

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, January 3, 2023 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, January 3, 2023, at 3:00 PM.

Members Present: Kevin Jones, Chair
Judith Mathews, Vice Chair
Allen Delzell
Peter Offen
Tad Fogel

Staff Present: Katherine Buzby, Planner
Janice Pinson, Board Clerk
Brian Gulden, Board Attorney

Others: Mr. and Mrs. Hiro Fukai, Crossroads Property Solutions, LLC

I. WELCOME

Chair K. Jones called the meeting to order at 3:00 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS

Board members, Board Attorney, and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

Chair K. Jones had the Clerk certify that a quorum of the Board was present.

IV. APPROVAL OF AGENDA

Motion to approve the agenda by T. Fogel, second by P. Offen, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the November 1, 2022, meeting by J. Mathews, second by A. Delzell, carried unanimously.

VI. NEW BUSINESS:

a) New Business

a. Request of Hiro Fukai, Crossroads Property Solutions, LLC, VAR-22-010 for a variance from UDO Chapter 2.3.C for a reduction of the rear setback requirement of 25' to allow an 8' setback on the rear property line. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district, further identified by PIN# 8586-75-7159-000.

Chair Jones went over the protocol for quasi-judicial proceedings.

He polled the board as to exparte communications and conflicts of interest, and there were none. Three board members viewed the property separately, A. Delzell, T. Fogel and K. Jones, and all spoke with no one.

Applicant was polled as to conflicts with any board members, and there were none.

Mr. and Mrs. Fukai, Applicants and Katherine Buzby, Planner were sworn.

Chair Jones opened the hearing.

Katherine Buzby, Planner, presented her staff report a portion of which follows:

Background

The applicant, Hiro Fukai, owns a house and a parcel of land at 82 Poplar Street, which is located in the General Residential-8 (GR-8) zoning district within the corporate limits of the City of Brevard. The parcel identification number is 8586-75-7159-000.

The current Unified Development Ordinance (UDO) rear yard setback requirement is 25 feet in the GR-8 zoning district. The applicant is asking for a 17' variance, as he is building a 16'x30' deck with an ADA ramp that will encroach' into the current rear yard setback, which will leave an 8' setback to the current rear yard property line.

Discussion

A plat recorded in 2008 at the Register of Deeds indicates that the rear yard (at the time of recording) was determined to be on the east side of the property. The applicant is constructing a deck (16'x30') with an ADA ramp on the east side of the property that extends into south side of the property.

The current UDO standards determine the rear yard is the opposite yard to the street frontage, making his rear yard the south side of the property. At the time of the survey recording, the ordinance standards may have been different, and the rear yard was determined to be the east side of the parcel.

Under current regulations, the new deck and ramp will require a variance of 17' leaving the current rear yard setback at 8'. The deck will also be built in the 100-year floodplain but will follow all UDO and FEMA standards.

Ms. Buzby stated that the property was posted, letters mailed to neighbors and properly advertised according to NCGS 160D. She further stated that the Applicant was in the process of following the required floodplain development regulations.

Mr. Fukai testified as follows: He began with a rendering of the proposed deck and handicap ramp. He stated that his father is handicapped and because they want him to be able to visit their home, they need the ramp. He further testified that the deck would help them enjoy their yard because presently the water drains and collects in their yard and keeps it very moist, and that the deck would provide them with a place to park their bicycles. He explained the design and that the ramp will be in the side yard and will not be seen from the road.

He explained that when he purchased the property the plat from 2008 was how he understood the property lines and setbacks to be. He had contacted two (2) surveyors to survey the property, but they were months out, but told him that they thought he would just need a floodplain development permit to add the deck and ramp.

Mr. Fukai stated that he had nothing further to say and thanked the board for hearing his case.

After some brief questions by the board the hearing was closed.

Motion by P. Offen:

With regard to variance request **22-010**, the application of Hiro Fukai, Crossroads Property Solutions, LLC, seeking a variance from Chapter 2.3.C of the UDO for property located at 82 Poplar Street, Brevard, North Carolina, within the General Residential (GR) Zoning District, I move the Board to make the following findings of fact:

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

The Applicants father is disabled and cannot access the property without the ramp. The yard is not usable because of drainage from road.

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

The recorded plat indicates different setbacks than the current ordinance; water drainage from street collects in the yard.

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

The Applicant did not change the UDO.

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.

The additional deck and ramp will improve the owners use of their property and provide a more attractive view from the public street.

Accordingly, I further move the board to **GRANT** the requested variance to allow for 17-foot (17') reduction of the rear yard setback creating an Eight foot (8') setback on the rear property line of the subject property in accordance with and only to the extent represented in the application and plans.

Second by A. Delzell carried unanimously.

b. Election of Officers

K. Jones stated that everyone should take a chance at being chair. J. Mathews nominated K. Jones as Chair, second by A. Delzell, carried unanimously.

J. Mathews nominated P. Offen as vice-chair, second by K. Jones, carried unanimously.

c. Meeting Schedule 2023

T. Fogel made a motion to approve the 2023 meeting schedule, second by P. Offen, unanimously carried.

VII. UNFINISHED BUSINESS

None.

VIII. REMARKS

None.

IX. ADJOURN

A. Delzell moved to adjourn the meeting, seconded by T. Fogel. The motion carried unanimously. Meeting adjourned at 3:37 PM.

Kevin Jones, Chair

Janice H. Pinson, Board Clerk