MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, April 21, 2026 – 2:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday April 21st, 2026, at 2:00 PM.

Members Present:	Peter Offen, Chair Reid Wood Jackson Tate Alan Mercaldo Gilly Pearson
Staff Present:	Katherine Poe, Planner Aaron Bland, Assistant Planning Director Paul Ray, Planning Director Brian Gulden, Board Attorney Mack McKeller, City Attorney
Guests:	James Veal, Appellant, owner of 231 Pinnacle Rd. Roy Robinson, Appellant, owner of 245 Pinnacle Rd. J. Elliott Dugger, Counsel representing James Veal and Roy Robinson Robert "Bo" Carpenter, Counsel representing Phillip Wheeler Phillip Wheeler, Fallon & Hawkstand, LLC Patricia Hildreth, CMS Engineering, PLLC

I. WELCOME

Chair, Peter Offen, called the meeting to order at 2:05 PM and welcomed those presents.

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

A. Mercaldo move to amend the agenda to place "New Business", immediately before "Unfinished Business" and reorder items under New Business, moving item B, VAR-26-0003 to A for efficiency. Seconded by G. Pearson, the motion is adopted.

The amended agenda was approved unanimously following a motion by A. Mercaldo and a second by J. Tate.

V. APPROVAL OF ORDER

P. Offen motioned to approve the Order for VAR 26-0002 as written, A. Mercaldo seconded, carried unanimously.

VI. APPROVAL OF MINUTES

A. Mercaldo made a motion to amend the March 13, 2026, draft minutes to correct the spelling of "Brian Goulden" to "Brian Gulden". Although B. Gulden indicated he did not object to the misspelling, the motion was acknowledged. Subsequently, J. Tate moved to approve the minutes, seconded by P. Offen, and the motion is adopted.

VII. BOARD DISCUSSION

P. Offen requested Elliott Dugger, counsel for the Appellant James Veal, to present arguments to the Board establishing the relevance of subpoenaing three individuals and specific records.

E. Dugger stated that the central issue of their argument is the location of the property in relation to the existing easement/right of way and the origin of the easement was established.

He then articulates the specific reasons why the following witnesses are considered necessary:

Witness 1: Mack Morrow (Contemporaneous Knowledge)

- *Purpose:* To provide firsthand testimony regarding the historical context of the trail's location.
- *Qualifications:* As a former council and planning board member, he was directly involved in acquiring the property and determining the easement's location.

Witness 2: Josh Freeman (Oversight and Public Record)

- *Purpose:* To testify regarding the administration of the Bracken Preserve trail and, specifically, to verify public statements made during the acquisition process.
- *Evidence:* Reference is made to *Transylvania Times* articles from December 2006 and January 2007 (pre- and post-condemnation).
- *Key Testimony:* Mr. Freeman, as the then-planning/community development director, was interviewed for these articles. He is expected to testify that he publicly represented that property owners would maintain access and that the project would likely increase their property values.

Witness 3: Daniel Cobb (Contemporaneous Knowledge)

- *Purpose*: Directly involve during the relevant period
- *Qualifications:* As a former council and planning board member, he was directly involved in acquiring the property and determining the easement's location.

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E. Dugger requested the Board to consider the history behind the easement since this has created a landlocked, unmarketable situation that contradicts the original intent and that they have identified three individuals who could provide necessary historical context of the Board's decision.

P. Offen acknowledged the broader dispute regarding the road, that issue falls outside this board's legal authority. He explained that the Board's jurisdiction is limited strictly to the driveway permit and whether the submitted information meets municipal requirements. The board cannot weigh in on, or bind the city to, matters of road maintenance or creation. Therefore, we will focus solely on the driveway application, specifically the information provided, or lack thereof, whether to approve or deny that permit.

P. Offen noted that the project's background, purpose, and development are already thoroughly documented in the public city committee minutes. Therefore, he argued that individual testimony is largely redundant, emphasizing that official, archived records constitute the permanent, authoritative history over any transient staffing changes.

E. Dugger contended that to understand the current predicament, we must look at what the easement was intended to be. The original documents show a 50-foot public easement designed to include a usable road. He argued that his client, J. Veal, purchased the property with the valid expectation of accessing it via this route, as it was previously utilized for vehicles. Suddenly, and without any formal closing notice or process, this road was blocked for vehicles and turned into a restricted trail. E. Dugger's argument is that the current property owners are being denied access to the right public access point that touches their land. He argues that the roadway in question has functioned as a public easement for over a century, regardless of its name changes. He emphasizes that the easement was public at the time it was established, making it inseparable from the current, broader dispute.

