

Board of Adjustment

The Board of Adjustment met in regular session on **Wednesday, March 19, 2025**, at **1:30 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 1:30 p.m.

Board members present were Sonya Mallard (D1-Chair), Jennifer Clements (D2), Stephen Holmberg (D3-Vice Chair), and Bill Huffman (D5)

Staff members present were Greg Hughes, Assistant County Attorney; Paul Body, Planner; Kristen Champion, Special Projects Coordinator; and Alice Randall, Operations Support Specialist

Approval of the February 19, 2025, BOA Minutes

Motion by Bill Huffman, seconded by Stephen Holmberg, to approve the BOA minutes of February 19, 2025. The motion passed unanimously.

Item H.1. This item was moved under item H.5.

Item H.2. Matthew S. and Gretchen W. Solar (Natasha Petrie & Dan Coe) request variances of Chapter 62, Article VI, Brevard County Code as follows, 1.) Section 62-2109(c) to allow 5.3 ft. over the maximum 4 ft. height permitted for a fence/wall in the 20 ft. front setback; 2.) Section 62-2109(a) to allow 4.5 ft. over the maximum 6 ft. height permitted for a fence/wall; and 3.) Section 62-2109(c) to allow 4.7 ft. over the maximum 4 ft. height permitted for a fence/wall in the 20 ft. setback required for a double frontage lot on a major waterbody in an RU-1-7 (Single-Family Residential) zoning classification. (25V00001) (Tax Account 3007937) (District 3)

Paul Body read the item into the record.

Dan Coe, on behalf of the property owners, stated they are requesting a zoning variance for a fence that was constructed as a direct response to Brevard County's building code requirements for fall protection. The purpose of this request is to address a discrepancy between the building department's approval of site conditions and the Zoning Department's interpretation of fence height restrictions under code 62-2109. He then presented pictures as documentation for the request. The first few pages are the approved site plan and lot drainage for the house. Pictures of the wall and fence and the certificate of occupancy. The site plans were thoroughly reviewed and approved by the building department and the zoning. These plans include the following key elements to retaining walls along the side property lines that meet near road level in the front. And taper downward behind the house toward the river. The lot was filled and graded, resulting in a finished floor elevation where the top of the retaining walls is a minimum of six inches above the finish lot. This was necessary to ensure proper drainage. Once construction was completed, the house underwent all required inspections, passed final review and was issued a certificate of occupancy. Prior to scheduling the final building inspection, an additional permit was obtained for a fence to satisfy Brevard County's fall protection requirements. As per the Florida building code guards shall be provided for those portions of open sided walking surfaces, including stairs, ramps and landings that are located more than thirty inches measured vertically to the floor or grade below at any point within 4 inches horizontally to the edge of the open side. And required guards at an open sided walking surfaces, including stairs, porches, balconies, or landings, shall not be less than 36 inches in height as measured vertically above the adjacent walking surface. The retaining wall is created an elevation change exceeding 30 inches, thereby triggering the mandatory requirement for fall protection per Florida building code. However, upon attempting to finalize the fence permit, it was flagged under code 62-D109, which

restricts fences to six feet in height in residential zoning classifications. The zoning restrictions pertain to fences, walls and other obstructions. However, this fence is a mandatory safety structure required by the Florida Building Code. Some key considerations, safety compliance versus zoning limitation, the building department required the fall protection fence due to the retaining walls. The zoning department is now restricting the very fence required to meet common safety standards. The Brevard County Zoning Code limits fences to 6 feet, effectively making it impossible to comply with both regulations simultaneously. Brevard County mandates compliance with the Florida Building code, meaning the fence is not an optional structure. Code language does not apply to the scenario. This section applies broadly to fencing used for privacy, property boundaries, and aesthetics. The fence in question is not serving as an obstruction, but rather as an essential safety feature due to the topography and retaining wall drop. If this variance is denied, it sets a precedent where property owners cannot meet both zoning and building safety requirements simultaneously. The county's own approval process allowed for the retaining walls, which necessitates this fence. The fence is not unnecessary obstruction, but a mandatory safety measure required under Florida building code. The variance would allow the property owner to remain compliant with both safety and zoning regulations. Denying this variance would result in a direct conflict between the building and zoning departments mandates. Is no negative impact on properties, aesthetics, or public safety. The customer prior to stepping up here provided six letters of support from neighbors in the area. You can see in the pictures that the lot was filled in. So, the fence is, although it's tough to interpret the code, the lot is even with the retaining walls. So, even though the fence and the wall are over 6 feet, it doesn't go over that from the customers property.

Stephen Holmberg inquired if the applicant had a rendering of the rest of it, and what it's going to look like when it's done. And if they're having a wall across the front of the house.

Mr. Coe responded it's fully complete.

Bill Huffman stated to summarize things, the two adjacent residential lots are in slightly different levels. That's why there's a retaining wall.

Mr. Coe stated the lot was built up for the house structure. And the retaining wall is a couple feet. And our surveyor did shoot elevations. So, we do have that documentation as far as showing that, but the lot sloped way down like this to the river. So, the retaining walls are put on the side properties so the lot can be built up and then that's where the finished floor of the house sat.

Mr. Huffman stated the top of the retaining wall is essentially level. What's the height of that open picket fence, how tall is that?

Mr. Coe responded that's the final grade of the home. And, it was permitted for 4 feet. The code requirement for the lot drainage was a minimum of 6 inches from the grade to the top of the wall. Some areas it's like that. And then toward the back before it stepped down, we have higher elevations in that area.

Mr. Huffman stated the fence is essentially 6 feet higher than the lower lot.

Mr. Coe responded that the customer's lot is at 6 or lower. On the other side is taller and some areas it could be 10.

Sonya Mallard stated she could see they have 6 letters of support. So, the neighbors are okay with this in the neighborhood.

Mr. Coe responded as far as I understand.

