

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, January 17, 2024, 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; Jeffrey Ball, Zoning Manager; Paul Body, Senior Planner; and Kristen Champion, Special Projects Coordinator.

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

Dale Rhodes announced his resignation from the Board of Adjustment, as he has moved from the area. He noted that the first order of business is to elect a new Chair. Mr. Rhodes asked Attorney Behl-Hill if he can make a motion for Chair, she informed him that he could not as current sitting Chair.

Dr. Bass made a motion to nominate Kevin McCann as the new Board Chair. No other nominations were noted. The vote was unanimous.

Dr. Bass made a motion to nominate Bill Huffman as Vice Chair. No other nominations were noted. The vote was unanimous.

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

Approval of December 13, 2023, Minutes

Motion by Kevin McCann, seconded by Bill Huffman, to approve the December 13, 2023, minutes. The motion passed unanimously.

Bradley W. and Aleta K. Sinclair (Kim Rezanka) Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-2109(c), to permit a variance of 2 ft. over the 4-ft. maximum height allowed for a fence/wall within the 20-ft. front setback; 2.) Section 62-1341(5)(a), to permit a variance of 13.7 ft. from the required 20-ft. front setback for an accessory structure; 3.) Section 62-1341(5)(b), to permit an accessory structure to be located forward of the front building line of the principal structure; 4.) Section 62-1341(5)(b), to permit an accessory structure to be located forward of the front building line of the principal structure; 5.) Section 62-1341(5)(b), to permit an accessory structure to be located forward of the front building line of the principal structure; in an RU-1-9 (Single-Family Residential) zoning classification. The property is 1 acre, located on the east side of Coquina Ridge Dr., approx. 390 ft. southeast of U.S. Highway 1. (4563 Coquina Ridge Dr., Melbourne) (23V00044) (Tax Account 2611575) (District 4)

Paul Body noted to the Board that this item needs to either be tabled or conditioned due to an oversight. After advertisement it was noted that this property has three docks noted on the survey provided by the applicant, which would be considered a marina per the Zoning code.

Mr. Body stated that the Board can either condition it to have one of them removed or they could condition it to be tabled and have it worked out for the next meeting.

Mr. McCann asked if we could ask the applicant their preference, to which Mr. Body responded yes.

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Kim Rezanka, Lacey Lyons Rezanka, 6013 Farcenda Pl, Melbourne, came forward and stated she is here as the representative for the applicants, Mr. and Mrs. Sinclair. Mr. Bradley Sinclair was not in attendance for today but Mrs. Aleta Sinclair is if the Board should have any additional questions.

Ms. Rezanka stated the issue was raised to her but her and her clients do not believe it is a dock. They believe it is a pier as it does not extend over the water. It is 10 to 15 feet over the water. You cannot park a boat to it. The applicants are not agreeable to removing it.

Ms. Rezanka noted that she's not sure if staff are saying it's a nonconforming lot so therefore, they are saying the applicants can't move forward. She suggested we could fix this with a binding development plan or an additional variance, but they don't believe this is a dock. Ms. Rezanka stated they know that's what the survey says but surveyors aren't lawyers. That they don't make legal interpretations, or shouldn't, so she doesn't know how to condition it at this time. She stated that she can show pictures of the structure, so the Board has a better understanding of what the structure actually is. That there is a difference between a dock and pier.

Mr. Body explained that the Code definition for a dock or pier is a platform extending from a seawall or the shore which is used to secure or provide access to boats. A dock or a pier is supported by pilings or pillars and has no sides or roof.

Ms. Rezanka offered to make it an approval condition that no boats can be "parked" to this pier and offered to show pictures of the structure.

Dale Rhodes asked if he could assist Mr. McCann and stated that he believes due to the ambiguity between staff and the applicants, we should table this item to the next meeting to give the applicants opportunity to address this discrepancy.

Ms. Rezanka agreed to tabling the item until February 21, 2024.

Dale Rhodes made a motion to table this item to the February BOA meeting, seconded by Dr. Bass.

Bill Huffman asked for further discussion just to clarify which structure this was in reference to on the property survey.

Kevin McCann called for a vote on the motion as stated, and it passed unanimously.

No public comment.

Jeff Haggard Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1340(5)(b), to permit a variance of 1.5 ft. from the required 7.5-ft. side (west) setback for an accessory structure; 2.) 5 ft. from the 5 ft. separation condition distance required for an accessory structure in an RU-1-13 (Single-Family Residential) zoning classification. The property is 0.29 acres, located on the northeast end of Amber Lane, approx. 285 ft. north of Lake Poinsett Road. (560 Amber Lane, Cocoa) (23V00046) (Tax Account 2408763) (District 1)

Paul Body requested that this item be tabled as well. Due to an oversight, it was not caught that the property appears to need an additional variance on the application for separation distance of an existing carport that was not noted in the advertisement.

