MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, May 5th, 2026 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a special called meeting on Tuesday May 5th , 2026, at 3:00 PM.

Members Present:	Reid Wood Jackson Tate Alan Mercaldo Gilly Pearson
Members Absent:	Peter Offen
Staff Present:	Brian Gulden, Board Attorney Katherine Poe, Planner Aaron Bland, Assistant Planning Director Vith Gass, Board Clerk
Guests:	Connie Mield-Perry, owner of 775 Camptown Rd. Paul Perry, Applicant Kyle Halloran, Landscaped Architect Jeff Martens, Applicant

I. WELCOME

Vice-Chair, Alan Mercaldo, called the meeting to order at 3:11 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

R. Wood moved to approve the agenda. J. Tate seconded the motion. The motion carried.

V. APPROVAL OF ORDER

A. VAR-26-0003

On a motion by J. Tate, seconded by G. Pearson, the Order was approved as written.

VII. UNFINISHED BUSINESS

A. Consideration of VAR-26-0001 – 775 Camptown Rd.

A. Mercaldo called the public hearing for a variance request submitted by Connie Mields-Perry regarding the property at 775 Camp Town Road (GR-8 Zoning District).

A. Mercaldo explained the quasi-judicial nature of the proceedings and the Board's role in making specific findings of facts. He then inquired if any party wished to request standing in the case and noted that no requests for standing were made.

The following were sworn: Connie Mields-Perry, Paul Perry, and Katherine Poe. No ethical conflicts were found. A. Mercaldo opened the hearing.

A. Mercaldo inquired if any Board members had ex-parte communications or contacts concerning the case; none were reported. He further asked if any member had a conflict of interest or was otherwise unable to serve as an impartial decision-maker in the matter, and no conflicts were declared. Finally, A. Mercaldo asked if any party wished to object to any member of the sitting panel, and no objections were raised.

Board Attorney B. Gulden informed the applicant that due to an unexcused absence, only four of the five Board members were present. He explained that because North Carolina law requires a four-fifths (4/5) supermajority to grant a variance, the applicant would need a unanimous vote from all four sitting members to secure approval. Acknowledging the strict voting threshold, the applicant elected to proceed with the hearing.

K. Poe presented her staff report, a portion of which follows:

Background

The applicant, Connie Mields-Perry, owns property at 775 Camptown Rd, which is located in the General Residential-8 (GR-8) zoning district and in the City's municipal limits. The parcel identification number is 8597-90-2186-000.

The applicant is requesting a variance from UDO Chapter 2.8.D(1), to allow a chain link fence in their front yard. The ordinance language states that fences must be made of "brick, stone stucco, wrought iron, wood, or other materials similar in appearance and durability." It further states that chain link fences may only be used in the side and rear yard.

*"**D. Fence and wall materials shall conform to the following requirements:***

1. GR and RMX districts:

*1. All fences and walls must be of **brick, stone, stucco, wrought iron, wood, or other materials similar in appearance and durability, except that chain link or woven wire may be used in the side and rear yards.***

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2. All other wire fences, including barbed wire or concertina wire, are prohibited.

3. Nothing in this chapter shall prevent the administrator from approving architecturally variant uses of material to allow creative fence design, such as the contemporary look of heavy-gauged welded wire panels framed in timber.

4. The use of plastic plumbing pipe is a prohibited fence material."

Under the City ordinance, yard designations are defined strictly by public right-of-way locations rather than the direction the house faces. Because the applicant's property abuts two street frontages—Camptown Road and Blueberry Hill Road, it is classified as a multi-frontage lot with two front yards. By definition, a front yard encompasses the portion of the lot between the front building line and the right-of-way. The applicant's fence violates GR district standards because it is positioned within both of these frontages, covering the entirety of Blueberry Hill Road and most of Camptown Road.

Discussion

This case stems from a January 2026 zoning violation regarding an unpermitted black chain link fence on a double-frontage lot bounded by Camptown Rd and Blueberry Hill Rd. The City denied the owner's retroactive permit application because the UDO prohibits chain link fencing in all GR district front yards. Although the owner unknowingly bypassed City rules, they did obtain approval from the Straus Park ECC, which they claim actually mandates this specific material. The owner plans to present this conflict as their primary argument at the hearing.

Following city staff's presentation, the Board had no questions. P. Perry, husband of applicant K. Poe, stepped forward to testify. He submitted printed reference materials to the Board, which were formally accepted and admitted into the public record.

