MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, November 7, 2023 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, November 7, 2023, at 3:00 PM.

Members Present:	Kevin Jones, Chair Judith Mathews Tad Fogel Allen Delzell Peter Offen, Vice Chair
Staff Present:	Katherine Buzby, Planner Janice Pinson, Board Clerk
Others :	William Hathaway, Applicant

I. WELCOME

Chair, Kevin Jones, called the meeting to order at 3:00 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

Chair, Kevin Jones had the Clerk certify that a quorum of the Board was present.

IV. APPROVAL OF AGENDA

Motion to approve the agenda by J. Mathews, second by A. Delzell, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the October 3, 2023, meeting by A. Delzell, second J. Mathews, Tad Fogel abstained because he did not attend meeting, carried unanimously.

VI. APPROVAL OF ORDER

Motion to approve Order for Scardo Appeal, APL-23-002 by P. Offen, second by A. Delzell, Tad Fogel abstained because he did not attend meeting, carried unanimously.

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VII. NEW BUSINESS

a. Consideration of Request of William Hathaway for a variance from UDO Chapter 4.9.C.2, variance from fence height of 4' in the front yard to allow for a 6' fence, a two-foot variance. The property is located at 245 S. Rice Street in the General Residential zoning jurisdiction of the City of Brevard, further identified by PIN #8585-59-2459-000.

Chair Jones explained quasi-judicial procedures including establishing standing.

It was determined that the City of Brevard and William Hathaway had standing, and the following were sworn Katherine Buzby, Planner and William Hathaway, Applicant.

Chair Jones polled the board as to exparte communications and conflicts of interest and there were none.

Chair Jones polled Mr. Hathaway as to conflicts of interest. Mr. Hathaway had none.

Katherine Buzby presented her staff report a portion of which follows: She stated that the property was posted, properly advertised and neighbors notified.

Background
The applicant, William Hathaway, owns property 245 S Rice Street, which is located in the General Residential-8 (GR-8) zoning district within the corporate limits of the City of Brevard. The parcel identification number is 8585-59-2459-000.

The applicant is requesting a variance from the UDO Chapter 4.9.C.2, which requires a fence height of 4 feet in in the front yard. He would like to install a 6-foot fence, so is requesting a 2-foot variance in height.

Discussion
The property sits at the corner of S Rice Street and Johnson Street, so it is considered a "double-fronted" lot. Per the UDO, Chapter 4.9, any fence within a residential district must not exceed 4 feet in height in the front yard.

The applicant is requesting a variance of 2 feet in fence height for both safety and usability issues, please see attached letter addressed to the board.

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

William Hathaway thanked the board for allowing him to speak. He testified that he is a neighbor and a Father of 4 children 8 years old and under. That the property and positioning of the home places his side yard as the primary yard area for his children to play and is located on the Johnson Street side of his lot. He is requesting a variance for a six' fence along a portion of Johnson Street for the safety of his children and those using Johnson Street.

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He further explained that he had presented a letter as a part of his application (Letter is attached hereto and labeled, Exhibit "A"). He said the hardship of a 4' fence in that area of his yard would prohibit the safety of his children and the roadway users of Johnson Street. He said that UDO Chapter 19.3 defines what a front yard is and that his lot is multi-fronted. He explained that the fence they are proposing would not impede sight distance for Johnson and Rice Streets.

He explained that he did not cause the hardship that the house and yard were established when he purchased the home. He said to keep in mind that we all want to live in a safe neighborhood and have the enjoyment of our property.

He stated that the fence would prevent injury and that it would connect with the existing wrought iron fence but be made of wood at a height of 6 feet.

Chair Jones closed the hearing.

P. Offen made the following motion:

With regard to variance request **VAR-23-007**, the application of William Hathaway, seeking a variance from Chapter 4.9.C of the UDO to allow for an increase in the fence height on property located at 245 S. Rice Street, Brevard, North Carolina, within the General Residential-8 (GR-8) 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;

   Applicant would not be able to fully enjoy his property, would expose his children and roadway users of Johnson Street to danger.

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

   The lot is multi-fronted and therefore the fence height restricted by the ordinance requirements in the front yard.

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

   The hardship is not the result of the applicant, the home and yard were established prior to his purchase of the property.

d) the requested variance is consistent with the spirit purpose and intent of the regulations such that Public Safety is secured and substantial Justice achieved.

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Without the variance the Applicant would be unable to fully enjoy his property, would expose his children and Johnson Street roadway users to danger.

Accordingly, I further move the board to **GRANT** the requested variance to allow for a 2-foot increase of the maximum fence height requirement in the front yard of the subject property in accordance with and only to the extent represented in the application and plans.

Second by A. Delzell, unanimously carried.

VIII. UNFINISHED BUSINESS

None.

VIII. REMARKS

There was discussion about obtaining new members for the board.

The clerk to the Board explained that there were no current applications and the deadline for applications for the December meeting had passed so the December 5th meeting would be cancelled.

IX. ADJOURN

A. Delzell moved to adjourn the meeting, seconded by T. Fogel. The motion carried unanimously. The meeting was adjourned at 3:30 PM.

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Kevin Jones, Chair

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Janice H. Pinson, Board Clerk

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