MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, June 2nd, 2026 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a special called meeting on Tuesday May 5th , 2026, at 3:01 PM.

Members Present:	Peter Offen, Chair Jackson Tate Reid Wood Gilly Pearson Alan Mercaldo Amy Kelton
Members Absent:	None
Staff Present:	Brian Gulden, Board Attorney Katherine Poe, Planner Paul Ray, Planning Director Vith Gass, Board Clerk
Guests:	Robert Lee, Applicant Chill-Lee Corporation DBA Dolly's Dairy Bar. John Noor, Representing Attorney for Big Inc. Jamie Pritchard – Property Manager for El Gato, LLC Scott Bridge – Tenant John Connelly - Tenant Davis Whitfield-Cargile – Representing Attorney for El Gato

I. WELCOME

Chair, Peter Offen called the meeting to order at 3:01 PM and welcomed those presents.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

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

IV. APPROVAL OF AGENDA

J. Tate moved to approve the agenda. G. Pearson seconded the motion. The motion carried.

V. APPROVAL OF MINUTES

A. Draft Minutes 04/21/2026

R. Wood moved to approve the minutes as written. P. Offen seconded the motion. The motion carried.

VI. APPROVAL OF ORDER

A. VAR-26-0001
B. APP-25-0001

Chair, P. Offen asks if there are any corrections to the orders as distributed. Hearing none, the orders stand approved, and the Chair will now entertain a motion.

On a motion by A. Mercaldo, seconded by P. Offen, the Orders were approved as written.

VII. NEW BUSINESS

A. Consideration of VAR-26-0003 - 128 Pisgah Hwy

Chair P. Offen introduced the first case. The applicant, Robert Lee of Chill-Lee Corporation, is requesting a variance from Section 10.7.D.1 of the UDO. This request is to allow an exception to the rules for bringing a non-conforming parking lot up to current standards.

P. Offen 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: Robert Lee, John Noor and Katherine Poe.

P. Offen 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.

B. Gulden asked if any Board members had conducted a site visit and formed any initial conclusions. G. Pearson noted she had visited the property several times but held no conclusions or determinations at present.

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

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

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Background

Dolly's Dairy Bar is located at 128 Pisgah Hwy in Pisgah Forest, is zoned Downtown Mixed Use (DMX) and is within the City's Extra Territorial Jurisdiction (ETJ). The parcel identification number is 8597-45-1544-001.

The building and business are owned by Chill-Lee Corporation, doing business as Dolly's Dairy Bar. The underlying land is owned by Jerry Brown of Big Inc. Attorney John Noor has been formally appointed to represent Big Inc. in this matter.

Dolly's sustained damage from Hurricane Helene and construction repairs were estimated at $60,000 per the permit application. The County tax office has appraised the building's value (primary structure) at $43,430.It further states that chain link fences may only be used in the side and rear yard.

According to the Unified Development Ordinance

The primary building is a grandfathered, nonconforming structure under current DMX zoning. Due to the high cost of the proposed repairs, the project has been officially designated as a Substantial Damage/Improvement.

UDO 14.3.E.(5): "Significant damage and/or significant improvement to any nonconforming structure that is located within a lot containing any other non-conforming condition shall, to the maximum extent possible, require the satisfaction of the all other requirements of this ordinance and the elimination of all non-conforming conditions. Examples include, but are not limited to, the provision of sufficient parking and landscaping and buffering, and public improvements (i.e., sidewalks and other), and full compliance with all applicable signage, flood hazard reduction, surface water protection, and stormwater management provisions.

The parking lot is currently not paved with permanent non-erodible surface treatment, which is a requirement of Chapter 10.7.D.1. It is a gravel lot.

Chill-Lee Corporation and the City executed an Infrastructure Improvement Agreement to complete the parking lot construction by March 28, 2027, as NCDOT project R-5799 roundabout construction is underway and will be constructing future curb cuts.

Discussion

The City approved the permit for repairs based on the signed Infrastructure Agreement that the parking lot will be brought into compliance with the UDO. The owners did add one ADA parking space as part of the completed repairs.

Following city staff's presentation, K. Poe introduced Stephanie from staff to clarify the historical UDO rules and the permit approval process for this case. Poe noted that recent, substantial text

amendments to non-conformity regulations (including one passed the previous day) have changed current policies, making Stephanie's presence helpful for addressing timeline-specific questions regarding the paving requirement.

