

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, March 2, 2021 – 3:00 PM – Council Chambers

The Brevard Board of Adjustment met for a regular meeting on Tuesday, March 2, 2021, at 3:00 PM in Council Chambers of City Hall.

Members Present: Judith A. Mathews, Chair
Tom Tartt, Vice Chair
Kevin Jones
Allen Delzell
Tad Fogel

Staff Present: Paul Ray, Planning Director
Kaitland Finkle, Planner
Janice H. Pinson, Board Clerk
Brian Gulden, Board Attorney

Others Peter and Dawn Rossi, Applicants

I. WELCOME

Chair J. Mathews 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 J. Mathews certified a quorum of the Board was present.

IV. APPROVAL OF AGENDA

K. Jones made a motion, seconded by T. Tartt to approve the agenda as presented, carried unanimously.

V. APPROVAL OF MINUTES

K. Jones moved, seconded by A. Delzell that the February 2, 2021, minutes be approved as presented. Motion carried unanimously.

VI. NEW BUSINESS

a. Consideration of Application #VAR-21-001 Request of Peter and Dawn Rossi for a Variance from UDO Chapter 3.30.D.2. Fence height requirements. The property is located in the General Residential (GR) zoning district with the address of 154 White Oak Lane within the corporate limits of the City of Brevard, further identified by PIN# 8586-32-6922-000.

Chair, J. Mathews explained quasi-judicial procedures.

Chair J. Mathews asked the Board if they had any conflicts of interest or ex parte communications. There were none.

Chair J. Mathews asked if the Applicants had any conflicts of interest with any of the Board members. They replied that they did not.

The following were sworn by the Board Clerk: Paul Ray, Planning Director, Kaitland Finkle, Planner and Peter and Dawn Rossi, Applicants.

Kaitland Finkle stated that the matter before the Board was properly advertised, property posted and neighbors notified by mail in accordance with the NC General Statute requirements.

K. Finkle presented her staff report which is attached hereto and labeled, Exhibit "A".

Peter Rossi thanked the board for hearing the case. He explained that their case involved two requests for variances, that their property has two fronts: Curlee Street and Pisgah /White Oak Lane. They want to use the Curlee Street side as their back yard to enjoy with their family and to house their pets, and because they believe there are security issues on this street.

Mr. Rossi further explained that they did not realize when they purchased the property that they would be considered to have two (2) front yards.

Mr. Rossi explained that they did not pull a permit for the fence on the Pisgah/White Oak Lane side because they did not realize they needed one. He explained that his neighbor is building a secondary dwelling to rent as a short term rental. They built the fence for privacy, but also to serve as a retaining wall to help with erosion control.

Dawn Rossi said that she believes their fence meets the UDO Chapter 3.30 requirements; that in her opinion the fence does not exceed 4 feet in the front yard, and that the best side faces the neighboring parcel. She explained that they needed the privacy fence on the Curlee Street side to be able to house their pets, but also to have a place to enjoy private outside time with family. She stated that she believes that their fence is in harmony with the spirit and intent of the ordinance, and will not be injurious to the safety and welfare of the surrounding properties.

K. Jones stated that according to the testimony the biggest issue seems to be the sight triangle on the Pisgah/White Oak Lane side, and asked if it created a safety hazard.

Paul Ray, Planning Director, stated that the sight triangle requirements are there for a reason, and that he did not want to testify as to safety hazards.

Mr. Rossi testified that they have no issues pulling in and out of their driveway. He further explained that if they take the fence down, they will have major site/erosion problems.

Brian Gulden, Board Attorney, stated that the site triangle fence height requirement in the UDO requires that the fence cannot exceed 2.5 feet in height within the 10 foot sight triangle. He asked how much of the fence encroached into this area.

Mr. Rossi testified that the fence is 7 feet from the edge of the pavement.

Kaitland Finkle, Planner, testified that the right of way is 30 feet in width and the road is actually 17 feet in width.

Paul Ray, Planning Director, stated that in the future the road could be increased to the full width of the right of way (30 feet) and would go all the way to the property line.

Mr. Rossi testified that the unnecessary hardships would be elevation, topography, and exposure to garbage, strangers, and criminals. He further testified that he did not contact the police to report criminal behavior, but that he knows the police are watching the Curlee Street area for criminal activity.

K. Jones asked if the City would have a problem with the Board handling the two variance requests separately.

Brian Gulden, Board Attorney, answered that the matters can be addressed separately, and the Board could also put conditions on it, if the Board chooses to do so.

There being no further questions, J. Mathews, Chair, closed the hearing.

The Board deliberated.

Brian Gulden recommended that the Board deal with the request for the 2 foot variance request for the Curlee Street fence. He explained that it was time to make a motion, or the variance would fail.

J. Mathews, Chair, stated that she would wait until 4:30 PM, and that if no motion was made the variance would fail.

A. Delzell made the following motion:

Peter and Dawn Rossi: VARIANCE REQUEST # VAR-21-001

With regard to variance request **21-001**, the application of Peter and Dawn Rossi, for a variance from the Fence Height requirements, as set forth in UDO Chapter 3.30.D.2., for property located at 154 White Oak Lane, Brevard, North Carolina, within the General Residential (GR) Zoning District, I move the Board to make the following findings of fact:

Variance of 2 feet in height for the Curlee Street proposed fence:

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

The lot is double fronted and the Applicants should be able to identify the Curlee Street side of their property as their back yard to allow for the normal and private enjoyment of their property.

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

The front yard requirements applied to both sides of the property create peculiar conditions.

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.

T. Fogel seconded the motion. The following voted in favor to grant the variance: Kevin Jones, Allen Delzell, Tom Tartt and Tad Fogel. Voted against: Judy Mathews.

The variance was granted for the Curlee Street 2 feet in height variance.

Brian Gulden, Board Attorney, explained that the Pisgah/White Oak request for variance was still before the Board. He explained to the Board that they could not use the fact that the fence was already built as a hardship. He further stated that if the Board chose to put conditions on the variance that the conditions must be in writing, agreed to and signed by the Applicants.

T. Tartt made a motion to approve the fence as built except where it encroaches into the required site triangle. The site triangle requirements, and area are to be determined by Staff. Second by T. Fogel, vote carried unanimously.

VII. UNFINISHED BUSINESS –

Kevin Jones reported that requests have been sent to the County to fill the board vacancies.

VIII. REMARKS –

Tad Fogel asked that Staff start to use a laser pointer to clearly point out discussion items during the hearings, or some type of pointing device.

Paul Ray, Planning Director explained that the new televisions are LED and the pointers are hard to find, but that Staff would try to find one.

IX. ADJOURN

K. Jones moved, seconded A. Delzell the meeting adjourn. Motion carried. Meeting adjourned at 4:55 PM.

Janice H. Pinson Board Clerk

Judith A. Mathews, Chair