



AGENDA
BREVARD BOARD OF ADJUSTMENT - REGULAR MEETING
Tuesday, August 4, 2026 - 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 Special Called Meeting — 05/05/2026
- b. Draft Minutes Regular Meeting — 05/05/2026
- c. Draft Minutes - 06/02/2026

VI. Approval of Orders

VII. Unfinished Business

- a. VAR-25-0003 - 128 Pisgah Hwy.

VIII. New Business

- a. APP-26-0001 - 221 Pinnacle Rd.

IX. Remarks

- a. The next Board Meeting is September 1st, 2026, at 3:00 PM

X. Adjourn

Agenda Posted, Website (07/08/2026)

V. Gass, 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 SPECIAL CALLED MEETING
Tuesday, May 5th, 2026 – 2:00 PM

The Brevard Board of Adjustment (BOA) met for a special called meeting on Tuesday May 5th, 2026, at 2:03 PM.

Members Present: Reid Wood
 Jackson Tate
 Alan Mercaldo
 Gilly Pearson

Members Absent: Peter Offen

Staff Present: Brian Gulden, Board Attorney
 Mack McKeller, City Attorney
 Katherine Poe, Planner
 Aaron Bland, Assistant Planning Director
 Vith Gass, Board Clerk

Guests: James Veal, Appellant, owner of 231 Pinnacle Rd.
 Roy Robinson, Appellant, owner of 245 Pinnacle Rd.
 J. Elliott Dugger, Counsel for the Appellant

I. WELCOME

Vice-Chair, Alan Mercaldo, called the meeting to order at 2:03 PM and welcomed those presents.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

A. Mercaldo had the Clerk certify that a quorum from the Board was present.

IV. APPROVAL OF AGENDA

Vice Chair, A. Mercaldo moved to amend the agenda to omit items five, six, eight, and nine, noting that the meeting was a continuation of a special called meeting. The motion was seconded by J. Tate and passed unanimously.

The amendment agenda was approved unanimously, and the Board proceeded directly to unfinished business to hear APP-25-0001.

IX. UNFINISHED BUSINESS**A. Consideration of APP-25-0001**

Board Attorney Brian Gulden noted that the agenda items contained separate issues and advised the board to proceed solely with the first appeal. He stated that the matter is an evidentiary, quasi-judicial hearing conducted pursuant to N.C.G.S. § 160D-406 and verified for the record that all testifying parties had already taken oaths.

Prior to the presentation, B. Gulden inquired if any board members absent from the January meeting had reviewed the previous record and evidence. G. Pearson confirmed that she had listened to the full audio recording and reviewed the record in its entirety.

E. Dugger, counsel for the Appellant, and Mack McKeller, counsel for the City, stated they had no objections.

M. McKeller provided a summary of the appeal, which concerns the denial of two driveway permits near the Bracken Preserve area by A. Bland. He noted the City denied the permits due to insufficient information regarding the driveway locations relative to the Bracken Preserve trail and their connection to a public right-of-way.

M. McKeller stated the City's position remains that only the information originally presented to staff at the time of application is relevant to determining if the denial was proper. Because the Appellant holds a different interpretation, the parties could not reach a pretrial evidentiary agreement. E. Dugger agreed this was a fair assessment of both positions.

E. Dugger explained the board had enough data to decide on the driveway permits. While technical issues delayed a supplemental packet to City staff, E. Dugger argued that existing files, including A. Bland's report—clearly showed how the driveways connect to the public right-of-way and bike trail. He then introduced J. Veal to walk the board through these specific report references.

M. McKeller objected to the presentation of evidence, noting that the proceeding was a quasi-judicial hearing. M. McKeller requested that the body follow standard procedure by requiring standard question-and-answer testimony to allow opportunity for objections.

E. Dugger allowed Appellant J. Veal to review the document line by line for proof of sufficient information. During testimony on the first paragraph, M. McKeller objected, arguing the response was a narrative and failed to answer the specific question about right-of-way evidence.

A. Mercaldo requested that speakers limit their comments to concise, factual statements to ensure an efficient process while still allowing for thorough discussion.

E. Dugger asked Appellant J. Veal to clarify which paragraphs represented evidence or information already held by the City. J. Veal responded with details concerning public street and right-of-way frontage. M. McKeller objected to the response, on the grounds that it was non-responsive to the question.

B. Gulden noted the objection and advised that a ruling from the Chair was required before the witness could proceed with further testimony. A. Mercaldo directed J. Veal to continue testifying.

J. Veal testified that the UDO allows driveways to connect to public or private streets and rights-of-way, noting that the right-of-way in question is public. M. McKeller objected and moved to strike the statement on the grounds that it was non-responsive and constituted non-expert opinion.

B. Gulden noted the objection and motion to strike for the record. A. Mercaldo sustained the objection.

E. Dugger asked J. Veal if he gave A. Bland information showing a public right-of-way near his property and the bike trail. J. Veal testified that his initial package included a property layout drawing and a Transylvania County GIS aerial map. Though told the GIS map had errors, he received no specific details about the flaws. After A. Bland rejected the initial drawing as insufficient, J. Veal emailed her a copy of a 2006 property survey by Michael Singleton.

E. Dugger asked J. Veal about the survey's origin. J. Veal testified it came from the easement condemnation court proceedings. He noted the court files referenced the drawing but only included an uncertified depiction that the city never accepted as correct. M. McKeller objected on relevance grounds, but A. Mercaldo overruled the objection.

E. Dugger noted the document's source was printed directly on it and had already been given to A. Bland. To clear up confusion, J. Veal offered to read it aloud. M. McKeller moved to strike the remarks, objecting to extraneous statements and speculation about city staff's motives. A. Mercaldo sustained the objection.

J. Veal responded that he was not speculating on motives but was directly citing survey facts within the submitted document. He then asked the Board to review the submitted packet to clarify the matter.

G. Pearson noted the objection was sustained, urged adherence to the ruling, and questioned the efficiency of the current line of questioning. A. Mercaldo agreed and declined a full packet review. He directed the Appellant to point out the exact locations of relevant information within the document.

J. Veal reasserted that he did provide the required right-of-way information, directly disputing the claim that it was missing from his submission.

B. Gulden advised J. Veal and E. Dugger to cease the dispute and instead proceed with presenting their case, instructing them to introduce the evidence directly and explain its relevance to the matter at hand.

J. Veal noted the email on the screen was wrong, explaining that the correct document from A. Bland used lavender for the right-of-way and yellow for the property line to prove the data was provided. M. McKeller asked E. Dugger to pose a direct question so everyone could identify the specific document under review.

At E. Dugger's request, J. Veal identified the document as the drawing for parcel two (his property). Asked if the City had seen this version, J. Veal explained the original lacked highlights, but A. Bland added them to the right-of-way and property lines to claim data was missing. J. Veal showed that the yellow highlight marked the north perimeter of parcel two, asserting the proposed driveway sits on

unencumbered property. Clarifying the unencumbered section for Dugger, Veal pointed to the driveway area outside the right-of-way, noting it extends to the south edge of the historic Mackey Ridge Road bed. M. McKeller then objected, citing speculation.

J. Veal argued that information had been submitted, asserting that a video available that afternoon clearly proved the contrary statement incorrect, and noted they possessed a copy. B. Gulden advised that the video had not yet been presented and noted that an objection had been made, adding that J. Veal would have ample opportunity to present the evidence later. A. Mercaldo then sustained the objection.

At E. Dugger's request, J. Veal located the Mackey Ridge Road bed on the drawing, pointing to the lettering to show its southern edge extending west and curving up out of the right-of-way. J. Veal explained a small rectangle on the document was an excerpt from a combined survey (using a 2003 Jenkins survey and a 2006 City-commissioned Singleton survey) showing a mobile home on Barbara Garrett's property. Dugger then asked if Veal had the deed for that property. Veal confirmed he did, but M. McKeller objected, arguing the response was non-responsive. A. Mercaldo sustained the objection.

Returning to his previous question, E. Dugger asked J. Veal if he had a deed for parcel two. J. Veal clarified that parcels two, deeds were omitted from the current packet, explaining that the documents provided were strictly limited to those with direct references to locations near Mackey Ridge Road.

Referencing the television screen, J. Veal located parcel one and requested A. Bland pull up its matching document. J. Veal highlighted the northeast corner of parcel one, the right-of-way, and a proposed driveway extending from unencumbered private property to the true Mackey Ridge Road bed. E. Dugger asked if Veal had a deed for the parcel. J. Veal stated he lacked the complete deed but possessed the legal description and the cover document.

E. Dugger asked J. Veal to show a document from the packet regarding the Parcel 1 deed. J. Veal noted it was submitted the day of the hearing and was absent from the original packet. M. McKeller stated that same-day submissions are irrelevant to A. Bland's initial application review, clarifying that the document would only be relevant if it was in the original package. A. Mercaldo sustained the objection to admitting the document based on its late submission timing.

E. Dugger introduced the Parcel 1 deed, stating J. Veal would testify about property rights detailed at the bottom of the page. M. McKeller questioned if E. Dugger was testifying to his witness, but Dugger clarified he was simply making a proffer to outline the evidence.

B. Gulden noted the Board needed a physical copy of any document before it could be officially entered into the record (see exhibit attachment).

J. Veal explained he spent 20 hours organizing the materials, noting that misplacing one document would disrupt the entire sequence. G. Pearson clarified that the file was missing from the Board's packet, adding her understanding that it had been shown to M. McKeller but never formally introduced as evidence until now. J. Veal confirmed the document was absent from the initial application given to A. Bland.

E. Dugger asked J. Veal for the document's source, and J. Veal stated he got it from the county deed office. E. Dugger then moved to formally admit it into evidence. M. McKeller renewed his objection, arguing it was irrelevant since A. Bland never reviewed it during the initial application. A. Mercaldo

overruled the objection, reminding the parties that the Board had already allowed the applicant to bring in extra evidence. After M. McKeller announced he would appeal this ruling to the full Board, J. Tate spoke up to support A. Mercaldo, stating the scope of the appeal permitted the introduction of this document.

A. Mercaldo explained that a document must be formally admitted before its relevance can be determined, confirming his ruling to overrule the objection. G. Pearson clarified the scope for the full Board, arguing the document is inadmissible if used generally to prove the driveway should be approved. However, she noted it could be admitted for the limited purpose of proving the City possessed sufficient data during its review. B. Gulden agreed, emphasizing that the Board lacks authority to issue permits. He clarified that a successful appeal would simply remand the matter back to City staff for consideration.

G. Pearson questioned why the document was being admitted, warning that the applicant was arguing for permit approval instead of focusing on whether the original application lacked enough data. R. Wood agreed, stating that if the City lacked sufficient information initially, the applicant's proper remedy was to reapply. A. Mercaldo asked if the document could be admitted under a limited scope to support what the City originally requested, but G. Pearson disagreed. R. Wood clarified that entirely new information requires a brand-new application process. G. Pearson then moved to deny the admission of the additional information as evidence, and R. Wood seconded the motion.

The Board's initial vote resulted in a 2–2 tie.

J. Tate asked Board Attorney B. Gulden about convening a brief closed session. B. Gulden advised that an unscheduled closed session was permissible by proper motion to seek legal counsel. He instructed that the motion be made under North Carolina General Statute § 143-318.11(a)(3) to protect attorney-client privilege and then called for the vote. J. Tate moved to enter closed session, and G. Pearson seconded the motion.

The motion carried, and the Board entered into closed session at 2:33 PM.

J. Tate made a motion to reconvene in open session, which was seconded by G. Pearson. The motion carried, and the Board returned to the special meeting session at 2:46 PM.

G. Pearson moved to limit all further evidence strictly to what was originally presented to the City and contained in A. Bland's application packet. The motion permits the Appellant to testify on existing evidence to argue its sufficiency under the Unified Development Ordinance (UDO), but bars any new information not found in the initial packet. R. Wood seconded the motion, which passed unanimously. A. Mercaldo ordered both parties to restrict all remaining questions to the evidence originally given to A. Bland. E. Dugger agreed to comply under protest, formally objecting that the restriction violated a previous hearing agreement. A. Mercaldo upheld the ruling, clarifying that the Board's only goal was to decide if the initial packet held enough data to support the appeal or overturn the denial.

E. Dugger asked J. Veal to point out any alternative easements, plats, or surveys in the original packet showing the driveway's location relative to the right-of-way. J. Veal identified the easement plat in File 11, Slide 922, and the County Planning Department's aerial vicinity map on page 22 of the agenda packet, requesting both be pulled up on the screen.

A. Mercaldo then instructed the parties to maintain a strict question-and-answer format rather than transitioning into an open presentation.

E. Dugger directed J. Veal to show the Board the location of the properties where the new driveways were being proposed.

J. Veal testified that the drawing was originally for a different application and relied on a 2003 survey of parcels one through six. M. McKeller objected, arguing the witness was being non-responsive. A. Mercaldo sustained the objection.

J. Veal continued testifying, explaining the drawing identified the Robinson and Veal properties and was made to address A. Bland's concerns. M. McKeller objected again, arguing the answer was still non-responsive to the question. A. Mercaldo sustained the objection.

E. Dugger rephrased the question, asking J. Veal to show the exact location of the driveways. J. Veal replied that the drawing showed the whole easement in relation to the parcels. M. McKeller objected again, arguing the answer was still non-responsive.

E. Dugger asked J. Veal how the proposed driveway connects to the right-of-way. J. Veal testified that it runs from the private property through the right-of-way to connect directly with Mackey Ridge Road, noting it was the only driveway on the plat showing how a vehicle would reach the existing road. Asked by Dugger if he understood the right-of-way to be public, Veal confirmed he did. M. McKeller objected, arguing Veal's personal understanding was an irrelevant opinion rather than a fact. A. Mercaldo sustained the objection and ordered both sides to stick to verifiable facts instead of opinions.

E. Dugger asked J. Veal if the right-of-way depicted on the drawing was a public right-of-way, to which J. Veal answered in the affirmative. M. McKeller objected on the grounds of speculation.

E. Dugger asked how J. Veal obtained that knowledge. J. Veal testified that he had reviewed City Council minutes about a condemnation vote and a declaration of taking that used road-opening language to imply public dedication. M. McKeller objected, arguing that since the documents were not in evidence, they must speak for themselves. A. Mercaldo sustained the objection, noting the files were missing from the approved evidence packet.

E. Dugger asked if any alternative plat or survey in the packet clarified where a driveway connects with the unverified right-of-way. Noting the previous document applied to Parcel 1, J. Veal asked the Board to look at the Parcel 2 materials. He showed that the Parcel 2 drawing depicted an easement running from the private property straight to the existing road. Asked by Dugger for more records showing driveway placement relative to the right-of-way, Veal had the City Planning Department's vicinity map displayed. He used it to pinpoint the driveway connections, explaining the drawing used county GIS data to show the right-of-way overlay. M. McKeller objected, arguing Veal's interpretation of the GIS data was speculative.

E. Dugger asked J. Veal about other packet items showing the driveway's right-of-way connection. J. Veal pointed to the Parcel 2 submission, which showed an easement running from private property to the road. At Veal's request, the Board displayed the City's vicinity map. He used it to pinpoint the proposed connections, explaining the drawing relied on county GIS overlays. M. McKeller interjected, objecting that Veal's take on the GIS data was speculative.

E. Dugger concluded the witness examination and requested permission to deliver a closing statement, noting that the applicant was finished presenting evidence.

E. Dugger contended that existing files, including the application packet and records reviewed during J. Veal's testimony, gave Zoning Administrator A. Bland sufficient information to decide on the permits. He argued that Veal's testimony, backed by official government documents, clearly proved where the driveways would enter the public right-of-way. Dugger concluded that if these materials were considered insufficient, no realistic standard could ever be met and thanked the Board.

M. McKeller presented his closing statement, contending that the application materials simply did not contain enough information to make a favorable determination. He noted that had additional data been provided, a framework might have been established to ensure the driveway could be constructed properly. M. McKeller argued that given the extreme paucity of information regarding how the driveway would interact with the trail, there was no viable way for the project to go forward. He concluded by asking the Board to uphold the original decision made by the Planning Department.

A. Mercado closed the public hearing and brought the Board into internal deliberations. Calling for member comments, he reminded them that their sole task was deciding if the original application held enough data to issue a permit. He noted the City's initial denial was based on a lack of information and opened the floor for discussion.

Board Attorney B. Gulden advised members to evaluate the entire approved record during deliberations. He noted this encompasses the application packet, A. Bland's presentation, and J. Veal's testimony from both hearings. He reminded the Board that they were acting in place of the Zoning Administrator and Assistant Planning Director to judge if the submitted data was sufficient to review the permit.

Board Attorney B. Gulden clarified that the Board lacks the authority to issue permits. He instructed members that closing arguments are not evidence, meaning their decision must rely strictly on official exhibits and witness testimony. Finally, he noted that the Unified Development Ordinance (UDO) standards must guide their final determination.

