



**AGENDA**  
**BREVARD BOARD OF ADJUSTMENT– REGULAR MEETING**  
**Tuesday, October 4, 2016 – 3:00 PM**  
**Council Chambers**

**I. Welcome**

**II. Introduction of Board Members**

**a. Certify Quorum and Voting Members**

**III. Approval of Agenda**

**IV. Approval of Minutes**

**a. September 6, 2016**

**V. New Business**

**a. Request of Imran Iqbal for a 95 sq. ft. variance to allow for canopy signage, exceeding the maximum ground sign limit of 32 square feet in the Downtown Mixed Use (DMX) zoning district in accordance with Unified Development Ordinance Chapter 12.9.B.1.i and 12.9.E. The property is located at 20 Hendersonville Highway within the corporate limits of the City of Brevard, further identified by PIN 8597-45-8002-000.**

**VI. Old Business**

**VII. Other Business**

**VIII. Adjourn**

**MINUTES**  
**BREVARD BOARD OF ADJUSTMENT – REGULAR MEETING**  
**Tuesday, September 6, 2016– 3:00 PM – Council Chambers**

The Brevard Board of Adjustment met in regular session on Tuesday, September 6, 2016 at 3:00 PM in Council Chambers of City Hall.

Members Present:                 Judith A. Mathews, Chair  
  Tad Fogel  
  Tom Tartt, Vice Chair  
  Paul Welch  
  Coty Ferguson  
  Allen Delzell

Members Absent:                 Mike Young  
  Kevin Jones

Staff Present:                     Daniel Cobb, Planning Director  
  Janice H. Pinson, Board Secretary  
  Brian Gulden, Board Attorney

Others:                             Judy Wilson, Applicant

**I. Welcome and Introduction of Board Members**

Chair, J. Mathews called the meeting to order at 3:00 PM. The Board introduced themselves and the Chair introduced the Applicant, Judy Wilson. Chair, J. Mathews certified that a quorum of the Board was present. She further stated that the alternate member, Coty Ferguson, would be the voting member.

**II. Approval of Agenda**

J. Mathews requested a motion to approve the agenda. P. Welch moved to approve, seconded by T. Fogel, unanimously carried.

**III. Approval of Minutes**

J. Mathews requested a motion to approve the Minutes of the August 2, 2016 meeting. Motion by P. Welch to approve minutes as written, seconded by T. Tartt, unanimously carried.

#### **IV. New Business:**

**a. Request of Judy Wilson for a variance in the front setback from 10' to 4' (UDO 12.5.B). The property is located at 218 Rosman Highway, within the corporate limits of the City of Brevard, further identified by PIN 8585-37-1758-000.**

J. Mathews opened the hearing. She explained the quasi-judicial hearing procedures. She polled the board as to ex parte communications and there were none. She polled the board and the applicant for conflicts of interests and there were none.

B. Gulden, Board Attorney, polled Judy Mathews as to whether or not she could be impartial after she stated that she was a friend of the applicant. J. Mathews stated that she could be impartial.

Chair, J. Mathews requested that B. Gulden give a review of the procedure and the voting requirements for a variance hearing. He explained that the variance would have to be approved by a super majority which would require a vote in favor by 4 of the board members.

The following were sworn: Daniel Cobb, Planning Director and Judy Wilson, Applicant.

Daniel Cobb stated that the hearing was properly advertised, the property posted and the neighbors contacted. He presented his staff report which included the following:

**BACKGROUND:** The Mountain Plaza Shopping Center was constructed in or around 1985, during which time the property was zoned C-4. The sign setback standard for a C-4 zoning district at that time was 10' from the edge of right-of-way.

In 2006 the property was rezoned to Neighborhood Mixed-Use (NMX). This rezoning occurred with the adoption of revised development standards (Unified Development Ordinance) and new zoning districts. While several changes to development standards occurred with the adoption of this ordinance, the same 10' sign setback standard remained.

This type of sign is considered a nonconforming ground sign due to its location, which is 4.68' from the edge of right-of-way, not the required 10'. Chapter 12 of the Unified Development Ordinance regulates size and location of signs and states the following "*The plastic inserts within existing nonconforming sign frames may be replaced for continued use until the amortization period expires [12.2.D.7].*" The amortization period expired January 1, 2003, however this seems to have been an oversight when the ordinance was adopted. The effective date of the ordinance is April 3, 2006.

