

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, October 20, 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; Kevin McCann, District 2; and Bill Huffman, District 5.

Staff members present were: Robin Rogers, 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 September 22, 2021, Minutes

Motion by Kevin McCann, seconded by Bill Huffman to approve the September 22, 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.

Bill Huffman asked, as there is an even number of Board members present today, what happens in the event of a tie vote.

Dale Rhodes said it would be tabled.

Paul Body said a tie would be tabled to the next meeting; hopefully another Board member would be five so they would have a majority.

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

4. (21PZ00061) Danny Peter & Elizabeth Ann Nooyen (Andrew Easler & Jennifer Altreche)

Request variances from Chapter 62, Article VI, Brevard County Code, Section 62-1342(5)(a), to permit a variance of 7.0 feet from the required 20.0 foot rear setback for a principal structure, in a RU-1-13 (Single Family Residential) zoning classification, on 0.16 acres, located on the east side of South Orlando Avenue, approximately 70.0 feet north of the intersection of Indian Mound Court and South Orlando Avenue (1490 South Orlando Avenue, Cocoa Beach) (Tax Account 2519996) (District 2)

Jennifer Altreche, Esq., 508 North Harbor City Boulevard, Melbourne. She said she represents Danny and Elizabeth Nooyen.

Andrew Easler, 508 North Harbor City Boulevard, Melbourne. He said he's also representing the applicant from Easler Law.

Jennifer Altreche said they represent Danny and Elizabeth Nooyen and the 7.0-foot variance application they submitted for their property in Cocoa Beach, Florida. She said before the Nooyens owned it, it was owned by the Bakers who applied for a 6.0-foot variance in 1982 that was approved; then the Nooyens purchased the property. She said the original 6.0-foot variance from 1982 was built into a porch; that was existing at the time Mr. and Mrs. Nooyen purchased the property. She said unfortunately there was an 8.0-inch deficit when the porch was originally made; regardless of that 8.0-inch deficit, the permits and inspections were approved for the porch by the permitting department.

She said the Nooyens are trying to enclose that porch and have hired a local engineer to apply for permits, follow code regulations and enclose the porch. She said the permit has been put on pause because of that 8.0-inch deficit from the original variance, which has been in place for almost 40 years and hasn't caused any issues. She said Mr. and Mrs. Nooyen request the 7.0-foot variance be approved so they can enclose the porch, considering all the documents and her speech today.

Kevin McCann asked if she could describe what the porch is made out of and what it entails now.

Jennifer Altreche said at the moment it was being enclosed by Mr. Nooyen, before the enclosure started, it was just screened in. She said it was made out of wood and the porch itself is concrete.

Kevin McCann said there is existing concrete now and was a screened in patio porch.

Jennifer Altreche said yes.

Kevin McCann asked if they want to remove the screening and enclose it with walls and windows.

Jennifer Altreche said correct.

Bill Huffman asked if the 8.0-inch deviation put the porch closer to the road or further back.

Jennifer Altreche said this is the back of the house in the rear setback so it's not affecting the road; the weird shape of the property is what caused the deficit.

Bill Huffman said he misspoke with the road and asked if it was closer to the property line or further away.

Jennifer Altreche said it's a little closer.

Bill Huffman said 8.0-inches closer.

Jennifer Altreche said yes.

Dale Rhodes asked if they built the original enclosure and added the 8.0-inches inadvertently.

Jennifer Altreche said the 8.0-inches was created in 1982.

Dale Rhodes asked if they built it.

Jennifer Altreche said no, it was the previous owners, whoever their construction company was.

Dale Rhodes asked if the previous variance that existed for 6.0 feet was from the previous owners.

Jennifer Altreche said yes, prior owners.

Dale Rhodes asked if when they enclose the porch, are they going to increase the footprint at all or just replace along the same lines.

Jennifer Altreche said they're just replacing what's there, not extending it.

No Public Comment

Kevin McCann said the structure is preexisting, since 1982, they're not increasing the size or foot print; it already has a concrete base and they're just enclosing the existing. He said he has no issue with that.

Dale Rhodes said he will go through the six points. He read, do special conditions and circumstances exist which aren't applicable to any other lands, structures or buildings in the applicable zoning classification. He said the special circumstances are that they bought a structure that had the extra 8.0-inches on it. He read, that special conditions and circumstances don't result from actions from the applicant. He said the applicant didn't build this, therefore it doesn't result from their actions. He said that is why he asks the question; if they built it that's a different animal, but they didn't. 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 in the identical zoning classification. He said they deal with items of this nature regularly, where somebody has done something that needs to be legitimized for the purposes of someone doing something else on that property. 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said it wouldn't deprive them of anything other than 6.0 inches of a porch, but would certainly create an undue hardship in that they had to take off 6.0 inches and reconfigure everything. 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 in this case, it is. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such a variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said as it has been there for around 40 years, it's obvious it wouldn't be a detriment to that area.

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

1. (21PZ00057) Ranae Clark and Scott Hall

Request variances from Chapter 62, Article VI, Brevard County Code, 1) Section 62-1402(5)(c) to permit a variance of 1.5 feet from the required 7.5-foot rear setback for an accessory structure; 2) Section 62-1402(5)(c) to permit a variance of 2.6 feet from the required 7.5 foot side setback for an accessory structure; 3) Section 62-2100(5)(1)(d) to permit a variance of 79 square feet over the 600 square feet allowed for an accessory structure; 4) Section 62-1402(5)(c) to permit a variance of 1.0 foot from the required 5.0 foot minimum spacing between structures; 5) Section 62-1402(5)(a) to permit a variance of 2.0 feet from the required 25.0 foot front setback for a principal structure, in a TR-1 (Single Family Mobile Home) zoning classification, on 0.15 acres, located on the north side of Missleview Avenue, approximately 225 feet east of the intersection of Newfound Harbor Drive and Missleview Avenue. (1860 Missleview Avenue, Merritt Island) (Tax Account 2515143) (District 2)

Ranae Clark, 1860 Missleview Avenue, Merritt Island. She said she and her husband purchased this property July of last year. She said they were living in Maryland at the time and when they got down here they requested and were approved for a demo permit for the pre-existing mobile home. She said

they ordered a new mobile home to replace the structure and have run into some zoning issues with the property with a pre-existing cinderblock garage. She said it's too close to the rear and side property lines as well as larger than 600 feet maximum. She said it's a cinderblock building so it won't be easy to lessen the size of it. She said being a non-conforming lot of record, it's a challenge to fit their new mobile home on the lot, meeting the required setbacks with the zoning. She said per the survey, the home will be 6.0-inches shy of the 5.0-foot setback between the main structure and the accessory structure. She said due to the drain fields in the rear yard, they are unable to spin the mobile home in a different direction in order to meet the minimum setbacks to adjust for a 2.0-foot variance to the 25.0-foot setback.

Kevin McCann said they're looking at the accessory structure which is concrete cinderblock that's slightly within the setbacks and then the mobile home. He asked if that had already been demolished.

Ranae Clark said the pre-existing one, yes.

Kevin McCann asked if the footprint of the old mobile home is still in place.

Ranae Clark said yes, it's been cleared and the lot is prepped for the new mobile home.

Kevin McCann asked if the new mobile home going to be built closer to the side or front.

Ranae Clark said they were moving it away from where it was located; the previous mobile home was within a foot of the accessory structure, they're looking to move and separate the two buildings.

