MINUTES
BREVARD BOARD OF ADJUSTMENT SPECIAL CALLED MEETING
Tuesday, May 5th, 2026 – 2:00 PM

The Brevard Board of Adjustment (BOA) met for a special called meeting on Tuesday May 5th , 2026, at 2:03 PM.

Members Present:	Reid Wood Jackson Tate Alan Mercaldo Gilly Pearson
Members Absent:	Peter Offen
Staff Present:	Brian Gulden, Board Attorney Mack McKeller, City Attorney Katherine Poe, Planner Aaron Bland, Assistant Planning Director Vith Gass, Board Clerk
Guests:	James Veal, Appellant, owner of 231 Pinnacle Rd. Roy Robinson, Appellant, owner of 245 Pinnacle Rd. J. Elliott Dugger, Counsel for the Appellant

I. WELCOME

Vice-Chair, Alan Mercaldo, called the meeting to order at 2:03 PM and welcomed those presents.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

A. Mercaldo had the Clerk certify that a quorum from the Board was present.

IV. APPROVAL OF AGENDA

Vice Chair, A. Mercaldo moved to amend the agenda to omit items five, six, eight, and nine, noting that the meeting was a continuation of a special called meeting. The motion was seconded by J. Tate and passed unanimously.

The amendment agenda was approved unanimously, and the Board proceeded directly to unfinished business to hear APP-25-0001.

IX. UNFINISHED BUSINESS

A. Consideration of APP-25-0001

Board Attorney Brian Gulden noted that the agenda items contained separate issues and advised the board to proceed solely with the first appeal. He stated that the matter is an evidentiary, quasi-judicial hearing conducted pursuant to N.C.G.S. § 160D-406 and verified for the record that all testifying parties had already taken oaths.

Prior to the presentation, B. Gulden inquired if any board members absent from the January meeting had reviewed the previous record and evidence. G. Pearson confirmed that she had listened to the full audio recording and reviewed the record in its entirety.

E. Dugger, counsel for the Appellant, and Mack McKeller, counsel for the City, stated they had no objections.

M. McKeller provided a summary of the appeal, which concerns the denial of two driveway permits near the Bracken Preserve area by A. Bland. He noted the City denied the permits due to insufficient information regarding the driveway locations relative to the Bracken Preserve trail and their connection to a public right-of-way.

M. McKeller stated the City's position remains that only the information originally presented to staff at the time of application is relevant to determining if the denial was proper. Because the Appellant holds a different interpretation, the parties could not reach a pretrial evidentiary agreement. E. Dugger agreed this was a fair assessment of both positions.

E. Dugger explained the board had enough data to decide on the driveway permits. While technical issues delayed a supplemental packet to City staff, E. Dugger argued that existing files, including A. Bland's report—clearly showed how the driveways connect to the public right-of-way and bike trail. He then introduced J. Veal to walk the board through these specific report references.

M. McKeller objected to the presentation of evidence, noting that the proceeding was a quasi-judicial hearing. M. McKeller requested that the body follow standard procedure by requiring standard question-and-answer testimony to allow opportunity for objections.

E. Dugger allowed Appellant J. Veal to review the document line by line for proof of sufficient information. During testimony on the first paragraph, M. McKeller objected, arguing the response was a narrative and failed to answer the specific question about right-of-way evidence.

A. Mercaldo requested that speakers limit their comments to concise, factual statements to ensure an efficient process while still allowing for thorough discussion.

E. Dugger asked Appellant J. Veal to clarify which paragraphs represented evidence or information already held by the City. J. Veal responded with details concerning public street and right-of-way frontage. M. McKeller objected to the response, on the grounds that it was non-responsive to the question.

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B. Gulden noted the objection and advised that a ruling from the Chair was required before the witness could proceed with further testimony. A. Mercaldo directed J. Veal to continue testifying.

J. Veal testified that the UDO allows driveways to connect to public or private streets and rights-of-way, noting that the right-of-way in question is public. M. McKeller objected and moved to strike the statement on the grounds that it was non-responsive and constituted non-expert opinion.

