MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, April 1st– 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday April 1st, 2025, at 3:00 PM.

Members Present:	Reid Wood Tad Fogel, Vice Chair Jackson Tate Peter Offen, Chair
Members Absent:	Alan Mercaldo
Staff Present:	Aaron Bland, Assistant Planning Director Katherine Buzby, Planner Madalin Baker, Board Clerk Brian Gulden, Board Attorney
Others:	Linda Curran, Robert Daquila, Andrew Mericle, Benjamin Ho

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 T. Foegel, second by R. Wood, carried unanimously.

V. APPROVAL OF MINUTES

R. Wood motioned to approve the minutes as written, J. Tate seconded. The motion carried unanimously.

VI. New Business

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a. VAR-25-001 – 188 Ashworth Avenue

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

None of the public requested to be granted standing.

B. Gulden reminded the board that due to A. Mercaldo's absence, his vote would have to be considered a "no" on all topics, and that the board would have to vote unanimously (4 out of 4) to pass any decisions in the meeting, as required by North Carolina State Law.

P. Offen polled the board as to previous communications with the applicant and conflicts of interest and found 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: Linda Curran and Katherine Buzby

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

> The applicant, Linda Curran, owns property at 188 Ashworth Ave, which is located in the General Residential-8 (GR-8) zoning district and in the City's municipal limits. The parcel identification number is 8585-46-5877-000. The applicant is requesting a variance of fifteen (15) feet from the Unified Development Ordinance's (UDO) Chapter 2.7.2 principal structure setback of 15' in the front yard, resulting in a zero (0) foot setback.
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> On October 23, 2024, the City was notified that the property had construction underway, a new fence and deck, with no zoning permits for the project. The City verified the complaint and started a Notice of Violation against the property owner, in which a letter the City sent reached the owner. The applicant's property has street frontage along two Right-of-Ways, Ashworth Ave and Turnpike Rd. Per UDO 2.7.4.A, "any structure on any lot that fronts on more than one street shall comply with the minimum front yard setback requirement for each street upon which the lot fronts."
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> The applicant's new deck would require a 15' setback off the property line that faces Turnpike Rd. During construction of the new house, the City worked with the General Contractor to make sure the deck that was originally built (see pictures attached) was in compliance with the 15' setback. Upon inspection of the complaint, the new deck was in violation of the 15' setback. The owner reached out to the Planning Dept to permit the fence and deck, but Planning was unable to issue a permit as the new deck

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does not meet setbacks. The applicant is requesting a variance for the full 15' front yard setback. She claims the house has drainage problems due to the slope of the surrounding houses and the path the stormwater flows.

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

Discussion followed. P. Offen asked K. Buzby if the full 15-foot setback variance was required for the deck to remain in its' current location, to which K. Buzby responded yes. K. Buzby shared that Turnpike Road is at a slope, and she could imagine how drainage might pool in the side yard as described in the application by the property owner, but she had not seen the lot herself in rainy conditions.

L. Curran presented a report to the Board. She noted that Turnpike Road is steep, and the drainage on the property is inadequate, resulting in water pooling in the side yard in question when it rains. She argued the topography of the parcel necessitates a solution to the drainage issue, i.e. the deck.

Robert Daquila, a neighbor of L. Curran, was granted standing and sworn in. He provided his agreement on the fact of drainage from Turnpike Road becoming quite intense during the rain, and shared that he has no issue with L. Curran's deck remaining where it sits at present.

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

B. Gulden reminded the Board that the four standards the applicant is required to meet are explained in the application included in the agenda packet, and should be considered, though L. Curran did not read each of them verbally. R. Wood noted that condition 3, "The hardship did not result from actions taken by the applicant or property owner," was not satisfied by the applicant, pointing out that having the deck constructed was in fact initiated by the applicant.

J. Tate made a motion to re-open the hearing. T. Fogel seconded, the motion passed unanimously, and P. Offen reopened the hearing.

J. Tate asked the applicant, L. Curran, if she was made aware of the dimensional plans for the deck by her contractor before construction began. L. Curran responded yes, she was made aware of the dimensional plans for the deck via phone conversations with her contractor before work began. T. Fogel clarified that no City permits were applied for or issued for the deck or the fence, which K. Buzby

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confirmed was correct. P. Offen verified there were no other questions, and seeing none, closed the hearing once again.

J. Tate said it was difficult to see how requirement A or B could be met, to which P. Offen pointed him to the description of drainage concerns in L. Curran's application. R. Wood noted a personal desire to grant a variance, but that the decision would create a concerning precedent for the board to grant a zero-foot setback. B. Gulden reminded the board that they define what exactly "unnecessary hardship" entails.

