**MINUTES**
**BREVARD BOARD OF ADJUSTMENT REGULAR MEETING**
**Tuesday, January 6th, 2025– 3:00 PM**

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday September 2nd, 2025, at 3:00 PM.

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| Members Present: | Peter Offen, Chair<br>Reid Wood<br>Jackson Tate<br>Alan Mercaldo |
| Staff Present: | Katherine Poe, Planner<br>Madalin Baker, Board Clerk<br>Aaron Bland, Assistant Planning Director<br>Paul Ray, Planning Director<br>Brian Gulden, Board Attorney |
| Guests: | Jeffrey Johnson, tenant at 109 Hendersonville Hwy<br>Josh McKinney, tenant at 109 Hendersonville Hwy<br>Neal Stanifer, Attorney & Agent for Gumstand Gap LLC, owner of 109 Hendersonville Hwy<br>James Veal, Appellant, owner of 231 Pinnacle Rd.<br>Roy Robinson, Appellant, owner of 245 Pinnacle Rd.<br>Elliot Duggar, Attorney representing James Veal and Roy Robinson<br>Mack McKeller, City Attorney |

## I. WELCOME

Chair, Peter Offen, called the meeting to order at 3:04 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 made by A. Mercaldo, seconded by R. Wood, carried unanimously.

## V. APPROVAL OF MINUTES

A. Mercaldo motioned to approve the September minutes as written, J. Tate seconded, carried unanimously.

## VI. APPROVAL OF ORDERS

None.

**VII. NEW BUSINESS**

A. Consideration of VAR-25-0001 – Pisgah Social, 109 Hendersonville Highway

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

The following were sworn: Jeffrey Johnson, Josh McKinney, Neal Stanifer. No ethical conflicts were found. P. Offen opened the hearing.

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

Pisgah Social, a new tenant at 109 Hendersonville Hwy, is scheduled to open a multi-business food restaurant. The property is located in the Downtown Mixed-Use (DMX) zoning district and within the City's municipal limits. The parcel identification number is 8597-55-3136-000 and is owned by Gumstand Gap LLC. The appointed agent, attorney Neal Stanifer, will be representing both the property owner and tenant. The applicant is requesting a variance from the Unified Development Ordinance (UDO) Chapter 12.6.K, which prohibits awning signs on buildings and became effective in early November 2025. There is already one (1) awning sign, which was permitted prior to them becoming prohibited. The request is limited to two (2) additional signs mounted on the awning structure only, defined for the purpose of this request as the portion of the structure that is attached to the building façade but supported by vertical posts. The request does not include signage on the roof of the main building, which is considered a separate structural element and is not part of this variance request. Notice of the hearing was advertised and posted on the property in accordance with North Carolina General Statute §160D-406.

Following her staff report, K. Poe looked to the Board for questions. P. Offen asked what regulations apply to signs on roofs, as opposed to awnings. K. Poe shared signs on roofs are prohibited. A. Mercaldo asked about the possibility of "attaching" the two additional signs to the existing permitted sign, which K. Poe shared was not allowed as it would be expanding an existing nonconformity.

Neal Stanifer shared his presentation, attached. He explained the business model for Pisgah Social is that of a food hall, featuring two separate restaurant options and one bar inside the same building, an operational concept that is growing nationwide. He shared the topography of new NCDOT road construction makes the visibility of the structure from the street level very limited, noting the road construction puts the grade of the street 12-15 feet higher than the previously existing road grade. This unique topography makes a wall sign invisible to street traffic, due to the grade and the existing awning on the building. The applicant cited trying alternative options in an effort to comply with the ordinance, but ultimately the property does not lend itself to advertising in any other way. A. Mercaldo asked about the value in advertising Pisgah Social separately, and J. Johnson shared that Pisgah Social is the business on the lease and will be the functional name of the bar inside—both kitchens lease from Pisgah Social. He said this would also protect the longevity of the project, if there were to be new tenants inside the building in the future, the name of the food hall could remain Pisgah Social.

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P. Offen asked if it would be possible to mount a wall sign in the gap between the top of the awning and the roofline, and K. Poe shared that would not be viable given the size of the sign. R. Wood asked if the proposed signs would be illuminated, and J. Johnson shared that yes, they hope to illuminate the signs externally following installation.

