

A G E N D A
AMENDED
CITY OF BREVARD
BOARD OF ADJUSTMENT
City Council Chambers
95 West Main Street, Brevard
www.cityofbrevard.com
June 9, 2015

I. Welcome

II. Introduction of Board Members

III. Approval of Agenda

IV. Approval of Minutes: May 12, 2015

V. Old Business: Continued from May 12, 2015 Meeting:

A. Consideration of Application for Variance (#15-126) by New Paradigm Homes, LLC, for a variance in the rear setback from 25' to 18'6". The property is located at 405 W. Probart Street within the corporate limits of the City of Brevard, further identified by PIN # 8586-32-4492-000.

B. Consideration of Application for Variance (#15-127) by New Paradigm Homes, LLC, for a variance in the rear setback from 25' to 18'6". The property is located at 415 W. Probart Street within the corporate limits of the City of Brevard, further identified by PIN # 8586-32-4475-000.

VI. Other Business

VII. Adjourn

Agenda posted and emailed to T. Times, June 2, 2015 jhp

**MINUTES
BREVARD BOARD OF ADJUSTMENT
May 12, 2015**

The Brevard Board of Adjustment met in regular session on Tuesday, May 12, 2015 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
Mike Young

Members Absent: Josh Burdette

Staff Present: Josh Freeman, Planning Director
Daniel Cobb, Asst. Planning Director
Janice H. Pinson, Board Secretary
Mike Egan, Board Attorney

Others: Collin O'Berry, Pilot Cove
Lane Lastinger, Pilot Cove
Doug Harris, New Paradigm Homes, LLC

I. Welcome and Introduction of Board Members

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

II. Approval of Agenda

J. Mathews requested that the agenda be amended to include, under Old Business: Reaben Oil Special Use Permit. She requested a motion to approve the agenda as amended, motion to approve by M. Young seconded by A. Delzell, unanimously carried.

Tad Fogel requested that J. Mathews, Chair, establish who would be the voting members for the meeting. She indicated that T. Fogel would not vote unless necessary.

III. Approval of Minutes

J. Mathews requested a motion to approve the Minutes of the April 14, 2015 meeting. A. Delzell requested a couple of minor revisions to the minutes. Motion was made to approve minutes as amended by C. Dillingham, seconded by T. Tartt, unanimously carried.

IV. New Business

A. Consideration of Application for Special Use Permit (#15-119) by Bryson Development & Mgt., Ltd., for a special use permit to operate a campground in a general residential (GR4) zoned district. The property is located at 72 Pisgah Highway, within the regulatory limits of the City of Brevard, further identified by PIN #(s) 8597-46-3919-000; 8597-47-7887-000; 8597-48-2017-000.

J. Mathews requested that any witnesses please present themselves, state their names and be sworn by the Board Secretary. The following were sworn: Collin O'Berry and Lane Lastinger, Pilot Cove developers and agent for the applicants, Bryson Development. Josh Freeman and Daniel Cobb, Staff.

J. Mathews polled the board as to exparte communications and conflicts of interest. There were none.

J. Mathews polled the applicants as to whether or not they had any objections to any of the board members voting on this case. There were none.

J. Freeman certified for the record that the public hearing had been properly advertised in accordance with NC State Law and City Code.

J. Freeman presented his staff report stating that campgrounds are an allowable use within General Residential districts but in the interest of public health, safety and welfare, campgrounds must be approved by the Board of Adjustment via issuance of a Special Use Permit as outlined in UDO Chapter 16. He further explained Chapter 16 as it pertains to the issuance of special use permits;

UDO Chapter 16 authorizes the Board to grant a special use permit upon positive affirmation of the following findings of fact:

1. 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
2. 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
3. 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.

J. Freeman stated that the design of the proposed campground meets all City Code and the current Land Use Plan. He stated that the campground will be visually and functionally

compatible with the surrounding area and not detrimental to the value of adjoining property and associated uses.

Further stating that the site is designed to facilitate good access by fire and other emergency services personnel, the lodge structure will receive a commercial fire suppression system, and recommended that it also be subject to the recommended condition that the campground be designed to comply with the NC Fire Wise Program. He stated that Staff recommends approval with the NC Fire Wise guidelines condition, and because the proposed campground would not be injurious to the health, safety and welfare of the public.

