ROBERTS
& STEVENS
ATTORNEYS AT LAW

WILLIAM CLARKE
VINCENT D. CHILDRESS, JR.
DAVID L. ENGLISH
KENNETH R. HUNT
DENNIS L. MARTIN, JR.
ANN-PATTON HORNTHAL
PHILLIP T. JACKSON
JAMES W. K. WILDE
MARY ROBINSON HERVIG
JOHN D. NOOR
KATHRYN MAULTSBY MADISON
L. ASHLEY SAVILLE-AMTOWER
SUSAN RUSSO KLEIN
CHARLES E. MCGEE
GRACIE K. PAULSON

CITY CENTRE BUILDING
301 COLLEGE STREET, SUITE 400 (28801)
POST OFFICE BOX 7647
ASHEVILLE, NORTH CAROLINA 28802
TELEPHONE (828) 252-6600
FACSIMILE (828) 258-6955
www.roberts-stevens.com

CINDY M. RICE
JORDAN P. BARNETTE
L. KATHLEEN POTTER HARGROVE
DAVID C. HAWISHER
ABBIE N. HORNBERGER
BRYANT G. CROSS
BENJAMIN H. VAN STEINBURGH
DENISE A. LOCKETT
KELLY E. MCLAUGHLIN
TYLER R. GILLIS
MARTHA M. SCHULL

LANDON ROBERTS, FOUNDER (1921-2007)
JOHN S. STEVENS, FOUNDER (1933-2019)

July 28, 2026

Via Email: stephanie.holland@cityofbrevard.com & paul.ray@cityofbrevard.com
City of Brevard Planning Department
ATTN: Stephanie Holland and Paul Ray
95 West Main Street
Brevard, NC 28712

RE: VAR File #VAR-25-0003
Dolly's Dairy Bar located at 128 Pisgah Hwy, Pisgah Forest

Dear Board:

Pursuant to your request, we are respectfully requesting that the variance hearing currently scheduled on August 4th be continued to September 1st as we are still waiting on the appraisal to be completed. This appraisal is necessary for the hearing.

I look forward to hearing from you.

Sincerely,

ROBERTS & STEVENS, P.A.

John D. Noor

JDN/djp

The Staff Report below was presented at the June Board of Adjustment hearing. The hearing was continued until August. The applicant has requested to continue the hearing to a later date to have more time to gather evidence.

Background

Dolly's Dairy Bar, a tenant at 128 Pisgah Hwy in Pisgah Forest, is zoned Downtown Mixed Use (DMX) and is within the City's Extra Territorial Jurisdiction (ETJ). The parcel identification number is 8597-45-1544-002.

Dolly's sustained damage from Hurricane Helene and construction repairs were estimated at $60,000 per the permit application. The County tax office has appraised the building's value (primary structure) at $43,430.

Per the Unified Development Ordinance (UDO), the primary structure is considered a pre-existing nonconformity and based on the cost of repairs to be invested in the building, it will be considered a Substantial Damage/Improvement.

Per UDO 14.3.E.(5): "Significant damage and/or significant improvement to any non-conforming structure that is located within a lot containing any other non-conforming condition shall, to the maximum extent possible, require the satisfaction of the all other requirements of this ordinance and the elimination of all non-conforming conditions. Examples include, but are not limited to, the provision of sufficient parking, landscaping and buffering, and public improvements (i.e., sidewalks and other), and full compliance with all applicable signage, flood hazard reduction, surface water protection, and stormwater management provisions."

The parking lot is currently not paved with permanent non-erodible surface treatment, which is a requirement of Chapter 10.7.D.1.

The owner of the property and the City executed an Infrastructure Improvement Agreement, as they stated NCDOT work will be happening with the R-5799 roundabout and wanted to wait until it's completion to do their parking lot improvements.

The applicant is requesting a variance of the Unified Development Ordinance's (UDO) Chapter 10.7.D.1 for non-conforming parking lot to be brought into compliance.

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

Discussion

The City did approve the repairs requested based on the fact that we have the Infrastructure Improvement Agreement on file. The owners did add ADA parking as part of these repairs.

Investigation

Upon inspection, the existing parking lot is a gravel lot but does have some holes/low spots.