B. Gulden noted the objection and motion to strike for the record. A. Mercaldo sustained the objection.

E. Dugger asked J. Veal if he gave A. Bland information showing a public right-of-way near his property and the bike trail. J. Veal testified that his initial package included a property layout drawing and a Transylvania County GIS aerial map. Though told the GIS map had errors, he received no specific details about the flaws. After A. Bland rejected the initial drawing as insufficient, J. Veal emailed her a copy of a 2006 property survey by Michael Singleton.

E. Dugger asked J. Veal about the survey's origin. J. Veal testified it came from the easement condemnation court proceedings. He noted the court files referenced the drawing but only included an uncertified depiction that the city never accepted as correct. M. McKeller objected on relevance grounds, but A. Mercaldo overruled the objection.

E. Dugger noted the document's source was printed directly on it and had already been given to A. Bland. To clear up confusion, J. Veal offered to read it aloud. M. McKeller moved to strike the remarks, objecting to extraneous statements and speculation about city staff's motives. A. Mercaldo sustained the objection.

J. Veal responded that he was not speculating on motives but was directly citing survey facts within the submitted document. He then asked the Board to review the submitted packet to clarify the matter.

G. Pearson noted the objection was sustained, urged adherence to the ruling, and questioned the efficiency of the current line of questioning. A. Mercaldo agreed and declined a full packet review. He directed the Appellant to point out the exact locations of relevant information within the document.

J. Veal reasserted that he did provide the required right-of-way information, directly disputing the claim that it was missing from his submission.

B. Gulden advised J. Veal and E. Duggar to cease the dispute and instead proceed with presenting their case, instructing them to introduce the evidence directly and explain its relevance to the matter at hand.

J. Veal noted the email on the screen was wrong, explaining that the correct document from A. Bland used lavender for the right-of-way and yellow for the property line to prove the data was provided. M. McKeller asked E. Dugger to pose a direct question so everyone could identify the specific document under review.

At E. Dugger’s request, J. Veal identified the document as the drawing for parcel two (his property). Asked if the City had seen this version, J. Veal explained the original lacked highlights, but A. Bland added them to the right-of-way and property lines to claim data was missing. J. Veal showed that the yellow highlight marked the north perimeter of parcel two, asserting the proposed driveway sits on

unencumbered property. Clarifying the unencumbered section for Dugger, Veal pointed to the driveway area outside the right-of-way, noting it extends to the south edge of the historic Mackey Ridge Road bed. M. McKeller then objected, citing speculation.

J. Veal argued that information had been submitted, asserting that a video available that afternoon clearly proved the contrary statement incorrect, and noted they possessed a copy. B. Gulden advised that the video had not yet been presented and noted that an objection had been made, adding that J. Veal would have ample opportunity to present the evidence later. A. Mercaldo then sustained the objection.

At E. Dugger's request, J. Veal located the Mackey Ridge Road bed on the drawing, pointing to the lettering to show its southern edge extending west and curving up out of the right-of-way. J. Veal explained a small rectangle on the document was an excerpt from a combined survey (using a 2003 Jenkins survey and a 2006 City-commissioned Singleton survey) showing a mobile home on Barbara Garrett's property. Dugger then asked if Veal had the deed for that property. Veal confirmed he did, but M. McKeller objected, arguing the response was non-responsive. A. Mercaldo sustained the objection.

Returning to his previous question, E. Dugger asked J. Veal if he had a deed for parcel two. J. Veal clarified that parcels two, deeds were omitted from the current packet, explaining that the documents provided were strictly limited to those with direct references to locations near Mackey Ridge Road.

Referencing the television screen, J. Veal located parcel one and requested A. Bland pull up its matching document. J. Veal highlighted the northeast corner of parcel one, the right-of-way, and a proposed driveway extending from unencumbered private property to the true Mackey Ridge Road bed. E. Dugger asked if Veal had a deed for the parcel. J. Veal stated he lacked the complete deed but possessed the legal description and the cover document.

