

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, October 16, 2024, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida;

Board members present were: Sonya Mallard, Vice Chair (D1); Steve Holmberg (D3); Dr. Joanna Bass (D4); and Bill Huffman, Chair (D5);

Staff members present were: Greg Hughes, Assistant County Attorney; Jeffrey Ball, Zoning Manager; Paul Body, Senior Planner; Desiree Jackson, Planner; and Alice Webber, Operations Support Specialist.

Vice-Chair Sonya Mallard called the meeting to order at 1:30 p.m.

Paul Body explained the function of the Board of Adjustment; Dr. Joanna Bass 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 September 18, 2024, Minutes

Motion by Sonya Mallard to approve the minutes of the September 18, 2024, meeting, seconded by Steve Holmberg. The motion passed unanimously.

Item H.1. Mahasu Associates, LLC (Sam Sebaali) requests a variance of the required lot width in a RU-1-9. (24V00022) (Tax Account 2419409) (District 2).

Paul Body read the item into the record and noted this item was continued from the July 14, 2024 BOA Meeting.

Sam Sebaali presented this item on behalf of the applicant. He referred back to the July meeting and noted that the main reason this item was continued was due to the Board's request that the applicant provide additional information of this request and to hear their adjacent neighbor's concerns. Mr. Sebaali said he had talked to the neighbor at 1019 Bevis Road after the July meeting and concerned they had no additional concerns with the project. The other adjacent property owner at 1045 Bevis Road was noted to have some legitimate concerns related to potential drainage impact to their property. Mr. Sebaali said "we would provide a swale area so we would fill partially on her property and our property to kind of level it off and provide some landscaping along that boundary with a sidewalk". He stated the intent is to have the proposed roadway lower than that neighbor's house. To address this neighbor's concern, he has committed to work with the neighbor throughout the construction of this project for the entrance.

Jeffrey Ball noted the applicant had provided plans on how the access is proposed but staff has not reviewed this access. He stated that during the site plan review process it will be reviewed to determine if it all our code requirements.

Mr. Sebaali clarified the intent of the submission of the conceptual plans is to make sure that we're not going to cause any flooding problems to the adjacent property.

No Public Comment.

Motion to approve item H.1. as depicted in the survey 2/6/2003 by Joanna Bass, seconded by Sonya Mallard. The motion passed 3 to 1.

Item H.2. Teale New Haven LLC (Bruce A. Moia) requests a variance of the required floor area for an efficiency apartment in a TU-2. (24V00030) (Tax Account 2800731) (District 5)

Paul Body read the item into the record.

Kim Rezenka, on behalf of the applicant, explained the purpose of the request. She said “the ordinances don't always match up with uh what the law says it is so the problems what they're trying to do here is take an old hotel and convert it to workforce housing using the standards of the live local act.” These proposed studio efficiency apartments require 400 sf so it is 112 sf variance per unit that is being required. The applicant proposes 254 studio efficiency apartments with restricted rate rentals of 40 and 30 percent 288sf for 30 years. She further stated they are 288 sf units but required 400 sf, so a 112 sq ft variance per unit is being requested.

Rian Hiller, on behalf of the applicant, furthermore explained the purpose of the request and what the project will provide for the residents.

Ms. Rezenka carried on to refer to a letter that was sent by the company to Mr. Calkins that stated “we want to do 245 multi-family studio apartments. 40% of the units will be restricted to 120% AMI. 74 will be restricted to Brevard County definition of Workforce density of 30 units to the acre.” She noted that they had received a letter back from Mr. Ball which basically stated “zoning classifications are considered consistent. If redevelopment plan meets all the criteria of the live local act it should be noted the highest land use is 30”. She said “they took this to mean it was fine. So they bought the property in May 2024, submitted site plan in June of 2024, and then got a note saying your units are too small. And that is why we are here.” They are building within the footprint of the original building. She went on explaining the pages of the handout.

Steven Holmberg asked if this is one variance to the design or for each unit.

Jeffrey answered it's a variance for each unit and covers all the units.

Joanna Bass asked if it was on a bus line.

Ryan Hiller responded that this rental apartment is within 500 ft of a bus line. He further explained the many features that come with the rental unit.