Public Comment

Chris Genaro stated he's on the south side of the wall in question and that's the side he's going to address. I've been a licensed general contractor for over 40 years. I operate construction companies, with 3 thousand plus projects completed. The first picture shows the original lots. During a storm the water comes up over our seawalls. We wouldn't be here if the wall was built to the approved plans that were submitted and approved by Brevard County. Original surveys to the final surveys, much discretion. I was at the time redoing my backyard pool project that had to run into all the restrictions, the fencing's, all this type of thing. I was restricted to be from the river 20 feet back per DNR. Nothing can go within 20 feet. Sea walls were grandfathered in. There's a sea wall that runs all the way down the river that had been there for fifty years. Can't touch them, can't build anything concrete within 20 feet of them. So, addressing the back 20 feet, I think there's 3 adjustments they're applying for. The back one shouldn't even be there. There's no reason for a fence. There's a block wall that sticks up 4 feet, goes right to the river. I contested that when it was being built with the inspectors, they agreed. It's not on the plans, it was never approved. Footers were poured, block wall put up. And I thought from day one that wall was coming down, so I proceeded with my plans. Wall stayed there. Nothing happened. I adjusted my plans. I couldn't put a 4-foot fence next to his 4 foot on the property line, to conform to pool barrier restrictions. I must have a 4-foot fence to keep anybody from coming into the pool area. So, I moved mine 5 feet away because I needed to finish my project, the wall was still there. This picture, I'm in the middle of construction. They put the walls up on either side and they're filling the lots. This is the back twenty in question. I had to move all my project away from the existing seawalls so that we could clear the DNR's restrictions. My drainage could not be any higher than that existing seawall. So, I had to conform with that and be lower than the seawall with my approved drainage. It was approved. This is the finished product with my drainage swale behind my existing seawall. And this is what I'm referring to with the block wall, the 20 feet. The block wall under construction, this is the back of my project. I moved all my stuff in 5 feet to keep clearance away from the wall so that he could step over. This was the original wall. Finished product, this is the rear of the properties where we abut each other. This is the 20-foot stake that nothing could be closer to. Now there's a discrepancy with the 20 feet that was ordered. Here's what we're looking at today. Fence after fence after walls, after fences. This is what I'm looking at from my side to his. Wall was designed as a mono wall to carry the strength to hold the weight of the dirt. As the dirt gets wet, the weight increases by three times, therefore exerting more pressure on the walls. So, when you build a retaining wall, it's got to be monolithic, all like one piece to carry the sprint per the engineers. As they pieced it together it started splitting. We called it to their attention. This is in the front now. And they went ahead and fixed it. That's what I'm looking at today. This is my front yard with the original wall. I say the original because it got a lot higher. That was the original wall. Not too bad 5, 6 feet. My new yard. Somehow it grew. Now it's two and a half blocks higher. This is the view out of my bedroom. Talk about drainage a little. All the water from the slop washed in, flooded my house, my septic. Called everybody for emergency help. Still waiting for a return phone call, but nothing happened. WE moved out. Saturation, tree went over onto the house because of the floating. I had to remove it. After we dried up the front yard, that's what we're looking at. All this dirt came from this around the wall, washed in on to my new yard. That's October last year when I called. This was yesterday. Here's my finished product on my side? This House was still under construction, so this picture's months old. I

don't know why in the back we still have a wall there. Somehow on the final surveys, the proper or existing wall elevations are on the final survey, but in no other survey that I searched were those ever called out. Original plans permit showing no footers or walls going out to the river. I guess if you build the way you're supposed to, the first time, you don't have to go in for a variance. When they permitted the wall, it states right on the permit that you got to have that rail for safety. Anything over thirty inch drop as he mentioned got to have a safety rail, and they'll be dropping on my property. So, I agree with that. But I don't agree with them raising the wall size. They put a 4-foot fence on top of that, 32-inch fence would have been fine, per the statutes. I don't know why. Their choice, I guess. So, I'm looking at 10 feet plus. Just bring one more reference. Their side. All finished, finished top, everything they would see. You saw my side. I brought it up, they said don't worry about it. You got a complaint? Go to Brevard County building department. Because I guess whoever approves block wall is a finished product. I don't know. Been looking at it for two years. I don't like it, it's his wall, I can't do nothing about it. It's terrible. It's changed our life. Drainage. The wall leaks. Water comes right through it. Always. Irrigated yesterday for twenty minutes and I had water coming through the wall. So even if we do try to finish that wall somehow, it's not going to work. Water weeping through is going to calcify, peel paint, pop stucco, whatever type of finish you put on it. The wall should have been waterproofed. It was not. So, I'm sure the other side's the same, but I won't speak for that side because I live on the south side. One more point. The back twenty again, with those walls coming through, when we get a storm, the river comes right up over the walls and the current goes north and south. Fifteen miles an hour. Not a problem because it'll run right through that little area of all our properties. We all lose our docks, constantly, that type of thing. When you put a dam out in the middle of that, when that storm happens, that water is going to hit the side, whether it's coming from the north or south and go shoot straight up towards our houses, it's going to be like a funnel. Hasn't happened, but it's going to. So, I'm really concerned about the back twenty. I object to any type of variance obviously. Everybody that comes to our house looks at that wall and says, how could you let them do that. I didn't let him do anything. That's what I'll be looking at the rest of my life and I'm embarrassed.

Mr. Holmberg stated he was at the house. Didn't even look at yours.

Mr. Genaro replied nobody will ever see it. I don't know if they've ever seen my side. I don't think the builders ever been. We had a couple meetings over there, but they're not looking at the issues like that.

Mr. Huffman asked if the variances being applied for are for the north or south side yard.

Mr. Body stated it's being applied for the front setbacks, overall height, and to the 20-foot rear setback along the river. So, it's both sides.

