

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, February 15, 2023, 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: Sonya Mallard (D1); Kevin McCann, (D2); Dale Rhodes, Chair; (D3); Bill Huffman, Vice Chair, (D5); and Dave Neuman (D5 Alt.) The District 5 alternate member 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.

Chair Dale Rhodes called the meeting to order at 1:30 p.m.

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

Approval of January 18, 2023, Minutes

Motion by Bill Huffman, seconded by Kevin McCann, to approve the January 18, 2023, minutes. The motion passed unanimously.

Barry Moyer (David Woodrow)

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-2123(a), to permit a variance to allow a swimming pool to be located forward of the front building line of the principal structure, in an RU-2-10 (Medium Density Multi-Family Residential) zoning classification. The property is 0.57 acres, located on the north side of E. Coral Way, approx. 375 ft. west of Hwy. A1A (108 E. Coral Way, Indialantic) (22V00048) (Tax Account 2716288) (District 5)

David Woodrow, 2800 Turtle Mound Road, Melbourne, stated he is the pool contractor for Barry Moyer who would like to install an in-ground swimming pool. The issue is that there are two structures in the rear of the property that prevent the pool from being placed there, and the only other area to place the pool is in front of the house.

Bill Huffman stated the subject property and adjacent properties are deep lots, as opposed to other lots in the area that are more shallow and closer to the road. He said the subject property also has a lot of trees and screening from the street. He asked if the variance is approved, would that screening remain in place. Mr. Woodrow replied there is one palm tree that would have to be removed, but everything else will remain, and there will also be a screen enclosure over the deck, so all codes will be addressed.

Mr. Huffman stated it appears that even if the accessory structures were not behind the house, it would still be a very tight fit for the proposed pool.

No public comment.

Motion by Bill Huffman, Kevin McCann, to approve the variance as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Dale Rhodes called for a vote on the motion as stated, and it passed unanimously.

Maritza Andrea and Kevin P. Reilly

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1404(8), to permit a variance of 32 sq. ft. from the required 500 sq. ft. living area for a principal structure, in a TR-3 (Mobile Home Park) zoning classification. The property is 0.02 acres, located on the north side of Peace Lane, approx. 0.16 mile west of Highway A1A. (436 Peace Lane, Melbourne Beach) (22V00053) (Tax Account 2848661) (District 3)

Maritz Reilly, 827 Preakness Drive, West Melbourne, stated they purchased a nonconforming mobile home lot in Melbourne Beach at 436 Peach Lane, and are asking for a variance from the minimum 500 square-foot requirement of 32 square feet in order to install a home and not encroach on the setbacks.

Dale Rhodes asked if the home would be 532 square feet. Ms. Reilly replied it will be a 469 square-foot home because the lot is the smallest in the community.

Mr. Rhodes stated in the hardship worksheet it was mentioned that similar requests have been granted to adjacent neighboring properties, but the information given to the board says there have not been any variances approved in that area.

Paul Body clarified there have not been any variances granted for a smaller house size, but there have been variances to perimeter setbacks.

Mr. Rhodes stated his concern was how close the house would be from the neighboring properties, but he doesn't see a problem with the request.

No public comment.

Motion by Kevin McCann, seconded by Sonya Mallard, to approve the variance as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Dale Rhodes called for a vote on the motion as stated, and it passed unanimously.

Melanie Rondeau and Zackry Corter

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1401(4), to permit a variance of 25 ft. from the required 125-foot minimum lot width in the RRMH-1 (Rural Residential Mobile Home) zoning classification. The property is 1 acre, located on the east side of Blounts Ridge Rd., approx. 0.16 mile north of Patty Lane (No assigned address. In the Mims area.) (22V00054) (Tax Account 2000693) (District 1)

Zackry Corter, 2215 East Jay Jay Road, Mims, stated they are requesting a variance of 125 feet from the minimum lot width, because the lot is only 100 feet wide, and in order to rezone to RRMH-1, the minimum lot width required is 125 feet.

Sonya Mallard stated she doesn't have a problem with the request.

Bill Huffman asked if the adjacent lot is also nonconforming lot. Mr. Corter replied yes, the lot to the south is also the same size.

Dale Rhodes asked if they would like to rezone the property. Mr. Corter replied yes, it is currently zoned General Use, and in order to be able to put a manufactured home on the property the zoning needs to be changed to RRMH-1.

Mr. Rhodes asked if the request is for the proposed zoning. Paul Body replied yes.

Kevin McCann asked if there are other properties in the immediate area that are zoned RRMH-1 and also have 100 feet of width. Mr. Corter replied there are a number of lots that are zoned RRMH-1.

Mr. Rhodes stated it appears there are a lot of properties with the same zoning classification with mobile homes in the area, and he believes the request would be in harmony with the area.

