

**MINUTES**  
**BREVARD BOARD OF ADJUSTMENT REGULAR MEETING**  
**Tuesday, August 2, 2022 – 3:00 PM**

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, August 2, 2022, at 3:00 PM.

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

Staff Present: Paul Ray, Planning Director  
Aaron Bland, Assistant Planning Director  
Emily Brewer, Planner and Interim Board Clerk  
Brian Gulden, Board Attorney

Others: Grant Tomlin, Agent for John Allemeir  
John Cochran, UpCountry Brewing

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

**IV. APPROVAL OF AGENDA**

Motion to approve the agenda by A. Delzell, second by T. Fogel, carried unanimously.

**V. APPROVAL OF MINUTES**

Motion to approve the minutes of the July 5, 2022 Board of Adjustment meeting as submitted by J. Mathews, second by P. Offen, carried unanimously.

## VI. APPROVAL OF ORDER

Motion to approve Order SUP-22-002, Jerry R. Brown, Don J. Brown and BIG, Inc., with the amended corrections that the parcel is located in the City's Extraterritorial Jurisdiction instead of the City's corporate limits and that a typographical error in the Findings of Fact Item 10 is remedied, by T. Fogel, second by A. Delzell, unanimously carried.

Motion to approve order SUP-22-003, Randy Baron is confirmed to have been approved electronically in advance of the meeting.

## VII. NEW BUSINESS:

a) Consideration of application VAR-22-005, Request of Grant Tomlin, Agent for John Allemeier for a variance from UDO Chapter 4.4.D for a variance to allow the subdivision of land without required road frontage. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district, further identified by PIN# 8585-99-8186-000.

Chair Jones explained quasi-judicial procedures and parties with standing.

Chair Jones asked the board if there should be a public comment period added to the proceedings.

A. Delzell clarified that any public comment received during that time would not be considered testimony and should not be considered in any decision.

J. Mathews moved that it is standard procedure for the Board of Adjustment to have a public comment period. Attorney Gulden explained that a public comment period is not considered standard procedure for Board of Adjustment proceedings. It could be included on a case-by-case basis instead. Attorney Gulden confirmed that the board could consider making a motion for public comment after the public hearing. No second for the motion.

Attorney Gulden explained what constitutes a party with standing and the procedures, including the requirement that each party testify to whether or not they believe to have standing and the party's ability to present evidence.

The Board was polled as to exparte communications, conflicts of interest, and there were none.

The following people requested consideration to have standing:

Carolyn Winchester, 103 Grandview Drive, Brevard, NC 28712

Erica Zaveta, 100 Grandview Drive, Brevard, NC 28712

Jim Lindsay, 210 Warren Lane, Brevard, NC 28712

Randy Burgess, 147 Warren Lane, Brevard, NC 28712

Ms. Winchester stated that she has standing because her property adjoins the parcel and that she would be adversely affected due to the increased traffic on the one-lane drive and the subsequent

safety issues. A. Delzell moved that Ms. Winchester has standing, with T. Fogel second. Carried unanimously.

Ms. Zaveta stated that she has standing because her property adjoins the parcel. She also stated that she anticipates an increased financial burden as a result of the increased traffic on the shared private driveway. She explained that the neighbors share the expense of maintaining the shared private drive. T. Fogel moved that Ms. Zaveta has standing, with P. Offen second, carried unanimously.

Mr. Lindsay stated that he has standing because he has a private 24-foot easement on the applicant's property. He stated that his property will be adversely affected by depressed market value and a lack of safety. A. Delzell moved that Mr. Lindsay has standing, with T. Fogel second, carried unanimously.

Mr. Burgess stated that he has standing because he shares a private drive with the applicant's property. He also stated that any widening of the private drive that may be necessary as part of a granted variance would require the removal of a tree on his property. Chair Jones moved that Mr. Burgess has standing, with J. Mathews second, carried unanimously.

Mr. Tomlin, Ms. Winchester, Ms. Zaveta, Mr. Lindsay and Mr. Burgess had no conflicts of interest with any of the Board members hearing the case.

The following were sworn by the Clerk to the Board: Mr. Tomlin, Ms. Winchester, Ms. Zaveta, Mr. Lindsay, Mr. Burgess, Mr. Bland, and Mr. Ray.

