MINUTES
BREVARD BOARD OF ADJUSTMENT SPECIAL CALLED MEETING
Tuesday, March 13th, 2026 – 2:00 PM

The Brevard Board of Adjustment (BOA) met for a special called meeting on Tuesday March 13th, 2026, at 2:00 PM.

Members Present:	Peter Offen, Chair Reid Wood Mayson "Gilly" Pearson Jackson Tate Alan Mercaldo
Members Absent:	Reid Wood
Staff Present:	Katherine Poe, Planner Brian Gulden, Board Attorney Vith Gass, Board Clerk
Guests:	Carole Deddy, Blueberry Hill HOA President, 37 Highbush Ln. Charles Smith and Mary Whiton, 790 Camptown Rd. Bill and Jenifer Dillard 106 Top Hat Ln. Allen Dalzell, 303 Stone Creek Trl. Martha McMan 203 Ridgetop Cir. Regis Breyer, 139 Trent Rd. Jimmy Zachary, 15 Townsend Trl.

I. WELCOME

Chair, Peter Offen, called the meeting to order at 2:02 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS

Board members and Staff introduced themselves.

III. CERTIFICATION OF QUORUM

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

IV. APPROVAL OF AGENDA

Motion to approve the agenda made by A. Mercaldo, seconded by J. Tate, carried unanimously.

V. APPROVAL OF MINUTES

J. Tate motioned to approve the February minutes as written, A. Mercaldo seconded, carried unanimously.

VI. APPROVAL OF ORDERS

None.

VII. UNFINISHED BUSINESS

None.

VIII. NEW BUSINESS

B. Goulden addressed the preliminary matters noting that the board only has four board members present on this day. Under North Carolina law, granting a variance requires four-out-of-five (4/5) supermajority votes. Because we only have four members, this means that the party needs to vote unanimously for approval.

With the two new business items – 775 Camptown Road and 85 Trent Road – applicants have the option to proceed with the four members present or table their request until a full-five members board is available. This option shall be discussed with each applicant when their case is called.

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

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 the Unified Development Ordinance's (UDO) Chapter 2.8.D.1(a), which does not allow chain link fences in the front yard of the property in GR zoned districts.

P. Offen, Chair, explained quasi-judicial procedures and standing requirements under the North Carolina law, which include demonstrating special damages and expert testimony that are strictly governed by N.C. Gen. Stat. § 160D-1402 **.**

B. Gulden clarified that to properly establish standing, applicants must meet the following criteria:

a. Applicants must demonstrate special damages, specifically a depreciation of their property's fair market value.

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b. Testimony on depreciation must be provided by an appraiser, while traffic impacts must be presented by an expert.

In addition, B. Gulden also cited the Supreme Court cases Magnum v. Raleigh and Cherry v. Wisener confirms that proximity or aesthetic concerns alone do not establish standing.

Carole Deddy seeks standing based on fence proximity and dead landscaping. A. Mercaldo move to deny standing due to insufficient evidence and lack of expert testimony; seconded by G. Pearson. Motion passed unanimously.

Charles Smith requested a postponement/continuance of the hearing due to lack of familiarity with the procedural requirements such as an independent authorized appraisal that was necessary to formally challenge the valuation of the property.

P. Offen reminded the public that only the party with standing can request to reschedule or postpone the hearing. B. Gulden noted that the Board has the ultimate discretion to determine if a petitioner has "standing" and if it is appropriate to grant them the opportunity to prove that their property value has decreased. He emphasized that simply claiming "my property is devalued" is insufficient. A valid claim usually requires competent, substantial evidence, such as an affidavit from a professional appraiser, to substantiate the claim. A full, comprehensive appraisal is not always necessary. A consulting report or a restricted appraisal report can be used to show a depreciation in fair market value.

Following disclosure, P. Offen reviewed the ethical considerations and potential conflicts of interest. The Chair paused to give the applicant an opportunity to state if they have any objections to the current board members hearing this case based on the disclosure, or if they have questions regarding these considerations. The applicant stated he had no objections.