At G. Pearson's request, Board Attorney B. Gulden reviewed the regulatory standards. He noted that new developments or major improvements with public street frontage must upgrade all frontages to match code. Developments without frontage must extend and connect to a public street in all cases. He clarified that these public extensions and improvements—even those past the property line—are the developer's sole responsibility. Finally, B. Gulden cited a rule stating that driveways and curb cuts must be between 12 and 24 feet wide where they intersect the street's right-of-way margin.

G. Pearson noted for the record that the subject property sits outside the Brevard city limits. A. Mercado clarified that the land is situated within the Extraterritorial Jurisdiction (ETJ) instead of the city limits.

G. Pearson spoke in favor of upholding the Planning Department's decision. While she found the aerial trail map and historical surveys informative from a staff perspective, she emphasized the City's core objection: the application failed to show how the proposed driveways would interact with the trail or how access would work at the trailhead. G. Pearson concluded that although the applicant had the opportunity to clearly illustrate how the driveways would cross the trail, that crucial data remained missing and was not apparent in the submission.

J. Tate concurred, stating that from the perspective of City staff, the application materials lacked sufficient clarity from the outset.

R. Wood agreed, noting that while the applicant tried to introduce new information during the appeal, the proper remedy was to file a new application. He stated that based strictly on the data available to the Planning Department at the time of review, he would move to uphold the administrative denial.

G. Pearson stressed that this conclusion aligns with the Unified Development Ordinance (UDO), which explicitly makes all required extensions and improvements the developer's sole responsibility.

A. Mercaldo made the following motion:

Based on the Board's deliberations and comments regarding case AP-25-0001—the administrative appeal of the City of Brevard Planning Department's denial of permits ENC-25-006 and ENC-25-007 for the installation of driveways on the properties identified as 231 Pinnacle Road and 245 Pinnacle Road, Brevard, North Carolina—I move that the Board adopt findings of fact and conclusions of law affirming the Planning Department's decision in its entirety. The administrative denial is affirmed due to a critical lack of information required by A. Bland that the applicant failed to provide. In accordance with, and strictly limited to, the record presented, I move that the Board affirms the City's decision as a whole. R. Wood seconded the motion, and the motion carried unanimously.

B. Consideration of APP-26-0001 – 221 Pinnacle Rd

J. Veal requested a continuance to a later date, thanking the Board for an informative session. In the interest of time for all participants, he formally requested a continuance for case AP-26-0001 (221 Pinnacle Road). A. Mercaldo asked to clarify if the applicant was making a formal request, and J. Veal confirmed that he was.

B. Gulden noted the request and advised that the Board must make a motion to continue the case to a date and time certain, recommending June 2nd at 3:00 PM.

R. Wood made a motion to continue case AP-26-0001 to June 2 at 3:00 PM at Brevard City Hall. G. Pearson seconded the motion, and the motion carried.

X. REMARKS

None

XI. ADJOURN

A. Mercaldo made a motion to adjourn the special-called meeting. R. Wood seconded the motion, and the meeting officially concluded at 3:08 PM.

Alan Mercaldo, Vice Chair

Edievith Gass, Board Clerk

DRAFT

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, May 5th, 2026 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a special called meeting on Tuesday May 5th, 2026, at 3:00 PM.

Members Present: Reid Wood
 Jackson Tate
 Alan Mercaldo
 Gilly Pearson

Members Absent: Peter Offen

Staff Present: Brian Gulden, Board Attorney
 Katherine Poe, Planner
 Aaron Bland, Assistant Planning Director
 Vith Gass, Board Clerk

Guests: Connie Mield-Perry, owner of 775 Camptown Rd.
 Paul Perry, Applicant
 Kyle Halloran, Landscaped Architect
 Jeff Martens, Applicant

I. WELCOME

Vice-Chair, Alan Mercaldo, called the meeting to order at 3:11 PM and welcomed those presents.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

A. Mercaldo had the Clerk certify that a quorum from the Board was present.

IV. APPROVAL OF AGENDA

R. Wood moved to approve the agenda. J. Tate seconded the motion. The motion carried.

V. APPROVAL OF ORDER

A. VAR-26-0003

On a motion by J. Tate, seconded by G. Pearson, the Order was approved as written.

VII. UNFINISHED BUSINESS

A. Consideration of VAR-26-0001 – 775 Camptown Rd.

A. Mercaldo called the public hearing for a variance request submitted by Connie Miels-Perry regarding the property at 775 Camp Town Road (GR-8 Zoning District).

A. Mercaldo explained the quasi-judicial nature of the proceedings and the Board's role in making specific findings of facts. He then inquired if any party wished to request standing in the case and noted that no requests for standing were made.

The following were sworn: Connie Miels-Perry, Paul Perry, and Katherine Poe. No ethical conflicts were found. A. Mercaldo opened the hearing.

A. Mercaldo inquired if any Board members had ex-parte communications or contacts concerning the case; none were reported. He further asked if any member had a conflict of interest or was otherwise unable to serve as an impartial decision-maker in the matter, and no conflicts were declared. Finally, A. Mercaldo asked if any party wished to object to any member of the sitting panel, and no objections were raised.

Board Attorney B. Gulden informed the applicant that due to an unexcused absence, only four of the five Board members were present. He explained that because North Carolina law requires a four-fifths (4/5) supermajority to grant a variance, the applicant would need a unanimous vote from all four sitting members to secure approval. Acknowledging the strict voting threshold, the applicant elected to proceed with the hearing.

K. Poe presented her staff report, a portion of which follows:

Background

The applicant, Connie Miels-Perry, owns property at 775 Camptown Rd, which is located in the General Residential-8 (GR-8) zoning district and in the City's municipal limits. The parcel identification number is 8597-90-2186-000.

The applicant is requesting a variance from UDO Chapter 2.8.D(1), to allow a chain link fence in their front yard. The ordinance language states that fences must be made of "brick, stone stucco, wrought iron, wood, or other materials similar in appearance and durability." It further states that chain link fences may only be used in the side and rear yard.

"D. Fence and wall materials shall conform to the following requirements:

1. GR and RMX districts:

1. All fences and walls must be of brick, stone, stucco, wrought iron, wood, or other materials similar in appearance and durability, except that chain link or woven wire may be used in the side and rear yards.

2. All other wire fences, including barbed wire or concertina wire, are prohibited.

3. Nothing in this chapter shall prevent the administrator from approving architecturally variant uses of material to allow creative fence design, such as the contemporary look of heavy-gauged welded wire panels framed in timber.

4. The use of plastic plumbing pipe is a prohibited fence material."

Under the City ordinance, yard designations are defined strictly by public right-of-way locations rather than the direction the house faces. Because the applicant's property abuts two street frontages—Camptown Road and Blueberry Hill Road, it is classified as a multi-frontage lot with two front yards. By definition, a front yard encompasses the portion of the lot between the front building line and the right-of-way. The applicant's fence violates GR district standards because it is positioned within both of these frontages, covering the entirety of Blueberry Hill Road and most of Camptown Road.

Discussion

This case stems from a January 2026 zoning violation regarding an unpermitted black chain link fence on a double-frontage lot bounded by Camptown Rd and Blueberry Hill Rd. The City denied the owner's retroactive permit application because the UDO prohibits chain link fencing in all GR district front yards. Although the owner unknowingly bypassed City rules, they did obtain approval from the Straus Park ECC, which they claim actually mandates this specific material. The owner plans to present this conflict as their primary argument at the hearing.

Following city staff's presentation, the Board had no questions. P. Perry, husband of applicant K. Poe, stepped forward to testify. He submitted printed reference materials to the Board, which were formally accepted and admitted into the public record.

During his testimony, P. Perry outlined the severe topographical challenges of the lot, specifically its unusual shape and a 20-foot steep berm where the two streets meet. These factors heavily constrained driveway access, vehicle turnaround space, and the layout of a secure yard for their dogs. To solve this, the applicants hired a land planner to draft a preliminary layout. This plan was reviewed by Planning Director Paul Ray, who verified in writing that the setbacks and rear yard placement correctly matched city street classifications. Confident in this official guidance, the applicants went ahead with buying the lot.

P. Perry further explained that they followed all subdivision guidelines with the Straus Park ECC. Although the applicants proactively asked to use aluminum pickets instead of chain link, the ECC rejected the request and stated that black or bronze chain link was the sole permitted material. As a result, the four-foot black chain link fence was explicitly drawn on all plans through final ECC approval. Operating under the assumption that a city-based subdivision would not mandate a violation of city rules, the owners acted in good faith. P. Perry closed by stating that a hardship variance is warranted because the fence is located strictly within the interior of the lot, sitting up to 30 feet away from the actual property line.

P. Perry called Kyle Halloran to the stand as a witness. Following the administration of the oath, K. Halloran testified to his professional background, confirming he is a licensed landscape architect practicing in North Carolina for five years, with an additional ten years of licensed practice in Texas. A. Mercaldo inquired if the Board had any objection to accepting the witness as an expert in landscape architecture. There being no objections, the witness was qualified as an expert, and A. Mercaldo directed Mr. Halloran to proceed.

K. Halloran testified that the proposed fence is an interior, heavily buffered structure set 7–33 feet from the property line and screened with native Rhododendron, bunch grasses, and cherry laurels, satisfying ECC requirements. Following a brief public disruption, A. Mercaldo restored order as K. Halloran noted that elevation differences and vegetation render the fence invisible from the road.

P. Perry added that the Straus Park ECC required mature landscaping. She stated that the installed buffer plants were five feet tall at planting and will continue to grow and fill out alongside the skip laurels and other vegetation surrounding the fence.

P. Perry presented a video walkthrough of the site to the Board. The video showed the side yard gate from the driveway before transitioning to a street-level view along Camptown Road. There, P. Perry highlighted the mix of original berm vegetation and new ECC-mandated plantings. He noted that although some plants had died since the installation three months ago, they were meeting a landscaper on Monday to arrange replacements. The video ended at the intersection of Camptown and Blueberry Hill Roads, panning from the street sign back toward the house and following the staked property line.

P. Perry concluded his testimony by explaining that chain link was not their first choice and that the fence is more visible from their own house than from neighboring properties. He stated they used the material solely because the ECC required it. He noted that the ECC has since updated its rules because of this situation. As shown in the newsletter provided, the HOA now allows aluminum or split-rail fences, both of which are permitted by the City. However, P. Perry noted this change came after the fact for them.

A. Mercaldo noted that the Board's role is strictly limited to applying the City UDO, not ruling on Straus Park ECC requirements.

A. Mercaldo asked city staff member K. Poe to confirm that chain link fences are only banned in front yards, which K. Poe verified as correct. A. Mercaldo then asked if the regulation originally targeted traditional gray galvanized chain link.

K. Poe stated the ordinance was passed before her time but noted that City Council simply did not want chain link fences in front yards. A. Mercaldo then asked if the Board had any more questions for staff or the applicants.

Board member G. Pearson sought clarification on the extent of the violation, inquiring how many linear feet of fencing would require replacement to satisfy the UDO, given that chain link remains permissible within the rear yard. K. Halloran replied that they followed P. Ray's initial guidance on front and side setbacks, and that the side yard was only treated as a front yard once the fence regulations were applied. P. Perry

agreed, noting that because the lot faces two streets, the UDO regulates both areas as front yards for fencing rules, even though they have different structural setback rules.

K. Poe clarified that there is a difference between a setback and a technical front yard under the UDO. She noted that while the lot is double-fronted and requires a 15-foot setback on both sides, fence regulations do not look at setbacks. Instead, they look at what qualifies as a front yard, which the UDO defines as any area from the building plane to the street. Since this property faces two streets, both sides are considered front yards, and the city's front-yard fencing restrictions apply to both.

P. Perry argued that the issue is not whether a fence is allowed, but simply the type of material used. K. Halloran answered G. Pearson's earlier question, stating that the non-compliant section measures 181 linear feet, which G. Pearson concluded was a substantial amount.

K. Poe reiterated city staff's position, explaining that any fencing extending from the side-building planes out to the respective roads falls within the legally defined front yard. Consequently, chain link material remains strictly prohibited within those boundaries.

P. Perry argued that chain links are allowed along the 25-foot rear yard setback. K. Poe agreed but noted that the fence must stay behind the front building plane, opposite the higher-classification street. She explained that while this determines where the rear setback sits on a double-fronted lot, fence rules are completely separate. She acknowledged the rules are confusing but emphasized that fencing restrictions are found in their own distinct section of the UDO.

Vice-Chair A. Mercaldo closed the evidentiary hearing to begin Board deliberations.

J. Tate stated that the private committee's decisions were made completely independent of the City's zoning framework. He noted a complete lack of communication between the ECC and the City, pointing out that the ECC should have known the material was prohibited by the City and informed the homeowner. However, because none of that occurred, J. Tate concluded the issue was outside the Board's purview. A. Mercaldo agreed with this assessment.

R. Wood agreed, stating that the Board must follow the UDO, which does not allow chain link fences in front yards. G. Pearson suggested reviewing the variance elements, asking if anyone felt that forcing the applicant to use another material created an unnecessary hardship. She noted that the main issue seemed to be the cost of replacing the fence. J. Tate countered, reminding the Board that financial cost is not a legal consideration for a variance.

Board Attorney B. Gulden explained that cost can sometimes be considered if it connects directly to a site hardship. He gave the example of a lot with an existing well or septic tank, where the cost to move that infrastructure to place the house correctly would be a valid consideration. He concluded, however, that financial cost on its own can never be used as a hardship.

G. Pearson stated that since average homeowners are not zoning experts, the applicant logically relied on the HOA. She noted that while the Board does not enforce HOA rules, the hardship was not self-imposed. She argued the applicant acted in good faith because it is

reasonable to expect Straus Park to comply with city rules. However, she concluded by pointing out that this represents only one of the four elements needed to approve a variance.

B. Gulden explained that all four elements must be satisfied to grant a variance. He noted that if the Board goes through the criteria and finds that the facts do not support even one of the elements, they can stop right there. If any single element is not met, the Board must deny the variance.

G. Pearson contended that satisfying the necessary variance criteria would be difficult for the applicants. She explained that the hardship did not result from unique physical conditions inherent to the property itself. Instead, she noted that the hardship directly resulted from compliance with Straus Park's guidelines—a private regulatory conflict that the Board is not legally permitted to consider as a basis for a variance.

A. Mercaldo reviewed the four required elements for a variance: that a strict application of the UDO—not HOA guidelines—creates an unnecessary hardship; that the hardship is due to physical traits unique to the property, like size or topography; that it was not self-imposed; and that it secures public safety and substantial justice. With those criteria stated, he asked if any Board member was ready to make a motion.

Board member J. Tate made a motion to deny Variance Application V-26-0001, a request by Connie Miels-Perry for relief from UDO Chapter 2.8.D regarding front-yard fence material restrictions at 775 Camptown Road (Zoning District: GR-8).

The motion to deny was grounded in the following proposed findings of fact relative to the statutory thresholds:

Unnecessary Hardship: Granted, the strict application of the code inflicts a financial and administrative burden regarding the removal and replacement of the current infrastructure.

Peculiar Conditions: Denied. The hardship is not a product of unique physical site attributes, location, size, or topography. While the lot is a double-frontage parcel, the core non-compliance stems entirely from the chosen construction material. A single-frontage lot featuring the same material would result in an identical violation; therefore, the land's physical configuration did not generate the conflict.

Consequently, based on the failure to satisfy the statutory criteria, J. Tate moved to deny the variance request to permit the chain link fence to remain in the front yard. The motion was seconded by R. Wood and passed unanimously (4-0).

P. Perry asked what the denial meant for their property. Board Attorney B. Gulden explained that the chain link fence must be removed from the front yard. He suggested that the applicant's landscape architect work with city staff to find exactly where the front yard ends and coordinate on allowed replacement materials.

Addressing P. Perry's question regarding a potential rejection by the HOA, Mr. Gulden clarified that he could not provide legal counsel. He acknowledged that the situation placed the property owners in a regulatory dilemma but reiterated that the Board lacks the jurisdiction to consider private ECC rules and must strictly enforce the UDO. He concluded that any covenant conflicts must be settled directly with Straus Park.

With no further business, the hearing was officially closed

VIII. NEW BUSINESS

A. Consideration of SUP-26-0003 – 21 Upper Glade Creek Rd.

Vice-Chair A. Mercaldo called the hearing for a Special Use Permit to operate an Estate Liquidation Business submitted by Jeff Martens regarding the property at 21 Upper Glade Creek Rd in Pisgah Forest.

Vice-Chair A. Mercaldo explained the quasi-judicial nature of the proceedings and the Board's role in making specific findings of facts. He then inquired if any party wished to request standing in the case and noted that no requests for standing were made.

The following were sworn: Jeff Martens and Katherine Poe. No ethical conflicts were found. Vice-Chair, A. Mercaldo opened the hearing.

