

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, November 15, 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); and Dr. Joanna Bass (D4 Alt.); and Bill Huffman (D5).

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 October 18, 2023, Minutes

Motion by Kevin McCann, seconded by Bill Huffman, to approve the October 18, 2023, minutes. The motion passed unanimously.

Triangle Auto and Tire Service, Inc.

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1482(5)(a)(2), to permit a variance of 1.8 ft. from the required 25-ft. front setback for an existing structure; 2.) Section 62-1482(5)(a)(2), to permit a variance of 16.7 ft. from the required 25-ft. front setback for a proposed structure; 3.) Section 62-1482(5)(a)(4)(b), to permit a variance of 4.4 ft. from the required 5-ft. side (east) setback for a proposed structure, in a BU-1 (General Retail Commercial) zoning classification. The property is 0.34 acres, located between N. Sykes Creek Parkway and Triangle Rd., east of the intersection of N. Sykes Creek Pkwy. and Triangle Rd. (1510 N. Sykes Creek Pkwy., Merritt Island) (22V00023) (Tax Account 2437357) (District 2)

Craig Dixon, Dixon Builders, 11 Ohio Street, Cocoa, stated his client has an existing roof and concrete slab that he would like to enclose because business is doing well at that location. Drawings were submitted for permitting and were stopped because of the setback. He said staff explained a variance would be required to enclose it. He noted the elevated foundation matches the principal building.

Louis Llerena, Triangle Auto President, 1422 Victoria Boulevard, Rockledge, stated the building is small and was built in 1972, and all of the lifts are inside. There is one lift outside on the slab that gets damaged from the weather, and he would like to enclose that lift to protect it, and also install larger equipment for larger trucks.

Paul Body explained the existing building had a variance granted in 1976 to extend the back to the east, but they owner never legitimized the front setback; it's supposed to be 25 feet and it is 23.2 feet, so staff determined that needed to be legitimized. He stated there is also a proposed garage being added to the north, which is 8.3 feet, and requires a second variance to the front setback. The applicant is cleaning up some of the work that was not approved in the previous variance to the addition setback.

Kevin McCann stated the second variance is for the distance from the proposed garage to the property line, and it is 16.7 feet to accommodate the proposed structure. He asked if the applicant

has measured the shoulder in the lanes of travel on North Banana River Drive. Mr. Dixon replied it is at least 20 feet.

Dale Rhodes asked if the roof line already exists. Mr. Llerena replied yes, and there is an open cement slab that has a damaged lift on it, and he is trying to enclose the existing area and also have a secondary. Mr. Rhodes asked if the roofline that needs the variance already exists. Mr. Llerena replied yes. Mr. Rhodes asked if Mr. Llerena built the structure or if it existed when he purchased the property. Mr. Llerena replied the structure existed when he purchased it.

No public comment.

Motion by Kevin McCann, 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.

Thomas J. Navo, III and Cheryl Navo

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1446(d)(7), to permit a variance to allow a swimming pool to be located forward of the front building line of the principal structure; 2.) Section 62-1446(d)(7), to permit a variance to allow a screen enclosure to be located forward of the front building line of the principal structure, in a PUD (Planned Unit Development) zoning classification. The property is 0.27 acres, located on the southeast corner of Frontier Dr. and Continental Ave. (1687 Frontier Dr., Melbourne) (23V00035) (Tax Account 2601217) (District 4)

Cheryl Navo, 1687 Frontier Drive, Melbourne, stated they would like to put a pool in the front yard with a courtyard around it and a wall, and screened in, and they need the variances because the lot is triangular shaped and there is no room in the back.

Joanna Bass stated the drawing shows the proposed pool and deck, and asked where the screen enclosure is located, and which courtyard the 6-foot fence is around. Ms. Navo replied there is a 6-foot wall around the pool and the screen will go over it.

Ms. Bass stated she drove by the property, and the community is nice, but the streets are narrow, and service trucks block one lane of traffic. She stated approximately 10% of the homes have pools but they are all in the back. Ms. Navo stated there are 4 or 5 homes in the entire community with pools in the front.

Ms. Bass stated the side where the pool will be is on Continental Avenue, which is the only north-south through street connecting the community's entrance and exit to Murrell Road.

Thomas Navo, 1687 Frontier Drive, Melbourne, stated the entrance and exit is further up the road by Old Glory Boulevard. Ms. Bass stated the road that connects to Old Glory is Continental and it is an immediate left turn to get out onto the gate onto Old Glory. At the other end of Continental is the exit

gate that can be used for all the people who live there. Mr. Navo stated that gate is locked and never open.