P. Offen addressed the attendees to identify those claiming standing, resulting in a show of hands indicating five interested parties seeking participation in the case.

The Board weighed the need to allow five parties seeking standing additional time to acquire substantial, credible evidence or expert testimony against the potential prejudice to the Applicant cause by a delay.

With the applicant not objecting to the proposed continuations, G. Pearson motioned to move this matter to May 5th, 3 PM; J. Tate seconded, and the motion passed unanimously with a clarification from B. Gulden that the board will not consider private restrictive covenant such as HOA restrictions when making, focusing exclusively on enforcing City of Brevard regulations as written, and they will not dive into private property rights issues. He affirmed that that variance decisions will be based strictly on submitted evidence, independent of any HOA restrictions.

B. <u>Consideration of VAR-26-0002 – 85 Trent Rd.</u>

P. Offen, explained quasi-judicial procedures and standing requirements under North Carolina law, which include demonstrating special damages and expert testimony that are strictly governed by N.C. Gen. Stat. § 160D-1402.

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B. Gulden affirmed that to establish standing, one must prove special damage that is distinct and different from the general public, specifically a diminution in the fair market value of their property attributable to the secondary impacts of the application.

Regis Breyer requested establishing standing as an aggrieved party, asserting this proposal directly impacts the fair market value and the used of his adjacent property. In addition, he requested a postponement of this hearing, citing lack of proper notification and the need for reasonable time to retain an expert for valuation evidence. B. Gulden pointed out that North Carolina law dictates minimal notice, requiring only newspaper publication, properly posting, and mailing to neighboring property owners.

Jimmy Zachary requested the Board's intervention regarding criminal activity on Trent Road. According to him, the operation of four mobile homes for drug trafficking by the Trent family has created a severe safety hazard. He argued that after 30 decades of effort to improve this area, he is demanding the board to take immediate action to shut down these operations and ensure the safety of their neighborhood. B. Gulden moved to strike the testimony citing a lack of competence and substantial evidence, urging the Board to exclude it from consideration.

J. Tate made a motion to deny standing, G. Person seconded, and the motion passed unanimously.

Cognizant of Regis Breyer postponement request, P. Offen evaluated the ethical implications and potential conflict of interest. Following disclosures, the Chair pauses to afford the applicant an opportunity to voice any objections regarding the composition of the board. The applicant stated he had no objections, waived any potential conflicts, and requested to proceed with the hearing immediately, effectively opposing and overcoming J. Zachary's request to postpone.

B. Gulden indicated that final authority rests with the board to decide. Without credible allegations, the only argument presented was a need for more time, which is what the board must consider.

A. Mercaldo moves to deny standing of J. Breyer citing that the applicant has not provided sufficient, credible evidence to justify continuance, and does not see a need for additional time to evaluate neighborhood property values. J. Tate seconded, and the motion passed unanimously.

The following were sworn in: Joseph Trent, Farrah Baynard. No ethical conflicts were found. P Offen opened the hearing.

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

Background:

The applicant, Farrah Baynard, is the agent for property at 85 Trent Rd, which is in the General Residential-4 (GR-4) zoning district and the Manufactured Home Overlay within the City's Extra Territorial Jurisdiction (ETJ). The parcel identification number is 8575-89-5653-000.

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The applicant is requesting a variance from the Unified Development Ordinance's (UDO) Chapter 2.7.2 for principal structures setbacks. The request is for fifteen (15) feet variance from the required twenty-five (25) feet setback for the rear yard, resulting in a ten (10) foot setback.

K. Poe outlined the distinction between zoning and nuisance regulations, wanted to clarify that although this property is located outside city corporate limits, it lies within the City's ETJ. Consequently, pursuant to Chapter 2.72, the City enforces its zoning regulations and development standards in this area, necessitating compliance with the same zoning requirements as properties within the city limits. She cited, however, that City nuisance regulations are not enforced in the ETJ.

K. Poe pointed out that since the property is in the ETJ, public sewer is not available, and any development will rely on a private septic tank. The property's depth ranges from roughly 80 feet on the southern portion to roughly 100 feet on the northern portion.