Jennifer Clements stated she just wanted to make sure she understood, when you're saying the back 20, you're talking about the 20 feet closest to the river.

Mr. Genaro replied yes, DNRs.

Sonya Mallard stated she wanted to sum it up with you're saying you don't like the wall because from your backyard it just looks hideous. Are you also saying because of that wall, the water and everything is coming onto your side of the property?

Mr. Genaro stated not because of the wall, but the natural gravity. The wall is porous, and the water goes right through it. It's block.

Ms. Mallard inquired and are you saying when they put the wall there, they didn't waterproof it? That's why the water's coming on your side.

Mr. Genaro responded correct, yes.

Mr. Holmberg asked if there has been an inspector from the county out for any reason.

Mr. Genaro responded constantly for all the projects where they built over the last year and a half.

Mr. Holmberg then asked if there are any reports on the wall.

Mr. Genaro replied I have no idea. This is first complaining about it, so I haven't been calling code enforcement. No, not the water. That type of thing. Just the looks of it. And the fact that there should be none in the back 20.

Mr. Holmberg stated the actual flooding you're telling us about there has been no, you have not reported that in any way to anybody.

Mr. Genaro responded no not yet, other than to the building, which was no response.

Mr. Holmberg asked Mr. Genaro to hold up the photo of the wall, where it was separating.

Ms. Clements inquired is your issue with the wall is not just the construction of the wall, you're nervous that it's not going to hold up and ultimately fail. And your possible resolve to this would be not put a 4-foot fence on top of that, you're saying just to meet the requirement of the six.

Mr. Genaro responded the requirement for drop off is a 32-inch guard rail. The block wall has already been raised above on their side 2 or 3 blocks. It varies where the driveway comes through. And then in the rear it's sticking out already that high. So, I don't even know why there would be required fence there anyways, but the wall shouldn't be there regardless in the back. In the front if you're standing next to the wall and you've already got 2-foot barrier, you only need 32 total, you could do a fence this high. To come forward towards that.

Ms. Clements responded you're saying in the back there's really no need for a fence because the height.

Mr. Genaro replied there shouldn't be. Shouldn't be anything at all. I had to have one for barrier requirements.

Ms. Clements asked if that is code or not code.

Mr. Body responded our code requires it to be only 4 feet high in the 20-foot setback off the river. So that was how the builder built it then. They put the fence on top of the wall so that it's over that. The zoning code requires it can't be over 4 feet high in the 20-foot setback off the river. And then they put the fence on top of the wall. So that it is over and so I think another 4 feet high.

Ms. Clements asked where does the discrepancy come from, the requirements and not be greater than six feet?

Mr. Body replied I think that it was the building code requires that if you're going to have something that falls off over a certain height, you must have the handrail to keep people from falling over. The contractor was stating all those state codes about it. He can go over it more with you again.

Ms. Mallard stated in this picture, this is what you're looking at. This is what you disagree with. When you say the wall, you're referring to this?

Mr. Genaro responded yes, the wall. Any kind of wall, any concrete. The black fence is irrelevant. You won't need it at that point. He doesn't need a 4-foot fence the way that's standing right now anyways. You couldn't fall over. It's not a level walking platform. They would measure from the inside of the wall down for a total of 32 blockade. But again, I don't think the wall needs to be at all. I don't think it was ever permitted. It was put in there right from the beginning.

Heather Weeks stated she is the neighbor to the north. Lifestyle homes and Mr. Solar built the wall to code. This is the finished product. Shortly after inspection they cut down my 30-foot sable palm tree. Why? Was it interfering with the code? It was interfering with the wall they planned to build. Lifestyle has a pattern of not asking for permission, but for asking for forgiveness. This is the finished product. This is what I look at every day. The wall leaks, as evidenced by the moisture here. It's hideous. It's terrible. So, after he passed the inspection, he they had men come out on the weekend and increase the wall by three cinder blocks. I called the builder and was told by Carl at Lifestyle homes, once we pass inspection, we have no control over what Mr. Solar does. I also have it in text. He continued to go higher, blatantly disregarding the code which are put in place for a reason. On October 9th, we were hit by Hurricane Milton. To the best of my knowledge, my house is never flooded in over 75 years. Before the wall, we had far worse hurricanes. On October ninth, my husband and I watched as water poured through the wall, under the wall, around the wall. The water, Mr. Solar's plus mine had nowhere to go. Gravity brought it to my side. It came up through my foundation of my home. And flooded my first floor. This is part of their repairs. This is the finished product. I see elements there. It's leaking, and that's your repair. The screws are already falling out. That's shameful. We had over one hundred and fifty thousand dollars in damages, and we hired a structural engineer. He stated in his report that the cause of the flood was partially caused by the neighbors new wall. This is my downstairs afterwards. This is my first floor afterwards. This is my first floor. Our flood insurance denied our claim. Based on that fact. This was two weeks after the hurricane and water is still pooled around my house. This was the day of October 9th. That water is not from the river, it's from Mr. Solar. The wall is unsightly. It looks like a prison wall. It's not structurally sound. In my opinion. It's held together with brackets. The water comes through the block. To protect my home from future catastrophic damage, this is my investment, this is my house, I respectfully request that a variance not be granted. And I have the structural engineer's report, where on page eleven it says the addition of a new retaining wall at the neighboring property kept the hydraulic line of water elevated for an extended period. Once the floodwaters receded differential settlement occurred. And I'd like to say that all the neighbors are here. So, I'm curious as to what six neighbors signed letters of support because it wasn't the neighbors.

Mr. Holmberg asked Ms. Weeks if she is on the left side. The blue house. How far from that wall to the bottom is there? Is there a garage there?

Ms. Weeks stated we do have a garage. It's on the north side of the house.

Mr. Holmberg looking at the house in question, the fence goes this way, and there's a wall and then there's your house that sits down a little bit. About 20 feet down. Does your area flood?