Stephanie explained that the most significant amendment, approved by the Board the previous evening, altered the non-conformity threshold. Specifically, the regulatory bar for a project to be considered 'new construction' was increased from 66% to 75%. Once a project reaches this 'new construction' level, all existing non-conforming conditions must be brought into compliance. Additionally, she noted that standard tax valuation methods may be heavily skewed in this case, as the building was historically unconditioned, making it difficult to determine an accurate baseline value.

K. Poe stated that she had consulted the tax office at the time of the variance application and found the property's assessed value listed as $43,430. She noted, however, that it was unclear whether this figure reflected the property's pre-damage or post-damage valuation, as it simply represented the baseline data on file. Additionally, Poe explained that the applicant's improvement application had been approved based on an Infrastructure Improvement Agreement, which stipulates that the construction of the parking lot must be completed by the spring of 2027.

B. Gulden noted that under Section 143.755, applicants get to choose between the old and new ordinances if a change affects their project. S. Holland confirmed that the repair threshold went up from 66% to 75%. This means if an applicant's repairs cost less than 75% of the building's value, they can choose to follow the new ordinance and potentially skip bringing the building or land back into full compliance.

S. Holland noted that because the permit was already issued and closed, it remains unclear whether "permit choice" still applies. Additionally, K. Poe stated that while the improvements were approved, the only remaining outstanding issue is that the work was completed by Spring.

B. Gulden inquired whether J. Noor was familiar with the new ordinance. J. Noor replied that although he was aware of the 75% threshold, he sought additional clarification, noting that "new construction" and "substantial improvement" seem to be two distinct categories.

P. Offen noted that the application lists repair costs at $60,000 against an appraised tax value of $43,000, meaning the threshold is exceeded under either ordinance. G. Pearson questioned whether the calculation must rely strictly on the tax appraisal or if an alternative valuation could be used, arguing that the market value of the building is significantly higher than $43,000 given current local real estate costs.

J. Noor mentioned that using the 75% threshold might change how they look at the building's valuation. B. Gulden explained that the applicant doesn't have to stick to the tax value; they can prove the building is worth more (like $120,000). With $60,000 in repairs, that's only 50%, which avoids the compliance rule. B. Gulden added that this is judged at the time of the variance request, prompting P. Offen to ask if the permit and construction are the actual reasons the variance is needed in the first place.

A. Mercaldo asked if the date of the variance request matches today's hearing or the day the application was originally filed. B. Gulden responded that today counts as the formal date of the variance request. He explained that this timing matters because the city just passed an ordinance change yesterday.

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J. Noor mentioned that they can still check if yesterday's ordinance change means they don't need a variance at all, or if their project even counts as a substantial improvement. He believes they should go ahead with the variance request today, see the outcome, and then look at the new rules since the change doesn't block their right to ask for one. He then asked the board for a short break to talk with his client about possibly pausing the session to figure out their next steps before making a final decision.

P. Offen and B. Gulden both agreed that the plan was fair. B. Gulden explained that since the council voted yesterday, the new rule is active right now, provided the paperwork has already been signed and filed with the clerk.

The Board granted J. Noor a brief recess to consult with his client regarding a potential procedural pause to determine their next steps before a final decision is made. The hearing officially went into recess at 3:21 PM.

Agenda Modifications

While the applicant was excused for a recess, B. Gulden explained that of the two appeals from the previous month, one had been rescheduled for today's meeting while the second was omitted from the agenda. He noted that because the appellant's attorney and the city attorney agreed to defer the second case to the August session, the agenda needed to be amended.

B. Gulden requested a motion to reopen and modify the agenda to place this unfinished business immediately after new business, allowing for a formal continuance to August 8. Chair P. Offen moved to reopen the agenda, G. Pearson seconded the motion, and the motion carried. *See VIII Unfinished Business below.*

At approximately 3:31 PM, Chair P. Offen moved to leave VAR-25-0003 open and proceed to VAR-26-0004. The motion was seconded by J. Tate and passed unanimously.

B. Consideration of VAR-26-0004 – 209 N. Caldwell St.

Chair P. Offen called the hearing for a variance to allow a ground sign with multiple panels to display the tenant businesses submitted by Zachary Bennett regarding the property at 209 N Caldwell St.

