MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, February 4th– 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday February 4th, at 3:00 PM.

Members Present:	Reid Wood Tad Fogel, Vice Chair Jackson Tate Peter Offen, Chair Alan Mercaldo
Staff Present:	Aaron Bland, Assistant Planning Director Katherine Buzby, Planner Madalin Baker, Board Clerk Brian Gulden, Board Attorney
Others:	Spencer Jones, Elizabeth (Betsy) Watson, Tore Borhaug, Kevin Jones

I. WELCOME

Chair, Peter Offen, called the meeting to order at 3:01 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 T. Foegel second by R. Wood, carried unanimously.

V. APPROVAL OF MINUTES

A. Mercaldo noted a clarification of move of sign as "new" from Nov. minutes, as it is not "new." The variance only needed be granted for the height, he said. Katherine Buzby offered clarification along with Brian Gulden, regarding expansion of sign face. A. Mercaldo suggested striking the sentence, which was deemed appropriate by Brian Gulden. A

DRAFT

Mercaldo motioned to approve the minutes with the revision to take out that sentence, second J. Tate. The motion carried unanimously.

VI. New Business

a) Consideration of Request Application for Variance VAR-24-007 by Spencer Jones and Betsy Watson for a variance from UDO Chapter 2.5.C.2. The property is located in the zoning jurisdiction of the City of Brevard in the General Residential (GR) zoning district further identified by PIN# 8596-48-9259-000.

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

None of the public 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: Spencer Jones and Katherine Buzby

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

The applicant is requesting a variance from the Unified Development Ordinance, Chapter 2.5.C.2, which requires residential accessory buildings (a shed-160' sq ft) to be located in the side or rear yard. The applicant's property has street frontage on Ecusta Rd. The determined front yard is in relation to the public Right-of-Way, not related to the way the actual structure faces.The applicant is requesting to place a 10' x 16' accessory building in their front yard (eastern yard), which is prohibited per Chapter 2.5.C.2 of the UDO: "Accessory structures shall be located only in the side or rear yards, except for gazebos, private garages, and carports." The applicants have stated that they have flooding issues in several areas of the property, and are also concerned about security for the new shed in alternative locations (which will be presented as evidence by the applicant). The property contains 500-year floodplain, which is currently not regulated by the City's Floodplain Ordinance. They also state that an exiting orchard with apple trees, sewer lines, and overhead power lines make finding a viable location in the side and rear yards difficult. Staff could not find evidence that supports the applicant's claim that the proximity of the future Ecusta Trail would create a security risk. There are multiple trees on the property, and overhead power lines run on the south side of the property. Staff is unable to tell where the sewer lines are located on the property.

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

DRAFT

A. Mercaldo asked K. Buzby about right-of-way setbacks for the potential shed. K. Buzby noted there are no setbacks for accessory structures in the front yard in the UDO, as they are simply not permitted.

R. Wood mentioned rec center road drainage issues.

T. Fogel asked if there had been any commentary from the neighbors, and K. Buzby reported there has been none.

Spencer Jones, Applicant, presented his case. See Exhibit A for full presentation slides. Some notes from his presentation are below.

The applicant noted the actual flood area comes further up the back yard than the GIS mapped floodplain. Notes location of septic tank in rear yard, with NSEW location. Actual "front" of house is the back of the house in practical use, which faces rec center road. Wants to avoid putting shed under power line, which runs over the backyard. Notes potential of Ecusta trail installation bringing worry for theft, citing previously having his children's bikes stolen. High foot traffic and car traffic area, and want to put a shed in a location behind tree line to deter visibility of it from the road. Old well pump house is currently used as shed. Homeowner also owns the lot at 1180. Presented chair with signatures of support from neighbors. There are mature trees in backyard as well. Unsure how easement of Ecusta trail could make drainage issues worse. Septic line, public access, power line all hardships. Rec center road gets a lot of foot traffic, especially when red cross utilized the area as disaster shelter post-Helene. Potentially security risk. Applicants have lived on property since 2003. Septic line has been there since before the house was built. Applicant stated desire to comply with all city laws. Less visibility could be attractive to city, out of the line of sight from ecusta road. Want to protect family and kids property.