Ms. Weeks replied it's down a lot, correct. It never had before. It does terribly now. It doesn't drain. It stays there for weeks afterwards. We never had that problem.

Mr. Holmberg inquired if they have a seawall in the back.

Ms. Weeks responded we have a riff raff. Yeah, we've never had any water.

Mr. Huffman commented you said the screws were falling out. What did you mean by that.

Ms. Weeks responded it's held together where there's parts that have failed. They've come out and they've put brackets that go on a door. It's not working. I've never seen anything like it in my life. Doesn't look like a professional job. I could have done a better job.

Mr. Huffman asked if blocks fell out of the wall, or it failed.

Ms. Weeks answered failed. The water was coming through it. It still is. You could see by the photo.

Mr. Huffman stated You mentioned that they took down your sabal palm. He was on your property.

Ms. Weeks responded correct, yes. No, they did not have permission. And in most counties, sabal palms, the state tree are protected, and you need a permit.

End Public Comment

Mr. Coe stated he was the construction supervisor in charge of building the home. I took the job over once most of the walls were up. Regarding the tree, I'm not aware of that, but I would certainly be willing to investigate that with my company. The variance is for the fence. The wall was part of the home permit, so the house was permitted with the walls. The walls were built to code. On the original lot drainage plan, they can't exceed six feet. We were within that. So, prior we received the certificate of occupancy, the house's final building inspected, everything was inspected. Good to go. But back to that code where if you exceed a 30-inch fall, you must have fall protection. So, the customer had a fence company permit for the fence to go on the wall for fall protection. So, the variance is regarding the fence, not the wall. However, in speaking with Paul in Zoning, it's kind of a gray area because the fence is viewed as an extension of the wall. So even though the home's good, the CO's there, everything 's in place, the variance is for the fence because I guess on the outside of the wall it exceeds the six feet, that's why we're requesting this meeting. Although on the inside of the wall on the customer's property we're not exceeding that 6 feet and I think it was within the 20-foot setback of the road and the high mean water line that you couldn't exceed four feet.

Ms. Clements asked how it went from that to that. That was what she said that it was the original. This was the original wall and then the inspection passed.

Mr. Coe responded it's not complete at that time. I can't speak on that. I don't know the date of the photo and I don't know the date of the final. So, you have several inspections for the wall. You have a

footer inspection, tie beam inspection, before they pour it solid, and then the final inspection at the end where they approve the final product.

Ms. Clements asked if Lifestyle was responsible for the increase.

Mr. Coe responded we ultimately built it, yes, but like the plan states, he just can't exceed 6 feet on that.

Ms. Mallard asked did you come back and repair this damage that was done to the wall.

Mr. Coe replied yes.

Mr. Body stated that there is a different building permit for the retaining wall, so it's not part of the house plan. And then they came back as the wall needed to have the fence. There's another building permit to have the fence height too, which is just a handrail to keep people from falling. But there's two separate permits that were done, but the retaining wall does have the fence on top of it. The fence is waiting right now for your verdict of the variance. The height. The wall is final.

Mr. Coe stated the predicament is if he didn't put a fence up, he wasn't necessarily need to, however, for safety and to meet the 30-inch fall requirement, it's a necessity.

Mr. Holmberg stated that he'd like to make a motion at this time to disapprove this variance that's depicted on the survey provided by the applicant. And this is predicated on the fact that to authorize the variance, we must find all the following factors to exist, which we read before we started. And, number six specifically, it says the purpose of this Charter and the variance will not be injurious to the area. Well clearly if two houses are flooding the wall and the fence or injurious to the area as well as two and three. We could also predicate some facts on those two, but that would be my opinion.

Motion to disapprove item H.2. as depicted on the survey dated December 23, 2024, by Stephen Holmberg, seconded by Bill Huffman. The motion passed unanimously.

Item H.3. Barry and Sandra Clinger request a variance of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-1336(5)(b) to allow 3 ft. from the required 15 ft. side (west) setback for accessory structures in an RR-1 (Rural Residential) zoning classification. (25V00002) (Tax Account 2300560) (District 1)

Paul Body read the item into the record.

Sandra Clinger spoke to the request, stating she is here today to request a variance to legitimize a 25-year-old carport. We purchased our property, about 9.13 acres, in 1999. We contracted to build a home with a licensed contractor. We also engaged a barn builder for a horse barn and this carport in question, that I'm asking for the variance for to house tractor, horse, trailer and all the implements it takes to take care of nine acres. A lot of equipment. Our licensed contractor applied for a permit. Successfully received this permit. That was in June of 2000. Submitted the site plan based on the survey of the property. The permit was finalized and issued in August of 2000. We went back and through the legacy permitting online, was able to pull up the finalization of that permit. So, in the interim, it's been 25 years, we've applied for a pool permit. Never heard a problem with this. We applied for a house expansion in 2000. We did some renovation work on the house, never knew there was a problem with this structure. Come to December of last year, we decided we'd like a nicer

chicken coop. So, we had a survey done on the property and that's when we found out there was a problem with where that existing structure was, because I asked for the survey person to be sure to mark the property boundary where we were going to be doing work to be sure we could set back from the property line. So, looking back at it, you know their questions were how did it happen? It was approved by the county. And I think what happened, my best guess is that the survey crew submitted a survey correctly based on the plat for the property, which included a 10-foot utility setback on that side lot line. Which did not equal the 15 feet setback required by zoning. So, I think that's where we got into trouble. But when we looked at, I went and requested all the background documents, and the contractor built it exactly where they said they were going to build it on their site plan. And so, when that got approved, we had no idea we were not in compliance. Until now. So that's what we're just asking to legitimize that existing structure. And we now know going forward to make sure that any additional anything we have built on the property would meet the fifteen foot on that area. When we put the chicken coop in, it'll be 15 feet from the property line.

No public comment.