Staff has issued permits for such signs (panel signs) in the past, however these were for replacing an existing panel, not adding anything additional.

The ordinance allows for the maintenance and repainting of nonconforming signs (no other changes). It appears the intent of this is to allow for the continued use of nonconforming signs as long as they are safe and functional. Any changes to a nonconforming sign requires compliance with current standards.

**DISCUSSION:** The purpose of sign regulation is to prevent dangerous conditions from occurring due to their size, location, construction, or manner of display or to mislead the public by causing confusion, or obstruct the vision necessary for traffic safety. The intent is also to support and complement land use objectives set forth in the zoning ordinance for the City of Brevard.

Until the nonconforming aspect of the sign is addressed, no additional panels may be added. In order to comply with setback standards the sign must be relocated or the requested variance must be granted.

**SUMMARY:** The standards governing the reason, size, location, construction, and manner of display of signs have applied, and remained consistent for the last 30 years. While a new ordinance was adopted in 2006, it did not affect sign setbacks. The Board should consider the facts of this case and decide accordingly.

J. Wilson testified that the ground sign had been there since the early 1980's. That she had it surveyed and that it was 4.86' from the street right of way and needed to be 10'. That she just wants her tenants to be able to advertise their businesses. The existing ground sign is 14' 11" tall and she does not want a larger sign, she just wants to be allowed to replace panels with existing businesses occupying her property and that currently there are businesses advertised on the sign that have not occupied spaces in her building for many years.

T. Tartt commented that he did not see any traffic impeding problems with the sign.

P. Welch asked Ms. Wilson how much she had paid for the application fee for this proceeding and the survey and she responded approximately \$1,300.00 for the survey and a \$200.00 application fee.

After questions by the board, Chair, J. Mathews closed the hearing. She went over the 4 requirements that needed to be met to grant a variance as follows:

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.

B. Gulden advised the Board that the Unified Development Ordinance Chapter 16.13.A.4. states that an economic hardship shall not constitute an unnecessary hardship.

B. Gulden stated that Daniel Cobb had requested that the hearing be reopened. P. Welch made a motion to reopen the hearing, seconded by T. Fogel, unanimously carried.

D. Cobb testified that the property is located with the 100 year flood plain and that if the sign was relocated that it would most likely have to be moved closer to the source and would have to be built to the current flood plain development standards.

C. Ferguson questioned whether or not a new owner would have to bring the sign into compliance.

B. Gulden advised that if the variance was granted that the sign would be considered conforming and that this follows the property.

T. Fogel made the following motion: With regard to the request by Judy Wilson for a variance in the front setback from 10' to 4' (UDO 12.5.8), I move the Board find (a) that unnecessary hardship would result from the strict application of the regulations; (b) the hardship results from conditions that are peculiar to the property, such as location, size or topography; (c) the hardship did not result from actions taken by the applicant or the property owner; and (d) the requested variance is consistent with the spirit, purpose and intent of the regulations, such that public safety is secured and substantial justice achieved. I further move the Board grant the requested variance in accordance with and only to the extent requested in the application. Allowing the sign to remain in its current location and a panel to be added is in keeping with the spirit and intent of the ordinance, seconded by P. Welch, unanimously carried and the variance was granted.

## **VI. Old Business**

None.

## **VII. Other Business**

A. Delzell was welcomed back as a member to the board.

C. Ferguson questioned if the Board of Adjustment had a role in changing the ordinance.

D. Cobb answered that the code is in the process of being rewritten and that this is the opportunity to fix things, but that the Board of Adjustment is a quasi-judicial board.

B. Gulden explained that the Board of Adjustment has no ability to tell the Planning Board what to do, but that as a citizen you can discuss changes to the ordinance with Planning Board members.

## **VIII. Adjourn**

Motion to adjourn by P. Welch, seconded by C. Ferguson, unanimously carried and meeting adjourned at 3:56 PM.