B. Gulden provided additional details regarding quasi-judicial proceedings, noting that as only 4 board members are present, all four would have to vote yes for the variance to be approved. B. Gulden shared they could request the case be taken up at the next meeting if desired. The applicant discussed and decided they would still like the case heard today.

A. Mercaldo asked K. Poe when the other two signs were erected, and Katherine clarified they were installed prior to the ordinance change in November of 2025 but were unpermitted. J. Johnson shared the total square footage of the three signs was kept under 64 square feet, which they mistakenly thought was covered under the first permit they were issued, which was only for the Pisgah Social sign.

P. Offen asked the applicants what harm they anticipate by not being able to advertise NC Smash and Cheef Eats independently. J. Johnson expressed fears of revenue loss operating a business with no exterior signage and not being able to appeal to tourist traffic as well, citing that each restaurant has name recognition around Brevard. P. Offen asked some clarifying questions regarding the timeline of events. J. Johnson shared they leased the building in February of 2025, the NCDOT road construction began at the end of 2024, but they did not have any knowledge of NCDOT's plans to raise the grade of the road.

A. Mercaldo asked the City how the square footage of signage is calculated. K. Poe shared it is calculated based off of the smallest rectangle that would fit around all the curves of a sign. J. Johnson mentioned the size of the previously existing Pisgah Fish Camp sign, and B. Gulden informed the applicants they would be entitled to permit choice. The applicants clarified they would like the variance considered under the sign ordinance as it was prior to November of 2025, when updates were made regarding awning signs. A. Mercaldo asked what the combined square footage of the three requested signs would be, and J. Johnson shared it would not be more than 36 total square feet.

P. Offen saw there were no further questions and closed the hearing.

J. Tate expressed concern that approving three awning signs might set a dangerous precedent for other businesses in town. B. Gulden reminded the Board of the outright prohibition of awning signs included in the November 2025 ordinance change, noting other businesses would be subject to already codified regulation changes.

P. Offen made the following motion:

With regard to variance request 25-0001, the application of Gumstand Gap LLC, through its agent Austin Walker, seeking a variance from Chapter 12.6.K of the UDO for property located 109 Hendersonville Hwy, Brevard, North Carolina, within the Downtown Mixed-Use Zoning District, I move the Board to make the following findings of fact:

a. that unnecessary hardship would result from the strict application of the regulations, defeating the purpose of the business, causing loss of revenue, limiting advertising ability to local and tourist clientele alike;

b. the hardship results /from conditions that are peculiar to the property such as location, size, or topography, resulting from significant changes in grade due to NCDOT road construction, the building position making wall signage difficult to utilize;
c. the hardship did not result in actions taken by the applicant or owner, the lease being entered into before the state grading work was complete, and city sign ordinances being updated in November of 2025;
d. the requested variance is consistent with the spirit, purpose, and intent of the regulations such that public safety is secured, and substantial justice is achieved, respective of permit choice and the sign ordinance as it stood in October of 2025, denoting a maximum square footage for signage of 64 square feet;

Accordingly, I further move the board to GRANT the requested variance to allow for the installation of two additional awning signs on the subject property in accordance with and only to the extent and within the area represented in the application and plans, with no additional future signage to be added to the awning.

J. Tate seconded the motion, passed unanimously. The applicants requested the Order be approved via email.

B. Consideration of APP-25-0001: Administrative appeal of the Planning Department decision Regarding Permits ENC-25-006 and ENC-25-007

P. Offen, Chair, explained quasi-judicial procedures and standing. B. Gulden followed, providing additional context regarding appeal proceedings.

Amy Kelton stated she wished to be granted standing. A. Kelton stated she owns the property at 159 Pinnacle Road, the closest residence to the properties in question. A. Kelton was sworn. P. Offen asked her to share why she might suffer special damages or harm unique from other properties in the community. A. Kelton shared that in July of 2022, J. Veal continued construction activities after receiving a stop work order from the City, continued loud construction into the night, with general disregard for the neighborhood. She shared she is concerned that the appellant displays a history of disregard for the city's rules and regulations. A. Kelton shared she is concerned that J. Veal could contaminate wells in the area or cause other environmental harm should work begin the install driveways at 245 and 231 Pinnacle Road, as proposed. A. Mercaldo asked if there are other homes in that proximity, and A. Kelton said yes, that all the other homes in the area are downhill from the appellants' properties. B. Gulden reminded the Board that proximity alone is not grounds for granting standing.

