

A G E N D A

**CITY OF BREVARD
BOARD OF ADJUSTMENT
City Council Chambers
95 West Main Street, Brevard
www.cityofbrevard.com
April 14, 2015**

I. Welcome

II. Introduction of Board Members

III. Approval of Agenda

IV. Approval of Minutes: October 14, 2014

V. New Business:

A. Consideration of Application for Special Use Permit #15-058 by Carolina Pizza Company for request for a drive-thru restaurant on property located at 62 Pisgah Highway within the corporate limits of the City of Brevard, further identified by PIN 8597-45-6400-000.

VI. Old Business

A. None

VI. Other Business

VII. Adjourn

MINUTES
BREVARD BOARD OF ADJUSTMENT
October 14, 2014

The Brevard Board of Adjustment met in regular session on Tuesday, October 14, 2014 at 7:00 PM in Council Chambers of City Hall.

Members Present: Judith A. Mathews, Chair
 Dr. Allen Delzell, Vice Chair
 Carol Dillingham
 Tad Fogel
 Tom Tartt

Members Absent: Mike Young
 Josh Burdette

Staff Present: Brad Burton, Asst. Planning Director
 Janice H. Pinson, Board Secretary
 Mike Egan, Board Attorney

Others: William Lapsley, Engineer

Welcome and Introduction of Board Members –

Chair, J. Mathews called the meeting to order at 7:00 PM and Board and Staff Members introduced themselves.

Approval of Agenda

Board Attorney, Mike Egan, recommended that the Board amend the Agenda under Old Business to add: Consideration of Orders from the September meeting. Motion was made by A. Delzell to amend the Agenda as recommended, seconded by C. Dillingham and unanimously carried.

Approval of Minutes

Motion was made by T. Fogel to approve Minutes of the September 9, 2014 meeting as written, seconded by T. Tartt and unanimously carried.

New Business:

A. Application #14-382 Request of Mr. Hall Waddell for a time extension to the previously-issued Special Use Permits #11-007 and #13-399 for the purposes of finalizing construction plans for the previously approved project. The property is located on Rosman Highway (existing Triangle Stop location) within the City's corporate limits, PIN #8585-38-7206-000.

William Lapsley, Agent for Reaban Oil Company and Brad Burton, Staff were sworn by Board Secretary, Janice Pinson.

B. Burton presented his staff report and gave a history of the project and stated that the additional property required to complete the project had been acquired and that there is a contract in place to move the sewer line which will be required to move forward with the project. He stated that he had spoken with Hall and Beau Waddell and they had stated that another construction project required their immediate attention and therefore they need an extension of the permit. He further stated that Staff recommends approval of the twelve (12) month extension.

T. Tartt asked how many times a special use permit can be heard by the Board. The answer was there are no limits at this time.

W. Lapsley, Project Engineer was asked by J. Mathews, Chair if he objected to any members of the board to which he responded he did not. He testified that he is an engineer and that he represents Reaban Oil Company. He stated that Hall Waddell and his son own the business and that they have planned to upgrade the store for many years. That they were presented with a time sensitive opportunity to develop a Triangle Stop store at the entrance to the Asheville Regional Airport and that the project had taken all of their resources and time with many delays in the process. Mr. Lapsley also testified that the applicant did not have the means to undertake both the Asheville Airport and Rosman Highway projects at the same time. The applicant is committed to the Roman Highway project and have obtained local and state permits to move the sanitary sewer line and have a contractor in place to begin the project within the next couple of weeks.

Mr. Lapsley requested a one (1) year extension of the special use permit and thanked the board for the opportunity.

J. Mathews, Chair closed the hearing.

T. Tartt made a motion to extend Special Use Permit #14-382 for one (1) year, seconded by A. Delzell, unanimously carried.