Principal building setbacks in GR-4 are 15 feet from the right-of-way, 6 feet from the side property lines and 25 feet from the rear property line (City UDO Section 2.3). The preexisting state-permitted septic field is located towards the front portion of the lot.

The NC Health Code, which is administered by the Transylvania County Public Health Department dictates the minimum distance required from a building to the well and septic systems. The applicant reports that the relatively narrow depth combined with the preexisting subterranean infrastructure creates a technical layout issue that prevents the placement of a home with the 25-foot rear yard setback.

Discussion:

Following her staff report, K. Poe looked at the Board for questions. A. Mercaldo inquired whether there was any additional matter denied by the city, specifically asking if the denial was based solely on the setback requirement. K. Poe clarified that a formal application was never officially denied. She explained that the agent, knowing the project would not meet the setback requirements, applied for variance in advance in submitting a full permit application.

J. Tate inquired about the proposed two-bedroom home's location relating to the drainage area, specifically requesting documentation detailing the distance, and a follow-up question was raised by G. Pearson asking the applicant to provide evidence confirming the ownership of the property behind the current drain field location. K. Poe noted that the home will be situated approximately 10 feet from the rear property line. She also confirmed that the drain field faces Trent Rd., meaning it is located in the front yard, where they are also replacing the piers.

Concluding that there were no further questions from the Board to the City, P. Offen thanked K. Poe for her report. P. Offen then called upon the property owner, Joseph Trent, to provide testimony.

J. Trent argued that that the variance would render the property economically unusable, as the septic system restrictions prevent development or even agricultural use, resulting in an unmarketable lot. P. Offen asked the applicant how the unnecessary hardship conditions are peculiar to the property.

Farrah Baynard asserted that due to the unique physical limitations of the property .025-acre lot, specifically the intersection of a 25-foot rear setback requirement and the existing septic field – strict adherence to the ordinance leaves no partial place to build. She stated that the property owner, J. Trent, is simply looking to replace a previous home in the same spot, adhering to the area's mobile home overlay status. Therefore, requiring compliance creates unnecessary hardship, denying reasonable use of the property.

J. Trent expressed deep concern over the fairness of the recent regulation changed. He argues that reducing property value after 40 years of stability through a 'stroke of pen' is negligent and essentially makes the property worthless.

B. Gulden pointed out that under North Carolina's NCGS 160D provision, a nonconforming use can be replaced if it has not been voluntarily discontinued for more than 24 consecutive months. It is important to verify if this mobile home has been gone, or the site has been vacated, for more than that two-year period to see if the grandfathered status can still be applied. F. Baynard stated that while the previous mobile home was removed seven years ago, Mr. Trent obtained country approval for a replacement permit but did not proceed with the installation at that time.

P. Offen raised concerns regarding the valuation based on the recent site assessment. F. Baynard responded that the lot is currently under contract for $50,000, with the intention of placing a mobile home on it. She explained that if a mobile home is not permitted, the property would lose significant value because there is no other space for development due to the location of the septic drain field. She concluded that is a home cannot be placed there, the value would drop significantly below 50,000, likely only appealing to adjacent property. She added that while Mr. Trent permit for the mobile home approved following the removal of the old one, the county downgraded the existing septic system capacity from three bedroom to two.

G. Pearson inquired regarding the intent of the regulations and the specific nature of the area located 10 feet behind the proposed site, specifically asking if it was empty lot. F. Baynard clarified that the area is an empty lot with existing, old fence situated on the property line. She further noted that the proposal would not alter the current conditions but simply restore the previous footprint. J. Trent mentioned that there is a house located about 200 feet behind this lot.

F. Baynard concluded that this is a straightforward request to replace an existing mobile home with the same footprint. Because the property is within the Mobile Home Overlay district, this request complies with existing zoning guidelines, merely confirming the intended use for that parcel.