Elliot Duggar, Attorney representing James Veal and Roy Robinson, questioned A. Kelton. He asked if A. Kelton is claiming damages based on J. Veal's previous activities, and she responded yes—his history of bright lights and loud noises continuing past the workday had negatively impacted her family on many occasions in 2022. A. Kelton noted she only filed a formal complaint with the city once, but J. Veal had displayed negligent behavior repeatedly in the past. E. Duggar asked if any of J. Veal's activities have diminished the value of her property. A. Kelton responded no, no diminution in value, but certainly diminution in their enjoyment of the property. E. Duggar asked if J. Veal's activities in the neighborhood continue currently, and A. Kelton responded yes, citing he continues to plant trees in the area on property that he does not own. E. Duggar asked if A. Kelton has any education in

erosion management, and A. Kelton said yes, she has attended courses through SORBA regarding erosion control.

B. Gulden reminded the Board that traffic and property-valuation facts must be presented by an expert.

A. Mercaldo made a motion to deny standing for A. Kelton. J. Tate seconded, and the motion passed unanimously.

Ethical considerations were made. P. Offen disclosed that M. McKeller is his father-in-law. No ethical conflicts were found. P. Offen opened the hearing. The following were sworn: Roy Ray Robinson, James Veal, Paul Ray, and Aaron Bland.

P. Ray presented his staff report, a portion of which follows:

**Background**: Two driveway applications for neighboring parcels located in the vicinity of the end of Pinnacle Road, near but beyond the parking lot and trailhead for the City-owned Bracken Preserve trails, were submitted on August 6, 2025. One for 231 Pinnacle Road (PIN 8576-83-5643-000) was submitted by owner James Veal, and one for 245 Pinnacle Road (PIN 8579-83-4791-000) by owner Roy Robinson. These were assigned to Assistant Planning Director Aaron Bland for review.

The two subject parcels are "landlocked" in that they have no frontage on a public street right-of-way. The Transylvania County tax map shows that the Pinnacle Drive ROW continues beyond the Bracken parking lot to the front of these parcels, however this is a mapping error. The exact extent of NCDOT maintenance and ownership of Pinnacle Drive is unclear. Different surveys show state maintenance ending in different places, but none show it extending as far as the subject parcels, and it is not improved beyond the parking lot. The official NCDOT State Maintained Network Map does not include Pinnacle Road at all, meaning that it is not maintained by NCDOT. This listing shows SR-1350 (the number attached to Pinnacle Road on surveys) as only being the 0.2-mile-long paved Music Camp Road, from Probart Street to Bishops Knoll. The entire unpaved Pinnacle Road is listed as “non-system” on official NCDOT maps.

The City's Bracken Mountain Trail leaves the parking lot and ascends to Bracken Preserve through a 50-foot-wide right-of-way that crosses several private properties between the parking lot and the City-owned Bracken Preserve parcel. This ROW was obtained by the City in 2008, and the public hiking/biking trail was opened to the public in July 2012. Properties in the area were once served by a small private road called Mackey Ridge Road, which was located in the vicinity of the current trail, but it is no longer in existence and never had a public right-of-way. This area is outside the City's corporate limits in the extraterritorial jurisdiction, and all subject parcels are zoned General Residential - 4 (GR4).

**Administrative Decision**: Below is a summary of the email correspondence between Mr. Bland and Mr. Veal regarding the review of the applications. The full email chain, including referenced attachments, is included in this packet.

On August 8th, Mr. Bland emailed Mr. Veal and Mr. Robinson that he had some confusion reading the submitted site plans and that additional information was needed. Namely, the location of the City's Bracken Mountain Trail and the ROW that the trail lies within, in an

effort to determine if the proposed driveways would be within the trail ROW and how close they would come to the trail.

