

MINUTES
BREVARD BOARD OF ADJUSTMENT REGULAR MEETING
Tuesday, July 5, 2022 – 3:00 PM

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

Members Present: Kevin Jones, Chair
Judith Mathews, Vice Chair
Allen Delzell
Tad Fogel
Peter Offen

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

Others: Randy Baron, Applicant
Jerry and Don Brown, Applicants

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 with the amendment to hear item b. SUP-22-003 by Randy Baron first by J. Mathews, second by T. Fogel carried unanimously.

V. APPROVAL OF MINUTES

Motion to approve the minutes of the June 7, 2022, as submitted by A. Delzell, second by T. Fogel, motion carried unanimously.

VI. APPROVAL OF ORDERS

Motion to approve Order VAR-22-004, Joe Fennessy, by T. Fogel, second by A. Delzell, unanimously carried.

VI. NEW BUSINESS

b. Consideration of Application for Special Use Permit #SUP-22-003 by Randy Baron, to allow for landscape services company in the Residential Mixed Use (RMX) and General Residential zoning district as required by UDO Chapter 3.35 on property owned by Randy and Joyanne Baron located at 700 Old Hendersonville Highway, within the extraterritorial jurisdiction of the City of Brevard, and further identified by PIN# 8596-24-3901-000.

Chair Jones explained quasi-judicial procedures and parties with standing.

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

Mr. Baron had no conflicts of interest with any of the Board members hearing the case.

The following were sworn by the Clerk to the Board: Randy Baron and Katherine Buzby.

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

An application for a Special Use Permit (SUP) was submitted to the City on May 23, 2022 by Mr. Randy Baron, owner of a 17.34-acre parcel located at 700 Old Hendersonville Hwy, PIN# 8596-24-3901-000. Mr. Baron has operated his landscaping company on this parcel since 2002 and would like to expand by adding an additional structure. The current zoning for his parcel is split between General Residential-4 (GR-4) in the back and Residential Mixed Use (RMX) up front. The parcel also has areas of floodplain and floodway, as depicted on the map (Attachment C). The proposed expansion would not be in the special flood hazard area, but the use itself is considered existing, non-conforming without a Special Use Permit. According to Section 14.2.B of the UDO, "A nonconforming, non-residential use shall not be expanded, changed to another non-conforming use, or enlarged, nor shall such a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located (either attached or detached)."

Discussion

Mr. Baron would like to add another building on the property behind the current principal structure that measures 12' by 46'. The building will function as an office for the landscaping operations and will be ADA compliant including a handicap parking space.

Chapter 2 of the UDO requires "Landscaping Services" to obtain a Special Use Permit to be allowed in the GR-4 zoning district, and it must also meet additional standards outlined in Section 3.35 of the UDO:

1. Equipment storage shall be permitted to include man-operated or mechanical equipment or other machinery that is in operable condition. The storage of inoperable vehicles is prohibited for this use.
2. All outdoor storage shall be located in the side and/or rear yard only.
3. Equipment storage and facilities shall be screened from off-site view from adjacent properties by a Type E buffer yard.
4. Storage of odorous materials including but not limited to manure, compost, and fertilizers shall be located at least 150 feet from property lines adjacent to GR and RMX parcels. The administrator may reduce the required setback of openly stored odorous material when measures have been taken to mitigate the effect on neighboring property as determined by the administrator.
5. Site grading shall be completed to ensure that surface run-off is directed away from any, and all material storage areas.
6. Excessive noise, dust, odor, vibration or light shall not be generated to disturb the surrounding neighborhood.
7. The hours of operation for material pick-ups, delivery, and outdoor processing operations shall be limited to 7:00 a.m. to 6:00 p.m.
8. In GR districts, parcels shall be at least two acres in size.
9. When a special use permit is required, the board of adjustment may impose additional conditions that are needed to protect public health, safety and welfare or to address unique characteristics of a particular site.

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

Mr. Baron stated for the record that the building size has changed and will be 12' X 36' and will be used for office space for his landscaping business.

There were no questions for Staff.

Mr. Baron testified that he has owned and operated his landscaping business on the property since 2002. That he applied for and received a special exception permit in 2004 for a driving range on the property that is still operating. He further explained that he is requesting the special use permit to add an additional building because a landscaping business requires a special use permit to operate in the general residential zoning district.

