

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, October 18, 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); Dave Neuman (D5 Alt.); and Dr. Joanna Bass (D4 Alt.). The District 4 alternate member was not eligible to vote on agenda items.

Staff members present were: 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; Bill Huffman 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 September 20, 2023, Minutes

Motion by John Thomas, seconded by Sonya Mallard, to approve the September 20, 2023, minutes. The motion passed unanimously.

David and Martha Sawczyn

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1340(5)(b), to permit a variance of 1.1 ft. from the required 7.5-ft. rear setback for an accessory structure in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.21 acres, located on the south side of Churchill Ave., approx. 300 ft. east of Julis Place (120 Churchill Ave., Satellite Beach) (23V00034) (Tax Account 2608099) (District 4)

David Sawczyn, 120 Churchill Avenue, Satellite Beach, stated the home's 1960's garage space was very limited, so he decided to build a detached garage. He explained, he applied for two permits. The first permit was an electrical permit which was approved and finalized; however, in order to complete that permit, a pre-existing accessory structure had to be removed. He stated the second permit is for the detached garage, and during the permitting process Natural Resources advised there were two invasive Pepper trees in the easement, which have been removed. He said the permit passed three inspections; however, the fourth inspection could not be scheduled until a survey was submitted well into the project, and it was then that he was told there was an encroachment into the rear setback. He stated after the foundation was laid out and prior to the concrete pour, he requested an inspection via Vuspex where he uploaded pictures of the layout. He said he received guidance from the County-supplied inspection card after the permit was approved, which states the size and location, and it passed, allowing him to continue with the pour. The building is 8 feet from the side fence line and 8 feet from the rear fence line, which had been established for decades, and that is when he discovered the discrepancy between the fence line and property line. If a survey had been requested prior to the pour, the discrepancy would have been rectified. He said after the initial shock of the potential costs associated with compliance, he learned he could apply for a variance. He asked the board to consider that the fence line was once considered the property line and that is what created the discrepancy.

John Thomas asked if a survey was done when he purchased the property. Mr. Sawczyn replied yes, but it wasn't as detailed as the survey he received and issued to the County, and it didn't show the discrepancy as shown today. Mr. Thomas asked if he is what was there before. Mr. Sawczyn replied,

it will be larger than the previous structure, but it will be concrete block and stucco, and it will match the principal structure.

Mr. Thomas stated there is a concern about how the survey was requested late in the game, and asked staff if the discrepancy would have been caught if it was requested earlier.

Paul Body replied when there is a proposed structure within one foot of a setback staff asks for a foundation survey, so it should have been caught at the foundation survey stage.

Mr. Sawczyn stated the survey he received when he purchased the house showed the original accessory structure into the setback and that's what raised red flags to remove it. He said it looked like there was room to be able to build something within what he thought was the setbacks and that's why he moved forward tearing down the existing structure and then removed the trees.

Dale Rhodes asked if the surveyor looked at the original survey when he laid out the garage. Mr. Sawczyn replied yes, he did. Mr. Rhodes asked if the layout was in compliance according to that survey. Mr. Sawczyn replied yes, he believes so. Mr. Rhodes asked if it was the next survey that changed the boundaries. Mr. Sawczyn replied yes, it did. Mr. Rhodes stated due to the discrepancy in the two surveys, he doesn't think there was any malice or intent to do wrong.

No public comment.

Motion by John Thomas, seconded by Dave Neuman, 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.

Angelica and Christopher Long-Alleyne

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1336(4), to permit a variance of .04 acre from the minimum 1-acre lot size in an RR-1 (Rural Residential) zoning classification; 2.) Section 62-1336(4), to permit a variance of 20 ft. from the required 125-ft. lot width required in the RR-1 zoning classification. The property is currently zoned RU-1-13 (Single-Family Residential). The property is 0.96 acres, located on the north side of Hield Rd., approx. 720 ft. west of Minton Rd. (3120 Hield Rd., Melbourne) (23V00030) (Tax Account 2806104) (District 5)

Christopher Long-Alleyne, 3120 Hield Road, Melbourne, stated he is asking for 20 feet to the width of his property in order to apply for a change of zoning to RR-1. He said approving the 20 feet would put him in compliance and he would not be in violation of having a horticulture business.

