

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, April 20, 2022, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair Bill Huffman presiding, to consider the requests below:

Board members present were: Bill Huffman, Chair, (D5); Jack Higgins, Vice Chair, (D1); Kevin McCann, (D2); and George Bovell, (D4).

Staff members present were: Sarah Beazley, Assistant County Attorney; Jeffrey Ball, Planning & Zoning Manager; Tania Ramos, Planner II; and Jennifer Jones, Special Projects Coordinator.

The Chair, Bill Huffman, called the meeting to order at 1:30 p.m.

Tania Ramos explained the function of the Board of Adjustment; Jack Higgins explained the definition of a hardship; and Bill Huffman explained the procedures of the Board of Adjustment. All speakers were sworn in by the Chair at the beginning of each item.

Approval of February 16, 2022, Minutes

Motion by Kevin McCann, seconded by Jack Higgins, to approve the February 16, 2022, minutes. The motion passed unanimously.

(21PZ00097) Tyler Hobbs (David Murphy)

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1305(5)(a), to permit a variance of 3 feet from the required 20-foot front setback for a principal structure, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.31 acres, located on the east side of Old Dixie Hwy., approx. 100 ft. south of Irwin Ave, Mims. (3485 Old Dixie Hwy., Mims) (Tax Account 2102111) (District 1)

David Murphy, 3650 Grantline Rd., Mims, stated the house was built in 1954 or 1955 and the criteria didn't exist then that exists today, and the house is 3 feet too close to the road. He said he would like to split the lot in order to build a house for his daughter, and he meets all of the requirements except that the old house is 3 feet inside of the 20-foot front setback.

Jack Higgins stated he doesn't see a problem with the variance.

George Bovell clarified that Mr. Murphy needs a variance because he wants to split the lot. Mr. Murphy replied yes, he would like to split the lot and the issue is that it doesn't meet the setback because of the existing house.

Mr. Bovell stated he doesn't have a problem with the variance.

Kevin McCann asked if the existing house faces Old Dixie Highway, and if the new house will face Irwin Avenue. Mr. Murphy replied yes, he will have 80 feet of frontage and 1/3 of an acre.

No public comment.

Motion by Jack Higgins, seconded by Kevin McCann, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

(22PZ00004) Robbi J. Rochon

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1402(5)(a), to permit a variance of 1.7 feet from the required 25-foot front setback for a principal structure, in a TR-1 (Single-

Family Mobile Home) zoning classification. The property is 0.36 acres, located at the northwest terminus of Cambridge Dr. (4919 Cambridge Dr., Mims) (Tax Account 2110465) (District 1)

Robbi Rochon, 4919 Cambridge Dr., Mims, stated his property is 23.3 feet from the property line, and according to code it's supposed to be 25 feet from the property line. He said he bought the house in 1994 and a few years later he added an extension to the carport on an existing slab. He stated he didn't realize he needed a permit when he built it, and now he was denied a permit because of the setback.

Jack Higgins stated he visited the property and it looks like there is another shed behind the one in question, and asked if that shed had a permit. Mr. Rochon stated based on the size of it, he didn't think he needed a permit. He said he built that shed for Code Enforcement because he had to clean up his property.

Mr. Higgins stated along Cambridge Drive there are numerous sheds and properties identical to the subject property, as far as encroachments, so its no different than many of his neighbors.

George Bovell asked Mr. Rochon is trying to do with the property, and if he is trying to build something. Mr. Rochon replied no, he already built the extension onto his carport and didn't realize he needed a permit.

Mr. Bovell asked about the Code Enforcement violation. Mr. Rochon explained a neighbor turned him in to Code Enforcement and he needed to clean up his property. He said he has done that and now he just needs a permit for the carport.

Mr. Bovell asked how it determined that he needed a variance. Mr. Rochon replied his property is on the corner and it arches and puts the corner of his house far enough back from the property line, but the center of the house is 23.3 feet instead of 25 feet.

No public comment.

Motion by Jack Higgins, second by Bill Huffman, to approve the variance as depicted on they survey provided by the applicant.