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Judith A. Mathews, Chairman

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Janice H. Pinson, Board Secretary



# The City of *Brevard* North Carolina

## BOARD OF ADJUSTMENT STAFF REPORT

October 4, 2016

**TITLE:** Variance Request #16-000002  
**SPEAKER:** Daniel P. Cobb, AICP, CFM, CZO – Planning Director  
**PREPARED BY:** Daniel P. Cobb, AICP, CFM, CZO – Planning Director

**Executive summary:** The Board will hear a request by Imran Iqbal for a 63 square foot variance to allow for additional signage on canopy of his gas station. The property is located at 20 Hendersonville Highway (PIN 8597-45-8002-000), previously home to an Exxon brand gas station.

**Applicant:** Imran Iqbal  
143 Thoroughbred Circle  
Arden, NC 28704

**Meeting Date:** October 4, 2016 – 3:00PM

**Variance:** 63 square feet

**Project Site:** 20 Hendersonville Highway  
Pisgah Forest, NC 28768

### Background:

On August 2, 2016, the Board of Adjustment granted the applicant a Special Use Permit (SUP 16-000001) to operate a Citgo brand gas station at 20 Hendersonville Highway (PIN 8597-45-8002-000), previously home to an Exxon brand gas station. Subsequent to this approval, the applicant applied for sign permits and was granted approval for a wall sign (S16-000087) and a ground sign (S16-000088, shown below). This request is to allow for additional signage, exceeding the maximum amount allowed in a Downtown Mixed-Use zoning district.

### Discussion:

The purpose of sign regulations is to prevent dangerous conditions from occurring due to their size, location, construction, or manner of display or to mislead the public



Ground sign

by causing confusion, or obstruct the vision necessary for traffic safety. The intent is also to support and complement land use objectives set forth in the zoning ordinance for the City of Brevard.

The specific request from Mr. Iqbal is to vary the standards listed in Chapter 12.9.B.1.i:

*“DMX, NMX, and RMX districts: 32 square feet in surface area per side of sign, up to a maximum of 64 square feet of aggregate surface area for the entire sign”*

The subject property is zoned Downtown Mixed-Use (DMX), which allows for a ground sign up 32 square feet in size. The ground sign approval issued August 24, 2016, was for a panel replacement of a 32 square foot panel. When considering canopy signs, both the ground sign dimensions and the dimensions of any canopy signs must be added together to calculate the overall sign dimensions. Chapter 12 of the UDO, section 12.9.E states:

*“[Canopy signs:] Signs may be attached to a canopy provided that the total area of both the ground signs and all canopy signs does not exceed the amount described in this subsection”*

Staff is of the opinion, based on the standards in 12.9.B.1.i and 12.9.E, that if Mr. Iqbal had installed a smaller ground sign, he would have additional area left for canopy signage. For example, a 16 square foot ground sign would allow for a 16 square foot canopy sign (16+16=32).

The existing built environment in the vicinity of the subject property is reminiscent of a more traditional suburban highway. Most buildings are setback from the road, parking is in front of them, and there is little, to no pedestrian infrastructure. However, it should be noted that this area is zoned DMX, which is the same zoning designation as downtown Brevard. The DMX district is coded for the traditional downtown area. Individual buildings are encouraged to be multi-story with uses mixed vertically, street level commercial and upper level office and residential. Higher densities of residential development is encouraged. It is the purpose of these regulations to encourage vitality by excluding certain activities which have a negative effect on the public realm through auto-dominated or non-pedestrian oriented design or uses. Over time, the intent of this zoning designation (implemented in 2006) is to steer development



Canopy from west



Canopy from east

towards the creation of a downtown environment. As can be seen currently in downtown Brevard, ground signs are minimal where they do exist.

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.

**Summary:**

The applicant received approval for two signs; a wall sign (S16-000087) and a ground sign (S16-000088). The ground sign was designed and built to the largest size possible within the zoning district in which it is located. A smaller ground sign would have allowed for the remaining area to be used for signage on the canopy. The applicant is requesting this variance to install additional signage (as depicted in the attached site plan).