J. Freeman explained that the NC Fire Wise Program is a way of designing urban wild fire interfaces in places where there is a higher than normal risk of wild fires impacting development and gave design examples such as fire breaks, brush control, etc.

Collin O'Berry presented a slideshow with a narrative of the proposed Pilot Cove Campground. He stated that they were hoping to fill a need for quality accommodations in the area. That they are catering to the adventure vacationist, people who would want to drive in, park their car and ride their bikes until they are ready to leave. He further stated that they are very much in support of preserving the natural environment and through their design hope to also educate people on conservation. That their plan is to promote the greenway as access to downtown and hope to work with local businesses to promote tourism. He went over the development plans in detail which are included in his narrative; a copy of which is attached hereto, labeled Exhibit "A" and incorporated herein by reference.

J. Mathews ask if the existing house on the property would be the proposed lodge. The answer was yes, the current Bryson residence.

A. Delzell asked how the property would be accessed.

C. O'Berry responded access would be from US Highway 276 across a private easement which will comply with all Unified Development Ordinance guidelines.

M. Young ask if there were concerns about adequate parking for groups that were traveling from different directions to meet at the campground.

C. O'Berry answered that there were concerns but that their advertising would make is clear that there would be only one parking spot available per campsite and cabin. They will also be exploring options with surrounding businesses to utilize existing parking lots for overflow parking.

T. Fogel asked if cars would be able to access the campsites or cabins.

C. O'Berry answered that each site would have a parking space available in close proximity. He further explained that no trailers or campers would be permitted.

C. O'Berry asked if there were any other questions of the Board or the general audience. Someone in the audience started to ask a question. M. Egan, Board Attorney, explained that this is a quasi-judicial proceeding and that audience participation was not allowed and that all questions need to come from Staff or the Board.

J. Mathews ask Board Attorney, Mike Egan, if it was appropriate to let Staff answer questions. M. Egan responded that it was. There were no questions for Staff.

J. Freeman explained that the Board had several options, approve as presented, approve with conditions, deny or table until the next meeting for further information.

J. Mathews ask if there were further questions for the Applicant or for Staff. There were none.

J. Freeman ask that J. Mathews, Chair, not close the hearing and he spoke with M. Egan, Board Attorney.

M. Egan addressed the Board Chair, J. Mathews, stating that it was late in the hearing but that he thought if someone with standing wanted to intervene and become a party to the hearing that they could then ask questions. J. Mathews, Chair, stated she would offer the opportunity.

J. Freeman asked M. Egan to give some examples of what would make someone a party of standing. M. Egan stated the following: Interest different in kind than the public at large, an adjoining property owner and that being a party would give them the right to appeal to the Courts.

The person in the audience responded that she felt her questions could be answered privately.

J. Mathews closed the hearing for the Board's deliberation.

A. Delzell made the motion as follows:

With regard to Case No. SUP- 15-119, the application of Bryson Development & Mgt., Ltd., for a special use permit to operate a campground in a GR General Residential Zoning District, 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 are in harmony with the general purpose and intent and preserves its spirit;
- 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
- 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.

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 and subject to the Staff's recommended condition that the campground be designed to comply with the NC Fire Wise guidelines. (<http://www.ncfirewise.org/>).

M. Young seconded motion, unanimously approved.

B. Consideration of Application for Variance (#15-126) by New Paradigm Homes, LLC, for a variance in the rear setback from 25' to 18'6". The property is located at 405 W. Probart Street within the corporate limits of the City of Brevard, further identified by PIN # 8586-32-4492-000.

C. Consideration of Application for Variance (#15-127) by New Paradigm Homes, LLC, for a variance in the rear setback from 25' to 18'6". The property is located at 415 W. Probart Street within the corporate limits of the City of Brevard, further identified by PIN # 8586-32-4475-000.

J. Mathews, Chair, combined the two (2) variance applications into one (1) hearing, stating that they would be voted on separately.

The following were sworn as witnesses by Board Secretary, Doug Harris, Applicant, Josh Freeman and Daniel Cobb, Staff.

