

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, July 21, 2021, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chairman Dale Rhodes presiding, to consider the requests below:

Board members present were: Dale Rhodes, Chair, District 3; Jack Higgins, Vice Chair, District 1; and Bill Huffman, District 5.

Staff members present were: Alex Esseesse, Assistant County Attorney; Jeffrey Ball, Zoning Manager; Paul Body, Planner II; and Michelle Adams, Administrative Secretary.

The Chairman, Dale Rhodes, called the meeting to order at 1:30 p.m.

Approval of June 23, 2021, Minutes

Motion by Bill Huffman, seconded by Jack Higgins to approve the June 23, 2021, minutes. The vote was unanimous.

Paul Body explained the function of the Board of Adjustment; Jack Higgins explained the definition of a hardship; and Dale Rhodes explained the procedures of the Board of Adjustment.

All applicants and speakers were sworn in by the Chairman prior to providing testimony.

1. (21PZ00034) Joseph Anthony Calderone

Requests a variance from Chapter 62, Article VI, Brevard County Code, Section 62-1402(4), to permit a variance of 28 feet to the 100-foot depth required in a TR-1-A (Single Mobile Home) zoning, the property is currently in a TR-3 (Mobile Home Park) zoning classification, on 0.14 acres, located on the northeast corner of Whaley Road and Mangrove Drive (6810 Whaley Road, Merritt Island) (Tax Account 2315419) (District 2)

Joseph A. Calderone, 637 Orange Court, Rockledge. He said he's there for them to consider a variance for his property because it meets the criteria for a hardship; in order for him to use the land the variance needs to be granted. He said he understands this is separate from zoning considerations which he has applied for and is coming up at their next meeting. He said the variance is reasonable, he only needs one; it meets setbacks and other criteria to make it buildable. He said it's his personal piece of property that he would build on for himself to live on.

Dale Rhodes asked if there was a mobile home currently on the property

Joseph A. Calderone said no.

Dale Rhodes asked if it was a vacant piece of land that he would put a mobile home on after the zoning takes place.

Joseph A. Calderone said yes, whatever is allowable.

Dale Rhodes asked if he divided it or if it was already divided.

Joseph A. Calderone said it exists as when the original owner lived on it and split it off. He said it avoided zoning changes for many years then the building was torn down several years ago. He said it's hooked into sewage for County park, when he goes to build he is not putting septic on it; it has water, sewage and power.

Bill Huffman asked if the sketch they have from Know It Now is the proposed configuration or current configuration. He said it's showing setbacks where he ends up with approximately a 40 by 40 pad.

Joseph A. Calderone said that's only to show what's buildable and that it meets the setbacks, it's not a proposal for a building.

Bill Huffman asked if the 40 by 40 pad was adequate for what he wanted to do.

Joseph A. Calderone said yes, the minimum was 600 square feet.

Bill Huffman asked if he would be coming back looking for a setback variance.

Joseph A. Calderone said no, this is the one; he will be putting a very minimal building on it. He said it's a small piece of property.

Jeffrey Ball, Planning and Zoning Manager said he will need to talk to the Health Department about what they will permit for a septic system. He said he understands that a stand-alone septic system, not on someone else's property, would be needed. He said that is something they permit, it's part of the review when he puts his mobile home on there. He said he should check with the Health Department to see if they will approve it or not.

No Public Comment

Joseph A. Calderone said as it exists it has a tie in to the sewage system for the County park, if he is allowed to use that, he won't need septic.

Dale Rhodes said they don't address that there, they're addressing allowing the size of the property to be used.

Joseph A. Calderone said he was answering his comments.

Dale Rhodes said he will have to look into that with the County Board of Health. He said his experience has been that he will have to have his own, they won't let him tie into another entity.

Joseph A. Calderone said historically it was tied in on previous building there; there's a pipe there.