DOLLY'S
DAIRY BAR



Standards for the Granting of Variances
In order to grant the variance *all* of the conditions below must be met:

1. Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

4. The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

Economic hardship or the fact that property may be utilized more profitably with a variance shall not constitute an unnecessary hardship. In its motion the Board should include Findings of Fact to support each of the items listed above.

INFRASTRUCTURE IMPROVEMENT AGREEMENT
"Performance and Payment Bond or Equivalent"
March 2, 2025

1. AGREEMENT

Pursuant to Section 16.12 of the City of Brevard Unified Development Ordinance and G.S. 160D-702(a) and 160D-804, this Infrastructure Improvement Agreement (the "Agreement") is made by and between the City of Brevard (the "City") and Chill-Lee Corporation dba Dolly's Dairy Bar (the "Developer"). The purpose of this Agreement is to establish the performance guarantee for the deferred completion of or variance from required site improvements, to include complying with Chapter 10.7 Off-street parking area design and construction standards.

2. PERFORMANCE GUARANTEE

The Developer agrees to provide a performance guarantee to ensure the completion of the required parking lot construction as depicted on the approved site plan and permit application number: Z-25-043. The performance guarantee has been provided in one of the following forms:

Check one that applies:

A surety bond issued by a company authorized to do business in North Carolina.

A letter of credit issued by a financial institution licensed to do business in North Carolina.

An alternative form of guarantee that provides equivalent security to a surety bond or letter of credit and is valid in North Carolina.

The base cost of the guarantee shall be the full (100%) estimated cost of construction of the required improvements being deferred, as certified by a licensed design professional (architect or engineer).

3. PERFORMANCE GUARANTEE PROVISIONS

No person other than the City of Brevard, the Developer, or the entity issuing or providing the performance guarantee shall have any rights under or to the performance guarantee or its proceeds.

The performance guarantee shall be released or returned in writing by the City of Brevard upon the satisfactory completion of the specified work, as acknowledged by the City of Brevard, or by the granting of a variance by the Board of Adjustment, eliminating or reducing the requirement for complying with Chapter 10.7 of the UDO off-street parking area design and construction standards.

In the event of default, as defined in Chapter 19 of the Unified Development Ordinance, the Developer shall pay all or any portion of the bond, cash account, or funds represented by a letter of credit to the City of Brevard up to the amount specified in this Agreement. The surety or bank issuing the letter of credit shall comply with the City's demand for payment. The City, at its discretion, may use the funds to complete the specified work and shall return any unspent funds to the Developer upon completion of the work.

4. SPECIFIED WORK

The Developer agrees obtain a variance from Chapter 10.7 of the UDO or complete the following specified work within the time provided:

Construction of an off-street hard surface parking area approximately 6,000 sq ft in area as illustrated on the site plan provided by the developer and attached to permit number Z-25-043 which shall comply with Chapter 10.7 of the City of Brevard UDO. For the purpose of this agreement, the parking area shall be defined as any public or private open area or facility used for parking automobiles and other vehicles serving primary use or uses and the vehicular use area from the proposed private sidewalk at the front of the building to the future curb cuts provided by NCDOT as part of their highway improvement project, R-5799.

The City shall hold a performance guarantee in the amount of $18,500.00for the work described as estimated by a qualified engineer or architect licensed to practice in the State of North Carolina. The City shall have the right to draw on the guaranteed funds and enter the adjoining property, if necessary, to construct the parking lot in compliance with Chapter 10.7 of the UDO if the Developer does not obtain a variance from Chapter 10.7 of the UDO or complete the work by March 28, 2027. The City Manager may extend this deadline in their discretion by one year or less. Any extension

5. BINDING EFFECT

The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, heirs, legatees, successors, assigns, and any other transferee. If the terms of this Agreement are correctly understood, please sign and date below.

6. SIGNATURES

Developer

By: _____
Name: Jean P. Lee
Title: President
Date: 03/13/2025

CITY OF BREVARD

By: Wilson B. Hooper
Name: Wilson B. Hooper
Title: City Manager
Date: 3/14/25

7. NOTARIZATION

STATE OF NORTH CAROLINA
COUNTY OF Buncombe.