Kevin McCann asked if they would have separation from the two buildings, much larger than it was.

Ranae Clark said yes, it was about a foot, now they're going to 4.5 feet.

Kevin McCann asked if the new mobile home was closer to the front of the property.

Ranae Clark said yes.

Kevin McCann asked if it was larger than the other.

Ranae Clark said no, it's within 2.0 inches.

No Public Comment

Jeffrey Ball said there were three variances.

Paul Body said, there are actually five variances.

Dale Rhodes said he will go through the six points. He read, do special conditions and circumstances exist which aren't applicable to any other lands, structures or buildings in the applicable zoning classification. He said the special conditions and circumstances are a structure that was built prior to them purchasing it. He read, that special conditions and circumstances don't result from actions from the applicant. He said it doesn't, they didn't build that particular structure. He said however they are moving that mobile home from the previous location; the other mobile home does require the extra

variance from the front setback, in doing so they're creating more space between the two buildings which is preferable to having it 1.0 foot from the other building. 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 in the identical zoning classification. He said there was at least one variance for a setback in that immediate area, so is not something they're giving them that they wouldn't give someone else in the same reasonable situation. 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said it doesn't deprive them of rights that would be enjoyed; they would still be asking for a variance, they would either be too close to that structure behind them or too close to the road. He said short of tearing down the structure behind them, they wouldn't have a choice, in that sense it would create an undue hardship because they would have to take down the other structure on the property. 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 a variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said as this structure has been there for many years he doesn't think it would be injurious to the welfare and with the letters in favor that they have in the package, it is in harmony with the area.

Motion by Kevin McCann, seconded by Bill Huffman, to approve the variances as depicted on the survey submitted by the applicants. The vote was unanimous.

2. (21PZ00058) Brett Amidon (Jack A. Kirshenbaum, Esq.)

Requests variances from Chapter 62, Article VI, Brevard County Code, 1) Section 62-1334(5)(a) to permit a variance of 9.3 feet from the required 10.0 foot side (south) setback for a principal structure; 2) Section 62-1334(5)(a) to permit a variance of 14.2 feet from the required 25.0 foot side street setback for a principal structure; 3) Section 62-1334(5)(b) to permit a variance of 5.0 feet from the required 15.0 foot side street setback for an accessory structure, in an A-U (Agricultural Residential) zoning classification, on 0.18 acres, located on the southwest corner of Goldenrod Street and Victoria Street (105 Victoria Street, Merritt Island) (Tax Account 2501510) (District 2)

Jack Kirshenbaum, Esq., 205 Antigua Drive, Cocoa Beach Florida. He said he's a Lawyer with Gray Robinson and represents the applicant today.

Brett Amidon, 105 Victoria Street, Merritt Island.

Jack Kirshenbaum said he had items to pass out that were demonstrative aids that he hopes will make it quicker and clearer. (Exhibits can be found in file 21PZ00058, located in the Planning and Development Department) He said the property in question is 105 Victoria Street, on the western shore of Merritt Island facing the eastern shore of Cocoa. He said this property was platted in 1924 and the house built, that is there now, was built in 1956. He said it came before this Board in 1977 for a variance to attempt to create a conforming lot because it was a non-conforming lot. He said two variances were granted in 1979, unfortunately the variances granted didn't clearly allow a variance to the setback requirements. He said Mr. Amidon would like to build a garage on the east side of his house, not expanding the width of this structure any further into the setbacks. He said when he came

to see staff, he was told he needed three setbacks; one for the minimum width on the north and south of the principal structure and one for the garage structure. He said the house is old, it has a carport that's not large enough for cars and if there was a theme to today's presentation it's time changes everything. He said it was probably okay in the 1920's when it was platted and when the house was actually built in 56', not everybody had garages, they had carports in the 50's and 60's; now everybody has a garage. He said he doesn't seek to extend into the north or south setbacks, he seeks to extend into the east and there will still be 25.0 feet between the east side of the garage and the west side of Goldenrod, which runs north and south. He said he isn't seeking anything that anyone else in this neighborhood in this zoning category doesn't have; almost all the houses have garages in this area. He said he is seeking the minimum setback that's required to build this garage; he was surprised when he sought permission to build a garage and found out that his house and lot were non-conforming though it came before this Board in 79' to get variances to cure those things. He said Mr. Amidon comes before them seeking three variances, two to legitimize his lot and house that's been there since 1956, the other to allow the addition of a garage on the east side of the property. He said he has spoken to all the neighbors and nobody has an objection, there are no additional encroachments into the setbacks for the garage. He said it will be the same north and south line as the existing house that's been there; he is seeking to build this garage on the east side where there is plenty of room as seen in the photographs taken from the northeast corner facing west and facing south. He said there's a big empty yard there and this garage would be in that portion of the property.

Kevin McCann asked what his address was.

Brett Amidon said, 105 Victoria Street.

Kevin McCann asked if his house, looking at the survey, would be facing to the right of the survey.

Brett Amidon said if he flips the survey around so the Know It Now is in the top left corner, that is the orientation from the river facing Goldenrod Street and Victoria is on the left or north side.

Kevin McCann said he may have misunderstood Mr. Kirshenbaum; the house is located on the Indian River not the Banana River, facing Rockledge.

Brett Amidon said that's correct, facing Rockledge.

Kevin McCann asked if adding the garage continues with the same line as the north side of the house, the front.

Brett Amidon said that's correct.

Kevin McCann said the property is a little on an angle, so it does encroach a little more in the setback going east toward Goldenrod.

Brett Amidon said that is true.

Jack Higgins asked if there was already a garage on the property, he is looking at the picture.

Brett Amidon said no, there is a car port to the Goldenrod side of the property; the building seen is attached to the house, it's a carport.

Dale Rhodes asked if the roof structure toward Goldenrod is the actual carport.

Brett Amidon said yes.

Jack Higgins stated some calculations (inaudible), he said he was mainly concerned if that was already a garage.

Brett Amidon said that's the carport and the garage would but right up against it and follow the same lines of the house.

Jack Kirshenbaum said he's had a lot of experience with this 1920's plat which isn't a great plat, there are anomalies all over which were discovered during these surveys. He said it's a difficult area to impose modern survey techniques on, even the shoreline is vastly different when it was platted.

Bill Huffman asked, looking at the survey he handed them, he thinks was in their packet, if the red lines are fences.

Brett Amidon said yes, they are.

Bill Huffman asked if they were his fences.

Paul Body said the red lines were fence lines.

Brett Amidon said he just bought the property but the original owner told him that the fence line runs from Goldenrod on the Victoria side, the northwest corner down to the water is the County's. He said in the 50's when they carved out for the boat ramp, this is third hand information. He said he was told that was put in by the County to keep people from using that County piece of property as a boat ramp, campsite, fishing or wandering onto other people's property. He said other than that, the fences came with the property.

Bill Huffman said if he is looking at the blue lines as the property lines, if they're his fences, they're on the neighbor's property. He said the house also looks like it's right up against the property line.

Brett Amidon said he's right about the house being right up against the property lines, he could reach his window on one side of the house and touch his neighbor's fence.

Dale Rhodes asked if the red line on the opposite side of Victoria, is not his fence.

Brett Amidon said that is the neighbor's fence.

Bill Huffman said the west side is County fences and on the South side is the neighbor's fence.

