The City of Brevard North Carolina

City of Brevard Planning Department
95 West Main Street
Brevard, North Carolina 28712
Phone (828) 885-5630
Fax (828) 885-5625
cityofbrevard.com

VAR File # VAR-24-002

APPLICATION FOR A VARINACE (VAR)
BREVARD BOARD OF ADJUSTMENT

PURPOSE OF VARIANCE – A variance is the official allowance of a variation from the dimensional requirements of the City of Brevard Unified Development Ordinance or other development regulations. An applicant for a variance must demonstrate valid reasons which create a need for a Variance. These reasons cannot be strictly economic in nature and must generally involve some physical problem with the subject property which will not allow it to be developed in a reasonable manner if City development regulations are followed literally, such as a lot which is substandard in area or width.

BOARD OF ADJUSTMENT - The Board of Adjustment or BOA, is the official City Board that considers request for variances. The BOA receives sworn testimony at its meetings and issues decisions on variance requests based on this testimony. It is the responsibility of each applicant for a variance to attend the BOA meeting and present sworn testimony in support of the request. Authority to grant a variance is found in 16.8.E of the City of Brevard's Unified Development Ordinance pursuant to North Carolina General Statute's 160D-705. The Unified Development Ordinance requires that the Brevard Board of Adjustment, when granting a variance must find that all four (4) of the following standards found in UDO Chapter 16.8.E.2. exist. In the spaces provided below, indicate the standards that you intend to show and the arguments that you intend to convince the Brevard Board of Adjustment that it can properly reach the four (4) required conclusions:

REASONS FOR VARIANCE REQUEST - Explain in your own words why you are requesting a Variance. Be sure to clearly indicate the problem(s) you will experience in complying with the City development regulations. (Attach additional sheets if needed.)

The existing building's proposed use is conforming with DMX. The existing building is non-conforming in both aspects of building height and location relative to UDO setback requirements. The proposed building expansion to the south and west at the corner of Oakdale and South Broad will extend only as far possible to maintain the handicapped parking at the corner. The expansion will be at an orthogonal relationship with the rest of the building despite Oakdale Street's angle. Please see attached project description for more detail.

The BOARD OF ADJUSTMENT is required to make the following four (4) findings before granting a Variance. Write a thorough response to each of these items.

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.

ATTACH SITE PLAN DESCRIBING VARIANCE REQUEST

PROPERTY LOCATION INFORMATION

Street address of subject property 280 South Broad

Tax Parcel Number of subject property 8585-49-2890-000

ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES

APPLICANT INFORMATION

Name: John Koury, AIA

Address: 170 South Broad, Suite 2B

Phone: 828.866.3104 Email: john@designwithmay.com

OWNER INFORMATION

Name: Lou Rubino

Address: 218 Bald Rock Rd

Brevard, NC 28712

Phone: 631- 517-0667 Email: tat2lou@gmail.com

ATTACH AGENT FORM IF THE APPLICANT IS NOT OWNER

DATE: 2.13.2024

APPLICANT'S SIGNATURE

Please refer to the City of Brevard Planning Department Board of Adjustment Category III Application Timeline for Variances.

VARIANCE REQUEST TO BE HEARD BY BOA ON: 4.2.2024.

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VAR File# _____

BREVARD BOARD OF ADJUSTMENT – VARIANCE

APPOINTMENT OF AGENT

I Lou Rubino Manager of Brevard Collective LLC, owner of property located at (street address) 280 South Broad and identified by the Transylvania County Tax Identification Number (PIN#):

8585-49-2890-000, located in Transylvania County, North Carolina, do hereby appoint John Koury, AIA to represent me in filing an application for Variance before the Brevard Board of Adjustment.

I further authorize John Koury, AIA to act as my agent in all matters, formal and informal, and to receive all official correspondence as it relates to the VARIANCE request and hearing.

Property Owner Signature: _____ Date: 2.13.2024
Mailing Address: 1220 Broadside rd, York SC 29745
Phone: 631- 517-0667 Email: Founders@Brevardcollective.com

Agent Name: John Koury
Mailing Address: 170 South Broad St. 2B Brevard, NC 28712
Phone: (828) 866-3104 Email: john@designwithmay.com

The City of Brevard North Carolina

Variances
"Unnecessary Hardship"

North Carolina General Statutes, 160D-705, authorizes the local Board of Adjustment to grant a variance from certain zoning regulations, such as setbacks and dimensional standards, under limited circumstances. The burden of proof is on the applicant seeking the variance to show an "unnecessary hardship." That term is outlined in the General Statutes and all of the criteria must be met in order for the Board of Adjustment to grant a variance, but what is an unnecessary hardship?

§ 160D-705. When unnecessary hardships would result from carrying out the strict letter of a zoning regulations, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the regulation. 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(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 is not a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

This literature is meant to provide general knowledge about variances. Please call (828) 885-5630 to make an appointment with a City Planner if you require further information.