Dave Neuman asked what he grows in his business. Mr. Long-Alleyne replied he grows shrubs, perennials, and small landscaping plants. Mr. Neuman asked the location of the business on the property. Mr. Long-Alleyne replied it is behind his pool fence. Mr. Neuman asked if his neighbors know he has a business, and if customers come to the property. Mr. Long-Alleyne replied his neighbors are aware of the business, but customers do not come to the property. He noted his

property is the smallest of seven lots, so he would be the only one who needs a variance because the other lots are the correct size.

Mr. Neuman asked staff if the board would be giving the applicant any privilege that would be concerning.

Paul Body replied, RR-1 is rural residential zoning that allows for accessory agricultural uses. He would not be allowed to have customers come to his property, but he could take the product elsewhere to be sold.

Mr. Rhodes asked the zoning of the abutting properties. Mr. Body replied, the abutting properties to the east and west are RU-1-13.

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.

Stacy L Goforth and Lawrence I. Munro

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-2118(d)(2), to permit a variance of 7.5 ft. from the required 7.5-ft. side (east) setback for a boat dock; 2.) Section 62-2118(d)(2), to permit a variance of 7.5 ft. from the required 7.5-ft. side (west) setback for a boat dock, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.21 acres, located on the southeast corner of Ursa Ave. and Diana Blvd. (305 Ursa Ave., Merritt Island) (23V00027) (Tax Account 2417446) (District 2)

Stacy Goforth, 305 Ursa Avenue, Merritt Island, stated the lot is pie-shaped on a canal, and the shape of the lot makes the back very narrow, as the seawall is only 31 feet wide. [Ms. Goforth referred to exhibits supplied to the board. The exhibits can be found in file 23V00027, located in the Planning & Development Department.] She said the unusual shape of the lot is because it is on a corner and not a result of anything they have done. The granting of the variances will not confer to them any special privilege. She stated there are 12 other corner lots in the neighborhood that have docks with either zero setbacks or that extend beyond the lines of the lots. She said they have owned a 20-foot boat since 2004 and use it weekly to enjoy the privileges of living on the water, and it would cause an undue hardship to not be able to have a minimal dock to lift and maintain a boat. She said originally, they were asking for a variance of 5 feet, but staff explained that would not work because of the extending lines, and the surveyor advised the only way to put in a dock and lift for their boat would be what is proposed today. She stated the requested variances are in harmony with the surrounding properties and if approved, the dock will be one of the smallest in the canal. She said the dock would not extend out any further into the canal than adjoining property, it would not narrow that canal, and it would not interfere with the two adjoining neighbors' docks and their ability to navigate the waterway or access their lifts. She noted both neighbors pull their lifts away from her property. She said granting the variances will afford them the same rights already being enjoyed by their neighbors.

Kevin McCann stated it appears the subject property is in the widest area of the canal, and they are trying to figure out a way to construct a boat dock so they can use the property the way they intended, but at the minimum intrusion to the neighbors or the waterway.

Lawrence Munro, 305 Ursa Avenue, Merritt Island, stated they are looking for the maximum utilization for the restriction. Ms. Goforth stated the dock would be angled away from the neighbor, which is the only way for it to fit.

Mr. McCann asked if there are docks or boathouses to the left or right that obstruct the applicants' view. Ms. Goforth replied most of the docks obstruct views because they are in back yards; their neighbor's dock obstructs the neighbor next to them. She said her dock will not obstruct a view because it will be angled away from one of the neighbors, and the corners do not go out further than the other neighbor.

Mr. McCann asked if she intends to have a roof on the dock. Ms. Goforth replied yes, and it will have a flat roof, similar to the neighbor's dock.

Mr. McCann noted the applicants have made considerations for their boat extending out further than the dock.

John Thomas asked how many feet between proposed dock and the covered boat dock to the east. Mr. Munro replied 9 feet.

Mr. Thomas stated it seems like if there was any objection, it would come from the neighbor to the east. Mr. Munro replied, the neighbors to the east agree to the variance and have no objection.

Public comment.

Denise Gannon, 285 Diana Boulevard, Merritt Island, stated she and her husband live adjacent to the or west and they are opposed to the variances because their property lines are abutting, and they will be greatly affected.