Brett Amidon said the river side; on the north side is County fence to his understanding.

Bill Huffman asked if he was maintaining it.

Brett Amidon said no, he is cutting the grass.

Jeffrey Ball said they need to rely on the professional survey to detect what is showing. He said they don't know who the owner of the fence is other than what's depicted on that survey; some of it is showing on the applicant's property, some is not. He said the red line based on what he sees, is a fence and the blue line is the property line.

Dale Rhodes asked which to variances are to legitimize what already exists.

Jack Kirshenbaum said that would be the first two mentioned on the agenda.

Dale Rhodes said variance one and variance two.

Jack Kirshenbaum said, that's correct.

Dale Rhodes asked if he was adding onto the front of the carport so the carport would remain and then going to add the garage to the front.

Brett Amidon said yes, it will run straight back following the lines of the house and carport.

Jack Kirshenbaum said that's correct, to the east of the carport, and that variance is a 5.0 variance from the required 15.0-foot setback.

Dale Rhodes asked if the carport was necessary if he adds the garage.

Brett Amidon said the carport is structural.

Dale Rhodes said okay, there is a reason the carport is staying. He said the obvious thing he's seeing is why he wouldn't take 5.0 feet out of the carport and put the garage there, then not needing the third variance. He said if it's structural, that would be the reason why.

Jack Kirshenbaum said the point he made was great, the only variance necessary to do the garage is on the north side, 5.0 feet into the setback of 15.0 feet which is consistent with the north wall of the house that runs east and west.

Dale Rhodes said the biggest variance he was concerned about was the one going less than a foot to the side, but that's the house that's already existing; that's why he asked which ones he was going to legitimize.

Kevin McCann asked if his property extended east all the way to Goldenrod Street, the section fenced in where the garage is going to be.

Brett Amidon said, yes.

Kevin McCann asked how many car garage will it be.

Brett Amidon said three.

Kevin McCann asked if the approach would be from Goldenrod or Victoria.

Brett Amidon said, Victoria.

No Public Comment

Dale Rhodes read, do special conditions and circumstances exist which aren't applicable to any other lands, structures or buildings in the applicable zoning classification. He said they're dealing with a house that was built long before people were requiring setbacks; that would be the special circumstances and conditions. He read, that special conditions and circumstances don't result from actions from the applicant. He said if he is reading correctly the house was built in 56', he wasn't building it, he didn't do that. 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 in the identical zoning classification. He said they deal with these nonconforming structures in many cases, that were built many years ago; they're not giving him any special privileges. 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said if he had to tear that house down and build a new one, that would certainly be an unnecessary hardship as this house has been in place for over 50 years. 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 a variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said that is the case, it's not injurious nor taking away from the chapter and what its intentions are which is future building, not necessarily a structure that's been there for 50 plus years.

Motion by Kevin McCann, seconded by Jack Higgins to approve the variances as depicted on the survey submitted by the applicant. The vote was unanimous.

3. (21PZ00060) Jeffrey J. Meyer & Della L. Adams-Meyer (Derek Ziade)

Request a variance from Chapter 62, Article VI, Brevard County Code, Section 62-1341(5)(a) to permit a variance of 2.0 feet from the required 7.5-foot west side setback for a principal structure, in an RU-1-9 (Single Family Residential) zoning classification, on 0.18 acres, located on the south side of Harris Boulevard, approximately 395 feet east of Palm Way. (126 Harris Boulevard, Indialantic) (Tax Account 2725945) (District 5)

Derek Ziade, 315 Pine Tree Drive, Indialantic. He said he is the contractor for his client.

Jeffrey J. Meyer, 126 Harris Boulevard, Indialantic.

Derek Ziade said they applied for a permit to do an addition on the front and the back on Mr. Meyer's house. He said they obtained the permit from the County and they moved down the road to their nieces' house that's vacant for X amount of months. He said they've torn the house apart inside and put form boards out, tore the porch down in front that was attached to the house and the Florida Room and put form boards up. He said they tried to go for an inspection and the County said they needed a form board survey; they got a form board survey and they told them it's denied.

He said the entire house in 1957 was built in the setback and they turned the house at a slight angle; the front is 6.9 feet from the property line, the back of the house is 6.2 feet. He said with their edition, another 13.0 feet, it becomes 5.9 feet, once the edition is in the setback. He said it's delayed him two months trying to get them back in the house which was supposed to be in December and they're sitting with this variance. He said he had photographs of what he has done, torn the entire front of the house apart, back of the house, form boards up, and they're waiting to get the variance so they can continue getting them in the house.

Bill Huffman asked when he purchased the property.

Jeffrey J. Meyer said they purchased the house approximately six years ago.

Bill Huffman asked if he had a deed survey done at that time.

Jeffrey J. Meyer said yes, they did.

Bill Huffman asked if it showed they were built into the setbacks.

Jeffrey J. Meyer said they supplied the same survey to them that they got then; they didn't have any issues when they closed on the house.

Bill Huffman asked if this was the deed survey or a new survey that was done for the purposes of this.

Jeffrey J. Meyer said that's the survey done when they purchased the house six years ago. He said they had an additional survey done so the engineer could layout the addition.

Bill Huffman said the survey is dated August of 2021.

Jeffrey J. Meyer said yes, when the engineer needed a new survey.

Derek Ziade said that's the form board survey the County wanted, but they were granted a permit to go ahead and build so they thought they were okay with the setbacks that the County gave them and when they did the form board survey, they said the whole house was in the setback. He said they did obtain a permit from the County saying go ahead, everything is okay.

Bill Huffman said he understands that and asked, when they purchased the house six years ago, did they have a survey done for the deed or mortgage purposes.

Jeffrey J. Meyer said yes, absolutely.

Bill Huffman asked if it showed that the house was in the setbacks at that time.

Jeffrey J. Meyer said yes, he would assume so. He said if looking at the addition, it's not going out, it's going straight back and straight forward, there's nothing going out the sides.

Dale Rhodes asked Paul Body if the entire house is in the setback.

Paul Body said the house that was existing was in the setback, it's cocked on the property, 6.7 feet to the northerly side and 6.2 on the southerly side. He said they're trying to keep it in alignment with the existing house, so it's coming down further to 5.9 for the formboard, the rear is.

Dale Rhodes said usually they have a request that legitimizes the existing structure; he asked if that had already been done, is there a reason that's not part of this.

Paul Body said no, there's not a variance on the property that legitimized it. He said he's not sure when the house was built.

Derek Ziade said it was built in 1957.

Paul Body said 1957 didn't have any codes, if it was non-conforming to a setback and now they're trying to expand it, they need to legitimize what their expansion is.

Dale Rhodes asked if they had to legitimize the existing structure.

Paul Body said this will legitimize it.

Dale Rhodes said okay, this will; usually they see the variance request to legitimize the existing structure, number one, then number two, the addition and he didn't see that.

No Public Comment

Jack Higgins said they do have seven signatures too.

Bill Huffman made a motion to approve the variances as stated in the application.

Paul Body said he wanted to make a statement they may want to read into it. He said there is a woodshop on the back and it says they will move it to meet setbacks. He said they might want to address that the woodshop has to be moved too.

Dale Rhodes said maybe we amend the approval.

Bill Huffman asked if it was stated in the statement.

Paul Body said no.

Bill Huffman said he amends his motion to also require them to remove the woodshed from the setbacks.

Jack Higgins asked remove it or relocate it.

