

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, November 16, 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: Jack Higgins, Vice Chair, (D1); Dale Rhodes (D3); Bill Huffman, Chair, (D5); and Dave Neuman (Alt. D5). The District 5 alternate was not eligible to vote on agenda items.

Staff members present were: Becky Behl-Hill, Assistant County Attorney; Jeffrey Ball, Planning & Zoning Manager; Paul Body, Planner III; and Jennifer Jones, Special Projects Coordinator.

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

Paul Body explained the function of the Board of Adjustment; Dale Rhodes explained the definition of an undue hardship; and Bill Huffman explained the procedures of the Board of Adjustment. All speakers were sworn in at the beginning of each item.

Approval of October 19, 2022, Minutes

Motion by Dale Rhodes, seconded by Jack Higgins, to approve the October 19, 2022, minutes. The motion passed unanimously.

Carol A. Hall

Variations from Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1401(5)(b), to permit a variance to allow an accessory building to be located forward of the front building line of the principal structure; 2.) Section 62-2100.5(1)(d), to permit a variance of 49 sq. ft. over the 600 sq. ft. allowed for an accessory structure; 3.) Section 62-2100.5(1)(b), to permit a variance of 2,125 sq. ft. over the total floor area of the principal structure allowed for all detached accessory structures, in an RRMH-1 (Rural Residential Mobile Home) zoning classification. The property is 1.94 acres, located on the north side of Brockett Rd., approx. 0.32 mile west of Hammock Rd. (2810 Brockett Rd., Mims) (22V00038) (Tax Account 2110383) (District 1)

Lisa Blackett stated she is representing her mother, Carol Hall. She said her mother's home was severely damaged during Hurricane Irma and she was a participant in the Rebuild Florida Program. She was granted a variance in January 2022 to allow all accessory structures to remain on the property and to allow demolition of the previous home, and installation of a new home. She stated because of an error by the surveyor, an accessory structure was not included on the survey that the variance approval was based upon. She noted there have not been any changes to any structures on the property, and everything is there as it will remain.

Jack Higgins asked if the pre-existing has been removed. Ms. Blackett replied no, none of the structures have been removed. She stated the assumption was that it was included in the original variance granted in January.

Mr. Higgins stated the attorney who represented the request in January said the structure was going to be removed. He asked if she wanted to use the structure for storage, in addition to the other structure. Ms. Blackett replied no, there is only one that is for storage and it was there originally. She explained that when the surveyor drew the plan, he put them together.

Mr. Higgins asked if Ms. Hall wants to leave the remaining structure as is, along with the new mobile home. Ms. Blackett replied that is correct. Mr. Higgins stated in January it was his understanding that the other structure would be removed because it was uninhabitable.

Ms. Blackett stated it was all connected in appearance, but it's a storage structure and it has always been for storage.

Dale Rhodes asked if the mobile home the variance is being requested for is the home Ms. Hall was living in. Ms. Blackett replied no, it was not livable, it didn't have a kitchen and it was never used as a residence. She stated her mother's home was destroyed and has since been demolished, and a new home has been placed. The reason for the variances is because the new home was installed behind the storage building, instead of beside it, like the old home was.

Mr. Rhodes asked if the mobile home is not the mobile home she was living in, but it is an accessory structure that was on the property but did not get included in the variance request. Ms. Blackett replied no, the intention all along was to use it as storage.

Mr. Rhodes asked if Ms. Hall lived in a mobile home. Ms. Blackett replied yes, but the roof was torn off during the hurricane. Mr. Rhodes asked if that mobile home has been removed. Ms. Blackett replied yes, it's been replaced with a new one.

Mr. Rhodes stated that is what the attorney was speaking to in January, that the home she was living in would be removed, and it was. That home was removed, and that is what the attorney was addressing, and they did that and brought in the new one; however, there is another mobile home on the property that is being used as storage and was not included with the previous variance.

Ms. Blackett stated that is correct, it was previously attached with a breezeway. Mr. Rhodes asked if the breezeway was removed after the first variance request. Ms. Blackett replied yes, when the original home was demolished. Mr. Rhodes stated that is why this is now coming back, because when it is attached by a breezeway the roofline makes it one building, and now that the breezeway is gone, it is two buildings.

Mr. Rhodes asked if the 2,125 square-foot structure is one the board previously approved.

Paul Body replied that is the total of all six structures on the property over the square footage of the new mobile home.

No public comment.

Motion by Jack Higgins, seconded by Dale Rhodes, to deny the variances.

Mr. Higgins stated he thought the intent in January was to clean up the area, and he doesn't see the need for the other structure.

Mr. Rhodes stated because it was previously attached the board approved it, and now it is out of compliance because it is no longer connected to the home by a breezeway. He said the board's understanding was that the mobile home was going to go away.