Tim Gannon, 285 Diana Boulevard, Merritt Island, stated they are in opposition because the proposed variance is for a want and not a need. He said there are other options to get their boat out of the water, and those options do not require a variance. [Mr. Gannon distributed a handout to the board. The handout can be found in file 23V00027, located in the Planning & Development Department.]

Ms. Gannon stated the applicants knew they had a 20-foot boat and 31 feet of water frontage when they purchased the property two years ago; there was an existing dock in place, they had a survey, and they had access to the regulations and codes. She said the variance requests equate to a 100% deviation from the code. She stated using a parallel dock as opposed to a perpendicular structure does not require a variance and does not interfere with the reasonable use of the waterway. She said she and her husband have a right to an unobstructed view, and the proposed dock would extend straight into the canal and decrease her property value. The proposed perpendicular dock would also impede water traffic in a navigable canal; there are kayaks, canoes, jet skis, paddle boards, swimmers, and fishermen that all use the canal, and because it is the widest point of the canal, that's where everyone turns around. She stated the applicants presented two white poles and said they do not stick out any further than anyone else's dock down the canal; however, the poles stick out 5 - 6

feet further than every dock down the canal. She said she doesn't have a problem if the dock is parallel, but a perpendicular dock intrudes not only on her rights, it also creates a safety issue. She stated the applicants could install an elevator lift which could lift their 20-foot boat. Another option would be a four-pole lift, which would fit without a variance. She said their boat is 21 feet with the motor, and because they have less than 50 feet of frontage, they only need a 5-foot setback.

Paul Body stated the setback is not 5 feet, it is 7.5 feet from the side property lines as extended into the waterway. If the boat is 21 feet long with the motor, it cannot extend into the 7.5-foot setback.

Ms. Gannon stated they could have something much smaller which would be a minimum variance. She said the applicants did not communicate with them prior to receiving the courtesy notice in the mail. She said she and her husband initiated communications and were met with untrue, hostile, and threatening attitudes if they did not agree to the variances. She added, there are a minimum of two options that allow reasonable use of the waterfront property for a boat dock and a moored watercraft that do not require a variance.

Mr. McCann stated now knowing the setbacks are 7.5 feet on each side, that will only leave them with a 16-foot distance between the two setbacks and their boat is 20 feet, so the options presented by Ms. Gannon would not be applicable.

Mr. McCann asked if Ms. Gannon could describe the dock that existed on the subject property prior to it being purchased by the applicants. Ms. Gannon stated it was approximately 16 feet wide by 12 feet deep; it was a platform dock that would have fit a boat lift, and it was parallel to the seawall.

Dale Rhodes stated they still would have needed a variance because the length of the boat and putting in the lift would have required a variance. He asked Ms. Gannon how far her boat dock is from the property line on to the left. Mr. Gannon replied it is 7.5 feet.

Mr. Rhodes stated that is on the property line, so in order to pull their boat in they have to pull in front of the neighbors' property. Ms. Gannon replied yes, and they've been pulling all the way around to park parallel and she doesn't have a problem with that because they have to do the same thing.

Mr. Rhodes stated according to the aerial map, it looks like Ms. Gannon's boat sticks out further than the dock, and asked if her boat motor extends beyond the dock. Ms. Gannon replied, she doesn't know, but it was all permitted. She said if the applicants' boat motor extended out two feet versus having a wall that would stand in front of her property, she would be agreeable to that.

Eileen Blackburn, 230 Artemis Boulevard, Merritt Island, stated she is opposed to the variance requests. She said she lives six houses down on the opposite side of the canal, and she feels like the poles look like the dock would stick out into the canal more than the other docks, which she feels would create a safety hazard with the canal traffic.

The board recessed at 2:34 p.m. and reconvened at 2:36 p.m.

Ms. Goforth stated the poles do not extend out, because they have to stay within the intersecting lines. She said the dock will not extend past the neighbors on the other side, but their boat does stick out. She said the Gannon's have a large dock they put in to save their view, but they took their neighbors' view.

Mr. Munro stated they are in the envelope between an existing structure and their property line. He noted the original dock was 12 feet by 12 feet and it was a platform with no lift or poles.