Motion to approve Item H.3. by Jennifer Clements, seconded by Stephen Holmberg. The motion passed unanimously.

Item H.4. Alexander and Alexandra Barboza request a variance of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-1334(5)(b) to allow an accessory structure to be located in the front of the front building line of the principal structure in an AU (Agricultural Residential) zoning classification. (25V00003) (Tax Account 2401413) (District 1)

Paul Body read the item into the record.

Alexandra Barboza spoke to the request. She stated we are requesting a variance to build an accessory structure, 30 by 70 by 12 feet high in front of our primary residence because when we purchase the property we began to get quotes for the accessory structure to be built in the rear of the property, and we were informed that the original builder of the property removed the dirt to build the primary residence and buried all the trees in the rear of the property. So, because of the topographical conditions, and we don't want to block our neighbors view in their backyards as well. We would request the variance for the accessory structure to be built in front of the primary residence on the right side. We also discussed verbally with our neighbor on the right side about these plans. We did not get a written authorization from him, but he let us know that he is okay with that as well.

Mr. Holmberg asked what kind of accessory structure it will be.

Ms. Barboza replied that it will be a metal structure, steel and aluminum and it's going to be used for storage of land use equipment, and we want to have chickens and things like that.

Ms. Clements asked what the setbacks are.

Ms. Barboza stated we are going with the setbacks that are set by the zoning department, which is 25 feet in the front and 15 feet from the side.

No public comment.

Motion to approve Item H.4. by Jennifer Clements, seconded by Stephen Holmberg. The motion passed unanimously.

Item H.5. Daniel T. Harrison (Theresa Livasy) request a variance of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-1403(5)(b) to allow 4 ft. from the required 10 ft. side (north) setback for an accessory in a TR-2 (Single-Family Mobile Home) zoning classification. (25V00005) (Tax Account 2310979) District 1)

Paul Body read the item into the record.

Teresa Livesay spoke to the application on behalf of her brother Daniel Harrison. Daniel inherited our grandparents property after both had passed away. Daniel has lived there for a little over 10 years now. Our grandparents wanted to make sure Daniel had a place to live, so they left him their home. Our uncle, our great uncle and our grandfather built this shed and carport approximately 35 years ago. And it's been there ever since, the same, and it hasn't been changed. The structure itself has been documented on the property appraiser website. And within year's tax assessments. Daniel is here to request that the variance be approved, as this area is a place that he will use in his everyday life. Removing it after it's been there for over 35 years would be a hardship on his life. And I say this because Daniel uses this area in his everyday life, tinkering with things, you know, guy things. Daniel is deaf. That's why I'm talking to you. And Daniel knows everything I'm saying. And the reason I said that is Daniel had a stroke about six years ago and since then he hasn't been able to continue the kind of work that he was doing before. He worked outside working on fiberglass for boats and they must have a breathing mechanism to use with the fiber, and he can't take the breaks as needed. The heat gets to him, so with the shed and carport area, he tinkers out there. He collects scrap metal and breaks it down and he can do it in his own time. So, with this shed and carport area, that's where he keeps his tools, his lawn equipment and all his fishing gear. We believe that this has been there for so long. Unfortunately, we can't go back on records because records and permits were destroyed in a flood back in 1990. So, we don't have permits that show we just have to show that it's been there for 35 years. We have pictures showing our grandparents and uncle and our great uncle working there. And it's just been there, and we would ask that it be approved for it to stay for him. Daniel's considered deaf mute. His intellect understanding level is at a 2nd grade level, so I break down things for him so he can understand them.

Ms. Mallard stated she was going to reiterate that this is the property that was left for him from your grandparents. The staff couldn't find any building permits applied for the structure, but it's been there for over 30 years.

Ms. Livasy responded yes, approximately 35 years, because the pictures we have from when they were building it, those black and whites, have the date on the back and all the dates are 1990 and 1991.

No public comment.

Motion to approve Item H.5. by Jennifer Clements, seconded by Stephen Holmberg. The motion passed unanimously.

Item H.1. Timothy Scott Gannon and Denise Irene Gannon request variances of Chapter 62, Article VI, Brevard County Code as follows, 1.) Section 62-1340(5)(b) to allow 4.9 ft from the 5 ft separation distance required for an accessory structure; and 2.) 62-1340(5)(b) to allow for 7.4 ft from the required 7.5 ft side (northeast) setback for an accessory structure in an RU-1-11 zoning classification. (24V00051) (Tax Account 2417445) (District 2)

Paul Body read the item into the record.

This application was continued from the 2/19/2025 meeting.

There was discussion as to whether the application should be continued again since there are 4 members present, and it could result in another tie vote. The applicants decided to go ahead with their case.

Denise Gannon spoke to the request. We are here to legitimize an existing accessory structure on the northeast side of our home, the left side, as you're looking at it from the front. I just want to focus on the left side roof, on the side of our house. If you get confused or if there's irrelevant information presented, please just ask the question. We're trying to make sure we answer all your questions. There's been an accessory structure in that exact same location and footprint for over 21 years. We bought this home with this existing situation. It was there when we bought the home in the exact same footprint. We had no possible way of knowing that it was a violation. It was sold to us this way. I went through all my closing documents, everything. We do have a code enforcement violation from the new owners at 305 Ursa. This brought it to our attention that there was a violation. We didn't even know about this process. So, we're here to remedy it and make that legitimized. We've done everything the county has asked us to do. We filed for a vacated easement. We met with Paul Body and went over this multitudes of times. The vacated easement was approved last fall. The Board of County Commissioners and the utilities have vacated and approved for us to have that existing structure stay there. We are going through this variance process to get your approval because again this process is new to us. We've had multiple surveys on that, so here we are. So just to be very simple, on some of the facts. The accessory structure has been there for over 20 years. In 2021 we purpose the exact same footprint, which went from a shed to a covered breezeway. Is now 4 poles and a roof, not a solid shed. It is open on all sides. It is not attached to the House. It was completed prior to the owners moving in at 305 Ursa. It is not obstructing anyone's view. It complies with the neighborhood continuity. Over 70% of Diana Shores has an accessory structure on the side of their home. It's guttered. It drains on our own yard. There's no other place on our property to place this covered patio. We enjoy our home as we have aged. Our needs changed from housing a whole lot of things in a shed to storage, to enjoying our grandchildren in a covered patio. We bought into an existing structure. And this is all part of the regentrification of Diana Shores. People are updating their homes. Their 1960 homes are very side lot constrained. So, this is the only place that we can put it and put coverage so we can be in the shade. It provides almost 25-degree difference from the shade to be sitting at our pool to be underneath that. This structure causes no noise, no disruption to view. It's a solid structure. It's been through two hurricanes recently, and it's no problems at all. So, we're asking your approval to keep our existing structure. Modified from the original one, but it has been there for over 20 years, having an existing structure in the same footprint on the side of our house.