Bill Huffman said relocate it to clear the setbacks.

Dale Rhodes said the motion is to approve the variance as depicted on the survey with the additional requirement that the woodshed be relocated where it is conforming. He asked if that was good.

Bill Huffman said yes.

Paul Body said yes, with the additional condition.

Jack Higgins asked if it was capable of being moved.

Jeffrey J. Meyer said the shed was there when they purchased the house, it wasn't something he did.

Paul Body said the shed is into an actual utility easement. He said he could come back and try to get the utility easement vacated; that would need to be done before his permit will get finalized. He said he may want to think twice about trying to get that easement vacated, and what it's going to take to come back and get a variance toward the setbacks of the shed too.

Jeffrey J. Meyer said it's (inaudible) with this permit, it's not something he put there.

Dale Rhodes said he understood but the problem was that it's not in his request so they have to.

Jeffrey J. Meyer said this is the first he is hearing of it.

Paul Body said he talked to his contractor about it, the applicant, and he said he could put that note in there that it would be moved or removed to meet the setbacks.

Jeffrey J. Meyer said okay.

Bill Huffman asked what was the nature of the structure.

Jeffrey J. Meyer said, it's a shed.

Dale Rhodes asked wood, metal.

Jeffrey J. Meyer said wood with a small deck out the front.

Bill Huffman asked if it was similar to what is purchased at a home store.

Jeffrey J. Meyer said yes, but it's on pilings and permanent.

Bill Huffman asked if the pilings were in the ground.

Jeffrey J. Meyer said yes, pilings in the ground.

Jack Higgins asked if concrete pilings were driven in the ground or wood.

Jeffrey J. Meyer said wood pilings cemented in.

Dale Rhodes said they could just be cut off and then move the shed.

Jeffrey J. Meyer said yes, he could do that if that's what has to be.

Jeffrey Ball said they have a couple of options in this case, they could hear the variances before them and approve as is, regardless of whether that structure was there; there are provisions in the code that if it's there for more than 10 years, there's not a cost for the variance, however, they would need to get a variance. He said since it was not included in this application, they will need to do that if that's the route they choose. He said they're also, based on their survey, located in a 5.0 easement; this Board doesn't have the authority to grant him that, it's done through the Public Works who vacates the easement. He said it's a difficult and costly process, but is his option to do that. He said to circle back, the Board can hear the request as presented and approve or deny based on that or they can table the application to address the woodshop if he so chooses.

Dale Rhodes said he would ask Jeffrey J. Meyer what he wanted to do. He said they have three options, they could approve it and require that the woodshed be relocated. He said they could approve the variance as is but he wouldn't get the permit until the shed is dealt with and trying to vacate that easement will probably cost more than that shed is worth. He said or they could table it and let him deal with those situations and come back to them.

Jeffrey J. Meyer said that's not an option, they have been out of their house for months now, they already have a permit, that's the whole issue. He said it boggles his mind that they received a permit and then they stop them after his house is completely torn apart. He said if they had a hurricane, it would have ripped the roof off his house because there are no soffits, they tore the carport and Florida Room off because they had a permit.

Paul Body said the permit that was turned in showed that it was going to meet 7.5-foot setbacks, that's the reason it was approved that way. He said when they came back with the form board survey, because it was right up against the setback, that showed that it doesn't meet the setbacks.

Jeffrey J. Meyer asked how that was possible because the survey he turned in is the same survey that was done when they bought the house seven years ago.

Dale Rhodes said the survey given to them was the form board.

Jeffrey J. Meyer said he had a copy of what (inaudible).

Paul Body said he'd have to go back to the surveyor to see why there is a discrepancy, they're going off of what was turned in; it was for the form board and that's how it came about, this needing the variance.

Jack Higgins said, if he was to agree to take this and tear it down, they can go ahead and okay the other part, if that's in the motion.

Jeffrey J. Meyer said at this point he would rather move it.

Paul Body said, he could cut it back to where it would meet the setback, as long as it meets the setback.

Dale Rhodes said he could change the configuration of the shed, cut a section of it off.

Paul Body said he could talk to Derek about it, he said it would either be moved or removed.

Jeffrey J. Meyer said okay.

Jack Higgins said that way he could go ahead and continue.

Jeffrey J. Meyer said that was the only option he had at this point.

Dale Rhodes said currently they have on the table a motion to approve his variance, not a second yet, as depicted on the survey with the condition that the shed be moved to meet setbacks and asked if he was good with that.

Jeffrey J. Meyer said that's fine.

Dale Rhodes said it's unusual to do it this way but they're here to try and help, he wants everyone to understand that. He said their purpose is to help and assist him in any way they can, allowing a little out of order to discuss this was advantages.

Motion by Bill Huffman, seconded by Jack Higgins, to approve the variance as depicted on the survey submitted by the applicants, with the condition that the accessory structure be moved to meet setbacks or removed. The vote was unanimous.

5. (21PZ00063) David Robles

Requests variances of Chapter 62, Article VI, Brevard County Code, 1) Section 62-1401(5)(b) to permit a variance to allow an accessory structure (garage) to be located forward of the front building line of the principal structure; 2) Section 62-1401(5)(b) to permit a variance to allow an accessory structure (shed) to be located forward of the front building line of the principal structure; 3) Section 62-2100.5(d) to permit a variance of 191 square feet over the 600 square feet allowed for an accessory structure; 4) Section 62-2100.5(1)(b) to permit a variance of 223 square feet over the total floor area of the principal structure allowed for all detached structures, in an RRMH-1 (Rural Residential Mobile Home) zoning classification, on 1.17 acres, located on the north side of Pine Needle Street, approximately 316 feet east of Hog Valley Road. (4784 Pine Needle Street, Mims) (Tax Account 2001290) (District 1)

David Robles, 4784 Pine Needle Street, Mims. He said he is looking to build a garage on the existing pad that was already there when he bought the house; it's 700 square feet, he would like to get that. He said he can't build anything on the side of it or in the back of the house because there are wetlands and septic in the back.

Jack Higgins said he went by the whole neighborhood there, he knows it very well. He said it's probably the neatest property on the street.

David Robles said he likes it, very peaceful.

Jack Higgins said it's very clean; one neighbor has bulldozers, backhoes and all kinds of trailers in the front of his house. He said the neighbor catty-corner to him has a structure put up next to the fence; it's very common in this area apparently. He said he looked at where it was going and took

pictures and it would pose no affect on anyone back there and it's deep into the property, it meets the preview on that street. (Exhibits can be found in file 21PZ00063, located in the Planning and Development Department) He said he would have no objection.

Dale Rhodes said that the permit is for 191 square feet of the 600 square feet allowed. He asked if he said it was 700 square foot.

David Robles said garage, yes.

Dale Rhodes asked how they were at 791 square feet.

David Robles said he was including the shed that was put there.

Paul Body said whenever he did the square footage, of the proposed metal building 700 square feet, they ran around the square footage of what the survey showed, including the 5.0-foot bump out, that's where they came up with that amount, 791 square feet.

Dale Rhodes asked if he wanted the entire 791 square feet.

David Robles said he thinks it's only 700 square feet.

Dale Rhodes said the bump out adds another 191.

David Robles said well yes, if they don't mind.

Dale Rhodes asked if the pad existed previously.

David Robles said yes.

Dale Rhodes asked what was there before.