Dale Rhodes asked if the request is only to be able to have the pool in front of the house.

Paul Body replied yes, and they are within the setbacks.

Ms. Navo stated the way the pool is designed, no one driving by would be able to see into the pool area. There will be a wall around the courtyard.

No public comment.

Motion by Joanna Bass, 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.

Kevin D. and Christine L. Hutchenson

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2123(a), to permit a variance of 2.4 ft. from the required 5-ft. side (east) setback for a swimming pool screen enclosure, in a PUD (Planned Unit Development) zoning classification. The property is 0.30 acres, located on the northeast corner of Sugarwood Way and Woodbridge Dr. (627 Sugarwood Way, Melbourne) (23V00036) (Tax Account 2603206) (District 4)

Kevin Hutchenson, 627 Sugarwood Way, Melbourne, stated the variance request is to fix a problem that has been on the property for a while. He explained he purchased the property in 1995 and the footprint of the pool and the house has not changed, but the northeast corner of the pool area is in the setback of HOA property. The request is to accept the build-out as it is; no changes have been made to the footprint of the property.

Joanna Bass stated she drove by the property. She said she is familiar with Suntree's special covenants and restrictions, and Suntree has sub-associations with their own restrictions and covenants, and she was pleased to see the proposed variance has been approved by the sub-association.

Dale Rhodes asked if Mr. Hutchenson is just re-building the new enclosure in the same location as the previous enclosure, or legitimizing the structure that is already there.

Mr. Hutchenson replied yes, it was a repair job of the screen enclosure, but there are no changes to the footprint.

No public comment.

Motion by Joanna Bass, 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.

Kerei Stampfel

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1340(5)(b), to permit a variance of 7.2 ft. from the required 7.5-ft. side (east) setback for an accessory structure; 2.) Section 62-1340(5)(b), to permit a variance of 5 ft. from the required 5-ft. minimum separation distance for an accessory structure, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.20 acres, located on the north side of Artemis Blvd., approx. 360 ft. west of S. Sykes Creek Dr. (410 Artemis Blvd., Merritt Island) (23V00037) (Tax Account 2418525) (District 2)

John Campbell, 115 Alma Boulevard, Merritt Island, stated two years ago an individual went through the neighborhood and anonymously reported several property owners to Code Enforcement for accessory structures that were in violation of the setback requirements. He said his client built a cabana without knowing she needed a permit; however, after the anonymous complaint was filed, she tried to come into compliance. He said Ms. Stampfel spoke to Planning & Development staff who sent her to Public Works for an easement vacation; she went through the public hearing process with the County Commission and the easement vacation was granted, and she was told she met the conditions of the Code Enforcement issues. [Mr. Campbell distributed a handout to the board. The handout can be found in file 23V00037, located in the Planning & Development Department]

Kerei Stampfel, 410 Artemis Boulevard, Merritt Island, stated when she went to the Planning & Development Department, she showed staff a picture of what she wanted to build and asked if she needed a permit, and she was told she did not need a permit. She said it did not occur to her that it would be in an easement. As soon as she received the violation she applied for a permit and hired an engineer. The vacation was granted because they spoke to the neighbors who said they didn't have a problem with the cabana. She stated it was her understanding that vacating the easement would satisfy the code violation, and the only person who told her she needed a variance was the Code Enforcement Officer.

Mr. Campbell stated Ms. Stampfel has done everything she needed to do, and it's unfortunate she received bad advice from staff.

Kevin McCann stated the first variance is because the structure is built close to the side yard, 7.2 feet from the 7.5-foot setback, and the other variance is because the structure is attached to the principal structure. Mr. Stampfel explained the cabana isn't actually attached to the principal structure, there is about four inches between the cabana and the porch on the principal structure.

Mr. McCann stated he is concerned about access for emergency personnel to get from the front yard to the backyard. The structure is open and there is access because it is a breezeway. He said the only other concern he would have is the obstruction of view for the neighbor, but it looks like only Ms. Stampfel's view would be obstructed.

Bill Huffman stated he is not sure a gurney would fit between the house and the cabana. Ms. Stampfel replied they are mobile pieces that can be moved.