Bill Huffman asked if the impervious area is being increased.

Mr. Hiller thinks they will be decreasing the impervious area. He further noted the entire building will be sprinkled for fire safety.

Bill Huffman noted he did not have a proposed layout of the apartments and wondered how the applicant is able to accommodate more units within the existing footprint of the building.

Mr. Hiller explained the layout of the proposed small kitchen.

No Public Comment.

Motion to approve item H.2. by Joanna Bass, seconded by Sonya Mallard. The vote passed unanimously.

Item H.3. Thomas L. Divita, II and Meredith C. Divita request variances of the spacing distance and rear setback required for an accessory structure in an EU-2. (24V00031) (District 2)

Paul Body read the item into the record.

Meredith Divita, on behalf of the applicant, explained the purpose of the request. They request a variance for an existing gazebo from the back of the house and from the back line.

Thomas Divita explained where the gazebo was bought from. He re-iterated the purpose of the request.

Ms. Divita noted “you cannot see it when you are standing in front of our home. And we do not have any neighbors directly behind us as well.”

Steven Holmberg asked if the gazebo has been there. The applicant confirmed it is not new and has been there.

No public comment.

Motion to approve item H.3. as depicted 4/8/2024 by Sonya Mallard, second by Steven Holmberg. The motion was approved unanimously.

Item H.4. Shani Murphy O’Brien and Todd P. O’Brien request variances for the rear setback and side setback required for an accessory structure in an RU-1-13. (24V00032) (Tax Account 2439169) (District 2)

Paul Body read the item into the record.

Shani O’Brien, explained the purpose of the request. The request for a variance is required because a permit for the accessory structure cannot be issued because the structure has existed since 1975. The home was bought in 2005 with the accessory structure existing on the property. She claims that recently their neighbors reported the accessory structure to Code Enforcement because “they are mad at us for replacing our old dilapidated wooden fence privacy fence and we installed a new white PVC privacy fence with all installation done per Brevard County Code requirements.” She went into further detail in regards to a lawsuit that was filed against them by their neighbors preceding the replacement of the previously mentioned fence.

Bill Huffman confirmed with the applicant the purpose of the request which is to legitimize the existing structure.

Public Comment

Richard Goodner is an adjacent neighbor to the applicant. He went into greater detail about the lawsuit and history of the lawsuit. He presented photos in relation to the existing accessory structure. The structure did not bother him previously. But now he states he doesn’t have his privacy. He noted it would not be fair to him to not have any privacy. He does not want to see his neighbors. He

additionally took note of rotting wood on the roof of the existing accessory structure. He says he has to put screening on poles for privacy in his own backyard.

End Public Comment

Bill Huffman asked if initially vegetation covered the existing structure.

Mr. Goodman noted the vegetation and the wooden fence provided cover up to the roofline of the existing structure.

Mr. Huffman asked about Mr. Goodman's trial against the owner. Mr. Goodman explained further. Mr. Huffman inquired about the Code Enforcement Case itself and whether it related to the condition of the existing structure.

Paul Body explained that the Code Enforcement case is about the existing structure meeting setbacks.

Jeffrey Ball noted that a side fence is limited up to six feet without a variance per Code. He also stated that "if there is a reason to believe the structure is unsafe we would have to send someone out from the Building Official side of things to do an inspection."

Joanna Bass asked what the court order has to do with this variance request.

Jeffrey Ball had no further knowledge of the court order.

Ms. O'Brien said they had maintained the upkeep of the structure up to the last two years. She attested it is a safe structure. Any additional maintenance that needs to be done can be done.

Todd O'Brien, the applicant, noted they had hired a fencing company to confirm that the previous fence was on their property. They then talked more about the lawsuit.

Steven Holmberg asked what exactly the structure is and why the variance is being requested.

Shani O'Brien explained it is a covered deck and reiterated this was requested due to a Code Enforcement Case.

In response Mr. Ball noted that the determined date of when the existing structure was constructed is undetermined due to the lack of records. Regardless of when it was built, the applicant is still required to comply with the zoning regulations and receive a variance for it. He also said that the fence, though unrelated to this variance, would have required a fence permit and would have needed to comply with 2109.