J. Mathews polled the board as to exparte communications and conflicts of interest. There were none.

J. Mathews polled the Applicant, Doug Harris, as to whether or not there were any objections to any of the board members voting on the cases. There were none.

J. Freeman presented his staff report stating that the variance request was for a 6'4" variance from the rear setback to facilitate placement of a stairway, which will provide secondary ingress/egress to two (2) existing residential structures upon the property. He guided the Board through City Code as is applies to granting variances and then through the principles that the Board needs to consider to make their decision.

Brevard City Code, UDO Section 16.3 authorizes the Board to grant variances upon positive affirmation of the following findings:

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 consideration of a variance request, City Code requires that the Board be guided by the following principles:

1. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
2. The hardship relates to the applicant's land, rather than personal circumstances;
3. The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
4. The hardship is not the result of the applicant's own actions; and
5. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

J. Freeman further explained that the structures are completed but are not occupied and that the Board should consider the following questions:

- Is the hardship the result of the applicant's own actions?
- Is the variance necessary or are there other reasonable and practical alternatives that would provide reasonable secondary access to the structures?

J. Freeman stated that the Board had the following options:

1. Approve the variance as presented, upon positive affirmation of the aforementioned findings of fact.
2. Approve the variance as presented with conditions, upon positive affirmation of the aforementioned findings of fact.
3. Deny the variance as presented due to an inability to positively affirm the aforementioned findings of fact.
4. Table a decision until the June, regular meeting and request that Staff and or the Applicant provide additional information.

T. Tartt requested an explanation of the current setbacks. J. Freeman explained that rear setbacks for structures and all parts of the structure in general residential zoned districts is 25' but that the setback for accessory structures is 10'.

M. Young asked why inspections did not catch the violation before construction, wondering why the variance was not requested before construction.

J. Freeman explained that when the Applicant realized that they had violated the rear setback, they did the honorable thing and came forward to report the violation. They proceeded to ask their options. He further explained that the current ordinance does not allow Staff any authority to grant a variance. Therefore, the Applicant's choices were to apply for the variance or to tear down the steps and rebuild to be in compliance. He stated that the Applicant was granted a conditional final zoning approval contingent on the fact that if the variance does not pass, the steps will be removed and reconstructed to be in compliance with the setback requirements.

Doug Harris, Applicant, stated that he had some photos that he would share with the Board in a few minutes. He stated that he appreciated the Board hearing the case and that he realizes that they got the cart before the horse.

D. Harris testified that he formed a partnership with others to build small, well designed, energy efficient homes to fill the need for people who wanted the convenience of a new home in town. He as the Architect handled the design and permitting aspect of the project and his contractor partner was responsible for the construction. At the end of the project a subcontractor was instructed to build the steps. The subcontractor made an assumption that the stairs were not subject to the same setbacks as the house. He stated that once into the project they discovered the grade of the lot was steeper than realized and this presented sewer connection and drainage issues.

He further testified that, after reviewing their options, the stairs as built were the least impactful and that they felt it important to provide egress from the rear of the house for the occupants. D. Harris presented site pictures for the Board to review. He stated that if they had realized upfront the situation, they would have been in front of the Board 8 months ago. His opinion is that if you drive by and view the steps as currently built that they are not detrimental to the neighborhood.

J. Mathews, Chair, ask if the Board had any questions.

M. Young ask if they have heard from any of the neighbors.

D. Harris delivered a letter to the Board from 5 neighbors in support of the requested variance. M. Egan ask if the applicant wanted the letter admitted into evidence. The applicant requested that it be admitted into evidence and it is attached hereto and labeled "Applicant's Exhibit "A". J. Mathews read the letter to the Board. M. Egan advised the Board that the letter is hearsay and that it cannot be considered as evidence by the Board.

The Board ask several questions about alternative solutions such as spiral staircase, changing the layout of the stairs. D. Harris responded to these questions with the reasons that these alternative solutions would not be feasible.

A. Delzell stated that it really bothered him and that it is important that we all pay attention to the ordinance and build in the allotted area accordingly.

