

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, MAY 7, 2019 - 3:00 PM - Council Chambers

The Brevard Board of Adjustment met for a regular meeting on Tuesday, May 7, 2019, at 3:00 PM in Council Chambers of City Hall.

Members Present: Judith A. Mathews, Chair
Kevin Jones
Tad Fogel
Allen Delzell
Paul Welch

Members Absent: Tom Tartt, Vice Chair

Staff Present: Daniel Cobb, Planning Director
Brian Gulden, Board Attorney
Janice H. Pinson, Board Clerk
Bryan Brightbill, Planner

Others H. Kristin Leesment, Applicant
George Lenze, Applicant
Daniel Stewart Trusler, Neighboring Property Owner

I. WELCOME

Chair J. Mathews called the meeting to order at 3:00 PM and welcomed those present.

II. INTRODUCTION OF BOARD MEMBERS

Board members, Board Attorney and Staff, introduced themselves.

III. CERTIFICATION OF QUORUM

Chair J. Mathews certified a quorum of the Board was present.

IV. APPROVAL OF AGENDA

P. Welch made a motion, seconded by K. Jones to approve the agenda as presented, carried unanimously.

V. APPROVAL OF MINUTES

P. Welch moved, seconded by T. Fogel that the January 8, February 5 and February 6, 2019, meeting minutes be approved as presented. Motion carried unanimously.

VI. NEW BUSINESS

a. Request of David Felmly and H. Kristin Leesment for a variance from UDO Chapter 3.12.D.4 to allow an accessory structure in the front yard in the General Residential (GR) zoning district. The property is located at 390 Delphia Drive within the corporate limits of the City of Brevard, further identified by PIN# B585-96-6660-000.

Daniel Cobb, Planning Director and H. Kristin Leesment, Applicant were sworn by the Board Clerk.

Daniel Cobb stated that the matter had been properly advertised, property posted and neighbors notified.

J. Mathews, Chair polled the board as to exparte communications and conflicts of interest. There were none. T. Fogel did make the board aware that he lives a couple of doors down from the property owned by Ms. Leesment but that he felt it was not a conflict for him to hear the case.

Ms. Leesment was asked if she had any conflicts with any of the board members hearing the case. She replied that she did not.

Daniel Cobb, Planning Director presented his staff report and explained the case before the board, a portion of his staff report follows:

The City's current development standards require accessory structures be placed in only the side or rear yard of a property (see Attachment B).

The applicant desires converting an existing pergola to a covered gazebo. Pergolas are not addressed specifically within the Unified Development Ordinance (UDO) and are not considered accessory structures. However, the addition of a roof changes its classification to a building. Specifically, an *accessory structure*. Accessory structures, as defined by the UDO, are

A structure...which is subordinate to a principal structure...on the same lot, and is used for purposes customarily incidental to the principal structure. Garages, carports, and storage sheds are common urban accessory structures...²

The placement of a roof over the existing pergola converts it to a *building*, as defined by the UDO, which is

A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals or chattels, and including tents, lunch wagons, dining cars, trailers, freestanding billboards and signs, fences, and similar structures whether stationary or movable. The term "building" shall be construed

as if followed by the words "or parts thereof." Each portion of a building separated by division walls from [the] ground up without openings shall be considered a separate building².

Structures are defined in the UDO as:

Any walled and roofed building or other physical object, whether temporary or permanent, that is designed for human habitation or to uphold, house, contain, or bear other objects or materials. Examples of structures include but are not limited to permanently affixed signs, swimming pools, houses, telecommunication towers, manufactured homes, or a gas, liquid, or liquefied gas storage tank that is principally above ground³.

Front, rear, and side yards are specifically defined as:

Yard, front: A yard situated between the front building line and the front lot line extending the full width of the lot;

Yard, rear: A yard situated between the rear building line and the rear lot line extending the full width of the lot;

Yard, side: A yard situated between a side building line and side lot line and extending from the required front yard to the required rear yard. In determining the situation of accessory structures, the side yard shall be assumed to extend through the rear yard to the rear lot line⁴.

This concept and yard designations is illustrated in Attachment C.

In order to grant the variance *all* of the conditions below must be met:

1. Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that

² Ibid
³ Ibid
⁴ Ibid

may justify the granting of a variance shall not be regarded as a self-created hardship.