There being no further questions, the hearing was closed.

T. Fogel made the following motion, noting the corrected building size of 12' X 36':

With regard to Case No. SUP-22-003, seeking a Special Use Permit to allow for landscape services company in the General Residential-4 (GR-4) zoning district on property located at 700 Old Hendersonville Highway, within the Extra-Territorial Jurisdiction of the City of Brevard, I move the Board to make the following findings of fact:

- a) The use meets all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit;

The business has been in operation since 2002 and has not compromised the character of the neighborhood, or property values to date.

- b) The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible with the surrounding area; and
- c) The proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.

Accordingly, I further move the Board to **GRANT** the requested special use permit to allow for landscape services company on property located at 700 Old Hendersonville Highway, within the ETJ of the City of Brevard, in accordance with and only to the extent represented in the application and plans

“and subject to the following conditions:”

The use must comply with the additional standards outlined in Section 3.35 of the City of Brevard’s Unified Development Ordinance.

Second by J. Mathews, unanimously carried.

- a. Consideration of Application for Special Use Permit #SUP-22-002 by Jerry R. Brown and Don J. Brown and Big, Inc. SUP-22-002, to allow a campground in the General Residential (GR) zoning district on property owned by Jerry R. Brown and Don J. Brown and Big, Inc, located at 722 Davidson River Road and 30 Riverside Park Drive, within the corporate limits of the City of Brevard, in the General Residential (GR) zoning district and further identified by PIN# 8597-61-7851-000 and 8597-61-9288-000.

Chair Jones explained quasi-judicial proceedings and parties with standing.

The following people requested consideration to have standing:

Ralph Frady 61,99 and 125 Dirt Road, Pisgah Forest

Jay Kiser, 71 Sherwood Village Lane, Brevard

Clement Swift, 858 Davidson River Road, Pisgah Forest

Caitland Klassovity, 117 First Street, Pisgah Forest

Martin Galloway, 33 Robin Crest Drive, Pisgah Forest

Samuel C. Simpson, 668 Davidson River Road, Pisgah Forest

Tad Fogel recused himself from the hearing because he is serving on a board that have had discussions with the Browns about their proposed project.

Attorney Gulden explained to the Applicants that with Mr. Fogel recusing himself 3 of the remaining 4 board members would have to vote in favor of the special use permit for it to be granted. He further explained that they had the option to continue to a later date for additional board members to hear the case.

Don and Jerry Brown stated that they wished to proceed with the hearing.

Attorney Gulden explained that parties with standing had to prove they would suffer special damages if the special use permit was granted.

The following were sworn: Ralph Frady, Jay Kiser, Clement Swift, Caitland Klassovity, Martin Galloway, and Samuel C. Simpson.

Ralph Frady stated that he has standing because his property adjoins the parcels. He stated he has a special needs child and that the neighborhood is a quiet neighborhood and the campground would create noise, litter, pollution and possibly fire hazards.

Dr. Delzell moved that Mr. Frady had standing, seconded by J. Mathews, unanimously carried.

Clement Swift stated that he owns property to the northeast of the parcels. That he operates an organic farm on his property. He is concerned about additional flooding due to more impervious surface being created by the campground. That flooding can be very damaging to his crops and his livelihood. He has concerns about how the wastewater will be handled and with flooding the possible contamination of his vegetables. He further has concerns about escaping in case of flooding because of the constraints which would possibly make for one way traffic.

Dr. Delzell moved that Mr. Swift had standing, seconded by J. Mathews, unanimously carried.

Caitland Klassovity stated that she owns adjoining property, she has concerns about noise and light pollution, sanitary issues, sustainability and preservation of the land and wildlife. She believes if allowed the campground will affect her property value and increase the risk of flooding.

K. Jones moved that Ms. Klassovity had standing, second by J. Mathews, unanimously carried.

Martin Galloway stated that his land abuts the proposed campground site and that he has owned the property for a very long time. He believes that if not handled properly that the development of a campground could affect his land value. He really just wants the outcome to be what is best for everyone.

K. Jones moved that Mr. Galloway not be granted standing but that a public comment time could be established later in the meeting. Second by Dr. Delzell, unanimously carried.

Samuel Simpson stated that he owns adjoining property and farms the property. He leases mobile home spaces from the Applicant and is concerned about losing the spaces and the income it generates. He also has concerns about noise, smell, rip rap coming into their neighborhood.