MAY COLLABORATIVE
ARCHITECTURE | PLANNING

Application For A Variance (VAR) Brevard Board Of Adjustment
280 South Broad Street, Brevard

February 14, 2024

Reasons for Variance Request:

The proposed project includes renovating an existing non-conforming structure to accommodate a conforming use per the City of Brevard's Unified Development Ordinance within the Downtown Mixed-use District. The existing building is a single-story, former retail store set back from corner of South Broad and Oakdale. The proposed renovation and reuse of the building is as a food hall. To accommodate the proposed uses, expanding and enclosing the existing porch along Oakdale is required. The proposed location provides desirable adjacencies for deliveries and new restrooms, keeping services from crossing front of house and guest seating areas. The Owner is requesting a variance to construct the single-story addition.

A. Building / Property Information

Parcel ID:	8585-49-2890-000
Calculated Acreage:	0.419 Acres
Land Value:	$240,000
Building Value:	$203,470
Assessed Value:	$443,470
Existing Building Area:	3,992 SFB

Adjacent Property Owners

263 South Caldwell Street

Parcel ID:8585491952000

Melrose Linda W Trustee 190 Speckled Trout Run Brevard, NC 28712

250 South Broad

Parcel ID 8585493865000

Feaster Properties LLC 1160 Old Mill Ln Wyomissing, PA 19610

253 South Caldwell St

Three Lees LLC (Lou Rubino) PO Box 40 Sapphire, NC 28774

Parcel ID: 8585492924000

B. Text from Unified Development Ordinance specific to nonconforming principal structures:

14.3. - Nonconforming principal structures.

A. A nonconforming principal structure containing a use permitted in the district may continue only in accordance with the provisions of this chapter.

B. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures and any nonconforming use contained therein.

C. A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.

E. If a nonconforming structure is significantly damaged or significantly improved, the following requirements shall apply in the issuance of any permit:

> *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 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.*

F. If a nonconforming structure is substantially damaged or substantially improved, the structure, all nonconforming uses contained therein, and all non-conforming conditions within the same property (i.e., parking, landscaping, signage, flood hazard issues, and etc.) shall be brought into full compliance with the requirements of this ordinance.

Definitions.

4. Downtown Mixed-Use (DMX). The Downtown Mixed-Use District is coded for the traditional downtown area. Individual buildings are encouraged to be multi-story with uses mixed vertically, street level commercial and upper-level office and residential. Higher densities of residential development are encouraged. It is the purpose of these regulations to encourage vitality by excluding certain activities which have a negative effect on the public realm through auto-dominated or non-pedestrian oriented design or uses.

Substantial improvement: Any combination of repairs, reconstruction, rehabilitation, addition, or other modification or improvement of a structure taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure as of the date the improvement was permitted (or, in the absence of any permit, before the date of start of construction of the improvement). In the absence of any information pertaining to market value, the administrator shall utilize the assessed value of the structure. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either of the following:

1. Any correction of existing violations of state, city, or county health, sanitary, or safety code specifications which have been identified by the administrator or other authorized official of the State of North Carolina or Transylvania County, and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of a historic structure provided it meets the following criteria: such alteration is necessary to maintain, retain or restore historically significant characteristics; the alteration will not preclude the structure's continued designation as a historic structure; and the alteration does not result in the expansion of a non-conforming condition.

C. Reasons for Variance Request

The Owner requests a variance in order to renovate the existing building to support reuse with conforming uses such as restaurant, retail, and/or outdoor seating. The proposed uses within the building and use of the outdoor space for seating will promote pedestrian-oriented design and uses of the property as desired for the DMX district.

The proposed portions of the structure to be reused will include the existing foundation, slab, exterior wall, windows along north wall, and existing roof decking and structure. New work will include exterior finishes, doors, floor finishes, building expansion, South Broad façade improvement, electrical, mechanical, and plumbing services.

The existing parking lot at the corner of Oakdale and Broad will remain as handicapped parking. The rear of the building will be redeveloped from the existing concrete to landscaped exterior beer garden. The property owner also owns 253 South Caldwell, which is currently an unimproved gravel parking lot. This lot will be improved per City standards to serve as parking for 280 South Broad.

The scope of proposed improvements relative to the tax value of the structure will constitute a *substantial improvement* as defined by the UDO. As required be Section 14.3.E.5, elimination of all nonconforming conditions would result in an unnecessary hardship, requiring small but expensive expansion in footprint with the addition of a second floor.

The requested variance is consistent with the spirit, purpose, and intent of the regulations, seeking to promote pedestrian-oriented uses along in DMX. The proposed project will improve the aesthetics of the existing building, bringing its façade to the R.O.W. on South Broad and add building height. The proposed single-story addition along South Broad will be compatible with the UDO requirements in everything but height, which will be approximately 18' a.f.f.