Chair Jones opened the hearing at 3:31 PM

Mr. Bland, Assistant Planning Director, presented his staff report a portion of which follows:

An application for a variance has been submitted by John Allemeier, owner of 106 Grandview Drive. The subject property is a single-family house on a 5.739-acre lot, in the General Residential – 4 (GR4) zoning district within the corporate limits of the City of Brevard. The parcel identification number 8585-99-8186-000. There is also a secondary dwelling unit currently under construction on the property.

The applicant is requesting a variance from the requirement that newly subdivided parcels have road frontage on a publicly maintained street, per Section 4.4 of the City's Unified Development Ordinance. Subsection E allows for residential single-family developments in the GR4 district to be subdivided with a privately maintained street satisfying the required street frontage for up to 3 lots, if the private street is 150 feet or less in length and the drivable surface is at least 16 feet wide.

The request is for a variance to allow the subdivision of one new lot using a private drive greater than 150 feet long as the required street frontage. The proposed new lot could be accessed via either Warren Lane or Outland Avenue, which would result in a private access drive of approximately 200 or 600 feet in length respectively, representing a variance of either 50 or 450 feet.

The subject parcel and the house that sits on it are accessed by an existing private drive that begins at the intersection of Outland Avenue and Grandview Avenue; several other homes

are accessed via this private drive. There is another private drive running along the southern portion of the parcel that provides access to one neighboring property; this drive begins at the end of Warren Lane.

The two existing private drives are, on average, less than 16 feet in width, and therefore do not meet the UDO standards for private street frontage for newly subdivided lots in GR4. The drive off Outland Avenue is between 10 and 11 feet wide, and the drive off Warren Lane is between 10 and 12 feet when straight, with turns widening to 17 feet.

Assuming the new parcel has a house built on it, the residents of that home would pass by 6 other houses if their access was via the Outland Avenue private road, and 9 houses if by the Warren Drive private road.

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

A. Delzell asked Mr. Bland for more clarification on UDO Section 4.4 Subsection E where single-family developments may, in some circumstances, be subdivided off a privately-maintained street.

Mr. Bland explained that private streets can serve as a public road frontage for subdivisions up to 3 parcels. According to Mr. Bland, this subsection was intended to serve large parcels in the extraterritorial jurisdiction that may not be accessible. Mr. Bland further explained that the privately-maintained street cannot exceed 150 feet from the established public right-of-way.

Chair Jones asked Mr. Bland to confirm whether or not the variance being requested is just for the increased length of the privately-maintained road.

Mr. Bland clarified that privately-maintained streets are required to be 16 feet wide, and the variance request is to increase the permissible length and reduce the permissible width of the private drive. When asked what the current widths are, Mr. Bland stated that the private drive off Outland Avenue varies between 10 and 11 feet and the private drive off of Warren Lane varies between 10 and 12 feet. He further explained that the latter does increase to 17 feet wide at the turn, but the average width of that private drive is less than 16 feet.

J. Mathews asked where Mr. Burgess' and Ms. Winchester's properties were located on the site plan provided. Mr. Bland showed where they were located to the best of his knowledge.

Mr. Lindsay asked for clarification on what the applicant would be able to build on the property if the variance is granted.

Mr. Bland explained that if the variance is granted then the subdivision would be allowed. It would create an additional vacant property that could be developed in accordance with the UDO. He explained that the new parcel would be designated General Residential-4, which has predominately residential uses. Mr. Bland noted that this means the property owner could develop a single-family home along with a smaller secondary dwelling of up to 800 square feet.

No other questions for Mr. Bland.

Mr. Tomlin, agent for the applicant, was asked by Chair Jones to present his case and testimony. Mr. Tomlin stated that he is the builder on the dwelling and was asked to serve as the agent. He stated

that he cannot speak to any of the four factors that must be met in order for the Board to grant a variance. He added that City presented the application and facts well and did not have any additional information to add.

Attorney Gulden asked for clarification on whether or not he felt confident serving as the agent presenting a case and answer questions on behalf of the applicant because he cannot speak to any of the points required to have a variance. He further explained that if Mr. Tomlin does not feel comfortable moving forward as the agent, he could ask the Board to continue the case to a time when the applicant can be present to make the presentation.