Chair P. Offen 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: Jamie Pritchard, Scott Bridge, John Connelly 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

209 N Caldwell St is in the Downtown Mixed-Use (DMX) zoning district and the Downtown Development Overlay District (DDOD), within the City's municipal limits. The parcel identification number is 8586-52-4162-000.

Zachary Bennett, the applicant, has filed for a variance to allow a ground sign with multiple panels to display the tenant businesses. Per the Unified Development Ordinance Chapter 12.9.C.1, ground signs are allowed in any zoning district that *"lies outside the Downtown Development Overlay District. Businesses located in this overlay district may display A-frame signs as described herein."*

The property is owned by El Gato LLC, and the attorney representing the LLC in this case is Davis Whitfield-Cargile.

Discussion

The Downtown Overlay District extends to this parcel. Therefore, no ground signs are allowed per the UDO Chapter 12.9.C.1 as stated above.

The allowable maximum size for a ground sign in the DMX district that lies outside the DOD is 32sqft.

The ground sign (panel sign) is for increased visibility per the applicant, so drivers can find the businesses at this location. No existing ground sign was located at the site within any recent timeframe.

Following her report, K. Poe opened the floor for questions from both the Board and the applicant.

> Chair P. Offen questioned whether the new party building across the street is permitted a freestanding sign. K. Poe clarified that under general statutes, an existing sign may only be replaced within a strict two-year window of its removal. Because historical Google data confirms no ground sign has existed at that location for 15 to 20 years, there is no established precedence to grant an exemption to the state statute.
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> A. Mercaldo asked what kind of signage is allowed downtown. K. Poe explained that because of tight space constraints, ground signs aren't permitted, businesses are usually limited to A-frame or wall signs, adding that the downtown overlay district regulations apply to the subject property.
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> G. Pearson inquired whether any potential wall signs on the buildings would be visible from the street. K. Poe clarified that visibility would be limited, as the structures are set back a little further from the roadway.
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> J. Tate asked about the photos showing signs on nearby properties, wondering if those buildings were outside the district. K. Poe explained that it's a mixed are outside the overlay district, and others are inside but grandfathered in as pre-existing uses under state statute.

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D. Whitfield-Cargile submitted photos of the site into the record as Exhibits 5–7, which K. Poe verified as accurate. Whitfield-Cargile established that the property is a single legal parcel featuring two buildings. He then argued that the front building on Caldwell Street blocks most of the view to the rear building from the street. Poe agreed this is true from a direct, head-on view, but noted that the rear building might still be visible when approaching from an angle.

D. Whitfield-Cargile brought up Exhibit 1 and asked K. Poe to confirm it was taken from Caldwell Street looking at the property. K. Poe agreed, saying she could see part of the building. D. Whitfield-Cargile then pointed out that you can't actually read the signs on the back building from there, which K. Poe agreed with. He also asked if the signs directly behind the front building are completely hidden from the traveling motorists on Caldwell Street , and she confirmed that they are.

D. Whitfield-Cargile then directed attention to Exhibit 2, establishing that the photograph was taken from a vantage point further south on Caldwell Street, near Charlie's Tire, looking across the street toward the subject building. K. Poe verified the location. Whitfield-Cargile noted that while a sign on the rear building is visible from this angle, the text remains illegible from the roadway, a point with which K. Poe concurred.

D. Whitfield-Cargile presented the next exhibit, establishing that the photograph was taken closer to the intersection of French Broad and Caldwell Street, which K. Poe verified. Whitfield-Cargile noted that while the existence of several signs facing Caldwell Street and one sign facing French Broad Street can be detected, the text on them remains completely illegible. K. Poe concurred with this assessment. Whitfield-Cargile argued that because the signs cannot be read, they provide no directional utility to the motoring public looking for businesses in the rear building from Caldwell Street.

D. Whitfield-Cargile then introduced Exhibit 5, confirming it was captured from across French Broad Street looking directly at the entrance of the rear building. He asserted that even from the sidewalk on French Broad Street, it is difficult to read the text of the sign on the side of the building. D. Whitfield-Cargile pointed out that the signs on-site say, 'Pet Grooming' (with a phone number), 'Fight Craft,' and one that is totally unreadable. He stressed that these signs cannot be seen by drivers on Caldwell Street. K. Poe agreed that Caldwell Street is a major thoroughfare and truck bypass route. D. Whitfield-Cargile then argued that the entire purpose of the Entrance Overlay District (EDO) is to help the motoring public find local businesses. To back this up, he pointed out that the board previously granted a ground sign variance to the Party Health Complex across the intersection for this exact reason, and Poe agreed that was correct. He concluded that these signs are completely obscured from the view of, and offer no assistance to, drivers traveling on Caldwell Street. Poe agreed with these characterizations.

