MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, May 6th– 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday May 6th, 2025, at 3:00 PM.

Members Present:	Peter Offen, Chair Tad Fogel, Vice Chair Reid Wood Jackson Tate Alan Mercaldo
Staff Present:	Katherine Buzby, Planner Madalin Baker, Board Clerk Brian Gulden, Board Attorney
Guests:	Joseph Kelly & Dawn Altman, Applicants

I. WELCOME

Chair, Peter Offen, called the meeting to order at 3:02 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

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

IV. APPROVAL OF AGENDA

Motion to approve the agenda as written by A. Mercaldo, second by T. Fogel, carried unanimously.

V. APPROVAL OF MINUTES

T. Fogel motioned to approve the minutes as written, R. Wood seconded, carried unanimously.

VI. APPROVAL OF ORDERS

a. **Order VAR-25-001**
b. **Order VAR-25-002**

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Motion to approve both Orders as written by R. Wood, seconded by J. Tate, passed unanimously.

VII. NEW BUSINESS

a. **VAR-25-003 – 555 W Probart St.**

P. Offen described Quasi-judicial proceedings. No public guests wished to be granted standing as there were none in attendance. B. Gulden refreshed the Board on the applicable rules. No ethical conflicts or conflicts of interest were found. The following were sworn: J. Kelly, Applicant, and K. Buzby, Planner.

P. Offen opened the hearing. K. Buzby gave her staff report, a portion of which follows:

Background The applicant, Joesph Kelly, owns property at 555 W Probart Street, which is located in the General Residential-8 (GR-8) zoning district and in the City's corporate limits. The parcel identification number is 8586-22-9973-000. The applicant is requesting a variance from the Unified Development Ordinance's (UDO) Chapter 2.7.3 for accessory structure setbacks. He is building an Accessory Dwelling Unit (ADU) and is requesting a nine (9) foot variance from the ten (10) foot setback in the rear yard, resulting in a one (1) foot setback. He is also requesting a variance of three (3) feet from the side yard setback of six (6), resulting in a three (3) foot setback. Notice of the hearing was advertised and posted on the property in accordance with North Carolina General Statute §160D-406.
Discussion The applicant's property has street frontage along W Probart Street, and he would like to build an ADU (10'x20') behind his current primary structure (house). The property is unique as the shape of the property is a triangle which narrows towards the rear yard. The applicant spoke with the Planning Dept to determine where his rear yard setbacks would be.
Investigation Upon inspection, the driveway entrance is shared with the adjacent neighbors and does slope towards the rear of the property. The slope of the driveway and the neighbor's front yard fence both attributed to reduced visibility reversing a vehicle out of the driveway onto Probart Street. The location of the proposed ADU is already level and cleared of any trees and debris. The applicant will provide evidence of the site restrictions when he presents his case to the Board.

Following the City's presentation, A. Mercaldo asked about tap fees associated with the proposed ADU, which K Buzby described are not typically addressed until after the permitting process, but she shared that the property owner could tie into an existing tap/sewer line on the property without necessarily notifying the City.

P. Offen saw there were no other questions for the City.

J. Kelly, Applicant, gave his presentation (Attached). He described the unique lot lines, the shared driveway, and the sloped topography of the lot all as constraints for the site of the proposed ADU. He described that backing out of the driveway is very

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difficult, especially as the driveway is shared with the lot next door, which is rented as an Airbnb and frequently has 3 or more cars parked. He shared that the proposed site of the ADU would maximize the safety for the applicants entering and exiting their driveway. J. Kelly also shared that there are a variety of homes in the neighborhood, on Probart, that have accessory dwelling units and that the proposed project is consistent with the existing character of the neighborhood.

Following the applicant's initial presentation, T. Fogel asked how drainage on the rear of the lot would be impacted by the proposed ADU. J. Kelly mentioned the existing drainage dig-out, pictured in the presentation, was created by him and could be rerouted easily as it is simply attached to the drainage spouts from the gutters attached to the primary house.

J. Tate asked if the applicants had considered an addition to the primary structure as a solution to giving them more space instead of the ADU. J. Kelly said yes, they had and provided additional site plans and context. He said due to the 25ft rear setback for primary structures, adding on to the existing house would also be prohibitive to driveway safety, and not allow for maximum desired functionality of the proposed space. In the event of an addition, J. Kelly cited concerns over disrupting the existing 1930s foundation and provided photos.

K. Buzby made an additional comment, that as she was backing out after taking photos of the site, the neighbor's fencing and shrubbery limited view of oncoming traffic significantly.

B. Gulden informed the room that traffic safety issues must be presented by an expert for consideration in a case, and so should not be used.

T. Fogel made the following motion:

With regard to variance 25-003, the request of Joseph Kelly, for a variance from Section 2.7.3 of the UDO to reduce the applicable setbacks for Accessory Dwelling Units in the rear-yard from 10 feet to 1 foot and in the side-yard from 6 feet to 3 feet in the general residential 8 district on property located at 555 W. Probart St., I move the Board to make the following findings of fact:

a) that unnecessary hardship would result from the strict application of the regulations; as the unique shape of the parcel narrows to the rear,

b) the hardship results from conditions that are peculiar to the property such as location, size or topography; as seen by the slope of the driveway and the slope of the rear yard of the parcel,

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

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, as evidenced by the increased driveway safety and the letters of support from neighbors.

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Accordingly, I further move the board to GRANT the requested variance to allow for a 9-foot variance in the rear yard and a 3-foot variance in the side yard for an Accessory Dwelling Unit on the subject property in accordance with and only to the extent represented in the application and plans.

Seconded by A. Mercaldo, the motion passed unanimously.

VIII. UNFINISHED BUSINESS

B. Gulden, Board Attorney, provided an update on VAR-24-005.

Regarding Case File 24-CV-1545-807, R. Wood moved Peter Offen, as the Board Chair, be given the authority to sign the Settlement Agreement on behalf of the City of Brevard Board of Adjustment.

IX. REMARKS

None.

X. ADJOURN

R. Wood moved to adjourn the meeting, seconded by A. Mercaldo. The motion carried unanimously. The meeting was adjourned at 4:01 PM.

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Peter Offen, Chair

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Madalin Baker, Board Clerk

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