K. Poe presented her staff report, a portion of which follows:

Background

Jeff Martens, of Light in the Attic Estates, applied to the City on March 10, 2026, for a Special Use Permit (SUP) to operate an Estate Liquidation Business (which is defined as a Storage use) at 21 Upper Glade Creek Rd in Pisgah Forest. The property is zoned Corridor Mixed-Use and, in the City's Extra Territorial Jurisdiction (ETJ). The proposed use requires a Special Use Permit from the Board of Adjustment per the Unified Development Ordinance (UDO) Chapter 2.2 Use Matrix.

Storage is defined in the UDO Chapter 19.3 as follows:

"Storage and disposal use: Facilities for the storage or subsequent disposal of furniture, household goods, or other commercial goods of any nature. This includes: chemical storage facilities; mini-warehouses and self-storage facilities; junk yards / salvage yards; solid waste disposal; outdoor storage yards; and warehouses and indoor storage."

Light in the Attic Estates buys and sells household items online through an auction. The building at the property will be used to house the items until they are sold. The business will be inside the building, with deliveries periodically. The owner will discuss more details of the business at the hearing.

The Special Use Permit (SUP) does not have any additional standards or requirements in the UDO under Chapter 3.11.3 since the business is household items and the storage is inside of the building.

The 2030 Comprehensive Land Use Plan (CLUP) has a future land use as *"Activity Center-Minor: provide a setting for services and activities that are supportive of surrounding residential neighborhoods. This character area may center around a community anchor, such as a school, park, library, or small commercial district. Uses and design considerations call for context-sensitive solutions, fostering community identity and a sense of shared ownership of neighborhood resources. Typical Uses: Institutional; small-scale commercial; single- and multi-family residential; public gathering space."*

Investigation

The property is a warehouse type building that fronts Hendersonville Hwy but is located far back on the property. The properties surrounding the proposed use are of similar nature; a cabinet business is directly across Hendersonville Hwy, and a self-storage facility is adjacent the property to the west.

Following the staff presentation by K. Poe, the Board offered no questions. A. Mercaldo then called Jeff Martens to provide testimony.

As a preliminary matter, Board Attorney B. Gulden questioned the witness regarding his property interest, asking if he had finalized the purchase and closed on the subject property. J. Martens confirmed the closing of the record.

Board Attorney B. Gulden provided clarification regarding the applicant's standing. He explained that while the original application contained an authorization letter from the prior owner, JLBLS, LLC, for J. Martens to act as their agent, a deed search conducted that day revealed that J. Martens had since officially closed on the property. He requested that Mr. Martens formally confirm this ownership update during his testimony so it could be incorporated into the official record.

The applicant, J. Martens, provided sworn testimony regarding his ownership status and the operational characteristics of his estate liquidation business to satisfy the statutory requirements for a variance.

The applicant testified that his business operates entirely indoors with no outdoor storage. Inventory is sorted off-site, and only standard household goods are brought to the warehouse. The facility runs Monday through Friday during regular business hours with only two to three employees. To protect public safety, the applicant entered a standard contract with the record showing that hazardous chemicals are banned from the site. Because all bidding takes place online, the business does not cause traffic, late-night noise, or public crowding.

The applicant stated that all business operations will be kept indoors, eliminating the outdoor storage problems caused by the previous occupant. To prove the business will not hurt local real estate, he cited his second location in Hendersonville, North Carolina. That facility has operated near downtown since 2023 with no neighbor complaints, while surrounding property values have continued to rise.

The applicant noted that his company is an established local small business that has previously operated within Brevard city limits for two years. He stated that intended improvements to the site are strictly cosmetic and structural maintenance (paint, plumbing, and electrical updates), preserving the existing building footprint while activating a vacant site in a manner that supports the local community.

A. Mercaldo asked what types of businesses surround the property. J. Martens replied that the area is entirely commercial, pointing out a storage facility two doors down and Rice Furniture across the street. Because of this layout, he stated his business fits perfectly in

harmony with the neighborhood. A. Mercaldo then asked a follow-up question regarding whether any new structures were planned for the site, to which J. Martens replied that no new construction would take place.

Seeing no additional inquiries, Vice-Chair A. Mercaldo formally concluded the evidentiary portion of the hearing, thanked the applicant, and entered the matter into Board deliberation.

G. Pearson stated that the presentation showed the business meets all the necessary elements for approval and raised no concern. R. Wood noted that the main reason a special use permit is needed is simply because the unique business type is difficult to label under current zoning rules. A. Mercaldo agreed, clarifying that the land-use matrix explicitly requires a Special Use Permit (SUP) for this specific business classification within the Commercial Mixed-Use (CMX) zoning district.

With Board deliberations concluded, Vice-Chair A. Mercaldo moved to approve Special Use Permit Application SUP-26-0003 for applicant Jeffrey Martens to operate an estate liquidation business (classified as a storage/retail use) in the CMX zoning district at 21 Upper Glade Creek Road.

The motion to approve was supported by the following formal findings of fact:

Ordinance Compliance: The business matches the text and goal of the UDO and city land-use rules. Sorting household goods is a low-impact business that fits right in with the surrounding commercial zone.

Site Compatibility: The property will be run exactly according to the submitted layout plans. Since changes are limited to minor indoor maintenance and painting, the building footprint stays the same. Removing the old boat clutter left in the yard by the previous tenant will also improve the street's appearance.

Safety & Values: The use will not hurt public health or lower nearby property values. The applicant proved that hazardous materials are banned from the building by contract, and since all bidding is online, the business will not cause heavy traffic or public safety issues.

Based upon these findings, A. Mercaldo moved to grant the Special Use Permit to allow the estate liquidation business to operate at the subject property in accordance with the submitted evidence. G. Pearson seconded the motion. Upon a call for the vote, the motion passed unanimously.

K. Poe instructed J. Martens that he cannot move his business inventory into the property until the official order is signed. She noted the Board could approve the order electronically or wait until the next meeting. Mr. Martens asked to receive it as soon as possible.

Board Attorney B. Gulden committed to drafting the document efficiently, clarifying that he would transmit the draft to the clerk to manage the electronic routing and distribution to the full Board. He requested that members closely audit the text and report any administrative or technical errors directly to him. Mr. Gulden acknowledged Jackson's diligence in identifying errors in the prior record and reiterated his intent to expedite the current draft. He noted that statutory mandates dictate that the final order must be executed in writing, approved by a vote of the Board, and officially recorded before becoming legally effective.

X. REMARKS

A. Mercaldo stated that he suspects the Board is not done dealing with this appeal. R. Wood pointed out that the applicants might not realize they can just reapply for a driveway permit and complete the requirements from there. B. Gulden noted that the other pending appeal might have different reasons for denial based on a separate set of facts.

G. Pearson suggested that Board members could use their own personal observations of the area's topography, such as from hiking the Bracken Mountain Trail, to help make their decision. Board Attorney B. Gulden agreed, explaining that members do not have to leave their personal knowledge at the door. He noted that if a member knows from firsthand experience that a physical feature like a roadbed is not where a plan claims it is, they can legally use that information now.

R. Wood pointed out that the applicant kept trying to talk about the right-of-way, even though the Board was only supposed to be looking at the application itself. Board Attorney B. Gulden agreed and clarified that members cannot use personal knowledge to disprove uncontested expert facts. He explained that if an engineer testifies to a specific fact, a member cannot simply say their personal opinion differs. He concluded that while members can use their own knowledge to understand a site, they cannot use it to override official expert evidence.

Vice-Chair A. Mercaldo expressed appreciation for the session and noted that he anticipated Chairman P. Offen's return to preside over subsequent proceedings regarding the case.

XI. ADJOURN

Vice Chair A. Mercaldo called for a motion to adjourn. J. Tate moved to adjourn, and R. Wood seconded the motion. The motion passed unanimously by voice vote, and Vice Chair, A. Mercaldo officially concluded the meeting at 4:26 PM.

Alan Mercaldo, Vice Chair

Edievith Gass, Board Clerk

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, June 2nd, 2026 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a special called meeting on Tuesday May 5th, 2026, at 3:01 PM.

Members Present: Peter Offen, Chair
 Jackson Tate
 Reid Wood
 Gilly Pearson
 Alan Mercaldo
 Amy Kelton

Members Absent: None

Staff Present: Brian Gulden, Board Attorney
 Katherine Poe, Planner
 Paul Ray, Planning Director
 Vith Gass, Board Clerk

Guests: Robert Lee, Applicant Chill-Lee Corporation DBA Dolly's Dairy Bar.
 John Noor, Representing Attorney for Big Inc.
 Jamie Pritchard – Property Manager for El Gato, LLC
 Scott Bridge – Tenant
 John Connelly - Tenant
 Davis Whitfield-Cargile – Representing Attorney for El Gato

I. WELCOME

Chair, Peter Offen called the meeting to order at 3:01 PM and welcomed those presents.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

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

IV. APPROVAL OF AGENDA

J. Tate moved to approve the agenda. G. Pearson seconded the motion. The motion carried.

V. APPROVAL OF MINUTES**A. Draft Minutes 04/21/2026**

R. Wood moved to approve the minutes as written. P. Offen seconded the motion. The motion carried.

VI. APPROVAL OF ORDER**A. VAR-26-0001****B. APP-25-0001**

Chair, P. Offen asks if there are any corrections to the orders as distributed. Hearing none, the orders stand approved, and the Chair will now entertain a motion.

On a motion by A. Mercaldo, seconded by P. Offen, the Orders were approved as written.

VII. NEW BUSINESS**A. Consideration of VAR-26-0003 - 128 Pisgah Hwy**

Chair P. Offen introduced the first case. The applicant, Robert Lee of Chill-Lee Corporation, is requesting a variance from Section 10.7.D.1 of the UDO. This request is to allow an exception to the rules for bringing a non-conforming parking lot up to current standards.

P. Offen explained the quasi-judicial nature of the proceedings and the Board's role in making specific findings of facts. He then inquired if any party wished to request standing in the case and noted that no requests for standing were made.

The following were sworn: Robert Lee, John Noor and Katherine Poe.

P. Offen inquired if any Board members had ex-parte communications or contacts concerning the case; none were reported. He further asked if any member had a conflict of interest or was otherwise unable to serve as an impartial decision-maker in the matter, and no conflicts were declared. Finally, A. Mercaldo asked if any party wished to object to any member of the sitting panel, and no objections were raised.

B. Gulden asked if any Board members had conducted a site visit and formed any initial conclusions. G. Pearson noted she had visited the property several times but held no conclusions or determinations at present.

No ethical conflicts were found. P. Offen opened the hearing.

K. Poe presented her staff report, a portion of which follows:

Background

Dolly's Dairy Bar is located at 128 Pisgah Hwy in Pisgah Forest, is zoned Downtown Mixed Use (DMX) and is within the City's Extra Territorial Jurisdiction (ETJ). The parcel identification number is 8597-45-1544-001.

The building and business are owned by Chill-Lee Corporation, doing business as Dolly's Dairy Bar. The underlying land is owned by Jerry Brown of Big Inc. Attorney John Noor has been formally appointed to represent Big Inc. in this matter.

Dolly's sustained damage from Hurricane Helene and construction repairs were estimated at \$60,000 per the permit application. The County tax office has appraised the building's value (primary structure) at \$43,430. It further states that chain link fences may only be used in the side and rear yard.

According to the Unified Development Ordinance

The primary building is a grandfathered, nonconforming structure under current DMX zoning. Due to the high cost of the proposed repairs, the project has been officially designated as a Substantial Damage/Improvement.

UDO 14.3.E.(5): "Significant damage and/or significant improvement to any nonconforming structure that is located within a lot containing any other non-conforming condition shall, to the maximum extent possible, require the satisfaction of the all other requirements of this ordinance and the elimination of all non-conforming conditions. Examples include, but are not limited to, the provision of sufficient parking and landscaping and buffering, and public improvements (i.e., sidewalks and other), and full compliance with all applicable signage, flood hazard reduction, surface water protection, and stormwater management provisions.

The parking lot is currently not paved with permanent non-erodible surface treatment, which is a requirement of Chapter 10.7.D.1. It is a gravel lot.

Chill-Lee Corporation and the City executed an Infrastructure Improvement Agreement to complete the parking lot construction by March 28, 2027, as NCDOT project R-5799 roundabout construction is underway and will be constructing future curb cuts.

Discussion

The City approved the permit for repairs based on the signed Infrastructure Agreement that the parking lot will be brought into compliance with the UDO. The owners did add one ADA parking space as part of the completed repairs.

Following city staff's presentation, K. Poe introduced Stephanie from staff to clarify the historical UDO rules and the permit approval process for this case. Poe noted that recent, substantial text

amendments to non-conformity regulations (including one passed the previous day) have changed current policies, making Stephanie's presence helpful for addressing timeline-specific questions regarding the paving requirement.

Stephanie explained that the most significant amendment, approved by the Board the previous evening, altered the non-conformity threshold. Specifically, the regulatory bar for a project to be considered 'new construction' was increased from 66% to 75%. Once a project reaches this 'new construction' level, all existing non-conforming conditions must be brought into compliance. Additionally, she noted that standard tax valuation methods may be heavily skewed in this case, as the building was historically unconditioned, making it difficult to determine an accurate baseline value.

K. Poe stated that she had consulted the tax office at the time of the variance application and found the property's assessed value listed as \$43,430. She noted, however, that it was unclear whether this figure reflected the property's pre-damage or post-damage valuation, as it simply represented the baseline data on file. Additionally, Poe explained that the applicant's improvement application had been approved based on an Infrastructure Improvement Agreement, which stipulates that the construction of the parking lot must be completed by the spring of 2027.

B. Gulden noted that under Section 143.755, applicants get to choose between the old and new ordinances if a change affects their project. S. Holland confirmed that the repair threshold went up from 66% to 75%. This means if an applicant's repairs cost less than 75% of the building's value, they can choose to follow the new ordinance and potentially skip bringing the building or land back into full compliance.

S. Holland noted that because the permit was already issued and closed, it remains unclear whether "permit choice" still applies. Additionally, K. Poe stated that while the improvements were approved, the only remaining outstanding issue is that the work was completed by Spring.

B. Gulden inquired whether J. Noor was familiar with the new ordinance. J. Noor replied that although he was aware of the 75% threshold, he sought additional clarification, noting that "new construction" and "substantial improvement" seem to be two distinct categories.

P. Offen noted that the application lists repair costs at \$60,000 against an appraised tax value of \$43,000, meaning the threshold is exceeded under either ordinance. G. Pearson questioned whether the calculation must rely strictly on the tax appraisal or if an alternative valuation could be used, arguing that the market value of the building is significantly higher than \$43,000 given current local real estate costs.

J. Noor mentioned that using the 75% threshold might change how they look at the building's valuation. B. Gulden explained that the applicant doesn't have to stick to the tax value; they can prove the building is worth more (like \$120,000). With \$60,000 in repairs, that's only 50%, which avoids the compliance rule. B. Gulden added that this is judged at the time of the variance request, prompting P. Offen to ask if the permit and construction are the actual reasons the variance is needed in the first place.

A. Mercaldo asked if the date of the variance request matches today's hearing or the day the application was originally filed. B. Gulden responded that today counts as the formal date of the variance request. He explained that this timing matters because the city just passed an ordinance change yesterday.

J. Noor mentioned that they can still check if yesterday's ordinance change means they don't need a variance at all, or if their project even counts as a substantial improvement. He believes they should go ahead with the variance request today, see the outcome, and then look at the new rules since the change doesn't block their right to ask for one. He then asked the board for a short break to talk with his client about possibly pausing the session to figure out their next steps before making a final decision.

P. Offen and B. Gulden both agreed that the plan was fair. B. Gulden explained that since the council voted yesterday, the new rule is active right now, provided the paperwork has already been signed and filed with the clerk.

The Board granted J. Noor a brief recess to consult with his client regarding a potential procedural pause to determine their next steps before a final decision is made. The hearing officially went into recess at 3:21 PM.

Agenda Modifications

While the applicant was excused for a recess, B. Gulden explained that of the two appeals from the previous month, one had been rescheduled for today's meeting while the second was omitted from the agenda. He noted that because the appellant's attorney and the city attorney agreed to defer the second case to the August session, the agenda needed to be amended.

B. Gulden requested a motion to reopen and modify the agenda to place this unfinished business immediately after new business, allowing for a formal continuance to August 8. Chair P. Offen moved to reopen the agenda, G. Pearson seconded the motion, and the motion carried. *See VIII Unfinished Business below.*

At approximately 3:31 PM, Chair P. Offen moved to leave VAR-25-0003 open and proceed to VAR-26-0004. The motion was seconded by J. Tate and passed unanimously.

B. Consideration of VAR-26-0004 – 209 N. Caldwell St.

Chair P. Offen called the hearing for a variance to allow a ground sign with multiple panels to display the tenant businesses submitted by Zachary Bennett regarding the property at 209 N Caldwell St.

Chair P. Offen explained the quasi-judicial nature of the proceedings and the Board's role in making specific findings of facts. He then inquired if any party wished to request standing in the case and noted that no requests for standing were made.

The following were sworn: Jamie Pritchard, Scott Bridge, John Connelly and Katherine Poe. No ethical conflicts were found. Vice-Chair, A. Mercaldo opened the hearing.