E. Dugger asked J. Veal to show a document from the packet regarding the Parcel 1 deed. J. Veal noted it was submitted the day of the hearing and was absent from the original packet. M. McKeller stated that same-day submissions are irrelevant to A. Bland's initial application review, clarifying that the document would only be relevant if it was in the original package. A. Mercaldo sustained the objection to admitting the document based on its late submission timing.

E. Dugger introduced the Parcel 1 deed, stating J. Veal would testify about property rights detailed at the bottom of the page. M. McKeller questioned if E. Dugger was testifying to his witness, but Dugger clarified he was simply making a proffer to outline the evidence.

B. Gulden noted the Board needed a physical copy of any document before it could be officially entered into the record (see exhibit attachment).

J. Veal explained he spent 20 hours organizing the materials, noting that misplacing one document would disrupt the entire sequence. G. Pearson clarified that the file was missing from the Board's packet, adding her understanding that it had been shown to M. McKeller but never formally introduced as evidence until now. J. Veal confirmed the document was absent from the initial application given to A. Bland.

E. Dugger asked J. Veal for the document's source, and J. Veal stated he got it from the county deed office. E. Dugger then moved to formally admit it into evidence. M. McKeller renewed his objection, arguing it was irrelevant since A. Bland never reviewed it during the initial application. A. Mercaldo

overruled the objection, reminding the parties that the Board had already allowed the applicant to bring in extra evidence. After M. McKeller announced he would appeal this ruling to the full Board, J. Tate spoke up to support A. Mercaldo, stating the scope of the appeal permitted the introduction of this document.

A. Mercaldo explained that a document must be formally admitted before its relevance can be determined, confirming his ruling to overrule the objection. G. Pearson clarified the scope for the full Board, arguing the document is inadmissible if used generally to prove the driveway should be approved. However, she noted it could be admitted for the limited purpose of proving the City possessed sufficient data during its review. B. Gulden agreed, emphasizing that the Board lacks authority to issue permits. He clarified that a successful appeal would simply remand the matter back to City staff for consideration.

G. Pearson questioned why the document was being admitted, warning that the applicant was arguing for permit approval instead of focusing on whether the original application lacked enough data. R. Wood agreed, stating that if the City lacked sufficient information initially, the applicant's proper remedy was to reapply. A. Mercaldo asked if the document could be admitted under a limited scope to support what the City originally requested, but G. Pearson disagreed. R. Wood clarified that entirely new information requires a brand-new application process. G. Pearson then moved to deny the admission of the additional information as evidence, and R. Wood seconded the motion.

The Board's initial vote resulted in a 2–2 tie.

J. Tate asked Board Attorney B. Gulden about convening a brief closed session. B. Gulden advised that an unscheduled closed session was permissible by proper motion to seek legal counsel. He instructed that the motion be made under North Carolina General Statute § 143-318.11(a)(3) to protect attorney-client privilege and then called for the vote. J. Tate moved to enter closed session, and G. Pearson seconded the motion.

The motion carried, and the Board entered into closed session at 2:33 PM.

J. Tate made a motion to reconvene in open session, which was seconded by G. Pearson. The motion carried, and the Board returned to the special meeting session at 2:46 PM.

G. Pearson moved to limit all further evidence strictly to what was originally presented to the City and contained in A. Bland's application packet. The motion permits the Appellant to testify on existing evidence to argue its sufficiency under the Unified Development Ordinance (UDO), but bars any new information not found in the initial packet. R. Wood seconded the motion, which passed unanimously. A. Mercaldo ordered both parties to restrict all remaining questions to the evidence originally given to A. Bland. E. Dugger agreed to comply under protest, formally objecting that the restriction violated a previous hearing agreement. A. Mercaldo upheld the ruling, clarifying that the Board's only goal was to decide if the initial packet held enough data to support the appeal or overturn the denial.