On August 28th, Mr. Veal responded by providing copies of portions of the legal documents from the establishment of the trail ROW, but did not include the requested information regarding the ROW and the trail's location as they relate to the location of the proposed driveways.

On August 29th, Mr. Bland responded, again asking for information about the location of the trail and trail ROW in relation to the proposed driveways. Mr. Bland cited the concern of potential conflicts with the driveway and the trail/trail users. To illustrate his concerns, Mr. Bland included an attachment with his own markup on the original site plans illustrating how much of the proposed driveways were seemingly shown within the City's trail ROW. Additionally, Mr. Bland pointed out that each driveway was shown to be constructed beyond the property lines.

On September 11th, Mr. Veal responded with additional site plans, however, they did not include the requested information of the location of the Bracken Mountain Trail. Mr. Veal indicated that the driveways would connect to Mackey Ridge Road as if it was still in existence. Mr. Veal's email also suggested that there could be "shared access" from the Bracken parking lot to the new driveways, presumably indicating that trail users on bike and foot would share the same travel corridor as vehicles using the driveways. However, nothing was shown on the site plans between the "mouth" of the driveways and the end of the public street of Pinnacle Road to show how this shared access portion would be improved to allow for a vehicle to traverse it. Nor was any evidence of an access easement across the properties required to reach the subject properties from Pinnacle Road.

On September 19th, Mr. Bland responded that given the materials provided, he was unable to fully review the applications and had no option but to deny them. He cited a lack of information about how the proposed driveways would interact with and possibly impact the Bracken Mountain Trail and the safety of users on it, as well as a lack of information about how vehicles would get to the driveways from the end of Pinnacle Road.

On October 6th, Mr. Veal and Mr. Robison both filed an appeal of their denials with the City Clerk (submissions are attached).

**Discussion**: The Unified Development Ordinance has some standards for driveways, however these are predicated on the notion that the driveway is connecting to a public street within a public right-of-way, neither of which is the case for these permits. For example, Section 13.8.B states (emphasis added) “No driveway or curb cut shall be less than 12 feet nor greater than 24 feet in width at the point of intersection with the margin of the right-of-way of any street located in the city…”
Many provisions of the ordinance assume frontage on a public street, which these subject parcels do not have, a condition known as “landlocked parcels.” Section 14.6 of the UDO discusses nonconforming lots such as the subject parcels. Subsection D states that “the administrator may permit the establishment of a private right-of-way or access easement in order to facilitate access to pre-existing land-locked parcels.” The City’s trail ROW does not convey private use to access these parcels, but rather public use to access Bracken Preserve. No evidence of other access easements for such private use to access the subject parcels was provided.

The overarching goal and purpose of the City's UDO and regulations in general, as well as the enabling state legislation that allows for zoning authority, is to promote public health, safety, and general welfare (UDO Section 1.2). Therefore, ensuring the safety of Bracken Preserve trail users, as well as any potential users of the driveways, was a primary concern when reviewing these applications. Mr. Bland's request for the location of the existing trail within the ROW was in order to ascertain if the vehicular traffic using the driveways would cross over or otherwise conflict with trail users. Without the location of the trails shown on the site plan, this was not able to be evaluated. Section 17.2.C of the UDO states that "The administrator shall have the authority to deny and return any submitted land development permit application and associated development plans upon a determination that such submitted items are insufficient…" Mr. Bland determined that the submitted plans were insufficient because they did not show 1) the location of the trail to determine potential user conflicts, 2) how cars could legally access the driveways from Pinnacle Road where it ends at the Bracken parking lot, and 3) how cars could physically traverse the terrain from the parking lot to the subject parcels.

Further, UDO Section 16.5.C.1 states that applications must contain "all information and materials required by this ordinance for submittal of the applicable type of application, and in sufficient detail, format, and readability for city staff to evaluate the application for compliance with applicable review standards." It is the Planning Department's position that these applications did not contain such "sufficient detail" for review of both potential safety conflicts with trail users and legal/physical access from where Pinnacle Road ends in the parking lot.