K. Poe presented her staff report, a portion of which follows:

Background

209 N Caldwell St is in the Downtown Mixed-Use (DMX) zoning district and the Downtown Development Overlay District (DDOD), within the City's municipal limits. The parcel identification number is 8586-52-4162-000.

Zachary Bennett, the applicant, has filed for a variance to allow a ground sign with multiple panels to display the tenant businesses. Per the Unified Development Ordinance Chapter 12.9.C.1, ground signs are allowed in any zoning district that *"lies outside the Downtown Development Overlay District. Businesses located in this overlay district may display A-frame signs as described herein."*

The property is owned by El Gato LLC, and the attorney representing the LLC in this case is Davis Whitfield-Cargile.

Discussion

The Downtown Overlay District extends to this parcel. Therefore, no ground signs are allowed per the UDO Chapter 12.9.C.1 as stated above.

The allowable maximum size for a ground sign in the DMX district that lies outside the DOD is 32sqft.

The ground sign (panel sign) is for increased visibility per the applicant, so drivers can find the businesses at this location. No existing ground sign was located at the site within any recent timeframe.

Following her report, K. Poe opened the floor for questions from both the Board and the applicant.

Chair P. Offen questioned whether the new party building across the street is permitted a freestanding sign. K. Poe clarified that under general statutes, an existing sign may only be replaced within a strict two-year window of its removal. Because historical Google data confirms no ground sign has existed at that location for 15 to 20 years, there is no established precedence to grant an exemption to the state statute.

A. Mercaldo asked what kind of signage is allowed downtown. K. Poe explained that because of tight space constraints, ground signs aren't permitted, businesses are usually limited to A-frame or wall signs, adding that the downtown overlay district regulations apply to the subject property.

G. Pearson inquired whether any potential wall signs on the buildings would be visible from the street. K. Poe clarified that visibility would be limited, as the structures are set back a little further from the roadway.

J. Tate asked about the photos showing signs on nearby properties, wondering if those buildings were outside the district. K. Poe explained that it's a mixed area outside the overlay district, and others are inside but grandfathered in as pre-existing uses under state statute.

D. Whitfield-Cargile submitted photos of the site into the record as Exhibits 5–7, which K. Poe verified as accurate. Whitfield-Cargile established that the property is a single legal parcel featuring two buildings. He then argued that the front building on Caldwell Street blocks most of the view to the rear building from the street. Poe agreed this is true from a direct, head-on view, but noted that the rear building might still be visible when approaching from an angle.

D. Whitfield-Cargile brought up Exhibit 1 and asked K. Poe to confirm it was taken from Caldwell Street looking at the property. K. Poe agreed, saying she could see part of the building. D. Whitfield-Cargile then pointed out that you can't actually read the signs on the back building from there, which K. Poe agreed with. He also asked if the signs directly behind the front building are completely hidden from the traveling motorists on Caldwell Street, and she confirmed that they are.

D. Whitfield-Cargile then directed attention to Exhibit 2, establishing that the photograph was taken from a vantage point further south on Caldwell Street, near Charlie's Tire, looking across the street toward the subject building. K. Poe verified the location. Whitfield-Cargile noted that while a sign on the rear building is visible from this angle, the text remains illegible from the roadway, a point with which K. Poe concurred.

D. Whitfield-Cargile presented the next exhibit, establishing that the photograph was taken closer to the intersection of French Broad and Caldwell Street, which K. Poe verified. Whitfield-Cargile noted that while the existence of several signs facing Caldwell Street and one sign facing French Broad Street can be detected, the text on them remains completely illegible. K. Poe concurred with this assessment. Whitfield-Cargile argued that because the signs cannot be read, they provide no directional utility to the motoring public looking for businesses in the rear building from Caldwell Street.

D. Whitfield-Cargile then introduced Exhibit 5, confirming it was captured from across French Broad Street looking directly at the entrance of the rear building. He asserted that even from the sidewalk on French Broad Street, it is difficult to read the text of the sign on the side of the building. D. Whitfield-Cargile pointed out that the signs on-site say, 'Pet Grooming' (with a phone number), 'Fight Craft,' and one that is totally unreadable. He stressed that these signs cannot be seen by drivers on Caldwell Street. K. Poe agreed that Caldwell Street is a major thoroughfare and truck bypass route. D. Whitfield-Cargile then argued that the entire purpose of the Entrance Overlay District (EDO) is to help the motoring public find local businesses. To back this up, he pointed out that the board previously granted a ground sign variance to the Party Health Complex across the intersection for this exact reason, and Poe agreed that was correct. He concluded that these signs are completely obscured from the view of, and offer no assistance to, drivers traveling on Caldwell Street. Poe agreed with these characterizations.

D. Whitfield-Cargile asked if the proposed ground sign positioned adjacent to Caldwell Street would be significantly more effective for wayfinding than an obscured sign on the side of the building. K. Poe concurred, stating that, in her opinion, the proposed sign would be much more helpful for public wayfinding.

D. Whitfield-Cargile showed Exhibit 6, explaining it was another layout view showing how the buildings sit on the lot. He asked K. Poe if she knew when Elgato LLC bought the property, but she didn't know. He offered to show her the deed to refresh her memory.

B. Gulden requested that the exhibits be distributed for the Board's review. D. Whitfield-Cargile complied, passing Exhibits 1 through 6 to A. Mercaldo to begin circulation while expressing appreciation to Gulden for his guidance. The Board raised no objections, and the submitted evidence was formally admitted into the official record.

Following the Board's review of the photographic and documentary evidence, D. Whitfield-Cargile resumed his questioning of K. Poe. K. Poe confirmed that both structures on the parcel pre-dated El Gato LLC's acquisition of the property. D. Whitfield-Cargile established that the resulting wayfinding hardship—caused by the buildings' physical orientation to each other and the street—was an inherent, pre-existing condition that predated the current ownership, a point with which K. Poe concurred.

D. Whitfield-Cargile then used the displayed city map to point out that multiple addresses (203, 207, and 209) are tied to the parcel. K. Poe explained that while she was unsure about the specific 209 North Caldwell designation for the rear unit, these numbers are generated by the 911 addressing system and mapped via the city's GIS layer. After Poe noted that the map seemed to show five different addresses in total, D. Whitfield-Cargile confirmed that the official city GIS data explicitly recognizes five distinct addresses on this single lot, which K. Poe verified.

D. Whitfield-Cargile asked if any of the back buildings had a Caldwell Street address, and K. Poe initially agreed. Whitfield-Cargile then corrected his statement after realizing the map marker actually pointed to a house across the street. He noted his client believed the whole property used a Caldwell Street address, while Poe specified that the variance application was explicitly filed under 209 North Caldwell Street.

Referencing the previously entered photographs, D. Whitfield-Cargile asked how many businesses are operating in the back building. K. Poe knew there were multiple tenants but admitted she was surprised when D. Whitfield-Cargile stated that there are actually seven distinct units in the rear structure.

D. Whitfield-Cargile asserted that having multiple active businesses in the rear structure with signage limited strictly to the side of the building creates significant wayfinding confusion for motorists. K. Poe agreed with this statement. Whitfield-Cargile further argued that this lack of visibility imposes a severe hardship on both the property owner and the tenants by hindering safety and preventing drivers from safely navigating to the businesses. Poe concurred. Finally, Whitfield-Cargile reiterated that this structural condition pre-dated El Gato LLC's ownership of the property, a point with which Poe once again agreed.

D. Whitfield-Cargile sought confirmation that, with the sole exception of the downtown overlay district's restriction on ground signs without a variance, the proposed structure fully complies with all other design and dimensional elements of the Entrance Overlay District (EDO) ordinance. K. Poe concurred that it did. Whitfield-Cargile then noted that a ground sign is currently located immediately adjacent to the subject site at Charlie's Tire, a point with which Poe also agreed.

D. Whitfield-Cargile moved for the admission of Exhibit 7 into the official record. He noted that the exhibit consists of the property deed establishing the acquisition timeline. Whitfield-Cargile suggested that the property's layout was 'pre-existing grandfathered,' which K. Poe clarified was legally classified as a pre-existing non-conforming use.

D. Whitfield-Cargile formally marked and presented Exhibits 9 and 10, which depict a ground sign located on the Mountainside building directly across French Broad Street from the subject property. K. Poe confirmed the accuracy of the location. Whitfield-Cargile noted that while the Mountainside property sits outside the boundaries of the downtown overlay district, it remains positioned immediately across the street from his client's site, a point with which Poe concurred.

D. Whitfield-Cargile then brought up Exhibit 11, which shows the UNC Health ground sign diagonally across the street. He pointed out that this sign was successfully allowed through a variance, even though that property is inside the exact same downtown overlay district as his client's lot. K. Poe agreed that was correct.

D. Whitfield-Cargile introduced Exhibit 11, depicting a ground sign at 9 West Morgan Street. Upon questioning, K. Poe stated she did not know if the sign was grandfathered, nor did she know the historical date when ground signs became prohibited in the downtown area. He then pointed out that the sign in Exhibit 11 lists several different businesses, showing that the building has multiple tenants. He argued that when you have a building with multiple businesses inside, a shared ground sign is exactly what helps drivers find their way, and Poe concurred with this assessment.

Concluding his remarks, D. Whitfield-Cargile requested that the Board take official notice of a prior variance. He formally presented and moved to admit a copy of the variance granted to 277 North Broad Street Partners, LLC, into the official record as Exhibit 12. Hearing no objections, the Board formally accepted the document as the final exhibit.

With no further questions for K. Poe, Chair P. Offen called Jamie Pritchard, Property Manager for El Gato, LLC. Pritchard testified that she has worked with managing member Zach Bennett since before his acquisition of 209 North Caldwell Street, establishing her thorough familiarity with the property and its current uses. She then testified that the rear structure—situated behind the primary front building—contains seven separate commercial units.

D. Whitfield-Cargile used a video exhibit, pausing it to show the view from French Broad Street looking at the rear building of 209 North Caldwell Street. Upon his questioning, J. Pritchard testified that it is difficult for passing motorists to see what is inside the building and agreed that the signs on the screen are completely unreadable. Pritchard further clarified that the building houses multiple units, noting that four businesses are currently operating there, a fifth tenant is about to move in, and two additional units remain vacant.

When questioned by D. Whitfield-Cargile about building access, J. Pritchard testified that the property has multiple entrances: a side door, one facing Caldwell Street, and another on the opposite side near a future vacancy. Regarding tenancy, J. Pritchard stated the building houses three active businesses—a dog groomer, a CBD shop, and a gym—with a wrestling facility planned next. She noted that three tenants primarily use the side entrance, while one uses a front entrance facing Caldwell Street that is completely blocked from view by the building in front.

When asked by D. Whitfield-Cargile if the front building blocks the visibility of the signage on that specific portion of the structure, J. Pritchard confirmed that it does. J. Pritchard further testified that an additional unit exists on the far side of the property, featuring a door that

faces Charlie's Tire. Additionally, it was established that all of these structural and situational conditions existed prior to El Gato acquiring the building.

Responding to D. Whitfield-Cargile, J. Pritchard testified that current building signs fail to assist drivers. She confirmed the proposed sign's purpose is to help motorists safely locate onsite businesses. Furthermore, she noted that a lack of visible signage creates a hazard, causing confused drivers to slow down and hesitate near the stoplight. J. Pritchard concluded that the requested sign would successfully mitigate these traffic dangers.

Next, D. Whitfield-Cargile presented a video recorded from a vehicle traveling south on Caldwell Street toward the property. J. Pritchard verified the footage and testified that a passing motorist would have no way of knowing what businesses operate at the back of the building. D. Whitfield-Cargile pointed out that even a driver specifically looking for the dog groomer, CBD Shop, or the wrestling business, would not know where to turn, especially given how close they are to the intersection. J. Pritchard agreed, confirming that looking left from this position offers absolutely no visibility of the signage on the rear building.

D. Whitfield-Cargile stated that the new signage frame will help drivers safely navigate into the complex via North Caldwell Street or French Broad Street. He noted that drivers currently bypass the complex entirely because the rear businesses lack visible signage. J. Pritchard concurred.

D. Whitfield-Cargile reviewed the safety benefits of the proposed signage frame, stating it would correct current visibility issues caused by parked cars and poor placement. The new signage will allow motorists to safely navigate onto North Caldwell Street or French Broad Street to access rear businesses. J. Pritchard expressed agreement with the safety and wayfinding benefits.

D. Whitfield-Cargile established that J. Pritchard was familiar with the prior decision granted to the health complex across the street and that the subject property is substantially similarly situated. J. Pritchard agreed that, due to patron wayfinding difficulties, substantial justice warrants similar treatment for this property. D. Whitfield-Cargile then deferred to the Board for further questions.

In response to questioning from P. Offen, J. Pritchard confirmed that the proposed sign would not interfere with the sidewalk or existing infrastructure. J. Pritchard also informed A. Mercado that, to her knowledge, no other project components required compliance with Downtown Mixed-Use (DMX) regulations.

P. Offen requested justification for the preferred sign location over alternative sites on the property. J. Pritchard responded that the chosen location visually unifies the front and rear buildings as a single property. She noted that a corner installation was dismissed because existing posts would obstruct visibility. Additionally, P. Offen sought clarification on the size of the sign, and J. Pritchard verified that it measures under 32 square feet.

R. Wood asked for confirmation that the proposed sign would be visible to motorists stopped at the intersection, allowing them sufficient time to turn before passing the complex. J. Pritchard confirmed that it would be visible from that location.

Hearing no further questions from the Board for J. Pritchard, Chair P. Offen inquired if D. Whitfield-Cargile wished to call another witness. Whitfield-Cargile requested to call John Connelly, and the Board granted permission.

At the request of D. Whitfield-Cargile, witness John Connelly introduced himself and testified that he has operated a hemp manufacturing facility as a tenant on the property since 2019.

Referencing an on-screen layout display, D. Whitfield-Cargile established that Connelly's facility sits on the northeastern corner of the one-story rear building. J. Connelly testified that his storefront is completely blocked from view by the front building and confirmed that this structural obstruction existed long before El Gato purchased the property.

D. Whitfield-Cargile established that Connelly's current on-building sign is invisible from Caldwell Street and requires an extreme viewing angle from French Broad Street. J. Connelly affirmed that his operational history at 203 Caldwell St. provided him with comparative experience regarding the visibility benefits of roadside signage versus standard on-building fixtures. He testified that because the building is set back 100 feet from the street, customers routinely reported severe difficulties locating the facility, often circling the block before finding it.

During continued questioning, J. Connelly confirmed that a secondary sign was previously installed on the front building. While it improved wayfinding, its utility was limited strictly to northbound motorists on Caldwell Street, and it was ultimately removed because regulations prohibit tenants from placing signage on separate buildings they do not occupy. D. Whitfield-Cargile emphasized that restricting rear tenants to on-building signage creates traffic safety hazards from confused drivers, a point Connelly corroborated by testifying that a customer had spent 20 minutes circling the block earlier that day. Whitfield-Cargile then concluded his examination and deferred to the Board for any further questions.

Hearing no further questions from the Board for J. Connelly, Chair P. Offen closed the public hearing. He then invited D. Whitfield-Cargile to present a closing statement.

D. Whitfield-Cargile delivered a closing statement arguing that the application successfully met all standard legal benchmarks to justify a variance. Using the Board's March decision for the cross-street health complex as a direct precedent, he demonstrated that restricting signage to the rear building creates an unnecessary hardship and traffic safety hazard. He noted that the layout issues are unique to the property, were not self-created by El Gato LLC, and that a front ground sign aligns with the spirit of the UDO. He emphasized that substantial justice requires consistency with the nearby health complex variance and requested approval.

During deliberations, A. Mercaldo sought clarification from Board Attorney B. Gulden regarding the use of prior UDO knowledge and outside case context. Attorney Gulden advised that evaluating UDO provisions is within the Board's explicit purview and noted that case law treats sign placement as an area variance. However, he cautioned that every application must stand on its own merits, instructing the Board that while the neighboring property's variance can be considered, it cannot serve as the sole justification for approving the current request.

A. Mercaldo stated that because the existing buildings are severely set back from the roadway, restricting signage to the structures creates clear wayfinding and safety hazards. He noted the

proposed sign is properly situated away from the sidewalk to protect pedestrian traffic. G. Pearson agreed, calling the lack of building visibility a clear-cut hardship with no other viable remedy than a ground sign. R. Wood concluded that the ground sign would optimize traffic flow and reduce safety risks by eliminating sudden motorist stops.

Chair P. Offen shared a personal anecdote corroborating the property's severe wayfinding issues, noting the extreme difficulty in locating existing businesses on the site from the street. J. Tate voiced agreement with the previous board members' findings, emphasizing that the property contains two separate structures with a significant setback from North Caldwell Street, which serves as the primary thoroughfare. Tate noted that because the complex hosts multiple distinct businesses rather than a single occupant, a shared roadside ground sign is uniquely necessary. Amy Kelton concurred with these points, after which Chair Offen called for a motion from the Board.