Regarding the mobile home, G. Pearson has requested clarification on the legal basis for the issued permit. Specifically, she wanted to know if the permit was granted based on the pre-existing structure/grandfathered status, or if the previous mobile home already been removed from the site when it was filed. J. Trent asserted that the property held pre-existing, permitted structure at the time it was approved. Although a three-bedroom unit was already on the site, inspector Furman Nicholson from the county denied permission to replace it with another three-bedroom unit, restricting it to a two-bedroom unit instead.

During deliberations, J. Tate argued that prohibiting the construction of any dwelling renders the property unbuildable, resulting in substantial reduction in its fair market value. G. Pearson concurred with J. Tate, adding that the proposal constitutes a hardship and aligns with the regulatory intent to prevent high-density development. G. Pearson noted that the impact would be minimal, as adjacent properties are not severely impacted. A. Mercaldo expressed his concurrence with the board members regarding the application. He noted that because the property lies within a manufactured home overlay district, the proposed use is permissible. Furthermore, he stated that the variance is justified by the unique physical conditions of the property, specifically concerning the existing septic system and drain field location. P. Offen also concurred, adding that without the setback reduction, the property has no viable use other than a field with septic tank.

Presented herewith are the findings as reviewed and enumerated by J. Tate:

1. *Unnecessary Hardship:* Strict application of the UDO regarding the 25-foot rear setback would result in unnecessary hardship. The property value would be greatly diminished because the site cannot be reasonably developed or improved for its intended purpose without the variance.

2. *Peculiar Physical Conditions:* The hardship results from conditions peculiar to this property, not common to the neighborhood. These factors include the exceptionally small size of the lot and the configuration of the site, in addition to the existing, fixed placement of the well, septic system, and drain field. These factors create a unique constraint on development.

3. *No Self-Created Hardship:* The hardship did not result from actions taken by the applicants or the current property owner. The request seeks to replace a structure that previously existed, and the proposed replacement is actually at a smaller, more compliant scale than the previous structure.

4. *Consistency with UDO Intent:* The variance is consistent with the spirit, purpose, and intent of the regulations. The site is zoned to allow residential use (GR-4), and this structure will remain in harmony with adjacent properties. Granting the variance will secure public safety and achieve substantial justice.

Based on the evidence presented, J. Tate made the motion that the Board grant the requested variance to allow a 15-foot reduction in the required 25-foot rear setback on the property located at 85 Trent Road, Brevard, North Carolina, in accordance with and only to the extent represented in the application and plans submitted. G. Pearson seconded and passed unanimously.

B. Gulden clarified that under North Carolina law, once a variance is granted by the Board of Adjustment, a formal written order must be drafted, reviewed, and signed to document the decision. He added that if the party requires the order expedited for closing, the board will bypass the standard one-month wait and use an electronic process to finalize the order promptly. Baynard agrees.

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IX. REMARKS

Due to an anticipated lack of a quorum, the Board meeting scheduled for April 7th is being rescheduled. The Board has agreed to move the meeting, which includes three scheduled appeals, to April 21st at 2:00 PM

B. Gulden reported that Mr. Dugger, attorney for two applicants, has requested subpoenas for three individuals regarding the upcoming appeal hearing, While the chairperson holds the authority to issue subpoenas based on the applicant's requests, any decision to deny this request can be immediately appealed to the full board. He added that the Board should note that if subpoenas are issued, the April 21st hearing may be brief, as witnesses cannot be compelled to appear until the board hears this argument. P. Offen requested information on the legal basis for the subpoenas at the upcoming hearing, B. Gulden identified the statutory authority under North Carolina law.

Pursuant to N.C.G.S. § 160D-406(g), quasi-judicial hearings allow for the issuance of subpoenas by the Board Chair to compel witnesses or evidence. Any party may request a subpoena in writing. The Chair determines relevance and reasonableness. Subpoena decisions may be immediately appealed to the full Board. If a subpoena is contested, it may cause delays in the proceedings as it moves through the appeal process, requiring adequate time for service.

X. ADJOURN

P. Offen made a motion to adjourn the meeting, G. Peason seconded. The motion carried unanimously. The meeting was adjourned at 3:26 PM.

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Peter Offen, Chair

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Edievith Gass, Board Clerk

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