

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, May 17, 2023, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair Dale Rhodes presiding, to consider the requests below:

Board members present were: Sonya Mallard (D1); Kevin McCann, (D2); Dale Rhodes, Chair; (D3); John Thomas (D4); and Dave Neuman, (D5 Alt).

Staff members present were: Jeffrey Ball, Planning & Zoning Manager; Becky Behl-Hill, Assistant County Attorney; Paul Body, Planner III; and Jennifer Jones, Special Projects Coordinator.

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

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

Approval of April 19, 2023, Minutes

Motion by John Thomas, seconded by Sonya Mallard, to approve the April 19, 2023, minutes. The motion passed unanimously.

Trevor T. Haman (Charlene Morgan)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1341(5)(a), to permit a variance of 2.15 ft. from the required 7.5-ft. side (west) setback for a principal structure in a RU-1-9 (Single-Family Residential) zoning classification. The property is 0.17 acres, located on the north side of Avenida Del Mar, approx. 300 ft. west of Palm Ave. (340 Avenida Del Mar, Indialantic) (23V00006) (Tax Account 2727893) (District 5)

Trevor Haman, 340 Avenida Del Mar, Indialantic, stated the reason for the variance request is for an addition to the house because there is not enough room between the property line and the addition.

Dale Rhodes asked if the addition has been built.

Paul Body explained the variance is to legitimize the existing house and for the proposed addition on the entire side setback on the west property line. The house does not meet the 7.5-foot side setback because the carport was enclosed into a garage and is now at 5.35 feet.

Dave Neuman stated the house is two stories, and there are other similar homes in the neighborhood. He said it seems Mr. Haman bought the property with the house in the current configuration and now needs a variance.

Kevin McCann asked if the area between the addition and the property line would be greater than what exists between the residence and the property line currently. Mr. Haman replied it would be along the same line as the existing carport.

No public comment.

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

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

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

Ernesto Diaz

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2118(d)(3), to permit a variance of 3.1 ft. over the maximum 16-ft. projection (20% the width of the waterway) permitted for a boat dock, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.17 acres, located on the north side of Rochelle Pkwy., approx. 315 ft. east of Westport Rd.) (23V00011) (1690 Rochelle Pkwy., Merritt Island) (Tax Account 2431874) (District 2)

Ernesto Diaz, 1690 Rochelle Pkwy., Merritt Island, stated the objection letter that was submitted states that he is obstructing the neighbor's view and also causing an obstruction during hurricane season. He said his dock does not protrude into the canal any further than existing structures along the canal. He explained he bought the house last year and the original owner did a repair to the seawall, but it was not a good repair, and it collapsed. Within three months of purchasing the home, holes appeared on the corner of the seawall, which caused him to get a permit to make repairs. He said he didn't know he wasn't able to actually build the seawall that was going to project into the canal further past what he wanted. The goal of the repair was to be able to build a dock with a lift. He repaired the seawall, it passed inspection, and everything was fine, but now he is projecting past what the code allows. He said his mistake was that he mis-read the code and thought it was 16 feet from the existing seawall and not the property line, and it was never his intention to do anything illegal.

Kevin McCann stated the seawall was constructed past the previous seawall, so it extends a little further into the canal, and asked if it extends any further out into the canal than the neighbors. Mr. Diaz replied there is one neighbor who is aligned with him, and who also has a variance for the same reason. He is the neighbor who wrote the objection letter. He said the previous owner didn't build a dock, but when he moved in, he built a dock, and that obstructed the neighbor's view of the canal.

Mr. McCann asked if the neighbors have an outdoor kitchen in the back yard. Mr. Diaz replied yes. Mr. McCann asked if the neighbors also have a roof on their dock. Mr. Diaz replied yes. Mr. McCann asked if either of those structures obstruct their view. Mr. Diaz replied yes. Mr. McCann asked the width of the canal. Mr. Diaz replied it is 80 feet. Mr. McCann asked if the property directly across the canal projects into the canal. Mr. Diaz replied yes, by five feet, but the owner has said he has no intentions of building the dock further into the canal. He noted that even with his dock being extended three feet, he is at the widest point of the canal.

Dale Rhodes asked if the dock has already been built. Mr. Diaz replied yes, it is built. Mr. Rhodes asked if the permit allowed him to build the dock in the manner it was built. Mr. Diaz replied yes, he submitted all of the drawings and he had the survey done twice because he pulled the permit for the seawall, and because the seawall was approved with no issues, he proceeded with building the dock.

Mr. Rhodes asked what the error was if the dock was permitted before being built. Mr. Diaz replied he did not wait for feedback from the County. Mr. Rhodes asked if the permit had not been issued before he started building the dock. Mr. Diaz replied yes, according to the code he was allowed to go out 20% of the width of the canal, which would be 16 feet, and the dock he built was 14.6 feet. He said he didn't know the projection was from the property line, and when he received the feedback from the County that it is from the property line and not the seawall, he realized he made a mistake.

No public comment.

