MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, September 2nd, 2025– 3:00 PM

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

Members Present:	Peter Offen, Chair Tad Fogel, Vice Chair Reid Wood Jackson Tate Alan Mercaldo
Staff Present:	Katherine Poe, Planner Madalin Baker, Board Clerk Paul Ray, Planning Director Brian Gulden, Board Attorney
Guests:	Mack McKeller, City Attorney Tracy Harvey, Appellant, member/manager of 123 S. Johnson St. LLC Emily Lowery, Executive Director, The Haven Sam Wheeler, Attorney for The Haven Linda Curran, Applicant, property owner at 188 Ashworth Ave. Stephen Ashley Messer, property owner at 421 Turnpike

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

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

IV. APPROVAL OF AGENDA

Motion to amend the agenda to take up APL-25-001 before VAR-25-001 instead of the originally published reverse order made by A. Mercaldo, seconded by R. Wood, carried unanimously.

V. APPROVAL OF MINUTES

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T. Fogel motioned to approve the May minutes as written, J. Tate seconded, carried unanimously.

VI. NEW BUSINESS

A. Consideration of Administrative Appeal APL-25-001 – Tracy Harvey, 123 S. Johnson St.

P. Offen, Chair, explained quasi-judicial procedures and standing. B. Gulden followed, providing additional context regarding the function and procedure of appeal hearings.

Tracy Harvey, appellant, was sworn. Ethical considerations were made. J. Tate stated T. Harvey reached out to him earlier in the year seeking an appraisal of her property, and J. Tate stated he could not provide an appraisal as a Board member. Following questioning from B. Gulden, no ethical conflicts were found.

P. Offen stated that M. McKeller is his father-in-law. Following questioning from B. Gulden, no ethical conflicts were found.

T. Harvey shared she had reached out to B. Gulden earlier in the year requesting his representation, and he declined. No ethical conflicts were found.

T. Harvey was asked to state her standing in the case. She cited sharing a property line with the subject property in the appeal document, diminution in property value could be shared by an expert and cited health and safety concerns.

The Board considered T. Harvey's request for standing. B. Gulden provided Board with additional guidance. The Board asked T. Harvey additional clarifying questions.

J. Tate motioned to grant T. Harvey standing. A. Mercaldo seconded, and the motion passed unanimously.

The following were sworn: Pat Hawkins, Looking Glass Realty; Emily Lowery, The Haven; Paul Ray, Planning Director.

The City presented its case. P. Ray summarized his staff report, outlining the reasoning for the decision made in ZCD-25-008. He shared The Haven reduced the number of proposed tenants, would require residents to pay rent, would no longer provide social services to tenants, and would not keep surveillance cameras inside the unit. M. McKeller noted all of these were changes to the originally proposed operational model by the Haven. He noted property owners commonly change operational models on properties to better comply with standards outlined in the UDO.

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The City turned to T. Harvey, appellant, for questions. T. Harvey asked P. Ray how the proposed residents of the Haven-operated property on 108 S. Johnson St. differ from the originally proposed residents of the property. P. Ray noted new proposal includes only Haven Alumni, who do not receive social services and are transitioning into more permanent housing by paying rent and signing a lease.

The City turned to The Board for questions, and the Board had none.

T. Harvey began to present her case. S. Wheeler, attorney for The Haven, shared an LLC cannot be represented by a member and must be represented by an attorney in quasi-judicial proceedings. B. Gulden provided additional knowledge and details, sharing the Board has historically allowed members of and LLC to represent themselves. He shared it is not the Board's responsibility to verify Ms. Harvey's ability to practice law in the state of North Carolina.

P. Offen, seeing that T. Harvey understood the potential for future conflict, motioned to allow T. Harvey to represent 123 S. Johnson St. LLC as a member. R. Wood seconded, passed unanimously.

T. Harvey presented her case. She asked E. Lowery a few questions. E. Lowery specified there are exterior cameras on the property. T. Harvey asked if E. Lowery intends to install a fence on the property at 108 S. Johnson St, which E. Lowery specified would be up to the property owner, and she was unsure. E. Lowery explained the score card system The Haven utilized to assess which Haven Alumni might be a good fit as tenants on the subject property. E. Lowery noted all Haven residents undergo background checks before they engage in their regular programming, before becoming Haven Alumni.

S. Wheeler questioned his client, E. Lowery. She noted the following: three women reside on the property at 108 S. Johnson St, they are all paying rent and up to date on payments, she is the Executive Director at The Haven and has been since 2017, prior to that role she was involved in working with the shelter since 2012, there have been no police calls regarding the property at 108 . Johnson St, and there have been no violent acts requiring police intervention at the Haven shelter operated on Oakdale in her 13 years working with The Haven. Additionally, she noted the following regarding her interest in the property: she is the executive director of The Haven, The Haven is leasing the subject property from the Children's Center, E. Lowery operates the property, she has the authority to make decisions regarding tenants and lease payments, and The Haven is operating as the entity that is leasing the property from the Children's Center and is in turn leasing to individual residents.

