

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, May 2, 2023 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, May 2, 2023, at 3:00 PM.

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

Members Absent: Kevin Jones, Chair

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

Others: Alan Boroshok, Applicant
Norman Roach, Agent
Scott & Dionne Hodgson, Hodgson Holdings, LLC, Applicants

I. WELCOME

Vice Chair, Peter Offen 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

Vice Chair, Peter Offen 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 J. Mathews, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the February 7, 2023, meeting by A. Delzell, second by T. Fogel, carried unanimously.

VI. NEW BUSINESS:

a. Request of Alan Boroshok VAR-23-002 for a variance from UDO Chapter 2.3.C for a 5 foot reduction of the rear setback requirement of 25 feet. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district, further identified by PIN# 8586-54-3755-000.

Vice Chair Offen explained the protocol for quasi-judicial proceedings.

Attorney Brian Gulden explained that a variance requires a 4/5th majority vote, and that the Applicant would have to have all four board members vote to grant the variance and that he had the option to postpone or proceed. The Applicant chose to proceed with the hearing.

Vice Chair Offen polled the board as to ex parte communications and conflicts of interest, and there were none.

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

The following were sworn: Alan Boroshok, Norman Roach and Emily Brewer

Vice Chair Offen opened the hearing.

Emily Brewer, Senior Planner, presented her staff report portion of which follows:

Background

An application for a variance has been submitted by Norman Roach on behalf of Alan Boroshok, owner of 33 Kilpatrick Street. The subject property is a single-family home in the General Residential-8 (GR-8) zoning district within the corporate limits of the City of Brevard. The parcel identification number 8586-54-3755-000.

The applicant is requesting a variance from the typical rear setback requirement for the GR-8 zoning district of 25 feet, per Section 2.3.C of the City's Unified Development Ordinance. The request is for a variance of 5 feet which would result in a setback of 20 feet. See Attachment 1 for the application materials and Attachment 2 for a site map.

Notice of the hearing was advertised and posted on the property in accordance with North Carolina General Statute §160D-406.

Discussion

The subject property is considered multi-fronted, with two sides of the property abutting public rights-of-way – Tinsley Road and Kilpatrick Street. According to the Unified Development Ordinance Section 2.3, all lots are required to have a rear yard. For a multi-frontage lot, the rear yard is determined to be the portion of the lot opposite the front yard on the street of higher classification. The illustration of multi-frontage lots in the UDO is included for reference.

Setbacks from Multi-frontage Lots



The administrator is responsible for determining the road of higher classification for setback purposes. When determining the street of higher classification, the administrator considers the following factors:

- The ownership of each of the roads (e.g., State roads are always considered higher classification than local roads.)
- The speed limits on the roads;
- The estimated traffic volumes on the roads;
- The length of the roads (e.g., a road that is 2 miles long in total verses a road that only extends $\frac{1}{4}$ mile); and
- The width of the rights-of-way on the roads.

The administrator determined that Tinsley Road would be considered the street of higher classification. Thus, the rear yard setback of 25 feet applies to the property line facing Kilpatrick Street, despite this being considered the front of the structure by the applicant.

The applicant is requesting a variance to construct a new deck, replacing the pre-existing concrete pad accessible from the front of the structure. This new deck would encroach into the 25-foot rear yard setback. The requested variance of 5 feet would allow the applicant to construct the structure.

Ms. Brewer explained that the hearing was properly advertised, notices mailed and property posted, all in accordance with NCGS 160D.

Alan Boroshok testified that he is the owner of 33 Kilpatrick Street, that there is a preexisting concrete pad with steps and a wooden deck, that the structure is unsafe and was constructed without permits before he purchased the property. That due to the cost of removing the concrete he would like to build a deck over the concrete to replace the unsafe deck with a safe and more aesthetically pleasing structure, that will comply with City and State codes.

Norman Roach, Agent, explained that the deck would barely encroach into the setback because they want to cover the concrete porch and steps and he explained the proposed construction of the deck.

There being no further questions, the hearing was closed.

P. Offen made the following motion:

With regard to variance request **23-002**, the application of Alan Boroshok, seeking a variance from Chapter 2.3.C of the UDO for property located at 33 Kilpatrick 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 hardship would be that the applicant could not bring the property up to code, make a safe deck that is more aesthetically pleasing and that the cost of removing the concrete would be a financial hardship.

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

The lot is double fronted and variance is required due to the odd application of the UDO setback requirements.

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

The unsafe structure was built by a previous owner without the proper permits.

- 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.

Accordingly, I further move the board to **GRANT** the requested variance to allow for a Five-foot (5') reduction of the rear yard setback requirement creating a twenty foot (20') 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, unanimously carried.

b. Consideration of Application for Special Use Permit #SUP-23-001 by Scott & Dionne Hodgson, Hodgson Holdings, LLC to allow a Special Event Venue, UDO Section 2.2. revised in the General Residential "GR" zoning district on property owned by Hodgson Holdings, LLC,

within the zoning jurisdiction of the City of Brevard, and further identified by PIN# 8585-60-4875-000.

Vice Chair Offen explained the protocol for quasi-judicial proceedings.

Attorney Brian Gulden explained that a special use permit would require that 3 of the 4 members present vote in favor to grant, that they had the option to postpone or proceed. The Applicant chose to proceed with the hearing.

Vice Chair Offen opened the hearing.

Robert Field – 189 Deerwoode Lane, stated that he might want to be sworn as a neighboring property with standing.