D. Whitfield-Cargile asked if the proposed ground sign positioned adjacent to Caldwell Street would be significantly more effective for wayfinding than an obscured sign on the side of the building. K. Poe concurred, stating that, in her opinion, the proposed sign would be much more helpful for public wayfinding.

D. Whitfield-Cargile showed Exhibit 6, explaining it was another layout view showing how the buildings sit on the lot. He asked K. Poe if she knew when Elgato LLC bought the property, but she didn't know. He offered to show her the deed to refresh her memory.

B. Gulden requested that the exhibits be distributed for the Board's review. D. Whitfield-Cargile complied, passing Exhibits 1 through 6 to A. Mercaldo to begin circulation while expressing appreciation to Gulden for his guidance. The Board raised no objections, and the submitted evidence was formally admitted into the official record.

Following the Board's review of the photographic and documentary evidence, D. Whitfield-Cargile resumed his questioning of K. Poe. K. Poe confirmed that both structures on the parcel pre-dated El Gato LLC's acquisition of the property. D. Whitfield-Cargile established that the resulting wayfinding hardship—caused by the buildings' physical orientation to each other and the street—was an inherent, pre-existing condition that predated the current ownership, a point with which K. Poe concurred.

D. Whitfield-Cargile then used the displayed city map to point out that multiple addresses (203, 207, and 209) are tied to the parcel. K. Poe explained that while she was unsure about the specific 209 North Caldwell designation for the rear unit, these numbers are generated by the 911 addressing system and mapped via the city's GIS layer. After Poe noted that the map seemed to show five different addresses in total, D. Whitfield-Cargile confirmed that the official city GIS data explicitly recognizes five distinct addresses on this single lot, which K. Poe verified.

D. Whitfield-Cargile asked if any of the back buildings had a Caldwell Street address, and K. Poe initially agreed. Whitfield-Cargile then corrected his statement after realizing the map marker actually pointed to a house across the street. He noted his client believed the whole property used a Caldwell Street address, while Poe specified that the variance application was explicitly filed under 209 North Caldwell Street.

Referencing the previously entered photographs, D. Whitfield-Cargile asked how many businesses are operating in the back building. K. Poe knew there were multiple tenants but admitted she was surprised when D. Whitfield-Cargile stated that there are actually seven distinct units in the rear structure.

D. Whitfield-Cargile asserted that having multiple active businesses in the rear structure with signage limited strictly to the side of the building creates significant wayfinding confusion for motorists. K. Poe agreed with this statement. Whitfield-Cargile further argued that this lack of visibility imposes a severe hardship on both the property owner and the tenants by hindering safety and preventing drivers from safely navigating to the businesses. Poe concurred. Finally, Whitfield-Cargile reiterated that this structural condition pre-dated El Gato LLC's ownership of the property, a point with which Poe once again agreed.

D. Whitfield-Cargile sought confirmation that, with the sole exception of the downtown overlay district's restriction on ground signs without a variance, the proposed structure fully complies with all other design and dimensional elements of the Entrance Overlay District (EDO) ordinance. K. Poe concurred that it did. Whitfield-Cargile then noted that a ground sign is currently located immediately adjacent to the subject site at Charlie's Tire, a point with which Poe also agreed.

D. Whitfield-Cargile moved for the admission of Exhibit 7 into the official record. He noted that the exhibit consists of the property deed establishing the acquisition timeline. Whitfield-Cargile suggested that the property's layout was 'pre-existing grandfathered,' which K. Poe clarified was legally classified as a pre-existing non-conforming use.

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D. Whitfield-Cargile formally marked and presented Exhibits 9 and 10, which depict a ground sign located on the Mountainside building directly across French Broad Street from the subject property. K. Poe confirmed the accuracy of the location. Whitfield-Cargile noted that while the Mountainside property sits outside the boundaries of the downtown overlay district, it remains positioned immediately across the street from his client's site, a point with which Poe concurred.

