

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, July 20, 2022, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair Bill Huffman presiding, to consider the requests below:

Board members present were: Bill Huffman, Chair, (D5); Jack Higgins, Vice Chair, (D1); Kevin McCann, (D2); and George Bovell, (D4).

Staff members present were: Sarah Beazley, Assistant County Attorney; Jeffrey Ball, Planning & Zoning Manager; Paul Body, Planner II; and Tonya Parker, Administrative Secretary.

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

Paul Body explained the function of the Board of Adjustment; George Bovell explained the definition of a hardship; and Bill Huffman explained the procedures of the Board of Adjustment. All speakers were sworn in by the Chair at the beginning of each item.

Approval of June 15, 2022, Minutes

Motion by Jack Higgins, seconded by Kevin McCann, to approve the June 15, 2022, minutes. The motion passed unanimously.

1. (22V00005) OBC Realty, LLC (Michael Allen)

Variances from Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1372(4), to permit a variance of 24.9 ft. from the required 75-ft. minimum lot width in an RU-2-15 (Medium Density Multi-Family Residential) zoning classification; 2.) Section 62-2105(d), to permit a variance of 8.2 ft. from the minimum breezeway requirement of 21.4 ft., in an RU-2-15 (Medium Density Multi-Family Residential) zoning classification. The property is 0.30 acres, located on the east side of S. Atlantic Ave., approx. 143 ft. north of 35th St. (3477 S. Atlantic Ave., Cocoa Beach) (Tax Account 2520973) (District 2)

Jack Kirschenbaum, Attorney with Gray Robinson, 1795 W. Nasa Blvd., Melbourne, stated many board members may be familiar with the strip of Brevard County on the barrier island just north of Patrick Air Force Base. In the 1950's the oceanfront area was platted with as 50-ft. lots. In the 1960's it started being developed with various businesses, and the property became a problem area in the early 1970's but it has enjoyed a renaissance, and anyone who has driven there lately will see there is everything from 8-story luxury condos to riverfront resort destinations, upscale restaurants, duplexes, and quadraplexes. The subject property is a 3-unit dilapidated multi-family structure that has been empty for a long time. He stated his client has a plan to redevelop and renovate the property. He noted the property already enjoys a variance for a reduction from 10-foot setbacks to 5-foot setbacks. As previously stated, the property was platted a long time ago on 50-foot lots, and now the minimum lot width in the RU-2-15 zoning classification is 75 feet. The first request is for a variance from that 75 feet to allow the project to move forward. The second request is a variance from the breezeway. He explained the proposed project is to use the footprint of the existing structure, and it will use the footprint from the east toward the west. There is a fairly complicated formula to calculate breezeway, and in this particular instance, the breezeway would act as a double setback. He stated the project will have a setback on the north side of 5 feet and on the south side of 8 feet, which doesn't take advantage of the entire variance that was previously granted. To permit and construct the proposed project, which will be an upscale, 4-unit multi-family residence, the two variances are needed from the width of the lot and from the breezeway. He said currently, under the County formula, the breezeway calculated is 21.4 feet and his client is seeking an 8.2-foot variance from that requirement. He stated these minimal setbacks are enjoyed by almost all of the properties up and

down A1A in Cocoa Beach, and they are the minimum variances that will make the project functioning, upscale, and fit in with the neighborhood.

Kevin McCann stated he understands the request and he doesn't have any questions.

George Bovell stated it appears the developer will have to extend the foundation in order to accommodate the project, but will not exceed the current setback on the side.

Mr. Kirschenbaum stated that is correct, there will be additional foundation outside of the existing footprint of the building, but it does not go into the previously granted setback area, it is still 8 feet from the property line. The southern extremity from the new foundation will be 8 feet from the southern property line.

Mr. Bovell asked where the breezeway is located.

Michael Allen, Allen Engineering, 106 Dixie Lane, Cocoa Beach, stated the breezeway will run from N. Atlantic Avenue toward the ocean, and from the building to the property line on the north, which is 5.2 feet; and on the south it follows the line of the building at 8 feet. He stated the purpose of the breezeway is for airflow.