During his testimony, P. Perry outlined the severe topographical challenges of the lot, specifically its unusual shape and a 20-foot steep berm where the two streets meet. These factors heavily constrained driveway access, vehicle turnaround space, and the layout of a secure yard for their dogs. To solve this, the applicants hired a land planner to draft a preliminary layout. This plan was reviewed by Planning Director Paul Ray, who verified in writing that the setbacks and rear yard placement correctly matched city street classifications. Confident in this official guidance, the applicants went ahead with buying the lot.

P. Perry further explained that they followed all subdivision guidelines with the Straus Park ECC. Although the applicants proactively asked to use aluminum pickets instead of chain link, the ECC rejected the request and stated that black or bronze chain link was the sole permitted material. As a result, the four-foot black chain link fence was explicitly drawn on all plans through final ECC approval. Operating under the assumption that a city-based subdivision would not mandate a violation of city rules, the owners acted in good faith. P. Perry closed by stating that a hardship variance is warranted because the fence is located strictly within the interior of the lot, sitting up to 30 feet away from the actual property line.

P. Perry called Kyle Halloran to the stand as a witness. Following the administration of the oath, K. Halloran testified to his professional background, confirming he is a licensed landscape architect practicing in North Carolina for five years, with an additional ten years of licensed practice in Texas. A. Mercaldo inquired if the Board had any objection to accepting the witness as an expert in landscape architecture. There being no objections, the witness was qualified as an expert, and A. Mercaldo directed Mr. Halloran to proceed.

K. Halloran testified that the proposed fence is an interior, heavily buffered structure set 7–33 feet from the property line and screened with native Rhododendron, bunch grasses, and cherry laurels, satisfying ECC requirements. Following a brief public disruption, A. Mercaldo restored order as K. Halloran noted that elevation differences and vegetation render the fence invisible from the road.

P. Perry added that the Straus Park ECC required mature landscaping. She stated that the installed buffer plants were five feet tall at planting and will continue to grow and fill out alongside the skip laurels and other vegetation surrounding the fence.

P. Perry presented a video walkthrough of the site to the Board. The video showed the side yard gate from the driveway before transitioning to a street-level view along Camptown Road. There, P. Perry highlighted the mix of original berm vegetation and new ECC-mandated plantings. He noted that although some plants had died since the installation three months ago, they were meeting a landscaper on Monday to arrange replacements. The video ended at the intersection of Camptown and Blueberry Hill Roads, panning from the street sign back toward the house and following the staked property line.

P. Perry concluded his testimony by explaining that chain link was not their first choice and that the fence is more visible from their own house than from neighboring properties. He stated they used the material solely because the ECC required it. He noted that the ECC has since updated its rules because of this situation. As shown in the newsletter provided, the HOA now allows aluminum or split-rail fences, both of which are permitted by the City. However, P. Perry noted this change came after the fact for them.

A. Mercaldo noted that the Board's role is strictly limited to applying the City UDO, not ruling on Straus Park ECC requirements.

A. Mercaldo asked city staff member K. Poe to confirm that chain link fences are only banned in front yards, which K. Poe verified as correct. A. Mercaldo then asked if the regulation originally targeted traditional gray galvanized chain link.
K. Poe stated the ordinance was passed before her time but noted that City Council simply did not want chain link fences in front yards. A. Mercaldo then asked if the Board had any more questions for staff or the applicants.

Board member G. Pearson sought clarification on the extent of the violation, inquiring how many linear feet of fencing would require replacement to satisfy the UDO, given that chain link remains permissible within the rear yard. K. Halloran replied that they followed P. Ray's initial guidance on front and side setbacks, and that the side yard was only treated as a front yard once the fence regulations were applied. P. Perry

agreed, noting that because the lot faces two streets, the UDO regulates both areas as front yards for fencing rules, even though they have different structural setback rules.

K. Poe clarified that there is a difference between a setback and a technical front yard under the UDO. She noted that while the lot is double-fronted and requires a 15-foot setback on both sides, fence regulations do not look at setbacks. Instead, they look at what qualifies as a front yard, which the UDO defines as any area from the building plane to the street. Since this property faces two streets, both sides are considered front yards, and the city's front-yard fencing restrictions apply to both.

P. Perry argued that the issue is not whether a fence is allowed, but simply the type of material used. K. Halloran answered G. Pearson's earlier question, stating that the non-compliant section measures 181 linear feet, which G. Pearson concluded was a substantial amount.