City Attorney Mack McKeller joined the hearing. He apologizes for being late, then urge the denial of subpoenas for witnesses, arguing that the testimony would be irrelevant to the decision on the driveway permit since its focus is on future legal issues (private deeds/roads) rather than the sufficiency of evidence for the current application. Based on the forecast of evidence from E. Dugger, M. McKeller formally requested that the Chairman deny the subpoenas.

J. Veal, the property owner, supports the subpoena, arguing that the written record does not capture all relevant details.

Regarding the issue of jurisdiction, E. Dugger argued that the city's assertion of no purview over this public road is inconsistent with the original petition for the easement. That petition expressly cited the intent to build a road and improve access. Given the court-ordered judgment granting the city several options, including construction, the failure to develop the road for years, despite the intent to increase property value, renders these adjacent lots unusable. Furthermore, the testimony from those present at the time supports the idea that the intent was to provide access, not render the land unmarketable.

B. Gulden acknowledges the statue and jurisdiction. He advised that evaluating the subpoena requests requires determining jurisdiction over the subject roadway. Since this driveway is located outside the corporate limits, jurisdiction over the driveway permit likely rests with the Department of Transportation, pursuant to NCGS 136-18(39).

B. Gulden pointed out that hearing this matter as an appeal of an administrative decision under NCGS 160D-405. This statute dictates that this Board holds the same powers as the official who made the initial decision. We have the authority to reverse, affirm—wholly or partly—or modify the decision made by the planning department regarding this driveway permit.

B. Gulden stated that the core issue before the Board is whether the applicant provided sufficient information to the Planning Department to satisfy ordinance requirements for a driveway permit, specifically regarding its location outside city limits. If this Board determines that the testimony of these three individuals is necessary to evaluate that sufficiency, it is likely our duty to issue the subpoenas to hear that evidence directly. B. Gulden made the initial ruling on the motion to issue the subpoenas with a reminder that this decision is subject to appeal to the full Board for a final determination.

P. Offen move to quash the subpoena, arguing that because the individuals involved are public officials, their actions are already covered by the public records and FOIA laws. He argued that the written , contemporaneous record is more reliable than the potentially hazy memory of events 15+ years ago.

G. Person suggests the timing of the 2014 acquisition, post-development, renders developer intent moot. Given that the trail was extant at the time of purchase, the owner took title with full knowledge of the physical reality, making current claims regarding intent largely immaterial.

J. Tate indicated his opposition in the light of the three-month period that has elapsed. As the three individuals have not provided written information on a voluntary basis, it appears the window for informal cooperations has passed, and the current phase of the inquiry may be considered complete.

A. Mercaldo noted his concurrence, emphasizing that the existing written evidence constitutes a complete record. He asserted that the documentation is sufficient to reach a final determination, placing written submissions on equal footing with verbal testimony.

The board, having considered the appellant's subpoena request, reached an impasse, with the majority opposing the motion. Consequently, the subpoena requests fail and is DENIED.

VIII. NEW BUSINESS

A. Consideration of VAR-26-0003 – 280 S. Broad St

P. Offen, Chair, explained quasi-judicial nature of the proceeding and the board's role in making specific findings of fact. He then inquired if any party wished to request standing in the variance case; no requests for standing were made.

The following were sworn: Robert "Bo" Carpenter, Phillip Wheeler, Patricia Hildreth and Katherine Poe. No ethical conflicts were found. P. Offen opened the hearing.

K. Poe presented her staff report, a portion of which follows:

Matthew J Giangrosso is the attorney representing the property owner (Phillip Wheeler) at 280 S Broad Street, which is located in the Downtown Mixed-Use (DMX)

zoning district and the Downtown Development Overlay District, within the City's municipal limits. The parcel identification number is 8585-49-2890-000.

The applicant is requesting a variance from the Unified Development Ordinance's (UDO) Chapter 9.3 for driveway separation distance from road intersections; specifically, that a proposed driveway on Oakdale St will be 63.2' from the closest intersection (Oakdale St/S Broad St) and the UDO specifies a minimum distance of 120' based on the 25mph speed limit on Oakdale St. The requested variance will be for 56.8' reduction of the required intersection separation distance.

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

Discussion

A developer has bought 3 connecting parcels (280 S Broad St, 263 S Caldwell St, and 253 S Caldwell St) to develop the properties into multiple townhouses. The developer will be closing a big portion of the preexisting nonconforming driveway on Oakdale St, reducing the driveway width (at point of intersection with the Right-of-Way) from 112' to 24'. This will bring the driveway into compliance with the UDO for width, but not for the minimum distance between driveways and intersections per Chapter 9.3.

Investigation

The existing driveway at the intersection of Oakdale St and S Broad St is a very large, nonconforming driveway. The apron of the driveway measures 112' from the point of intersection down to its termination on Oakdale St. The current configuration allows cars to enter the property along Oakdale St in multiple locations. The developer has stated in emails that they will keep the existing sidewalk on Oakdale St with the closing of the driveway opening.