Motion by Kevin McCann, seconded by John Thomas, to approve the variance request as depicted on the survey provided by the applicant.

Mr. McCann stated he visited the property. The neighbors to the west who wrote the objection letter has the platform for their dock on the opposite side of their boat, boat lift, and roof, so they are already not going to have a good view down the canal. The neighbor also has an outdoor kitchen, and he doesn't see how Mr. Diaz's structure, that doesn't have a roof, would impact their view significantly, if at all. He said it is a wide canal, and if you take away the 16 feet that the neighbor across the canal could build, and you take away Mr. Diaz's 14.6 feet, there is still 50 feet of canal between the docks, which is a good width without any navigable issues.

Mr. Rhodes stated there could be issues if the board continues to allow people to build beyond what is allowed by code. In looking at the aerial map, everyone there has already built a boat dock, so there would be less opportunity for issues with this particular situation. He said he is concerned that it was built without a permit, because that is always an issue.

Paul Body noted Mr. Diaz did have a permit approved to go out from his property line by 16 feet. It was the as-built survey that showed the encroachment.

Mr. Rhodes stated given that information, it seems like it was a legitimate error and Mr. Diaz did what he thought was correct.

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

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

John K. and Rebecca J. Marshall

Variations of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1336(5)(b), to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure; 2.) Section 62-1336(5)(b), to permit a variance of 6.29 ft. from the required 15-ft. side setback for an accessory structure, in an RR-1 (Rural Residential) zoning classification. The property is 1.20 acres, located on the east side of Harlock Rd., approx. 350 ft. north of Aurora Rd. (1575 Harlock Rd., Melbourne) (23V00012) (Tax Account 2702720) (District 5)

Rebecca Marshall, 1575 Harlock Rd., Melbourne, stated she and her husband built a carport too close to the property line, but they weren't aware of the codes. She said the carport is also forward of the house, because there was no other place to put it. She added, she was given poor advice and did not have a permit for the carport.

Dave Neuman asked the advice she was given about the carport. Ms. Marshall replied a contractor told her a permit was not needed.

Mr. Neuman stated there are violations for the carport and a shed, and asked if the shed is being removed and the carport being kept. Ms. Marshall replied that is correct.

Mr. Neuman asked how long has the carport been in place. Ms. Marshall replied since 2019. Mr. Neuman asked if the contractor who said she didn't need a permit is the same contractor who built the carport. Ms. Marshall replied yes.

John Thomas asked if Ms. Marshall has had any complaints from adjacent neighbors. Ms. Marshall stated she believes one neighbor complained.

Dale Rhodes asked if Ms. Marshall is going to apply for permits to build another shed. Ms. Marshall replied yes. Mr. Rhodes asked if the carport protrudes out to where it blocks any view of people traveling up and down the road, or anything of that nature. Ms. Marshall replied she doesn't believe so.

Mr. Rhodes asked Mr. Neuman if he sees any safety issues. Mr. Neuman replied no.

Mr. Rhodes asked if the neighbor who complained lives next door, on the same side of the carport. Ms. Marshall replied yes.

Mr. Thomas asked if there is a physical barrier between the carport and the neighbor's property. Ms. Marshall replied there is a privacy fence.

Public comment.

Mike Dalton, 4730 Aurora Rd., Melbourne, stated the structure is next door to him, on his property that he has been looking into getting permits for a residence. He said the carport is very large, and built very close to the property line, in front of the house. He said the proposed house on his property to the south will face Harlock Road, and the structure will be in front of the new house.

Mr. Rhodes stated the carport is approximately 30 feet from the road, and asked if it would hamper his construction. Mr. Dalton replied yes, and it would also affect property values because it looks like an industrial structure located in front of the house. He said he does not think a permit would have been approved for the structure.

Mr. Rhodes asked Mr. Dalton how long he has owned his property. Mr. Dalton replied it has been in his family for 30 years. Mr. Rhodes asked if it was not a problem until he started to build, or did he just not notice it for the last four years. Mr. Dalton replied there were trees between the properties, and with the trees gone, the carport is visible. Mr. Rhodes asked who removed the trees. Mr. Dalton replied he removed them because they were Pepper trees. Mr. Rhodes asked if the carport is an issue now because the trees have been removed. Mr. Dalton replied yes. Mr. Rhodes asked why he did not leave the trees in place. Mr. Dalton replied Pepper trees are not used for landscaping.

John Thomas asked if Mr. Dalton has had anyone estimate his property value, and that without the carport next door his property value would be higher. Mr. Dalton replied no.

Kevin McCann asked Mr. Dalton if he was aware of the carport when it was being constructed. Mr. Dalton replied yes. Mr. McCann asked if the carport visible from the street. Mr. Dalton replied yes.

Mr. Neuman stated the main concern from Mr. Dalton is property values for the integrity of the neighborhood. He said from the aerial map, it looks like a lot of clearing has been done. Mr. Dalton stated he has been removing a lot of invasive trees.

Ms. Marshall stated since moving to the property, her value has doubled with the carport, and it is actually an RV port, which is why it is so big.