Attorney Gulden explained that he would have to prove he is an aggrieved party and that he would suffer special damages, examples being, the likely reduction in property value, noise, traffic, safety, glare. He further explained that traffic concerns would have to be testified to by a traffic engineer. He explained that Mr. Field could testify after the fact if he does not want to be considered to have standing but it was at the board's discretion as to whether they would hear him and that they could not consider his testimony in their decision.

Mr. Field explained that he does have concerns about traffic and safety that he would like to address.

T. Fogel moved that Mr. Field be allowed to testify after the fact, A. Delzell seconded, unanimously carried.

Mr. Field did not seek standing.

Vice Chair Offen polled the board as to ex parte communications and conflicts of interest, and there were none.

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

The following were sworn: Dionne and Scott Hodgson, Katherine Buzby and Emily Brewer.

Katherine Buzby, Planner, presented her staff report, noting that the property had been advertised, posted and notices sent in accordance with NCGS 160D. A portion of the staff report follows:

Background

Scott and Dionne Hodgson, of Holdgson Holdings LLC, submitted an application to the City on March 15, 2023 for a Special Use Permit (SUP) to operate a *Special Event Venue* at Deerwoode Reserve at 395 Riversedge Rd in Brevard. The property is currently zoned General Residential-4 and the proposed use requires a Special Use Permit.

Special Event Venue is defined in the Unified Development Ordinance (UDO) as:

“A multipurpose venue facility designed largely for hosting special events such as graduations, weddings, gatherings, trade shows, corporate function or meetings, and other similar functions. The facility may have a catering kitchen, indoor and outdoor seating, a stage or event area, and meeting/conference facilities.”

The Hodgson’s currently run Deerwoode Reserve as short-term vacation rental cabins and would like to renovate an existing building on their property to be run as a *Special Event Venue*. The goal is to host events such as weddings, family reunions, etc. The property is rather large and the building to be renovated into the *Special Event Venue* is a good distance from any adjoining neighbors.

The only additional standard listed in the City’s UDO for this use is no open fires without a permit from the Fire Chief.

A Notice of Hearing was mailed to adjacent property owners, the property was posted, and the meeting was advertised per General Statue 160D-406(b).

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, bulk, mass, intensity of use, etc. shall be authorized by the BOA.

There were no questions.

Dionne Hodgson gave a presentation explaining the history of the property, their relationship with the Mayes, their current use of the property and the conservation contract with Conserving Carolina. They explained that they want to improve the current “old gym” on the property to provide an event center to the community. They explained the proposed improvements to the property. They testified that they want to be good stewards of the land and good neighbors. They testified that the appraised value would be raised significantly with the renovation of the building.

Scott Hodgson testified that they were business owners in Florida, too young to retire but wanted to slow down their pace of life. They stated that they found the property and also found an overwhelming sense of community that they never expected and that it has been an eye opening experience. They added that they want peace and harmony with the neighbors and want to be good stewards of the property until the next people take it over. They want to make sure the noise and traffic concerns are addressed and want to be in harmony with the neighbors.

He stated that he truly believes the event space will be an asset to the community.

Rob Field was allowed to speak, and he stated that he is pleased that they have neighbors taking good care of the property. He explained that he and his wife moved to Deerwoode Lane in 1997 and chose it because it was a quiet residential street, but there are no sidewalks and he, his wife and neighbors like to walk in the neighborhood for exercise. He has concerns about the substantial change in the amount of traffic and the speed in which the traffic will travel the road. The street is one way and the only way in and out of the neighborhood. He requested that a condition be added with reasonable traffic guidelines. That he does not want to be dodging traffic while trying to take walks.

Mr. Hodgson explained that they hosted a motorcycle event and there was a speeding incident that they had to address and the person was evicted from the property and told they could never return. That they held a concert with 300 people in October and had no complaints. The plan is to situate events so the noise travels in the opposite direction of Deerwoode Lane, but toward Sugarloaf Road which is a further distance away.

It was discussed that Deerwoode Lane is a NCDOT street and that the Board could not impose conditions on a street that they did not have jurisdiction over.

Mr. Field was asked if he felt like he could work with the property owner if an issue comes up, and he replied that he felt that he could, but that he would not hesitate to contact the police if necessary.

The Hodgson's again relayed that they want to be good neighbors and that they would contact NCDOT to ask what their options were to control speeding.

The hearing was closed.

Attorney Gulden reminded the board that any evidence considered had to be competent, any testimony considered on traffic and safety must be provided by an expert and that the board can impose reasonable conditions but that they cannot impose any conditions on a NCDOT road, that the state governs the road. He stated there was a lack of evidence and limited authority.

Motion was made by P. Offen as follows:

With regard to Case No. SUP-23-001, seeking a Special Use Permit to allow Special Event Venue in the General Residential-4 (GR-4) zoning district on property located at 395 Riversedge Rd, within the City of Brevard, I move the Board to make the following findings of fact:

- a) The use does meet 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;

Special Event Venue is in harmony with the UDO.

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

The proposed renovation to the building will be visually compatible with the surrounding area, and will provide event space for the community.

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.

The proposed use will not be injurious and will not be detrimental to the adjoining property owners or affect their property values.

Accordingly, I further move the Board to GRANT the requested special use permit to allow a *Special Event Venue* on property located at 395 Riversedge Rd, within the City of Brevard in accordance with and only to the extent represented in the application and plans.

Seconded by A. Delzell, 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 4:23 PM.

Peter Offen, Vice Chair

Janice H. Pinson, Board Clerk