I, Zackary Thompson, a Notary Public, do hereby certify that JEAN P. LEE personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this the 13 day of March, 2025.

Signature of Notary Public: Zackary Thompson
Printed Name of Notary Public: Zackary Thompson
My Commission Expires: 12/03/2029

ZACKARY THOMPSON
NOTARY PUBLIC
BUNCOMBE COUNTY NC
MY COMMISSION EXP:12/03/2029

STATE OF NORTH CAROLINA
COUNTY OF Transylvania.

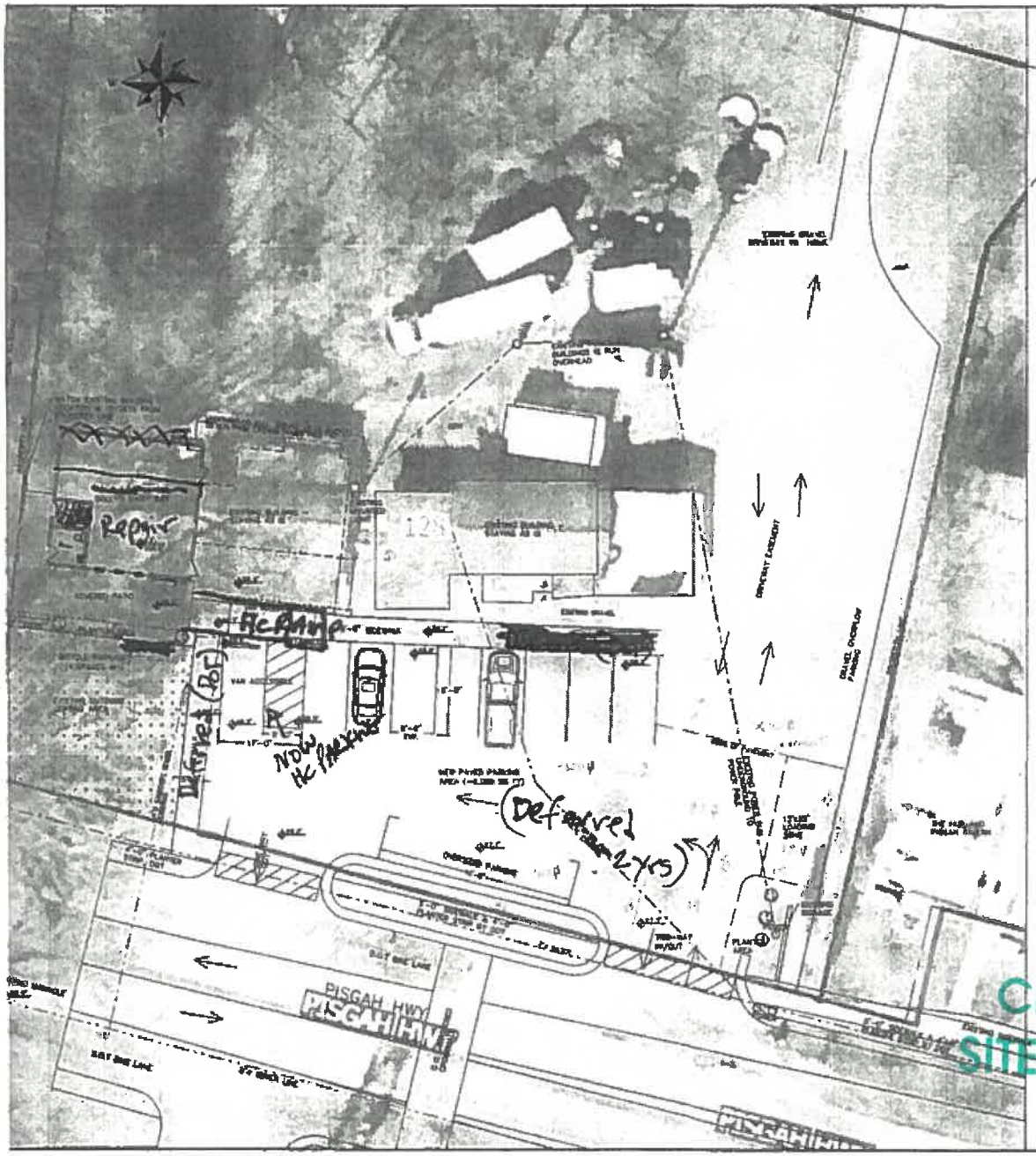
I, Denise Hodsdon, a Notary Public of said State and County, do hereby certify that WILSON B. HOOPER personally appeared before me this day and acknowledged that he is the City Manager for the City of Brevard, a North Carolina municipal corporation, and that by authority duly given and as the act of this corporation, the foregoing instrument was signed in its name by him as its City Manager.