David Robles said nothing, there were no screws or indication there was something built on there.

Kevin McCann asked if the shed was preexisting or to be built.

David Robles said he just put it in; it came from Oviedo Police Station.

Dale Rhodes asked if there was a reason he put the shed in front of the building line.

David Robles said there's wetlands and septic in the back, there's nothing he can do in the back or side.

Dale Rhodes asked if he could have made a way to squeeze the shed in without putting it in front of the structure.

Jack Higgins said it's a narrow structure.

David Robles said he took pictures if they would like to see them.

Dale Rhodes said no, they're good.

Kevin McCann asked if he put the shed in, in front of the building without getting a permit or variance.

David Robles said he didn't. He said its not exactly in the front, more toward the side.

Dale Rhodes said these are pictures that Mr. Higgins took and said he would let him take a look.

Jack Higgins said the one clean picture is his house.

Dale Rhodes asked him to look at the pictures to verify it was his property.

David Robles pointed to two pictures and said that is.

No Public Comment.

Kevin McCann said the second variance to try to legitimize the shed that was built without a permit and doesn't conform to code, he would generally have a concern with that and sway him. He said the property is large, doesn't appear to infringe on any neighbors and seems to be consistent with other properties in his neighborhood.

Dale Rhodes said he agrees, he has a problem with a shed put up and coming on the back end to ask for a variance for a shed already put up. He said he would much rather see it the other way around. He said there's a direction he will be going with that in a minute. He read, do special conditions and circumstances exist which aren't applicable to any other lands, structures or buildings in the applicable zoning classification. He said the only thing he can see that special conditions and circumstances might exist would be if in fact there are wetlands on the side of the property with the leach field behind, which leaves no other option than to put the structures in front. He said he's taking his word for that, doesn't have anything showing him that. He read, that special conditions and circumstances don't result from actions from the applicant. He said they do result of the actions of the applicant, at least with number two with the fact he put a shed forward of the structure without permission to do so. He said the garage is his desire to put a garage forward of the structure. 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 in the identical zoning classification. He said it doesn't give him special privileges, provided he ask before he do it; to ask after doing something is always a concern to him, addressing the shed. He said the other, they have certainly allowed structures forward of the building line before where there was no other option. 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said it wouldn't deprive him of the right to enjoy his property but of the right to build a garage because he couldn't put it behind or to the side of the property. He said he could still enjoy the property without a garage; it wouldn't deny him of a right to enjoy it but of a want. 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 if they're looking at the garage, it's probably the minimum variance needed to put the garage in the location he desires. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such a variance will not be injurious to the area involved or

otherwise be detrimental to the public welfare. He said from Mr. Higgins, it would be in harmony with the other properties in the area. He said he's not seeing any variances that were approved for the accessory structure in the square footage permitted, that they would be permitting him in the immediate area. He said from what Mr. Higgins has said it would be in harmony with the area and with the Chapter. He said they're looking at the fact that he can't build it behind or to the side because of the conditions of the property.

Jack Higgins said he missed something. He asked if he already built this.

Dale Rhodes said not the garage, the shed.

Jack Higgins asked where he got that from.

Dale Rhodes said, number two

Jack Higgins said that was built without a permit or put there without a permit.

Dale Rhodes said he's asking for a variance to that structure, having been built in front of the building line, he couldn't have gotten a permit.

Jack Higgins said he was judging from the house.

Dale Rhodes asked if he was correct, that he couldn't have gotten a permit to build that in front of the structure without a variance.

Paul Body said that's correct, he would have to of applied for one.

Jack Higgins said, but there is one, okay.

Paul Body said he should apply for a permit for the structure if it's over 100.0 square feet.

Dale Rhodes asked what the size of the structure is.

Dale Robles said he thinks 200.

Jack Higgins said the reason there are no others is because everything out there is built without a permit.

Dale Rhodes said they have two situations, they have a shed that was built without a permit and now coming after the fact because he's wanting to build a garage and needs permission for the shed to exist. He said he probably wouldn't be there if he wasn't wanting to build a garage; that shed would still exist, wouldn't come here and wouldn't be asking for a variance for it. He said because he is now wanting to build a garage, oops, they have a structure that was previously built and that's an issue.

Jack Higgins asked how long it had been there.

Dale Rhodes said he didn't know the answer and would let him come up to answer, as nobody else would be able to answer it. He said they can't get back into comments. He asked how long the shed had been there.

David Robles said that shed has been there for about a month, month and a half and it wasn't built, it was brought in.

Dale Rhodes said whether he had it brought in or built it, it's the same thing.

Paul Body said it's 289.3 square feet.

Dale Rhodes said it's not a small shed.

Paul Body said it's 24.1 by 12.0

Dale Rhodes said that's a pretty descent size structure to build without asking permission. He said numbers one, three and four deal with building of the new garage. He said he wants to ask for approval on those and take number two by itself.

Jeffrey Ball said they can do that, they just need to be sure the motion identifies what they're doing.

Robin Rogers said Mr. Higgins could amend his motion.

Jack Higgins said he would amend the motion to include one, three and four and omit two at the moment.

Dale Rhodes said they're going to deal with one, three and four that deal with building the garage. (Motion stated below).

Dale Rhodes said now let's deal with number two which deals with a structure that was just recently put there.

Jack Higgins said he assumed he would have to get a permit for it and it's in the front so it's not going to work because it's in the front unless he goes for a variance.

Dale Rhodes asked Paul Body if once they give him the variance, would he still need a permit.

Paul Body said yes, he would probably need to get a permit because it's over the 100.0 square feet.

Dale Rhodes said even if they approve the variance he would still have to go back and get a permit and meet all applicable codes.

Paul Body said yes, he would need to get a permit for the shed.

Jack Higgins said they could tie a motion in to obtaining a permit prior.

Dale Rhodes said no, they're just approving or not allowing this, it's then up to him what he does after that. He said that Code would be aware that the structure is sitting there.

Jeffrey Ball said to Paul Body, variance number two deals with both the garage and the shed because they're both forward of the principal structure.

Paul Body said they have two that deal with the accessory structure in front; number one is for the garage to be in front of the principal structure and number two is for the shed to be in front.

Jeffrey Ball said okay, he wanted to be sure that number two is just for shed that's in front.

Dale Rhodes said that's what he thought he read, thank you for double checking. He said they have a shed just less than 300 square feet that was put on the property a month and a half ago without permit; he's now asking for a variance to locate it in front of the principal structure. He said he will still have to get a permit for it, even if they say yes to it. He said he can't make his other comments until after they get a motion and a second.

Jack Higgins said that in regards to the room available on that property, he would make a motion to allow the variance for number two, for the shed moved there recently with the exception that he has to obtain a permit.

Dale Rhodes asked if he could do that, make a motion to approve it but require a permit be obtained.

Jack Higgins said it will only be accepted by the County after he obtains the permit.

Dale Rhodes asked if they could require that.

Robin Rogers said no.

Jack Higgins asked if he had to say for the variance and the rest be up to code.

Robin Rogers said yes.

Dale Rhodes said he always has issues when somebody comes to him after the fact; its done, he gets caught, and now wants to come back and have them fix it. He said it may sound harsh but he has issues with that because he assumes he knows when building a structure, he would have to have a permit to do it. He said he was just going to do it, but had to get the permit for the garage and now that are in a whoops caught you situation. He said he always has issues with that, he doesn't like it, then he has to way out, is it injurious to anything. He said his issue with approving anything like that is, people get into the habit of building it, then saying whoops sorry, didn't mean to do that, forgive me and give me the variance. He said if that starts to be a thing, then they start seeing a lot of this, where instead of getting permission, people ask for forgiveness; then if becomes a difficult road.