Bill Huffman stated one of the criteria for considering variances is if the hardship was created by the applicant, and he understands that the surveyor mis-represented what was on the property. Another criterion is if the request is compatible with the area.

Mr. Higgins stated the request is compatible with the neighborhood. He said he thought the board approved it in January, but he also understands the hardship.

Motion by Jack Higgins, seconded by Bill Huffman, to withdraw the motion to deny the variances. The motion passed unanimously.

Motion by Dale Rhodes, seconded by Jack Higgins, to approve the requested variances as depicted on the survey provided by the applicant. The motion passed unanimously.

Louis A. Bell III, Trust

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-3304(2), to permit a variance of 140 square feet of wall and canopy signage on a site developed with a nonconforming billboard, in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The property is 2.42 +/- acres, located between S.R. 520 and Lake Dr., approx. 0.30 mile west of N. Burnett Rd. (No assigned address. In the Cocoa area.) (22V00033) (Tax Account 2409610) (District 1)

Phillip Hollis, 1190 Business Center Dr., Lake Mary, Florida, stated there is an existing non-conforming billboard on the property and he was told that if he cuts off 100 feet of the property that the billboard is on, and just not develop that portion, the billboard can remain, but the problem is that there would not be enough property left to make it viable. He stated the property value continues to go down, along with the value of the billboard, and the effect of the hardship economically of the billboard becomes more and more severe and significant. He said he feels the request meets all six requirements for determining a variance. It will be nice signage on a nice building that is good for the community.

Dale Rhodes stated in regards to undue hardship, economic reasons may be considered only in instances where the landowner could not yield a reasonable use or reasonable return under the existing land use regulations. The economic situation isn't what the board is able to take into consideration; the board is addressing if it can permit additional signage and allow the billboard to remain without creating other issues.

Mr. Hollis stated the variance will determine whether the contract with Ms. Bell will be terminated because the developer cannot pay her what she wants for the property because of the hardships.

No public comment.

Mr. Hollis closed by stating he believes if the variance is denied it will cause severe economic hardship to Ms. Bell and cause an unreasonable return under the existing land development regulations.

Motion by Jack Higgins, seconded by Bill Huffman, to deny the variance.

Bill Huffman stated the property is isolated between two roads, not adjacent to other residences or other buildings to be detrimental. He said he recognizes the economic issues and will consider those, but he doesn't see that granting the variance would be detrimental to the neighborhood.

Mr. Rhodes stated the board is approving a specific amount of square footage, which is the specific amount of signage that would be attached to the building. He said if the request was for another

billboard, he would have exceptions to it, but as it is, he is not opposed because it is reasonable and will not cause any issues in the area.

Mr. Higgins asked for clarification on the billboard's nonconforming status. Jeffrey Ball stated because the County no longer allows billboards it is considered non-conforming. He explained non-conforming billboards need to be removed before any other signage can be approved. The request today is to keep the non-conforming billboard and get additional signage.

Bill Huffman called for a vote on the motion as stated, it failed 1:2, with Huffman and Rhodes voting nay.

Motion by Dale Rhodes, seconded by Jack Higgins, to approve the variances as depicted on the survey provided by the applicant. The motion passed unanimously.

Jaime Dempsey (Tom Bartkowski)

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1339(5)(b), to permit a variance of 7 ft. from the required 10-ft. side (west) setback for an accessory structure; 2.) Section 62-1339(5)(b), to permit a variance of 7.5 ft. from the required 10-ft. rear (north) setback for an accessory structure, in an EU-1 (Estate Use Residential) zoning classification. The property is 0.25 acres, located on the north side of Pinta Circle, approx. 389 ft. east of N. Tropical Trail. (190 Pinta Cir., Merritt Island) (22V00017) (Tax Account 2444588) (District 2)

Tom Bartkowski, 190 Pinta Circle, Merritt Island, stated the request is for a variance of 7 feet from the west property line, and 7.5 feet from the north property line, to install a pre-manufactured storage shed.

Bill Huffman asked if Mr. Bartkowski has any letters of support from neighbors. Mr. Bartkowski replied a neighbor across the street signed the notice that was sent to him. He stated the proposed location of the shed has foliage, so the majority of the neighbors would not see the shed. He noted that he plans to add additional landscaping on the north side to further hide the shed.

Mr. Huffman asked if the adjoining neighbors been made aware of the variance request. Mr. Bartkowski replied he spoke with the majority of the immediate neighbors and they are in favor.

Dale Rhodes stated it looks like there is nowhere else on the property for the shed to be located, but a shed 2 feet from the property line creates a tight situation. He said of the immediate neighbors, no one sent any letters, so their thoughts are unknown.