K. Poe clarified that it is important to note that these additional criteria are not meant to replace the four hardship requirements; they are supplementary. This is to clarify previous confusion during the application period, which we have reviewed with the Board of Attorney.

B. Gulden, adding to K. Poe's point, these two requirements serve to support no replacement - the four essential elements required by law. The city is interpreting these as necessary to uphold the spirit and purpose of the ordinance, requiring a professional transportation assessment, which, under 160D, is standard practice for evaluating transportation impacts.

K. Poe stated that the submitted site plan – representing approximately 35 townhomes across three parcels – has been reviewed by the fire department and meets fire code. While acknowledging potential alternative configurations, she noted that the decision is based on the provided plan, which includes a driveway location that now compliant with Section 9.3.

Upon conclusion of K. Poe's report, B. Carpenter, counsel for property owner Phillip Wheeler, took the floor to present his case. He explained the legal interpretation of the ordinance and the board's authority to grant the variance.

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For the Board's reference, B. Carpenter has provided documentations outlining the structural compliance, including a signed affidavit from engineer P. Hildreth certifying.

B. Carpenter emphasizes that its request for a modification is predicated on the unique, peculiar physical circumstances of this property, which warrants a finding of 'undue hardship' per subsection 16.8.D.4 of the Zoning Ordinance. Regarding the legal interpretation offered by B. Gulden, B. Carpenter disagrees with the assertion that Section 9.3, d4 is inextricably linked to the site bearings. He respectfully submits that 9.3, d4 stands as a separate, distinct provision that grants this Board the discretionary authority to modify the driveway length to the intersection, provided the applicant satisfies the core conditions of that section.

After B. Carpenter's introduction, P. Wheeler is called to testify.

P. Wheeler thanked the Board for the opportunity to be heard. He introduced himself as a resident of 128 Holy Cir in Brevard and a former licensed civil engineer with over 50 years' experience in land development projects. He addressed the Board regarding the three recently acquired properties. He stated that although the layout has received planning approval, they are seeking a resolution to the driveway issue. Upon approval, they intend to immediately submit construction plans for water, sewer, and stormwater infrastructure to commence horizontal construction.

B. Carpenter directed P. Wheeler to introduce himself and present his professional background to the Board prior to addressing the merits of the case.

P. Wheeler introduced himself to the Board and outlined his extensive background in property development and civil engineering. He noted his past credentials as a licensed civil engineer, letting the license lapse approximately five years ago upon retiring from active practice. P. Wheeler shared that he gained foundational experience through his family's land surveying business, learning subdivision layout and local ordinances from a young age. His professional career spans numerous years, combining professional engineering and land development across approximately 50 total projects. His project portfolio includes townhome developments, low-income housing tax credit initiatives in larger cities, and commercial-industrial parks. As a part-time Brevard resident, P. Wheeler identified the subject parcels as prime opportunities for townhome development, urban redevelopment, and infill development. He noted inspiration from the Georgia Street townhomes project, leading him to secure the properties under agreement and close on them.

P. Wheeler stated that feedback regarding the project concept has been exclusively positive to date. He indicated that, to the best of his knowledge, the community supports the development and views it as a significant value-add for downtown Brevard. He noted that municipal planning staff recommended pursuing a variance for the project. Specifically, he clarified that planning staff member Katherine Poe issued a review comment identifying the need for a variance due to the proposed driveway location.

P. Wheeler provided a general project overview, stating that the currently approved master plan features 30 total townhome units across three combined parcels. He clarified his role as the master land developer responsible for delivering finished, build-ready pads rather than acting as the vertical builder. He noted that while negotiations are actively underway with multiple builders, a final construction agreement has not yet been executed. The architectural vision prescribes 20-foot-wide, three-story attached residential products configured strictly in small three-unit or four-

unit building clusters. He highlighted that the properties are situated within the Downtown Mixed-Use (DMX) zoning district, making the entire proposed layout allowable by right. Each townhouse will feature a first-floor two-car garage, a fourth-story rooftop deck optimized for western mountain views, and fee-simple, for-sale ownership. He confirmed that a Homeowners Association (HOA) will be established upon project completion to manage and maintain all common areas and shared infrastructure.