Kevin McCann stated for the record that the applicant still needs to apply for a permit for his carport extension.

Bill Huffman called for a vote on the motion as stated and it passed unanimously.

(22PZ00006) Bryan W. and Tara D. Massey

Variances from Chapter 62, Article VI, Brevard County Code, Section 62-1372(5)(a), as follows: 1.) to permit a variance of 7.5 ft. from the required 7.5-ft. side setback for an accessory structure; 2.) 4 ft. from the required 7.5-ft. rear setback for an accessory structure; 3.) 3.4 ft. from the required 7.5-ft side setback for an accessory structure; 4.) 5.4 ft. from the required 7.5-ft. rear setback for an accessory structure; 5.) Section 62-2100.5(1)(a), to permit a variance to allow two accessory structures to be located on a lot under 7,500 sq. ft, in an RU-2-15 (Multi-Family Residential) zoning classification. The property is 0.15 acres, located on the south side of N. Azure Lane, approx. 70 ft. east of Ridgewood Ave. (305 N. Azure Lane, Cocoa Beach) (Tax Account 2436924) (District 2)

Bryan Massey, 305 N. Azure Lane, Cocoa Beach, stated they purchased the property in August 2021 and applied for a permit to do some inside work and also to build a deck in the backyard, but the permit was denied due to two existing sheds being too close to the property line. The house was built in 1955 and it doesn't have a garage, and both of the sheds have been there since at least 2008. He said they would like to get a variance to leave the sheds in place for storage and to be able to build a deck in the backyard.

Kevin McCann stated there are neighbors with similar sheds in similar locations.

Bill Huffman stated it looks like the sheds are against a fence, and asked if it is a solid fence. Mr. Massey replied it is a wooden fence that belongs to the neighbor.

No public comment.

Motion Kevin McCann, seconded by George Bovell, to approve the variances as depicted on the survey submitted by the applicant.

Kevin McCann stated he visited the property and noticed several neighbors had similar structures in similar locations with little to no setbacks, and because the sheds were preexisting he doesn't feel as though there are any safety issues.

Bill Huffman called for a vote on the motion as stated and it passed unanimously.

(22PZ00007) Lock It Storage, LLC (Glenn T. Sundin)

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1482(5)a.4.b., to permit a variance of 1-ft. from the required 5-ft. side setback for a single-family residential structure in a BU-1 (General Retail Commercial) zoning classification. The property is 1.66 acres, located on the west side of U.S. Hwy. 1, approx. 480 ft. south of Anderson Way. (6400 N. U.S. Hwy 1, Melbourne) (Tax Account 2606063) (District 4)

Glenn Sundin, 560 Hidden Creek Dr. Merritt Island, stated he is an Attorney representing Lock It Storage, which is a self-storage facility on South U.S. 1. He stated his client has owned the property since December 2016, and they are seeking to expand their facilities, but ran into some trouble with the County when it was discovered there is an infringement on the setback for an existing residential home that has been in place since 1936, so the County won't issue a building permit without having the matter resolved, so they were advised to request a variance. He stated the structure is currently being used as an office and it will be used as an office in the future. [Mr. Sundin distributed photos to the board. The photos can be found in file 21PZ00007, located in the Planning & Development Department.] He said the problem is a result of the fact that it is not the whole structure itself that is in violation, it is the northeast corner of the building. The reason there is a violation is because of the way the property line runs, and it's closer to the building on the northeast corner by less than 1 foot.

George Bovell stated he has no questions because it's either the building is destroyed or the board grants the variance, and noted the building existed before the code.

Public comment.

Robert Paul Higgins, 6425 Andersen Way, Melbourne, stated his property abuts the subject property from the back. Lock It Storage has been a good neighbor and he just wants to know if anything is going to affect him on their mutual wall.

Jeffrey Ball stated the structure that needs the variance is along the northern property line, which should not affect anything on the western boundary, and Mr. Higgins can speak to the applicant after the meeting for more information.

Motion George Bovell, seconded by Kevin McCann, to approve the variances are depicted on the survey submitted by the applicant. The motion passed unanimously.