Bill Huffman asked the width of the path way if emergency vehicles need to access the back of the property. Mr. Allen replied, in front there is a covered parking area and emergency vehicles will enter from A1A, go under the parking area and down the sidewalk to access the back, which is standard for similar condominiums in the area.

Public comment:

Warren Chambers, 3485 S. Atlantic Avenue, Cocoa Beach, stated he has been in favor of improvements done so far in the area by OBC Realty. He said he is not against development on the subject property, but his concern is that the previous two properties to the north had to set back off of the ocean, and he believes the subject property needs to set back off of the ocean. He clarified that he wants the property developed, but is concerned about beach erosion.

Paul Body explained there is a coastal construction setback line that is regulated by the Natural Resources Department, and they will review those setbacks.

John Osborne, 3445 S. Atlantic Avenue, Cocoa Beach stated he owns property immediately adjacent to the north of the subject property. He said his condominium was built in 2006 and met all of the setbacks and regulations at that time. He stated he thinks the proposed project will look nicer than what is there right now, but he has not heard an argument that it is in the public's interest that the variances should be approved. Principally, it will be a transient facility, set up with three units, two-bedroom, two-bath, and they can be rented for one week at a time. He said he and others in his condominium would like to see the applicant meet the existing regulations and construct a facility that would actually have a benefit to the neighbors.

Mr. Kirschenbaum stated in regard to the easternmost portion of the project, Mr. Allen has gone to the Department of Natural Resources and the project is within all of the regulations that allows the re-building of the building to the previous footprint, and there is a letter in the file authorizing the footprint

for the proposed project. He noted it is proposed to be a 4-unit project at this time, but after site planning it could be less.

Motion by Kevin McCann, seconded by George Bovell, to approve the variances as depicted on the plans provided by the applicant.

Mr. McCann stated he visited the property and he agrees it is in a dilapidated state and any kind of improvement would be an improvement to the area. He noted the breezeways are sufficiently wide enough to accommodate any emergency vehicles.

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

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

2. (22V000014) James O. and Donna Andrus Born

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-2109(c), to permit a variance of 2 ft. over the maximum 4-ft. height limitation for a fence within the front setback in an EU (Estate Use Residential) zoning classification. The property is 1.06 acres, located on the east side of Brentwood Dr., approx. 285 ft. east of N. U.S. Highway 1 (4690 Brentwood Dr., Cocoa) (Tax Account 2317189) (District 1)

James Born, 4690 Brentwood Drive, Cocoa, stated Brentwood Drive is at the very end of Indian River Drive, going north, it is fairly isolated and his house is the last house on the street. When he purchased the house there was heavy foliage and the Boy Scout camp and fire station in front of his property, which completely blocked U.S. 1. He said the foliage has been cleaned out and now there is a view from U.S. 1 to his house, making it the only house on the street visible from U.S. 1. He stated he would like to extend the 4-foot fence in the front to 6 feet, for privacy. He noted he has spoken to his neighbors and they are in support of the request.

No public comment.

Motion by Jack Higgins, seconded by George Bovell, to approve the variance as depicted on the survey.

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

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

3. (22V00015) Lisa C. Shover

Variances from Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-2123(a), to permit a variance to allow a swimming pool to be located forward of the front building line of the principal structure; 2.) Section 62-2123(a), to permit a variance of 2.5 ft. from the required 25-ft. front setback for a swimming pool; 3.) Section 62-2123(a), to permit a variance of 0.7 ft. from the required 25-ft. side setback for a swimming pool on a corner lot contiguous to a key lot; 4.) Section 62-1340(5)(b), to permit a variance of 2.5 ft. from the 7.5-ft. side setback for an accessory structure, in an RU-1-13 (Single-Family Residential) zoning classification. The property is 0.25 acres, located on

the southwest corner of Bonita Dr. and Marlin Dr. (155 Bonita Dr., Merritt Island) (Tax Account 2502115) (District 2)

Lisa Shover, 155 Bonita Drive, Merritt Island stated she has been trying to put in a pool since November 2021. She has submitted many permits for pools, and have moved it and adjusted it many times, and finally in January staff helped figure out how to fit the pool on the property. She explained she does not have a backyard, all of her yard is in the front. She stated she was also told she needs a variance for a carport that has been on the property for over 25 years.