Mr. Holmberg stated let's clarify this. You guys been here a long time, so let's just get this straight. The variance is requested are for a large structure along 24 feet of the other gentleman's property.

Now that large structure. How long has that been there? Did you build that, because it says it was built with no permits? Does that mean 30 years ago?

Ms. Gannon responded the shed was there in the same footprint. It went literally to the fence and to our home. The shed was replaced with 4 poles and a roof in the same footprint, and that was in 21. Yes, correct.

Mr. Holmberg inquired the structure within 24 feet, did you get a permit for that?

Timothy Gannon replied we did not. And that's where we didn't know about this process. The structures were already there, so we repurposed the structure for something that was going to be more useful for us.

Mr. Holmberg responded so all you did was use the structure that was there. Did you put new posts in?

Ms. Gannon responded yes, because they were old. Yes, all the walls are open.

Mr. Holmberg asked if there were any complaints prior to that, the structure that was there being on anyone else's property?

Ms. Gannon responded no, nothing.

Mr. Holmberg asked did you turn the structure?

Ms. Gannon responded no. Nothing's moved.

Ms. Mallard asked if they had a picture with them today of it that you can show?

Ms. Gannon responded yes ma'am.

Mr. Holmberg stated so now you have another area you've built in the back. Is that true?

Mr. Gannon responded no, just this one structure.

Ms. Gannon stated it's the same footprint as the previous shed.

Ms. Mallard stated if I remember correctly that structure is where you have an outside kitchen and everything in there, correct, for the shade for the grandkids.

Ms. Gannon responded yes, correct.

Mr. Holmberg stated so you're asking for basically 4.9 of a 5-foot variance, correct.

Ms. Gannon responded the shed went all the way to fence. So, there's 4 poles, and although it's open, the roof goes right to the 4.9 that you see.

Mr. Holmberg stated let me ask this again, the other structure that was there prior to you putting this roof on, did that roof go to the same area as the new one?

Ms. Gannon responded yes sir.

Public Comment.

Stacey Goforth stated we are against this. We are the neighbor that is on the side that the structure is. We have pictures. That is their house. That is the structure we are talking about. That is the structure, those photos were taken from the code enforcement file, the code enforcement officer took those photographs. That is the structure. The 1st picture shows you that's the structure. When they were building that structure, they knew it needed permits. Our contractor was working on our house. At the last meeting Dr. Bass asked did you talk to them about it. She said it was an empty lot. It was never an empty lot. There was always a home there. Our contractor was losing his mind over that structure, saying it can't be there. That's illegal. They need permits for that. They're running electric out there. That can't happen. So, they knew. They put a tin roof, all of that built. They ran electric with no permits, no variances, no anything. I said something to them about it later. So, Mr. Holmberg, I want to discuss what you asked about the prior structure. The prior structure, here are photographs over the years. These are from the property appraisers. So, if you look in your packet, there's quite a few. They're not the greatest. They're kind of grainy. But if you look at them, the structure did not go over the property line. That structure, it goes to their mid roof line. If you look at it now, it goes all the way to the front of their house. It's double the size. It's not the exact same footprint. It's double the size what was there, and it goes over the property line. You can see now it's at least double the size of what was there. And the structure now actually goes on to our property. It's 3 inches onto our property. And I'll show that as well. The structure of on the side that the square is around, that's the structure we're talking about today. The reason why I circled the other structure, she's stating that is a necessity for her grandkids to get out of the sun. That large structure that's circled, that's a covered patio to get out of the sun. It's 450 sq. ft. There are sofas and chairs under there, access to the house, access to a bathroom. If the grandchildren need to get out of the sun the pool is right, there. Go onto that covered area. That other structure is tucked on the side of the house.

Mr. Holmberg asked if that was a new structure.

Ms. Goforth responded No, that's been there the whole time. And what I'm trying to say is at the last hearing it was the reason for this hardship is it's a place for them to get out of the sun. They need an extra space to get out of the sun. The old structure that was there was a shed. It was used for storage. Now they're saying we need a place to get out of the sun. Well, they've got a huge patio to get out of the sun. This structure is not a necessity.

Mr. Holmberg asked what exactly is the problem? Is the problem that they have a patio out back or a deck? Does it hangover on your property?

Ms. Goforth responded it's on our property. It's drained on our property. It's a safety issue. It's a hazard.

Mr. Holmberg asked how does it drain onto your property?

Ms. Goforth responded that roof slanted down so when they put the gutters up all of that is on our property and we can show you that it is. There was testimony given saying that it wasn't on our property.

Mr. Holmberg stated the question I have is if they used the same posts.

Ms. Goforth responded they didn't use the same post. Did you see the shed. They didn't use the same posts.

Lawrence Monroe stated it was a shed.

Mr. Holmberg stated the old one that was there for numerous years, that was on your property, correct. You're saying this new one that they put up is now on your property, but the old one was not.