Motion to approve H.4. based on the survey dated 6/7/2024 by Joanna Bass, seconded by Steve Holmberg. The motion passed 3 to 1.

Item H.5. Zackery Lively requests variances to have an accessory structure located in front of the principal structure and for the side setback required for accessory structure in an RRMH-1 (Rural Residential Mobile Home) zoning classification. (24V00033) (Tax Account 200690) (District 1)

Paul Body read the item into the record.

Zackery Lively presented the purpose of this request. He is trying to legitimize the location of an existing carport. He wishes to replace the mobile home existing on the property with a new house in the same exact location. During the building permitting process it was noted that the existing carport would now be in front of the primary structure. "The previous house had a concrete porch attached to the front of it that we had to demolish to get the old house out and get the new one in so it will be sticking up a little bit further than the front line of the house and it's a foot and a half too close to the property line on one side" he said.

Sonya Mallard stated she had visited the property. She had wanted to know what the existing slab on the property was for.

Mr. Lively replied "I have the driveway going back to a concrete building that's an accessory building and the carport is sitting directly in front of that the house pad is just to the west of that concrete building."

Ms. Mallard asked if the neighbors have any problems with this.

Mr. Lively said he had talked to both and answered no.

No public comment.

Motion to approve item H.5. based on the survey dated 8/22/2024 by Sonya Mallard, seconded by Stephen Holmberg. The motion passed unanimously.

A short recess was called at 2:44pm

The meeting was called to order at 2:51pm

Item H.6. Timothy S. Gannon and Denise I. Gannon request variances for the required side setbacks and spacing distance for an accessory structure in a RU-1-11. (24V00034) (Tax Account 2417445) (District 2)

Paul Body read the item into the record.

Timothy Gannon, the applicant, explained the purpose of the request. They presented three packets to the Board to help go through explaining the purpose of the request. He explained each picture and said "two variances for a roof over the breezeway/covered patio and then on the southwest side the right side one variance for a shed; which you can see just over the gate there in the background." The house was purchased in 2004. He stated these particular houses don't have a high pitch roof so you don't have the attic space for storage. There is a 12 x 20 shed on the property for additional storage. After 2021 he said they "no longer needed that much storage so we repurposed the footprint of the northeast side. We removed the extra large shed and the two sheds behind it that had been there for 20 years. We purchased a much smaller shed to house for our boating gear and water toys and

placed it on the southwest side. We repurposed the footprint on the of the extra large shed with a covered breezeway/patio.” The new small shed is 6 x 12, which does not need a permit, and was painted to match the home. “When we place it there, we asked the neighbors if there were if they were okay with it since it was going to change the landscape on that side of the house and they had no problems” he further said. He was not aware that the small shed would still need to meet the required setback. The breezeway has a metal roof and is completely guttered on the outside this with a fully insulated ceiling to keep it cool ceiling fan to keep it cool. It houses their movable barbecue grill with fans to blow exhaust to the street with fire extinguishers which are in place while grilling.

Denise Gannon, the applicant, further pointed out aspects about the breezeway and repurposed areas.

Mr. Gannon claimed that within the neighborhood “there are at least 28 breezeways with roof structures that go from the house and extend to the property line”. He also referenced an approved variance request from 2023 that he believes was for an existing structure similar to theirs.

Bill Huffman stated from looking at the photo “that it seemed like the other side is blocked”.

Ms. Gannon said it is not and that the air conditioner is at least 10 ft in front of the shed, so it's not blocked. She said “the shed we're asking for it to go it's a foot off the property line.” She further clarified that 6 ft is the narrowest distance between the house wall and the shed.

Jeffrey Ball noted it was 5.1 ft.

Joanna Bass asked if the neighbors on that side were alright with this.

Ms. Gannon replied “yes, we asked them when we put it in.”

Mr. Ball added that the neighbors would have been notified and if they had a protest they would be here today. This variance was a result of a code enforcement case.