Old Business:

A. Consideration of Amendment to Rules of Procedure.

M. Egan, Board Attorney discussed his September 26, 2014 Memorandum as to Revisions of Rules of Procedure. Motion to approve Rules of Procedure using the alternative language presented to the board for 6.A. Decisions, was made by A. Delzell and seconded by T. Fogel, it was unanimously approved that the board would make all motions in the affirmative and if the motion fails to achieve the required number of votes, the application shall be deemed denied without further action by the Board.

B. Consideration by the Board of Orders from the September Meeting.

1. Motion was made by T. Fogel to adopt the Decision as written for the H. E. & Nancy Carroll request for variance from the City of Brevard Unified Development Ordinance Case No. 14-327, seconded by C. Dillingham and unanimously carried.

2. Motion was made by C. Dillingham to adopt the Final Order as written for Transylvania County for an Architectural Exception Case No. AE-14-339 seconded by A. Delzell and unanimously carried.

VI. Other Business – None.

Adjourn

There being no further business the meeting adjourned at 7:52 PM upon motion made by A. Delzell and seconded by C. Dillingham, unanimously carried.

Judith A. Mathews, Chairman

Janice H. Pinson, Board Secretary



The City of
Brevard
North Carolina

BOARD OF ADJUSTMENT STAFF REPORT

APRIL 14, 2015

TITLE: Special Use Permit Request #15-058
SPEAKER: Daniel P. Cobb, AICP, CFM, CZO – Assistant Planning Director
PREPARED BY: Daniel P. Cobb, AICP, CFM, CZO – Assistant Planning Director

Executive Summary:

The Board will hear a request by Carolina Pizza Company for a drive-thru restaurant at 62 Pisgah Highway (PIN 8597-45-6400-000), currently home to Pizza Hut.

Applicant: Tammy Korte, ArcVision Inc.
1950 Craig Rd. #300
St. Louis, MO 63146
Meeting Date: April 14th, 2015 – 7:00PM
Proposed Use: Drive-thru Restaurant
Project Site: 62 Pisgah Highway
Pisgah Forest, NC 28768

Background:

In February of 2015 the Planning Department received development plans for the remodel of the existing Pizza Hut facility located at 62 Pisgah Highway. While no new or additional uses are proposed for the site, the *significant improvement* (as defined by chapter 14 of the UDO) of an existing structure in a downtown mixed-use zoning district requires the issuance of a Special Use Permit from the Board of Adjustment.

When the current building was constructed in 1997 the property was zoned C-4 – Highway Commercial District (district that no longer exists), in which eating establishments were allowed by right. Along with the adoption of the UDO in 2006, new zoning districts were enacted. At that point in time the Pizza-Hut parcel was changed from a C-4 zoning district to Downtown Mixed Use (DMX) district, which allows drive-thru restaurants with the granting of a Special Use Permit by the Board of Adjustment.

Please see below for a graphic representing the location of the site in question. Just west of the site is the entrance to Pisgah National Forest, immediately to the east is the intersection of US Highways 276 and 64 and North Carolina Highway 280. Directly behind the site is the Bi-Lo shopping center.



Special Use Permits:

Special uses are generally compatible with the land uses permitted by right in a zoning district, but require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district.

Only those uses enumerated as Special Uses in a zoning district, including but not limited to hours of operation, height, and bulk, mass, intensity of use, etc. shall be authorized by the BOA.

The evaluation and approval of the Special Use Permit shall be based upon the sworn testimony and evidence presented at the hearing relevant to the following Findings of Fact:

- a) The use meets all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and
- b) The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible to the surrounding area; and
- c) The proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.

In approving an application for a Special Use Permit, the BOA may attach fair and reasonable conditions which support the required Findings of Fact. The BOA may not require the landowner to waive a vested right as a condition of the Special Use Permit approval. The burden of proof of producing evidence to support these Findings and to overcome any challenges that approval of the plan would be contrary to one or more of these Findings shall rest entirely with the applicant or landowner.

Discussion:

Staff has reviewed the applicants request to modify an existing allowable use by considering the use as to its proposed location and how such a use relates to published land use plans for the area, the visual compatibility with the neighboring properties, and thoughts as to any potential impacts to adjacent properties.