P. Wheeler stated that the preliminary layout had been approved, noting that the development team successfully addressed all agency review comments to date, with the exception of the single pending matter. He recalled that approvals and comments had been coordinated through the County Fire Marshal, City Fire Chief, city police, water, sewer, and planning departments. Regarding fire safety, he noted that his prior statewide development experience relied on standard "adequate fire hose coverage," where a 150-foot hose deployed from a public right-of-way could wrap around the building. He stated that the project's submitted plan demonstrated compliant fire hose coverage without requiring fire engines to enter the property, except for two buildings on South Caldwell Street. He explained that the County Fire Marshal rejected standard hose coverage alone, requiring on-site fire apparatus access to the rear of every building. He further testified that the site plan had to be heavily revised to accommodate the turning radius of a full-sized ladder truck, which the Fire Marshal mandated as the maximum design vehicle. He noted this requirement significantly expanded the project's asphalt footprint to allow the ladder truck to enter, turn, reverse, and exit the site. He concluded that this turning radius constraint severely impacts the 280 South Broad Street parcel, which narrows from 90 feet down to 45 feet, effectively eliminating development potential on the western portion of that lot. He directed the Board to the project layout, noting the large concrete area situated to the west of the building on South Broad Street and demonstrated how the parcel significantly tapers down to a narrow bottleneck of approximately 45 feet at its tightest point.

G. Pearson asked if the variance request was restricted solely to this particular lot instead of the other properties. K. Poe explained that the proposed driveway falls entirely onto this specific parcel number. She noted that while regulations will require the properties to be intentionally combined into a single unified lot if approved, the physical variance request remains tied to this individual parcel.

Redirecting the focus from the driveway variance, B. Carpenter introduced Chapter Two exhibit highlighting the Downtown Mixed-Use and Downtown Development Overlay districts, asking P. Wheeler to explain how the project fits into these zoning frameworks.

P. Wheeler stated that the project directly aligns with the objectives of the 2030 Comprehensive Land Use Plan and the DMX district regulations. He noted that the project promotes high-density development, pedestrian-friendly design, and reduced automobile reliance while increasing downtown vitality. He emphasized that the site boasts an excellent walkability score, providing exceptional pedestrian access to downtown Brevard alongside private two-car garages for regional travel. P. Wheeler pointed out that the development features multi-story structures and higher residential densities, both of which are explicitly encouraged by the zoning text. He noted that the regulations seek to protect the public realm by excluding auto-dominated or non-pedestrian-oriented designs. He stated that the project preserves community character and fosters a human-scaled environment. He concluded that the project achieves true urban infill by revitalizing underutilized downtown property to maximize its potential, rather than clearing greenfield acreage for large-scale suburban lots.

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Referring to the property outlined on the screen, B. Carpenter asked P. Wheeler to describe the unique characteristics of this particular lot as they relate to the driveway.

Providing context on the lot's history, P. Wheeler noted that the former McNeely's rental site was once slated for a beer garden before the previous developer abandoned the project due to high costs. He emphasized that the current site is highly unsafe, utilizing 112 feet of uncurbed, unregulated parking that forces drivers to execute dangerous backing maneuvers into the road. He added that the existing layout contains explicit state statute violations due to vehicle parking within 25 feet of an intersection, alongside two poorly configured, non-standard curb cuts.

Introducing Exhibit B—which contained Street View photographs attached to an affidavit, B. Carpenter distributed the pages to the Board and the applicant. He instructed P. Wheeler to reference these handouts and the on-screen images to walk the Board through the property's current physical appearance.

P. Wheeler testified that the first photograph was taken near the intersection of South Broad Street, looking in a westerly direction down Oakdale Street. He pointed out that this view demonstrates a complete absence of curbing along Oakdale Street, where the public sidewalk currently functions as an open parking area. He noted the two white gates visible at the western edge of the existing building, which serve as the entrance from Oakdale Street into the fenced rear yard.

Referencing the second photograph, P. Wheeler indicated that curbing only begins to appear at the termination of the 112-foot parking zone. He concluded by highlighting that, up to that specific point, the property features entirely unfettered access and unregulated parking all the way to South Broad Street.

B. Carpenter sought confirmation that the absence of street curbing permits vehicular access across the property's entire 112-foot frontage. P. Wheeler affirmed the accuracy of B. Carpenter's statement regarding unrestricted frontage access. B. Carpenter requested a follow-up explanation concerning current vehicle navigation and site access methods. P. Wheeler testified that site users must execute hazardous backing maneuvers directly into the public roadway and active traffic lanes. He noted that these maneuvers generate severe traffic disruptions and public safety risks. B. Carpenter observed that the existing site configuration violates the applicable development ordinance with which P. Wheeler fully concurred with this assessment of regulatory non-compliance.

