

## BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, July 22, 2020, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chairman Dale Rhodes presiding, to consider the requests below:

Board members present were: Dale Rhodes, Chairman, District 3; Jack Higgins, Vice Chair, District 1; and Michael Hartman, District 2.

Staff members present were: Alex Esseesse, Assistant County Attorney; Paul Body, Planner II; and Jennifer Jones, Special Projects Coordinator.

The Chairman, Dale Rhodes, called the meeting to order at 1:30 p.m.

Paul Body explained the function of the Board of Adjustment; Jack Higgins explained the definition of a hardship; and Dale Rhodes explained the procedures of the Board of Adjustment.

### **Approval of June 17, 2020, Minutes**

Motion by Jack Higgins, seconded by Michael Hartman, to approve the June 17, 2020, minutes. The motion passed unanimously.

All applicants and speakers were sworn in by the Chairman prior to providing testimony.

### **1. (20PZ00055) Norman and Rebekah Griffith**

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2100.5(1)(d), to permit a variance of 600 square feet over the 600 square feet (50% of the living area of the principal structure) allowed for an accessory structure, in an RU-1-9 (Single Family Residential) zoning classification, on 0.77 acres, located on the North West corner of Prospect Street and Lee Street. (5370 Prospect Street, Cocoa) (Tax Account 2408187) (District 1)

Paul Body stated that the section of the code 62-2100.5(1)(d) for accessory structures and accessory use standards, size limitations of accessory buildings or structures when they are secondary to the single-family residential use is further limited as follows, each detached accessory building or structure shall not exceed 600 square feet or 50% of the living area of the principal building whichever is greater.

Norman Griffith, 5370 Prospect Street, Cocoa and Rebekah Griffith, 5370 Prospect Street, Cocoa. Norman Griffith stated that he would like to get this variance approved so that he can build a garage. He said that he has a garage that is full, he has a walk path to it and needs space. He stated he has three vehicles, four motorcycles and a trailer and needs space.

Jack Higgins said he drove by there on Sunday, looked at the property and does not think it is out of the question with the other places in the neighborhood. He said that Norman Griffith does have an exceptionally big lot and does not believe it would be a problem, especially set back the way it looks.

Norman Griffith said he has no other questions, just wants a bigger garage than what he's allowed.

No Public Comment

Motion by Jack Higgins, seconded by Michael Hartman, to approve the variances as depicted on the plot plan and application provided by the applicant. The motion passed unanimously.

**2. (20PZ00060) John and Deborah Rawdanowicz**

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2100.5(1)(d), to permit a variance of 1,073 square feet over the 1,115 square feet (50% of the living area of the principal structure) allowed for an accessory structure, in an RU-1-13 (Single Family Residential) zoning classification, on 2.12 acres, located on the south side of Heather Lane, across from Nicole Drive. (3575 Heather Lane, Micco) (Tax Account 3009074) (District 3)

Paul Body stated that section 62-2100.5(1)(d) states the size limitation of accessory buildings or structures when secondary to single-family residential uses is further limited as follows: each detached accessory building or structure shall not exceed 600 square feet or 50% of the living area of the principle building, whichever is greater.

John Rawdanowicz, 3575 Heather Lane, Micco. He stated that he has a large piece of property and a small home; small to him as he is used to having a big home and family. He said now everyone is gone and he has purchased a small house on the river three years ago and did some remodeling on it. He said he is used to having collectible cars and collectable farm equipment and would like to get back into that again. He stated he would like to have a structure for his boat; he has to take it off the lift during a hurricane and would like to be able to put it in the structure. He said this would have a large section for a boat and two vehicles. He stated that is the purpose of it, to have that and a workshop in there as well as a parts room for his collectable cars.

Dale Rhodes asked if there was a storage facility on the property now. John Rawdanowicz answered yes, it is his gym, a small garage that is 24 x 26 used for his gym because his house is too small for a gym. Dale Rhodes asked if it was separate from his house. John Rawdanowicz answered yes.