Future Land Use / City of Brevard Comprehensive Land Use Plan

The property in question is designated as "Mixed Use Boulevard" in the August 2002 Future Land Use Plan. Mixed use boulevard land use designations encourage development toward nodes, typically at main intersections, landscaping and street trees are important design considerations for these locations. The property is zoned DMX, this district does allow for drive-thru restaurants with the granting of a special use permit.

Transportation / Pedestrian Plans

There are no long-term transportation plans for this parcel. The 2007 pedestrian plan does include a sidewalk along this stretch of highway but it was not listed as a priority for funding or construction.

Visual / Functional Compatibility

While there will be exterior changes to the building, the footprint will not change. The building has been in this location since 1997.

Impacts to Adjacent Properties / Uses

Aside from cosmetic changes and normal maintenance and repair to the exterior of the building, the use, size, and intensity of the operation will not change.

Site Plan Review

With the exception resealing and striping the parking lot, the applicant proposes no changes to the site itself. According to chapter 14 of the Unified Development Ordinance significant improvements to structures require any nonconformities be addressed to the *greatest extent possible*. In this case parking, landscaping, and buffering are all sufficient. No additional compliance or retrofitting of the site is necessary.

Summary:

Drive-thru restaurants are an allowable use per the table of permissible uses in chapter 2 of the UDO with the issuance of a Special Use Permit. Due to the fact that the existing business (Pizza Hut) has been operating under a grandfathering status (because of the change in zoning in 2006) and has now applied for a development permit, the granting of an SUP is required before development approval can be issued.

CITY OF BREVARD BOARD OF ADJUSTMENT

SUGGESTED MOTION: TAMMY KORTE (DRIVE-THRU RESTAURANT); SUP-15-058

With regard to Case No. SUP-15-058, the application of Tammy Korte for a special use permit to operate a drive-thru restaurant in an existing structure at 62 Pisgah Highway, I move the Board to make the following findings of fact:

- a) The use meets all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit;

List FINDINGS OF FACT for this element per the testimony received

- b) The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible with the surrounding area; and

List FINDINGS OF FACT for this element per the testimony received

- c) The proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.

List FINDINGS OF FACT for this element per the testimony received

Accordingly, I further move the Board to grant the requested special use permit in accordance with and only to the extent represented in the application and plans

[IF, AND ONLY IF, YOU WISH TO ADD CONDITIONS, THEN STATE THE FOLLOWING]

“and subject to the following conditions:

[THEN LIST CONDITIONS]”

City Of Brevard, North Carolina
BREVARD BOARD OF ADJUSTMENT

RECEIVED
2/19/15

Application for Special Use Permit (SUP)

SUP File Number: # 15-058

Property Owner:

Name Carolina Pizza Company
Address 9313 34th St, Suite N#100
City/State/Zip Code Wichita, KS 67226
Telephone Number 561-670-1025 Email Address _____

Applicant and/or Agent (if different than property owner):

Name Tammy Korte, ArcVision Inc.
Address 1950 Craig Rd #300
City/State/Zip Code St. Louis, MO 63146
Telephone Number 314-415-2400 Email Address tkorte@arcv.com

Location of Property:

62 Pisgah Hwy

Property Identification Number (PIN): 8597-45-6400-000

Zoning District(s): C4 Within City Limits? Yes No

Request SEP as permitted in City Zoning Ordinance, Section(s) _____

REQUESTING SPECIAL USE PERMIT TO ALLOW: _____

existing drive thru window

Following must be included with Application:

1. Site Plan
2. Listing of names and mailing addresses of all property owners within five-hundred feet (500') from the boundaries of the property in question.
3. Application filing fee - \$200 Receipt # _____

[Signature]
Signature of Property Owner

[Signature]
Signature of Agent (if different than property owner)

02-18-15
Date

2/18/15
Date

SPECIAL USE PERMIT Request to be heard by BOA on: 3/10/15 4/14/15