4. The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

Economic hardship or the fact that property may be utilized more profitably with a variance shall not constitute an unnecessary hardship. In its motion the Board should include Findings of Fact to support each of the items listed above.

Summary:

Application VAR-19-001 is for the placement of an accessory structure within the front yard of property located at 390 Delphia Drive, Brevard, NC 28766.

Ms. Leesment testified that because of the topography her house is placed on her lot with the garage entrance facing the street. She showed the board a short video of the side entrance to her home and the view from her front yard.

She further explained the reason for wanting the accessory structure in her front yard was to take advantage of her view.

It was stated that the property owner most likely affected by the structure would be Dr. Rogers.

Ms. Leesment explained that Dr. Rogers is having a medical emergency but that she had discussed building the structure with her neighbors on several occasions and they had shown no signs of objection.

K. Jones made the following motion:

With regard to variance request #VAR-19-001, the application of David Felmy and H. Kristin Leesment, for a variance from UDO Chapter 3.12.D.4 to allow an accessory structure in a front yard for property within the General Residential (GR) Zoning District and located at 390 Delphia Drive, Brevard, North Carolina, I move the Board to grant the application based upon the following findings of fact:

- a) that unnecessary hardship would result from the strict application of the regulations;

The Applicant would be denied the enjoyment of her property if denied.

- b) the hardship results from conditions that are peculiar to the property such as location size or topography;

The house is situated peculiar on the lot, the front of the house is situated facing the side yard of the neighboring property.

- c) the hardship did not result from actions taken by the applicant or the property owner; and

The house was purchased after it was built, therefore the Applicant had no part in the placement of the house on the lot.

- d) the requested variance is consistent with the spirit purpose and intent of the regulations such that Public Safety is secured and substantial justice achieved.

Accordingly, I further move the board to Grant the requested variance in accordance with and only to the extent represented in the application and plans.

Motion seconded by T. Fogel, unanimously carried and variance was granted.

b. Request of Lenze Real Estate, LLC, Agent for David E. and Susan G. Warren for a variance from UDO Chapter 2.3.C to allow for a total side setback variance of 4' to subdivide the parcel into four (4) lots. The property is located in the Residential Mixed Use (RMX) zoning district with the address of 279 Probart Street within the corporate limits of the City of Brevard, further identified by PIN# 8586-31-9966-000.

George Lenze, Agent was sworn by the Board Clerk.

The board was polled as to ex parte communications and conflicts of interest. There were none.

Mr. Lenze was asked if he had any conflicts with any board members and he did not.

Daniel Cobb, Planning Director stated that the matter was properly advertised, property posted and neighbors notified.

Daniel Cobb presented his staff report a portion of which follows:

Background

George Lenze (Agent) for property owner Susan Warren (Applicant) is requesting a total setback reduction of 2.9' or 34.8". This setback reduction is intended to allow the creation of four new lots and dedication of land to the City of Brevard.

Discussion

The City received a request from the Applicant April 19, 2019 for a Variance from the side yard setback requirements (see Attachment A). The requested setback reduction is intended to allow the creation of four new lots and dedication of land to the City of Brevard for the next phase of the bike path.

Three of the four lots require a 2.4' side yard setback reduction and the fourth, highlighted in green, requires a 15.6' reduction on one side and 4.8' on the other (see Attachment B).

The minimum width for the subdivision of land for the lot in question is 30'. While the applicant proposes lots with widths ranging from 37.42' to 36', exceeding the 30' minimum, the required reduction of setbacks is essential to providing sufficient land for the construction of the next phase of construction of the bike path.

Independent of this Variance request, the Applicant has agreed to partner with the City to assist in the construction of this new bike path. The Board's decision should *not* take this fact into consideration when voting upon this request. However, in an effort to provide context and rationale for this request this information is included (see Attachment C) for review.

In order to grant the variance *all* of the conditions below must be met:

1. Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

Economic hardship or the fact that property may be utilized more profitably with a variance shall not constitute an unnecessary hardship. In its motion the Board should include Findings of Fact to support each of the items listed above.

Summary:

Application VAR-19-002 is for the reduction of the required six-foot side yard setback for property located at 279 Probart Street, Brevard, NC 28712. This request is made to allow for the subdivision of land creating four new lots for development, and one to be given to the City of Brevard.

