

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, June 1, 2021 – 3:00 PM – Council Chambers

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, June 1, 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
Aaron Bland, Assistant Planning Director
Janice H. Pinson, Board Clerk
Brian Gulden, Board Attorney

Others: Village Blacksmiths, Applicant, Jason Brown
Steve Revis, Village Blacksmiths, Business Partner, Witness
Monique Brown, Village Blacksmiths, Witness
Perry Harper, Adjoining Property Owner
Al Horrigan, French Broad Place, POA, President
Maria Keohane, French Broad Place
Dennis Piranian, French Broad Place
Kat Raxter, Lieutenant Brevard Police Department

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 Mathews certified a quorum of the Board was present.

IV. APPROVAL OF AGENDA

Mr. Jones moved seconded by Mr. Tartt, to approve the agenda as presented, carried unanimously.

V. APPROVAL OF MINUTES

Mr. Jones moved, seconded by Mr. Fogel that the May 4, 2021, minutes be approved as presented. Motion carried unanimously.

VI. NEW BUSINESS

a. Consideration of Application for Special Use Permit #SUP-21-004 by Jason Brown, Village Blacksmiths, Agent for Sharon Petit to allow metal products fabrication, a machine or welding shop; blacksmithing in the Downtown Mixed Use “DMX” zoning district on property owned by Sharon Petit, and located at 161 N. Broad Street within the corporate limits of the City of Brevard, in the Downtown Mixed Use (DMX) zoning district and further identified by PIN# 8586-51-6703-000.

Chair Mathews explained quasi-judicial procedures.

Attorney Gulden explained the qualifications to be a party with standing, and the procedure to identify those with standing. He further stated that 160D prohibits the Board from accepting lay person opinion testimony into evidence.

Ms. Mathews explained that she has known the property owners, Roger Petit and his family for 50 years. She further stated that she is a resident of French Broad Place, and that her condominium faces North Broad Street. She further stated that she believed that she could hear the matter before the board and vote on the matter without prejudice.

Mr. Gulden, Attorney asked Jason Brown, Applicant if he had any objections to Ms. Mathews serving as the Chair during this proceeding. He stated that he did not.

Perry Harper, Al Horrigan, Maria Keohane and Dennis Piranian gave a short explanation as to why they believe they have standing. (Their testimonies reflect their reasons).

Mr. Jones moved, seconded by Dr. Delzell that Mr. Harper be qualified as a party with standing, unanimously carried. When asked if he had an objection to Ms. Mathews serving as Chair for the hearing, he had no objections.

Mr. Jones moved, seconded by Mr. Fogel that Mr. Horrigan be qualified as a party with standing, unanimously carried. When asked if he had an objection to Ms. Mathews serving as Chair for the hearing, he had no objections.

Mr. Fogel moved, seconded by Mr. Jones that Ms. Keohane be qualified as a party with standing, unanimously carried. When asked if she had an objection to Ms. Mathews serving as Chair for the hearing, she had no objections.

Mr. Fogel moved, seconded by Mr. Jones that Mr. Piranian be qualified as a party with standing, unanimously carried. When asked if he had an objection to Ms. Mathews serving as Chair for the hearing, he had no objections.

Chair Mathews polled the Board as to any conflicts of interest or ex parte communications about the matter before them. There were none.

Attorney Gulden 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:

Aaron Bland, Paul Ray, Kat Raxter, Jason Brown, Monique Brown, Steve Revis, Perry Harper, Al Horrigan, Maria Keohane, Dennis Piramian.

Mr. Bland 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.

Mr. Bland presented his staff report noting that blacksmithing was the only aspect that would require a special use permit. He explained that noise is the chief concern, and for this reason decibel readings were taken, and that the noise level did not violate the City's Noise Ordinance.

A portion of the staff report follows:

Background

Mr. Jason Brown, agent for property owner Sharon Petit, submitted an application (Attachment A) to the City on May 3, 2021 for a Special Use Permit (SUP) to operate a blacksmithing operation in the existing building at 161 North Broad Street (PIN 8586-51-6703-000).

Blacksmithing best fits within the definition of a *Metal Products Fabrication, Machine or Welding Shop* land use, which is defined in Chapter 19 of the City's Unified Development Ordinance (UDO) as "establishment[s] engaged in the production and/or assembly of metal parts, including the production of metal cabinets and enclosures, cans and shipping containers, doors and gates, duct work forgings and stampings, hardware and tools, plumbing fixtures and products, tanks, towers, and similar products. Examples of these include, without limitation, the following: blacksmith and welding shops; plating, stripping, and coating shops; sheet metal shops; machine shops; and boiler shops."