Jack Higgins said in regards to him building it, he caught something when he was up there; he didn't build that shed, he bought it; maybe it could be moved.

Dale Rhodes asked if he could move it to the side or to the back and he said no.

Bill Huffman said he understands that this motion is for the location of the shed. He said off topic, the reason for building codes, especially in Merritt Island, is because there are wind code provisions so

the shed or debris doesn't become windblown and damage an owner's property or others. He said the permitting process is not just a convenience, it's a public safety issue.

Dale Rhodes said in regards to numbers one, three and four, he read, do special conditions and circumstances exist which aren't applicable to any other lands, structures or buildings in the applicable zoning classification. He said that being there are wetlands and a leach field, that means he has to build it where it is, He said in regards to number two, if he were getting a permit, and coming for the variance, it would be the identical thing. He read, that special conditions and circumstances don't result from actions from the applicant. He said for one, two, three and four, they are the result of his actions because he wants this in front of the building structure. 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 in the identical zoning classification. He said in regards to one, three and four, it doesn't give special privilege under the conditions of this land; they would consider this with any applicant and have done so previously. He said in regards to number two, it would because they're granting him a variance on a structure that's not legally put in the place. 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said if they enforce it to where he had to build behind the property or the building structure line, it would deprive him of the ability to build that structure because of the leach field and wetlands. He said this is the only place he would have. As for creating an unnecessary and undue hardship, that depends on how badly he needs the shed and garage. 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 in regards to one, three and four, that is correct. He said in regards to number two, it's not because this is a structure that's wasn't built properly. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such a variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said in regards to one, three and four, he believes that to be the case; in regards to number two, it's not in harmony with the intent and purpose of the code because he didn't get permission to do it before doing it.

Motion by Jack Higgins, seconded by Bill Huffman, to approve variances one, three and four as depicted on the survey submitted by the applicant. The vote was unanimous.

Motion by Jack Higgins, seconded by Kevin McCann, to approve variance two as depicted on the survey submitted by the applicant. The vote passed 3:1 with Rhodes voting nay.

6. (21PZ00064) Jonathan Daniel Ames & Heidi Reichle Hollowell

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2118(d)(3) to permit a variance of 2.8 feet over the 13.3 foot projection (20% of the width of the waterway) permitted for a boat dock, in an RU-1-13 (Single Family Residential) zoning classification, on 0.22 acres, located on the south side of Central Avenue approximately 0.21 miles east of Banana River Drive (1745 Central Avenue, Merritt Island) (Tax Account 2431910) (District 2)

Jonathan Daniel Ames Hollowell, 1560 Monte Carlo Court, Merritt Island.

Heidi Reichle Hollowell, 1560 Monte Carlo Court, Merritt Island.

Jonathan Daniel Ames Hollowell said he and his wife purchased this property in January 2019; when they purchased it, the seawall had failed and then was semi-repaired. He said they got a seawall contractor to build a new seawall. He said according to the seawall contractor, the most effective and efficient way was to go out 12.0 feet and go up higher; they took care of that and are now building a home. He said they contracted Waterfront Solutions marine contractor to design and put in a dock; their boat fits into a smaller category of 18.0 to 22.0-feet which has an 8.5-foot-wide beam. He said going out a foot into the water, they wouldn't be able to fit that boat into a lift. He said that's the reason they're requesting the variance, so they can build a dock and put a boat in out of the water.

Kevin McCann asked if they resided on Monte Carlo.

Jonathan Daniel Ames Hollowell said yes, they have a house built there too. He said that house was destroyed before they went through everything, the rezoning and permitting, put a new seawall and boat lift in. He said that's where they currently reside, same boat. He said the difference is, the canal they live on is 80.0 feet; the canal they are moving to is 66.0 feet.

Kevin McCann asked if the 1745 Central Drive wasn't their current residence.

Jonathan Daniel Ames Hollowell said no, they will be building a house there; they're in the process.

Kevin McCann asked if they would move to it.

Jonathan Daniel Ames Hollowell said yes.

Kevin McCann asked if he said the seawall was built 12.0 feet out and 2.0 feet up.

Jonathan Daniel Ames Hollowell said no, 1.0 foot out and 2.0 feet up.

Kevin McCann asked if that extended him into the Central Avenue Canal.

Jonathan Daniel Ames Hollowell said yes, which is why he is asking for the variance.

Kevin McCann said he was almost at the end of the canal, almost right on the Banana River; it looks like half of his property is open water, the other half is canal.

Jonathan Daniel Ames Hollowell said yes.

Kevin McCann said he doesn't have an issue with their request.

Dale Rhodes asked which end he was building the dock on, the end closest to the open water.

Jonathan Daniel Ames Hollowell said it's scheduled to go kind of in the middle, maybe a little further to the west. He said if needed, if it makes more sense they could move it further to the east, toward the open water.

Bill Huffman asked if he already owned the boat.

Jonathan Daniel Ames Hollowell said yes.

Bill Huffman asked if this dock was to accommodate that boat.

Jonathan Daniel Ames Hollowell said yes.

Bill Huffman asked if he knew he would build a dock when he built the seawall.

Jonathan Daniel Ames Hollowell said yes.

Bill Huffman said he is always troubled by this because he understands that seawalls don't get a County permit.

Jeffrey Ball said that isn't true; for a seawall that's on a County canal or canal, Natural Resources reviews that part of the application. He said Zoning doesn't review it, they review the dock permit; for a seawall they still need to get a permit, however Zoning doesn't review that.

Bill Huffman asked if he got a state permit.

Jonathan Daniel Ames Hollowell said it wasn't a state permit, it was through the County and it was approved. He said one of the items of confusion with the contractor and talking to people at the County, is it has moved from where the protrusion into the water is considered, if it's from the original demarcation of the land or if it's where the new seawall is. He said when they had the seawall done, they thought everything would be fine. He said they knew the boat he had, they knew everything he had and said he shouldn't have a problem.

Bill Huffman asked who "they" was.

Jonathan Daniel Ames Hollowell said Waterfront Solutions, the Marine Contractor they used.

Bill Huffman said the advice of the marine contractor was, not a problem.

Jonathan Daniel Ames Hollowell said yes, everything should be good as long as he wasn't trying to put in a giant 40.0-foot boat with a 12.0-foot beam.

Bill Huffman asked if they got the permit.

Jonathan Daniel Ames Hollowell said they went with Pelican Chase Marine, they were the ones, they may go under Scorpion right now of Port Canaveral; they were the ones that put in for the permit.

Bill Huffman asked if he knew they needed a dock when they put up the seawall.

Jonathan Daniel Ames Hollowell said he did know he needed a dock while they were putting up the seawall but couldn't get the dock put in at the same time.

Bill Huffman said he could have planned; he is always troubled by these. He said his in the front of the access for all the other boats coming into the canal. He said if he was in the back of the canal, he would have less of a problem.