Dale Rhodes said, codes have changed; he'll have to see what they say. He said he will review the six points. He read, do special conditions and circumstances exist which aren't applicable to any other land structures or buildings in the applicable zoning classification. He said from what he has seen and researched, there are other properties in the area that are similar in size and have properties on them. He said there haven't been variance requests in that area but at some point, somebody built on the properties, likely prior to changes. He said there are special conditions that exist since other properties build before the current codes. He read, the special circumstances and conditions don't result from actions from the applicant. He said he didn't divide the property or subdivide it, it was done by other entities prior to him acquiring it. He read, that granting the variance and request won't confer on the applicant any special privileges that are denied by the provision of the Chapter to other lands, buildings and structures of identical zoning classification. He said if faced with the same situation on another piece of property, they would come to the same conclusion. He

read, literal enforcement of the provision of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in an identical zoning classification or provisions of this Chapter will constitute unnecessary and undue hardships on the applicant. He said that's correct; if they don't give the requested variance, he wouldn't be able to use the property at all. He said the hardship provision addresses that specifically. He read, that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure. He said that is the case. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such use variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said there are other properties in the area of similar size that have buildings on them, so it would be in harmony with the area.

Motion by Jack Higgins, seconded by Bill Huffman, to approve the variance as depicted on the survey submitted by the applicants. The vote was unanimous.

2. (21PZ00036) Richard C. Hitz, Jr.

Requests variances from Chapter 62, Article VI, Brevard County Code, 1) Section 62-2118(d)(3), to permit a variance of 4.4 feet over the 11.6 foot projection (20% of the width of the waterway) permitted for a boat dock, 2) Section 62-2118(d)(5), to permit a variance of 40 square feet over the 600 square foot total coverage permitted for a boat dock with a covered roof, in a RA-2-10 (Single Family Attached Residential) zoning classification, on 0.50 acres, located on the north side of Halyard Court, approximately 770 feet north of Helmsman Place (6204 Halyard Court, Rockledge) (Tax Account 2601754) (District 4)

Richard Hitz, 6204 Halyard Court, Rockledge.

Joseph Reese, 1305 Rivermont Drive, Melbourne. He said he was a marine contractor, he owns Dream Docs and Reese Enterprises. He said they are applying for a variance hardship to extend the boathouse and boatlift into the canal an additional four feet give or take. He said that is necessary because they're attempting to have room for maintenance and the boatlift needs to be projected off the seawall; they need a little more room. He said he has had the canal measured across in different places and doesn't think it will affect any navigation; there will still be roughly 30 feet of navigation left. He said the edges of this canal don't run parallel, they narrow toward the mouth; at the mouth of the canal, the total width is 50 feet. He said where Mr. Hitz's property is, it's close to 70 feet wide. He said there is a narrowing projection at the mouth of the canal so making it a little narrower in the back shouldn't affect anyone.

Dale Rhodes asked if the three letters given to the Board at the beginning of the meeting had been seen and read by both of them.

Richard Hitz replied yes.

Joseph Resse replied yes.

Richard Hitz said his HOA approved and signed off on his dock.

Bill Huffman asked if the seawall was a recent addition or had been there awhile.

Joseph Reese said its new within the year.

Bill Huffman asked if it projected further into the canal than the old seawall.

Joseph Reese said there wasn't a seawall, it was a vacant lot until recently. He said it's right on the line, brand new, there is no overage and is right where it should be. He said they kept it inward so that they would be able to do the 18 inches a couple of times, when it's rebuilt again in the future.

Bill Huffman asked for him to repeat that.

Joseph Reese said they kept the seawall on his property line, in a little bit, so that down the road when they rebuild the seawall, they'll be able to build in front of it without issue. He said at this time it's on the property, on the line and not projected into the canal.

Dale Rhodes said they should deal with number two first since it's the easiest. He said they're asking for 40 square feet more than the 600 square feet and asked what the reasoning was for needing the additional 40 square feet.

Joseph Reese said that 40 square feet came in because the canal tends to be shallow and they would like to fill in the gap rather than leave a gap between the sea wall and the edge of the dock. He said they need the dock projected out a bit, so are filling in the gap, that's where the extra 40 square feet comes in.