Ms. Goforth stated that one that's circled is not.

Mr. Holmberg stated you're saying the old roof that was there, you're saying was not on your property.

Mr. Monroe responded correct.

Mr. Holmberg added when they put the new one up, now that overhangs on your side, correct.

Mr. Monroe stated about 3 inches.

Ms. Goforth stated the original structure was this. That was the original structure. The current structure goes back here. And all the way up here. The posts are here, here, here and here. This structure did not go over the fence line. This structure is not attached to the house. Mrs. Gannon testified just a second ago that the structure isn't attached to the house. Does that look like it's attached to the house?

Mr. Holmberg asked do we have a current survey that shows that it overhangs?

Ms. Goforth stated there isn't, because there were never permits or variances for any of these structures.

Mr. Body stated the current survey states that the proposed addition covered area is 1/10th clear of the property line and 1/10th clear of the building wall. If you approve this, they'll have to get a building permit and have an as built to make sure that it meets that requirement as it is proposed. If you give them the variance, they'll have to get a building permit to meet these requirements of the tenth separation and have an as built that shows that by the surveyor. Right now, the survey shows it being proposed, even though it is built. So, he'll have to modify it if it is over the property line.

Ms. Goforth stated the question was asked, was it attached to the House? The answer was given that it wasn't. It is attached to the house. There's a TV set on that wall. It's attached to the house, and it goes over the property line.

Mr. Huffman commented plain and blunt. If, as Mr. Body says, they're going to get a building permit and they're going to be completely on their side of the property line by a tenth of a foot, but still legally, that is. Do you have another objection? Is there an aesthetics objection?

Ms. Goforth responded if it was a foot away from the property line and they had their drainage, and it didn't drain onto our property. Right now, what's on our property are the gutters.

Mr. Huffman responded they're going to fix that by building permit. But if that water does not drain onto your property is that still an objection to you?

Mr. Monroe responded we have no objection because it would have been legitimized. How could there be an argument? We want to make sure it's represented correctly, as has maybe been categorized otherwise. This thing is built. It's built to the house, it's attached. It's hurricane proof. It's all those great things.

Mr. Huffman responded the only way to do that would be for us to approve this variance. Then they must get the permits.

Ms. Goforth responded I don't think it needs any of the six points. It could be placed in the back yard. We didn't purchase a home in a zero-lot line neighborhood. We now have a house that goes straight to our property. It sets a precedent. Where if other people come in and say we need a place to go, so that's everyone in Brevard County. That means everyone can start building to their property lines. And how do you come in and say no to the next person?

Mr. Monroe responded it's about precedence. I mentioned before and we are actively beautifying, and we are part of the beautification, but we know the restrictions before we came, we know.

Ms. Goforth stated it's a safety thing. We have pictures. Both sides of their house. Now they've come in for 5 different variances, but both sides like if you look at those pictures, there's on one side a shed, a dry sauna, a boat on the other side. There's no clearance for people to get through. There are screens down. It's a fire hazard. Just reading through the county paperwork, for the 6 things that you read off all the time. Is it the minimum variance that will make possible the reasonable use of the land? They already have reasonable use of land. Already have a huge patio. They already have a place to get out of the sun. All of them. The granting of this variance will be in harmony with the general intent and purpose of this chapter, and it won't be injurious. If everyone in our neighborhood doesn't have that, there's no one in our neighborhood within 50 houses of us that has something built from their roof line all the way to the property line. If people started doing that, there would be no break between houses. It's that whole thing of doing things by the book, getting a permit, getting variances. It's like build first and ask for forgiveness later. I don't think they can answer any of those 6 questions. And would it hurt the neighborhood if everyone did that? Yes.

Mr. Monroe added yes, we had future plans, and now if this does get approved, fantastic, but I would only say fantastic because I'd like to put a carport out there on my vacant part that's parallel exactly where theirs are so I can put my boat trailer, keep everything dry. It would not get approved. I would be denied for setback reasons, safety reasons, but if it was built already, I wouldn't have an issue.

Ms. Goforth stated that's a photograph of the house. If you look at both sides of that house going back, where is access? If someone needed to get into that backyard, it is the shed that you guys granted them the variance for on this side. The shed over here. There's a dry sauna here that will be addressed at some point. And then over on the other side is that other structure and I know Mrs. Gannon said that there was room, a five-foot gate, but if you look at the pictures, the kitchen, you can see the posts sticking up in the back. It's right where my finger was, where the post was. And there's that other beam on the other side. If you open that gate, there's not enough room to get a stretcher and everything through there if they needed. The other side is full. I'm just going to read this is why there are setbacks. In Merritt Island, Florida, seven and half foot setbacks are required to protect

residential neighborhoods, promote public health and safety, and ensure adequate light, air and space between buildings, as well as prevent fire and other damages. Setbacks are the required distances between a building and property lines. Serve several important purposes and zoning regulations. They help ensure the adequate light, space between buildings. Setbacks help prevent the spread of fires from one building to another. We had a house in our neighborhood. You guys heard they had to come before for hearings. Caught on fire within hours, burned to the ground. That roof is now literally seven and a half feet from our house, maybe nine feet nine feet from our roof line. They have their kitchen right there on our property line. A grill with a wood roof over it.

Mr. Monroe stated this distance here is nine feet. From the edge of that structure.

Ms. Goforth continued we feel that they can't answer any of the six questions. We feel it's not a necessity. They have a huge porch as it is, and there is room in the backyard. That photograph right there, shows that there is plenty of room in the backyard right there. It's a huge area. Where they could have built off that other room back there. There is other space that they could have put it than right on the property line. They wouldn't need any variances in the backyard if that structure were there. They tucked it on our side because they didn't want to have to look at it unless they were using it. They didn't want it in their view.