(22PZ00008) Joyce A. Hayes, Trust

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1339(5)(b), to permit a variance of 5 feet from the required 10-ft. side (south) setback for an accessory structure, in an EU (Estate Use Residential) zoning classification. The property is 0.43 acres, located on the west side of Malibu Lane, approx. 700 ft. north of Rio Casa Blvd. (763 Malibu Lane, Indialantic) (Tax Account 2725513) (District 5)

Joyce Hayes, 763 Malibu Ln., Indialantic, stated she's requesting a variance to the side setback on her property line so she can build an accessory structure adjacent to the pool. There is a safety requirement that there cannot be any structures within 5 feet of a pool, and in order to get that space, she's proposing to go 5 feet into the 10-foot setback. She noted she would not impede on the public utilities easement; there is a preexisting concrete slab that is there now, and when she applies for the permit she will have the concrete slab removed so that the easement is back to greenspace. She stated her house is one of the smaller ones in the neighborhood which is why she has the floor space and square footage that would enable an accessory structure. She mentioned two ancient Oaks on the property that have extensive root systems. She said almost every pool in the neighborhood is right behind the house, so they have opportunity to improve around their pools, but because of her trees, her pool is offset, which is why it's pushed to the left side of the property in the back.

Jeffrey Ball clarified the encroachment is 5 feet into the 10-foot side setback, not into the easement. The proposed structure cannot be in the easement without first vacating the easement.

Kevin McCann, asked for clarification if the pool runs perpendicular to the house, and she wants to put a 15 x 32-foot structure between the pool and the property line, on the side of the house. Ms. Hayes replied yes, but the structure will not exceed those dimensions.

Mr. McCann asked if the proposed structure one story or two stories. Ms. Hayes replied it has not been designed, but her intent is one story.

Jack Higgins asked if the structure can be 10 feet wide instead of 15 feet wide. Ms. Hayes stated it would not be functional because that would push into the pool safety requirement.

No public comment.

Bill Huffman noted there are two letters of objection. Mr. Ball stated the letters are part of the record, and the board can take appropriate actions as it sees fit.

Ms. Hayes stated the in letter from Ms. Tupper, one of the statements was that there are not any other structures on the street, but there are at least three accessory structures on the street. She said Ms. Tupper also mentioned the structure might block her view, but if the variance is denied, she will continue to pursue something and will try an alternative. In the letter from the Thomas's, she is not aware there is a requirement on site lines from inside her neighbors' house, so she hasn't assessed whether or not any structure there would block their view, but if she doesn't get the variance and she puts up a different structure, they will have the same concern.

Motion Bill Huffman, seconded by George Bovell, to approve the variances as depicted on the survey submitted by the applicant.

Mr. Huffman stated he is okay with the idea that there is a 5-foot clearance between her fence and where the building is going to go. He said it is waterfront property at a premium and she should be able to enjoy it.

Mr. McCann stated he appreciates that it is a premium lot, but he also appreciates the neighbors and their opposition. The setbacks are in place for a reason and one of them is for the neighbors' well-being and he's concerned that a structure encroaching 5 feet into the setback would affect the view and the well-being of the neighbors, so he is not in support of the variance.

Mr. Higgins stated the board has had a lot of discussion on similar issues in this area over the past few years, and he's not in favor of the variance.

Bill Huffman called for a vote on the motion as stated and it resulted in a tie vote, with Jack Higgins and Kevin McCann voting in opposition; therefore, the variance is denied.