Dr. Delzell moved that Mr. Simpson had standing, second by K. Jones, unanimously carried.

Jay Kiser stated that he owns multiple trailer spots on property adjoining the proposed site. He stated that his tenants have concerns about smoke, noise, light pollution and flooding concerns and infrastructure not being adequate for the traffic load. He stated that he primarily speaking on behalf of his tenants. That he is friends with the Applicants and wants them to be successful.

Dr. Delzell moved that Mr. Kiser had standing, second by J. Mathews, vote carried 3 to 1 with K. Jones voting nay.

Attorney Gulden explained that it is not the duty of the Board to educate the public.

Chair Jones polled the Board as to ex parte communications and conflicts of interest. There were none.

The Applicants were asked if they had any objection to any Board members. There were none.

The following were sworn by the Board Clerk: Jerry Brown, Don Brown, Emily Brewer and Paul Ray.

Emily Brewer, Planner presented her staff report a portion of which follows:

Background

An application for a Special Use Permit (SUP) was submitted to the City on May 16, 2022 by Jerry R. Brown, Don J. Brown and Big, Inc. (“the applicants”), the owners of two parcels located at 722 Davidson River Road and 30 Riverside Park Drive in the City of Brevard’s Extra-Territorial Jurisdiction (ETJ). The properties are identified by PINs 8597-61-7851-000 and 8597-61-9288-000, respectively.

The applicants would like to develop the property as a campground with recreational vehicle (RV) facilities. The preliminary site plan includes areas for tent camping, 84 RV parking spots, a store, and a pool (Attachment B). Neither stand-alone RVs nor RV parks are permitted in any zoning district of the City’s planning jurisdiction. However, “campgrounds” are allowed in the General Residential zoning district with a Special Use Permit, and they are defined as:

Campground/artist colony: Establishments accommodating campers and/or artists and their equipment, including tents, tent trailers, travel trailers, and recreational vehicles. Facilities and services include cabins, washrooms, food services, recreational facilities and equipment, and organized recreational activities.

The current zoning for the parcels is General Residential – 4 (GR-4). The “Use Matrix,” located in Chapter 2 of the Unified Development Ordinance, sets forth the manner by which certain uses may be permitted within the various districts. As mentioned above, a “Campground/Artist Colony” must obtain a Special Use Permit to be allowed.

Site and Surrounding Conditions

The parcels proposed for the SUP total 29.2 acres and are zoned GR-4. They are surrounded on all sides by GR-4, except to the west which is part of the Davidson River Village Planned Development District (Attachment C). The adjacent uses include single-family residential and manufactured homes, and some parcels remain undeveloped.

The subject properties are situated in the Flood Hazard Prevention Area, with the majority of the property within the 100-year floodplain, as depicted in Attachment D. As a condition of all permits issued for properties in the floodplain, the development must strictly adhere to FEMA regulations and the City’s flood damage prevention ordinance (Code of Ordinances Section 34-3). This includes the elevation of all structures at least two feet above the highest adjacent grade, certification of no adverse impacts, etc. Specific standards are included for recreational vehicles in the floodplain. Per Brevard Code of Ordinances Sec. 34-32.6, recreational vehicles shall either:

- a) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or*
b) Meet all the requirements for new construction.

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

Staff Recommendation

Staff proposes adding the following conditions to the Special Use Permit:

1. The two parcels shall be recombined or subdivided to separate the pre-existing nonconforming manufactured home park from the campground.
2. Except as otherwise provided in chapter 34 of the Code of Ordinance, no structure or land shall be located, extended, converted, altered, or developed in any way within the special flood hazard area, nor shall any floodplain development permit be issued until the administrator makes a determination that the project would not increase danger to life or property and would have no adverse impact based upon the affirmative findings of Section 34-33(b)(1 thru 11).

Upon questioning by Mr. Frady as to whether or not the City meet all the advertising requirements.

Ms. Brewer indicated that the City had met all the required regulations.

She further explained that any development would be required to adhere to the City's development regulations, including floodplain development regulations.

Mr. Swift asked who the Administrators are.

Ms. Brewer explained that Staff are the Administrators and further that the City would hire engineer consultants to review aspects of the development if necessary.

Attorney Gulden stated that Staff can be asked questions about the UDO.