George Lenze, Agent explained that the proposed development is in compliance with the rear setbacks. He is only requesting the variance in the front to allow development and also grant the City of Brevard an easement to build the bike path along the side property line.

Daniel Stewart Trusler, 266 W. Probart Street was sworn as a party with standing in the matter.

He stated that until the neighboring property owners' know what is being built they cannot form an opinion and testify for or against the development. He stated he had concerns if this was his only opportunity to object.

J. Mathews, Chair explained to Mr. Trusler that the board only has the authority to grant or deny the variance. That the development piece is for the Planning Department and Planning Board, and not a part of the discussion before them today.

Robert Bauslaugh, 285 W. Main Street stated that he is in favor of the bike path going straight through to West Main Street.

Daniel Cobb explained that this is not a swap, that it is a request for a variance, and that the variance would allow Mr. Lenze to subdivide and develop the property.

Mr. Lenze was asked if he was through with his presentation. He said he was unless there were questions.

There were no further questions and J. Mathews, Chair closed the hearing.

P. Welch moved to grant the variance as presented and to incorporate findings of fact as follows:

- a) that unnecessary hardship would result from the strict application of the regulations;
- b) the hardship results from conditions that are peculiar to the property such as location size or topography;
- c) the hardship did not result from actions taken by the applicant or the property owner; and

- d) the requested variance is consistent with the spirit purpose and intent of the regulations such that Public Safety is secured and substantial justice achieved.

Motion seconded by K. Jones and unanimously carried. Variance was granted.

VIII. REMARKS

Daniel Cobb, Planning Director introduced the Planning Department's new employee, Bryan Brightbill.