(22PZ00009) Honiker Family Trust

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-2118(d)(3), to permit a variance of 5.8 ft. from the 14-ft. projection (20% the width of the waterway) for a boat dock, in an RU-1-11 (Single-Family Residential) zoning classification. The property is .20 acres, located on the south side of Richland Ave., approx. 0.13 mile east of S. Montego Bay Dr. (305 Richland Ave., Merritt Island) (Tax Account 2419742) (District 2)

Peter Honiker, 305 Richland Ave., Merritt Island, stated 11 years ago he applied for a permit for his dock and was allowed to project a maximum of 14 feet into the waterway; he submitted a design drawing and a survey and was granted a permit. The dock was constructed and the finished survey was approved. Last fall he applied for a permit to put a roof on the existing dock and submitted design drawings and survey and the permit was approved. The roof was built and a new survey was submitted showing the roof did not extend any further into the canal than the existing dock. He said he was then informed that his existing dock was no longer compliant with the code and that the physical dimension of the projection into the canal didn't change, but the allowed projection of 14 feet is now being taken from the property line rather than the seawall, so because of the re-interpretation of the code from what it was 11 years ago, he needs a variance.

Kevin McCann stated the seawall is no further out than any other seawall along the entire canal. Mr. Honiker stated the seawall was built before any of the houses.

Mr. McCann stated his property line is 5 feet in from the seawall, but it actually extends through the rear property. Mr. Honiker stated he maintains everything up to and including the seawall.

Mr. McCann stated his dock doesn't extend out into the canal any further than any of the neighbors' docks, and there is plenty of room for boats to pass beyond his dock.

No public comment.

Bill Huffman noted there is one letter in favor of the request.

Motion Kevin McCann, seconded by Jack Higgins, to approve the variances as depicted on the survey submitted by the applicant. The motion passed unanimously.

(22V00001) Mark T. and Linda G. White (Daniel Burnham)

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1402(5)(a), to permit a variance of 3.2 ft. from the required 25-ft. front setback for a principal structure, in a TR-1 (Single-Family Residential) zoning classification. The property is 0.17 acres, located on the west side of Vanguard Circle, approx. 300 ft. south of Vanguard Drive. (170 Vanguard Circle, Cocoa) (Tax Account 2411154 (District 1))

Erica Romero, 4870 Deer Lake Dr., Jacksonville, stated she is representing the applicants and Timberline Construction Group. She said Ms. White is part of the Rebuild Florida Program, her house was damaged by Hurricane Irma and she received a grant to have it replaced. Timberline Construction Group pulled permits for the demolition of the old home and replacement with a new home. When placing the new home, the installer placed it 3.2 feet closer to the front property line, encroaching into the 25-foot front setback. Moving the house at this point would be very expensive and time consuming.

Kevin McCann clarified it was the installer who did not place it correctly according to the survey. Ms. Romero replied yes, that is correct.

No public comment.

Motion Jack Higgins, seconded by George Bovell, to approve the variances as depicted on the survey submitted by the applicant. The motion passed unanimously.

(22V00003) Brevard County (Tim Lawry/Larry Lallo)

A variance from Chapter 62, Article IX, Brevard County Code, Section 62-3316(b)(4), to permit a variance of 10 ft. from the required 15-ft. side (east) setback for a freestanding sign, in a BU-1 (General Retail Commercial) zoning classification. The property is 4.01 acres, located on the southwest corner of N. Courtenay Parkway and Heidi Lane. (2575 N. Courtenay Parkway, Merritt Island.) (Tax Account 2412102) (District 2)

Tim Lawry, Brevard County Facilities Department, stated the property is the County Service Complex on Merritt Island, and the County would like to replace the sign that is in front of the building. There is a required 15-foot setback from the property line. The road is askew, the south side of the property is closer than the north side of the property. He said if the variance is granted, the sign will be 28.4 feet

from the edge of the pavement. The former sign was in the same location, so the new sign will not be any closer to the property, it will actually be a little bit further away from the property line.

Kevin McCann stated he visited the property and the location of the new sign will not obstruct any visibility for cars on Courtenay Parkway or the side street.

No public comment.

Motion Kevin McCann, seconded by Jack Higgins, to approve the variances as depicted on the survey submitted by the applicant. The motion passed unanimously.

County Attorney's Office - Sunshine Law Presentation.

Sarah Beazley, Assistant County Attorney, gave the board a presentation on Government in the Sunshine.

Other business

The board discussed the possibility of being provided identification badges for the board members when they visit properties requesting a variance. Staff will discuss providing something to the board members.

Upon consensus, the meeting adjourned at 3:06 p.m.