B. Carpenter inquired about the specific design remedies planned for the 112-foot frontage. P. Wheeler explained that the project will replace the open parking area with a traditional curb, gutter, and public sidewalk system, leaving only a single 24-foot driveway entrance. He added that the design incorporates updated drainage infrastructure and will seamlessly mesh with the city's recent ADA intersection improvements to achieve full ordinance compliance

B. Carpenter confirmed that the proposed driveway will be 24 feet wide, leaving the remaining 88 feet of frontage fully curbed, and asked how these site access. P. Wheeler explained that the driveway is precisely engineered to accommodate the substantial turning radius of a large fire department ladder truck, as mandated by the County Fire Marshal. He stated that relocating the driveway further down the property is physically impossible while maintaining this required radius, concluding that the new design represents a major improvement for public safety.

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B. Carpenter noted that a single engineered access point would benefit the community far more than the current layout, adding that the site plan incorporates extensive "belt-and-suspenders" fire safety compliance measures. He asked if the development could meet the Fire Marshal's tracking requirements if the driveway was moved off the 112-foot frontage entirely, which P. Wheeler stated was impossible in his opinion.

B. Carpenter cited the applicant's engineer's affidavit, noting her professional opinion that strict adherence to the ordinance regarding the 120-foot driveway intersection distance would create an undue hardship. P. Wheeler verified this summary of the engineer's findings.

B. Carpenter referenced an on-screen image showing a vehicle parked on the property and asked the applicant if he was aware that the public routinely uses that specific entrance for parking. P. Wheeler confirmed that the vacant site is constantly used for unauthorized parking, noting that his real estate broker took multiple site photos, each capturing random vehicles, utility trailers, or landscaping trucks parked there. He observed that all three parcels currently serve as unmanaged overflow parking for adjacent businesses, with members of the public acting as though they are entitled to park across the property. He stated that this ongoing unregulated parking will be entirely eliminated once the new project is constructed. He added that, as a cumulative public benefit, the project will drastically reduce and consolidate access points across the entire multi-parcel development. He explained that the existing layout contains five total access points: one curb cut on South Broad Street, two on the subject Oakdale property, and two on South Caldwell Street. He concluded that the new design will permanently remove the highly problematic South Broad Street cut, get rid of all roadside sidewalk parking along Oakdale Street, and consolidate the South Caldwell Street access down to a single point, resulting in just two controlled curb cuts for the entire development.

Highlighting Section 9.1 of Chapter Nine, B. Carpenter asked the applicant to explain how the variance aligns with the regulatory purpose and intent. P. Wheeler responded that the by-right project complies fully with DMX zoning by fostering a pedestrian-friendly environment and reducing auto reliance. He argued that the reduction and engineering of the curb cuts will disperse traffic much better than the current five random access points. Finally, he noted that the project will repair a 50-year-old infrastructure deficiency along Oakdale Street, drastically improving safety for pedestrians and cyclists through new sidewalks, ADA ramps, and the elimination of unregulated street parking.

B. Carpenter calculated that installing the 24-foot driveway along the 112-foot frontage leaves 88 feet of brand-new curbing and sidewalks, which P. Wheeler confirmed. In response to B. Carpenter's questions about neighborhood compliance, P. Wheeler testified that not a single property between South Broad and South Caldwell streets possesses a conforming driveway, as all falls within the 120-foot intersection setback. B. Carpenter noted that the proposed design would be more conforming than its neighbors, while P. Wheeler stated it would be equally conforming to the rest of the street.

Referencing Section 1.2 of UDO Chapter One, B. Carpenter asked the applicant to briefly explain how the proposed driveway variance aligns with the overall purpose of the development ordinance. P. Wheeler stated that the project comports Section 1.2 of the UDO by lessening street congestion through a project-wide reduction in curb cuts from five down to two, which stabilizes traffic operations. He noted that the design removes the unsafe and non-conforming parking on Oakdale Street and fulfills rigorous safety requirements mandated by the County Fire Marshal to protect

against fire and other hazards. He asserted that the planned infrastructure improvements across Oakdale Street, South Broad Street, and South Caldwell Street actively promote public health, safety, and general welfare.

P. Wheeler introduced his Raleigh-based civil engineer, Patricia Hildreth, highlighting their eight-year partnership specializing in multi-family urban infill projects. He stated that P. Hildreth's ITE-based traffic analysis shows the development will decrease traffic entering the local network at the proposed Oakdale Street entrance. He noted that P. Hildreth conducted the traffic analysis and data generation for the site using Institute of Transportation Engineers (ITE) Trip Generation standards. P. Wheeler reported that the analysis demonstrates a net decrease in vehicular traffic entering the existing street system from the proposed Oakdale Street entrance. He qualified the data by stating that while standard ITE models assume maximum-capacity, full-time primary residency (365 days a year), the units will likely include part-time or secondary homes. He concluded with near certainty that actual trip generation from the 18 units accessing Oakdale Street will be significantly lower than the model's worst-case projections, resulting in an overall traffic reduction.