IX. ADJOURN

A. Delzell moved, seconded K. Jones the meeting be adjourned. Motion carried. Meeting adjourned at 3:53 PM.



Janice H. Pinson, Board Clerk

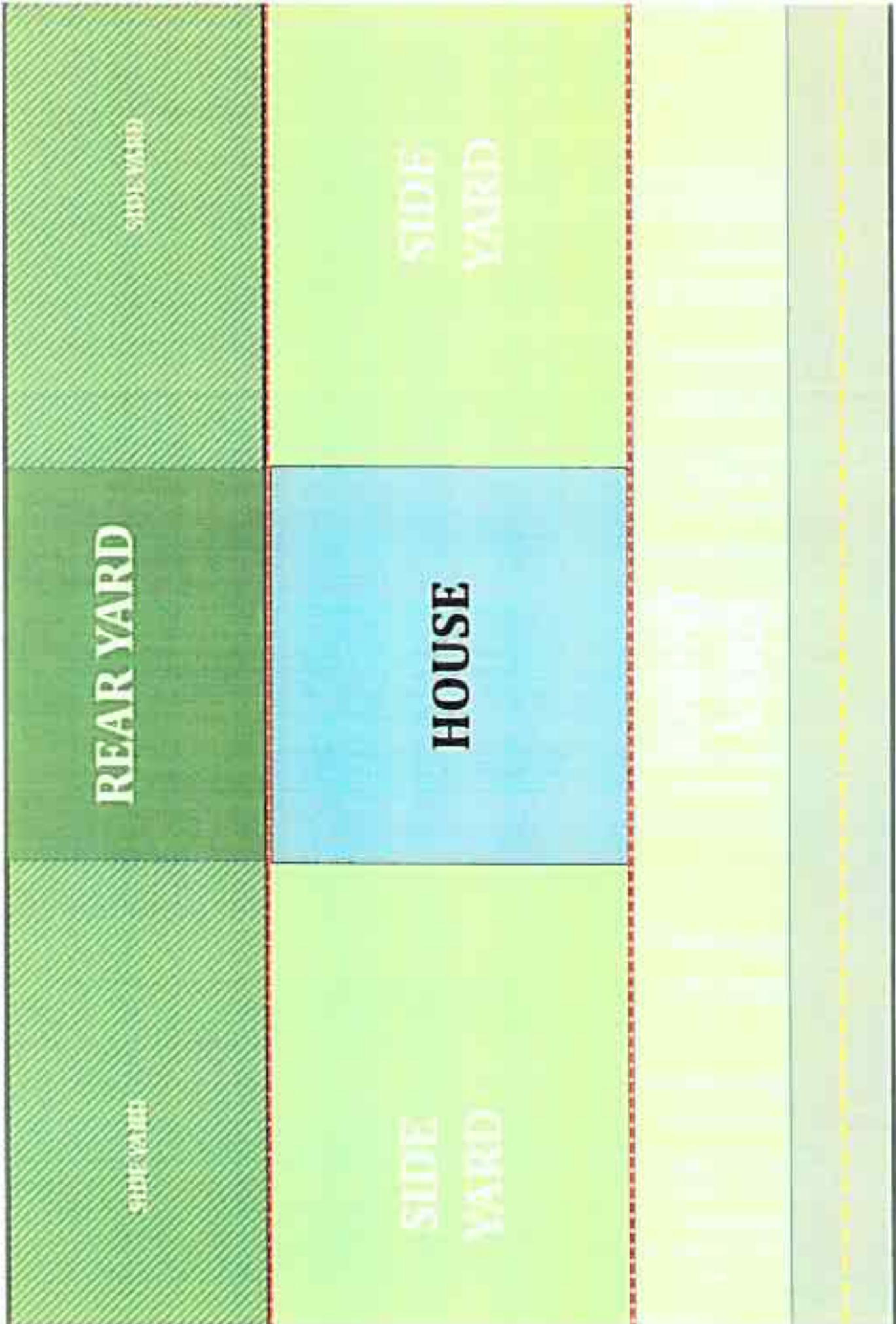
Judith A. Mathews, Chair

3.12. - Accessory structures (all residential districts) permitted with standards.

- A. *Principal buildings required.* The construction of an accessory structure or building is not permitted unless a principal building is located on the lot, except as set forth below. Accessory and principal buildings may be constructed concurrently.
1. Garden sheds may be permitted in the absence of a principal structure subject to the following requirements:
 - a. Garden sheds shall be no larger than 120 square feet in size;
 - b. Garden sheds shall be single-story;
 - c. Garden shed shall not be connected to water, sewer, or electricity; and
 - d. Garden sheds shall be utilized only for the storage of lawn equipment, garden utensils, and other implements necessary for the maintenance of gardens and grounds.
 2. Accessory structures utilized for agricultural purposes in association with bona-fide agricultural operations may be permitted in the absence of a principal structure.
 3. Chicken coops and chicken runs, as defined in Chapter 14-1 of Brevard City Code, may be permitted upon parcels of land where no principal structure is present, subject to the requirements set forth in Brevard City Code, Chapter 14, Animals and Fowl; Article I, Generally; Sections 14-1, Definitions, and 14-6, Keeping fowl.
- B. *Maximum number permitted.* In residential districts, no more than two accessory buildings or uses shall be permitted per lot, except for bona-fide agricultural enterprises, approved bed and breakfast inns, and camps.
- C. *Permitted uses.*
1. The following uses are permitted within residential accessory structures:
 - Parking shed or garage;
 - Gazebo;
 - Pool house;
 - Equipment enclosure;
 - Customary home occupation;
 - Playhouses;
 - Swimming pools subject to the requirements of Section 3.2B;
 - Artist studio space;

- Sauna;
 - Workshop;
 - Conservatory;
 - Rental cottage;
 - Tree houses;
 - Garden sheds;
- Chicken coops and runs as defined in Chapter 14-1 of Brevard City Code, subject to the requirements set forth in Brevard City Code, Chapter 14, Animals and Fowl; Article I, Generally; Sections 14-1, Definitions, and 14-6, Keeping fowl.
2. Accessory structures providing common facilities for residential developments (clubhouse, pool house, etc.) shall be permitted subject to all other requirements of this ordinance.
- D. *Requirements.*
1. Where an accessory structure is structurally attached to a principle structure or is less than six feet distant from a main building, it shall be subject to, and must conform with, all regulations of this ordinance applicable to principle structures.
 2. Trash containers, mechanical equipment and outdoor storage shall be located only within the rear or side yards.
 3. Mailboxes, newspaper boxes, walls, fences, birdhouses, flagpoles, and pump covers may be placed in any front, side or rear yard. Doghouses may be placed in side and rear yards only.
 4. Accessory structures shall be located only in side or rear yards of residential lots, except for bona-fide agricultural enterprises. The administrator shall make a determination as to the side and rear yard for accessory structures proposed to be located on lots fronting more than one street.
 5. Accessory buildings shall not cover more than 30 percent of the required side or rear yard except as otherwise provided in this ordinance.
 6. Accessory structures with a footprint of more than 500 square feet shall be buffered from the adjacent residential development with a type A buffer yard. Accessory structures located on a bona fide farm and accessory structures located not less than 24 feet from a property line shall be exempt from this buffering requirement.

(Ord. No. 2012-22, § 2(Exh. A), 8-20-12)



City Of Brevard, North Carolina
BREVARD BOARD OF ADJUSTMENT

Application for Variance

Variance Case/File Number # VAR-19-002

Property Owner:

Name DAVID / SUSAN WARREN
Address 279 PROBART ST. BREVARD, NC 28712
City/State/Zip Code _____
Telephone Number 888 230 5329 Email Address _____

Applicant and/or Agent (if different than property owner):

Name GEORGE LENUE
Address 1636 EVERETT RD
City/State/Zip Code PISGAH FOREST, NC 28768
Telephone Number 888 577-9809 Email Address george.lenue@icloud.com

Location of Property:

279 Probart St.

Property Identification Number (PIN): 8586-31-9946-000
Zoning District(s): RMX Within City Limits? Yes No

Request VARIANCE from City Zoning Ordinance, Section(s) 2.3.C.

Zoning Ordinance Requires 6' side setback

REQUESTING VARIANCE TO ALLOW SIDE LINE SETBACK TO BE REDUCED

Following must be included with Application:

- 1. Site Plan
- 2. Application filing fee - \$200.00

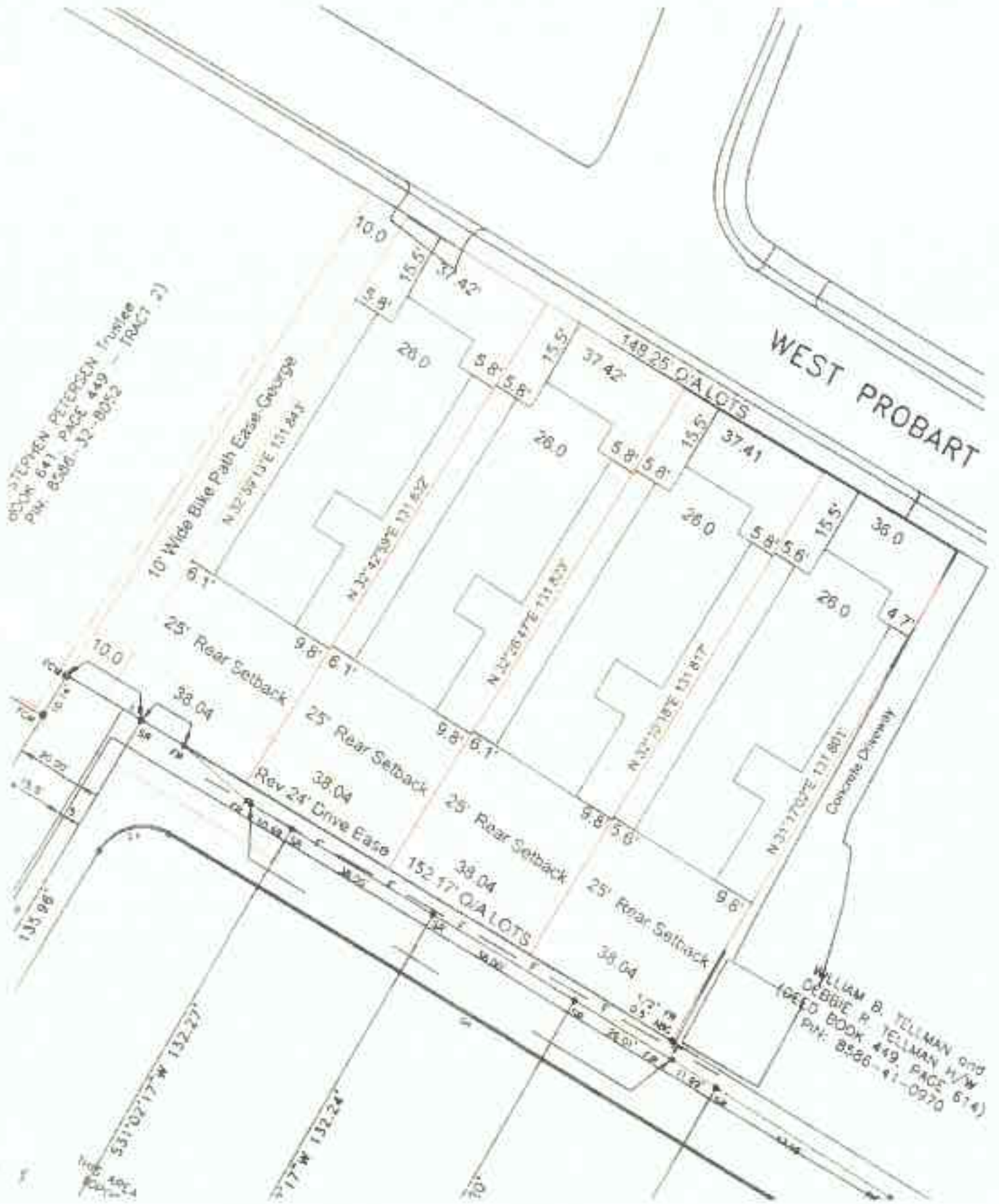
Susan Warren
Signature of Property Owner

4-23-19
Date

[Signature]
Signature of Agent (if different than property owner)

4-23-19
Date

VARIANCE Request to be heard by BOA on: May 7, 2019



WEST PROBART

OLD TOWN PETERSON TRUCKS
P.M. 8586-32-8052 - TRACT 2)

WILLIAM B. TELLMAN and
OEBBIE R. TELLMAN H/W
(SEE BOOK 449, PAGE 614)
P.M. 8586-41-0970

10' Wide Bike Path Easement
N 132.04' 131.814'

Rev 24' Drive Easo

Concrete Driveway
N 33' 17.00" E 131.801'

152.17' Q/A LOTS

149.25' Q/A LOTS

25' Rear Setback

25' Rear Setback

25' Rear Setback

25' Rear Setback

25' Rear Setback

10.0

9.8' 6.1'

9.8' 6.1'

9.8' 5.8'

9.8'

10.0

28.04

38.04

38.04

38.04

38.04

10.0

28.0

28.0

28.0

28.0

15.5

5.8' 5.8''

5.8' 5.8''

5.8' 5.8''

37.42

37.42

37.41

36.0

15.5

15.5

15.5

4.7

531' 02" 17" W 132.27'

17' W 132.24'

70'

15' 10" 05' 00"

28.0' 18"

11.92'

**Brevard Planning Department
Brevard, North Carolina**

APPOINTMENT OF AGENT

I, SUSAN WARREN, owner of property located at (street address) 279 PARBART ST BREVARD, NC 28712 and identified by the Transylvania County Tax Assessor's Office as PIN: 8286-31-9966-000 located in Transylvania County, North Carolina, do hereby appoint GEORGE LENZE to represent me in filing an application for CATEGORY TYPE III, VARIANCE REQUEST with the Brevard Planning Department and before the Brevard Board of Adjustment.

I further authorize GEORGE LENZE to act as my agent in all matters, formal and informal, and to receive all official correspondence as it relates to the CATEGORY TYPE III, VARIANCE REQUEST and hearing.

Susan Gallaway Warren
Property Owner Signature

279 PARBART ST BREVARD, NC 28712 828 280-5189
Property Owner Mailing Address and Telephone Number

4-23-19
Date of Signature

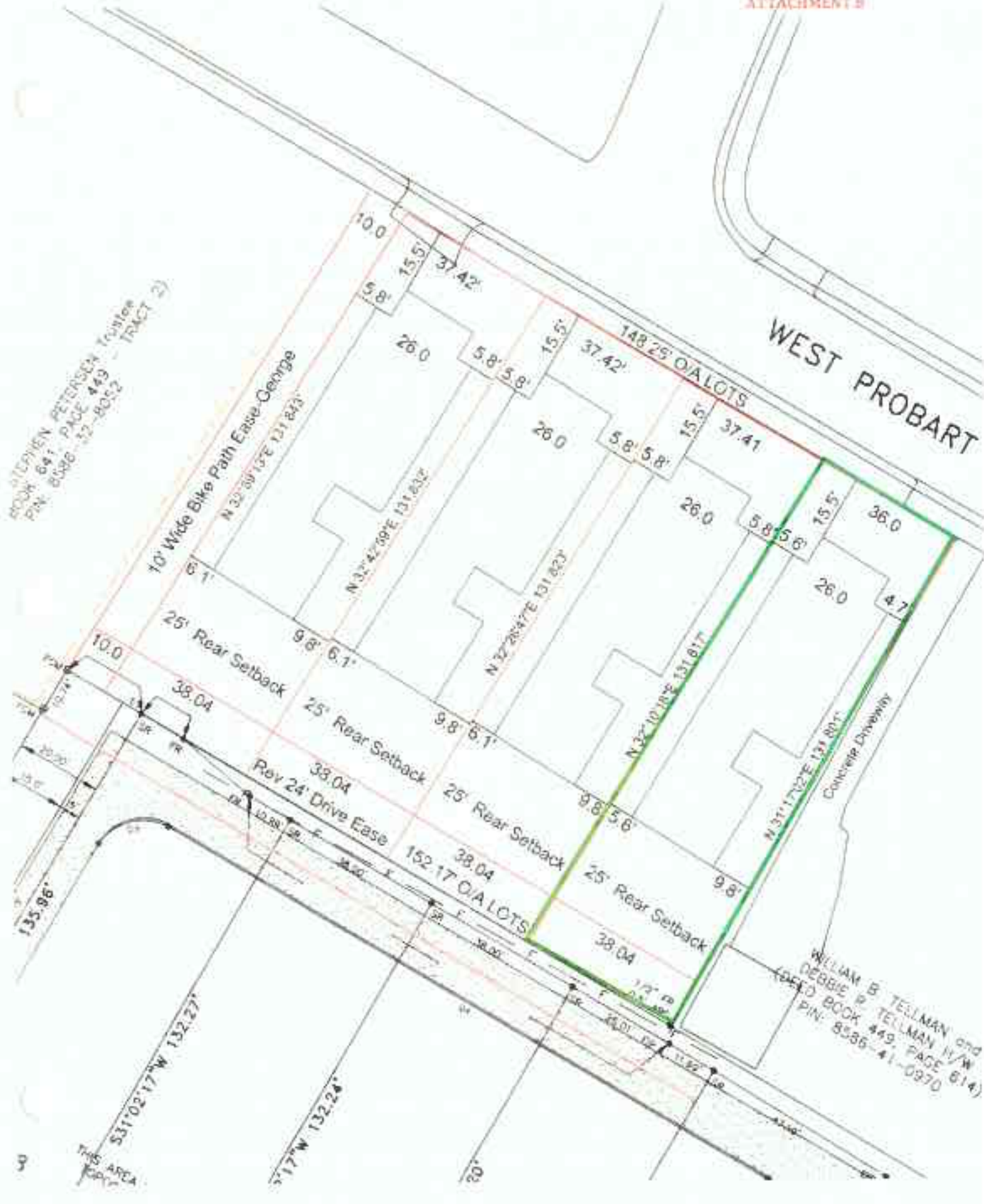
Agent's Information: Name GEORGE LENZE
Address 1636 EVERETT RD.
PISCAN FOREST, NC 28768
Telephone & Fax 828 577-9707
Email george.lenze@icloud.com

BOA Case Number VAR-19-002

BOA Hearing Date: May 7, 2019

STEPHEN PETERSCH Trustee
BOOK 647 PAGE 449
PIN: 8386-32-8052 - TRACT 2)

WEST PROBART



WILLIAM B. TELLMAN and
DEBBIE R. TELLMAN H/W
(845) BOOK 449 PAGE 814
PIN: 8386-41-0970

7.5' AREA
TOP AREA



**CITY OF BREVARD BIKE PATH &
SIDEWALK CONSTRUCTION
EXHIBIT TO LENZE AGREEMENT**



- Property Line
- Water Line
- Gas Line
- Electric Line
- Sanitary Sewer Line
- Storm Sewer Line

- 1000' Street Setback
- 100' Right-of-Way
 - 40' Street Easement
 - 20' Street Easement
 - 10' Street Easement
 - 5' Street Easement



Exhibit to Agreement of 5mp Fee Waiver
Aerial Photo - 2015
Project Data - Trinity/Venue County
Map Created: April 15, 2019