Discussion: J. Tate asked about intentions of house at 1180. Asked about combining parcels. K. Buzby responded, citing it would create nonconformities with more than one principal structure on one parcel. City has reviewed previous plans for house renovations on both properties. A. Mercaldo requested clarity on difference between shed and "garage" specified in UDO as a garage is permitted in a front yard, which K. Buzby clarified a garage must be able to accommodate a vehicle. R. Wood asked about back property line of 1180 influencing setbacks for 1190 parcel, which K. Buzby said would need further review from planning to answer. Least obtrusive location and most protected, that does not compromise any existing trees. Brian Clarified 10 foot property line condition could be imposed, S. Jones agreed that the proposed location is the most practical for shed maintenance and to protect from fallen tree branches.

DRAFT

With no further questions, P. Offen closed the hearing.

Discussion among board members regarding possible conditions followed, about setback requirements. A condition of 15 feet from the property lines was proposed by R. Wood.

Following discussion, A. Mercaldo made the following motion:

MOTION: With regard to variance request 24-007, the request of Elizabeth Watson and Spencer Jones, for a variance from Section 2.5.C.2 of the UDO to allow an accessory structure to be located in the front yard of the real property located at 1190 Ecusta Road, I move the Board to make the following findings of fact:

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

There are impacts to safety, access issues with other locations for power, septic, and flooding in the rear and side yards

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

given location of power lines, new flooding, right of way encumbrance

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

The current owner did not set house in its location, "front" yard is only deemed front on the basis of technicality,

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.

With the condition that 15 foot condition from property line at 1180, public safety would remain secure,

Accordingly, I further move the board to **GRANT** the requested variance to allow for an accessory structure to be located in the front yard on the subject property in accordance with and only to the extent represented in the application and plans, with the condition that the proposed shed be located 15 feet set back from the property lines of 1180 Ecusta Road.

Second by R. Wood, unanimously carried.

K. Buzby requested that Order be signed and recorded digitally for ease and speed of the process.

DRAFT

b) Consideration of Request Application for Variance VAR-24-008 by Tore Borhaug of Parashift Holdings LLC for a variance from UDO Chapters 2.3 A and 2.7.2 A. The property is located in the zoning jurisdiction of the City of Brevard in the Residential Mixed Use (RMX) zoning district further identified by PIN# 8596-26-6331-000.

P. Offen explained quasi-judicial procedures. Brian Gulden explained standing requirements.

The following were sworn: Tore Borhaug, Aaron Bland

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.

Aaron Bland, Assistant Planning Director, presented his staff report a portion of which follows:

An application for a variance has been submitted by Tore Borhaug of Parashift Holdings LLC for two properties at the corner of Osborne Road and Victore Lane. The subject properties are vacant lots that are a part of Mr. Borhaug's small subdivision that is currently being developed. The lots are zoned Residential Mixed-Use (RMX) and identified by the Property Identification Numbers 8596-26-6493-000 and 8596-26-8323-000. The applicant is making two requests:
1. To be allowed to have no more than two principal buildings on each lot, representing a variance from UDO Section 2.3.A which limits lots to only having one principal building.
To be allowed to have a front yard setback of 5 feet on the portions of the lots facing Osborne Road, representing a 5-foot variance from UDO Section 2.7.2.A which requires a front setback of 10 feet in RMX. Note that each request is for **both** lots. Notice of the hearing was advertised and posted on the property in accordance with North Carolina General Statute §160D-406. **Economic hardship or the fact that property may be utilized more profitably with a variance shall not constitute an unnecessary hardship.**

Mr. Borhaug's application materials indicate that the intent for this request is to be able to provide more housing units in the new development than originally planned. When the neighborhood was initially subdivided, the Applicant stated an intent for all the new lots to have a duplex building built on them, and the first two developed lots have had duplexes built on them. With this request, the Applicant hopes to build two duplex buildings on each of the two subject lots instead of the initial single duplex building on each lot. It is important to note that a variance is not required to build 4 dwelling units on each of these lots, as the RMX

district allows the development of a quadplex. If the desired dwelling units for these lots is 4, then Staff believes that can be achieved following the UDO requirements for RMX without a variance. The Applicant's submittal also mentions the aesthetics of the two existing structures in the development as part of the rationale for the variance requests. The Board is reminded that under North Carolina state law, the City cannot regulate the architectural style or aesthetics of structures built under the residential building code (i.e. single-family home, duplex, triplex, or quadplex) and that aesthetics are not an appropriate basis for a variance. It should also be noted that the need for the setback variances could be alleviated with a lot line adjustment, which is possible as all the lots in the subdivision are owned by the Applicant.

A. Mercaldo requested clarification from the City on the year of the original subdivision. A. Bland responded it had been within the last few years, probably 2023 or 24. R. Wood clarified the setbacks of the structures fronting Victore Ln. P. Offen asked how far the property line is from Osborne road, and A. Bland approximated 10. Feet.