Dale Rhodes asked if the 40 square feet was to the property side not to the canal side.

Joseph Reese said yes, he filled in the two feet he would normally leave in his normal dock layout; the overall number comes from the dock entirety.

Dale Rhodes asked if there was an actual need for the additional 4.4 feet of width or is it a want.

Joseph Reese said it was needed, if they place the pylons right against the sea wall they'll have issues with it when they rot down the road and have to be pulled out. He said they like to space it off two feet which just adds up. He said there is a twelve-foot-wide boat lift; 12 feet and 2 feet is 14 feet, there are walkways and they end up with an 18-foot-wide structure. He said he is allowed roughly 14 feet, so they are asking for the additional 4 feet.

Dale Rhodes said he reads 11.6 feet and asked if that was correct.

Paul Body said yes, based on the width of the canal being 58 feet.

Dale Rhodes said if he is saying this is going to be 18 feet wide, the request is incorrect.

Paul Body said he is requesting 16 feet off of the sea wall.

Jack Higgins said he sees 16 feet.

Joseph Reese said he might have his numbers off, he sees a lot of sea walls.

Paul Body said the survey shows that he's 16 feet coming off the seawall and then 40 feet along the seawall in length; it comes up to 640 square feet.

Joseph Reese said he may have reviewed the wrong side of the survey; at the east side of Mr. Hitz's property, it's 57.9 feet and 68.8 on the west side. He said they're working in the middle; He is not sure if an average is taken.

Dale Rhodes asked if they took the four feet off of it, what would that do.

Joseph Reese said it crams everything back up; where the boat lift goes down will be right against the sea wall which will cause issues.

Dale Rhodes asked if the lift would be against the seawall or the pylons.

Joseph Reese said both, the lift sits on top of the pylons.

Dale Rhodes asked if the lift was inside the pylons, so the lift isn't going to hit the seawall.

Joseph Reese said it won't hit the seawall it will hit the ground, where the silt tends to build up.

Dale Rhodes said there haven't been variances approved for docks projecting into the waterway over the 20 percent requirement in his area; everyone else has been able to be within that provision.

Joseph Reese said that doesn't seem right.

Dale Rhodes said he is reading what he is given, according to their records, no other variance has been approved for a dock projecting any further than what is permitted. He said everyone has been able to be in it and asked what was special about his that it can't be.

Joseph Reese said maybe those other people didn't pull permits or ask permission; he has been down that canal and it's not the case that everyone else is within spec. He said he had a variance granted at 810 Malibu for additional projection into the canal; it might not be in that area.

Dale Rhodes said that is what they are dealing with, this specific area.

Public Comment

Kevin Fox, 6398 Anchor Lane, Rockledge. He said he was in opposition. He said he delivered a letter from his home owner's association. He said they share a canal system with Indian River Isle Central, the second and third edition is their proper terms.

Dale Rhodes asked if it was from the home owner's association or from people within the association.

Kevin Fox said it's from the President of the Indian River Isles Property Owners Association, which is the neighborhood he lives in, the other is from a neighbor who lives on the water and asked him to deliver it. He said he lives across from the property and can understand support in some aspects because he would like to be able to see like he does and be able to back out the boat into deeper water. He said he is asking for 4.4 feet into the canal which is a common area; they are responsible

for maintaining that canal as their two associations have to work together. He said it was dredged about three years ago; most dredging projects involve the County and there's a 10-foot setback. He said they can't dredge closer than 10 feet to a manmade structure. He said there'll be two docks, and a 10-foot set off from the proposed dock and from the one across from them which does abide by the 20 percent setback; they will end up with an eight-foot-wide swath down the center of the canal to be dredged and maintained. He said if they give a variance, they are not allowed to require them to dredge closer to the dock. He said he and his wife don't support it as proposed; they have complied with it, they have to back up against the sea wall. He said the board waiv in question is already installed; they're going to remove it. He said he understands what they want but they've all complied with it, stayed within the 20 feet; it's a narrower canal. He said he would support it if it was angled slightly so only a little triangle was sticking out; that's what he would like to see for himself also, otherwise he is backing up parallel in the shallow water. He said if he's on the North/South canal it's 80 or 90 feet wide, so they can have it set out in the canal slightly farther, they are in deeper water, so don't have to worry about lowering a boat into the muck that builds over time. He said his biggest concern for the homeowner's association and himself is that they have access down the center of the canal so they can maintain it. He said he feels for the applicant and understands what he wants, but doesn't support the present proposal.