Mr. Rhodes asked if they could you have put in a lift as the neighbors stated. Ms. Goforth replied it was not feasible because they have to stay within the triangle, and if they tried to do it that way, they would still be outside the triangle which they could not get a variance for, because they have to be able to walk onto the boat. She said their riparian rights to the view of the canal is directly to the canal and not down the canal. She said the dock would be angled away from the Gannon's property and they would still have a view.

Mr. Munro stated the other issue is if in the future they want to put in a smaller dock, which they have said they want to do, they have the right to put in another 12 to 15-foot dock in front of their seawall and if they do that it will completely hinder him.

Motion by Kevin McCann, seconded by Sonya Mallard, to approve the requests as depicted on the survey provided by the applicant.

John Thomas stated the applicants bought the property two years ago with an existing dock, and they knew what they were buying when they bought it. He said he supports their rights to use their property as they see fit, but within the guidelines established by the County. He said for the board to go outside of those guidelines and approve the variances would be injurious to the area and based on the neighbors' testimony, he believes it would hurt their property value. He stated there is a traffic jam in the canal now and would be greater if the variances are approved.

Mr. McCann stated he visited the property and was able to walk up to the seawall and see the configuration of the property and see the layout of the neighbors' property; it was obvious that is the widest area of the canal and to him, three or four boats would fit side by side without any issues. He said the canal does get narrower and the distance between the docks on the opposite side are greater at the subject property and get narrower navigating away. He stated when considering views and how injurious the situation is, he looks at the opposition's house and their dock, and it looks to be the biggest dock in the neighborhood and it's built at the setback next to the adjoining neighbors, and that view is obstructed by their dock. He said when comparing that with what the applicant presented he does not see an obstruction. He stated the applicants are using everything in their power to minimize the intrusion, or minimize any kind of injury to the neighbors, the neighborhood, and the community by designing the smallest dock possible, and he's convinced there are no alternatives. He believes property owners should be able to use their property as they see fit as long as it is reasonable; unfortunately, the code does not allow the applicants to have a dock that would be reasonable, which is why variances are possible. He said if their property was slightly wider and they didn't need the variance, they would be able to put a dock there, so he is supportive of approving the variances.

Mr. Neuman stated he is sympathetic to the neighbors' property value as well as knowing the applicants already had a boat of that size. He said he also understands that the applicants do not have a lot to work with on the property, nor would any future owners.

Ms. Mallard stated every homeowner living on the water has a right to enjoy their back yards, and she commends the neighbor for showing other options; however, she was given bad advice on the 5 feet

versus 7.5 feet, which makes a big difference. She said she believes the applicants worked hard to ensure they were within the guidelines, and she agrees with approving the variances.

Mr. Rhodes asked staff if there were any other options for the applicants other than what has been presented. Mr. Body replied they are very limited on what they can do which is why they took the plans back to the surveyor and asked him to fit the boat into the dock within the space available. Mr. Rhodes asked if it is staff's opinion that the configuration on the survey is the only way the dock will fit on the property. Mr. Body replied there might be other ways to do it.

Mr. Rhodes stated he does not like exceptions to boat docks. He said he doesn't think the applicants are looking for more, they are looking for a way to make something happen. The proposed dock would impair views, but any dock is going to impair views, and it will not extend further out than the dock next door, which means it will not impair traffic in the canal. If the dock is built parallel with the seawall it will still affect views and they would still need a variance. He said it is a unique property; however, they knew that when they bought it. He said in looking at the aerial map, the neighbor in opposition has a large dock and if their boat's motor extends beyond the dock, they are not within code because the boat motor has to fit and not extend into the 7.5-foot setback.

Dale Rhodes read aloud the six criteria for a hardship.

Mr. Rhodes asked if it is Mr. McCann's opinion that if the board applied the literal enforcement of the Chapter it would deprive the applicants rights commonly enjoyed by other properties in the same zoning classification. Mr. McCann replied yes.

Dale Rhodes called for a vote on the motion as stated, and it failed 3:2, with Thomas, Neuman, and Rhodes voting nay; therefore, the request is denied.

Upon consensus, the meeting adjourned at 3:11 p.m.