Don Brown, Applicant stated that they have lived here for 65-70 years. He stated that making money is what makes the world go around and that they have rented mobile home spaces on the proposed site but that there was never any guarantee that the mobile homes would be there forever. He explained that they do not want any negative relations with any of the neighbors. He explained that three (3) mobile homes would need to be removed. Mr. Brown went over their proposed site plan, explaining that they 89 sites is an estimate. He said that a professional organization would be hired to manage the campground and they would be responsible for controlling noise, etc.

Jerry Brown explained that the development would have to adhere to City regulations and that the sewer system would have to meet the Department of Natural Resource requirements. That there were many regulations that would be required to be met for the development.

Mr. Brown further explained that they planned to have soil samples taken in approximately 30 days, that the sewer system will have to be designed and that the approved sewer system will determine how many campsites will be allowed. He further explained that they have been working with Andrew Bick a floodwater design engineer and that the City will make sure that they abide by what is required.

Don Brown stated that they do not want to do anything to negatively affect the neighbors and that he trusts that the City will guide them so as not to do anything detrimental to the neighborhood.

Peter Offen asked if they knew the number of sites that would be in the tent camping section.

Don Brown responded that they had not determined that number to date.

Mr. Offen asked about the proposed store.

Mr. Brown responded that it would be an office and a general store providing camping supplies, bike rentals, etc.

When asked if they would put a barrier up around the property, Mr. Brown answered that yes they picture a wooden fence and possible chain link in the rear part of the property and additional landscaping would probably need to be added.

When asked how close the campground would be to adjoining neighbors, Mr. Brown answered 60 foot because there is a Duke Energy right of way that he has had no luck in abandoning thus far. The grade was stated as approximately 6 foot for the length of the property.

Mr. Frady asked Jerry Brown if he trusted the City.

Jerry Brown stated that he could not answer that question.

Attorney Gulden sustained the objection.

When asked Mr. Brown stated that there would be dumpsters around the site to contain the trash.

Chair Jones explained that the Board is not allowed to make a decision based on the “what if’s”

Don Brown explained that the dog park would be double gated and that aggressive dogs would not be allowed in the park.

Mr. Kiser asked that the Applicants do their due diligence as much as possible. Address traffic, lights including traffic lights, what will be sold at the store, alcohol? NCDOT infrastructure. Will taxes go up were all concerns of he and his tenants.

Mr. Swift testified that public safety is his biggest concern. He read FEMA language about recreational vehicles in the floodplain. He presented data he had gathered on how many flash flood warnings and flood warnings had been issued in the last 3 years. He stated concerns about how the campers would be notified of a flood event and how they would exit the property.

Don Brown stated that they would probably go door to door notifications.

Chair Jones called for a 10-minute recess.

Chair Jones reconvened the meeting.

Mr. Frady testified that trying to get 89 recreational vehicles out before a flooding event gets bad would not happen. He explained that they have a tiny self-sufficient farm and are trying to live a simple life and to be left alone. He explained his concerns about trash, safety during a flood event, light pollution that will disturb his and his livestock's sleep. He explained concerns about adequate infrastructure to handle the traffic, concerns about pollution but most of all concerns about escaping flood waters.

Mr. Swift called Emily Brewer, Planner as a witness. She explained that the UDO Chapter 34 would address flood standards and that any additional FEMA standards would be required to be met.

Mr. Swift asked what next steps would be in the process.

Ms. Brewer explained that the City would review all plans and make sure they meet the City's standards and specifications. That any conditions in the special use permit Order would have to be adhered to. She explained that all projects must meet the UDO requirements without exceptions and that no permit is issued until standards are met. When asked if there was a limit to the size of the development, she explained that the UDO did not regulate the size. She further stated that floodplain development permits would be required. When asked if a traffic study would be required, she explained that the project would not meet the industry standards to require a traffic study.

Attorney Gulden clarified that the site plan showed 89 sites and explained to the Board that they would be approving the development as shown on the site plan.

Mr. Swift stated that he had a surveyor determine the BFE to be approximately 4 feet above the ground. He stated that he did not feel from the perspective of public safety that the site could be evacuated timely. That there is no traffic light, and that the development would be injurious to public safety and welfare.

C. Klassovity stated that the development would not be visually compatible with the surrounding area. She stated concerns about protecting the environment and endangered species that live in the valley.

Mr. Simpson requested a copy of the site plan.