M. McKeller questioned E. Lowery. She noted the following: There are no on-site services being provided at the Johnson St. house, each tenant has separate written occupancy agreements, they each pay rent, there are no walk-in services provided, and all rooms are single occupancy.

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T. Harvey asked if E. Lowery plans to put any signage on the building, and she said no.
The Board questioned E. Lowery. A. Mercaldo asked if the term "Haven Alumni" was in use before, and she said they've been using the term to reference graduates of their program for about a year and a half. A. Mercaldo asked if tenants will be subject to evictions if they are not paying rent, and E. Lowery responded yes.

B. Gulden indicated T. Harvey could make a closing statement. T. Harvey noted desire to "close the whole thing down" and dismiss her appeal. S. Wheeler indicated consent on behalf of The Haven; M. McKeller had no objections on behalf of the City. B. Gulden informed T. Harvey of the impact of her request, and she noted she was certain. The appeal was dismissed.

B. Consideration of Rehearing Request of Linda Curran – 188 Ashworth Ave, Var-25-001

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

The following were sworn: K. Poe, L. Curran, S. Messer

L. Curran noted that her rehearing request is based on the fact that her requested variance is less distance than it was initially.

No ethical conflicts were found. P. Offen opened the rehearing.

K. Poe presented her staff report, a portion of which follows: The applicant, Linda Curran, owns property at 188 Ashworth Ave, which is located in the General Residential-8 (GR-8) zoning district and within the City's municipal limits. The parcel identification number is 8585-46-5877-000. The applicant is requesting a variance of nine (9) feet from the Unified Development Ordinance's (UDO) Chapter 2.7.2 principal structure setback of 15' in the front yard, resulting in a six (6) foot setback. The previous variance request by the applicant was for fifteen (15) foot variance, which was denied by the Board. Notice of the hearing was advertised and posted on the property in accordance with North Carolina General Statute §160D-406. The applicant built a new deck that would require a 15' setback off the property line that faces Turnpike Rd per the UDO. The deck has been reduced, and the maximum variance request is now for nine (9) feet. The applicant claims the house has drainage problems due to the slope of the surrounding houses and the path the stormwater flows. She will be presenting evidence of the stormwater problems at her house.

P. Offen looked to the Board for questions. A. Mercaldo asked when the initial hearing was, and K. Poe said it was in May.

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L. Curran, Applicant, presented her case. She cited drainage issues from all surrounding lots, being situated at the bottom of a hill. She described difficulty with water leakage in the crawlspace. She cited the topography of the lot makes an alternative deck design or location dysfunctional. The applicant provided photos and showed video indicating the severity of the drainage issues on the property.

J. Tate clarified the nature of the request, and L. Curran cited desire to have available outdoor space to enjoy, where they currently have no other outside space to enjoy not plagued by excessive water drainage. L. Curran described a prior conversation with a contractor about possibly pouring a concrete slab instead of a deck, which the contractor said was ill-advised, would cause future issues, and be a waste of money.

The applicant called her neighbor, S. Messer, to testify. He noted that the lot is in fact exceptionally wet, that the house sits below the street grade of both Ashworth and Turnpike. He noted that the deck already exists and has posed no issue as far as he is concerned. He once again noted the unique topography of the lot at 188 Ashworth and argued for the reasonableness of L. Curran's request.

T. Fogel clarified that the deck is behind an existing fence on the property, which L. Curran said it is, that it is not obtrusive, and matches the style of the houses in the surrounding neighborhood. P. Offen clarified that on all sides of the property, standing water presents an issue, and L. Curran responded yes, as well as under the house.

P, Offen closed the hearing.

The Board discussed. A. Mercaldo made the following motion:

With regard to variance request **25-001**, the application of Lindy Curran, seeking a variance from Chapter 2.7.2 of the UDO for property located 188 Ashworth Avenue, 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, rendering much of the property unusable, with the knowledge that concrete material is not advisable on the property and decking is more appropriate;

b) the hardship results from conditions that are peculiar to the property such as location size or topography, including multiple sources of water drainage and the fact that the lot is "double fronted";

c) the hardship did not result from actions taken by the applicant or the property owner; it is natural and perhaps exacerbated by neighboring properties;

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, as fence isolates deck from any public safety considerations.

Accordingly, I further move the board to **GRANT** the requested variance to allow for a maximum nine (9) foot reduction of the front yard setback resulting in a six (6)

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foot front yard setback for the subject property in accordance with and only to the extent and within the area represented in the application and plans.

R. Wood seconded the motion and it passed unanimously.

VII. UNFINISHED BUSINESS

None.

IX. REMARKS

None.

X. ADJOURN

T. Fogel moved to adjourn the meeting, seconded by P. Offen. The motion carried unanimously. The meeting was adjourned at 4:27 PM.

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Peter Offen, Chair

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Madalin Baker, Board Clerk

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