Public Comment

Stacy Gillford noted they had reported the code violation. She referenced five code enforcement violations. She claimed “when they put the sheds on the other side they never got the variances for those. When they built on out side that big structure it is 26 feet to the property line on our side.” She presented images to the Board and provided further clarification based on those images stating one of the structures currently existing on the property goes 3 feet over onto her property line and that there is no setback distance. She had noted other concerns regarding neighbor’s workers with heavy equipment trespassing on her property, using her dumpster, and claimed there was work being done without proper permitting.

Lawrence Monroe stated the gutter on one of the existing structures was clearly going over onto their property.

Ms. Gillford believes the barbeque currently situated under their neighbor’s covered patio is a fire safety hazard. She then stated that their neighbor’s roof goes 26 ft over her property line and then

stated the roof goes 3 inches over her property line. If this variance is approved her neighbor would have to cut 3 inches off from their roof that is currently going over her property line.

Jeffrey Ball responded to the public comment and noted the code enforcement case is a separate process. He additionally said that "we do not have a survey that shows this to be over the property line. If that was the case we could not entertain the variance that goes over someone else's property. My understanding is that if the Board were to approve the variance, it would potentially go up to the property line but it could not go over the property line."

Ms. Gillford continued to say "the original structure was small. The original structure there they took that all the way to the front of their house."

End Public Comment

Stephen Holmberg asked for clarification of the request.

Denise Gannon, stated they had replaced the original 12 x 20 shed. There were two sheds behind it. They replaced the exact footprint. She further referenced pictures from 2004 and a survey from back then.

Timothy Gannon explained that the pictures they presented showed a fire extinguisher next their grill.

Ms. Gannon chimed in by stating "this is the day they were doing construction, and the drainage was from their gutter because they did not have a grass down their area. You will notice it is not next to the fence line that was completely from them. It was completely from their own gutters and not having grass that was making rivets in their yard." She said the structure has "completely pressure treated wood" and it has an insulated metal roof. She claims they would never build an unsafe structure right next to their master bedroom.

Mr. Holmberg asked how the variances would affect their neighbor's yard.

Jeffrey Ball responded with the reasoning for setbacks and said "you asked the question to begin with for firemen or for anybody trying to get through here. Is there room for anybody to get through, say a fireman wanted to get through, I can't answer that question. I don't know what they require I would just use common sense."

Mr. Holmberg rephrased his question regarding the current variance and asked "that's not going to have any bearing on the property line between the houses, correct?"

Mr. Ball answered "no."

Dr. Bass asked "how much room is between that building and the fence?"

Mr. Ball said "the survey that they provided shows 5.1 ft between the shed and the existing house and then theirs is an AC unit that may inhibit some ingress/egress also."

Dr. Bass was referring to another side. She understood from staff that an egress is only available on the north side and not available on the south side. She wanted to know how much room there was still between the structure and the fence.

Mr. Ball ascertained that “once the gate is open you could get ingress/egress but you would have to go through the covered patio”.

Motion to approve variance request 1 of item H.6. by Sonya Mallard, seconded by Bill Huffman. The motion failed 2 to 2.

Motion to approve variance request 2 of item H.6. by Bill Huffman, seconded by Sonya Mallard. The motion failed 3 to 1.

Motion to deny variance request 3 of item H.6. by Stephen Holmberg, seconded by Bill Huffman. The motion failed 2 to 2.

Motion to approve variance request 3 of item H.6. by Stephen Holmberg. Bill Huffman stated to have seconded the variance. The motion failed 2 to 2.

Item H.7. Kenneth Greenslade and Robin Greenslade (Kelly Hyvonen) request a variance of the required width in an AU. (24V00035) (Tax Account 2410747) (District 1)

Paul Body read the item into the record.

Kely Hvvonen, presenting on behalf of the property owner, explained the purpose of this request. The property was purchased in January of this year and it contained an old dilapidated single family home on it. She said “they purchased the property because of what they could do in the AU zoning ,including construction of a new single family home. However construction of a new single family home on this Au zone property requires a variance to the lot width to be buildable.” The property is about 124.15 ft wide but the required width is 150 ft. She stated “if you look at what's in your package of the aerial and the property lines that lot width is really consistent throughout this area. And there are even some smaller lot widths to the south.”

Sonya Mallard wanted to clarify that they had already torn down the existing old home.

Ms. Hyvonen said “yes and they can't get their permit until after they get this variance.”