End Public Comment

Ms. Gannon stated just to squash any concerns about access. We had the fire Marshall, and the fire inspection come to our home. And here's a letter from the direct fire Marshall of Brevard County that says we have adequate access down both sides of our house. They did a test with the gurney. This is signed by Brevard County Fire Marshall. He saw no fire hazard. Most people in Brevard County have their grills under their deck and barbecue. There is no further hazard than having your car in your garage as he put it to me. That is off our master bedroom. We would never intentionally do something that is a fire hazard. That was signed by Brevard County, dated in the past couple weeks, so a couple of things. I never said it was an empty lot. I went back to the YouTube video. I have times if you would like them. The lot was dirted. They were not moved in. This was complete prior to them moving into their home next door. We wouldn't be here if they would have gotten their variance the first time. I sincerely apologize that you've been brought into this drama. This has become a personal vindictive from them. Not has anything to do with of our county policy. They walk out their front door and see the exact same code violations that we have, with multitudes as you drive through Diana Shores. Three houses across from them have the exact same carport. A very prestigious person in our entire Brevard County has the exact same thing. They have told a mutual friend of ours don't worry; we won't call on you. And it's three times the size of our boat roof. We got called on and we're the only permitted boat roof in Brevard County at this point. I'm sorry to bring up drama, but my patients level with the personal vendetta is beyond and I hate to put you through that. You listened to it with them, so I feel we need to rebut. I will make this very brief. So that was a mutual friend who told us she said she won't call on us. My husband went over there after this was done and they moved in and said, what gripe do you have? We got the letter of code violation. We're here because they wrote us up on code violations because the day that they did not get their variance written from their iPhone, I have a copy of it. We got a copy of the code violation. My husband went over to talk to them and said what problem do you have with the roof? I'd like to fix it. What is the issue? They literally looked him straight in the face and said we want to cost you money and watch you squirm. We can't get past this. I'm sorry you must deal with this drama. I would like to address the gutter, the drainage issue. There is no drainage on their. It is completely guttered and flows down into the tree in our front of our house.

The drainage issue is during their construction from their own gutter. This is on our own property in the very front. It is the exact same size as it was previously. There were three sheds behind that one big shed, all against the fence. You had asked me last time Ms. Clemens where they were, there were three of them against the fence, along with the big shed. That encompassed the entire side of our house. If you check your survey, as Mr. Body stated, it is not on their property. The proposed is not on their property. We don't want to be on their property. We want to be on our own property, do our own thing. Leave us alone. You do your own thing. The other thing I'd like to say is, as stated last month Mr. Monroe was here and stated this structure causes no noise to them. This structure has no sort of disruption to his view or the comfort of his own home. These are all quotes. Solid structures. Substantial and hurricane proof. It is absolutely beautiful. They did a fantastic job, and I'd like to build my own to match. They had no legitimate reason to object this variance. We spent a lot of money making this a nice area for our forever home to retire in.

Mr. Gannon stated the pictures that they show where they were saying it's attached to the house; it is 100% not attached to the house. It's very close. It's underneath the eaves, so the TV that they're talking about won't get wet. It's not attached to the house, period. It's not attached anywhere.

Ms. Gannon added you can see it's point one off the fence. The drainage issue is their gutter running down their backyard. This is our fence. We own the fence, and the fence is one foot in from their property. The drainage was not from ours. You can see another picture here of all the drainage that was from their gutter and not our roof. And when I said about barbecuing, our kitchen cart is on wheels, we can roll it out. But if they were that concerned, they parked a boat full of gas right next to our fence, right next to it. And there's their grill right under their eaves, right outside of their son's room. I don't think that they have any reason to say if we have enough back patio or not. This is our forever home. We're at a different age in life. We do not want storage of a shed. We are here to legitimize what we have existing and in no way to hinder any of our neighbor's view, noise disruption or anything? And as stated last time, they had no legitimate concerns. The fire department has no legitimate concerns. They offered to come here today. We were hoping the letter from the Brevard County head of Fire Marshall would help. That directs all access. They saw no fire issues, whatsoever.

Mr. Huffman commented he is honestly conflicted on this. In the one hand, if we grant the variance, then I'm assuming that the building department would have due diligence on inspections that would make sure that they clear the fence line by the tenth of a foot.

Mr. Body responded the building permit would require an as built survey, so they'd have to have the surveyor come back out and measure and make sure that it meets what was approved for the variance.

Mr. Huffman continued with on the other hand, if we deny the variance, it moves into trespass. If the survey shows they're over. That puts it in a different venue. So, like I said, which way to go?

Ms. Mallard responded I think based on her receiving the letter from the Fire Rescue to show us that they can come out, and that there's no conflict of getting into the egress, I think that clarified a lot of things for me.

Mr. Huffman responded that was one of my original concerns. I'll take the authority of the fire department as a gentleman.

Ms. Mallard stated correct. And I think if you are approving it and agreeing with us that then it will go into the next step. That's all we're here for today. It is nothing else. We're not worrying about neighborhood conflicts or anything like that.

Mr. Huffman if we approve the variance, they still must go for a building permit.

Mr. Body responded that's correct. They have a code enforcement case against them. One of them is not having a building permit for it.

Mr. Holmberg stated we are worried about neighborhood conflicts because that's why we ask if there are any questions or problems. That's why we have other people here? So, for me personally, I am 100% against the variance. I don't think it should go through unfortunately, and I'll tell you why. Because I'm not exactly sure what is going on here. There are too many neighborhood problems that really shouldn't be. We're all human. It just shouldn't be like this, but it is, so I am 100% against the variance, but I feel the only way that this will ever be settled is to approve the variance. And have the builder come out here, tell you take it down, do it right, then fix the overhang or whatever happens. I believe that is the only solution to this whole problem.

Motion to approve Item H.1. by Jennifer Clements, seconded by Sonya Mallard. The motion passed unanimously.

The meeting was adjourned at 3:27 p.m.