**Attachments:**

- A. Application
- B. Site plan
- C. Suggested motion

RECEIVED  
8/31/16

ATTACHMENT A

City Of Brevard, North Carolina  
BREVARD BOARD OF ADJUSTMENT

Application for Variance

Variance Case/File Number: # V16-000002

**Property Owner:**

Name James Mudrey  
Address 112 Woodcross Dr.  
City/State/Zip Code St. Johns, FL 32259  
Telephone Number 386-871-7147 Email Address mudreyjo@hotmail.com

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

Name Imran Iqbal  
Address 143 Throughbred Cir.  
City/State/Zip Code Arden, NC 28704  
Telephone Number (828) 412-9928 Email Address i.iqbal@gmail.com

**Location of Property:**

20 Hendersonville Hwy Pisgah Forest, NC 28768

Property Identification Number (PIN): 8597-45-8002-000  
Zoning District(s): Mixed use Within City Limits? Yes No     

Request VARIANCE from City Zoning Ordinance, Section(s) 12.9 B 1 i  
12.9 E

Zoning Ordinance Requires: Signs may be attached to the canopy provided that the total area of both the ground sign and canopy signs does not exceed the amount described in subsection.

**REQUESTING VARIANCE TO ALLOW:** Citgo branded canopy channel letters w/ Citgo Trimark. Every gas canopy in town has their brand names on their canopy. It's how gas stations are branded.

**Following must be included with Application:**

1.  Site Plan
2.  Listing of names and mailing addresses of all property owners within two-hundred feet (200') from the boundaries of the property in question.
3.  Application filing fee - \$200.00

James E. Mudrey  
Signature of Property Owner  
8-30-16  
Date

Imran Iqbal  
Signature of Agent (if different than property owner)  
8-30-16  
Date

\*\*\*\*\*

VARIANCE Request to be heard by BOA on: October 4, 2016

**Properties within 200 ft of Energy Stop #4:**

- 1 Pisgah Pet Care Animal Hospital  
40 Hendersonville Hwy.  
Pisgah Forest NC 28768**

# CITY OF BREVARD

## STATEMENT OF FEES

### CUSTOMER INFORMATION

Customer name: Imran Iqbal Telephone: \_\_\_\_\_  
 Contractor name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 Development Permit Number: \_\_\_\_\_  
 Location (911 Property Address): 20 Hendersonville Hwy  
 Billing address: \_\_\_\_\_  
 Tax ID or Fed. #: \_\_\_\_\_