Jonathan Daniel Ames Hollowell said he was at a bridge restricted canal, they can't go far before they hit a bridge that a boat won't fit under, a large boat. He said small boats and his boat has a T top he put hinges on to lower for his Monte Carlo address, to get out. He said he understands what he is saying, if he was trying to build a monstrosity that would impede traffic, he would understand. He said he doesn't believe that this dock nor any of the other neighbors he has spoken with believe it would impede any boat traffic for the size boat that goes through there, that's able to navigate that canal.

Bill Huffman said okay, he accepts his point.

Jack Higgins said his point was, if there were two pontoon boats, or something coming down.

Bill Huffman said it's more a matter of him needing a seawall and a dock, that there were ways to engineer or configure that would have accommodated within the (inaudible).

Jonathan Daniel Ames Hollowell said based on information from the seawall contractor, the marine contractor, their impression was they would have no problem putting the same boat, the same dock, everything they had on Monte Carlo Court, on Central Avenue. He said they said when they looked at it in the past, the demarcation point, where the seawall is now, not where the original property was.

Dale Rhodes said the contractor that gave that information, they decided not to go with.

Jonathan Daniel Ames Hollowell said they were working with both of them, both gave that information. He said the guy that could do the seawall was Waterfront Solutions; Pelican Chase Marine had an ownership division so the guy who did the seawall lost his barge to do docks, he could then not do the dock so they went with waterfront Solutions.

Dale Rhodes asked if he had that same conversation with them about the dock he wanted to build.

Jonathan Daniel Ames Hollowell said yes, with both.

Dale Rhodes asked if Pelican Chase told him they could build the seawall here and he would still be able to build the dock he wanted without a problem.

Jonathan Daniel Ames Hollowell said yes.

Bill Huffman asked if it was without a variance.

Jonathan Daniel Ames Hollowell said there was no discussion about a variance; the way the variance came up was in talking with Waterfront Solutions. He said they came back and one of them measured from the protrusion now and one measured from the original demarcation line of the original property; they said that changed. He said he doesn't know if that's true or not. He said when he talked to Kyle at the County, he indicated that it has gone back and forth where the point is picked, the original property line or the seawall line.

Jack Higgins asked if either one of them suggested putting the new seawall in front, the back side.

Jonathan Daniel Ames Hollowell said they didn't. He asked if he was saying the property side.

Jack Higgins said yes.

Jonathan Daniel Ames Hollowell said the reason they didn't do that is he has a 10.0-foot easement; he can't put anything for 10.0 feet from the seawall onto the property, anything permanent. He said he had confusion there too because he has been told pools aren't considered permanent and been told they're. He said he's learning a lot today; he has been told sheds aren't permanent and told they are. He said that's one of the solutions one of the guys came back and said, they could possibly put the pilings on his property; it would get in the way of his 10.0-foot easement.

Paul Body said there isn't an easement on the survey along the rear property line. He said they do have a code that states that structures have to be 10.0 feet from the seawall. He said they possibly could have put it inside the old seawall. He said there might have been failure because they have tiebacks and trying to do it that way might be a problem.

Kevin McCann said he used to live in that neighborhood and navigated that canal for years; its an easy canal to navigate, it's wide. He said despite the fact that he is going out the minimum distance he can go out with the existing seawall; a lot of the residents park their boats on the outside of the slip, on the outside of the docks and there's still room to navigate. He said he is supportive of his request for a variance.

Jack Higgins said they better not park them, they better dock them.

Public Comment

Charles Calin, 1757 East Central Avenue, Merritt Island. He said he is in opposition. He said they purchased their property 1757, in 1989. He said on many occasions, they worked to free boats that were stuck up against their boathouse. He said it was strange to him but learned from the boat owners that the canal was the deepest at the seawall.; the farther out one goes the less water they have and the better chance they have of getting tied up. He said that's what was getting these boats tied up and they would have to go out and try to get them back floating in the canal again. He said during the hurricane of 2017, a boat hit their boathouse, because of the damage they had to have it dismantled; they worked with the code enforcement people. He said the boathouse was replaced with a dock that was only protruding 9.0 feet into the water; he figured that would help the people that were getting hung up. He said the boats still stay extremely close to the dock when they come by. He said the question he had is if they allow the docks to go out further, then it's going to be a problem.

Dale Rhodes asked if he was beside him.

Charles Calin said no, they're on the river side.

Dale Rhodes asked if he was the house on the corner.

Charles Calin said right on the corner. He said he had pictures of the damage.

Dale Rhodes said, that's okay.

Bill Huffman asked Charles Calin if they dredge that canal.

Charles Calin said he hasn't seen it dredged, he doesn't know if that's the case; they have done surveys to determine what they should do. He said there was dirt taken out and put on Shore Drive to enhance that street. He said when the boathouse was knocked down they decided to put a dock in because it was closer and not pushing the boats out too far to get hung up.

Anthony Aiello, 1756 Bayside Street, Merritt Island. He said he is across the canal of his residence and is in favor with some reservations to express they may not be aware of. He said as the other gentleman stated, it's very shallow at the edge when first going into the canal; he has stepped out into 18 inches and 2.0 feet in some spots. He said one would think that the middle of the canal would be deeper, but it's the opposite, like he said it's right on the edge where it gets deeper. He said on the turn, one has to come close to his seawall or get stuck; he has seen a lot of boats get stuck there. He said that is a concern; they have been doing surveys and talking about dredging the canal. He said last year, he spoke to someone in the water to their waist, doing a survey, who said in the next year or two, the money hadn't been allocated yet. He said some type of relief is on the way, it would be done soon. He said his concern as far as their property is that there's a boathouse located across from a piece of their seawall. He said he would ask that they don't build a dock across from that boathouse, that would cause an issue, it's a very narrow canal, they're saying 60.0 feet. He said he is a new boater, if there's another boat coming he's worried; he's not the greatest boater being new to it. He said two pontoon boats could not pass at the same time where the dock and the boathouse are if they were opposite, there would be a 20.0-foot space between them. He said his request would be for them not to go across from the boathouse so people could maneuver, beyond that, welcome.

Bill Huffman asked if he had seen this picture which is included in their packets. (GIS Aerial Map can be found in file 21PZ00064, located in the Planning and Development Department)

Anthony Aiello said he had not.

Dale Rhodes said he could show him but not have discussion out of the microphone.

Bill Huffman asked if the light brown was sediment.

Anthony Aiello said that's all silt and sand.

Bill Huffman said the channel is...

Anthony Aiello said it's almost nonexistent, people have to be very careful there. He said when people turn the corner, the channel goes out to the left there; when someone makes the turn, they have to go near his seawall or they will get stuck. He said he has hit the bottom, more times than he could tell them.

Jonathan Daniel Ames Hollowell said he does agree to an extent with what they say; he is also a relatively new boater and goes by there all the time. He said he has never run it aground or hit anything. He said he grew up on Central Avenue, his parents moved there in 1964; he has gone up and down this canal most of his life when he lived there. He said he has heard people say they get stuck there, in the years he has been there and his house has been under construction for eight months, he sees boats go back and forth and has never seen anyone get stuck. He said he realizes it's shallow on that end. He said he is going to contradict what these gentlemen said; he was going to

put his dock further to the west so people wouldn't run into where it gets shallow. He said for him to move his seawall back 12.0 inches would probably cost \$75,000; it has a crack that hopefully can be repaired. He said there had been variances given to other homeowners on the canal behind him where they've gone out roughly the same distance.

Dale Rhodes said it will have been awhile since those were done.

Jack Higgins asked what the beam size was on the boat he has.