The applicant's narrative indicates that the operation will involve "blacksmithing, woodworking, silversmithing, and art" as well as "teaching blacksmithing, woodworking, and silversmithing." In addition to the active smithing, there will be a retail component

selling completed wares. The woodworking and retail components are allowed by-right in Downtown Mixed Use (DMX); only the blacksmithing aspect requires an SUP.

Site and Surrounding Conditions

The parcel proposed for the SUP is 0.22 acres and zoned Downtown Mixed Use. The parcel is at the corner of North Broad Street and the alley opposite of East Appletree Street. See Attachments B & C for site information. The road frontage of the property is completely hardscaped up to the sidewalk along Broad Street. See Attachments B & C.

Neighboring to the northeast, across the alley, is French Broad Place, a multi-story mixed-use building with both commercial and residential uses. To the southwest is Professional Plaza, a multi-building complex of offices and other commercial uses. To the north is the office for Bracken Mountain Builders. Across Broad Street to the east and southeast is more commercial property, including land slated for development as a boutique hotel. The nearest single-family detached house is over 450 feet away, on East Appletree Street.

Because noise is a key concern with a blacksmithing operation, the City of Brevard Police Department was asked to take sound measurements for comparison to the City's Noise Ordinance. Lieutenant Kat Raxter conducted the measurements between 1:48 and 2:03 on May 5, 2021 with both garage bay doors of the building open and with the applicant striking metal with a hammer. The readings across the road at East Appletree Street were high 76.4 / low 61.5. The readings at French Broad Street at North Broad Street were higher, high 78.0 / low 67.5. The overall low of 61.5 was during a brief moment that there was no traffic passing on Broad Street. Lt. Raxter remarked that "depending on the number of cars driving by, there were times I could not hear the hammer over the traffic."

The City's Noise Ordinance enumerates violations as:

- a. The ambient noise level shall be determined, if it is reasonably practicable to do so in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint. Then, the alleged violation noise level shall be determined at the same location, both determinations to be made by the use of the same sound level meter, and using the same procedure. A violation shall have occurred if the alleged violation noise level exceeds the ambient noise level:
 - By ten decibels, between the hours of 9:00 p.m. and 7:00 a.m.; or
 - By 20 decibels, between the hours of 7:00 a.m. and 9:00 p.m.

- b. If, due to the nature of the alleged violation noise level, no determination of an ambient noise level is practicable in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint, then a violation shall have occurred if the alleged violation noise level exceeds:
 - 60 decibels between the hours of 9:00 p.m. and 7:00 a.m.; or
 - 70 decibels between the hours of 7:00 a.m. and 9:00 p.m.

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.

The evaluation and approval of the Special Use Permit shall be based upon the sworn testimony and evidence presented at the hearing relevant to the following findings of fact:

- a) 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
- b) 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
- 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.

In approving an application for a Special Use Permit, the BOA may attach fair and reasonable conditions which support the required Findings of Fact, however the Board may not require the landowner to waive a vested right. The burden of proof of producing evidence to support these Findings and to overcome any challenges that approval of the plan would be contrary to one or more of these Findings rests entirely with the applicant.

Staff Recommendation

Staff believes in the context of the adjacent land uses that this proposed use is harmonious with the surroundings and can be operated without detriment to neighboring properties. Given the residential use of the adjacent French Broad Place, Staff recommends the Board carefully consider crafting conditions to mitigate any potential negative impacts.

Lieutenant Raxter explained decibel instrument readings. She testified that she took readings as follows:

On May 3, 2021, the ambient noise level in the alley closest to the subject property the readings were high 66.4 / low 64.7 decibels. The ambient noise level on the corner of E. French Broad and N. Broad Street were high 79.6 / low 74.4 decibels. The ambient noise level at E. Appletree Street were high 104.3 / low 96.8 decibels.

On May 5, 2021, between 1:48 and 2:03 p.m. with both garage bay doors of the building open and with the Applicant striking metal with a hammer, the decibel readings across the road at East Appletree Street were high 76.4 / low 61.5. The readings at French Broad Street and North Broad Street were high 78.0 / low 67.5. The overall low of 61.5 was during a brief moment that there was no traffic passing on Broad Street.

Mr. Piranian asked Lt. Raxter if she was aware of the CDC concerns that any noise level of 70 Decibels or higher could damage hearing. He stated that he believes the noise will affect people.

Lt. Raxter stated that she was not a medical expert, and could not testify to hearing damage.

Mr. Harper asked Lt. Raxter if the readings taken on May 3rd were when the applicant was not in operation, and the May 5th decibel readings taken during coordinated operation and the readings were lower.

Lt. Raxter stated that this was correct.

Mr. Horrigan asked Lt. Raxter if she took the reading in the middle of the alley on May 5th, further explaining that she was behind a wall, and that this would buffer the noise.

Lt. Raxter explained that she took the reading in the alley between the buildings.