G. Pearson inquired if the traffic reduction model relied on the property's potential development use, questioning how adding 18 active townhomes to a vacant lot lowers traffic. P. Wheeler clarified that standard trip generation data is calculated by land-use classification rather than current vacancy, using the site's previous equipment rental/specialty retail profile as the baseline. When G. Pearson noted this was a hypothetical comparison versus the actual current usage, P. Wheeler acknowledged that physical traffic is currently near zero but explained that engineering models require baseline use assumptions. He stated that the finalized analysis, which incorporates the old rental business metrics and neighboring fitness center parking adjustments, mathematically verifies a net traffic reduction.

Pointing out that the ordinance requires a transportation assessment from a licensed North Carolina professional, B. Carpenter noted that P. Wheeler lacks this certification and suggested the Board review P. Hildreth's submission instead.

He confirmed that P. Hildreth's expert testimony would be entered into the record through her executed affidavit. Concluding his direct questioning, B. Carpenter opened the floor to the rest of the Board for inquiries, noting that a detailed discussion of the affidavit would follow immediately afterward.

P. Offen asked for confirmation on whether the current site plan was designed to maximize unit density while meeting UDO rules. He inquired if moving the driveway to a compliant location was technically possible but avoided because it would reduce the unit count or disrupt the rest of the site layout. P. Wheeler testified that it is physically impossible to safely execute the turning radius of a fire department ladder truck within the constraints of the 45-foot bottleneck. He stated his professional opinion that a full-sized ladder truck cannot be turned around within that narrow 45-foot section of the property.

A. Mercaldo then followed up to clarify the physics of the site layout, asking if the proposed 63-foot driveway setback provides the unique width and angle needed for a ladder truck to turn, whereas moving it back to a 100-foot setback would fail because the property narrows too much. P. Wheeler confirmed that the tapering width of the lot makes the 63-foot location the only viable spot to accommodate the truck's turning radius.

J. Tate asked if a lower density was needed for the project, to which P. Wheeler replied it was a possibility. However, he also emphasized that their main objective is to operate within standard compliance boundaries rather than pushing the limits of the zoning.

A. Mercaldo inquired about the precise location of the proposed 63-foot driveway setback relative to the existing building structure. P. Wheeler demonstrated on the site plan exhibit that a 63-foot distance would extend approximately to the location of the existing white fence. P. Hildreth supports the argument that the 63-foot driveway is as safe as the 120-foot driveway. P. Wheeler emphasized that the project meets DOT standards and the requested variance is consistent with the spirit and intent of the regulations.

B. Gulden directed that all evidence and affidavits must be submitted to the Clerk and formally accepted by a Board vote. He explained that under quasi-judicial rules, expert testimony via affidavit is legally admissible as long as there are no standing objections. He concluded that the Board could accept the engineer's affidavit, noting that her physical presence in the hearing ensured she could immediately answer any follow-up questions from the Board.

B. Carpenter formally tendered Patricia Hildreth as an expert in civil engineering, citing her credentials since 1990, her active license since 2007, and her eight-year history with the applicant. He then moved to admit her affidavit into evidence. He noted that the expert affidavit satisfies all variance elements under Section 9.3(D)(4). Specifically, he cited her findings that the 63-foot driveway placement is the minimum deviation required to handle urban infill constraints, that replacing the open parking with a curbed driveway improves public safety, and that enforcing the 120-foot rule creates unnecessary hardship. He added that the affidavit proves a 63-foot setback is just as safe as 120 feet, and that the layout aligns with NCDOT standards. He wrapped up by introducing Exhibit A (her resume), Exhibit B (the street photos), and Exhibit C (the ITE traffic assessment showing a net traffic decrease).

A. Mercaldo asked if the affidavit's conclusion that a 63-foot setback is just as safe as a 120-foot setback was based on the ITE traffic model producing the same numbers. P. Hildreth clarified that the ITE model only measures trip generation volumes, not spatial safety. She noted that while Oakdale is not an NCDOT-regulated street, the driveway design still satisfies the standard NCDOT 10' x 70' sight-distance triangle rule used for major roads like South Broad Street. A. Mercaldo thanked her for the explanation.

B. Carpenter concluded with two legal points: first, Section 9.3(A) only governs streets with existing curbing, making it arguably inapplicable to uncurbed Oakdale Street; second, Section 9.3(D)(4) grants the Board independent authority to modify driveway rules, noting ambiguities must favor free property use. He stated that P. Hildreth's expert assessment satisfies both prongs of Section 9.3(D)(4) by proving the 63-foot design improves public safety and represents the minimum change needed for urban infill site circulation. To ensure full coverage, he asked the Board to approve both the modification and a traditional variance, arguing all hardship elements are met. He explained that the restriction is unnecessary because the design already improves a 50-year non-conforming streetscape by adding 88 feet of curbing. Finally, he noted the hardship is unique to the property's severe tapering and Fire Marshal mandates rather than being self-created and concluded that the plan fulfills the spirit of the UDO by vastly improving local pedestrian safety.