There is a gap between where Pinnacle Road stops being a public street and the proposed driveways. How large this gap is varies by source, but there is undoubtedly a gap. The applicant seemed to indicate that it was acceptable to connect to the trail ROW, as if it was a public street ROW, due to the language of the legal documents establishing the City's trail ROW. These are written to allow for "all vehicular and pedestrian travel across the property" in order to "serve [Bracken Preserve], providing ingress, egress and regress thereto."

The inclusion of vehicular travel gives the City the right and ability to allow such use of the ROW, but not the obligation to install a road capable of providing such use. The City cannot establish a City street outside the corporate limits. Thus, to date, the City has chosen to only allow travel through the ROW to Bracken Preserve by foot and bike. The decision to exercise the right to allow vehicles is a policy decision that cannot be made by Planning Staff. Again, no evidence of additional access easements for the purpose of traversing the private properties between the end of Pinnacle Road and the subject parcels was provided, therefore Staff assumes there is no such guaranteed access to these parcels from Pinnacle Road. [end staff report].

Following P. Ray's staff report, M. McKeller asked that the staff report and all accompanying attachments be submitted as evidence. M. McKeller questioned Paul. M. McKeller asked if the Bracken Preserve trailhead is in City Limits, and P. Ray answered no. M. McKeller asked if the City is allowed to maintain roads outside of the City limits, and P. Ray answered no. M. McKeller asked if the right of way that provided access from the parking lot to the bracken preserve is owned by the City, and P. Ray said no. M. McKeller asked if, in reviewing any of the submitted plans, if the City was shown any plan that showed any parcel linking to a

public road, and P. Ray answered no. M. McKeller asked if any additional information was provided to the city other than the attachments included in the staff report, and P. Ray answered no. M. McKeller confirmed he had no further questions for the City.

E. Duggar questioned the City. E. Duggar asked P. Ray to list his professional credentials as a City Planner. P. Ray cited having a bachelor's degree in public administration, taking courses through the UNC School of Government, and over 20 years of professional experience in City and Regional Planning and building inspections across multiple municipalities. E. Duggar said he would like P. Ray to be qualified as an expert witness in City Planning. E. Duggar asked P. Ray if he engaged in any outside communications regarding the case beyond what is included in the staff report. P. Ray responded no, only conversations with City staff, not Board of Adjustment members or City Council.

E. Duggar asked P. Ray how he concluded there was not a public street right of way in front of the properties at 231 and 245 Pinnacle Rd. P. Ray shared A. Bland communicated with NCDOT to ascertain the location of their right of way, and NCDOT confirmed their right of way does not extend that far. P. Ray clarified he is summarizing the staff report, but that A. Bland can be called as a witness as well regarding specific communications with NCDOT. E. Duggar asked what steps have been taken by the City to clarify the end of NCDOT ownership and maintenance of Pinnacle Drive [sic]. P. Offen interjected, telling E. Duggar that his question might be more appropriate to ask A. Bland after he concludes questioning P. Ray, for the sake of clarity and time. E. Duggar noted he had no further questions for P. Ray.

The Board questioned the City.

A. Mercaldo asked P. Ray if the two subject properties were subdivided from one larger lot at some point, and P. Ray responded yes, they were subdivided at various times in history.

P. Offen asked if there is any paved road or improvements planned connecting to the location of the proposed driveway and asked what the existing terrain there is like. P. Ray noted the frontage of the two subject parcels features rugged terrain, and the City has no clarity on how the applicant would be able to safely navigate to the proposed driveway location in a car. P. Ray noted the City's trail lies within that 50-foot right-of-way, from the parking lot.

J. Tate asked P. Ray what the width of the area being used to access the subject parcels via vehicles is. P. Ray noted there is currently no vehicular access to the subject parcels. P. Offen asked how the other structures in the attached map area are accessed, and P. Ray shared access to those structures would be via private road. P. Offen clarified that state maintenance of Pinnacle Road ends before the City's parking lot, and P. Ray said yes. J. Tate asked if the deeds for either subject property mention right of way access, and P. Ray shared he was unsure, as he did not perform a title search.