The proposed expansion along Oakdale will maintain an orthogonal relationship with the existing building extending south as close to the R.O.W. as possible while maintaining the existing handicapped parking at the Oakdale & South Broad Streets. Proposed expansion along Oakdale to the west will use the same parameters, but be limited by clearance required for new grease trap between the expansion and the R.O.W. The facades along Oakdale Streets will be of UDO compliant materials and approximately 17' a.f.f.

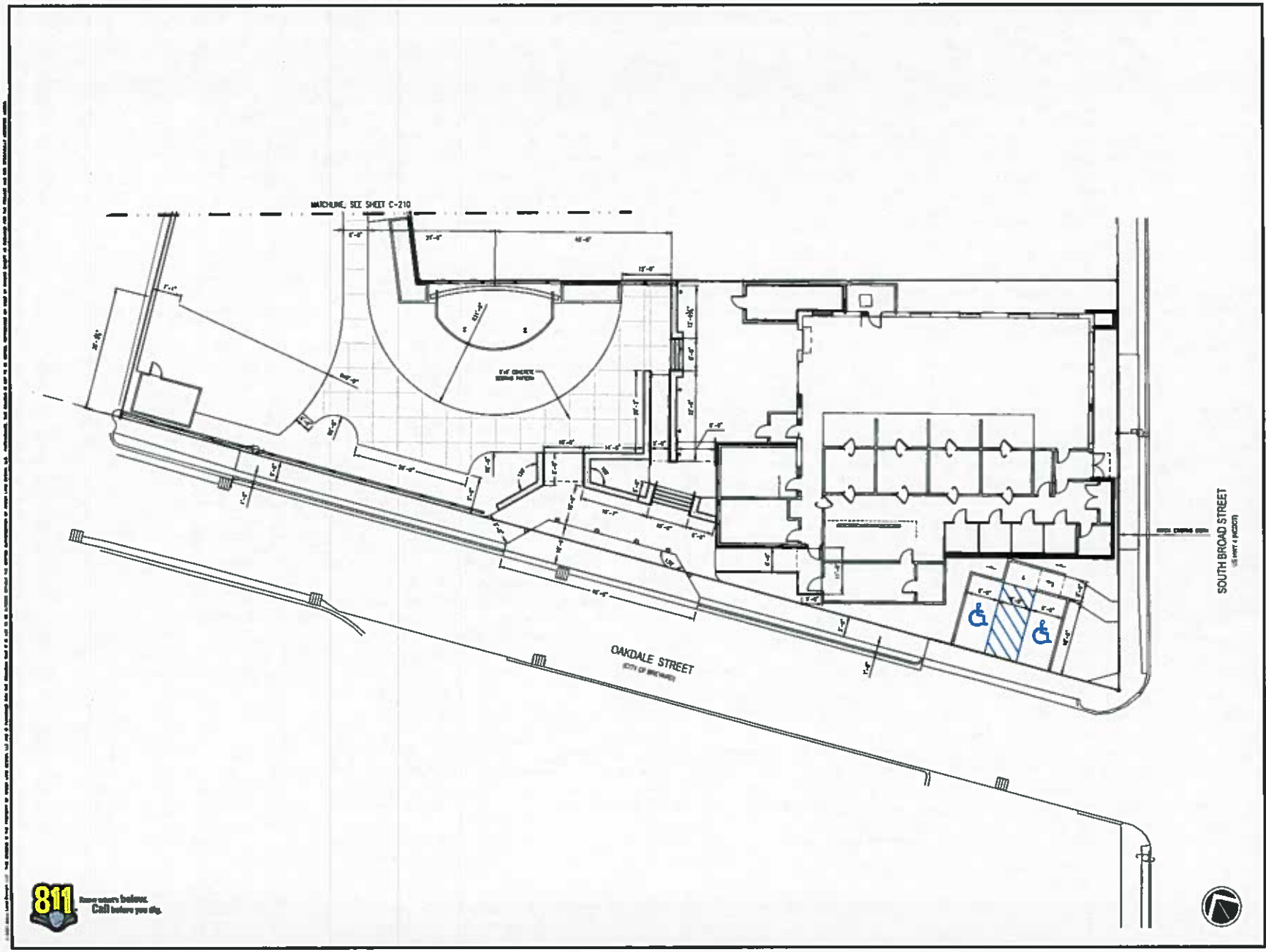
D. Existing Photos – Context



a. View at Corner of Oakdale (left) and South Broad Streets



b. View at South Broad Street



ARBOR
LAND DESIGN

REVISIONS

NO.	DATE	DESCRIPTION	BY

LEGEND

BREVARD
COLLECTIVE

BREVARD NORTH CAROLINA

LAYOUT PLAN

	JRS		11/07/23
	JRS/LS		1"=20'
	CAC		

23179

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