E. Dugger asked J. Veal to point out any alternative easements, plats, or surveys in the original packet showing the driveway's location relative to the right-of-way. J. Veal identified the easement plat in File 11, Slide 922, and the County Planning Department's aerial vicinity map on page 22 of the agenda packet, requesting both be pulled up on the screen.

A. Mercaldo then instructed the parties to maintain a strict question-and-answer format rather than transitioning into an open presentation.

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E. Dugger directed J. Veal to show the Board the location of the properties where the new driveways were being proposed.

J. Veal testified that the drawing was originally for a different application and relied on a 2003 survey of parcels one through six. M. McKeller objected, arguing the witness was being non-responsive. A. Mercaldo sustained the objection.

J. Veal continued testifying, explaining the drawing identified the Robinson and Veal properties and was made to address A. Bland's concerns. M. McKeller objected again, arguing the answer was still non-responsive to the question. A. Mercaldo sustained the objection.

E. Dugger rephrased the question, asking J. Veal to show the exact location of the driveways. J. Veal replied that the drawing showed the whole easement in relation to the parcels. M. McKeller objected again, arguing the answer was still non-responsive.

E. Dugger asked J. Veal how the proposed driveway connects to the right-of-way. J. Veal testified that it runs from the private property through the right-of-way to connect directly with Mackey Ridge Road, noting it was the only driveway on the plat showing how a vehicle would reach the existing road. Asked by Dugger if he understood the right-of-way to be public, Veal confirmed he did. M. McKeller objected, arguing Veal's personal understanding was an irrelevant opinion rather than a fact. A. Mercaldo sustained the objection and ordered both sides to stick to verifiable facts instead of opinions.

E. Dugger asked J. Veal if the right-of-way depicted on the drawing was a public right-of-way, to which J. Veal answered in the affirmative. M. McKeller objected on the grounds of speculation.

E. Dugger asked how J. Veal obtained that knowledge. J. Veal testified that he had reviewed City Council minutes about a condemnation vote and a declaration of taking that used road-opening language to imply public dedication. M. McKeller objected, arguing that since the documents were not in evidence, they must speak for themselves. A. Mercaldo sustained the objection, noting the files were missing from the approved evidence packet.

E. Dugger asked if any alternative plat or survey in the packet clarified where a driveway connects with the unverified right-of-way. Noting the previous document applied to Parcel 1, J. Veal asked the Board to look at the Parcel 2 materials. He showed that the Parcel 2 drawing depicted an easement running from the private property straight to the existing road. Asked by Dugger for more records showing driveway placement relative to the right-of-way, Veal had the City Planning Department's vicinity map displayed. He used it to pinpoint the driveway connections, explaining the drawing used county GIS data to show the right-of-way overlay. M. McKeller objected, arguing Veal's interpretation of the GIS data was speculative.

E. Dugger asked J. Veal about other packet items showing the driveway's right-of-way connection. J. Veal pointed to the Parcel 2 submission, which showed an easement running from private property to the road. At Veal's request, the Board displayed the City's vicinity map. He used it to pinpoint the proposed connections, explaining the drawing relied on county GIS overlays. M. McKeller interjected, objecting that Veal's take on the GIS data was speculative.

E. Dugger concluded the witness examination and requested permission to deliver a closing statement, noting that the applicant was finished presenting evidence.

E. Dugger contended that existing files, including the application packet and records reviewed during J. Veal's testimony, gave Zoning Administrator A. Bland sufficient information to decide on the permits. He argued that Veal's testimony, backed by official government documents, clearly proved where the driveways would enter the public right-of-way. Dugger concluded that if these materials were considered insufficient, no realistic standard could ever be met and thanked the Board.

M. McKeller presented his closing statement, contending that the application materials simply did not contain enough information to make a favorable determination. He noted that had additional data been provided, a framework might have been established to ensure the driveway could be constructed properly. M. McKeller argued that given the extreme paucity of information regarding how the driveway would interact with the trail, there was no viable way for the project to go forward. He concluded by asking the Board to uphold the original decision made by the Planning Department.

