreational equipment or vehicles." The Special Event Venue is defined as "A multipurpose venue facility designed largely for hosting special events such as graduations, weddings, gatherings, trade shows, corporate function or meetings, and other similar functions. The facility may have a catering kitchen, indoor and outdoor seating, a stage or event area, and meeting/conference facilities."

Following his staff report, A. Bland turned to the board for questions. He clarified that the hearing had been advertised in accordance with General Statute 160D-406(b).

A. Mercado questioned the extent of the Board's jurisdiction, as the ETJ boundary runs through the parcel. B. Gulden said the board's decision would only impact the portion of the lot in the ETJ, not the entire parcel. This is unique and uncommon.

B. Gulden noted that the City code regarding open burning would apply, and A. Bland agreed.

The applicant gave her presentation, as attached in her application narrative. Following her presentation, P. Offen looked to the Board for questions.

A. Bland clarified that the prohibition on open burning only applies in the city limits.

M. Spreen and C. Taylor provided further details regarding the intentions of the space, that they hope the pavilion will be used for small gatherings like family reunions or company retreats. They emphasized a desire to keep the noise level low, and cited that the pavilion intentionally does not feature a catering kitchen, which would work to deter some bigger gatherings that might rely on a catering kitchen to operate.

T. Fogel asked how far away the closest residential area was to the pavilion, which M. Spreen noted was 375 feet as the crow flies. She noted the topography about the surrounding hills also would work to mitigate noise created by pavilion gatherings.

Ryan Olson was sworn, and noted that he is a conservationist. He cited his support for the project and described it as more of a conservation effort than a development one. He expressed hope that the project will provide a model for surrounding areas to create conservation-based recreation.

J. Tate asked if there are any existing easements or other characteristics on the land that would prohibit future development, and R. Olson answered no.

R. Olson noted Transylvania County is far behind Buncombe County as far as creative lodging designs go, and that there is big local demand for this kind of recreational lodging development. He noted personal collaboration with neighbors in the area as well, who look favorably upon the project.

J. Tate asked how they plan to deter trespassing. M. Spreen and R. Olson cited signage around the perimeter of the property, as well as a gated camping area. T. Fogel asked if the units were available to be rented individually, which R. Olson answered yes.

A. Bland provided one more update on the “open burning” fire code, noting that it applies to “special event venues,” but that it is unclear if that applies to special event venues that are outside of the City limits.

Cynthia McCall, guest and neighboring property owner, requested to ask a question. P. Offen and B. Gulden shared that the Board does not hear questions from parties without standing, but that the applicants could entertain her question. C. McCall questioned the state of the main access road to a portion of the property, citing it is in disrepair and that the proposed development would bring more traffic to that road. C. Taylor acknowledged that the road does pose a challenge, noting that it is a NCDOT maintained road. A. Bland noted the planning department can help put them in touch with the correct NCDOT representatives to request maintenance on the road.

P. Offen closed the hearing.

A. Mercaldo made the following motion:

With regard to Case No. SUP-25-001, the application of Monte Vista, Inc., through its agent Melanie Spreen, seeking a Special Use Permit to allow a Campground and Special Event Venue in the General Residential (GR) zoning district on property located off Wolf Pen Cove Road, I move the Board to make the following findings of fact:

a) The use meets all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; that the applicants plan to maintain the natural landscape of the area, in line with the CLUP;

b) The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible with the surrounding area; not posing a visual obstruction to surrounding properties;

c) The proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses; the lot is secluded, and will feature gated, monitored access for overnight guests.

Accordingly, I further move the Board to GRANT the requested special use permit to allow a Campground and Special Event Venue on property located on Wolf Pen Cove Road, within the Extraterritorial Jurisdiction of the City of Brevard in accordance with and only to the extent represented in the application and plans, subject to the following condition: that they obtain any appropriate permits from the Fire Chief regarding burning regulations, and comply with any guidelines or restrictions thereby imposed.

T. Fogel seconded, and the motion passed unanimously.

The applicants requested the Order be approved via email.

VIII. UNFINISHED BUSINESS

None.

IX. REMARKS

A. Bland notified the Board of the newly adopted Code of Ethics passed at the last Council meeting.

X. ADJOURN

R. Wood moved to adjourn the meeting, seconded by T. Fogel. The motion carried unanimously. The meeting was adjourned at 4:04 PM.

Peter Offen, Chair

Madalin Baker, Board Clerk

STAFF REPORT
Board of Adjustment, Tuesday, August 5, 2025

Title: Consideration of Continued SUP-25-002 - 107 S. Johnson St.
Speaker: Katherine Poe
Prepared by:
Approved by: Paul Ray, Planning Director

The applicant, Emily Lowery, has withdrawn her application for the Special Use Permit for a shelter at 107 S Johnson Street.

Attachments: