

MINUTES
BREVARD BOARD OF ADJUSTMENT – REGULAR MEETING
Tuesday, December 5, 2017– 3:00 PM – Council Chambers

The Brevard Board of Adjustment met in regular session on Tuesday, December 5, 2017 at 3:00 PM in Council Chambers of City Hall.

Members Present: Judith A. Mathews, Chair
 Coty Ferguson
 Kevin Jones
 Tad Fogel
 Allen Delzell

Members Absent: Tom Tartt, Vice Chair
 Paul Welch

Staff Present: Daniel Cobb, Planning Director
 Janice H. Pinson, Board Secretary
 Brian Gulden, Board Attorney

Other: Bruce Roberts, Applicant
 Belinda Roberts

I. Welcome and Introduction of Board Members

Chair, J. Mathews called the meeting to order at 3:00 PM.

II. Certification of Quorum

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

III. Approval of Agenda

J. Mathews requested a motion to approve the agenda. K. Jones moved to approve, seconded by T. Fogel, unanimously carried.

IV. Approval of Minutes

J. Mathews requested a motion to approve the Minutes of the October 3, 2017, meeting. Motion by T. Fogel to accept the minutes as presented, seconded by A. Delzell.

J. Mathews requested that revisions be made to the minutes and that action be delayed until the next meeting. Motion to delay action on minutes by C. Ferguson, seconded by A. Delzell, unanimously carried.

V. New Business

a. Consideration of Application for Special Use Permit #SUP-17-003 by Bruce V. Roberts, BPOE Investments, LLC, to amend existing special use permit #SUP-14-203 on property located at 100 Elks Club Road within the corporate limits of the City of Brevard, in a General Residential (6) zoning district and further identified by PIN# 8586-90-0146-000.

J. Mathews opened the hearing and polled the Board as to conflicts of interest and ex parte communications. There were none.

J. Mathews, Chair, explained the quasi-judicial hearing process.

Bruce and Belinda Roberts were asked if they had any conflicts with any of the board members. They responded that they did not.

The following were sworn: Daniel Cobb, Planning Director, Bruce Roberts, Applicant and Belinda Roberts.

D. Cobb stated that the hearing was properly advertised, property posted, and neighbors were notified. He presented his staff report and gave a history of the case. Staff Report is attached and labeled, Exhibit "A".

He further gave the Board examples of similar properties: French Broad Place, Brevard Lumber Yard.

D. Cobb stated that Mr. Roberts had provided him with a little more information that he would be presenting to the Board, and that there have been no complaints from the neighbors.

J. Mathews asked, if they were not required to obtain permits, what tool would be used to regulate.

D. Cobb explained that no regulatory actions would be in place other than complaint driven code enforcement. He made the suggestion that if the board was concerned, they could require Mr. Roberts to file an annual report with staff listing the tenants occupying the property.

C. Ferguson asked for an example of a use that would not fall into professional services.

D. Cobb referred the board to his staff report which included the definition for professional services, and gave examples of uses listed separate from professional services.

Bruce Roberts provided pictures of the facility. He thanked the board for letting them present their case. He explained that his father was a land planner and that he grew up around it, that he understands it, and has a great respect for planning. He stated that there were two (2) issues before the board, to remove the condition of zoning permits for each tenant, and the approval of his site plan for future expansion. He requested that the board consider each item separately.

He further explained that one side of the building provided office space for his business, Carolina Financial, and the other side for his wife, Belinda's business, a wellness center.

Belinda Roberts testified that the Carolina Financial side of the building is a very open office space, and federally regulated and was designed with this in mind. She went on to explain the different uses of the wellness center space, also designed for a specific purpose, with treatment rooms for massage, acupuncture, yoga, pilates. That they have a community room that is used for different purposes, including the Quakers use it on Sundays for their services. That they have a commercial kitchen that is used for health oriented businesses. She stated that they envisions good things happening at their property. She further explained that there is a moss business on the property.

A. Delzell asked if they had any additional space available.

Applicant answered that the only available space would be the community room for classes or meetings, that no other space was currently available.

T. Fogel asked about the use of the commercial kitchen as a commissary for food trucks.

Applicant answered that Hanes Hoffman had used it 1 or 2 mornings a week, but that he is no longer in business.

C. Ferguson asked about the moss business on the property.

Applicant responded that it was only on the exterior of the property.

J. Mathews questioned the Applicant as to whether or not all tenants had obtained zoning permits.

Belinda Roberts responded that they did not realize until their most recent tenant, that they were required to get zoning permits for each tenant. Once realized she stated that they knew that they needed to try to change this because it is a deterrent, and an extra burden for their type of tenants who are not accustomed to this process to rent space.

Bruce Roberts explained that most of the neighbors were thrilled that they purchased the property to repurpose. The zoning permits condition was sprung on them at the last minute, and further that he had never heard of commercial property being required to have each tenant obtain a zoning permit.

Mr. Roberts further explained that their commercial kitchen has been an incubator for new business, giving examples of juicing, gluten free baking, etc. and stated that their property is not a revolving door, but an evolving door. He also explained that there is a big turnover in the wellness business.

C. Ferguson asked if the moss business, food service and church service are all covered under the professional service category.

D. Cobb explained that there is no use, other than a restaurant that a commercial kitchen would fall under. He further explained that religious and the moss business would be allowed uses in the general residential zoning district.

He explained that he had looked at the Brevard Lumber Yard as an example of uses allowed. He further explained that he really could not speak to the commercial kitchen other than that most churches usually have one.