Dale Rhodes said to Paul Body that in his application it states that he can have two additional 1,000 square foot buildings and asked, if he already has one then would that eliminate the ability... Paul Body answered yes, all of his accessory structures cannot add up to more than what the total of his house is, the foot print of his house, but each accessory structure is limited to 50% of the living area of his house. Dale Rhodes asked Paul Body if John Rawdanowicz would be limited to only building one at this point since he already has one. Paul Body answered that he already has one accessory structure that is in front of his house that is 626.5 square feet. Dale Rhodes said that the applicant states that he can have two 1,000 square foot buildings and asked, since he already has one, if he could not build two additional 1,000 square foot buildings. Paul Body said that he has a living area of 2,230 square feet so 50% would be 1,115 square feet so he could have two of them at 1,000 square feet. Dale Rhodes asked if that is in addition to what he has now. Paul Body answered yes, they can't be over 15 square feet, the total of his house is 2,830 square feet for the foot print, so he wouldn't be over that to have two of them.

**Public Comment**

Brian Eckstein, 9972 Sebastian River Drive. He stated that he is in opposition. He said that he, his wife and daughter have lived there for 4.5 years, their property is two adjacent lots, 100 x 100, they abut Mr. J.R.'s drive way. His driveway runs directly behind our property, lots three and four is where they live. He said that they bought there because it's a quiet location, at the southern reaches of Brevard County. He said they like that the Indian and Sebastian rivers are there, there are a lot of oak trees and birds, it is out of the way, quiet and unassuming. He stated that the predominant home in the neighborhood is single story. He said that if he goes up two stories directly behind their house,

their backyard could be overlooked which is currently a private back yard. He said he lives by the rules of the County and understands that the County makes rules for a reason. He said he feels that this is an extreme request beyond it, but with some minor modifications he is not entirely opposed to the building presented. He said he would just like to see that it does not have the big cupola on top of it that goes up so much higher, it affects the bird patterns, wind and is something they will see from their back yard. He stated that he has a picture. He said that the picture is of their backyard, you can see his detached garage from their backyard; the other structure would be more directly behind them. He said they spend a lot of time in their backyard and enjoy their privacy; the drawings don't say anything about windows on the 2<sup>nd</sup> floor, but it does reference attic storage. He said he thinks the plans were incomplete without the attic storage being depicted; if there were no windows on the 2<sup>nd</sup> floor he would be fine with that and if the cupola was removed he would be fine with that and the only other questions is, if the usage will be just as a garage. He stated there is a tool room, a workshop, three stall garage and attic storage; it seems like the use could be easily modified in the future. He said he would like a guarantee that what is submitted is what is going to be there. He said he questioned the hardship and asked to submit a 2<sup>nd</sup> picture. He said that it is a four-car garage that he presented and that is within the square footage that is allowed. He said, to go over with the workshop, patio, tool room and extra stuff and the really unique design, with the questionable side load garage that does not have a drive way that goes to it, it seems that there is a plan for something different in the future for the building. He said if something like this was built, it would allow storage for four additional cars and if he made one taller, it would fit an RV or boat and it fits within the square footage; so, the hardship is a question. He said he does not know what J.R. went through to get the drawings, he knows he paid \$600 for the variance process. He said he would like to be respectful of his neighbor and for him to be able to do what he wants on his property. He said with some minor modifications he is fine with what was presented, just so there are not windows towering over their back yard and that the use remains as a garage; not getting used as a business, cars coming in and out, refurbishing things and selling them or being used for an Air B&B. (Public Comment pictures can be found in file 20PZ00060 located in the Planning and Development Department.)

Dale Rhodes said that those items are code items that are different than what is being dealt with there. He asked Brian Eckstein if his house is in front of John Rawdanowicz's, closer to the road. Brian Eckstein said that they face Sebastian River Drive, the back of their house abuts his. Dale Rhodes asked if the flag portion of his lot is beside their house. Brian Eckstein said yes, he had another picture. Dale Rhodes said that's ok, he has the plat there. Dale Rhodes asked Brian Eckstein if he would be more comfortable with two 1000 square foot buildings or one building like he is describing. Brian Eckstein said that he thinks there are other options; if he attached something to his house with a covered walkway, he could build a 5000 square foot building if he wanted. He said then John Rawdanowicz's wouldn't have to go through a variance, it would just be a remodel of his existing home. He said he has no limits on what he can do, he is not concerned about it. He said he was invited into this process, the sign was posted, and it's twice what's requested. He said he went through the drawings and is very concerned and has a list of concerns that he will not go over in the interest of being kind to his neighbor, not causing a problem. Dale Rhodes asked if his biggest concern was the window in the upper story. Brian Eckstein said yes, and the cupola, he does not think it's necessary or needs to be built; he is a general contractor also. Dale Rhodes said that he is not being combative, he just asked the question because he could build two 1000 square foot buildings and not have to go through the variance process. Brian Eckstein said but they would not be able to have 2<sup>nd</sup> floors because that would count toward his square footage. He said the drawings aren't complete; it says 2<sup>nd</sup> floor and doesn't show the 2<sup>nd</sup> floor. He said at a minimum if John