Jason Brown, Applicant, testified that they plan to install sound board on the walls, that they have purchased wooden anvil blocks to go under their metal anvil blocks, because it is quieter. That they have investigated other means for helping mitigate the noise and that baffles in the ceiling will help with the sound. He explained that they will be teaching classes, and that they have friends in other cities that have the same or similar situation and have been successful.

Steve Revis testified that when Lt. Raxter took the decibel readings they were hitting cold steel, and that the noise level would be lower when they were hitting hot iron. They plan to open at 10 AM and close before dark. They want to teach classes, and for folks to leave with something they made. They fully intend to be respectful and good neighbors.

Ms. Keohane asked where patrons would park, how many classes would be taught, and how many people per class.

Mr. Revis answered that the patrons would park on their property. That they plan to have classes at 12, 2 and 4, and that the maximum class size would be 6 people.

There were further questions about adverse effects being corrected if in a year or two things change.

Mr. Bland explained that the Board has the ability to put conditions on the permit, and also the authority to revoke the permit if the Applicant violates the conditions.

Mr. Brown stated that he purchased a no ringing anvil because they create less noise.

There was further discussion about adequate parking.

Mr. Harper asked if there would be odors such as sulphur odors.

Mr. Brown stated that there would be no odors, and that the Fire Department prohibited them from any outdoor operations.

Monique Brown testified that she has been doing blacksmithing with her father for approximately 15 years, and that neither of them have significant hearing loss. That they do not usually wear hearing protection. That they forge outside their homes, and that she has actually slept while people were blacksmithing outside their home. She stated that she wanted to be respectful of the neighbors, and would welcome open communication as to any issues.

Mr. Harper stated that he has no complaints, and that based on their testimonies has no reason to believe they cannot operate as they propose. He has no objection to what they want to do. He would like for the board to put conditions on the permit, and that no additional phase of business be allowed that would not be in line with the conditions of the permit.

Mr. Horrigan testified that he actually did go out and ask the gentlemen to hammer so that he could hear it. He stated that he felt it would be far noisier if there was not ambient noise. That he felt the board needed to consider patrons of Dugan's Pub trying to have a meal on the outside patio. He stated that he lives above and behind, and that sound does travel up. He stated that during the day it would not be obsessive noise, but as the traffic level decreases the noise level would rise. He requested that the board limit hours of operation and require the installation of sound buffering.

Mr. Brown asked Mr. Horrigan if he could hear the cars driving by.

Mr. Horrigan stated that he could. He also explained that the residents of French Broad Place do not want their balcony use to be interrupted.

Ms. Koehane stated that she still has concerns that the 10 parking spaces will not be adequate, and that she still has noise level concerns. She wants the Applicant to make use the French Broad Place parking garage is not used for their business.

Ms. Brown stated that they will firmly tell their patrons that the French Broad Place parking garage is not to be used.

Mr. Piranian stated he feels the board needs to set a time certain for operations. He further wanted to submit an article about hearing loss.

Ms. Mathews explained that the board could not accept the article into evidence, that the board could listen to his concerns, but expert testimony would be required for the board to consider as evidence.

Attorney Gulden explained competent evidence as required by NC General Statute.

There being no further questions, Ms. Mathews closed the hearing.

Mr. Jones stated that he felt the special use permit should be granted, and that although he respects the residents, he does not think placing conditions on a business establishment that may or may not satisfy folks concerns is not appropriate.

T. Fogel stated that his proposal would limit hours, but only for production.

T. Fogel made the following motion:

With regard to Case No. SUP-21-004, the application of Village Blacksmiths by Jason Brown, Agent for Sharon Petit, seeking a Special Use Permit, to allow a metal products fabrication, a machine or welding shop; blacksmithing, on property owned by Sharon Petit located at 161 N. Broad Street within the corporate limits of the City of Brevard, in the Downtown Mixed Use (DMX) zoning district and further identified by PIN # 8586-51-6703-000, I move the Board to **GRANT** the application based the following findings of fact:

- a) 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;
- 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

Provided the hours of production are limited and the Applicant provide sound mitigation.

- 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 following conditions:

Applicant to provide sound mitigation during production hours.

Hours of production are Monday through Saturday 10 AM to 7 PM, with no production allowed on Sunday.

Second by Mr. Jones, unanimously carried.

Attorney Gulden explained that the Applicant is required to sign the Order agreeing to the conditions. He further explained that the Applicant can request a rehearing on the matter.

VII. UNFINISHED BUSINESS – None.

VIII. REMARKS – None.

IX. ADJOURN

Mr. Jones moved, seconded by Mr. Tartt that the meeting adjourn. Motion carried. Meeting adjourned at 4:50 PM.

Janice H. Pinson, Board Clerk

Judith A. Mathews, Chair