D. Whitfield-Cargile then brought up Exhibit 11, which shows the UNC Health ground sign diagonally across the street. He pointed out that this sign was successfully allowed through a variance, even though that property is inside the exact same downtown overlay district as his client's lot. K. Poe agreed that was correct.

D. Whitfield-Cargile introduced Exhibit 11, depicting a ground sign at 9 West Morgan Street. Upon questioning, K. Poe stated she did not know if the sign was grandfathered, nor did she know the historical date when ground signs became prohibited in the downtown area. He then pointed out that the sign in Exhibit 11 lists several different businesses, showing that the building has multiple tenants. He argued that when you have a building with multiple businesses inside, a shared ground sign is exactly what helps drivers find their way, and Poe concurred with this assessment.

Concluding his remarks, D. Whitfield-Cargile requested that the Board take official notice of a prior variance. He formally presented and moved to admit a copy of the variance granted to 277 North Broad Street Partners, LLC, into the official record as Exhibit 12. Hearing no objections, the Board formally accepted the document as the final exhibit.

With no further questions for K. Poe, Chair P. Offen called Jamie Pritchard, Property Manager for El Gato, LLC. Pritchard testified that she has worked with managing member Zach Bennett since before his acquisition of 209 North Caldwell Street, establishing her thorough familiarity with the property and its current uses. She then testified that the rear structure—situated behind the primary front building—contains seven separate commercial units.

D. Whitfield-Cargile used a video exhibit, pausing it to show the view from French Broad Street looking at the rear building of 209 North Caldwell Street. Upon his questioning, J. Pritchard testified that it is difficult for passing motorists to see what is inside the building and agreed that the signs on the screen are completely unreadable. Pritchard further clarified that the building houses multiple units, noting that four businesses are currently operating there, a fifth tenant is about to move in, and two additional units remain vacant.

When questioned by D. Whitfield-Cargile about building access, J. Pritchard testified that the property has multiple entrances: a side door, one facing Caldwell Street, and another on the opposite side near a future vacancy. Regarding tenancy, J. Pritchard stated the building houses three active businesses—a dog groomer, a CBD shop, and a gym—with a wrestling facility planned next. She noted that three tenants primarily use the side entrance, while one uses a front entrance facing Caldwell Street that is completely blocked from view by the building in front.

When asked by D. Whitfield-Cargile if the front building blocks the visibility of the signage on that specific portion of the structure, J. Pritchard confirmed that it does. J. Pritchard further testified that an additional unit exists on the far side of the property, featuring a door that

faces Charlie's Tire. Additionally, it was established that all of these structural and situational conditions existed prior to El Gato acquiring the building.

Responding to D. Whitfield-Cargile, J. Pritchard testified that current building signs fail to assist drivers. She confirmed the proposed sign's purpose is to help motorists safely locate onsite businesses. Furthermore, she noted that a lack of visible signage creates a hazard, causing confused drivers to slow down and hesitate near the stoplight. J Pritchard concluded that the requested sign would successfully mitigate these traffic dangers.

Next, D. Whitfield-Cargile presented a video recorded from a vehicle traveling south on Caldwell Street toward the property. J. Pritchard verified the footage and testified that a passing motorist would have no way of knowing what businesses operate at the back of the building. D. Whitfield-Cargile pointed out that even a driver specifically looking for the dog groomer, CBD Shop, or the wrestling business, would not know where to turn, especially given how close they are to the intersection. J. Pritchard agreed, confirming that looking left from this position offers absolutely no visibility of the signage on the rear building.

D. Whitfield-Cargile stated that the new signage frame will help drivers safely navigate into the complex via North Caldwell Street or French Broad Street. He noted that drivers currently bypass the complex entirely because the rear businesses lack visible signage. J. Pritchard concurred.

D. Whitfield-Cargile reviewed the safety benefits of the proposed signage frame, stating it would correct current visibility issues caused by parked cars and poor placement. The new signage will allow motorists to safely navigate onto North Caldwell Street or French Broad Street to access rear businesses. J. Pritchard expressed agreement with the safety and wayfinding benefits.

D. Whitfield-Cargile established that J. Pritchard was familiar with the prior decision granted to the health complex across the street and that the subject property is substantially similarly situated. J. Pritchard agreed that, due to patron wayfinding difficulties, substantial justice warrants similar treatment for this property. D. Whitfield-Cargile then deferred to the Board for further questions.