Rawdanowicz's is going to go forward with this he would like to see a copy of the 2<sup>nd</sup> floor plans because its referenced in the variance request but not shown in the drawing.

Paul Body said one of the things with this variance, is it was all done on the first floor; the 2<sup>nd</sup> floor is done for storage and doesn't show any stairs going to it; it has a pull-down stairway. He said it wasn't done with the calculations of it, so if approved and he tried to make it into more area, it wouldn't meet the square footage that is approved by this variance. Dale Rhodes said at that point he would be in code violation. Paul Body said, correct. Dale Rhodes asked Brian Eckstein if that helped any. Brian Eckstein said yes, if there are no windows, it wouldn't be difficult to put in a window later. Paul Body said that in the plans that they have, he doesn't see where there are any windows. Brian Eckstein said no there aren't but his concern is in the future, a window could be added. Dale Rhodes said he understood that but can't deal in hypotheticals, has to deal with what is actually being done and if he were to do something later, he would have to get approval to do so. He said he understands his concern, does not mean this wrongly but cannot deal with hypotheticals.

Jack Higgins asked Brian Eckstein how the cupola would affect the birds; he has a big barn and a cupola and it doesn't affect the birds. Brian Eckstein said that the drawing doesn't show the height. Jack Higgins said it doesn't show the cupola either. Brian Eckstein said it does on the side elevation. Michael Hartman said they don't have the side elevation in their package. Brian Eckstein said that there is a cupola that extends at least eight feet. Jack Higgins asked Brian Eckstein if those two items were given up, would he be happy. Brian Eckstein said he would be absolutely fine; the garage that he presented meets the code, it has four garage bays and it could do everything and so he does not see a hardship.

Paul Body asked the Board if they got copies of the plans that were in the application. All Board members responded that they have the floor plan and attic storage but do not have a side elevation. Brian Eckstein said that the attic storage is shown as insulated space which qualifies as conditioned space. Dale Rhodes said that it can't be living space because it would not be code; at that point he would be in violation and be fined so he would not be able to use it as such. Michael Hartman said they have A1 but not A2. Dale Rhodes asked that they be given a moment to review. Alex Esseeesse said to Dale Rhodes that they could take a five-minute recess so that each individual member of the Board has time to review; that might be wise. Michael Hartman asked Brian Eckstein if his house is just west of his or on the river. Brian Eckstein said no they are east. Michael Hartman asked if he was on the right of John Rawdanowicz. Brian Eckstein answered, John Rawdanowicz's has a flag shape lot. Michael Hartman said you are the house in the front off of the river. Brian Eckstein said lots three and four. Dale Rhodes said he is on the road. Michael Hartman said so there is a house behind you on the river. Brian Eckstein said a house to the south of us and another that is on the river. Michael Hartman asked Brian Eckstein if he was the one that is closer up where the flag portion is. Brian Eckstein answered yes, and also where the proposed construction is going to take place. Michael Hartman said it's going to be down closer to his house. Brian Eckstein said that is why he gave the picture, it is going to be in full view of the back of their house. He said he had another picture that explains it better; that is our fence. (Public Comment pictures can be found in file 20PZ00060 located in the Planning and Development Department.) Dale Rhodes asked if John Rawdanowicz's house was over there (referencing the picture). Brian Eckstein answered, down there you can see the detached garage building structure and it's going to be right next to that, closer to their house. He said that with regard to height the survey does not show the finished floor elevation of the building, the new building or any of the other structures on his property; he thinks that height should be

considered in this decision. Dale Rhodes asked Brian Eckstein if he had anything else for them. Brian Eckstein answered that he did not.