A. Mercaldo closed the public hearing and brought the Board into internal deliberations. Calling for member comments, he reminded them that their sole task was deciding if the original application held enough data to issue a permit. He noted the City's initial denial was based on a lack of information and opened the floor for discussion.

Board Attorney B. Gulden advised members to evaluate the entire approved record during deliberations. He noted this encompasses the application packet, A. Bland's presentation, and J. Veal's testimony from both hearings. He reminded the Board that they were acting in place of the Zoning Administrator and Assistant Planning Director to judge if the submitted data was sufficient to review the permit.

Board Attorney B. Gulden clarified that the Board lacks the authority to issue permits. He instructed members that closing arguments are not evidence, meaning their decision must rely strictly on official exhibits and witness testimony. Finally, he noted that the Unified Development Ordinance (UDO) standards must guide their final determination.
At G. Pearson's request, Board Attorney B. Gulden reviewed the regulatory standards. He noted that new developments or major improvements with public street frontage must upgrade all frontages to match code. Developments without frontage must extend and connect to a public street in all cases. He clarified that these public extensions and improvements—even those past the property line—are the developer's sole responsibility. Finally, B. Gulden cited a rule stating that driveways and curb cuts must be between 12 and 24 feet wide where they intersect the street's right-of-way margin.

G. Pearson noted for the record that the subject property sits outside the Brevard city limits. A. Mercaldo clarified that the land is situated within the Extraterritorial Jurisdiction (ETJ) instead of the city limits.

G. Pearson spoke in favor of upholding the Planning Department's decision. While she found the aerial trail map and historical surveys informative from a staff perspective, she emphasized the City's core objection: the application failed to show how the proposed driveways would interact with the trail or how access would work at the trailhead. G. Pearson concluded that although the applicant had the opportunity to clearly illustrate how the driveways would cross the trail, that crucial data remained missing and was not apparent in the submission.

J. Tate concurred, stating that from the perspective of City staff, the application materials lacked sufficient clarity from the outset.

R. Wood agreed, noting that while the applicant tried to introduce new information during the appeal, the proper remedy was to file a new application. He stated that based strictly on the data available to the Planning Department at the time of review, he would move to uphold the administrative denial.

G. Pearson stressed that this conclusion aligns with the Unified Development Ordinance (UDO), which explicitly makes all required extensions and improvements the developer's sole responsibility.

A. Mercaldo made the following motion:

Based on the Board's deliberations and comments regarding case AP-25-0001—the administrative appeal of the City of Brevard Planning Department's denial of permits ENC-25-006 and ENC-25-007 for the installation of driveways on the properties identified as 231 Pinnacle Road and 245 Pinnacle Road, Brevard, North Carolina—I move that the Board adopt findings of fact and conclusions of law affirming the Planning Department's decision in its entirety. The administrative denial is affirmed due to a critical lack of information required by A. Bland that the applicant failed to provide. In accordance with, and strictly limited to, the record presented, I move that the Board affirms the City's decision as a whole. R. Wood seconded the motion, and the motion carried unanimously.

B. Consideration of APP-26-0001 – 221 Pinnacle Rd

J. Veal requested a continuance to a later date, thanking the Board for an informative session. In the interest of time for all participants, he formally requested a continuance for case AP-26-0001 (221 Pinnacle Road). A. Mercaldo asked to clarify if the applicant was making a formal request, and J. Veal confirmed that he was.

B. Gulden noted the request and advised that the Board must make a motion to continue the case to a date and time certain, recommending June 2nd at 3:00 PM.

R. Wood made a motion to continue case AP-26-0001 to June 2 at 3:00 PM at Brevard City Hall. G. Pearson seconded the motion, and the motion carried.

X. REMARKS

None

XI. ADJOURN

A. Mercaldo made a motion to adjourn the special-called meeting. R. Wood seconded the motion, and the meeting officially concluded at 3:08 PM.

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Alan Mercaldo, Vice Chair

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