MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, November 5, 2024– 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday November 5, 2024, at 3:00 PM.

Members Present:	Kevin Jones Tad Fogel, Vice Chair Allen Delzell Peter Offen, Chair Alan Mercaldo
Staff Present:	Aaron Bland, Assistant Planning Director Katherine Buzby, Planner Janice Pinson, Board Clerk Brian Gulden Board Attorney
Others:	Shane Atkins, Moss Sign Company, Applicant for Telco Credit Union Janna Zwerner, Applicant Witnesses: Judy Tedrick, Jacquelyn Rokonitv, Thomas Jacoby

I. WELCOME

Chair, Peter Offen, called the meeting to order at 3:00 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

Chair, P. Offen had the Clerk certify that a quorum of the Board was present.

IV. APPROVAL OF AGENDA

Motion to approve the agenda by K. Jones second by A. Delzell, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the May 7, 2024, meeting by T. Fogel, second by A. Delzell, carried unanimously.

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VI. New Business

a. Request of Shane Atkins, Moss Sign Co., Agent for Telco Community Credit Union for a variance from UDO Chapter 12.9.C.3.(a)v. The property is located in the zoning jurisdiction of the City of Brevard in the Corridor Mixed Use (CMX) zoning district further identified by PIN# 8586-85-5560-000.

P. Offen, Chair explained quasi-judicial procedures and standing.

None of the public requested to be granted standing.

P. Offen polled the board as to exparte communications and conflicts of interest and there were none.

The Applicant was asked if they had any conflicts with any member of the board and there were none.

The following were sworn: Shane Atkins and Katherine Buzby.

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

Background

An application for a variance has been submitted by Moss Sign Company on behalf of David Burnette, President of Telco Community Credit Union at 281 Asheville Hwy. The subject property is a bank along Asheville Hwy (PIN#8586-85-5600-000, zoned Corridor Mixed-Use) that will be affected by an NCDOT road widening project R-5800.

The applicant is requesting a 9-foot 6-inch variance from the maximum ground sign height of 20-feet, per Section 12.9.C.3.a.v of the City's Unified Development Ordinance. The proposed ground sign would be 29-feet, 6-inches tall with an electronic reader board. See Attachments for the application materials and for a site map.

Discussion

The subject property is along Asheville Hwy, which will be part of a major NCDOT Project (R-5800) which is widening its Right-of-Way. The current Telco sign is within the NCDOT right-of-way and must be moved for future road construction.

The Planning Department has made allowances for other pre-existing, non-conforming ground signs affected by NCDOT projects, but only when the pre-existing signs can be moved to another location on the property without expansion or modification (per North Carolina General Statue 160D-912.1). In

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this case, the applicant is requesting a taller sign of 9-feet, 6-inches over the 20-foot maximum height, measured from the top of the sign to the adjacent grade. Due to this modification, the proposed ground sign would be treated as "new" and must conform to the current standards of the Unified Development Ordinance.

The applicant has stated they want the taller ground sign because, “The building restricts the side of the sign facing south” and they will “lose valuable advertising/marketing to the general public” (see variance application).

The site map submitted shows the existing sign location and the proposed location and additional sign details. A Google Street View map is attached to further demonstrate the current sign location and the proposed location from the view of Asheville Hwy.

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

When asked if there were questions, there were none.

Shane Atkins, Moss Sign Co. thanked the board for their time. He testified that the sign would need to be relocated because of the NCDOT project, and the only desirable place would conceal a clear line of sight at the current height. The visibility will be greater in the new location and at the new height and is good for bank business and marketability.

When asked if the reader board would show from a distance, Mr. Atkins said that it would not, just the Telco sign.

When asked Katherine Buzby explained that the UDO prohibits reader boards but that the NCGS allows the sign to be moved as it was originally permitted due to the circumstances, but that the height allowed by the UDO is a maximum of 20’ and they are requesting a variance of 9’6”.

T. Fogel asked Mr. Atkins if this was his only option and he stated that it was.

With no further questions, P. Offen closed the hearing.

The board had a brief discussion and T. Fogel made the following motion:

With regard to variance request **24-005**, the request of Shane Atkins, Moss Sign Co., Agent for Telco Community Credit Union for a 9-foot 6-inch variance from the maximum ground sign height of 20-feet and the continuance of an electronic

reader board located at 281 Asheville Hwy, I move the Board to make the following findings of fact:

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

NCDOT has acquired the section of the parcel where the current ground sign is located and they must vacate the site and the only new reasonable location available will have a restricted view without the height variance.

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

The building will restrict the view of the sign if the variance is not granted for the sign height to be increased.

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

NCDOT project is requiring the sign to be relocated.

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 sign height of 29 feet 6 inches with an electronic reader board on the subject property in accordance with and only to the extent represented in the application and plans.

Second by K. Jones, unanimously carried.

b. Request of Janna Zwerner for a variance from UDO Chapter 9.3.A. The property is located at 390 West Probart Street in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district further identified by PIN# 8586-32-6425-000.

P. Offen explained quasi-judicial procedures. Brian Gulden explained standing requirements.

Aaron Bland and Janna Zwerner were sworn.

P. Offen polled the board as to exparte communications and conflicts of interest and there were none.

The Applicant was asked if they had any conflicts with any member of the board and there were none.