J. Mathews ask if the Board, D. Harris or Staff had any rebuttal. There were none. The hearing was closed.

M. Young stated that he visited the property. That he has lived in Brevard for 22 years and feels that the structures look good and are the type of cost effective housing that is needed in Brevard. He felt that D. Harris and the Contractor showed integrity by coming to the Planning Department when they realized the violation. He voiced his concerns about removing the stairs and building a balcony with no egress because of the fire hazard.

T. Tartt stated that he shared A. Delzell's concerns about not complying with the ordinance as written and that the Planning Department did not seem to have a problem with the current situation.

J. Mathews corrected T. Tartt by stating that she had not heard Staff give an opinion.

T. Tartt answered the motion as written is in the affirmative. M. Egan explained that the Board's approved procedures are that all motions are prepared by Board Attorney in the affirmative.

J. Mathews ask the questions that are required to be complied with in order to grant a variance and there was further discussion. She further stated that she was concerned about setting a precedence of the Board hearing cases for people who build and then ask for forgiveness.

T. Fogel shared concerns that approval of the variance would be setting precedence for conflicts of this type in the future. Asking has this been done in the past, minor variances granted.

J. Mathews stated she did not know the answer to this question.

M. Egan, Board Attorney, stated that each case stands on it on merits but that the Board needed to be consistent with their decisions.

J. Mathews ask M. Egan if the Board could delay the decision until the next meeting.

M. Egan stated that the Board could delay, but should tell the Applicant the information needed so they could prepare for the next meeting. He also explained that the meeting would have to be reopened to conduct the business of continuing the hearing until the next meeting.

M. Young made a motion to reopen the hearing, seconded by C. Dillingham, unanimously approved.

T. Tartt what there thinking was on the matter and how will it impact things in the future.

J. Freeman stated that each case stands on its own merits but that decisions made to create a pattern that communicate expectations to the public and that unrealistic decisions can jeopardize the city's standing in litigation. He further explained Staff's position to be that the hardship was created by the Applicant and that he would question the Board's ability to find otherwise, staying true to the findings of fact and if the Board is so inclined to approve that they need to be certain that there are no other

options. He suggested that the Applicant bring more information before the Board to confirm that there are no better options.

J. Mathews ask if the Applicant wanted to make a rebuttal statement.

D. Harris stated that they had looked at a lot of options but due to heights, dimensions, topography of the lot, they felt that there were no other viable options that were less impactful. He stated that he did not have any examples to show but that if the Board wishes, he will bring something before them.

J. Mathews stated that the Board would like to see more options.

T. Tartt made a motion to continue the hearing until June 9th to allow the Applicant time to provide further information. Seconded by C. Dillingham and unanimously approved.

J. Mathews closed the hearing.

V. Old Business – Daniel Cobb report on Hall Waddell Extension of Special Use Permit.

D. Cobb reported on the Reaben Oil Company Special Use Permit, the original application was file # 11-007; the permit had been extended twice file # 13-399 and 14-382. He stated that he spoke with Hall Waddell about their plans and he stated that they were still in the process of building their new store in Asheville and that due to the size of their company; they did not have the manpower to work on both projects at the same time. Mr. Waddell said he plans to finish the Asheville project and will be coming back to the Board next fall to request another 12 month extension. His plans are to begin the Brevard project in the summer of 2016. D. Cobb explained to the Board that there is no limit to the number of times an extension to an SUP can be requested and brought before the Board.

He explained that if the Board is interested in seeing changes to limit the amount of time a special use permit can be extended, the Board would need to Staff direction to do so, at which time a text amendment can be sent to the Planning Board for review and if approved, it would move on to City Council for approval, at which time the Board's Rules of Procedure would be amended accordingly.

T. Tartt thanked D. Cobb for the information and said that he had no interest in trying to change the ordinance at this time.

VI. Other Business

T. Fogel requested that Chair, J. Mathews certify a quorum each meeting and establish the voting members.

J. Mathews stated she would do so.

J. Freeman commented that the Board is functioning very well and that he was proud of them and thanked them for their service.

Adjourn

Motion to adjourn by C. Dillingham, seconded by A. Delzell, unanimously approved and meeting adjourned at 8:46 PM.

Judith A. Mathews, Chairman

Janice H. Pinson, Board Secretary

DRAFT