### FEES

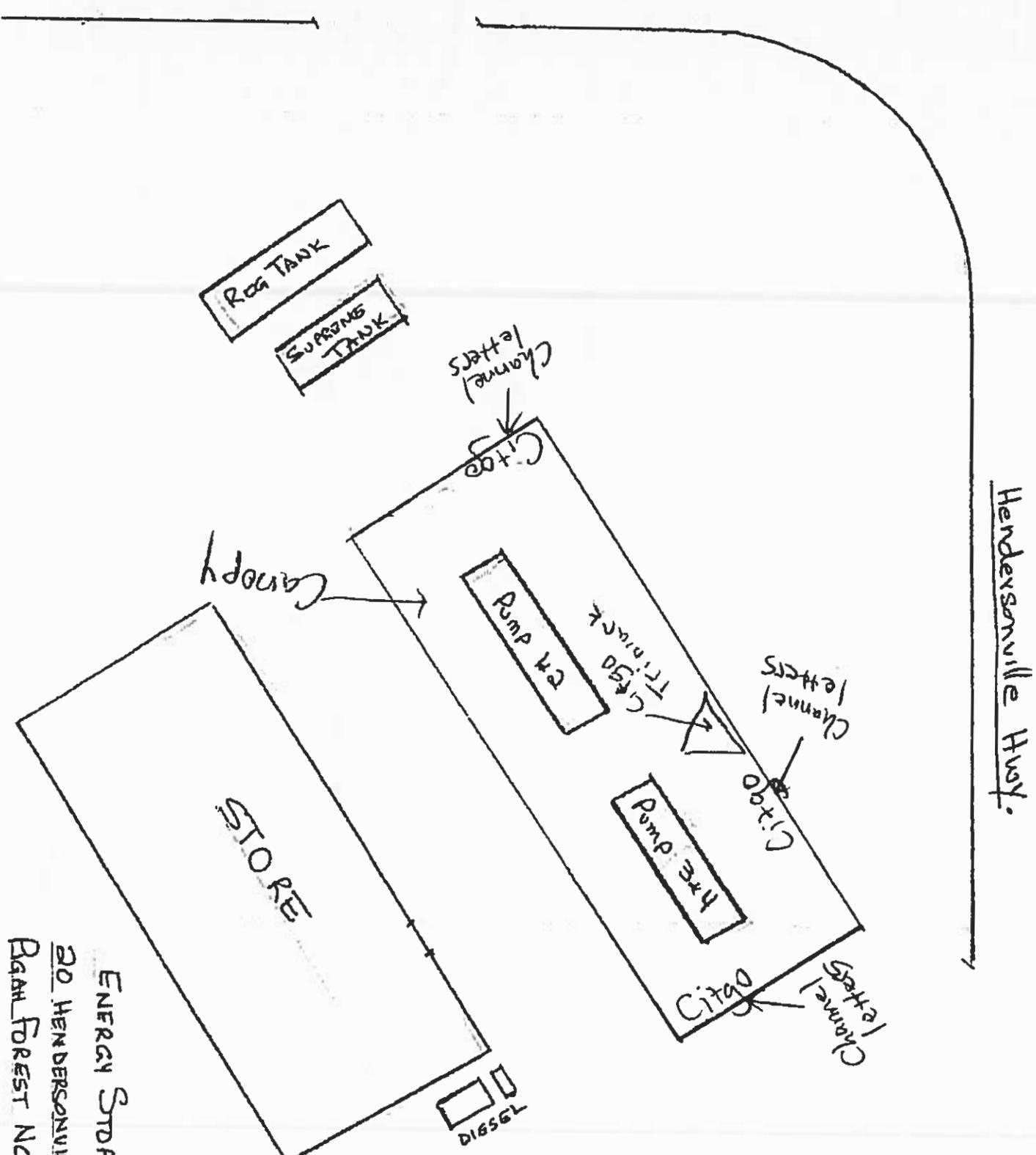
Category	Fee	Account Code	By
Business License		10-1260-0300	
Utility Account Deposit		30-2360-0200	
Water Tap Fee		30-3730-0100	
Sewer Tap Fee		30-3730-0200	
Water Impact Fee <sup>1</sup>		35-3730-0100	
Sewer Impact Fee <sup>1</sup>		35-3730-0200	
Zoning Permit	200. <sup>00</sup>	10-3350-0200	
Stormwater Fee-In-Lieu		35-1010-0480	
Parking Fee-In-Lieu		10-3350-0600	
Sidewalk Fee-In-Lieu		35-1010-0460	
Sign Permit Fee		10-3350-0200	
Miscellaneous Bonds		10-2010-1000	
Other (Describe)			
Total Fee <sup>2</sup>	200. <sup>00</sup>	Receipt Number: 357627	Date: 8/31/16

\*Note to Planning Staff: Knox Box fees should be collected separately and forwarded to the vendor.

Please bring this form with you to the Water Dept to pay fees and we will be happy to give you a receipt for necessary permits.

Day meter to be set (if applicable): \_\_\_\_\_

Hwy 280



ENERGY STOP #4  
 20 HENDERSVILLE HWY  
 RAAM FOREST NC 28768

**CITY OF BREVARD ZONING BOARD OF ADJUSTMENT**

**SUGGESTED MOTION: IMRAN IQBAL: VARIANCE REQUEST #16-000002**

With regard to variance request 16 – 00002, the application of Imran Iqbal for a 95 sq. ft. variance to allow for canopy signage exceeding the maximum ground sign limit of 32 square feet in the Downtown Mixed Use (“DMX”) zoning district, I move the Board make the following findings of fact:

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

**(LIST FINDINGS OF FACTS FOR THIS ELEMENT PER THE TESTIMONY)**

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

**(LIST FINDINGS OF FACTS FOR THIS ELEMENT PER THE TESTIMONY)**

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

**(LIST FINDINGS OF FACTS FOR THIS ELEMENT PER THE TESTIMONY)**

- d) the requested variance is consistent with the spirit purpose and intent of the regulations such that Public Safety is secured and substantial Justice achieved.

**(LIST FINDINGS OF FACTS FOR THIS ELEMENT PER THE TESTIMONY)**

Accordingly, I further move the board to Grant the requested variation 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: (LIST THE CONDITIONS)