Motion by Sonya Mallard, seconded by Bill Huffman, to approve the variance as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Dale Rhodes called for a vote on the motion as stated, and it passed unanimously.

Espejo Investment Group, LLC

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-2100.5(d), to permit a variance of 138.4 sq. ft. over the 600 sq. ft. allowed for an accessory structure in an RU-1-7 (Single-Family Residential) zoning classification, currently zoned AU (Agricultural Residential). The property is 0.25 acres, located on the east side of Goldenrod St. approx. 125 ft. south of Victoria St. (932 Goldenrod St., Merritt Island) (23V00001) (Tax Account 2501515) (District 2)

Michael Espejo, 932 Goldenrod Street, Merritt Island, stated he would like to rezone from Agricultural to Residential. He said he purchased the property with an existing accessory structure and the overhang makes it larger than what is allowed in relation to the principal structure.

Kevin McCann asked if the structure would be within code without the overhang. Mr. Espejo replied yes.

No public comment.

Motion by Kevin McCann, seconded by Sonya Mallard, to approve the variance as depicted on the survey provided by the applicant.

Mr. McCann stated he visited the property and the structure cannot be seen from the street. It is a large piece of property and it's appropriate to approve the request.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Dale Rhodes called for a vote on the motion as stated and passed unanimously.

Ryan F. Armstrong and Christina E. Zaruba

Variances from Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1334(5)(b), to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure; 2.) Section 62-1334(5)(a), to permit a variance of 24.9 ft. from the required 25-ft. minimum front setback for a structure, in an AU (Agricultural Residential) zoning classification. The property is 1.02 acres, located on the southeast corner of Tangelo Ave. and Bahia St. (4295 Tangelo Ave., Cocoa) (Tax Account 2401339) (District 1)

Ryan Armstrong, 4295 Tangelo Avenue, Cocoa, stated they purchased a motor home with the intention of protecting it with a carport. He said before getting the motor home, they contacted contractors to lay a pad and construct the carport structure, and they discussed numerous options of where it could be located on the property to best suit getting it on and off the property safely, and what costs would be incurred. He noted in one of the objection letters he received, it was suggested the carport be located on the back portion of the property where there is a right-of-way easement off of Bahia Street; however, they were informed during the negotiations with the concrete contractor that they are only allowed two such easements for right-of-way, but they purchased the property with three easements in place. He said they also had a theft a number of years ago with a trailer that was parked in the back and it felt like a very unsecure location to place the carport, as well as very expensive. He stated they opted for the northwest corner of the property, adjacent to the driveway portion of the property, and after five months of having it, they finally managed to pull the motor home in safely with one turn. He said in the neighborhood, he's noticed six other properties that are in violation of one if not both of the variances that they are requesting, so he doesn't feel they are asking anything that doesn't already exist in the neighborhood.

Kevin McCann asked the name of the concrete contractor who gave Mr. Armstrong advice. Mr. Armstrong replied, Sunny Concrete. Mr. McCann asked if they also installed the structure. Mr. Armstrong replied no, they did not, Cals Carports installed the carport and they also used Casteel Metalworks for the labor. Mr. McCann asked if the concrete contractor or the other contractors pulled any permits. Mr. Armstrong replied they did not.

Mr. McCann asked if Mr. Armstrong if he did any research to see if the other possible violations in the neighborhood had permits or variances. Mr. Armstrong replied no, he did not.

Mr. McCann asked if there are any other locations on the property where the structure would fit.

Mr. Armstrong replied after speaking with staff, the only other option that would have been to rotate the structure 90 degrees and point it down from east to west in front of the property line, but the carport would have covered the entire front of the house. He stated the entire eastern side is where the septic tank and field are located, so that is not a possibility; it was in front of that area, to the north, where they originally wanted the carport before being told about the right-of-way restrictions, as that would have forced them to put in a culvert. He noted on the back portion of the property, to the south of the structure, there is a third culvert off of Bahia Street area, but it is only paved up to the point of the culvert and not further onto the property, plus the entire area is heavily wooded and would require a significant amount of tree removal and ground clearing.

Mr. McCann asked if the back yard is large. Mr. Armstrong replied the house is located on the front portion of the lot, so nearly half of the lot is the back yard, and they also have a screened in-ground pool in the back yard.

Mr. McCann asked what is on the west side of the house. Mr. Armstrong replied the west side of the house is approximately 20 feet to the edge of the property and is also heavily wooded with trees.

Mr. McCann asked how far from the front property line is the carport. Mr. Armstrong replied the carport is nearly against the edge of the property line along Tangelo Avenue. Mr. McCann asked if it occupies the entire setback. Mr. Armstrong replied yes, that entire corner.

Mr. McCann asked if Mr. Armstrong has driven northbound on Bahia Street to see if there are any obstructions to traffic.