Dale Rhodes asked if the letter he had from the homeowner's association was not the applicant's, but the adjoining home owner's association.

Kevin Fox said correct, all property owners own the land to the center of the canal. He said their neighborhood is called Indian River Isles North; officially their name is Indian River Isles Property Owners Association with first edition, theirs is the second and third editions.

Dale Rhodes asked if this letter from this property association is the adjoining, not his; he got permission from his HOA. He said he shows two letters, one on Anchor Lane.

Kevin Fox said one is his and one is his next-door neighbor's.

Dale Rhodes asked where is that property in relationship to his.

Kevin Fox said it would be slightly to the east.

Dale Rhodes asked if he was directly across the canal from him.

Kevin Fox said he is kitty corner.

Dale Rhodes asked if Anchor Lane across from his property.

Kevin Fox said he is across him on the canal.

Dale Rhodes said he wanted to make sure if they are talking about people who are on the opposite side of the same canal or if they are around the corner and down the canal, which is different.

Kevin Fox said they are on the other side on the same canal and are in compliance.

Dale Rhodes asked if they had their boat docks already in place.

Kevin Fox said they're all in compliance with the 20 percent setback, 11.8 feet.

Bill Huffman asked Joseph Reese if he was able to configure this construction to indent the sea wall at that point and come back in to have the gap he wants between the mechanical of the boat dock and the edge of the sea wall.

Joseph Reese said it would've been possible months ago but it's built now and there's a new home there; it wouldn't be feasible at this point. He said it's structural, the vinyl capped sea wall; the wall would have to be rebuilt, tie backs would need removed and there's a swale that was approved by the County for drainage. He said a lot of things would have to be reengineered for that to happen.

Jack Higgins said, since the seawall was already done, he wondered if they could come up and over it, but that doesn't make any difference.

Joseph Reese said in looking at the survey, he told them earlier that the two shore lines aren't perpendicular to each other, they narrow toward the mouth of the canal. He said it's not exact but he has used Google service to measure and between two of the docks and the boats that are on this canal, there is a gap that is just shy of 23 feet in width toward the mouth of the canal. He said he had exact measurements from Mr. Hitz's seawall to the neighbor directly across the way, the narrowest point is 48.7 feet across. He said if they took a little shy of 18 feet from that, they would still have 20 feet. He said it's kind of conforming to what exists. He said he has looked at the canal, measured and been in the water, there are a lot of these docks that are not conforming. He said some of the homeowners think that they are, the pylons are conforming but the roof overhangs aren't. He said he doesn't feel that Mr. Hitz is asking for a lot of projection that will affect the canal in any way; the only neighbor it could possibly affect would be the neighbor to his west and he was 100 percent on board with it, happy that they shifted the project to the east, to the middle rather than build right on the 7-foot line allowed so they wouldn't block his access.

Dale Rhodes asked if they brought a letter or anything from that individual.

Joseph Reese said no.