Mr. Tomlin requested a continuance.

P. Offen motioned to grant a continuance, with T. Fogel second. J. Mathews asked what date the case would resume. Attorney Gulden noted that he will be out of town for the September 6, 2022, Board of Adjustment meeting and would be unable to participate. He stated that the public hearing for this case would resume at the next regular meeting on October 4, 2022.

Chair Jones confirmed with Mr. Tomlin that he would still wish to ask for the continuance despite it being postponed another month.

J. Mathews offered an amended motion for the continuance to be granted and resume on October 4, 2022. P. Offen seconded. The motion carried unanimously.

Attorney Gulden explained that with parties that have been confirmed to have standing in this case tonight will not have to requalify for standing at the continuation. He further explained that additional parties believing to have standing may request such at the continued hearing.

K. Jones closed the hearing at 3:54 pm.

b) Consideration of application SUP-22-004, Request of UpCountry Brewing, LLC, Agent for Brevard Lumber Yard, LLC for a special use permit to allow a distillery and mixed beverage private bar. The property is located at 212 King Street, Unit B, within the Neighborhood Mixed Use (NMX) zoning jurisdiction of the City of Brevard, further identified by PIN# 8586-42-7578-000.

Chair Jones explained quasi-judicial procedures and parties with standing.

No additional persons requested to be considered a party with standing.

The following were sworn by the Clerk to the Board: Paul Ray, Planning Director for the City of Brevard, and John Cochran, owner of Upcountry LLC, applicant.

The Board was polled as to exparte communications, conflicts of interest, and there were none.

Chair Jones stated that he does not have a close familiar connection or a financial stake in the decision. Chair Jones disclosed that he serves on the ABC Board and that he has had conversations regarding a potential new brewery/distillery in the area. He also noted that he previously held a financial stake in Ecusta Brewing but has since divested. Chair Jones stated that he can confidently remain unbiased and has no preconceived notions about the case.

Mr. Cochran did not object to Chair Jones or any other Board members hearing the case.

Chair Jones opened the public hearing at 4:01 pm.

Paul Ray, Planning Director, presented his staff report a portion of which follows:

The applicant, UpCountry Brewing Company, LLC, currently operates UpCountry Brewing Company located at 212 King Street, which is determined to be a bar/tavern/nightclub. The parcel is zoned Neighborhood Mixed Use (NMX) and owned by Brevard Lumberyard LLC, Parcel Identification Number, 8586-42-7578-000.

In 2013, the larger building was renovated and permitted as a, “cultural community facility” (permit 13-043) offering art, dance, and cultural classes within. However, individual tenants could still upfit a dedicated space within the larger building with separate zoning approval for each use. It was noted on the plans that a Special Use Permit would be required for a bar/tavern/nightclub.

On September 20, 2017, permit Z-17-018 was issued to Tipping Point Brewery, for a “new brewery and tasting room with 16 seats” and approved by the previous Planning Director, Daniel Cobb, without a Special Use Permit. It is believed that “Neighborhood Manufacturing” was the interpreted use, which is allowed by right in the Neighborhood Mixed Use zoning district.

On November 30, 2018, permit Z-18-177 was issued to UpCountry Brewing Company, LLC who became the new tenant of that space. At that time, it was determined the use of a bar/tavern/nightclub had been previously established without a Special Use Permit and was non-conforming, but the use had not been abandoned for more than 180-days, would not increase in intensity, and was therefore allowed to reestablish.

Currently, UpCountry Brewing Company, LLC wants to add a “distillery and mixed beverage private bar,” as stated on their application, to their existing bar/tavern/nightclub establishment. Section 14.2.B of the Unified Development Ordinances states, “A nonconforming non-residential use shall not be expanded, changed to another non-conforming use, or enlarged, nor shall such a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located (either attached or detached). However, if a nonconforming non-residential use can expand within the existing structure, it may do so as long as the administrator determines that the interior expansion will not have a negative impact upon surrounding conforming uses. Any occupation of additional lands beyond the boundaries of the lot on which the nonconforming use is located is prohibited.”