C. Ferguson asked if approved, would these additional uses still need to get permits.

D. Cobb deferred to Board Attorney, Brian Gulden to answer. Mr. Gulden explained that if the property is encumbered by a special use permit allowing professional services, they cannot pick out separate uses allowed for general residential zoning districts.

Bruce Roberts explained that the wellness business is to promote health of mind, body and spirit and that he realizes the codes do not really address these uses. He explained that the moss business is exterior only and that the owner, Annie, is a designer, speaker, and sells the moss to customers.

D. Cobb explained that he has seen where the moss is being grown, and that there is no structure or greenhouse of any kind.

Bruce Roberts explained the site plan, stating that there have been historical problems with run off affecting the neighboring properties, because the run off hits the foundations of the neighbors below. They would like to remove pavement/parking spaces and build a terraced garden to correct the run off issue, but to also garden. They also plan to build an approximately 30' X 30' shed to store a tractor and garden tools.

They also have plans to bring the rear of the building up to make handicap accessible, level the parking area and make two (2) way traffic flow more efficiently. He stated that they have 30 parking spaces, plenty to meet their needs. They also plan to plant trees for a better buffer and for security purposes.

After further discussion, T. Fogel asked D. Cobb if they need to make two (2) separate motions.

D. Cobb responded, whatever the board desired.

J. Mathews asked D. Cobb if there were any similar situations within the City of Brevard that do not have to get individual permits. She further asked if this is a unique situation because it is located in a general residential zoning district.

D. Cobb stated that he could not think of any special use permits off the top of his head. He explained that it was unusual, but that there are other businesses located in general residential areas such as the VFW and Moose Lodge.

J. Mathews asked if the City had any concerns about changes in traffic patterns.

The Applicant stated that the biggest truck that enters the property is the City's garbage truck.

D. Cobb explained that if the site plan was approved, then staff can review, make sure plan is generally consistent with Board's approval, and not require the Applicant to have to come before the board again.

J. Mathews, Chair, asked Mr. Roberts if they had any rebuttal testimony.

Mr. Roberts responded that they did not, that Staff had been terrific to work with on the matter. He further stated that they would like for the board to approve their requests.

D. Cobb stated in closing that there have been no complaints from neighbors, the site plan was understandable for future development, and that the Roberts have been very forthcoming in working with staff.

J. Mathews closed the hearing for the Board's deliberation.

K. Jones made a motion that the two (2) requests be handled separately, seconded by C. Ferguson and unanimously carried.

K. Jones made a motion to approve the site plan as presented, knowing that any development has to be generally consistent with what has been presented; that the use meets all the requirements and specifications of the ordinance and any adopted land use plan and is in harmony with the general purpose and intent and preserves its spirit. The proposed use of the structure will be consistent and compatible with the area. The site plan will not be injurious to the safety of the general public. The site plan and structure in general is consistent with the surrounding area, and is enhancing the area, making the property ecologically better, and further made the recommendation that no further conditions be applied.

Motion seconded by C. Ferguson.

J. Mathews explained that the motion was for the site plan only, and asked B. Gulden, Board Attorney if he had any advice to offer the Board.

B. Gulden said he had nothing to offer on the motion.

The motion unanimously carried.

K. Jones asked if the board's attorney had guidance for them on the issue of individual permitting, asking if there was any advice for the board.

B. Gulden advised the board that they needed to acknowledge and note any change from 2014 that would allow the board to change their earlier findings. Explaining that one court cannot rule out another, and the board needs to indicate what is different now. Example: traffic concerns.

J. Mathews read the condition from the original decision as follows:

Requiring prospective tenants to obtain a zoning permit by demonstrating that they qualify as professional services will help to ensure that the use of the property will be functionally compatible with the surrounding area.

C. Ferguson stated that he felt it an excessive burden to ask each tenant to get a permit. Further stating that if the applicant allows uses not allowed under the special use permit for professional services, then they will be in violation of their special use permit.

J. Mathews stated that a complaint would be the only way we would ever know. She asked how the UDO deals with special use permits.

B. Gulden read the special use permit requirements from the UDO. He further explained that something has to change to warrant an amendment to the special use permit.

After discussion of the reasons for the change, and for removal of the condition based on three (3) year history of good operations, and due to the fact that the board has previously removed conditions from special use permits.

Also, they have been compliant, no complaints, that neighbors were in attendance tonight, and did not make any objections.

B. Gulden further explained to the Board that they need to recognize a change in order to amend or remove conditions previous made by the board.

K. Jones made a motion to eliminate the condition in the original special use permit #SUP-14-203, stating that each tenant be required to obtain a zoning permit by demonstrating they qualify as professional services, that this is to ensure that the use be compatible with the surrounding area. That based on the three (3) year history of the Roberts owning the property, that the requirement to get an individual zoning permit for each business is excessive and takes business owners away from their businesses, that the Roberts have shown that they are exceptional property owners, there have been no complaints, and the property continues to be enhanced and it is not injurious to the neighbors or surrounding area, and that the Board finds these sufficient reasons to eliminate the one condition of the special use permit.

Seconded by T. Fogel, unanimously carried.

VII. Unfinished Business - None.

VIII. Remarks – None.

X. Adjourn

There being no further business, A. Delzell moved to adjourn, seconded by C. Ferguson, unanimously carried. The meeting adjourned at 4:44 PM.

Judith A. Mathews, Chairman

Janice H. Pinson, Board Secretary