R. Wood asked about the origins of the label "Mackey Ridge Road," as notated on page 33 of the agenda packet. P. Ray shared it was never an official road from what the City can tell, and that it was likely a private dirt road historically, emphasizing that the road was never an official one. A. Mercaldo asked if the current Bracken Mountain Trail is overlaid in the location where that potential private road previously was, and P. Ray said yes. A. Mercaldo asked if the City took any action to clear the trail area, or if it includes natural foliage. P. Ray responded there is no evidence on the ground currently that Mackey Ridge Road ever

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existed. A. Mercaldo noted that the path of Bracken Mountain Trail, which is city-owned, runs from the city-owned parking lot to the other portion of city-owned property, and P. Ray said that was correct. A. Mercaldo asked the City to clarify the ownership of the portion of land that connects the two City owned properties, and P. Ray shared the connecting bit was condemned for use as a right-of-way in 2008. The Board had no further questions for the City.

E. Duggar called A. Bland to testify. E. Duggar asked A. Bland to summarize his qualifications. A. Bland shared he has a master's degree in city and regional planning, he is an AICP certified planner by the American Planning Association, is a Certified Zoning Official by the state of North Carolina, and has been working in Brevard for 14 years. E. Duggar moved to have A. Bland qualified as an expert witness in the scope of his report.

E. Duggar asked A. Bland how he concluded that the tax map, showing the Pinnacle Drive [sic.] right of way extending beyond the Bracken parking lot and to the front of the subject parcels, was a mapping error. A. Bland noted that many surveys have been performed of the area over the years, and while none of the surveys seem to exactly agree, none of the surveys indicate Pinnacle Road extending as far as is shown on the county tax map. Additionally, A. Bland cited correspondence with NCDOT District Engineer Troy Wilson, who said they do not claim or own Pinnacle Road in front of the subject parcels and that the state street network map identifies the subject portion of Pinnacle Road as "non-system road," indicating it is not theirs [NCDOTs]. A. Bland emphasized once again that none of the information he reviewed indicated Pinnacle Road extending as far as the tax map would indicate. E. Duggar asked how exactly A. Bland would determine which map was most accurate and asked if A. Bland could say with professional certainty that the tax map is inaccurate. A. Bland responded yes, he would say the tax map is inaccurate. E. Duggar asked if A. Bland would agree that there is no clarity, and A. Bland agreed, saying not based on what he has seen. E. Duggar asked A. Bland if it is possible that the tax map is the correct one. A. Bland responded saying if he saw a document that showed the same thing as the tax map then yes. E. Duggar followed up asking if it is possible that the tax map is the accurate one, given that we don't have any accurate one [map] necessarily. A. Bland responded, saying it is possible that any of the maps are the accurate one. E. Duggar asked A. Bland if this would be the basis of the conclusion that the maintenance and ownership of Pinnacle Drive [sic] are unclear, and A. Bland said yes.

E. Duggar asked if, beyond what was already testified to, the NCDOT weighed in on what they thought. A. Bland said yes, sharing Troy Wilson's email stated that NCDOT owns the 0.2 miles of SR-1350, Music Camp Road, running from Probart Street to just shy of the rear entrance to the Music Center. The entirety of the gravel portion of the road is not claimed or maintained by NCDOT, according to Mr. Wilson.

E. Duggar asked A. Bland if he had seen the name Mackey Ridge Road on any surveys, and A. Bland responded yes. E. Duggar asked if Mackey Ridge Road is superimposed on SR-1350 at any point in time, and A. Bland said that depends on your definition of the end of SR-1350.

E. Duggar recalled that A. Bland said the entirety of the unpaved portion of Pinnacle Road is listed as a non-system road on NCDOT maps, and asked A. Bland to define what nonsystem means. A. Bland shared it means the street is not a part of the official NCDOT street system, indicating roads that could be private or could be city owned. E. Duggar noted that means the road could be under the control of another government entity, and A. Bland said yes, the

non-system designation simply indicates the street is not in the NCDOT system. E. Duggar noted the designation could indicate a road owned by a forest service, and A. Bland said yes.