B. Gulden made a note that the name of T. Borhaug's company, Parashift Holdings, had been misspelled on some of the documents as Parkshift Holdings, and to disregard this mistake. All references to Parkshift holdings should be applied to Parashift Holdings.

Following the City's presentation, T. Borhaug presented his case.

T. Borhaug cited improving the appearance of the façade, and that he could create more, better looking units from Osborne road. Cited funding struggles for workforce housing for Parashift employees, opportunity to create workforce housing for other folks from other companies. Applicant says he would be improving land on bigger scale. Total density once developed will not be affected at all. If completed in the nature that ordinance would allow for, it would be another big ugly wall to look at. Current ordinance change made the plans a nonconformity, but that changed recently. Thanked the City for the recent changes to ordinances permitting property usage. T. Borhaug also cited his contributions in the fact that he constructed a street. B. Gulden advised the board on consideration of the hardship. A. Bland reminded board there was never a master plan when the subdivision originally happened. R. Wood and P. Offen asked about the potential of lot line movement. J. Tate asked applicant to clarify the hardship with connecting the buildings with finished space, and T. Borhaug cited community beautification and past complaints regarding his building designs. P. Offen asked for insight from A. Bland about the original motivation for the one building per lot clause in the UDO, to which A. Bland mentioned community continuity and visual cohesion. R. Wood asked about original motivation for subdivision of lots, and T. Borhaug cited future ease should he wish

to sell the lots separately. Additionally, soil conditions in Brevard are expensive and unfavorable from an engineering aspect, and pose a unique and expensive challenge. T. Borhaug again cited aesthetics.

Seeing there were no further questions, P. Offen closed the hearing.

The board discussed the presentations. B. Gulden reminded the board of the requirement for competent material and substantial evidence required to grant a Variance. A. Mercaldo cited the two buildings on a principal lot issue as a self-imposed issue, and that in the case one structure was on the lot, the setback issue would be null. Finances cannot be considered in variance situations. T. Fogel agreed, as did P. Offen, R. Wood, and J. Tate, on the basis that variance requirements are incredibly specific, and T. Borhaug's presentation did not address the requirements specifically. J. Tate acknowledged the need for affordable housing in Brevard and said it was unfortunate that the findings of fact the Board must abide by are so specific. The board thanked Mr. Borhaug for his development contributions to the community. P. Offen also acknowledged the unique challenge and inconvenience suffered by T. Borhaug following the change in the UDO, calling it unfortunate.

Following discussion, A. Mercaldo made the following motion:

With regard to variance request **24-008**, the request of Tore Borhaug, Agent for Parashift Holdings, LLC for a **variance to allow more than one principal building per lot for each lot** located on either side of Victore Lane at its intersection with Osborne Road, I move the Board to make the following findings of fact:

a) that **no** unnecessary hardship would result from the strict application of the regulations;

b) the hardship **does not result** from conditions that are peculiar to the property such as location size or topography;

c) the hardship **did** result from actions taken by the applicant or the property owner; and

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.

DRAFT

Accordingly, I further move the board to **DENY** the requested variance

Second by J. Tate, unanimously carried.

Following discussion, P. Offen made the following motion:

With regard to variance request **24-008**, the request of Tore Borhaug, Agent for Parashift Holdings, LLC for a 5-foot reduction in the front-yard setback for each lot located on either side of Victore Lane at its intersection with Osborne Road, I move the Board to make the following findings of fact:

a) that **no** unnecessary hardship would result from the strict application of the regulations;

b) the hardship **does not result** from conditions that are peculiar to the property such as location size or topography;

c) the hardship **did** result from actions taken by the applicant or the property owner; and

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.

Accordingly, I further move the board to **DENY** the requested variance

Second by R. Wood, unanimously carried.

VII. UNFINISHED BUSINESS

Election of officers – A. Mercaldo nominated P. Offen remain chair, and T. Fogel seconded. Passed unanimously.

P. Offen nominated T. Fogel to remain in his position as chair of vice (Vice Chair). A. Mercaldo seconded, passed unanimously.

The 2025 meeting schedule was approved, motion by P. Offen, second R. Wood, passed unanimously.

DRAFT

VII. REMARKS

T. Fogel officially welcomed R. Wood to the board.

VIII. ADJOURN

P. Offen moved to adjourn the meeting, seconded by T. Fogel. The motion carried unanimously. The meeting was adjourned at 4:52 PM.

_____
Peter Offen, Chair

_____
Madalin Baker, Board Clerk

DRAFT