John Rawdanowicz said that this could turn into a long drawn out reason for the presentation that they just heard, but its irrelevant. He said this has not been the friendliest of neighborly relations. He said the construction is not directly behind their house; they could take a photograph and look anyway they want, but you can see by the plat of the property that it is not directly behind his house. He stated the cupola was the designer's idea because he had a problem with the way the roof lines connect. He said looking at the roof plan and the way the different roof lines connect, there was no way to have them connect and meet in a sensible way without an intersection; the intersection becomes what's being called the cupola. He said as far as the quietness of the neighborhood, he wishes it was quieter instead of a stereo blasting all day even when nobody is home just to tick him off. He said it doesn't bother him because he has storm windows; he would like Brian Eckstein to know he can have it as loud as he wants. He said Brian Eckstein put a fence up having not filed for a permit which is fine, it's a nice fence. He said the workers at his house were tired of seeing him and his girlfriend nude out in the grass at six o'clock in the morning. Dale Rhodes asked John Rawdanowicz to stay on point. John Rawdanowicz said he would stay on subject; that was about it.

Motion by Dale Rhodes, seconded by Michael Hartman, to approve the variances as depicted on the sketch description provided by the applicant. The motion passed unanimously.

**3. (20PZ00061) John R. and Mercedes Pailos Hussey Revocable Trust (John F. Hussey)**

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1336(4), to permit a variance of 64.5 feet from the 125 foot minimum lot width required, as defined in Section 62-1102 Definition of Lot Width, in an RR-1 (Rural Residential) zoning classification, on 2.19 acres, located on the northwest right of way of Friday Lane 1,675 feet north of James Road (2880 Friday Lane, Cocoa) (Tax Account 2404089) (District 1)

Paul Body stated, Section 62-1336(4) is about the minimum lot size, an area of not less than one acre is required having a width of not less than 125 feet and a depth of not less than 125 feet. Code 62-1102 under definition of lot width states lot width means the distance between straight lines connecting the front lot line, the front and rear lot lines at each side of the lot drawn perpendicular to parallel side lot lines or if not parallel, measured across the rear of the minimum required front yard as measured by the front setback.

John Hussey, P.O. Box 237335, Cocoa, FL. He stated that he wished to submit some maps. Dale Rhodes said that they had these. He stated that he had signed affidavits from property owners from each side of the property that had no objection to it. (Public Comment letters can be found in file 20PZ00061 located in the Planning and Development Department.) Dale Rhodes stated that for the record they have two affidavits, both state "please be advised that I have no objection to the variance 20PZ00061 located at 2880 Friday Lane, Cocoa Florida". The first one is signed by Jacqueline Anson, the 2<sup>nd</sup> is signed by John French. John Hussey said he is here today to get a variance on his parents' property before he purchases it, so he can build a structure on it. He said he found out when speaking with the County that he had to get a variance because there is not enough frontage. The people that owed the property before his parents subdivided the lots; on the Pine Lake Ranch map, you will see where lot fourteen was all one parcel. He said then they subdivided it only leaving about 9.5 feet of frontage, as on the 2<sup>nd</sup> map from Campbell Surveying. He stated in order to get the

required frontage, he had to go back 25 feet on the set back to get 16.5 feet; without this variance this property is useless, can't do anything with it. He said there is a house to the left of the parcel on the now subdivided lot fourteen and there is a house on lot thirteen and both no objection signatures are from the remainder of lot fourteen and lot thirteen.

Jack Higgins asked if there was equipment stored on the property; construction equipment. John Hussey said he has a boat trailer on it. Jack Higgins said he looked for an hour in the area and could not find it. John Hussey said that the construction equipment is the neighbor to the right; that is the Anson's. Jack Higgins asked if he was the wooded part in between the house to the left and the construction equipment. John Hussey said yes, there is a gate there with a no trespassing sign; its tiny. Jack Higgins asked why there was not a sign there; the green sign you are supposed to have. John Hussey said maybe the weather blew it off, he came back and nailed it twice. Jack Higgins said he rode up and down, got out and looked and couldn't find it. He asked John Hussey if there was a reason he didn't want it advertised. John Hussey said no, he posted it, there were constant rains and he kept going back to staple it; it looks now like its been through the shredder, it is beat up, has a million staples that looks like have been ripped off of it. He said maybe a neighbor may have tinkered with it but he doubts it; the constant weather and rain... Jack Higgins said it is pretty wooded back there, he will grant it that. He said he has no objection to what he would like to do, it is a very nice area. John Hussey said that the gentleman that subdivided it back before he was born may have had rules that applied differently; unfortunately, without that setback, he can't put a chicken coup on it.