K. Poe reiterated city staff's position, explaining that any fencing extending from the side-building planes out to the respective roads falls within the legally defined front yard. Consequently, chain link material remains strictly prohibited within those boundaries.

P. Perry argued that chain links are allowed along the 25-foot rear yard setback. K. Poe agreed but noted that the fence must stay behind the front building plane, opposite the higher-classification street. She explained that while this determines where the rear setback sits on a double-fronted lot, fence rules are completely separate. She acknowledged the rules are confusing but emphasized that fencing restrictions are found in their own distinct section of the UDO.

Vice-Chair A. Mercaldo closed the evidentiary hearing to begin Board deliberations.

J. Tate stated that the private committee's decisions were made completely independent of the City's zoning framework. He noted a complete lack of communication between the ECC and the City, pointing out that the ECC should have known the material was prohibited by the City and informed the homeowner. However, because none of that occurred, J. Tate concluded the issue was outside the Board's purview. A. Mercaldo agreed with this assessment.

R. Wood agreed, stating that the Board must follow the UDO, which does not allow chain link fences in front yards. G. Pearson suggested reviewing the variance elements, asking if anyone felt that forcing the applicant to use another material created an unnecessary hardship. She noted that the main issue seemed to be the cost of replacing the fence. J. Tate countered, reminding the Board that financial cost is not a legal consideration for a variance.

Board Attorney B. Gulden explained that cost can sometimes be considered if it connects directly to a site hardship. He gave the example of a lot with an existing well or septic tank, where the cost to move that infrastructure to place the house correctly would be a valid consideration. He concluded, however, that financial cost on its own can never be used as a hardship.

G. Pearson stated that since average homeowners are not zoning experts, the applicant logically relied on the HOA. She noted that while the Board does not enforce HOA rules, the hardship was not self-imposed. She argued the applicant acted in good faith because it is

reasonable to expect Straus Park to comply with city rules. However, she concluded by pointing out that this represents only one of the four elements needed to approve a variance.

B. Gulden explained that all four elements must be satisfied to grant a variance. He noted that if the Board goes through the criteria and finds that the facts do not support even one of the elements, they can stop right there. If any single element is not met, the Board must deny the variance.

G. Pearson contended that satisfying the necessary variance criteria would be difficult for the applicants. She explained that the hardship did not result from unique physical conditions inherent to the property itself. Instead, she noted that the hardship directly resulted from compliance with Straus Park's guidelines—a private regulatory conflict that the Board is not legally permitted to consider as a basis for a variance.

A. Mercaldo reviewed the four required elements for a variance: that a strict application of the UDO—not HOA guidelines—creates an unnecessary hardship; that the hardship is due to physical traits unique to the property, like size or topography; that it was not self-imposed; and that it secures public safety and substantial justice. With those criteria stated, he asked if any Board member was ready to make a motion.

Board member J. Tate made a motion to deny Variance Application V-26-0001, a request by Connie Mields-Perry for relief from UDO Chapter 2.8.D regarding front-yard fence material restrictions at 775 Camptown Road (Zoning District: GR-8).

The motion to deny was grounded in the following proposed findings of fact relative to the statutory thresholds:

Unnecessary Hardship: Granted, the strict application of the code inflicts a financial and administrative burden regarding the removal and replacement of the current infrastructure.

Peculiar Conditions: Denied. The hardship is not a product of unique physical site attributes, location, size, or topography. While the lot is a double-frontage parcel, the core non-compliance stems entirely from the chosen construction material. A single-frontage lot featuring the same material would result in an identical violation; therefore, the land's physical configuration did not generate the conflict.

Consequently, based on the failure to satisfy the statutory criteria, J. Tate moved to deny the variance request to permit the chain link fence to remain in the front yard. The motion was seconded by R. Wood and passed unanimously (4-0).

P. Perry asked what the denial meant for their property. Board Attorney B. Gulden explained that the chain link fence must be removed from the front yard. He suggested that the applicant's landscape architect work with city staff to find exactly where the front yard ends and coordinate on allowed replacement materials.

Addressing P. Perry's question regarding a potential rejection by the HOA, Mr. Gulden clarified that he could not provide legal counsel. He acknowledged that the situation placed the property owners in a regulatory dilemma but reiterated that the Board lacks the jurisdiction to consider private ECC rules and must strictly enforce the UDO. He concluded that any covenant conflicts must be settled directly with Straus Park.