Mr. Neuman asked if an RV is parked under the carport. Ms. Marshall replied the RV has been sold, but there is a carport side and the RV side.

Motion by Dave Neuman, seconded by John Thomas, to deny the variance requests.

Mr. Neuman stated the board often talks about not enabling contractors to build things without a permit, and the contractor who built the structure and should have known, if he had a license, that there should have been a permit. He said he also would not want to approve something that will harm the value of a developing neighborhood, especially because proper procedure was not followed. He said he is sympathetic to the situation, but the genesis of it causes a problem for him.

Mr. Rhodes asked Ms. Marshall if she has been in contact with the contractor since the complaint was filed. Ms. Marshall replied no. Mr. Rhodes stated if the variances are not approved, the carport will have to be removed, and the contractor would be liable because he didn't have a permit.

Ms. Marshall stated she got a permit prior to applying for the variance.

Paul Body noted there is an application for a building permit, but it is on hold for the variances.

Mr. Rhodes stated if the contractor made the mistake, and the board requires it to be taken down, that could be something she could go back to the contractor for.

Mr. Thomas stated he agrees with Mr. Neuman, and it is a shame that Ms. Marshall is in this position, but by the same token, Mr. Dalton has the right to enjoy the maximum value of his property, and he can see, without an expert opinion, how the carport could affect property value. He said Mr. Dalton should be able to remove Pepper trees or any other growth on his property without it adversely affecting his property. He stated he believes it is injurious to the area to approve the variance.

Mr. McCann stated according to the survey, the carport looks like it is at least 60 feet back from the road, and he doesn't think 60 feet from the road is a tremendous hardship. He said it is also over 8.5 feet from the side property line, and although that infringes on the 15-foot setback, a lot of variance requests are for 7.5-foot setbacks, and this is greater. He stated denying the application may outweigh the benefit of approving it.

Sonya Mallard stated, because Ms. Marshall no longer has the RV, and because of the property values, she agrees it is an eyesore and should be removed.

Mr. Rhodes stated he always has issues when something is built without a permit, but in this case, the homeowner consulted a contractor who told her he could build it, and she relied on that information. It is the homeowner's responsibility to check that what the contractor is saying is true, but unfortunately, there are a lot of contractors who are not honest. He said Ms. Marshall should be able

to remedy the issue through the contractor at his expense. He further stated the structure has been in place since 2019, and the neighbor didn't have a problem with it when it was being built, but now that he wants to do something different with his property, it is an issue. He said he doesn't believe it is injurious to property values, and for those reasons he cannot support the motion to deny the variance.

Mr. Neuman asked Mr. Rhodes if, despite not going through the proper process, it is his opinion that he would have allowed for the variance.

Mr. Rhodes stated he does not like it when someone builds without a permit, but in this case, she talked to a contractor who said he could build it. The issue is if the board believes she talked to a contractor and the contractor told her a permit was not needed. It is on her to double check, but ultimately, the board makes the decision to believe that she understood it was correct, and from there, the board has to consider if it is reasonable to build the structure as it is built. He said his issue is that it has been in place for four years and has not been a problem, and because of that, he is in favor of keeping it.

Mr. Neuman asked Mr. Rhodes' opinion on whether it benefits or hurts the integrity of the neighborhood, with his real estate experience. Mr. Rhodes replied he doesn't know that it benefits, but he doesn't believe it hurts the integrity. If it was a quarter-acre lot, it would be a different discussion. The lot is large and the carport sits far away from the road, and he doesn't think it will be an issue for a neighbor next door, but real estate is always subjective to the person buying the property.

Mr. Thomas stated if the property did not affect anyone else, he could see approving the variances, but is not Mr. Dalton's fault that the mistake was made by the contractor; no matter how old the complaint is, it doesn't make it correct.

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

Dale Rhodes called for a vote on the motion as stated, and it passed 3:1, with Rhodes and McCann noting nay.

Cummins Family Revocable Trust (Jennifer Altreche)

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1543(5)(a), to permit a variance of 23.1 ft. from the required 40-ft. front setback for a structure; 2.) Section 62-1453(5)(b), to permit a variance of 13.81 ft. from the required 15-ft. side (west) setback for a structure; 3.) Section 62-1453(5)(c), to permit a variance of 20.12 ft. from the required 25-ft. rear setback for a structure, in an IU (Light Industrial) zoning classification. The on property is 1 acre, located on the south side of Broadcast Court, approx. 216 ft. east of Clearlake Rd. (798 Clearlake Rd., Cocoa) (23V00013) (Tax Account 2421588) (District 2)

Jennifer Altreche, 508 N. Harbor City Boulevard, Melbourne, stated the building was built in 1964, which was before her client transferred the property into the name of the Trust. The owners want to legitimize what currently exists; nothing is planned to be added or removed.

Kevin McCann stated he visited the property and the building has been in existence for a long time and no longer complies with the setbacks.

No public comment.

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

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

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

Upon consensus, the meeting adjourned at 2:45 p.m.