Jonathan Daniel Ames Hollowell said 8.5 feet.

Jack Higgins asked why he needed (inaudible)

Jonathan Daniel Ames Hollowell said because they way the center lines of the pilings will be, according to the contractor, the beam is 8.5 and they would have to put the center line, would be 10.0 feet each so he would end up with a 9.0-foot beam, and the boat would be continually banging against the pilings when left in the water.

Jack Higgins said he would think he could bring it in a little.

Jonathan Daniel Ames Hollowell said he talked to the marine contractor who said that's not an option for that boat, the wind is going to push and will be continually battering against.

Dale Rhodes asked how wide his walk would be on that side.

Jonathan Daniel Ames Hollowell said it's scheduled to be two feet but if they say make it a foot, he just needs something, he could make it a foot, he could cut an inch off of that.

Dale Rhodes said the foot doesn't give 2.8 feet; he needs 3.0 feet.

Jack Higgins said he needs 2.0 to walk so he doesn't fall in the water.

Dale Rhodes read, do special conditions and circumstances exist which aren't applicable to any other lands, structures or buildings in the applicable zoning classification. He said he doesn't know that there are any special circumstances or conditions that exist; he is going to say there aren't. He read, that special conditions and circumstances don't result from actions from the applicant. He said the actions of the applicant are that they want to put a dock and lift in, that would be a result of their actions. 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 in the identical zoning classification. He said if they did it would give him special privileges as they have turned down many in the last few months regarding protruding further into the canal. 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said the provisions of the Chapter don't deprive them of any rights commonly enjoyed by anybody else in the same classification. He said the hardship is they wouldn't be able to put in a lift, they could put the dock in but not the lift they were wanting. 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 it's the minimum variance that they require for what they're wanting to put in, it doesn't change the use of the land or the structure. He said it doesn't take away from the reasonable use of the land or the water; if they said no it wouldn't allow for that structure. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such a variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said this is where he has his biggest issue, it could be detrimental to the public welfare and potentially injurious to the area involved; it's subjective.

Bill Huffman said he is looking at the photograph again and it looks like there is a shadow cast by a post, like a channel marker. He asked if there is a channel marker out there that tells people to go around that north side.

Kevin McCann said he is happy to comment on that.

Dale Rhodes asked Jonathan Daniel Ames Hollowell to come back to the stand and asked how well he was versed in that pole.

Jonathan Daniel Ames Hollowell said he is correct, it's a channel marker that denotes the channel, which way to go, one goes around the point.

Dale Rhodes asked if it was to his side of the property, of the canal.

Jonathan Daniel Ames Hollowell said yes, it's in the river, when coming out of the canal and looking ahead, its center of the canal, is the channel marker to go right. He said every canal on that side of Merritt Island has its own channels.

Dale Rhodes asked if those markers tell people to go to his side of the canal.

Jonathan Daniel Ames Hollowell said yes, when getting to that point, when you get to beyond his canal, where his home is, where his future home is, that canal is as deep as it can get on either side. He said there's no protrusion on his canal.

Dale Rhodes asked if that pole tells him to go on either side of it depending on which way he is going.

Jonathan Daniel Ames Hollowell said it tells which side to go on.

Dale Rhodes asked if it had a specific side.

Jonathan Daniel Ames Hollowell said yes it does.

Dale Rhodes said he is coming out of the canal, looking at that pole and has to go to the left side.

Jonathan Daniel Ames Hollowell said he has to go to the left side per maritime laws, right on return.

Jack Higgins said it looks like the one in the center is showing the right of way, the left and the right, the markers east and west; south and north looks like it's showing open where it's deeper. He asked if that was right.

Jonathan Daniel Ames Hollowell said the channel marker is out in the waterway, to the left of that picture there would be another channel marker and then another channel marker. He said to stay in the channel, go out the canal and make a left and make a right.

Jack Higgins said, to keep away from sandbars it looks like.

Jonathan Daniel Ames Hollowell said the whole area is sandbars; every canal on that side of Merritt Island has the same channel marker system.

Kevin McCann said where it's dark, north south, where there's deeper water, even for the Central Avenue canal, the canal coming off the main water from the channel, or the channel coming in from the main channel, comes in to that canal just north of Central, not his but the one just north. He said then it dog legs south and comes across his (Charles Taylor) property, and then can turn either into the Central Avenue canal or extend straight to the other side of Bayside. He said the other side of Bayside is where the channel markers are marking the channel going down south the Bayside.

Jack Higgins said that is what he is thinking.

Bill Huffman said if the channel marker is there, it means there's a sandbar there. He said currents, tides or whatever naturally created this sandbar. He said he's not sure dredging the canal would be a substantial solution.

Jack Higgins said, he isn't sure it would help but maybe get it into deeper water if he moved it to the west a little, where the other fellow has his. He said it would give him deeper water but may not be a solution.

Kevin McCann said his position hasn't changed, the contractor who built the seawall are the experts, they decided to build it a foot into the canal, maybe because of the failure of the other seawall, that was the best way to secure the property; he can't guess otherwise. He said he doesn't believe the way the seawall wall built was his fault, he was left with what remained and if he wanted a dock with a boat lift like every one of his neighbors, then he would need this variance.

Dale Rhodes said he always has issue with granting a variance further into the canal, his position hasn't changed on that from the first time they dealt with this. He said he may ask for two feet then the next guy asks for three, the next for four and the next thing they we know, we have major issues. He said he always sees it as a problem, he looks for solutions to do it any other way. He said Mr. Body said it would be potentially difficult to put the pilings inside the seawall with the tie ins. He said he is appreciative of the situation, he has to look at the future and what they may have to deal with down the road. He said at what point do they stop that, he's not sure there's an answer to that.

Jack Higgins said, as far as going inside, the tiebacks, at one point it will have to be addressed either way. He said if the next guy across the canal starts doing that, each time there could end up more and more and be no canal if allowed that way. He said the tiebacks would have to be addressed if they put it inside; if they would to begin with, that's something they will have to address in the future.

Motion by Kevin McCann, seconded by Jack Higgins, to approve the variance as depicted on the survey provided by the applicants. The vote was 2:2 with Huffman and Rhodes voting nay.

Dale Rhodes asked where it goes from here.

Paul Body asked if the vote was two to two.

Dale Rhodes said that's correct.

Paul Body said they would need another member or an odd number of members to have a majority. He said they would need to table it until the next meeting and hopefully have an odd number.

Robin Rogers said yes, unless one of them wanted to change their mind, they can table it; without a majority it would be denied. She said it's up to them, they can table it until there is a fifth member there, or if one of them were willing to change their mind based on (inaudible).

Dale Rhodes said if they table it, they come back to the next meeting and they do it again.

Robin Rogers said yes.

Bill Huffman said it's an action to table it, it's not automatic.

Robin Rogers said yes, they need to make an action to table it.

Bill Huffman asked if it was a motion.

Robin Rogers said yes.

Dale Rhodes asked if it was denied if they don't table it.

Robin Rogers said yes, without a majority.

Motion by Bill Huffman, seconded by Kevin McCann, to table the request to the November 17, 2021 Board of Adjustment meeting. The vote was unanimous.

Dale Rhodes said November 17th will be the next meeting, they will address it again at that meeting. He said sorry, he hated to put them through it.

Upon consensus, the meeting adjourned at 3:38 p.m.