E. Duggar referenced one of the maps in the packet, asking A. Bland for insight on the label that reads "existing old roadbed, +/- 10 ft wide." A. Bland said he does not know what that label is referring to. E. Duggar noted that we don't know what that roadbed is, and A. Bland said no, he does not know. E. Dugar asked if it is possible that it is the former Mackey Ridge Road, and A. Bland said yes, but emphasized once again that he does not know anything beyond what the plat states. E. Duggar asked if all of the surveys within the City's possession agree on the location of the easement lines and property lines in the subject area, and A. Bland said he would assume so, but has not compared the corner points of the easements on each of the plats, noting that as they are performed by licensed surveyors. E. Duggar noted that surveyors occasionally disagree and make mistakes, to which A. Bland replied sure, and E. Dugar asked if he would agree that it's possible the surveys may disagree with each other, to which A. Bland replied they may.

E. Duggar asked A. Bland to indicate where the bike path is on the map, and A. Bland did so, sharing the trail is the blue line. E. Duggar noted the easement is indicated by the white line and asked if the roadbed is seen topographically on the map. A. Bland said he does not have a survey that indicates the position of the bike trail as well on the same map, noting that is what he asked the applicants for originally was a site plan that showed the position of the trail on the same site plan as the driveway, so he could tell if they conflicted. A. Bland said he never received such a plan as requested, which was the reason for his denial of the original applications.

E. Duggar asked how wide the bike trail is, and A. Bland said 3 feet. E. Duggar asked if it is common to have a 50 foot easement for a bike trail that is 3 feet wide, and A. Bland responded he does not know, as he does not have many other easements to compare it to, but he knows that you do need some space when working with mountainous terrain to maneuver the trail across the changing topography—the trail cannot simply be a straight line.

E. Duggar asked A. Bland how wide a typical roadway is in the city, and A. Bland shared that a road is usually 11 to 13 feet wide per lane. M. McKeller reminded the Board that the question before them is whether enough information was given to the City for a decision to be made. P. Offen asked E. Duggar for the reasoning behind his line of questioning, and E. Duggar said his questions are drawn from the staff report.

E. Duggar asked A. Bland how he knows that Mackey Ridge Road ever existed. A. Bland said it has been shown on some of the plats and mentioned by J. Veal in conversations. A. Bland said a roadbed is identified on some of the plats, but he does not recall if any label is given to the roadbed. E. Duggar asked when, how, and by whom was Mackey Ridge Road closed, if A. Bland believes it to have existed at some point in time. A. Bland said he does not know the answer to any of that, as it is not part of the review of a driveway permit. E. Duggar asked A. Bland what information he relied on the conclude that Mackey Ridge Road was never a public road, and A. Bland noted he never saw any evidence of it, as is is not an NCDOT road and cannot be a City road, and those are the only tow options for public ownership. E. Duggar asked if it might be accepted as a public road by some other agency, and A. Bland said it might be, but he saw no evidence of such a conclusion. A. Bland re-emphasized that his review was only of those materials submitted in the application. E. Duggar asked if A.

Bland has access to maps that show where the trail goes, and A. Bland said yes. E. Duggar restated that we do not know who, how, why, or when Mackey Ridge Road was closed, and A. Bland followed noting he does not know if there was something to be closed, if it was simply a private, flat, drivable surface, there was nothing to be closed or abandoned officially, it is simply disused.

E. Duggar asked if A. Bland had any knowledge of people using the old roadbed to access properties in the past, and A. Bland said no, only what he had been told by J. Veal. E. Duggar asked if A. Bland has access to the City's original site plans for the bike path, and A. Bland said yes, the Bracken Masterplan, which is available to the public. E. Duggar asked A. Bland if it does not make perfect sense that in the applications presented by J. Veal and R. Robinson, they were asking to cut driveways to the 50 foot right of way. A. Bland replied that when he first received the applications, he was unsure what they were trying to connect to because there is no drivable road in that area. E. Duggar referenced the map included in page 37 of the packet, and asked A. Bland if it was fair to say that he had enough information to make a determination about the driveway. A. Bland said his intention when drawing the colored elements of the referenced map was to clarify that he was interpreting it correctly, and he sent it back to J. Veal for clarification. A. Bland said he also requested J. Veal add the location of the trail on the site plan, to know if the proposed driveway would cross the trail, etc. A. Bland specified he drew the highlights on the map, not the base survey. E. Duggar asked A. Bland if he had a map of the location of the bike trail, and A. Bland said yes, he does, but his map of the bike trail does not include the proposed driveways on it. E. Duggar asked if A. Bland could not figure out where the trail would be in relation to the easement, and A. Bland said no, not with enough certainty to understand potential safety hazards for trail users. A. Bland said he was never able to evaluate potential danger to trail users, as he never received a plan that included both the proposed driveway and the trail. E. Duggar once again asked A. Bland if he knew the location of the trail, and A. Bland said yes. E. Duggar asked how A. Bland concluded he did not have enough information, and A. Bland said because it is not on the site plan.