Mr. Armstrong replied, from the Tangelo side he walked the easternmost edge of his driveway and took a picture from that direction, at an estimated of 24 yards. He said he also walked the same distance in all four directions and took similar pictures, and in only two of them was the structure able to be seen, and that was looking east on Tangelo, looking toward his property, and the other was similarly from Bahia.

Mr. McCann asked, of the six properties in the vicinity that have accessory structures in the front of their principal structures, if any of them are constructed on actual intersections. Mr. Armstrong replied yes, two of them are on Lee Street where Tangelo dead ends, and also one to the south of that.

Mr. McCann stated those properties are not in an intersection. He asked, if any of the six properties have structures in front of the houses that are within the setbacks. Mr. Armstrong replied two of them look to be close, one on Citrus Boulevard looks to be barely off the edge of the property line, and one on Peppertree is very close to the property line.

Mr. McCann asked if Mr. Armstrong knows why permits were not pulled for his structure. Mr. Armstrong replied no, he does not. Mr. McCann asked if it could be because the permits would not have been approved. Mr. Armstrong replied it is possible.

Dale Rhodes asked staff if any of the three rights of way could be taken away from him. Paul Body replied rights of way are under the driveway code with the Public Works Department.

Bill Huffman asked if the carport is open on all sides. Mr. Armstrong replied it has a partial side wall down to four or five feet off the ground, but it's not a complete structure.

Mr. Huffman stated asked if the carport pad was part of the carport construction. Mr. Armstrong replied there were two projects with two different contractors, and the concrete pad was specifically poured for the carport. Mr. Huffman asked if it never crossed his mind that he would need a permit, as he is the one who hired the contractor. Mr. Armstrong replied his past experience with hiring contractors is that they pull any necessary permits, and that has always been the case when he has had permits pulled for other work, so he assumed the contractors were pulling permits.

Mr. Huffman asked if the contract with the concrete contractor was a one-page typical proposal scope of work. Mr. Armstrong replied yes.

Mr. Rhodes asked if the concrete contractor also did not pull permits. Mr. Armstrong replied he did not know, and the only thing that has been brought to his attention at this point is the lack of permit for

the carport. He said they've been pursuing getting that permit approved, which is why they need a variance.

Mr. Rhodes asked if the contracts specifically state that the contractors would pull the permits. Mr. Armstrong replied he did not know. Mr. Rhodes asked if he would not reasonably think permits would be required and that as the property owner it would be his responsibility to ensure permits were pulled before the work is done. Mr. Armstrong replied he it was a poor assumption on his part.

Sonya Mallard stated as a homeowner, he should have known to read the contract and understand the importance of having those permits pulled and he failed to do so.

No public comment.

Motion by Sonya Mallard, seconded by Kevin McCann, to deny the variances requested.

Mr. McCann stated he drove by the property and he has significant issues with the project. It's a very large structure in the front yard, built all the way to the front property line. He said it's impossible to see through the structure because there are partial walls on it and the RV is parked in it. He said he drove Bahia Street and his view was obstructed at Bahia and Tangelo, so he's concerned about safety of vehicles and pedestrians. He stated he believes there is sufficient space in the rear of the property, and the gated access off of Bahia provides sufficient space as well. He said for safety of the community he cannot support the request.

Mr. Rhodes stated even if Mr. Armstrong requested the variance before building it, he would have objected to it for the reasons already stated as far as safety, and also because it's three inches from the property line. He said a reasonable contractor would realize this would be a problem, and he hopes the contract states permits were needed, but if not, it is the homeowner's responsibility to ensure that any structure is being properly built to code and that permits are in place before building.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for denying the variances.

Dale Rhodes called for a vote on the motion as stated and passed unanimously.

Anthony V. and Kathleen E. DiLella (Carter Hayes)

Variances from Chapter 62, Article VI, Brevard County Code, as follows: 1) Section 21-2118(d)(3), to permit a variance of 2.48 ft. over the 15.52-ft. projection (20% the width of the waterway) for a boat dock; 2.) Section 62-1340(5)(b), to permit a variance of 2 ft. from the required 7.5-ft. side (west) setback for an accessory structure, in an RU-1-13 (Single-Family Residential) zoning classification. The property is 0.35 acres, located on the westerly side of Bay Shore Dr., approx. 0.14 mile northwest of West Point Dr. (1742 Bay Shore Dr., Cocoa Beach) (23V00003) (Tax Account 2519528) (District 2)

Dale Rhodes stated the second variance request is to legitimize an existing accessory structure, and asked staff if the board can divide the variances and decide on them individually.

Becky Behl-Hill replied yes.

Mr. Rhodes -stated he would like the board to hear the second variance first, for the existing accessory structure.

Anthony DiLella, 1742 Bay Shore Drive, Cocoa Beach stated when they purchased the house there was a detached garage that had been in existence since the house was built, but it was not built within the current setback of 7.5 feet.