A. Mercaldo introducing a motion to approve variance request V-26-0004 on behalf of El Gato LLC. The application requests relief from UDO Chapter 12.9.3.C to allow a freestanding ground sign at 209 North Caldwell Street, Brevard, located within the Downtown Mixed-Use (DMX) and Downtown Development Overlay Districts.

He moved that the Board adopt the following findings of fact:

- a. *Unnecessary Hardship*: An unnecessary hardship would result from the strict application of the regulations, as customer awareness and motorist wayfinding would be severely impacted.
- b. *Peculiar Conditions*: The hardship results from conditions peculiar to the property, specifically the deep structural setback that makes on-building signage impossible to see, as well as the property's corner-lot topography, which increases traffic hazards when drivers search for signs while navigating an intersection.
- c. *Not Self-Created*: The hardship did not result from actions taken by the applicant or property owner, as the applicant has done nothing since assuming ownership to create the condition.
- d. *Spirit, Purpose, and Intent*: The requested variance is consistent with the spirit, purpose, and intent of the regulations, securing public safety and achieving substantial justice. The proposed sign properly respects all right-of-way and sidewalk setbacks to protect the public.

A. Mercaldo further moved to grant the variance strictly to the extent of the areas and dimensions represented in the submitted application and site plans. He stated that the approval is subject to the sole condition that the final structure must maintain compliance with all other general UDO ground sign regulations.

Board Attorney B. Gulden requested clarification on whether the applicant would formalize an agreement to ensure the proposed sign respects standard DMX dimensional guidelines, such as the 32-square-foot area cap. D. Whitfield-Cargile replied that while staff's prior testimony verified the application's baseline conformity, the motion could explicitly bind the approval to the submitted site plans or DMX provisions. Chair P. Offen added that because variances are a permanent property right, including specific compliance parameters in the motion is critical to preventing future owners from exceeding standard DMX limits.

G. Pearson seconded the motion, and the motion passed unanimously. Chair P. Offen declared the variance approved, reminding the applicant that the authorization is contingent upon the sign, remaining in continuous compliance with all standard Downtown Mixed-Use (DMX) regulations. Chair P. Offen outlined the standard administrative timeline, noting that order approval typically occurs at the subsequent monthly meeting, which would be in August due to the customary cancellation of the July session. He explained that while the order would normally be signed then, the Board could expedite the process by utilizing electronic signatures to allow for an early pick-up at the Planning Department. D. Whitfield-Cargile stated that the applicant would appreciate the expedited electronic process, and Chair Offen confirmed that the request would be accommodated. Chair Offen then officially concluded the hearing and excused all involved parties.

A. Consideration of VAR-26-0003 - 128 Pisgah Hwy – Cont.

The variance hearing for case 25-000341 (28 Pisgah Highway) was reopened by Chair P. Offen at 4:36 PM for further board deliberation.

John Norm, an attorney with Robertson Stevens in Asheville, introduced himself as the representative for both the landowner and the tenant operating Dolly's. He noted that after reviewing the amendment passed the previous evening, the applicant requests a continuance to the August meeting. This extension will allow them to consult with the planning staff, as the recent legislative change may eliminate the need for the variance entirely.

As requested, Chair P. Offen moved to continue the hearing to a date and time certain of August 4 at 3:00 PM in the City Council Chambers. Seconded by A. Mercaldo, the motion carried unanimously.

VIII. UNFINISHED BUSINESS

A. APP-26-0001 – 221 Pinnacle Rd.

Chair P. Offen motioned to add appeal AP-26-001 to the agenda under unfinished business and to continue the matter to the August 4, 2026, meeting. The hearing will be held at 3:00 p.m. in the council chambers. A. Mercaldo seconded the motion, and the motion carried.

IX. REMARKS

R. Wood welcomed new alternate Board member Amy Kelton. Chair P. Offen extended a welcome and noted that board training would be upcoming. B. Gulden confirmed that training sessions would be organized in the near future to accommodate new membership.

X. ADJOURN

Chair P. Offen called for a motion to adjourn. R. Wood moved to adjourn, and P. Offen seconded the motion. The motion passed unanimously by voice vote, and Chair, P. Offen officially concluded the meeting at 4:28 PM.

Peter Offen, Chair

Edievith Gass, Board Clerk

STAFF REPORT

Board of Adjustment, Tuesday, August 4, 2026

Title: VAR-25-0003 - 128 Pisgah Hwy.

Speaker: Katherine Poe

Prepared by: Katherine Poe, Planner/Assistant Zoning Administrator

Approved by: Paul Ray, Planning Director

Continuance Request

The Staff Report below was presented at the June Board of Adjustment hearing. The hearing was continued until August. The applicant has requested to continue the hearing to a later date to have more time to gather evidence.

Background

Dolly's Dairy Bar is located at 128 Pisgah Hwy in Pisgah Forest, is zoned Downtown Mixed Use (DMX) and is within the City's Extra Territorial Jurisdiction (ETJ). The parcel identification number is 8597-45-1544-001.

The building/business is owned by Chill-Lee Corporation dba Dolly's Dairy Bar, while the land is owned by Big Inc.

Dolly's sustained damage from Hurricane Helene and construction repairs were estimated at \$60,000 per the permit application. The County tax office has appraised the building's value (primary structure) at \$43,430.

Per the Unified Development Ordinance (UDO), the primary structure is considered a pre-existing nonconformity as it does not meet current regulations based on the current zoning of DMX. Due to the cost of repairs on the building, it is considered a Substantial Damage/Improvement.

Per UDO 14.3.E.(5): "Significant damage and/or significant improvement to any non-conforming structure that is located within a lot containing any other non-conforming condition shall, to the maximum extent possible, require the satisfaction of the all other requirements of this ordinance and the elimination of all non-conforming conditions. Examples include, but are not limited to, the provision of sufficient parking, landscaping and buffering, and public improvements (i.e., sidewalks and other), and full compliance with all applicable signage, flood hazard reduction, surface water protection, and stormwater management provisions."

The parking lot is currently not paved with permanent non-erodible surface treatment, which is a requirement of Chapter 10.7.D.1. It is a gravel lot.

Chill-Lee Corporation and the City executed an Infrastructure Improvement Agreement to complete the parking lot construction by March 28, 2027, as NCDOT project R-5799 roundabout construction is underway and will be constructing future curb cuts.

The applicant, Robert Lee of Chill-Lee Corporation, is requesting a variance of the Unified Development Ordinance's (UDO) Chapter 10.7.D.1 for a non-conforming parking lot to be brought into compliance.

Jerry Brown, of Big Inc, has appointed John Noor, an attorney to represent the company.

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

Discussion

The City approved the permit for repairs based on the signed Infrastructure Agreement that the parking lot will be brought into compliance with the UDO. The owners did add one ADA parking space as part of the completed repairs.

Investigation

Upon inspection, the existing parking lot is a gravel lot but does have some holes/low spots. An ADA parking space has been added.







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. Letter to Continue - Dolly's Dairy Bar Hearing
2. Application Materials
3. 14.3 Nonconforming principal structures
4. Dolly's 2025 Property Card
5. Signed Infrastructure Improvement Agreement
6. Appointment of Agent_

**ROBERTS
& STEVENS**
ATTORNEYS AT LAW

WILLIAM CLARKE
VINCENT D. CHILDRESS, JR.
DAVID L. ENGLISH
KENNETH R. HUNT
DENNIS L. MARTIN, JR.
ANN-PATTON HORNTAL
PHILLIP T. JACKSON
JAMES W. K. WILDE
MARY ROBINSON HERVIG
JOHN D. NOOR
KATHRYN MAULTSBY MADISON
L. ASHLEY SAVILLE-AMTOWER
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GRACIE K. PAULSON

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DENISE A. LOCKETT
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TYLER R. GILLIS
MARTHA M. SCHULL

LONDON ROBERTS, FOUNDER (1921-2007)
JOHN S. STEVENS, FOUNDER (1933-2019)

July 28, 2026

Via Email: stephanie.holland@cityofbrevard.com & paul.ray@cityofbrevard.com

City of Brevard Planning Department
ATTN: Stephanie Holland and Paul Ray
95 West Main Street
Brevard, NC 28712

RE: VAR File #VAR-25-0003
Dolly's Dairy Bar located at 128 Pisgah Hwy, Pisgah Forest

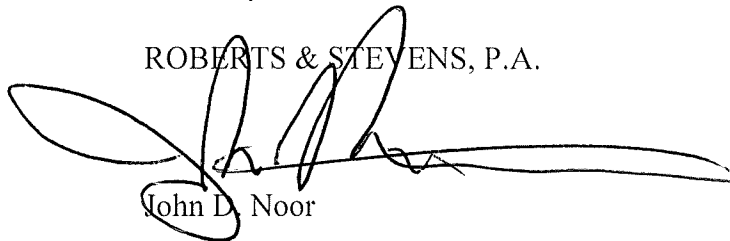
Dear Board:

Pursuant to your request, we are respectfully requesting that the variance hearing currently scheduled on August 4th be continued to September 1st as we are still waiting on the appraisal to be completed. This appraisal is necessary for the hearing.

I look forward to hearing from you.

Sincerely,

ROBERTS & STEVENS, P.A.



John D. Noor

JDN/djp



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.)

Please See attached

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 128 Pisgah Hwy., Pisgah Forest NC 28768
Tax Parcel Number of subject property 8597-45-1544-001

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: Robert Lee

Address: 8 Cleftridge Ct
Asheville, NC 28803

Phone: 

OWNER INFORMATION

Name: Jerry Brown (BIG INC.)

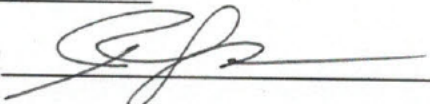
Address: P.O. Box 1359

Pisgah Forest, NC 28768

Phone: 

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 12/5/2025

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: February 3, 2026.

We are requesting a variance from the requirement to pave the parking lot at Dolly's Dairy Bar, located at 128 Pisgah Highway, Pisgah Forest, NC 28768.

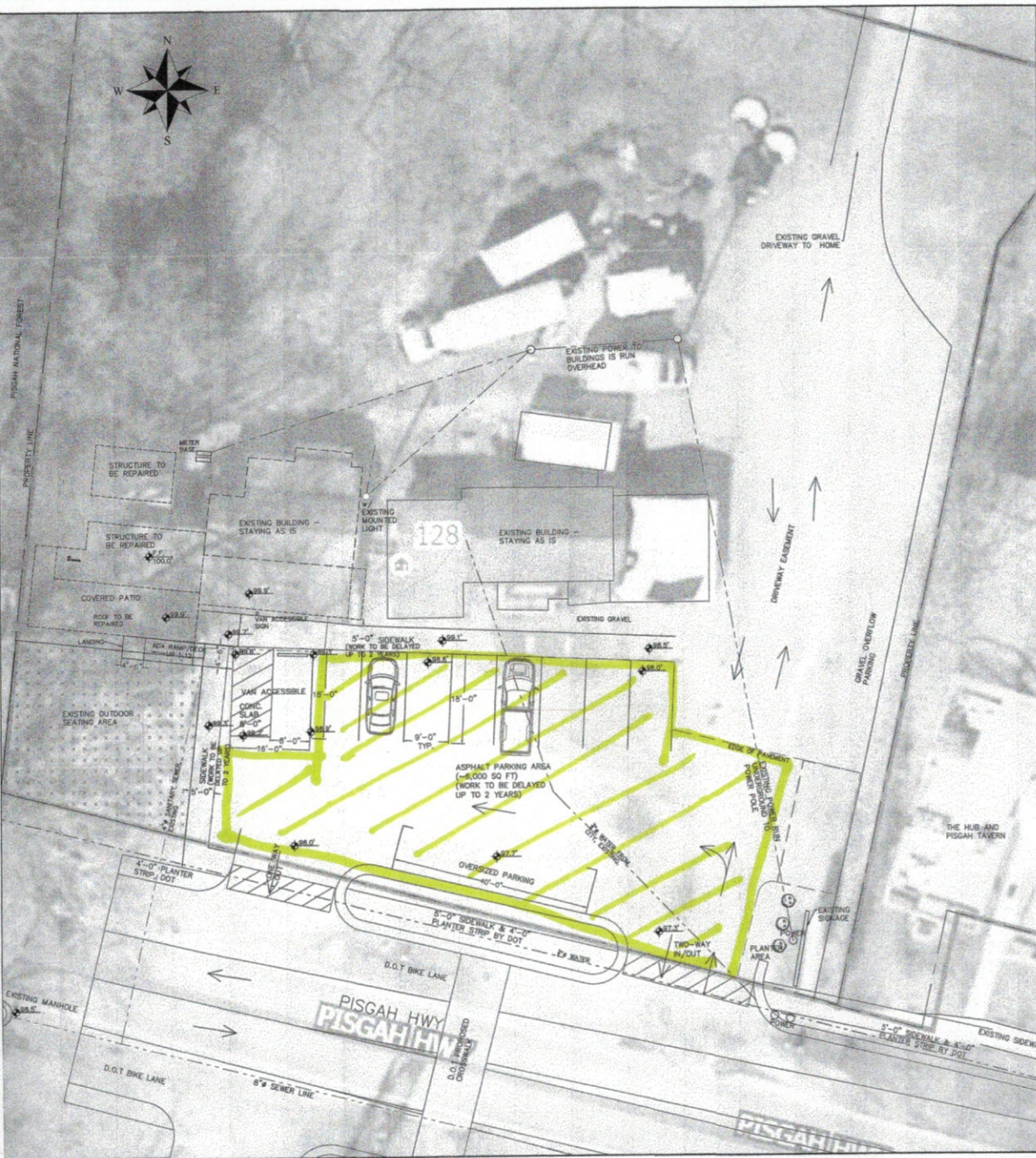
The existing parking area is well-maintained and does not present safety, accessibility or drainage concerns. The lot is used primarily for short-term parking and has served the needs of the business, its customers and employees for approximately 40 years.

The requirement to pave the parking lot came only after we applied for a permit to rebuild our business after Hurricane Helene. Had it not been for the hurricane damages, we would not have been subject to this requirement. It is also worth noting that we are tenants and not owners of the property. To comply with the requirement would pose a significant financial burden. Based on estimates we have obtained, the cost for this project would be upwards of \$20,000.

During the hurricane repairs, we did make adjustments to comply with ADA parking requirements. We continue our commitment to maintaining the existing lot in good condition.

We respectfully request a variance be granted so that we may continue operating our business without undue hardship.

Thank you for your time and consideration.



CITY OF BREVARD - SITE PLAN NOTES:

1. PROPERTY:
 - 1.1. PN NUMBER 8597-45-1544-001
 - 1.2. CALCULATED ACREAGE 0.827 (26,024 SQ FT)
2. ZONING IS DMX (PLAN IS TO REZONE TO PGX IN COMING MONTHS)
3. PARKING REQUIREMENTS
 - 3.1. BUSINESS (1 SPACE PER 500 FT²) - 5 SPACES REQUIRED
 - 3.2. BICYCLE PARKING @ 1 PER 20 AUTO SPACES OR 4 PER MINIMUM REQUIRED
 - 3.2.1. REQUIRES 1 BICYCLE SPACES (RACK FOR 4 BICYCLES)
 - 3.3. ALL PARKING SPOTS ARE TO BE WITHIN 65 FT OF A SIDE WALK OR PEDESTRIAN CROSSING
4. STORMWATER IMPACT: NONE
5. LANDSCAPE
 - 5.1. SIDEWALK AT STREET AND CURB BY D.O.T
 - 5.2. SEE LANDSCAPE DETAIL BELOW
6. LIGHTING
 - 6.1. LOW INTENSITY LIGHTING WILL BE PROVIDED AT THE OUTDOOR COVERED PATIO.
 - 6.2. PARKING AREA IS LIT BY EXISTING STREET LIGHTING (DUKE POWER POLE)
7. SIGNAGE
- 7.1. EXISTING - NO CHANGES
8. UTILITIES
 - 8.1. WATER:
 - 8.1.1. RESTAURANT: EXISTING 3/4" METER AND SUPPLY RUN FROM CITY 4" LINE.
 - 8.2. SEWER:
 - 8.2.1. 4" SEWER (EXISTING) RUNS FROM ICE CREAM SHOP TO PISGAH HWY. 6" CITY SEWER RUNNING UNDER ROAD.
 - 8.3. STORMWATER: NO NEW PERMEABLE SURFACES. NONE REQUIRED.
 9. DELAYED WORK/IMPROVEMENT
 - 9.1. DUE TO WORK UNDERWAY BY NC D.O.T. AT FRONT OF PROPERTY (CURB AND SIDEWALK, ETC.) CITY OF BREVARD IS ALLOWING IDENTIFIED IMPROVEMENTS TO BE DELAYED UP TO TWO YEARS
 - 9.2. THE FOLLOWING WORK IS INCLUDED AND WILL BE BONDED FOR PERFORMANCE.
 - ASPHALT PARKING (-6000 FT²) \$19,300
 - SIDEWALKS - FROM STREET AND AT PARKING \$10,000
 - LANDSCAPE AT STREET FRONTAGE \$3,600
 - TOTAL: \$32,900

SHRUB - 3 GALLON - PRUNUS LAUROCEARUS OTTO
 LUYKEN OR CRYPTOMERIA JAPONICA - QTY (-5)
 SIZE AT PLANTING:
 18" TALL x 12"-15" WIDE
 MATURE SIZE:
 30" TALL

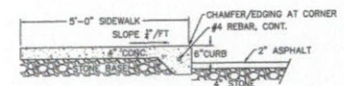
***** REFRESHED MULCH: REFRESH EXISTING MULCHED SITTING AREA.