The appellant took a recess.

Upon returning from recess, E. Duggar asked A. Bland if he knew when the City started discussions around using that right of way as a bike trail, and A. Bland said yes, that talks were in progress in 2012 when he started at the City. E. Dugar asked if the City began discussions about putting the trail on the right of way before or after they condemned the property, and A. Bland said he was unsure, but noted that the trail physically existed when he started working for the City, unopened to the public. E. Duggar had no further questions.

M. McKeller questioned A. Bland. M. McKeller asked if it is true that the county has a disclosure statement saying the tax map should not be used as a legal document, and A. Bland responded yes. M. McKeller asked if A. Bland would consider the county tax map less accurate than maps held by NCDOT, and A. Bland responded yes. M. McKeller asked if it is true that counties are not allowed to own or maintain rights of way, and A. Bland responded yes. M. McKeller asked if the right of way in question is outside of the City of Brevard limits, and A. Bland responded yes. M. McKeller asked if it is true that the right of way can only be used for access from the City owned parking lot to the City owned Bracken property, and A. Bland responded yes. M. McKeller asked if it was imperative that the precise location of the trail is specified before allowing any vehicular traffic in the area, and A. Bland responded yes. M. McKeller asked A. Bland if he is aware of any paved road called Mackey Ridge road,

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and A. Bland responded no. M. McKeller referenced the plat on page 39 of the agenda packet, noting the plat reads "unable to positively identify exact location of road." A. Bland stated again that he is unaware of any road in the area. M. McKeller asked if A. Bland was a bike rider, and A. Bland said yes, noting he has biked the City's bracken preserve many times. M. McKeller asked if there are any remnants of a road there, and A. Bland said no, nothing you could drive a vehicle down.

No further questions were found. E. Duggar called J. Veal to testify.
E. Duggar asked J. Veal to summarize his qualifications. J. Veal noted a long career in architecture, where he is registered in Florida, Alabama, and North Carolina. E. Duggar asked him to elaborate on his experience with deeds and plats, and J. Veal noted that he is well versed in reviewing surveys. E. Duggar asked that J. Veal be qualified as an expert witness. B. Gulden cautioned the Board against naming the same person as both a fact witness and an expert witness. P. Offen said the Board would not qualify J. Veal as an expert witness.

E. Duggar asked J. Veal if there is a survey in the packet that shows where the easement, the bike path, and Mackey Ridge road all intertwine. J. Veal responded yes. E. Duggar invited J. Veal to take the Board through those. J. Veal began to discuss the history of the ownership of the properties in the subject area. E. Duggar asked where J. Veal found the surveys and information presented in his application, and J. Veal cited the deed office and Angela Towlard as sources.

J. Tate made a motion to table the agenda item (B) until the February 3rd Board of Adjustment meeting, to be held at 3:00 PM in the City Council Chambers. A. Mercaldo seconded the motion, and it passed unanimously.

A. 2026 Calendar
R. Wood made a motion to approve the 2026 calendar as written. J. Tate seconded, and the motion passed unanimously.

B. 2026 Chair & Vice Chair Elections
J. Tate made a motion that P. Offen remain the Board's chair. A. Mercaldo seconded, and the motion passed unanimously. J. Tate made a motion that A. Mercaldo be elected as the Board's vice chair.

**VIII. UNFINISHED BUSINESS**

None.

**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 6:12 PM.

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Peter Offen, Chair

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Madalin Baker, Board Clerk

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