Joanna Bass stated there are requirements for granting a variance and she cannot base an evaluation on a similar violation in the area, and she cannot base an evaluation on past conversation. She can only evaluate the requests based on the pictures provided and the required criteria.

Ms. Stampfel stated she pulled permits for everything she has ever done to the house.

Dale Rhodes asked why she did not get a permit for the cabana before it was built. Ms. Stampfel replied she was in the Planning & Development Department pulling a permit for another house she owns and she showed the cabana to a staff member who said a permit was not required.

Mr. Rhodes asked staff if the cabana was attached to the house, would she still need the variance for the 5-foot separation distance.

Paul Body replied no, it's still an accessory structure because it is 1 - 2 feet above the roof of the house, and it's supposed to be attached with a similar roof and materials.

Mr. Rhodes stated Ms. Stampfel mentioned the vacation of the easement thought that dealt with everything, but it was just dealing with that single violation and not other violations. If she had pulled a permit for the cabana she would have known there were issues. He said his biggest issue is the amount of the variances; it's 3 inches on one and zero on the other. He said his second issue is the fact that a permit was not pulled, and she knows permits are required to build a structure. Ms. Stampfel reiterated that she asked staff if she needed a permit and was told she did not.

Mr. Body stated it is possible the permit technician didn't understand what she was building, and maybe they thought it wasn't going to be large enough to require a permit. He said accessory structures under 100 square feet and not on concrete do not require a permit; however, it still must meet the setbacks.

Mr. Rhodes asked what someone should do when they are told they do not need a permit and then find out later they do need a permit. Mr. Body replied it would be a good idea to get it in writing.

Mr. McCann asked the measurement of the cabana structure. Mr. Body replied the survey shows the covered area as 8.6 feet x 14.8 feet. Mr. McCann stated it is close to not needing a permit, but it does need to meet setbacks. He said the board is spending a lot of time on whether she got a permit.

Public Comment.

Colleen Mitchell, 420 Artemis Boulevard, Merritt Island, stated she is most affected by the structure and she can't even see it. She said she has no issue with the cabana and she is in favor of the variance.

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

Mr. McCann stated on one of the variance requests at the last meeting, as the district representative, it's been protocol that he begin the questioning, and he was not given that opportunity, and it set the tone for opposition when he didn't believe it was an unreasonable request. He stated he visited the subject property and he's comfortable with the request. He said it's not really a structure, it's a roof

built on columns on top of a wood deck that is movable, and there is a sufficient breezeway for ingress and egress. It doesn't affect the views of the neighbors, or have any negative impact on the community. He stated the board is getting caught up on the fact that she didn't pull a permit, but she has proven that she does pull permits and she complies with the permit process. He said she was advised poorly on the requirement of a permit for the cabana, but he doesn't feel like anything was done maliciously and he supports the variances.

Ms. Bass stated if a new neighbor moves in, they may not be as gracious as the current neighbor.

Bill Huffman stated if there is a neighbor in support, if they sell their property they've accepted the fact that if the cabana is a detriment they have accepted a reduction in value of their property and they have no recourse if the variances are approved. He said he accepts the fact that EMTs can access the property.

Mr. Rhodes stated there is a reason codes are in place, and the separation distance requirement is in case there is a fire, because it creates a fire break. He said he knows Ms. Stampfel thought she was doing the right thing, and that dissuades his biggest issue of people building without a permit when they knew they needed a permit, but he has a problem when the board is basically eliminating an entire 5-foot section. Ms. Stampfel stated there is a 5-foot opening from where it starts next to my Florida room to the next post. Mr. Rhodes stated there is still no 5-foot gap between the cabana and the house. He asked if she would be willing to take off the 5 feet toward the pool. Ms. Stampfel replied no, because they are 14-foot pieces.

Mr. McCann stated the potential of future neighbors was mentioned and how it would affect them, but Ms. Mitchell testified that the structure doesn't affect her view at all and it doesn't impact her home or the enjoyment of her property. He said the board also talked about not judging past variance requests, but they have to listen to the testimony of each applicant, each person in support, each expert, each representative, and each person in opposition to get a full picture and hear all the testimony and look at all the evidence to make an informative decision. He stated past conversations are important because it's facts and facts are important. The board makes decisions that impact peoples lives and the use and enjoyment of their property, and this was an honest mistake by the applicant.

Mr. Rhodes stated there is a risk of fire because of the grill under the cabana. Mr. McCann replied there is plenty of ventilation, and he doesn't see how that increases fire dangers.

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.

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