Don Brown stated that they do not want to upset anyone and that the City knows what they are trying to do and he asked the Board to make the best decision based on the testimony.

There was discussion about an additional exit along the back of the property, Cemetery Road.

Attorney Gulden explained that the Board could not place conditions on the permit that relate to state-maintained roads, that NCGS 136 governs NCDOT regulations. He further reminded the Board that the decision can only be based on the existing site plan submitted by the Applicant.

P. Offen asked if commercial buildings are allowed in GR4.

Emily read the UDO definition - *Campground/artist colony*: Establishments accommodating campers and/or artists and their equipment, including tents, tent trailers, travel trailers, and recreational vehicles. Facilities and services include cabins, washrooms, food services, recreational facilities and equipment, and organized recreational activities.

There were no further questions.

Mr. Frady requested public comment be allowed.

Chair Jones stated that he suggested public comment to allow people without standing to speak. Motion to allow 1 minute per person of public comment, second by Dr. Delzell, unanimously carried.

Mrs. Frady stated that Cemetery Road and Davidson River Road were a circle. She explained that she cannot swim, which raises the panic level in times of flooding and that she would not be comfortable trying to follow 40 rvs out of her neighborhood.

Mr. Frady apologized for his demeanor. He stated his lack of trust in government and FEMA. He further explained that the neighborhood did not need 80 rvs blocking their way out in a flood event.

He further stated concerns about light pollution and trash. He stated that they have livestock to also get out in a flood event. He said he would be concerned for their basic safety.

Public Comment was closed.

Attorney Gulden reminded the Board that under NCGS 160D every quasi-judicial decision shall be based on competent and substantial evidence. Stating that competent and substantial material as used under rules of evidence cannot include testimony of layperson as to particular uses, vehicular traffic or safety.

P. Offen stated that he had a number of concerns and that it made him uncomfortable that the rv sites are identified by number but not the tent camping sites, that a commercial store would operate in the general residential zoning district, and also safety and business operational concerns.

P. Offen made the following motion:

With regard to Case No. SUP-22-002, seeking a Special Use Permit for a campground in the General Residential-4 (GR-4) zoning district on property located at 722 Davidson River Road and 30 Riverside Park Drive, within the Extra-Territorial Jurisdiction of the City of Brevard, I move the Board to make the following findings of fact:

- a) The use meets does not meet all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit;

The Applicants cannot provide an estimate of the number of proposed tent sites, Application refers to rv park and campground but Applicant continues to refer to the project as an rv park. The commercial store on the site plan does not meet UDO requirements for the general residential zoning district. That the project appears to be more of an rv park than a campground and the UDO prohibits RV parks.

- b) The proposed use or structure will not, if developed according to the plan submitted and approved, be visually and functionally compatible with the surrounding area; and

A barrier may be required by the City, and would not be visually compatible with the surrounding area; the area is currently a residential neighborhood with agricultural uses and the lighting and noise from the campground would not be compatible with the neighborhood.

c) The proposed use or structure will be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.

The trestle on Davidson River Road is impassable for a recreational vehicle, and further impassible during heavy rain at the time of the application. The traffic congestion and increased waste production would be detrimental. The project sits in a 100 year floodplain and has flooded twice in the past 20 years. There is at least one business that relies on the property, and further the project if developed according to the plans would be detrimental to adjoining property values.

Accordingly, I further move the Board to **DENY** the requested special use permit to allow a campground on property located at 722 Davidson River Road and 30 Riverside Park Drive, within ETJ of the City of Brevard in accordance with and only to the extent represented in the application and plans

Second by Dr. Delzell.

There was discussion about possible other uses that would also create evacuation issues.

Attorney Gulden stated that other uses cannot be mentioned and that only the evidence presented can be considered by the Board.

Vote carried 3 to 1 to deny the special use permit. K. Jones, A. Delzell and P. Offen voted to deny and J. Mathews voted nay to deny.

VII. UNFINISHED BUSINESS

Attorney Gulden stated that when we have more new members to the board he would propose some training.

He further discussed that the board can only consider the findings of fact when considering an application.

VIII. REMARKS - None.

IX. ADJOURN

J. Mathews moved, seconded by A. Delzell that the meeting adjourn. Motion carried. Meeting adjourned at 7:34 PM.

Janice H. Pinson, Board Clerk

Kevin Jones, Chair