R. Wood made the following motion:

MOTION: With regard to variance request 25-001, the request of Linda Curran, for a variance from Section 2.7.2 of the UDO to reduce the required setback in the general residential district from 15' to Zero in the front yard of the real property located at 188 Ashworth Avenue, I move the Board to make the following findings of fact:

a) that no unnecessary hardship would result from the strict application of the regulations;

b) the hardship does not result from conditions that are peculiar to the property such as location size or topography,

c) the hardship resulted from actions taken by the applicant or the property owner; and

d) the requested variance is not 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 **DENY** the requested variance to allow for a 15-foot variance resulting in a Zero (0) foot setback in the front yard on the subject property.

J. Tate seconded the motion, and it passed unanimously.

b) VAR-**25-002**

P. Offen explained quasi-judicial procedures.

The following were sworn: Andrew Mericle, Benjamin Ho, Stephanie Holland, and Paul Ray

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

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

P. Offen opened the hearing.

Stephanie Holland, Planner, gave her staff report, a portion of which follows:

> The applicant, Andrew Mericle, owns a property at 15 Burrell Ave, which is in the General Industrial (GI) zoning district in Brevard's corporate limits. The parcel identification number is 8586-53-2891-000. The applicant is requesting an 11-foot variance in the setback off the northern property line. The Unified Development Ordinance, Chapter 2.7.2, requires a 25-foot setback from adjoining General Residential (GR) zoned property. The applicant's property has an existing building, constructed in approximately 1979. The location of the building encroaches into the northern setback, violating current setback requirements stated in 2.7.2 of the UDO. The owner would like to make repairs to the North wall and maintain the current size and location of the existing building.
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> Notice of the hearing was advertised and posted on the property in accordance with North Carolina General Statute §160D-406.

Following the staff report, P. Offen asked if the board had questions for the City. B. Gulden clarified with the City that a variance is necessary for the proposed work, and P. Ray confirmed that yes, a variance would be necessary due to the UDO's "substantial improvement" definition and guidelines.

The applicants, A. Mericle and B. Ho, gave a presentation. They detailed the scope of the proposed work on the property and emphasized that the grade and slope of the lot, combined with existing vegetation, provide satisfactory visual separation from the adjoining General Residential lot in question.

P. Offen clarified that the applicants are not proposing to change the height of the wall, which B. Ho confirmed was correct, that the wall would be rebuilt to its existing dimensions. R. Wood asked if the existing soil covering a portion of the side of the existing North wall would be replaced, and A. Mericle shared that the answer is both yes and no; that some of the existing land on the existing slope of the North wall of the building was never intended to be there, and is causing the current structural issues with the wall.

P. Offen asked about potential square footage lossage if the applicants are required to bring the building into compliance, which A. Mericle and B. Ho calculated could be up to 6,000 square feet.

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P. Offen saw there were no further questions and closed the hearing.
R. Wood explained she sees the unnecessary hardship in the strict application of the UDO, and mentioned adding the condition that the applicant would have to replace the landscaping interrupted by the work. The board seemed to look favorably upon this suggestion. B. Gulden clarified that the City requiring the applicant to lose a portion of their existing building due to their effort to bring the building to a structurally sound state is an unnecessary hardship.

R. Wood made a motion to approve the variance with the condition that the existing landscaping on the North wall of the building is replaced if it is damaged. In an effort to clarify the conditions with the applicant, R. Wood made a motion to reopen the hearing, seconded by J. Tate, passed unanimously.

P. Ray and S. Holland confirmed that a Type B buffer would be appropriate due to the nature of the building. A. Mericle and B. Ho sought specifics from the City regarding buffer requirements and types.

Following discussion, R. Wood made the following motion:

With regard to variance request 25-002, the request of 1700, LLC by Andrew Mericle, for an 11-foot variance from Section 2.7.2 of the UDO to reduce the required side-yard setback in the general industrial district from 25' to 14' on the northern portion of the real property located at 15 Burrell Avenue, I move the Board to make the following findings of fact:
a) that unnecessary hardship would result from the strict application of the regulations;

reducing the usable square footage of the existing building,

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

the building already exists as a legal non-conforming structure and was built in the 70s.

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

the building was constructed before current zoning regulations were in place and the North wall is not currently structurally sound.

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.

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Granting the setback variance will not increase the nonconformity and will bring the North wall of the building to a structurally sounds state,
Accordingly, I further move the board to GRANT the requested variance to allow for an 11-foot variance resulting in a 14 -foot side yard setback on the northern portion of the subject property in accordance with and only to the extent represented in the application and plans, and subject to the following conditions: that all landscaping damaged or eliminated during the construction process would be replaced with equivalent replacements.

Second by T. Fogel, unanimously carried.

VII. UNFINISHED BUSINESS

None.

VII. REMARKS

None.

VIII. ADJOURN

T. Fogel moved to adjourn the meeting, seconded by R. Wood. The motion carried unanimously. The meeting was adjourned at 4:14 PM.

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Peter Offen, Chair

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Madalin Baker, Board Clerk

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