The current Planning Director, Paul Ray, determined that allowing a distillery to an existing bar/tavern/nightclub would intensify a non-conforming use by adding an incidental use which in conjunction with the tasting room requires a Special Use Permit. According to an email from Attorney Derek J. Allen, dated July 7, 2022, “The facility for the manufacturing of distilled spirits is a separate use. The Tax and Trade Bureau (TTB) requires that the distillery have its own ingress/egress that does not require going through any other business areas and the distillery must be secure from any other business areas. In sharp contrast, a brewery (brewpub) may share ingress/egress with its tasting room (retail) area.”

The North Carolina Alcoholic Beverage Control Commission requires a change in licensure with signature acknowledgment from the local Zoning Administrator on the permitted uses within the zoning classification. As previously stated, a bar/tavern/nightclub requires a

Special Use Permit in the Neighborhood Mixed Use zoning district. The Planning Director offers no objections to the issuance of a Special Use Permit as this would be consistent with the same or similar uses on that block with the same zoning designation. The Planning Department is not aware of any complaints from neighboring properties about UpCountry Brewing Company in nearly four years of continued operation as a bar/tavern/nightclub.

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

A. Delzell asked what “DSP” means on the documentation. It was clarified that it means “Distilled Spirits Plant.”

Chair Jones asked for clarification on the current zoning status. Mr. Ray explained that this is considered an expansion of a pre-existing nonconforming use which triggers the requirement for the use to come into conformance. The SUP would satisfy this.

P. Offen asked if this SUP is required as part of the ABC permit. Mr. Ray confirmed that this is a separate procedure to that of an ABC permit. He further explained that as Planning Director, he was asked to sign off on the new ABC license request stating that it complies with the zoning.

Mr. Cochran testified that the new distillery would be expanding the internal use, not the premise itself. He further testified that this will be self-contained in the existing premises – they will be using the same bar, and no seating will be added.

There were no other questions for the applicant.

Chair Jones closed the public hearing at 4:14 PM.

T. Fogel, made the following motion,

With regard to Case No. SUP-22-004, seeking a Special Use Permit to allow a distillery and mixed beverage private bar in the Neighborhood Mixed Use (NMU) zoning district on property located at 212 King Street, Unit B, within the City of Brevard, I move the Board to make 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  
The business will have no changes to the exterior of the building and the proposed use will be self-contained in the existing premises.
- 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 to allow a distillery and mixed beverage private bar on property located at 212 King Street, Unit B,

within the City of Brevard in accordance with and only to the extent represented in the application and plans

The motion was seconded by A. Delzell, carried unanimously.

Attorney Gulden asked for confirmation on whether or not it was allowed for private bar to operate without a membership and associated fee. Chair Jones confirmed that North Carolina law changed so that private bars do not have to enact that fee, based on his knowledge as the ABC Board Chair.

The motion carried unanimously.

#### **VII. UNFINISHED BUSINESS**

T. Fogel stated that he will not be in attendance at the regularly scheduled meeting on October 4, 2022.

The Board discussed rescheduling the September 6, 2022, meeting so Attorney Gulden will be able to attend. Attorney Gulden explained that it may be advisable to have a new meeting scheduled because there are three items already slated for the September agenda.

T. Fogel moved that the September regular meeting be rescheduled to Thursday, September 8, 2022, at 3:00 PM in City Council Chambers. A. Delzell seconded the motion. Ms. Brewer confirmed that Planning Staff would be available that afternoon and that she will reserve City Council Chambers.

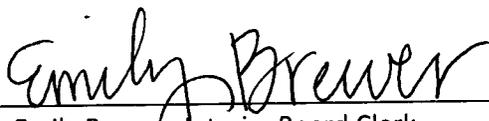
The motion carried unanimously.

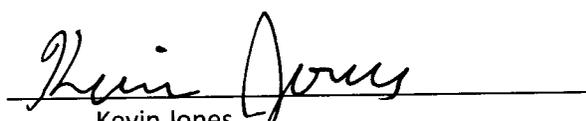
#### **VIII. REMARKS**

None.

#### **IX. ADJOURN**

A. Delzell moved to adjourn the meeting, seconded by J. Mathews. The motion carried unanimously. Meeting adjourned at 4:25 PM.

  
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Emily Brewer, Interim Board Clerk

  
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Kevin Jones