LANDSCAPING DETAIL

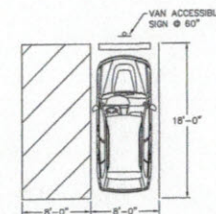
NOTE: DESIGN TO BE FINALIZED NEAR END OF PROJECT. TREE/SHRUB TYPES TO COMPLY W/ USD.

Occupancy	Units	Design (daily flow)	Gal/Day
Dolly's Dairy Bar	Bar	36 Seats	20 gal/seat 720 Total Usage 720 gal/day
Increase from preproject use is			0 gal/day

WATER USAGE TABLE



CURB & SIDEWALK DETAIL NOTES



VAN ACCESSIBLE PARKING DETAIL



VAN ACCESSIBLE PARKING SIGN

DESIGN BY:
 S. LATELL, P.E.

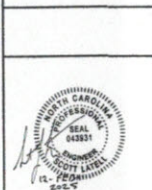
DRAWN BY:
 E. JOYNER

DATE:
 16-JAN-2025

PROJECT NO.
 24-119

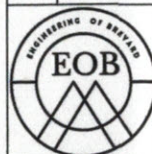
DRAWING:
 24-119-002

REV. 12-FEB-2025
 REPAIR EXISTING STRUCTURE



SCALE: APPROX.
 1" = 10'-0"

DOLLY'S DAIRY BAR
 SITE PLAN



Engineering of Brevard, PLLC
 PO Box 202
 Brevard, NC 28712

Design Professional:
 Scott Latell, PE
 #043931

UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 14. NONCONFORMITIES

14.3. Nonconforming principal structures.

- A. A nonconforming principal structure containing a use permitted in the district may continue only in accordance with the provisions of this chapter.
- B. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures and any nonconforming use contained therein.
- C. A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.
- D. Subject to the provisions of Section 14.3(E) and 14.3(F), when a nonconforming structure is moved on lot upon which it is located, it shall, if possible, be moved so as to make the structure conforming. Otherwise, the moved structure shall be placed on the lot in as conforming a manner as possible.
- E. If a nonconforming structure is significantly damaged or significantly improved, the following requirements shall apply in the issuance of any permit:
 - 1. Where modifications are proposed to repair damages to a structure, a permit for reconstruction of such structure must be secured no later than 180 days from the date of its destruction.
 - 2. If the structure can be rebuilt on the same lot and meet all district and building type requirements, it shall be.
 - 3. If the structure cannot be rebuilt at the same size (ground floor area) in accordance with the minimum standards of the district in which it is located or building type, then it shall be placed on the lot in as conforming a manner as possible.
 - 4. A nonconforming structure shall not be rebuilt in a manner which increases its nonconformity.
 - 5. Significant damage and/or significant improvement to any non-conforming structure that is located within a lot containing any other non-conforming condition shall, to the maximum extent possible, require the satisfaction all other requirements of this ordinance and the elimination of all non-conforming conditions. Examples include, but are not limited to, the provision of sufficient parking, landscaping and buffering, and public improvements (i.e., sidewalks and other), and full compliance with all applicable signage, flood hazard reduction, surface water protection, and stormwater management provisions.
 - 6. In no case shall significantly damaged structure be rebuilt so as to encroach upon any public right-of-way, easement, regulatory floodway, surface water protection area or except as allowed by CHAPTER 6 of this ordinance or Chapter 34 of Brevard City Code.
 - 7. A non-conforming use which existed within the structure to which modifications are made may reoccupy such structure upon issuance of certificate of occupancy provided that:
 - a. Modifications do not result in an expansion of the nonconforming use.
 - b. The nonconforming use is reestablished within the structure within 60 days of the issuance of a certificate of occupancy.
 - c. Any use requiring the issuance of a special use permit shall not be reestablished in a district within which such special use is not permitted.
- F. If a nonconforming structure is substantially damaged or substantially improved, the structure, all nonconforming uses contained therein, and all non-conforming conditions within the same property (i.e., parking, landscaping, signage, flood hazard issues, and etc.) shall be brought into full compliance with the requirements of this ordinance.

(Ord. No. 20-09, § 4(Exh. B(6)), 9-21-09)

Chill Lee Corporation

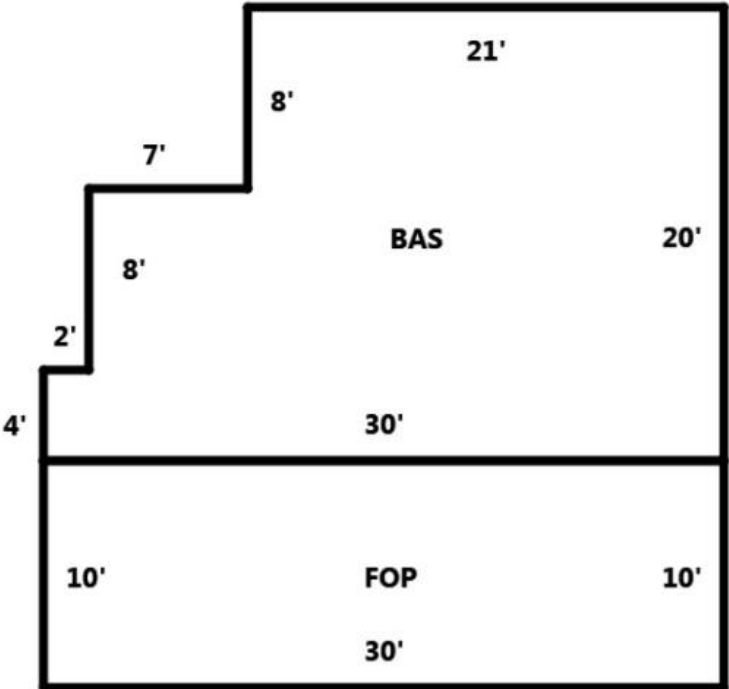
70382790

COUNTY TAX (100), BREVARD FIRE TX (100), COUNTY
FIRE TAX (100)
Reval Year: 2025 Tax Year: 2027 HWY 276- DOLLYS DAIRY BAR
Appraised By 14 on 01/01/2025 40110 64/280 Commercial Intersection

Parcel ID: 8597-45-1544-002
PLAT: / UNIQ ID 43974
DOLLY'S DAIRY BAR ID NO: T401 00294AB 02 MS.10
SPLIT FROM ID

CARD NO. 1 of 1
0.0000 UT
TW-02 CI- FR-
SRC= Inspection
AT- LAST ACTION 20260216

CONSTRUCTION DETAIL				2
Foundation				2.00
Piers				4
Sub Floor System				10.00
Plywood				04
Exterior Walls				16.00
Single Siding (No Sheathing)				03
Roofing Structure				8.00
Gable				02
Roofing Cover				2.00
Rolled Composition				2
Interior Wall Construction				4.00
Wall Board or Wood Wall				07
Interior Floor Cover				6.00
Vinyl Tile				03
Heating Fuel				1.00
Gas				04
Heating Type				6.00
Forced Air - Ducted				03
Air Conditioning Type				6.00
Central				1
Commercial Heat & Air				0.00
None				02
Structural Frame				10.00
Wood Frame				08
Ceiling & Insulation				3.00
Not Suspended - No Insulation				
Half-Bathrooms				
BAS - 0 FUS - 0 LL - 0				
Plumbing Fixtures				
2.00				10.000
Office				
BAS - 0 FUS - 0 LL - 0				0
TOTAL POINT VALUE				84.000
BUILDING ADJUSTMENTS				
Quality	2	Average		1.00
Shape/Design	3	SLIGHT IRR		1.10
Size	Size	Size		1.14
TOTAL ADJUSTMENT FACTOR				1.250
TOTAL QUALITY INDEX				105



CORRELATION OF VALUE	
CREDENCE TO	MARKET
DEPR. BUILDING VALUE - CARD	43,430
DEPR. OB/XF VALUE - CARD	
MARKET LAND VALUE - CARD	0
TOTAL MARKET VALUE - CARD	43,430
TOTAL APPRAISED VALUE - CARD	43,430
TOTAL APPRAISED VALUE - PARCEL	43,430
TOTAL PRESENT USE VALUE - LAND	0
TOTAL VALUE DEFERRED - PARCEL	0
TOTAL TAXABLE VALUE - PARCEL \$	43,430
PRIOR APPRAISAL	
BUILDING VALUE	22,100
OBXF VALUE	0
LAND VALUE	0
PRESENT USE VALUE	0
DEFERRED VALUE	0
TOTAL VALUE	22,100
PERMIT	
CODE	DATE
NO.	
ROUT: 034WTRSHD:	
SALES DATA	
OFF. RECORD	DATE
BOOK	PAGE
MO	YR
DEED TYPE	Q/U
V/I	INDICATE
00000	0000
1	2013
QC	E
I	SALES PRICE
0	
BUILDING AREA 512	
NOTES	
26133	

SUBAREA				CODE	DESCRIPTION	COUNT	LTH	WTH	UNITS	UNIT PRICE	ORIG % COND	BLDG #	---	AYB	EYB	DEP SCH	OVR	% COND	OB/XF DEPR. VALUE
TYPE	GS AREA	PCT	RPL CS																
BAS	512	100	63974		TOTAL OB/XF VALUE														
FOP	300	040	14994																
SUBAREA TOTALS		812	78,968																

BLDG DIMENSIONS BAS=W21S8W7S8W2S4E30N20Area:512;FOP=W30S10E30N10Area:300;TotalArea:812

LAND INFORMATION																	
HIGHEST AND BEST USE	USE CODE	LOCAL ZONING	FRONTAGE	DEPTH	DEPTH / SIZE	LND MOD	COND FACT	OTHER ADJ/NOTES RF AC LC TO OT	ROAD TYPE	LAND UNIT PRICE	TOTAL LAND UNITS	UNIT TYPE	TOTAL ADJUST	ADJUSTED UNIT PRICE	LAND VALUE	OVERRIDE VALUE	LAND NOTES
NO LND INT	9010		0	0	1.0000	0	1.0000			0.00	1.000	UT	1.000		0		
TOTAL MARKET LAND DATA															0		
TOTAL PRESENT USE DATA																	

INFRASTRUCTURE IMPROVEMENT AGREEMENT
"Performance and Payment Bond or Equivalent"
March 2, 2025

1. AGREEMENT

Pursuant to Section 16.12 of the City of Brevard Unified Development Ordinance and G.S. 160D-702(a) and 160D-804, this Infrastructure Improvement Agreement (the "Agreement") is made by and between the City of Brevard (the "City") and Chill-Lee Corporation dba Dolly's Dairy Bar (the "Developer"). The purpose of this Agreement is to establish the performance guarantee for the deferred completion of or variance from required site improvements, to include complying with Chapter 10.7 Off-street parking area design and construction standards.

2. PERFORMANCE GUARANTEE

The Developer agrees to provide a performance guarantee to ensure the completion of the required parking lot construction as depicted on the approved site plan and permit application number: 2-25-043. The performance guarantee has been provided in one of the following forms:

Check one that applies:

A surety bond issued by a company authorized to do business in North Carolina.

A letter of credit issued by a financial institution licensed to do business in North Carolina.

An alternative form of guarantee that provides equivalent security to a surety bond or letter of credit and is valid in North Carolina.

The base cost of the guarantee shall be the full (100%) estimated cost of construction of the required improvements being deferred, as certified by a licensed design professional (architect or engineer).

3. PERFORMANCE GUARANTEE PROVISIONS

No person other than the City of Brevard, the Developer, or the entity issuing or providing the performance guarantee shall have any rights under or to the performance guarantee or its proceeds.

The performance guarantee shall be released or returned in writing by the City of Brevard upon the satisfactory completion of the specified work, as acknowledged by the City of Brevard, or by the granting of a variance by the Board of Adjustment, eliminating or reducing the requirement for complying with Chapter 10.7 of the UDO off-street parking area design and construction standards.

In the event of default, as defined in Chapter 19 of the Unified Development Ordinance, the Developer shall pay all or any portion of the bond, cash account, or funds represented by a letter of credit to the City of Brevard up to the amount specified in this Agreement. The surety or bank issuing the letter of credit shall comply with the City's demand for payment. The City, at its discretion, may use the funds to complete the specified work and shall return any unspent funds to the Developer upon completion of the work.

4. SPECIFIED WORK

The Developer agrees obtain a variance from Chapter 10.7 of the UDO or complete the following specified work within the time provided:

Construction of an off-street hard surface parking area approximately 6,000 sq ft in area as illustrated on the site plan provided by the developer and attached to permit number 2-25-043 which shall comply with Chapter 10.7 of the City of Brevard UDO. For the purpose of this agreement, the parking area shall be defined as any public or private open area or facility used for parking automobiles and other vehicles serving primary use or uses and the vehicular use area from the proposed private sidewalk at the front of the building to the future curb cuts provided by NCDOT as part of their highway improvement project, R-5799.

The City shall hold a performance guarantee in the amount of \$18,500.00 for the work described as estimated by a qualified engineer or architect licensed to practice in the State of North Carolina. The City shall have the right to draw on the guaranteed funds and enter the adjoining property, if necessary, to construct the parking lot in compliance with Chapter 10.7 of the UDO if the Developer does not obtain a variance from Chapter 10.7 of the UDO or complete the work by March 28, 2027. The City Manager may extend this deadline in their discretion by one year or less. Any extension

5. BINDING EFFECT

The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, heirs, legatees, successors, assigns, and any other transferee. If the terms of this Agreement are correctly understood, please sign and date below.

6. SIGNATURES

Developer

By: [Signature]
Name: Jean P. Lee
Title: President
Date: 03/13/2025

CITY OF BREVARD

By: Wilson B. Hooper
Name: Wilson B. Hooper
Title: City Manager
Date: 3/14/25

7. NOTARIZATION

STATE OF NORTH CAROLINA
COUNTY OF Buncombe

I, Zackary Thompson, a Notary Public, do hereby certify that JEAN P. LEE personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this the 13 day of March, 2025.

Signature of Notary Public: [Signature]
Printed Name of Notary Public: ZACKARY Thompson
My Commission Expires: 12/03/2029

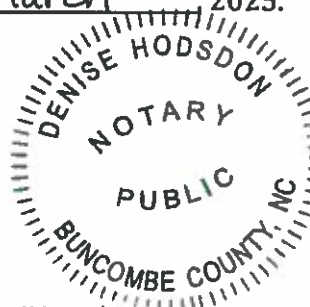


STATE OF NORTH CAROLINA
COUNTY OF Transylvania

I, Denise Hodsdon, a Notary Public of said State and County, do hereby certify that WILSON B. HOOPER personally appeared before me this day and acknowledged that he is the City Manager for the City of Brevard, a North Carolina municipal corporation, and that by authority duly given and as the act of this corporation, the foregoing instrument was signed in its name by him as its City Manager.

WITNESS my hand and Notarial Seal, this the 14th day of March, 2025.

Signature of Notary Public: [Signature]
Printed Name of Notary Public: Denise Hodsdon
My Commission Expires: 10/6/2029





The City of
Brevard
North Carolina

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

VAR File# #VAR-25-0003

BREVARD BOARD OF ADJUSTMENT – VARIANCE

APPOINTMENT OF AGENT

I JERRY BROWN, President of BIG, INC., owner of property located at
(street address) 128 Pisgah Hwy, Pisgah Forest, NC 28768 and
identified by the Transylvania County Tax Identification Number (PIN#):

8597-45-1544-001, located in Transylvania County, North Carolina, do
hereby appoint JOHN NOOR, Esq. of ROBERTS & STEVENS, P.A. to represent me in
filing an application for Variance before the Brevard Board of Adjustment.

I further authorize JOHN NOOR, Esq. of ROBERTS & STEVENS, P.A. 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: *Jerry L. Brown* Date: 2/29/2026
Mailing Address: P.O. BOX 1359, PISGAH FOREST, NC 28768
Phone: 828-553-2410 Email: jerrybrown@comporium.net

Agent Name: JOHN NOOR, ROBERTS & STEVENS, P.A.
Mailing Address: P.O. BOX 7647, ASHEVILLE, NC 28802
Phone: 828-252-6600 Email: jnoor@roberts-stevens.com

STAFF REPORT

Board of Adjustment, Tuesday, August 4, 2026

Title: APP-26-0001 - 221 Pinnacle Rd.