Paul Body said we have pictures that he sent of the sign posted. Jack Higgins said as long as he has them, he just couldn't find it. Dale Rhodes said he can see if from there. Paul Body asked Jack Higgins if he would like to see it. Jack Higgins said he could see it there. Dale Rhodes said he was about to ask if he had a photo of it. John Hussey said he instantly took pictures and went back and stapled it., Mr. French from next door saw him do it and came out to talk to him. Dale Rhodes asked if the letters they received were from the neighbors directly abutting the property. John Hussey said, correct, from the left and right side, actually touching the property. He said that without this variance they can't do anything with it, can't even sell it. Dale Rhodes said that this is probably one of the best cases of a hardship if it's not approved of one that he has seen.

Motion by Jack Higgins, seconded by Michael Hartman, to approve the variances as depicted on the sketch description provided by the applicant. The motion passed unanimously.

#### **4. (20PZ00063) Anders and Amanda Nelson**

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2100.5(1)(d), to permit a variance of 2,489 square feet over the 891 square feet (50% of living area of the principal structure) allowed for an accessory structure in an RU-1-11 (Single Family Residential) zoning classification, on 1.18 acres, located on the east side of Newfound Harbor Drive (2890 Newfound Harbor Drive, Merritt Island) (Tax Account 2519166) (District 2)

Paul Body said, Section 62-2100.5(1)(d) states the size limitation of accessory buildings or structures when secondary to a single-family residential use is further limited as follows, each detached accessory building or structure shall not exceed 600 square feet or 50% of the living area of the principal building, whichever is greater.

Amanda Nelson, 2890 Newfound Harbor Drive, Merritt Island. She stated that they are here to get a variance to build a garage. They bought a little over an acre and at the time only had the money to

build a small house; now they are ready to build a garage. She said they have a 30-foot boat, a 2<sup>nd</sup> boat and two fairly new cars; they want somewhere that when hurricanes come they can put everything to keep it from rusting or corroding. She stated they did not know that the attic space was going to be counted as square footage; it is only going to be used as attic space. The reason they built it the height they did is to match the architecture of the house so it would all look the same and they did not do a pull-down staircase because the ceilings were fourteen feet and they thought it would be dangerous. She said she was not even sure if they make a pull-down staircase for fourteen feet. She said if that makes a difference, she has already told the architect to just eliminate it and put a pull down if that helps with the square footage.

Dale Rhodes asked Paul Body if it makes a difference, if she removed the stair case and put in a pulldown. Paul Body answered that we would have to advertise the square footage and have her come back another day. Michael Hartman asked Amanda Nelson if it was going to be 300 feet off the road. Amanda Nelson answered yes, 300 or 400 feet off the road. Jack Higgins said he thought it was not going to have a pull-down staircase. Amanda Nelson said currently on the plans, it has a staircase going up. Dale Rhodes said, which is why it is 2,400 square feet over instead of... Amanda Nelson said yes, she has a lot of Halloween and Christmas decorations and is not allowed to put them in the garage so that is why the upstairs is her attic space. Dale Rhodes said so it is your intention to use the upstairs as an attic space even though there is a staircase there. He said it looks like living space and asked if it would be or not. Amanda Nelson said only attic space, its just the form of the truss they had us choose to match the architect of the house. Dale Rhodes asked Amanda Nelson if she talked to her neighbors. Amanda Nelson said yes, and they don't mind. Dales Rhodes asked her if she got anything in writing. Amanda Nelson said she didn't know she had to, he asked to come with her but she told him he doesn't have to. Dale Rhodes said she didn't have to, they always like to know if the people next door, who it mostly affects, have an issue or not.

#### No Public Comment

Paul Body said once again this one does not have it drawn onto the survey so I would say as depicted on the plans.

Motion by Michael Hartman, seconded by Jack Higgins, to approve the variances as depicted on the plans provided by the applicant. The motion passed unanimously.

Upon consensus, the meeting adjourned at **2:20** p.m.