In response to questioning from P. Offen, J. Pritchard confirmed that the proposed sign would not interfere with the sidewalk or existing infrastructure. J. Pritchard also informed A. Mercaldo that, to her knowledge, no other project components required compliance with Downtown Mixed-Use (DMX) regulations.

P. Offen requested justification for the preferred sign location over alternative sites on the property. J. Pritchard responded that the chosen location visually unifies the front and rear buildings as a single property. She noted that a corner installation was dismissed because existing posts would obstruct visibility. Additionally, P. Offen sought clarification on the size of the sign, and J. Pritchard verified that it measures under 32 square feet.

R. Wood asked for confirmation that the proposed sign would be visible to motorists stopped at the intersection, allowing them sufficient time to turn before passing the complex. J. Pritchard confirmed that it would be visible from that location.

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Hearing no further questions from the Board for J. Pritchard, Chair P. Offen inquired if D. Whitfield-Cargile wished to call another witness. Whitfield-Cargile requested to call John Connelly, and the Board granted permission.

At the request of D. Whitfield-Cargile, witness John Connelly introduced himself and testified that he has operated a hemp manufacturing facility as a tenant on the property since 2019.

Referencing an on-screen layout display, D. Whitfield-Cargile established that Connelly's facility sits on the northeastern corner of the one-story rear building. J. Connelly testified that his storefront is completely blocked from view by the front building and confirmed that this structural obstruction existed long before El Gato purchased the property.

D. Whitfield-Cargile established that Connelly's current on-building sign is invisible from Caldwell Street and requires an extreme viewing angle from French Broad Street. J. Connelly affirmed that his operational history at 203 Caldwell St. provided him with comparative experience regarding the visibility benefits of roadside signage versus standard on-building fixtures. He testified that because the building is set back 100 feet from the street, customers routinely reported severe difficulties locating the facility, often circling the block before finding it.

During continued questioning, J. Connelly confirmed that a secondary sign was previously installed on the front building. While it improved wayfinding, its utility was limited strictly to northbound motorists on Caldwell Street, and it was ultimately removed because regulations prohibit tenants from placing signage on separate buildings they do not occupy. D. Whitfield-Cargile emphasized that restricting rear tenants to on-building signage creates traffic safety hazards from confused drivers, a point Connelly corroborated by testifying that a customer had spent 20 minutes circling the block earlier that day. Whitfield-Cargile then concluded his examination and deferred to the Board for any further questions.

Hearing no further questions from the Board for J. Connelly, Chair P. Offen closed the public hearing. He then invited D. Whitfield-Cargile to present a closing statement.

D. Whitfield-Cargile delivered a closing statement arguing that the application successfully met all standard legal benchmarks to justify a variance. Using the Board's March decision for the cross-street health complex as a direct precedent, he demonstrated that restricting signage to the rear building creates an unnecessary hardship and traffic safety hazard. He noted that the layout issues are unique to the property, were not self-created by El Gato LLC, and that a front ground sign aligns with the spirit of the UDO. He emphasized that substantial justice requires consistency with the nearby health complex variance and requested approval.

During deliberations, A. Mercaldo sought clarification from Board Attorney B. Gulden regarding the use of prior UDO knowledge and outside case context. Attorney Gulden advised that evaluating UDO provisions is within the Board's explicit purview and noted that case law treats sign placement as an area variance. However, he cautioned that every application must stand on its own merits, instructing the Board that while the neighboring property's variance can be considered, it cannot serve as the sole justification for approving the current request.

A. Mercaldo stated that because the existing buildings are severely set back from the roadway, restricting signage to the structures creates clear wayfinding and safety hazards. He noted the

proposed sign is properly situated away from the sidewalk to protect pedestrian traffic. G. Pearson agreed, calling the lack of building visibility a clear-cut hardship with no other viable remedy than a ground sign. R. Wood concluded that the ground sign would optimize traffic flow and reduce safety risks by eliminating sudden motorist stops.

Chair P. Offen shared a personal anecdote corroborating the property's severe wayfinding issues, noting the extreme difficulty in locating existing businesses on the site from the street. J. Tate voiced agreement with the previous board members' findings, emphasizing that the property contains two separate structures with a significant setback from North Caldwell Street, which serves as the primary thoroughfare. Tate noted that because the complex hosts multiple distinct businesses rather than a single occupant, a shared roadside ground sign is uniquely necessary. Amy Kelton concurred with these points, after which Chair Offen called for a motion from the Board.