Speaker: Mack McKeller, City Attorney
Paul Ray, Planning Director
Aaron Bland, Asst Planning Director

Prepared by: Aaron Bland, Asst Planning Director

Approved by: Paul Ray, Planning Director

This is a continuation of appeal #APP-26-0001 which first appeared on the agenda for the February 3, 2026 meeting, has appeared on several agendas since, and has been repeatedly tabled.

The Applicant, Mr. Veal, has appealed the Board's decision of his other, similar, case (#APP-25-0001), filed in Transylvania County Superior Court on July 3, 2026. In an email exchange (attached) with City Attorney Mack McKeller, Mr. Veal's attorney Mr. Elliott Dugger has shown his desire for "a continuance on the record to be renoticed for a date certain after the Superior Court ruling."

The original staff report from the February 3rd meeting packet is attached.

Attachments:

1. Staff Report from Feb 3 2026 Agenda Packet
2. Duggar McKeller Continuance Email Chain

STAFF REPORT

Board of Adjustment, Tuesday, February 3, 2026

Title: Consideration of APP-26-0001 - 221 Pinnacle Rd.

Speaker: Paul Ray, Planning Director
Aaron Bland, Assistant Planning Director

Prepared by: Paul Ray, Planning Director, Aaron Bland, Asst Planning Director

Approved by: Paul Ray, Planning Director

Background

A driveway application for a parcel located in the vicinity of the end of Pinnacle Road, near but beyond the parking lot and trailhead for the City-owned Bracken Preserve trails, for 221 Pinnacle Road (PIN 8576-83-6675-000) was submitted on October 22, 2025 by owner James Veal. This application was assigned to Assistant Planning Director Aaron Bland for review.

Note that this is a separate parcel, application, and appeal than the previously discussed APP-25-0001 for 231 and 245 Pinnacle Road, though it shares the same site constraints and characteristics.

The subject parcel is "landlocked" in that it does not have any frontage on a public street right-of-way. The Transylvania County tax map shows that the Pinnacle Drive ROW continues beyond the Bracken parking lot to the front of the parcel, however this is a mapping error. The exact extent of NCDOT maintenance and ownership of Pinnacle Drive is unclear. Different surveys show state maintenance ending in different places, but none show it extending as far as the tax map indicates, and it is not improved in any way beyond the parking lot. The official NCDOT State Maintained Network Map does not include Pinnacle Road at all, meaning that it is not claimed or maintained by NCDOT; the entire unpaved Pinnacle Road is listed as "non-system" on official NCDOT maps.

The City's Bracken Mountain Trail leaves the parking lot and ascends to Bracken Preserve through a 50-foot wide right-of-way that crosses several private properties between the parking lot and the City-owned Bracken Preserve parcel. This ROW was obtained by the City in 2008 and the public hiking/biking trail was opened to the public in July 2012. Properties in the area were once served by a small private access drive called Mackey Ridge Road, which was located in the vicinity of the current trail, but it is no longer in existence and never had a public right-of-way. The former roadbed has not been used in decades and has become overgrown with natural vegetation and is criss-crossed by the Bracken Mountain Trail and related incidental improvements such as fencing, rock armoring, picnic tables, and signage.

The parcel is located outside the City's corporate limits in the extraterritorial jurisdiction and is zoned General Residential - 4 (GR4).

Administrative Decision

This application, ENC-25-0001, was submitted on October 22, 2025. On October 30, 2025, Mr. Bland emailed a denial to Mr. Veal citing the same lack of information that had caused the previous denials at 231 and 245 Pinnacle Road (dated September 19, 2025, prior to this application). Mr. Bland responded that given the materials provided, he was unable to fully review the applications and had no option but to deny them. He cited a lack of information about how the proposed driveway would interact with and possibly impact the Bracken Mountain Trail and the safety of users on it, as well as a lack of information about how vehicles would get to the driveway from the end of Pinnacle Road given the physical characteristics of the land including obstacles such as signs, fences, and boulders.

Mr. Veal notified the City Clerk of his intention to appeal the decision of Mr. Bland on November 28, 2025, and paid the fee to complete his appeal application on December 18, 2025.

Discussion

The Unified Development Ordinance has some standards for driveways, however these are predicated on the notion that the driveway is connecting to a public street within a public right-of-way, which is not the case with the subject parcel. Many provisions of the UDO assume frontage on a public street, which the subject parcel does not have, a condition known as a "landlocked parcel." Section 14.6 of the UDO discusses nonconforming lots such as the subject parcel. Subsection D states that "the administrator may permit the establishment of a private right-of-way or access easement in order to facilitate access to pre-existing land-locked parcels." The applicant has not provided any evidence of such an access easement, existing or proposed, to the subject parcel.

In meetings preceding the driveway applications, the applicant has suggested that the City's trail ROW should suffice in the same manner as a public street right-of-way. This belief is based on the legal documents establishing the City's trail ROW, which are written to allow for "all vehicular and pedestrian travel across the property" in order to "serve [Bracken Preserve], providing ingress, egress and regress thereto." However, the trail right-of-way does not convey use for access to private parcels, but rather public use to access the city-owned Bracken Preserve parcel from the city-owned parking lot parcel. The inclusion of vehicular travel in these documents gives the City the *right and ability* to allow such use of the ROW, but not the *obligation* to install a road capable of providing such use. In fact, the City cannot establish a City street outside the corporate limits. Thus, to date, the City has chosen to only allow travel through the ROW to Bracken Preserve by foot and bike. Further, the decision to exercise the right to allow vehicles is a policy decision that cannot be made by Planning Staff.

Again, no evidence of any formal or recorded access agreement or easement which provides private access to the subject parcel was provided by the applicant, calling into question how a vehicle would legally access the proposed driveway.

The overarching goal and purpose of the City's UDO and regulations in general, as well as the enabling state legislation that allows for zoning authority, is to promote public health, safety, and general welfare (UDO Section 1.2). Therefore, ensuring the safety of Bracken Preserve trail users, as well as any potential users of the driveways, was a primary concern when reviewing this application. Mr. Bland's request for the location of the existing trail within the ROW was in order to ascertain if the vehicular traffic using the driveway would cross over or otherwise conflict with trail users. Without the location of the trails shown on the site plan, this was not able to be evaluated. Section 17.2.C of the UDO states that "The administrator shall have the authority to deny and return any submitted land development permit application and associated development plans upon a determination that such submitted items are insufficient..." Mr. Bland determined that the submitted plans were insufficient because they did not show 1) the location of the trail to determine potential user conflicts, 2) how cars could legally access the driveways from Pinnacle Road where it ends at the Bracken parking lot, and 3) how cars could physically traverse the terrain from the parking lot to the subject parcels.

Further, UDO Section 16.5.C.1 states that applications must contain "all information and materials required by this ordinance for submittal of the applicable type of application, and in sufficient detail, format, and readability for city staff to evaluate the application for compliance with applicable review standards." It is the Planning Department's position that the application did not contain such "sufficient detail" for review of both potential safety conflicts with trail users and legal/physical access.

Board Decision

North Carolina General Statutes 160D-406(j) states "When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision." The decision must be based on competent, material, and substantial evidence in the record.

Attachments:

1. ENC-25-0001 Application Materials
2. ENC-25-0001 Denial Email
3. Appeal Email to City Clerk
4. Appeal Receipt



Record Report for Driveway or Other Encroachment on City Rights-of-Way #ENC-25-0001

Record Overview

Record Number:	ENC-25-0001
Record Type:	Driveway or Other Encroachment on City Rights-of-Way
Record Status:	Denied
Record Submitted At:	Wednesday October 22, 2025
Record Address:	221 Pinnacle Rd. Brevard, NC 28712
Record Owner:	Aaron Bland
Record Applicant:	jv@jvealarchitect.com

Form Submission

Applicant:

James Veal

jv@jvealarchitect.com, (850) 450-3295

Property Owner (if different):

Property Address:	221 Pinnacle Rd. Brevard, NC 28712
Parcel Identification Number (PIN):	8576-83-6675-000
Zoning District:	General Residential - 4 (GR4)
Overlay District:	None
Business Name:	James Veal
Permit Type:	Driveway
If other, please specify:	-
Width of Driveway (if applicable) (ft):	12
Distance from Nearest Intersection (ft):	-
Distance from Nearest Driveway (ft):	-

Signature:

Signed in GovWell: Wednesday October 22, 2025, 1:16pm

I Acknowledge:

Yes

Signature:



Signed in GovWell: Wednesday October 22, 2025, 1:16pm



APPLICATION FOR DEMOLITION, GRADING OR LAND DISTURBANCE

Contact Information (To be completed by Applicant)

Applicant/Agent/Contractor Name: →	Property Owner: JAMES VEAL
Mailing Address: →	Mailing Address: 627 Bayshore Dr
City: State: Zip: →	City: State: Zip: Pensacola FL 32507
Phone: →	Phone: 850-450-7295
Email: →	Email: jve@jvealarcitect.com

Property/Project Information

Contractor Hauling Debris: T.B.D.	Property PIN (Tax id #): 8576-83-6675-000
Mailing Address:	Property Location/Address: 221 Pinnacle Rd
City/State	Date applicant desires to being project: 12-31-2025
Phone:	Disposal location:
Email:	Note: As a part of the final inspection you may be required to produce evidence of location of disposal of demolition waste.

Project Type/Description:

Residential

Note: Site/Project plans are required to be submitted as a part of this application.

Demolition/Grading and Other Land Disturbance Permit Holder is Responsible to:

- Demolition: \$500 reimbursable bond per structure. Lots with multiple structures requiring Bonds exceeding \$500 shall be based upon a qualified professional's estimate of cleanup clean cost + 25%
- Grading & Other Land Disturbance: \$500 reimbursable bond per lot up to one acre. Lots larger than one acre requiring Bonds exceeding \$500 shall be based upon a qualified professional's estimate of cleanup clean cost + 25%
- Contact City Utility Department to insure water/sewer utility services have been disconnected from structure(s).
- Contact ALL Utility Companies (electric, gas, telephone, cable, etc) to insure services are disconnected from structure.
- Cleanup debris from demolition.
- Sow grass seed on property following cleanup of all debris.

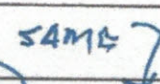
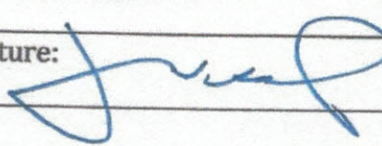
Demolition: Administrator may require a bond in excess of \$500 if such is deemed necessary in the interests of public health or safety. These bonds shall be prepared and administered in accordance with the improvement guarantee procedures set forth in the Procedure for the Installation and Dedication of Public Improvements. The Administrator

may require a demolition, in association with any development activity for which such bond is relevant.

Grading & Other Land Disturbance: Administrator may require a bond in excess of \$500 if such is deemed necessary in the interests of public health or safety. These bonds shall be prepared and administered in accordance with the improvement guarantee procedures set forth in the Procedure for the Installation & Dedication of Public Improvements. The Administrator may require a grading or land disturbance bond in association with any development activity for which such bond is relevant.

I affirm and certify that I understand and will comply with all regulations and requirements of the City of Brevard. I further certify that the above statements and the statements and showings made in any paper or plans submitted herewith are true to the best of my knowledge and belief. Further, I understand that the application, attachments and fees become a part of the Official Records of the City of Brevard Planning Department, are not returnable and are subject to NC Public Records Law. I also recognize that if one or more deficiencies exist in this application, I will be notified of the deficient items, and the department shall take no further action on the application until the required information is submitted. I understand that misrepresentation of information contained within this application may be cause to void any development approvals associated with this application. I grant permission to the Zoning Administrator, and designees thereof, to enter upon the property represented herein for the purposes of administering this application.

If the Applicant is other than the property owner, proof of owner's consent is required. Owner's signature proves consent. The applicant will be the liaison with the City and will be the party to receive official notice. Notice communicated to the applicant will be deemed communicated to the owner. By signing this application, the applicant is consenting to the designation for these purposes.

Applicant/Agent/Contractor Signature:		Date:
Property Owner Signature:		Date: 10/21/25

TRANSYLVANIA COUNTY
EMERGENCY SERVICES
155 PUBLIC SAFETY WAY
BREVARD, NC 28712
828-884-3108



May 2, 2024

Parcel 3

Dear Property Owner,

Transylvania County Emergency Services Addressing Division has assigned an address to property that you own. The address is listed below for your convenience. If it is a change of address, please follow through as soon as you can notifying others of the new address.

Each location is mapped using global positioning system (GPS) technology, eliminating confusion for emergency service providers and delivery services. Benefits of the addressing system include:

- *Reduced emergency response times for firemen, law enforcement, and ambulance services.*
- *Integration of cell phones into the 911 GPS system, enabling emergency care providers to locate callers even when they are not at an assigned address (e.g. in the forest).*
- *Improved package delivery services.*
- *Greater ease of compliance when applying for a home loan, building permit, or utilities connection.*

You should put your new address number on your house and on your mailbox at your earliest convenience. This will not only help your mail carrier but will also assist the emergency services in locating you if you need help.

Your Old Address:

PREVIOUSLY UNASSIGNED

PIN#8576-83-6675-000

(If your old address is listed incorrectly, please contact the Transylvania County Communications Office at the number below.)

Your New Address:

221 PINNACLE RD
BREVARD, NC 28712

ASSIGNED 05/02/.2024

Property owners should notify their renters of the new address change.

Thank you for your cooperation. If you have any questions or concerns, we are happy to help you in any way possible. For assistance contact the Transylvania County Emergency Services business office at (828) 884-3108.

Assigned By:

KRS

Transylvania County Tax Map

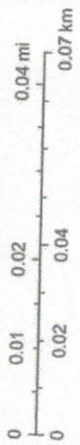


10/21/2025, 1:05:00 PM

Roads

— Roads

1:1,128



3

NC CGIA, Maxar, Microsoft

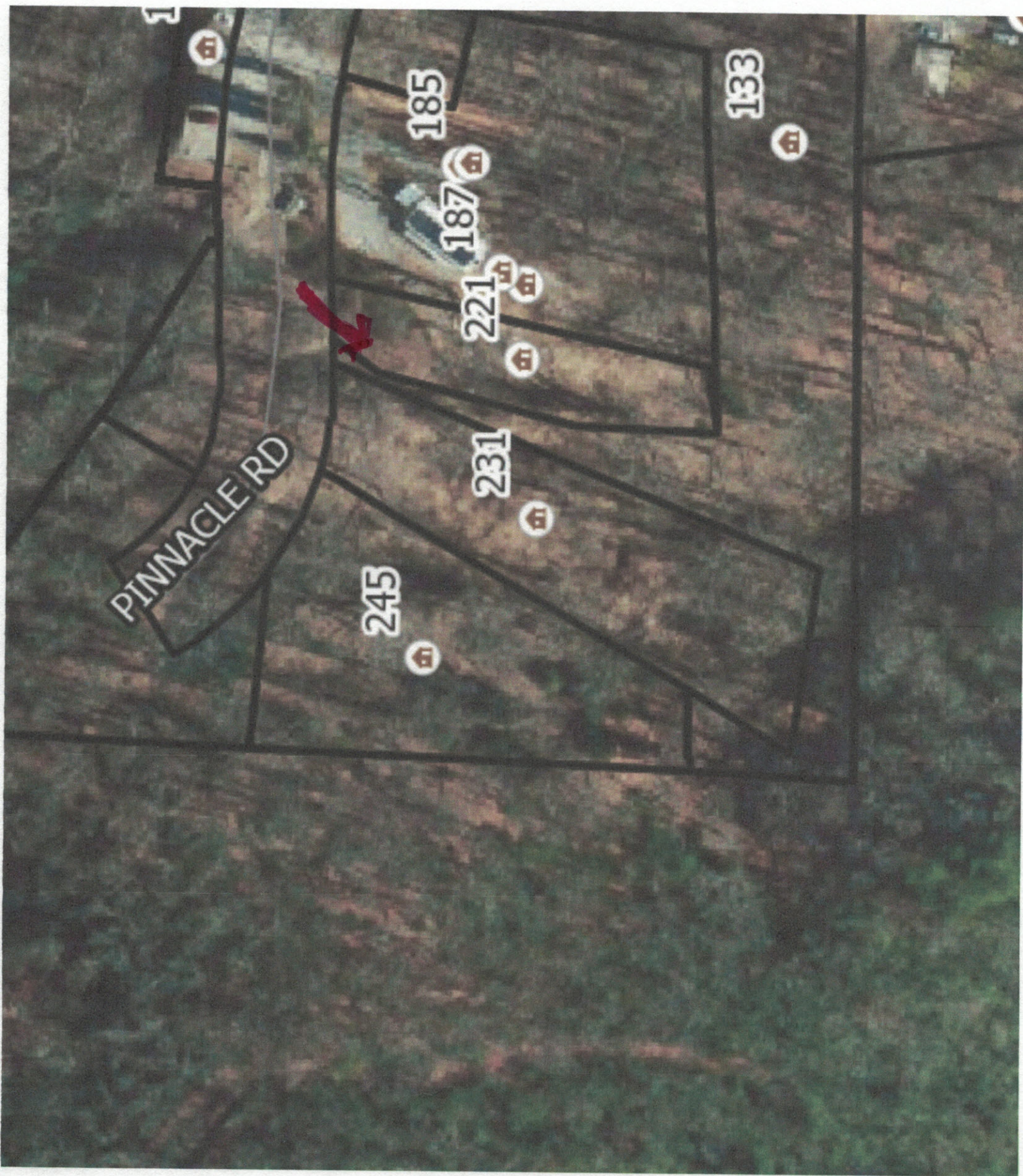


Exhibit A
Page 1 of 3

CITY OF BREVARD
RIGHT OF WAY ACQUISITION TO BRACKEN CREEK
From a plat recorded in File 11, Slide 922

REFERENCE WILLIAM LEONARD BUNKER DRAWING NUMBER
FD-61-61-300 REFERENCED HEREIN



Proposed Drive

TAPED ON?