No Public Comment

Dale Rhodes said there're two different variances, they can approve one without the other. He said it's challenging when he has three letters in opposition and they didn't provide a neighbor's who said it would be okay. He said he would be particularly interested in the neighbors toward the end of the canal, who it would affect the most, void of that, he has to go with the information in front of him and decide what is best for the entire area. He said he will review the six points. He read, do special conditions and circumstances exist which aren't applicable to any other land structures or buildings in the applicable zoning classification. He said there are no special conditions or circumstances, such as the land sticking out further for example, needing the extra four feet. He read, the special circumstances and conditions don't result from actions from the applicant. He said this is a direct result of what they are desiring to have; it is their creation in that they are wanting to go further than what code allows. He read, that granting the variance and request won't confer on the applicant any special privileges that are denied by the provision of the Chapter to other lands, buildings and

structures of identical zoning classification. He said according to their records, nobody has asked for a variance, so if they give the variance, they would be giving something nobody else has received.

Alex Esseesse said to the Board, he understands they want to deny one variance and approve another and asked if they were going through six steps for the denial and six steps for the approval.

Dale Rhodes said he can do that; the one now is for the denial of the 4.4 feet. He read, literal enforcement of the provision of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in an identical zoning classification or provisions of this Chapter will constitute unnecessary and undue hardships on the applicant. He said it doesn't deprive of any right, it deprives of wants. He said everyone has the same right through there. He read, that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure. He said they have reasonable use without the variance, it would be required for the want they have. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such use variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said it wouldn't be in harmony. He advised there was no more discussion.

Joseph Reese said they were presented the wrong information by staff.

Dale Rhodes said he'll need to be quiet or will be asked to leave; they have had their time and don't have anymore.

Dale Rhodes said it wouldn't be in harmony with the general intent due to the fact that everyone else, according to his information is in compliance with the code as it says. He said it would be injurious to the area because it allows it to stick out further which could potentially cause a public welfare issue with other people trying to maneuver the canal. He said it's always tough to deal with these because somebody asks for three feet and the next guy asks for four feet and the next asks for five feet. He asked where they should draw the line. He said the next guy will say that he got four feet and is only asking for a foot more than that; which doesn't sound like a lot until all of a sudden both docks are meeting, because everybody keeps requesting. He said this is where their concern arises and this is not the first one; they always look at where it is. He said being at the end of the canal, boxed in, would probably be more detrimental than if it was further down where there might be more room. He said they have to look at what the next guy will request as well as what they are requesting. He said they feel for them and understand their situation, want and desire but have to look at the overall picture, not just what they're wanting to do. He said they never enjoy saying no, but sometimes it's necessary as with the first variance request. He said regarding variance number two, and read, do special conditions and circumstances exist which aren't applicable to any other land structures or buildings in the applicable zoning classification. He said even though they're making a motion to approve this one, there aren't any special circumstances or conditions that exist. He said he is in favor of this because it's going toward the land side and not projecting in the water side. He said they have turned down ones projecting additional square footage in the water side. He said if they disapprove the 4.4, the second one may not be needed, but they will deal with it. He read, the special circumstances and conditions don't result from actions from the applicant. He said it's a request that they want to build it, so it is a result of their actions in regards to it's what they're wanting to do. He said if it was a boat dock built by somebody before, then that's something he didn't create; it would be something they were coming into legitimize, not built or caused by them. He said in this case, they

are the ones building it. He read, that granting the variance and request won't confer on the applicant any special privileges that are denied by the provision of the Chapter to other lands, buildings and structures of identical zoning classification. He said he doesn't know that it's giving them special consideration; he doesn't know what everyone else's rooftops are; there is no variance for it. He said because it's going to the land side it's not giving them any special privilege; they would grant that to anybody asking that as long as it was going that direction. He read, literal enforcement of the provision of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in an identical zoning classification or provisions of this Chapter will constitute unnecessary and undue hardships on the applicant. He said it wouldn't do that if they said no to this; it's the direction that it's going that allows them to say yes to it. He read, that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure. He said he is told that is the minimum requirement. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such use variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said because it's going to the property side it wouldn't be injurious to the public or be out of harmony with what the intent was.

Motion by Bill Huffman, seconded by Jack Higgins to deny variance number 1, and approve variance number 2 the variance as depicted on the survey submitted by the applicant. The vote was unanimous.

Upon consensus, the meeting adjourned at 2:17 p.m.