Kevin McCann asked if there is sufficient room between the accessory structure and the property line to safely pass through. Mr. DiLella replied yes, his pool equipment is next to the structure and there is at least five feet.

No public comment regarding Variance No. 2.

Motion by Kevin McCann, seconded by Bill Huffman, to approve Variance No. 2 as depicted on the survey provided by the applicant.

Mr. McCann stated he visited the property and the structure seems safe, not obstructing anyone's view.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving Variance No. 2.

Dale Rhodes called for a vote on the motion as stated and passed unanimously.

Variance No. 1:

Mr. DiLella stated before purchasing the home in 2020, he and his wife investigated the possibility of a dock and lift, which were both favorable but provided challenges because of the space behind the house. After purchasing the home, they began thinking of improvements they would like to make. [Mr. DiLella provided a handout to the board. The handout can be found in file No. 23V00003, located in the Planning & Development Department] He said based on aerial photos, the property had lot at least 10 feet of land over the past 10 years, so putting in a seawall was necessary. He said they wanted a boat lift and a dock behind to be able to put house a boat. He stated they became friends with their neighbor's, the O'Kane's, and he would like to stay friends; he got good insight from there for how they launch their boat, and he told the O'Kane's he would not block them in with his dock. He said they met with LeeAnn McCullough-Wham from Natural Resources Management and explored options such as putting in a slip just 12 feet out and 6 feet in, looking for the minimum requirement of 18 feet, but that was not possible, so they began with variance process with Paul Body. He stated after meeting with Mr. Body, it was determined that the only option was a variance to be able to flip the boat because all other options that fall within the setbacks would have it parallel to the property, which makes it impossible for the neighbors to use their boat. He stated he wanted to be able to come in straight, so they narrowed it down as much as possible, and in exploring every option to put the structure as far away from the O'Kane's as possible, they reduced the piers from 4 feet to 3 feet, and also removed a 2-foot spacer on the opposite side of the O'Kane's to save another 4 feet, which basically puts the structure starting at halfway between the two legs. He said after looking at every possible option, he doesn't see another one. So, going to the minimum of 3 feet on each pier and 11 in the minimum, just being able to go out 18 feet would give us an 18 - 20-foot boat in there, and that is all they want to do.

Carter Hayes, 1210 S. Atlantic Avenue, Cocoa Beach, stated the proposed variance is the smallest possible and still accomplish the greater amount of good for everyone in the cul de sac of water.

Paul Body stated the Code states that the watercraft or any pilings cannot increase over 20%, so if he's pulling a boat perpendicular straight in, the boat is going to have to meet the 20% requirement. The boat cannot stick out any further than what they are asking for on the dock. He further stated, the code reads that no boat dock, covered boat dock, or pier, together with pilings, moored vessels, or watercraft, shall project into a manmade waterway more than 20% the width of the waterway. He said if Mr. DiLella is asking for his boat to stick out further, he's going to need a bigger variance than what has been proposed for the dock, or else a smaller boat.

Mr. DiLella stated there are other boats in the area that hang outside of the structure.

Mr. Rhodes stated the board can either proceed with the request as written, and if approved, the your boat would have to remain inside of that, or the board can table the item and Mr. DiLella can make an amendment and come back at another meeting.

Jeffrey Ball suggested the board table the application in order for the applicant to look at other options, and staff can determine the actual variance he will need. If he needs a greater variance than what was advertised, he will need to be re-advertised for that increase in the variance. He stated the next meeting is April 19, 2023, which would give him 60 days.

Kevin McCann stated the requested variance may intrude too closely to the neighbors' access to their dock. He said it is probably more appropriate to table it and figure it all out rather than pushing forward and getting a denial. He said his concern is the swing of the neighbors' boat to be able to get in and out of their dock. He stated after seeing that the seawall is on a diagonal and does not extend all the way to the west property line, he feels the dock can be moved and the finger pier started 3 feet toward the property line, and that will allow an extra 3 feet of space.

Mr. McCann suggested reducing or eliminating the east finger pier that was originally constructed at 4 feet.

Mr. DiLella stated one of the suggestions by the O'Kane's was for them to apply for a variance as well so they can all pull in straight, and asked if he and the O'Kane's are able to come to the board at the same time for variances.

Mr. Rhodes stated he would need to talk to staff about the application process and deadlines. The board considers variance requests on a case-by-case basis.

Mr. Body recommended Mr. DiLella speak to the surveyor and the neighbors to try to find a solution.

Motion by Bill Huffman, seconded by Kevin McCann, to table Variance No. 2 to the next available Board of Adjustment meeting after the applicant meets with staff to determine if an alternate or additional variance is required. The motion passed unanimously.

Upon consensus, the meeting adjourned at 3:07 p.m.