NOTE: THIS DRAWING IS NOT TO SCALE

THIS DRAWING IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS. GS 547-30 (n)

152

642-500'	DATE: 11.31'
1235'	DATE: 11.31'
R-56	36600132
R-57	13271038
R-58	12871038
R-59	12871038
R-60	12871038
R-61	12871038
R-62	12871038
R-63	12871038
R-64	12871038

50' RIGHT OF WAY

WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER, AND SEAL THIS THE 14th DAY OF MARCH, 2012, A.D.

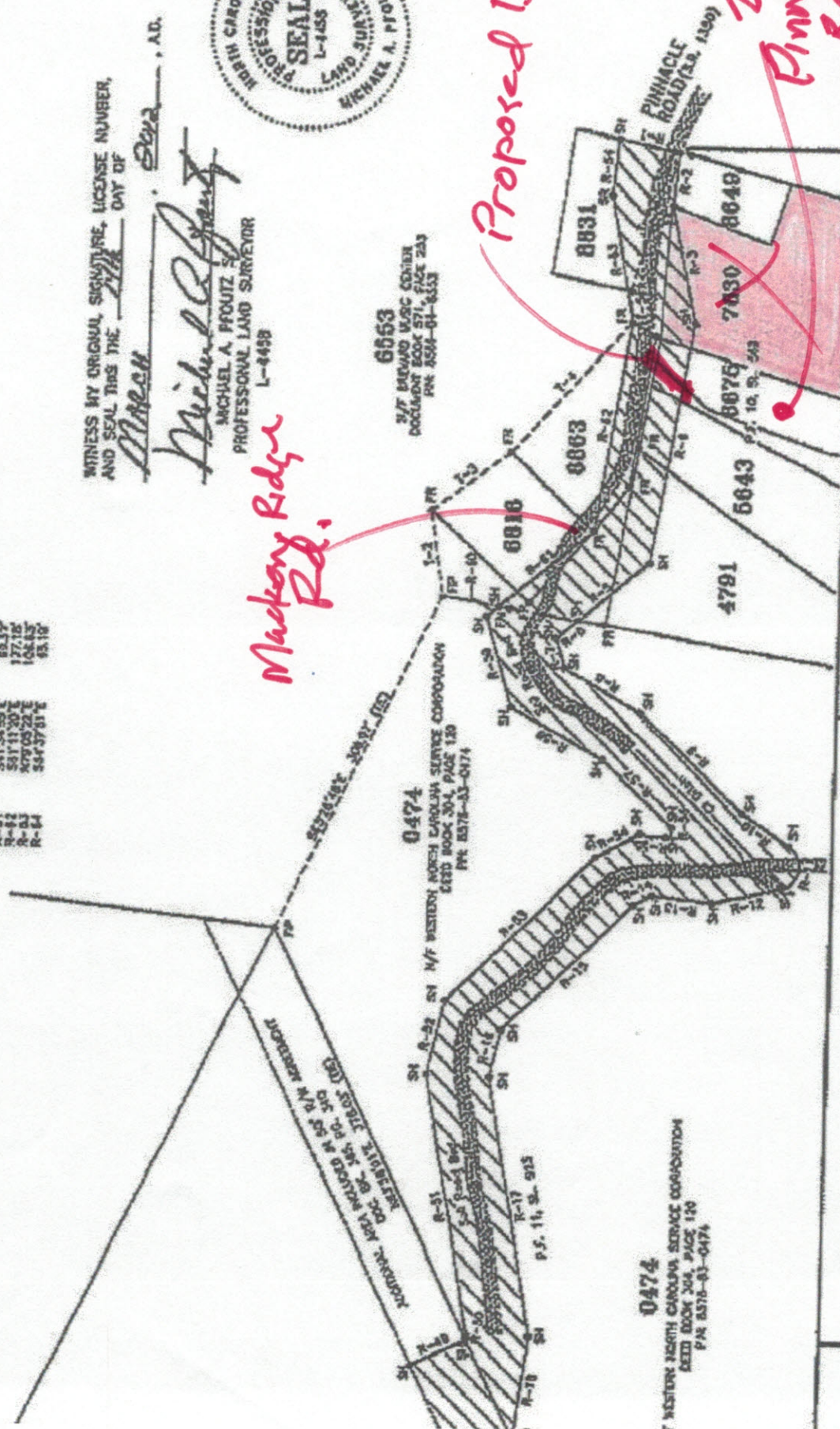
Michael A. Pfoutz
MICHAEL A. PFOUTZ
PROFESSIONAL LAND SURVEYOR
L-4498



Muckey Ridge Rd.

Proposed Drive

221 Pinnacle Rd



BOUNDARY SURVEY AND PLAT OF
BRACKEN MOUNTAIN WATERSHED
AND 50' RIGHT OF WAY
PREPARED FOR
CITY OF BREVARD

DATE: MARCH 14, 2012

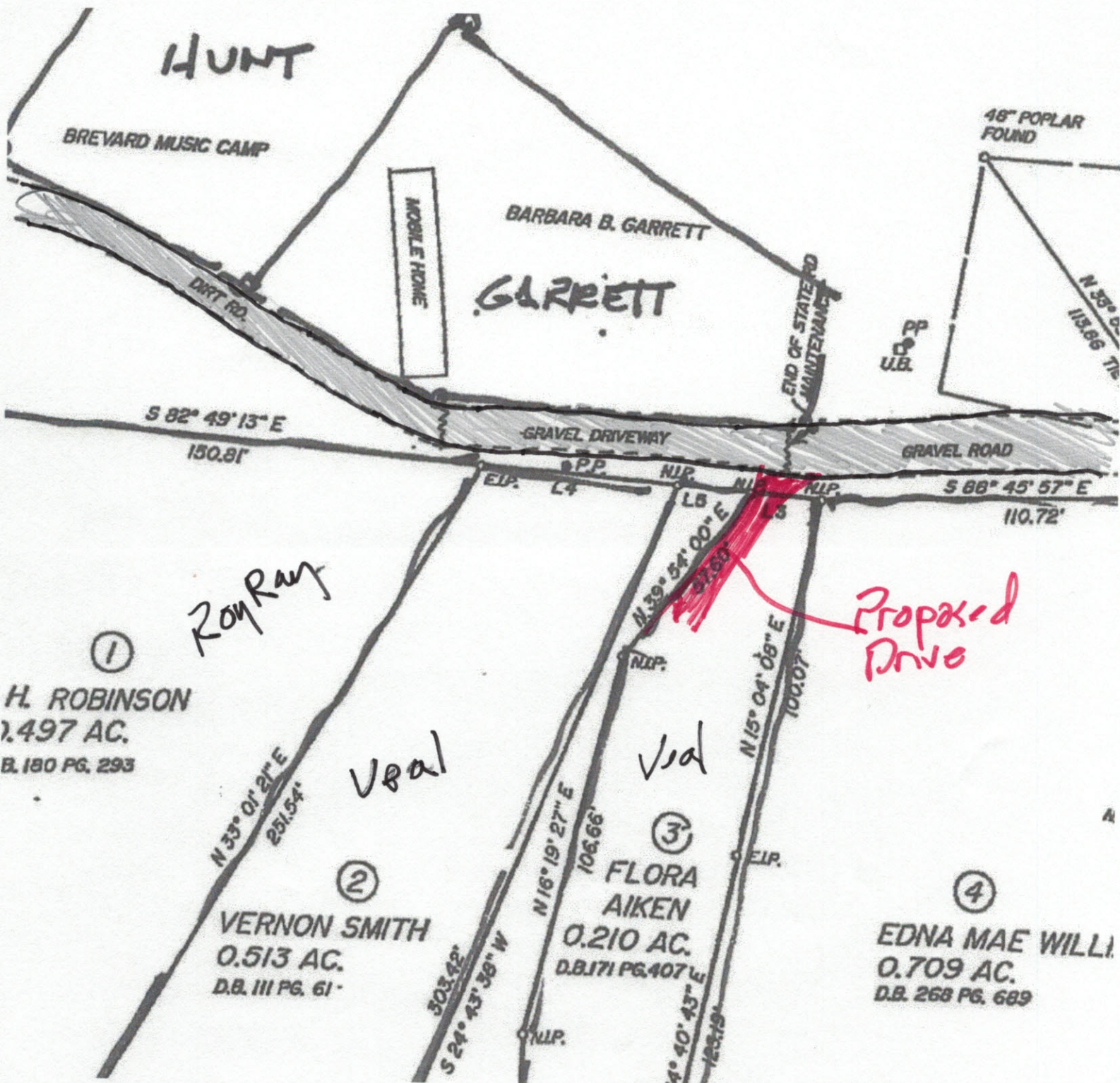
FIELD RECORDS
DATA COLLECTOR

DRAWING
CMS11014-2

COCORD. FILE
CMS11014.CRD

PROJECT NUMBER
CMS11014

ENLARGEMENT NOT TO SCALE





Invoice #152 for Planning & Zoning Applications #ENC-25-0001

Due date: October 27, 2025
Applicant: jv@jvealarchitect.com
Application Number: #ENC-25-0001
Application Type: Driveway or Other Encroachment on City Rights-of-Way
Address: 221 Pinnacle Rd. Brevard, NC 28712
Requested: October 22, 2025, 1:16pm



Fee	Description	Explanation	Total	General Ledger #
	Driveway or Other Encroachment on City Right-of-Ways	\$50.00 * 1	\$50.00	10-3350-0200

Total: \$50.00

To pay the invoice, click [here](#) or scan the QR code above to visit <https://app.govwell.com/brevard/pay/ENC-25-0001>.



Receipt for Planning & Zoning Applications #ENC-25-0001

Invoice Number: #152
Applicant: jv@jvealarchitect.com
Application Number: #ENC-25-0001
Application Type: Driveway or Other Encroachment on City Rights-of-Way
Address: 221 Pinnacle Rd. Brevard, NC 28712
Requested: October 22, 2025, 1:16pm
Paid: October 22, 2025, 1:17pm

Fee	Description	Explanation	Total	General Ledger #
Driveway or Other Encroachment on City Right-of-Ways		\$50.00 * 1	\$50.00	10-3350-0200

Processing Fee: \$1.75
Total Paid: \$51.75
Payment Method: Credit Card

Thank you for your payment.

From: [Aaron Bland](#)
To: [James Veal](#)
Cc: [Paul Ray](#); [Mack McKeller](#)
Subject: Permit ENC-25-0001
Date: Thursday, October 30, 2025 4:47:00 PM

Mr. Veal,

As with your previous application, we are unable to fully review this application because the site plans provided do not show the location of the hiking/biking trail as it relates to the proposed driveway. Beyond this, it appears that, if constructed, the driveway would not be accessible from the end of the public Pinnacle Road/Bracken parking area. There are many impediments between the end of Pinnacle Road and the proposed driveway, including the hiking/biking only Bracken Mountain trail, its rock armoring and boulders, fences, a handicapped parking space, and trees, rendering such a driveway impractical, if not impossible, to permit. Even if the terrain allowed a passenger vehicle to reach the driveway, it is not within this department's purview to permit the driveway encroachment across parkland and allow such use to occur within the hiking trail in order to ensure user safety. For these reasons, the application has been denied in our system. You may receive emails from GovWell regarding this status change as well.

Have you considered using the existing driveway on your neighboring lot to access this parcel?

Best,

Aaron N. Bland, AICP, CZO
Assistant Planning Director
City of Brevard
95 West Main Street
Brevard, NC 28712
Phone: 828-885-5630
aaron.bland@cityofbrevard.com

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From: [James Veal](#)
To: [Denise Hodsdon](#)
Cc: [Aaron Bland](#); [ELLIOTT DUGGER](#)
Subject: Appeal to email denying driveway permit application
Date: Friday, November 28, 2025 12:45:14 PM
Attachments: [Appeal for Parcel 3 back-up pkg \(25-10-28\).pdf](#)

11-28-25

Denise Hodsdon, City Clerk
City of Brevard, NC

RE: Appeal to Denial of Driveway Permit Application (221 Pinnacle Road)

Denise

I submitted for a driveway located @ 221 Pinnacle Road on October 21, 2025

After responding to request for additional information, etc. I received an email from Aaron Bland, Assistant Planning Director on October 30th, 2025... which is attached. I have also attached a copy of the application.

I am submitting this letter to begin the process of appealing that decision.

Please call me for a credit card or I have also sent a check in the mail.

Respectfully,

James Veal

J.Veal, Architect
627 Bayshore Drive
Pensacola, FL 32507
850.450.3295 jvealarchitect.com

From: Valerie Tilson <valerie.tilson@cityofbrevard.com>
Sent: Thursday, December 18, 2025 4:52 PM
To: Denise Hodsdon <denise.hodsdon@cityofbrevard.com>
Subject: James Veal

CASH COLLECTIONS RECEIPTS BY RECEIPT NUMBER

Dates: 12/18/2025 to 12/18/2025
Receipt Numbers: 733158 to 733158
Deposit Numbers: All

City Of Brevard
FY 2025-2026
Multiple Users Selected

Date	Rec No	Customer	Amount Owed (\$)	User ID	Mod
12/18/2025	733158	JAMES VEAL	100.00	WINDOW	MS
		ZONING ZONING ADMIN	10-3350-0200		
		ZONING APPEAL - VT			
Subtotal for 733158 Credit:			\$100.00	AMEX1005	

FYI – Thank you!



Valerie S. Tilson
Accts Receivable/Customer Service Rep
Finance Department

City of Brevard
95 W. Main Street
Brevard, NC 28712
828-885-5607 Direct
828-885-5600 Main ext 1
828-883-883-2853 fax
valerie.tilson@cityofbrevard.com
www.cityofbrevard.com

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From: [Mack McKeller](#)
To: [ELLIOTT DUGGER](#); [Mack McKeller](#)
Cc: [Brian Gulden](#); [James Veal](#); [Paul Ray](#); [Aaron Bland](#)
Subject: Re: Hearing on the 4th
Date: Tuesday, July 28, 2026 12:28:24 PM

I'll take care of it and get you documentation for your file.

Mack McKeller

McKeller Law PC
130 S. Broad St
Brevard NC 28712
(828)966-3159

mack@ecustalawgroup.com

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From: ELLIOTT DUGGER <elliott@duggerlawfirm.com>
Sent: Tuesday, July 28, 2026 12:27 PM
To: Mack McKeller <mack.mckeller@cityofbrevard.com>
Cc: Mack McKeller <mack@ecustalawgroup.com>; Brian Gulden <bgulden@vwlawfirm.com>; James Veal <jv@jvealarchitect.com>; Paul Ray <paul.ray@cityofbrevard.com>; Aaron Bland <Aaron.Bland@cityofbrevard.com>
Subject: Re: Hearing on the 4th

Yes. I think it should be a continuance on the record to be renoticed for a date certain after the Superior Court ruling.

Thank You,
J. Elliott Dugger, Attorney at Law
Dugger Law Firm, PLLC
Phone: 828-384-6648
Fax: 406-258-0860
elliott@duggerlawfirm.com

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On Tue, Jul 28, 2026, 12:22 PM Mack McKeller <mack.mckeller@cityofbrevard.com> wrote:

I agree to that. My understanding is that Brian is on vacation but that the planning department agrees as well. I will appear on the 4th and ask that the continuance be indefinite to be renoticed appropriately after decision by the Superior Court. Will that work for you Elliott?

Mack McKeller
Brevard City Attorney
[130 S. Broad St](#)
[Brevard, NC 28712](#)

From: ELLIOTT DUGGER <elliott@duggerlawfirm.com>

Sent: Tuesday, July 28, 2026 12:11 PM

To: Mack McKeller <mack@ecustalawgroup.com>; Mack McKeller <mack.mckeller@cityofbrevard.com>; Brian Gulden <bgulden@vwlawfirm.com>; James Veal <jv@jvealarchitect.com>

Subject: Hearing on the 4th

Good afternoon:

I assume the hearing on the 4th will be continued? Please advise.

Thank You,

J. Elliott Dugger, Attorney at Law
Dugger Law Firm, PLLC
Phone: 828-384-6648
Fax: 406-258-0860
elliott@duggerlawfirm.com

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