Stephen Holmberg asked about the size of the proposed structure.

Ms. Hyvonen responded with about 4,000 sf under roof and noted they do not have dimensions because drawings of the structure have only been conceptually put together.

No public comment.

Motion to approve item H. 7. based on the survey dated 8/29/2024 by Sonya Mallard, seconded by Joanna Bass. The motion passed unanimously.

Item H.8. Breanna D. Marks requests variances for the front setback and spacing distance for an accessory structure in a TRC-1. (24V00038) (Tax Account 2400432) (District 1)

Paul Body read the item into the record.

Breanna Marks explained the purpose of the request. She said “I bought a piece of property with a home on mobile home on it from the clerk of courts and it was deemed unlivable.” She went on to explain how the property has an existing shed on it and how she had a new mobile home installed on

the property. A building permit was issued for the new home. Inspections were done. By the third inspection it was noted that the new home was placed 3 ft too far “forward”. This described the reason for the need of the variance.

Speaker 1, stated “we are learning as we go and this is just one little hiccup.”

Stephen Holmberg asked if this property was part of a mobile home park, to which the applicant replied “no.”

No public comment.

Motion to approve item H.8. based on the survey dated 9/4/2024 by Sonya Mallard, seconded by Stephen Holmberg. The motion passed unanimously.

Item H.9. George M. Scarboro and Marilyn Scarboro request a variance of the required lot size in an AU. (24V00039) (Tax Account 2105509) (District 1)

Paul Body read the item into the record.

George Scarboro verbally authorized Richard Owl to speak on behalf of the applicant.

Richard Owl, on behalf of the applicant, explained the purpose of the variance request which is to develop and maintain the property. The property is less 2.5 acres. Before the current property owner bought the property, the property was split and sold off and rendered the current property down to 1.77 acres. The property was developed in 1979 and the now old structure needs to be updated to be deemed safe.

Sonya Mallard asked for clarification of the purpose of the variance request and wanted to know what kind of animals are

Mr. Owl explained that this variance is to be able to develop on the property and that there are ducks, chickens, goats, and geese on the property.

Jeffrey clarified that this request is to legitimize the size of the lot.

Stephen Holmberg requested clarification of the acreage size. Paul Body clarified the current parcel is 1.77 acres and that the applicant is requesting a variance of 0.73 acres from the 2.5 acres required for the AU zoning.

No public comment.

Motion to approve the variance as depicted on the survey dated 11/10/2022 by Sonya Mallard, seconded by Joanna Bass. The motion passed unanimously.

Item H.10. Joseph Dechert and Amanda Dechert request variances of the side setbacks required for a boat dock in an RU-1-11. (24V00040) (Tax Account 2608862) (District 4)

Paul Body read the item into the record.

Joseph Dechert, explained the purpose of this variance request. He noted he is very limited in the placement of the boat dock.

Joanna Bass asked if the boat dock would go out towards the water or be horizontal with the property. She also asked how the dock would fit between the neighboring properties.

Mr. Dechert explained it would go out towards the water from the north side of his property line. It would be immediately adjacent to his neighbor's property line to the north. His neighbor to the north already has a boat dock that extends about 20 ft. into the water. His south neighbor also has a boat dock that runs about 30 ft into the water. He stated to believe his proposed boat dock will offer the safest way to navigate into that area given the limitation of being in that corner lot.

Dr. Bass asked how wide the dock is to be.

Mr. Dechert answered it will be 4 ft wide and extend 30 ft into the water. Additionally, he read letters from neighbors that noted no concerns with the requested variance.

Jeffrey Ball explained the variance requests are for the side setbacks. Brevard County Code requires a minimum of 7.5 ft. So there is a variance on the North side and then there is a variance for the south side too.

Stephen Holmberg asked how big the boat will be.

Mr. Dechert answered 28 ft.

Mr. Ball clarified that boat, including the engine, cannot go past the 30 ft projection into the water.

No public comment.

Motion to approved item H.10. as depicted on the survey dated 9/6/2024 by Joanna Bass, seconded by Stephen Holmberg. The motion passed unanimously.

Staff and Board members further discussed board procedure.

Meeting adjourned at 4:25