MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, May 7, 2024– 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday May 7, 2024, at 3:00 PM.

Members Present:	Kevin Jones Tad Fogel, Vice Chair Allen Delzell Peter Offen, Chair Alan Mercaldo
Members Absent:	Judy Mathews
Staff Present:	Katherine Buzby, Planner Janice Pinson, Board Clerk Taylor Osborne, Board Attorney – for Brian Gulden
Others:	Sean Brady, Fairhaven Meadows, LLC Mary Martin, M + A Studio, PC

I. WELCOME

Chair, Peter Offen, 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, P. Offen had the Clerk certify that a quorum of the Board was present.

IV. APPROVAL OF AGENDA

Motion to approve the agenda by A. Delzell, second by T. Fogel, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the April 2, 2024, meeting by T. Fogel, second by A. Delzell, carried unanimously.

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VI. New Business

a. Consideration of Application VAR-24-004 - Request of Mary Martin, Agent for Fairhaven Meadows, LLC for a variance from UDO Chapter 10.7.C.3. The property is located in the zoning jurisdiction of the City of Brevard in the Neighborhood Mixed Use (NMX) zoning district further identified by PIN# 8597-24-8025-000.

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

None of the public present requested to be granted standing.

P. Offen polled the board as to exparte communications and conflicts of interest and there were none.

The Applicant was asked if they had any conflicts with any member of the board and there were none.

The following were sworn: Sean Brady, Mary Martin, and Katherine Buzby.

Katherine Buzby, Planner presented her staff report a portion of which follows:

Background

The City has received an application for a variance request from Mary Martin, agent for Kristi Morgan of Fairhaven Meadows LLC, for a variance from Section 10.7.C.3 of the Brevard Unified Development Ordinance. The property is located in the zoning jurisdiction of the City of Brevard in the Neighborhood Mixed Use (NMX) zoning district, further identified by PIN# 8587-24-8025-000.

The applicant is requesting a variance from the requirement that new parking lots shall not be permitted between any principal structure and the street upon which such structure fronts. Specifically, the applicant is requesting to be allowed to have the parking lot in the front of one of the principal structures and the street (Asheville Hwy).

See the included attachments for the application materials, relevant sections of the UDO, and a site map.

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

Discussion

City Council passed a text amendment in 2020 that requires parking lots to be behind principal structure(s). The intent of the amendment was to have principal structures adjacent to the street (in the front) and the parking lots in the rear. The text amendment really does not distinguish group developments from single principal structures.

The applicant has multiple principal structures, with one adjacent to the street and one in the rear of the parcel. The variance is for the rear building to remain where it is with the parking lot in the front. The parcel itself has unique topography (slopes upwards towards

the back of the property, average of 18% slope) that restricts how the buildings can be arranged on the property.

As a reminder, the Board may consider adding conditions of approval that are reasonably related to the variance and the standards for its approval.

There were questions about the location of the property. There was discussion about the property fronting on two streets and it was explained that the street of higher classification Asheville Highway takes precedence in determining the property frontage.

Katherine Buzby was asked to explain the intent of the text amendment limiting parking in the front, which she explained to the satisfaction of the Board.

Mr. Brady presented Exhibits "A-E" and explained each, outlining their hardships such as the need to begin grading the property soon to meet the deadline of completion and not lose the tax credits they have been awarded. That the developer requires that the playground and manager's office have high visibility. That they have designed the project to avoid steep slope development. There is not ample time to redesign the project and meet the deadlines to still receive tax credits and the project would be unable to move forward.

When asked, Mary Martin answered that she estimates the parking area to begin 90 foot off the highway.

Mary Martin testified that they have a good understanding of what the developer is looking for, such as high visibility playground, moving the parking in the rear brings up safety concerns. That FMHA has requirements for distribution of ADA parking areas. She explained that there would be large trees, shrubs, and a mulched area along the new sidewalk to buffer the development from the Asheville Highway.

They further testified that there are steep slope challenges on the site, requiring some retaining walls, but that they stayed out of the steep slope areas with the design.

It was explained that the State's Senior Architect, Russ Griffin, does a very thorough, high-level review before approving a project.

T. Fogel asked if neighborhood feedback had been received.

They answered that a Neighborhood Compatibility Meeting was held at the Mary C. Jenkins Community Center and that they met onsite with the neighbors on both sides of the property. The neighbors requested that no balconies be on the back side of the units and that good fencing be installed along the retaining walls.

K. Buzby, Planner explained that the project is a by right project allowed in the zoning district and that the Applicants have gone above and beyond to satisfy the neighbors' concerns. She explained that they were not required to hold the Neighborhood Compatibility Meeting but chose to do so.

A. Delzell commented that Ms. Martin's detailed letter included with the application outlining the hardships was very helpful. The letter is attached hereto and labeled, Exhibit "F".

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There being no further questions the Chair closed the hearing.

After a brief discussion P. Offen made the following motion:

Fairhaven Meadows, LLC: VARIANCE REQUEST #24-004

With regard to variance request **24-004**, the request of Fairhaven Meadows, LLC for a variance from the provisions of Chapter 10.7.C.3 of the City of Brevard Unified Development Ordinance to allow off-street parking between a principal structure and the adjoining street for property identified as tax parcel number 8597-24-8025-000, I move the Board to make the following findings of fact:

a) that unnecessary hardship would result from the strict application of the regulations;

That the Applicants would lose their tax credits due to the deadline for carryover of December 2024 and the deadline for project completion is December 2026.

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

That the back of the property is steep, and there are strict state and federal requirements limiting design.

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

That the requirements of the state and federal governments were not due to action of the applicant or the property owner.

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.

That the project will be approximately 90 ft. off the highway, and that a buffer of trees and shrubs will be installed along the sidewalk shielding the parking lot from the Asheville Highway.

Accordingly, I further move the board to **GRANT** the requested variance to allow for off-street parking between a structure on the subject property and the adjoining street in accordance with and only to the extent represented in the application and plans.

Seconded by T. Fogel, unanimously carried.

T. Fogel further requested that the Order be processed for approval by email to expedite the process for the Applicants.

VII. UNFINISHED BUSINESS - None

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VII. REMARKS -None

VIII. ADJOURN

K. Jones moved to adjourn the meeting, seconded by A. Mercaldo. The motion carried unanimously. The meeting was adjourned at 3:30 PM.

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Peter Offen, Chair

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Janice H. Pinson, Board Clerk

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