With no further business, the hearing was officially closed

VIII. NEW BUSINESS

A. Consideration of SUP-26-0003 – 21 Upper Glade Creek Rd.

Vice-Chair A. Mercaldo called the hearing for a Special Use Permit to operate an Estate Liquidation Business submitted by Jeff Martens regarding the property at 21 Upper Glade Creek Rd in Pisgah Forest.

Vice-Chair A. Mercaldo explained the quasi-judicial nature of the proceedings and the Board's role in making specific findings of facts. He then inquired if any party wished to request standing in the case and noted that no requests for standing were made.

The following were sworn: Jeff Martens and Katherine Poe. No ethical conflicts were found. Vice-Chair, A. Mercaldo opened the hearing.

K. Poe presented her staff report, a portion of which follows:

Background

Jeff Martens, of Light in the Attic Estates, applied to the City on March 10, 2026, for a Special Use Permit (SUP) to operate an Estate Liquidation Business (which is defined as a Storage use) at 21 Upper Glade Creek Rd in Pisgah Forest. The property is zoned Corridor Mixed-Use and, in the City's Extra Territorial Jurisdiction (ETJ). The proposed use requires a Special Use Permit from the Board of Adjustment per the Unified Development Ordinance (UDO) Chapter 2.2 Use Matrix.

Storage is defined in the UDO Chapter 19.3 as follows:

"Storage and disposal use: Facilities for the storage or subsequent disposal of furniture, household goods, or other commercial goods of any nature. This includes: chemical storage facilities; mini-warehouses and self-storage facilities; junk yards / salvage yards; solid waste disposal; outdoor storage yards; and warehouses and indoor storage."

Light in the Attic Estates buys and sells household items online through an auction. The building at the property will be used to house the items until they are sold. The business will be inside the building, with deliveries periodically. The owner will discuss more details of the business at the hearing.

The Special Use Permit (SUP) does not have any additional standards or requirements in the UDO under Chapter 3.11.3 since the business is household items and the storage is inside of the building.

The 2030 Comprehensive Land Use Plan (CLUP) has a future land use as *"Activity Center-Minor: provide a setting for services and activities that are supportive of surrounding residential neighborhoods. This character area may center around a community anchor, such as a school, park, library, or small commercial district. Uses and design considerations call for context-sensitive solutions, fostering community identity and a sense of shared ownership of neighborhood resources. Typical Uses: Institutional; small-scale commercial; single- and multi-family residential; public gathering space ."*

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Investigation

The property is a warehouse type building that fronts Hendersonville Hwy but is located far back on the property. The properties surrounding the proposed use are of similar nature; a cabinet business is directly across Hendersonville Hwy, and a self-storage facility is adjacent the property to the west.

Following the staff presentation by K. Poe, the Board offered no questions. A. Mercaldo then called Jeff Martens to provide testimony.

As a preliminary matter, Board Attorney B. Gulden questioned the witness regarding his property interest, asking if he had finalized the purchase and closed on the subject property. J. Martens confirmed the closing of the record.

Board Attorney B. Gulden provided clarification regarding the applicant's standing. He explained that while the original application contained an authorization letter from the prior owner, JJLBS, LLC, for J. Martens to act as their agent, a deed search conducted that day revealed that J. Martens had since officially closed on the property. He requested that Mr. Martens formally confirm this ownership update during his testimony so it could be incorporated into the official record.

The applicant, J. Martens, provided sworn testimony regarding his ownership status and the operational characteristics of his estate liquidation business to satisfy the statutory requirements for a variance.

The applicant testified that his business operates entirely indoors with no outdoor storage. Inventory is sorted off-site, and only standard household goods are brought to the warehouse. The facility runs Monday through Friday during regular business hours with only two to three employees. To protect public safety, the applicant entered a standard contract with the record showing that hazardous chemicals are banned from the site. Because all bidding takes place online, the business does not cause traffic, late-night noise, or public crowding.

The applicant stated that all business operations will be kept indoors, eliminating the outdoor storage problems caused by the previous occupant. To prove the business will not hurt local real estate, he cited his second location in Hendersonville, North Carolina. That facility has operated near downtown since 2023 with no neighbor complaints, while surrounding property values have continued to rise.

The applicant noted that his company is an established local small business that has previously operated within Brevard city limits for two years. He stated that intended improvements to the site are strictly cosmetic and structural maintenance (paint, plumbing, and electrical updates), preserving the existing building footprint while activating a vacant site in a manner that supports the local community.