A. Mercaldo introducing a motion to approve variance request V-26-0004 on behalf of El Gato LLC. The application requests relief from UDO Chapter 12.9.3.C to allow a freestanding ground sign at 209 North Caldwell Street, Brevard, located within the Downtown Mixed-Use (DMX) and Downtown Development Overlay Districts.

He moved that the Board adopt the following findings of fact:

a. *Unnecessary Hardship:* An unnecessary hardship would result from the strict application of the regulations, as customer awareness and motorist wayfinding would be severely impacted.

b. *Peculiar Conditions:* The hardship results from conditions peculiar to the property, specifically the deep structural setback that makes on-building signage impossible to see, as well as the property's corner-lot topography, which increases traffic hazards when drivers search for signs while navigating an intersection.

c. *Not Self-Created:* The hardship did not result from actions taken by the applicant or property owner, as the applicant has done nothing since assuming ownership to create the condition.

d. *Spirit, Purpose, and Intent:* The requested variance is consistent with the spirit, purpose, and intent of the regulations, securing public safety and achieving substantial justice. The proposed sign properly respects all right-of-way and sidewalk setbacks to protect the public.

A. Mercaldo further moved to grant the variance strictly to the extent of the areas and dimensions represented in the submitted application and site plans. He stated that the approval is subject to the sole condition that the final structure must maintain compliance with all other general UDO ground sign regulations.

Board Attorney B. Gulden requested clarification on whether the applicant would formalize an agreement to ensure the proposed sign respects standard DMX dimensional guidelines, such as the 32-square-foot area cap. D. Whitfield-Cargile replied that while staff's prior testimony verified the application's baseline conformity, the motion could explicitly bind the approval to the submitted site plans or DMX provisions. Chair P. Offen added that because variances are a permanent property right, including specific compliance parameters in the motion is critical to preventing future owners from exceeding standard DMX limits.

G. Pearson seconded the motion, and the motion passed unanimously. Chair P. Offen declared the variance approved, reminding the applicant that the authorization is contingent upon the sign, remaining in continuous compliance with all standard Downtown Mixed-Use (DMX) regulations.
Chair P. Offen outlined the standard administrative timeline, noting that order approval typically occurs at the subsequent monthly meeting, which would be in August due to the customary cancellation of the July session. He explained that while the order would normally be signed then, the Board could expedite the process by utilizing electronic signatures to allow for an early pick-up at the Planning Department. D. Whitfield-Cargile stated that the applicant would appreciate the expedited electronic process, and Chair Offen confirmed that the request would be accommodated. Chair Offen then officially concluded the hearing and excused all involved parties.

A. Consideration of VAR-26-0003 - 128 Pisgah Hwy – Cont.

The variance hearing for case 25-000341 (28 Pisgah Highway) was reopened by Chair P. Offen at 4:36 PM for further board deliberation.

John Norm, an attorney with Robertson Stevens in Asheville, introduced himself as the representative for both the landowner and the tenant operating Dolly's. He noted that after reviewing the amendment passed the previous evening, the applicant requests a continuance to the August meeting. This extension will allow them to consult with the planning staff, as the recent legislative change may eliminate the need for the variance entirely.

As requested, Chair P. Offen moved to continue the hearing to a date and time certain of August 4 at 3:00 PM in the City Council Chambers. Seconded by A. Mercaldo, the motion carried unanimously.

VIII. UNFINISHED BUSINESS

A. APP-26-0001 – 221 Pinnacle Rd.

Chair P. Offen motioned to add appeal AP-26-001 to the agenda under unfinished business and to continue the matter to the August 4, 2026, meeting. The hearing will be held at 3:00 p.m. in the council chambers. A. Mercaldo seconded the motion, and the motion carried.

IX. REMARKS

R. Wood welcomed new alternate Board member Amy Kelton. Chair P. Offen extended a welcome and noted that board training would be upcoming. B. Gulden confirmed that training sessions would be organized in the near future to accommodate new membership.

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X. ADJOURN

Chair P. Offen called for a motion to adjourn. R. Wood moved to adjourn, and P. Offen seconded the motion. The motion passed unanimously by voice vote, and Chair, P. Offen officially concluded the meeting at 4:28 PM.

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Peter Offen, Chair

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Edievith Gass, Board Clerk

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