

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, June 7, 2022 – 3:00 PM

The Brevard Board of Adjustment (BOA) met for a regular meeting on Tuesday, June 7, 2022, at 3:00 PM.

Members Present: Kevin Jones, Chair
Allen Delzell
Tad Fogel
Tom Tartt

Members Absent: Judith A. Mathews, Vice Chair

Staff Present: Aaron Bland, Assistant Planning Director
Katherine Buzby, Planner
Janice Pinson, Board Clerk
Brian Gulden, Board Attorney

Others: Joe Fennessy, Applicant

I. WELCOME

Chair K. Jones 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 Jones had the Clerk certify that a quorum of the Board was present.

IV. APPROVAL OF AGENDA

Motion to approve the agenda by T. Fogel, second by T. Tartt, carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the May 3, 2022, as submitted by A. Delzell, second by T. Tartt, motion carried unanimously.

VI. APPROVAL OF ORDERS

Motion to approve Order VAR-22-003, Khadijahs, Inc. by T. Fogel, second by T. Tartt, unanimously carried.

VI. NEW BUSINESS

a. VAR Request – Joe Fennessy #VAR-22-004

Request of Joe Fennessy for a variance from UDO Chapter 4.8.E.2 to allow an accessory structure in the front yard. The property is located in the General Residential (GR) zoning district within the Extraterritorial Jurisdiction the City of Brevard, further identified by PIN# 8575-94-1192-000.

The matter was properly advertised, property posted, and letters were mailed to the neighboring property owners.

Chair Jones explained quasi-judicial procedures.

Brian Gulden, Board Attorney explained requirements to have standing.

The Board was polled as to conflicts of interest and exparte communications. There were none.

The Applicant, Joe Fennessy was polled as to conflicts of interest and he had none.

Chair Jones explained to Mr. Fennessy that all four board members in attendance would be required to vote to grant the variance because a super majority vote is required to grant a variance. Mr. Fennessy was given the option to postpone the hearing or proceed and he chose to proceed.

The following were sworn by the Board Clerk: Joe Fennessy, Katherine Buzby, and Aaron Bland.

Chair Jones opened the hearing.

Katherine Buzby presented her staff report a portion of which follows:

Background

The applicant, Joe Fennessy, owns property at 4 Boomer Lane, which is located in the General Residential-4 (GR-4) zoning district and in the City's Extra Territorial Jurisdiction (ETJ). The parcel identification number is 8575-94-1192-000.

The applicant is requesting a variance from the requirement that accessory buildings have to be located in the side or rear yard.

Discussion

The current UDO language per Section 4.8.E.2 states that “Accessory structures shall be located only in the side or rear yards, except for gazebos, private garages, and carports”. Mr. Fennessy is asking for a variance to put a 28’ by 24’ greenhouse in the front yard of his property.

The applicant’s property is approximately 1.47 acres and the preexisting house (built in 1964) was built towards the rear of the property. The rear yard calculated slope (per the Planning Dept. ArcGIS program) is estimated at 25%. Mr. Fennessy states that it is too steep for the structure plus does not have adequate light due to the neighbor’s trees. The western side yard does not have any available space to put the greenhouse and the eastern side yard contains the septic field that cannot be built upon.

Mr. Fennessy is proposing to put the greenhouse in the southern front yard approximately 25 feet from the front lot line and 30 feet from the side yard lot line. His property currently has evergreen trees as a buffer and the greenhouse will be recessed four feet into the ground. The height of the greenhouse will be below the top of the evergreen trees.

A Notice of Hearing was mailed, the property was posted, and the meeting was advertised per General Statute 160D-406.

There were no questions for Ms. Buzby.

Joe Fennessy testified that the greenhouse would be recessed into the earth, that the placement is necessary because of the topography and that it is really the only place left that it could be located and further, that the area gets the best sunlight. He further explained that a buffer of trees exists and more have been planted that will block the view of the greenhouse from the road and from all neighbors except one until the newly planted trees grow taller. He stated that the septic and drain field take up the largest portion of the front yard area and this limits where he can place the accessory structure, a greenhouse.

Mr. Fennessy was asked when he purchased the property and if he had planned to put the greenhouse in that location when he purchased the property.

Mr. Fennessy testified that he purchased the property in 2011 and that he did not have plans to place a greenhouse on the property when he purchased it, and further explained his reason for wanting it now is that he wants to better regulate the food supply that his family eats. He further explained that he has made no changes to the septic system since 2011 except that he has expanded the drain field.

Aaron Bland, Assistant Planning Director explained that steep slopes of 25% or greater cannot be built on per the current ordinance.

There being no further questions.

Chair Jones closed the hearing.

After a brief discussion T. Fogel made the following motion:

With regard to variance request **22-004**, the application of Joe Fennessy, seeking a variance from Chapter 4.8.E.2 of the UDO for property located at 4 Boomer Lane, Brevard, North Carolina, within the General Residential (GR) Zoning District, I move the Board to make the following findings of fact:

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

The property has steep slopes of 25% and greater that would not allow building upon.

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

Topography would prohibit the placement of the accessory structure in the side or rear yard.

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

The septic system and drain field that takes up a major portion of the yard was existing when the property was purchased.

- 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.

The applicant has planted trees to buffer the yard and greenhouse from the road and neighbors.

Accordingly, I further move the board to **GRANT** the requested variance to allow the accessory structure in the front yard.

Second by A. Delzell unanimously carried, and variance was granted.

Applicant was instructed to get the necessary zoning permit for the structure.

VII. UNFINISHED BUSINESS

B. Gulden explained standing to the Board in further detail.

VIII. REMARKS - None.

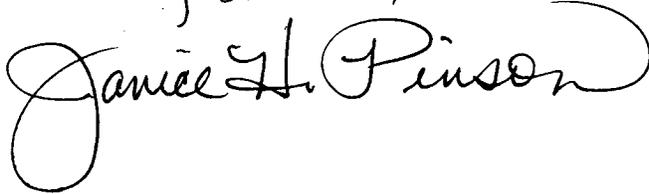
IX. ADJOURN

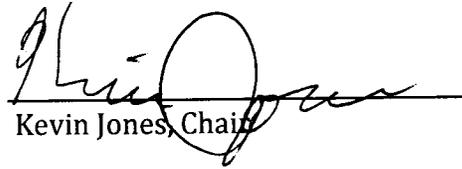
A. Delzell moved, seconded by T. Fogel that the meeting adjourn. Motion carried. Meeting adjourned at 3:35 PM.



Janice H. Pinson, Board Clerk

Emily Brewer, Interim





Kevin Jones, Chair