A. Mercaldo asked what types of businesses surround the property. J. Martens replied that the area is entirely commercial, pointing out a storage facility two doors down and Rice Furniture across the street. Because of this layout, he stated his business fits perfectly in

harmony with the neighborhood. A. Mercaldo then asked a follow-up question regarding whether any new structures were planned for the site, to which J. Martens replied that no new construction would take place.

Seeing no additional inquiries, Vice-Chair A. Mercaldo formally concluded the evidentiary portion of the hearing, thanked the applicant, and entered the matter into Board deliberation.

G. Pearson stated that the presentation showed the business meets all the necessary elements for approval and raised no concern. R. Wood noted that the main reason a special use permit is needed is simply because the unique business type is difficult to label under current zoning rules. A. Mercaldo agreed, clarifying that the land-use matrix explicitly requires a Special Use Permit (SUP) for this specific business classification within the Commercial Mixed-Use (CMX) zoning district.

With Board deliberations concluded, Vice-Chair A. Mercaldo moved to approve Special Use Permit Application SUP-26-0003 for applicant Jeffrey Martens to operate an estate liquidation business (classified as a storage/retail use) in the CMX zoning district at 21 Upper Glade Creek Road.

The motion to approve was supported by the following formal findings of fact:

Ordinance Compliance: The business matches the text and goal of the UDO and city land-use rules. Sorting household goods is a low-impact business that fits right in with the surrounding commercial zone.

Site Compatibility: The property will be run exactly according to the submitted layout plans. Since changes are limited to minor indoor maintenance and painting, the building footprint stays the same. Removing the old boat clutter left in the yard by the previous tenant will also improve the street's appearance.

Safety & Values: The use will not hurt public health or lower nearby property values. The applicant proved that hazardous materials are banned from the building by contract, and since all bidding is online, the business will not cause heavy traffic or public safety issues.

Based upon these findings, A. Mercaldo moved to grant the Special Use Permit to allow the estate liquidation business to operate at the subject property in accordance with the submitted evidence. G. Pearson seconded the motion. Upon a call for the vote, the motion passed unanimously.

K. Poe instructed J. Martens that he cannot move his business inventory into the property until the official order is signed. She noted the Board could approve the order electronically or wait until the next meeting. Mr. Martens asked to receive it as soon as possible.

Board Attorney B. Gulden committed to drafting the document efficiently, clarifying that he would transmit the draft to the clerk to manage the electronic routing and distribution to the full Board. He requested that members closely audit the text and report any administrative or technical errors directly to him. Mr. Gulden acknowledged Jackson's diligence in identifying errors in the prior record and reiterated his intent to expedite the current draft. He noted that statutory mandates dictate that the final order must be executed in writing, approved by a vote of the Board, and officially recorded before becoming legally effective.

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X. REMARKS

A. Mercaldo stated that he suspects the Board is not done dealing with this appeal. R. Wood pointed out that the applicants might not realize they can just reapply for a driveway permit and complete the requirements from there. B. Gulden noted that the other pending appeal might have different reasons for denial based on a separate set of facts.

G. Pearson suggested that Board members could use their own personal observations of the area's topography, such as from hiking the Bracken Mountain Trail, to help make their decision. Board Attorney B. Gulden agreed, explaining that members do not have to leave their personal knowledge at the door. He noted that if a member knows from firsthand experience that a physical feature like a roadbed is not where a plan claims it is, they can legally use that information now.

R. Wood pointed out that the applicant kept trying to talk about the right-of-way, even though the Board was only supposed to be looking at the application itself. Board Attorney B. Gulden agreed and clarified that members cannot use personal knowledge to disprove uncontested expert facts. He explained that if an engineer testifies to a specific fact, a member cannot simply say their personal opinion differs. He concluded that while members can use their own knowledge to understand a site, they cannot use it to override official expert evidence.

Vice-Chair A. Mercaldo expressed appreciation for the session and noted that he anticipated Chairman P. Offen's return to preside over subsequent proceedings regarding the case.

XI. ADJOURN

Vice Chair A. Mercaldo called for a motion to adjourn. J. Tate moved to adjourn, and R. Wood seconded the motion. The motion passed unanimously by voice vote, and Vice Chair, A. Mercaldo officially concluded the meeting at 4:26 PM.

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Alan Mercaldo, Vice Chair

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Edievith Gass, Board Clerk

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