Hearing no further questions from the Board or staff, the Chairman thanked the applicant and formally closed the evidentiary public hearing. The Board then transitioned into internal deliberations to review the evidence and findings of fact.

B. Gulden stated that state statutes govern local ordinances, meaning the City Council cannot strip the Board of its legal authority to evaluate the four standard elements of a variance. He explained that the proposed order includes the two specific criteria from Section 9.3(D)(4) supported by the engineer's testimony and affidavit. He noted that meeting those two requirements essentially satisfies the "spirit and intent" prone of a traditional variance, leaving the remaining findings up to the Board's determination.

R. Wood stated that the applicant met all necessary criteria to satisfy the Board's requirements. Concurring with her assessment, P. Offen noted the applicant tried hard to comply with all other regulations but was caught in an impossible conflict between the driveway setback rule and Fire Marshal's unusually strict mandates. He added that expert testimony proved the 63-foot setback is just as safe as 120 feet, while R. Wood highlighted that the engineer's data showed the layout would not increase traffic and might even decrease it.

A. Mercaldo stated the project actively reduces traffic risks by eliminating an entire block that currently acts as an open driveway. He noted that while he initially questioned alternative designs, the tapering shape of the lot combined with the Fire Marshal's ladder truck constraints means there is no other viable location for the entrance. R. Wood added that any vehicular stacking will happen internally within the development's private driveway, meaning the configuration creates an internal burden for the residents rather than an external issue for the public street. G. Pearson agreed with the comments already made, and J. Tate expressed his concurrence.

P. Offen then called for a formal motion, pointing out that A. Mercaldo had notes ready. A. Mercaldo lightened the mood by replying that he was waiting for J. Tate, drawing laughter from the room.

A. Mercaldo introduced a formal motion regarding Variance Request 26-0003, submitted by Fallen and Hawk Stand LLC and Philip Wheeler. The application sought a variance from Section 9.3(A) of the Unified Development Ordinance (UDO) to permit a 56.8-foot reduction in the required driveway intersection separation distance at 280 South Broad Street, Brevard, North Carolina, within the Downtown Mixed-Use (DMX) zoning district. A. Mercaldo moved that the Board adopt the following statutory Findings of Fact:

> *A. Unnecessary Hardship:* An unnecessary hardship would result from the strict, literal application of the regulations. The turning radius mandates imposed by the County Fire Marshal for maximum-sized emergency vehicles severely restrict the site's layout. The proposed location is the only viable spot on the tract capable of physically accommodating the required emergency vehicle maneuvers.
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> *B. Peculiar Conditions:* The hardship results from physical conditions peculiar to the property, specifically its location, size, and geometry. The narrow, sharply angled shape of the lot between Oakdale Street and South Broad Street severely restricts development options while the applicant attempts to meet the requirements of the Downtown Development Overlay District.
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> *C. Not Self-Created:* The hardship did not result from any past or present actions taken by the applicant or property owner. The baseline non-conforming conditions are historical, and the proposed design actively reduces the size and scope of the existing non-conforming street access.

D. Spirit, Purpose, and Intent: The requested variance preserves the spirit, purpose, and intent of the regulations, securing public safety and achieving substantial justice. The sworn affidavit of the licensed Professional Engineer proves that the design resolves public safety concerns. Furthermore, replacing the open, unregulated parking apron with a single driveway significantly reduces overall traffic risk.

Final Motion to Grant: Based on these findings, A. Mercaldo moved that the Board formally grant the requested variance to allow a 56.8-foot reduction of the required driveway separation distance from intersections for the property at 280 South Broad Street, in strict accordance with the application, site plans, and evidentiary exhibits submitted into the record. The motion was seconded by J. Tate and carried out by a unanimous vote of the Board.

B. Gulden clarified that under Chapter 160D rules, the variance decision must be finalized in a written format. He noted the Board will review and vote to approve this draft order at their next meeting in two weeks. He stated that the Chairman will sign the approved document. He finished by explaining that the signed order will be formally recorded with the Clerk and submitted to the Register of Deeds.

B. Carpenter asked if they needed to attend the next meeting, and B. Gulden replied that attendance was not required since the Board would simply be voting to approve the written order as presented.
B. Carpenter thanked the Board members for their time and consideration, expressed his appreciation, and concluded his appearance.

Procedural Recess: The Chairman called for a brief recess to allow the Board a short break before transitioning to the next scheduled administrative appeal.