Kevin McCann stated regarding the carport, it's common that people purchase properties after the code has changed, or the previous owners built something outside of the code. When someone asks for a variance for one thing, staff checks to make sure everything else on the property is within code. He stated he drove by the property and agree that there is not a backyard, it's almost three side yards and a front yard, and he agrees that the only place for a pool is in the front yard. He asked what the primary entrance will be once the pool is constructed. Ms. Shover replied it will be on Marlin Street. Mr. McCann asked if she plans to enclose the pool. Ms. Shover replied she plans a privacy fence.

George Bovell stated the pool will be in the best location it could possibly be with the double frontage, and the issue with the carport should not be a problem.

Jack Higgins asked if the fence be at the property line or just around the pool. Ms. Shover replied the fence will only be around the pool.

No public comment.

Motion by Kevin McCann, seconded by George Bovell, to approve the variances as depicted on the survey provided by the applicant.

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

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

4. (22V00016) Todd J. Starkey (Brian Stephens)

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-2123(c), to permit a variance of 1.5 feet from the required 5-ft. rear setback for a screened pool enclosure, in a PUD (Planned Unit Development) zoning classification. The property is 0.52 acres, located on the west side of Cortona Dr., at the southwest terminus of Cortona Dr. (3077 Cortona Dr., Viera) (Tax Account 2631042) (District 4)

Brian Stephens, Attorney with Dean Meade, 7380 Murrell Road, stated his client is requesting a variance to be able to encroach into the setback by 18 inches for a pool screen enclosure. He said despite the fact that when the permit application was submitted for the pool in a manner that was compliant with code and compliant with setbacks, the pool improvements were put in the ground in a location such that when finished would result in an 18-inch encroachment. Specifically, the portion that will encroach will be the footers for the screen enclosure.

George Bovell asked if the basic structure of the pool already in the ground. Mr. Stephens replied yes, it is.

Mr. Bovell stated in Viera there have been several properties with pools built within the setback and needed variances, so he does not have no problem with the request.

No public comment.

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

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

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

5. (22V00019) Board of County Commissioners, Brevard County, Florida (Tim Lawry)

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1572(6), to permit a variance of 5 ft. from the required 25-ft. front setback in a GML(H) (Government Managed Lands, High-Intensity) zoning classification. The property is 3.39 acres, located on the south side of Pineda Cswy., approx. 0.23 mile west of N. Wickham Rd. (2905, 2915, & 2925 Pineda Cswy., Melbourne) (District 4) (Tax Account 2606131)

Tim Lawry, Brevard County Public Works, Facilities, 2725 Judge Fran Jamieson Way, Viera, stated Facilities is designing, permitting, and constructing a traffic management building at 2925 Pineda Causeway. He explained the current ordinance was adopted in 1994 and since then the overpass has been built to fly over the railroad tracks. The frontage of the property would have been on Pineda Causeway before the overpass was built, but now the overpass has changed the elevation, and now there is an exit that ramps down on the west side of the building. The front of the building is on the southwest corner of the property because of the hill behind it, which is the overpass.

Kevin McCann asked if Holy Trinity uses the same access. Mr. Lawry replied they do access it, but there is another access at the bottom of the hill with a traffic light.

Jack Higgins asked if the facility will be the traffic management building for the entire county. Mr. Lawry replied it will be the main facility for the center of the county.

No public comment.

Motion by George Bovell, seconded by Jack Higgins, to approve the variance as depicted on the site plan provided by the applicant.

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

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

Upon consensus, the meeting adjourned at 2:39 p.m.