Mr. Bartkowski stated the shed will be 2.5 feet or more from the property line. There is a well point that is above the ground and he would like to put the shed as close to that well point as possible without covering or being on top of it.

Public comment.

Sherry Steele, 174 Pinta Circle, Merritt Island, state she owns the property to the north, directly behind the subject property, and there is nothing green between the subject property and her property. The shed will be 1 foot from her fence, and she doesn't feel that because they want such a large shed that she should have to pay the consequence and pay to keep it out of sight.

Bill Huffman asked the applicant for clarification on the additional landscaping. Mr. Bartkowski stated a landscaping company recommended a type of palm tree to line the back of the property. He noted some greenery has been removed to make room for the shed.

Mr. Huffman asked if the shed will have a peaked roof and eaves. Mr. Bartkowski replied there are no eaves, it has a metal roof that is rounded at the top. He said he plans to hide the shed as much as possible from all corners, with palm trees in the back and existing foliage on the west side. He stated he is not asking for anything out of the ordinary within the neighborhood, there are 35 homes and at least 12 sheds within the setbacks. He noted that Ms. Steele also has an accessory structure that is approximately 1.5 feet from his property line.

Motion by Dale Rhodes, seconded by Jack Higgins, to deny the requested variances.

Mr. Rhodes stated a 70% to 75% deviation from the code potentially creates a hazard.

Mr. Higgins asked if the shed could be placed closer to the house. Mr. Ball replied it has to be 5 feet from any other structure.

Mr. Huffman stated an immediate neighbor is in attendance and is in opposition, and that weighs on his decision.

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variances.

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

Shandyn L. DiClaudio (Michael Minot)

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Sections 62-1334(4) and 62-1102, to permit a variance of 22.62 ft. from the required 108-ft. minimum lot width at the front lot line; 2.) Sections 62-1334(4) and 62-1102, to permit a variance of 37.5 ft. from the required 150-ft. minimum lot width measured at the rear of the front setback line, in an AU (Agricultural Residential) zoning classification. The property is 2.07 acres, located at the south end of Parker Dr., on the west side of Parker Dr. (9581 Parker Dr., Micco) (22V00034) (Tax Account 3008204) (District 3)

Mike Minot, 96 Willard St., Cocoa, stated his client purchased the property in November 2020. There was an issue shortly after the purchase because the Property Appraiser's Office records reflected the property as 3.59 acres, but it was actually 2.11 acres. He said it was determined that the size and configuration, per the survey provided, was the case prior to March 6, 1974, when the AU zoning requirements were substantially changed; therefore, the property is nonconforming, but still needs certain variances for purposes of becoming a buildable lot. He noted another way to solve the problem is to request a rezoning to RR-1; however, staff advised him the minimum amount of administrative change should be requested, and it is staff's position that these variance requests are less substantial than would be a zoning change. He concluded by stating that the hardship is that without the variances there is no ability to pull a building permit to build a house.

Dale Rhodes stated he visited the property, and asked how there was a discrepancy between 3.59 and 2.11 acres. Mr. Minot replied these types of discrepancies happen often and the Property Appraiser's Office doesn't do a review until it is brought to their attention.

No public comment.

Motion by Dale Rhodes, seconded by Jack Higgins, to approve the variances as depicted on the survey provided by the applicant.

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variances.

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

Lance C. Boncek

A variance of Chapter 62, Article VI, Brevard County Code, as follows, Section 62-1334(5)(b), to permit a variance of 4.8 ft. from the required 15-ft. rear setback for an accessory structure, in an AU(L) (Agricultural Residential, Low Intensity) zoning classification. The property is 1.08 acres, located on the south side of Angelica St., approx. 708 ft. east of Alan Shepard Ave. (3375 Angelica St., Cocoa) (22V00035) (Tax Account 2403955) (District 1)

Lance Boncek, 3375 Angelica St., Cocoa, stated he is requesting a variance for an existing detached garage, of which he was granted a variance. He said he had staked the area of the garage for where it should be placed, but the concrete company poured the pad incorrectly and faced the pad with his house. He said when the final survey was done he found out the building and pad were 4.8 feet from the setback, but neither the concrete company nor the builder want to answer as to how the mistake happened.

Jack Higgins stated in that area there are many accessory structures with similar situations, so he doesn't think it would interfere with neighbors.

Bill Huffman asked if the concrete company moved the stakes. Mr. Boncek replied yes, they adjusted the framework to where it would face along with the house. Mr. Huffman asked if there were any construction drawings that showed the layout. Mr. Boncek replied yes, the survey he submitted with his application.

No public comment.

Motion by Jack Higgins, seconded by Dale Rhodes, to approve the variance as depicted on the survey provided by the applicant.

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variances.

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

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