IX. UNFINISHED BUSINESS

A. Consideration of APP-25-0001; APP-26-0001

Immediately upon opening, M. McKeller addressed the Chairman regarding several procedural matters aimed at maximizing efficiency. First, he proposed that rather than introducing E. Dugger's numerous exhibits individually through testimony, they be submitted as a comprehensive tender package. Under this proposal, E. Dugger will compile the documents with explanations of relevance, and M. McKeller will review them to stipulate admissibility or note specific objections before submitting the organized package directly to the Board. Second, noting that the pending appeals for J. Veal, R. Robinson, and J. Veal involve nearly identical issues, M. McKeller proposed that counsel jointly moves to consolidate the three matters into a single hearing to avoid duplicative testimony. Finally, to allow counsel adequate time to compile the joint exhibit package and prepare for the consolidated matters, M. McKeller requested a continuance of the hearing until May 5th. He indicated that on that date, counsel anticipates presenting a brief factual summary followed by closing arguments for a final Board decision, noting that E. Dugger joined in this request.

E. Dugger stated that utilizing existing record evidence alongside new supporting documents on the same issue maximizes efficiency. He noted the primary objective is to demonstrate that the board previously possessed or reviewed this information. Furthermore, E. Dugger clarified that if distinct

grounds or standards arise outside this scope, the appropriate recourse would be to file a separate appeal.

A. Mercaldo raised a procedural question regarding the upcoming hearing: if the three matters are combined, should the team file a single joint motion, or should separate motions be prepared for each case?

B. Gulden advised the Board to consolidate all three cases into a single motion to yield a single verdict and accelerate the hearing. It was proposed that parties will submit agreed stipulations and deliver focused appellate arguments.

Following discussion, the Board determined that all three appeals share sufficient factual and legal issues to justify consolidation. The Board formally invited J. Veal to present any immediate objections to the consolidation before proceeding. J. Veal entered a formal dissent against the consolidation proposal, citing unique factual and legal issues distinct to Parcel Three.

Lacking board consensus, B. Gulden confirmed the cases would not be consolidated and would proceed as separate actions. The matters remain divided into two distinct appeals: the two previously joined cases and the newly filed case. B. Gulden questioned the Appellant counsel regarding the logistics of presenting separate proffers of evidence for each individual appeal.

E. Duggar noted that all three parcels share a common deficiency: insufficient information. He also clarified that Parcel Three involves additional, independent grounds for denial not shared by the other properties. J. Veal attempted to emphasize the critical relevance of the geographic factors. M. McKeller interrupted to request that the Chair enforce proper quasi-judicial hearing protocol by allowing only counsel to speak.

B. Gulden referenced an existing agreement where parties would proffer evidence and deliver standard oral arguments for the board's evaluation. He emphasized that everyone is present for a scheduled hour, and if the party is ready to present testimony and get the hearing moving.

E. Duggar explicitly sought confirmation on whether the evidentiary proffer for the third parcel could encompass the additional, distinct grounds for denial. P. Offen agreed, stating that a separate proffer could be submitted to cover the extra, divided information for that specific case.

Consequently, the Board agreed to continue the hearing until May 5th as an unfinish business. B. Gulden pointed out two cases are currently scheduled for May 5th and recommended classifying the current matter as unfinished business for that same date.

B. Gulden advised the Board to formally continue the hearing to a date and time certain to preserve the record and ensure all testimony is captured. The Board discussed a May 5th continuation, contrasting a 2:00 PM start against a 3:00 PM start to ensure adequate time for the case.

On a motion by J. Tate, seconded by P. Offen, the Board voted unanimously to schedule the continued hearing for May 5th at 2:00 PM in the same building, pushing subsequent variance items to 3:00 PM.

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X. REMARKS

A. Bland questioned City Alternate Member Reid Wood regarding their preference to transition to a permanent City Primary seat or remain an alternate. A. Bland clarified the seat allocation, that a new application was pending, meaning that R. Wood's choice would determine whether the new applicant fills a primary or alternate vacancy. R. Wood agreed to accept the City Primary designation, noting they had consistently filled a regular seat due to ongoing vacancies.

R. Wood requested that the "Vice-Chair" title be removed from her nameplate, clarifying that Board Member Alan Mercaldo currently holds the position. The Board Clerk acknowledged the request and confirmed the nameplate would be updated to reflect the correct titles.

XI. ADJOURN

Board Chair P. Offen called for a motion to adjourn. R. Wood moved to adjourn, and P. Offen seconded the motion. The motion passed unanimously by voice vote, and Chair P. Offen officially concluded the meeting at 4:29 PM.

_____
Peter Offen, Chair

_____
Edievith Gass, Board Clerk

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