WITNESS my hand and Notarial Seal, this the 14th day of March, 2025.

Signature of Notary Public: Denise Hodsdon
Printed Name of Notary Public: Denise Hodsdon
My Commission Expires: 10/6/2029

DENISE HODSDON
NOTARY
PUBLIC
BUNCOMBE COUNTY, NC

DOLLY'S DAIRY BAR - (CHILL-LEE CORP)

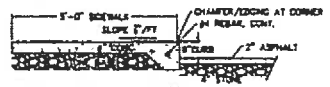


CITY OF BREVARD – SITE PLAN NOTES:

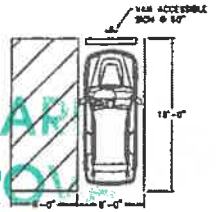
1. PROPERTY
   - 1.1. PIN NUMBER 8597-45-1544-001
   - 1.2. CALCULATED ACREAGE 0.827 (36,024 SQ FT)
2. ZONING IS PCD
3. PARKING REQUIREMENTS
   - 3.1. BUSINESS (1 SPACE PER 300 FT²) = 3 SPACES REQUIRED
   - 3.3.1. REQUIRES 1 BICYCLE SPACES (RACK FOR 4 BICYCLES)
   - 3.3. ALL PARKING SPOTS ARE TO BE WITHIN 65 FT OF A SIDE WALK OR PEDESTRIAN CROSSING.
4. STORMWATER IMPACT: NONE
5. LIGHTING
   - 5.1. LOW INTENSITY LIGHTING WILL BE PROVIDED AT THE OUTDOOR COVERED PATIO.
   - 5.2. PARKING AREA IS LIT BY EXISTING STREET LIGHTING AND PLANNED D.O.T LIGHTING
7. SIGNAGE
8. UTILITIES
   - 8.1. WATER:
     - 8.1.1. RESTAURANT: EXISTING 2"ø METER AND SUPPLY RUN FROM CITY 4" LINE.
   - 8.2. SEWER:
     - 8.2.1. 4"ø SEWER (EXISTING) RUNS FROM ICE CREAM SHOP TO PISGAH HWY. 8" CITY SEWER RUNNING UNDER ROAD.
   - 8.3. STORMWATER: NO NEW PERMEABLE SURFACES. NONE REQUIRED.
   - 8.4. ELECTRICAL SERVICE (DUKE) IS TO RUN UNDERGROUND TO BUILDING FROM EXISTING SERVICE POLE. (COORDINATE TAP WITH DUKE ENERGY)

	Occupancy	Units	Design Usage/Room	Gal/Day
Dolly's Dairy Bar	Bar	36 Seats	35 gal/seat	720
			Total Usage	720 gal/day

WATER USAGE TABLE



CURB & SIDEWALK DETAIL
NTS



VAN ACCESSIBLE PARKING DETAIL



VAN ACCESSIBLE PARKING SIGN

DESIGN BY: S LATELL,PE
DRAWN BY: E. JOYNER
DATE: 16-JAN-2025
PROJECT NO: 24-119
DRAWING: 24-119-002
REV: REPAIR

SCALE: APPROX. 1" = 10'-0"

DOLLY'S DAIRY BAR

SITE PLAN

EOB

Engineering of Brevard, PLLC
PO Box 202
Brevard, NC 28712

Design Professional:
Scott Latell, PE
#043931

CITY OF BREVARD
SITE PLAN APPROVAL
DATE: 3/14/25

Z-25-043
8597-45-1544-001