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

Background The Planning Department has received a variance request from Janna Zwerner for her property at 390 W. Probart Street. The request is for a reduction in the driveway separation requirements of Section 9.3 of the City of Brevard Unified Development Ordinance (UDO). The property is located in the zoning jurisdiction of the City of Brevard and located within the General Residential 8 (GR8) district, further identified by PIN 8586-32-6425-000. The house on the property is a recent build, with the application and site plan submitted on September 20, 2023. The site plan showed all UDO requirements for a new single-family house were met, including a single driveway, and the permit was issued. A preliminary footer inspection was done by Katherine Buzby on 10/3/23 and the final inspection was done by Aaron Bland on 5/22/24. After the permit was finalled out following the final inspection, it came to the Planning Department's attention that the builder of the new house had installed a second curb cut for the driveway, despite the approved site plan for only one curb cut. This second curb cut was obscured by a subcontractor's vehicle which was parked on top of it during the final inspection. After becoming aware of the second curb cut, Aaron Bland contacted contractor Zach McCall and informed him that the second cut was not allowed and needed to be closed, and Mr. McCall indicated that the situation would be remedied shortly. Later, during a follow-up phone call, Mr. McCall informed Mr. Bland that the buyer of the house wished for it to remain and would be contacting our office about their options in the matter. A letter was sent to the new owner, Ms. Zwerner, on August 12, 2024, informing her of the violation and providing options for remedying it. After an in-person meeting, Ms. Zwerner chose to pursue a variance. See the included attachments for the application materials, relevant UDO section, and a site map. Page 26 of 70

Discussion The unpermitted second driveway curb cut was installed in violation of the UDO Section 9.3, which states that second driveway curb cuts for single-family houses on streets with a posted speed limit of 25 MPH must have a separation distance of at least 60 feet. The separation distance of the second cut at 390 Probart Street is approximately 22 feet indicating the need for a 38-foot variance. Ms. Zwerner's application indicates a need for the second driveway cut due to traffic issues on Probart Street. Probart Street has been identified as a street in need of "traffic calming" by the City for some time, beginning in earnest in 2022 when the City Manager met residents to hear their concerns about traffic on the street, kick-starting an official traffic-calming request. In 2023, this request made its way through the City's Traffic Calming Policy, which included traffic volume and speed counts by the Police Department, a review and design proposal by consultant traffic engineers, and a public meeting to review the proposed treatments. Ultimately, traffic-calming treatments were approved by City Council and to date have been partially implemented.

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Aaron Bland handed out a map (Exhibit "A") and explained that traffic calming speed cushions are to be installed. When asked he explained that the speed cushions are deep.

Janna Zwerner testified that she just found out about the speed humps yesterday or she would have been prepared to discuss.

She submitted a list of 12 neighbors who signed a petition in favor of her request (Exhibit "B").

She submitted evidence of safety facts and photos in support of her testimony that there is a sight distance issue pulling out of her driveway because there is a hill, a curve and other items that make it hard to back out of her driveway safely. (Exhibit "C"). She stated that most of the residents on Probart Street are aware of the safety study results. That speeds are 40, 45 and 50 mph in a 25 mph zone. She went over traffic data obtained from Brevard Police records.

Judy Tedrick, 415 Probart Street testified that she had an accident when she backed out of her driveway and a truck backed into her car causing 5 thousand dollars in damages.

Jacquelyn Rokotnitv a friend who visits Ms. Zwerner testified that she finds the regulation perplexing and that backing into Probart Street is dangerous. That the Applicant has given up a nice front yard to have a safe driveway. Further, in her opinion the regulation is misplaced and an error of judgment.

Thomas Jacoby is a neighbor on White Oak Lane. He testified that it is very clear that the speeding on Probart Street is a problem. He described a telephone pole that is directly in his front yard that causes sight issues, and believes Ms. Zwerner's driveway significantly provides safety and better visibility.

K. Jones asked Ms. Zwerner if she understood that the board cannot invalidate city regulations and that her request applies to her property alone.

J. Zwerner explained that she understood and further explained that her property is more obstructed because of the curve.

P. Offen asked if Ms. Zwerner had any idea that the site plan submitted for the permit for her home did not reflect the circular driveway and she answered that she did not.

Ms. Zwerner was further questioned by the board about other options available without the second curb cut and about the possibility of a drive in the back.

She explained there was a fence in the front inches from her property line and that she believed when she was viewing the property for sale that she saw everything on the ground that was approved on the site plan.

P. Offen asked A. Bland what the reason is for the distance between driveways and A. Bland answered fewer conflicts.

P. Offen closed the hearing.

Members of the board complimented the Applicant on a good presentation of her case.

Motion by A. Mercaldo as follows:

With regard to variance request **24-006**, the request of Janna Zwerner, for a reduction in the
driveway separation requirements for property located at 390 W. Probart Street, I move the
Board to make the following findings of fact:

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

That it would difficult to find properties that would meet the UDO driveway separation requirements because of the higher density development currently happening in the City.

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

the limited site visibility due to the curve and hill

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

The Applicant had no prior knowledge of the UDO driveway requirements.

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.

Public Safety is achieved not only for the Applicant but for all who travel Probart Street

Accordingly, I further move the board to **GRANT** the requested variance to allow for allow a reduction in the driveway separation requirements on the subject property in accordance with and only to the extent represented in the application and plans.

Second by T. Fogel, unanimously carried.

c. Board of Adjustment By-Laws

Brian Gulden approved the new format of the by-laws.

Motion to approve by. P Offen, seconded by A. Delzell, unanimously carried.

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VII. UNFINISHED BUSINESS – None

VII. REMARKS – Janice Pinson, Board Clerk, announced to the board that she would be retiring December 31, 2024. She stated that it has been an honor to serve the board.

VIII. ADJOURN

P. Offen moved to adjourn the meeting, seconded by A. Mercaldo. The motion carried unanimously. The meeting was adjourned at 4:10 PM.

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Peter Offen, Chair

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Janice H. Pinson, Board Clerk

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