Bill Huffman made a motion to table this item until the February 21, 2024, BOA meeting, seconded by Dale Rhodes.

Kevin McCann called for a vote on the motion as stated, and it passed unanimously.

No public comment.

Christopher D. Strozier Variance of Chapter 62, Article VI, Brevard County Code, Section 62-1340(5)(a), to permit a variance of 10 ft. from the required 75-ft. minimum lot width in an RU-1-11 (Single-Family Residential) zoning classification. Currently zoned RU-1-9 (Single-Family Residential). The property is 0.31 acres, located on the west side of Kaiser Road, approx. 203 ft. south of Smith Road. (2466 Kaiser Rd., Mims.) (23V00047) (Tax Account 2104016) (District 1)

Christopher Strozier 2940 Hobbs Place, Titusville, stated that he's requesting a variance to the lot size to be able to build a single-family home.

Mr. Strozier clarified that at the time the lot was created, it had different zoning code requirements. He's asking to legitimize the lot in its current configuration. After a variance is granted, he's going to apply to rezone to make the zoning classification consistent with it's Future Land Use Element.

Sonya Mallard asked the applicant to clarify that his intent is to rezone from RU-1-9 to RU-1-11 to which Mr. Strozier stated that was correct.

Ms. Mallard stated that she did drive through the neighborhood and noted that there existing single-family homes and asked if he's spoken to his neighbors. Mr. Strozier stated yes, he has and to his knowledge, neither neighbor has an issue with his proposal of building a house.

Ms. Mallard asked Mr. Strozier if emergency vehicles would still have access if a home was built and he said yes. Ms. Mallard did not have any further questions.

Dale Rhodes asked Sonya Mallard if the applicant's lot is the same size as the neighboring parcel, which already has an existing home. She said yes and stated that she believes the addition of another home on the street would contribute to the beautification of the neighborhood.

Bill Huffman stated that this type of variance request is a common occurrence.

No public comment.

Sonya Mallard made a motion to approve the item as depicted on the survey provided by the applicant, seconded by Dale Rhodes.

Kevin McCann read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Kevin McCann called for a vote on the motion as stated, and it passed unanimously.

William L. and Maureen F. Baker Variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334(4), to permit a variance of 0.28 acres from the required 2.5-acre minimum lot size in an AU (Agricultural Residential) zoning classification. The property is 2.22 acres, located on the north side of Burkholm Rd., approx. 0.32 mile east of Brighton Blvd. (4340 Burkholm Rd., Mims) (23V00048) (Tax Account 2001869) (District 1)

William Baker, 4340 Burkholm Road, Mims, Florida stated he is requesting a variance to legitimize the lot size to be able to build a detached garage.

Mr. Baker and his wife bought the property two years ago and were unaware that it was undersized for its zoning classification. He believes in 1990, an access easement/road was constructed to allow access to the neighboring parcel behind his, which caused his lot to become substandard.

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Ms. Mallard stated that she did drive by the property and it's a beautiful area in Mims and that she just wanted clarification on where Mr. and Mrs. Baker are proposing their detached garage, to which Mr. Baker stated it'll be to the west side of his home between the house and the access road to the rear property.

Dr. Bass asked how many bays this proposed garage would have. Mr. Baker stated two, just a two-car garage, not an extended one.

Dale Rhodes asked if Mr. and Mrs. Baker created that right-of-way through there. Mr. Baker stated that he believes it was deeded to the owners, it was done before he purchased the home.

Paul Body clarified that the flag stem was created and sold off in 1990 by previous owners, which created the inadequate lot.

No public comment.

Bill Huffman noted that the survey states it was scaled from the Property Appraiser and asked if that was deducted that from the Baker's property?

Paul Body clarified that the graphics on the property appraiser are skewed a lot of times and don't always match the actual legal description of the property and that he's unsure of why the surveyor would note that to begin with.

Sonya Mallard made a motion to approve the variance as depicted on the survey provided by the applicant, seconded by Dr. Joanna Bass.

Kevin McCann read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Kevin McCann called for a vote on the motion as stated, and it passed unanimously.

Luz Nogueroles Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1334(5)(c)(2), to permit a variance of 16 ft. from the required 50-ft. side (north) setback for a barn; 2.) Section 62-1334(5)(c)(2), to permit a variance of 29.5 ft. from the required 50-ft. side (south) setback for a barn, in an AU (Agricultural Residential) zoning classification. The property is 5 acres, located on the west side of Martin Rd., approx. 0.62 miles northwest of S. Fiske Blvd. (1455 Martin Rd., Rockledge) (23V00049) (Tax Account 2509830) (District 2)

Luz Nogueroles 1455 Martin Road, Rockledge, Florida stated that she and her husband are applying for these variances to legitimize the existing structures, a barn and a stable. Which after purchasing the property, they were made aware that they do not meet code requirements. They're both in need of repair and they'd like to try and salvage them versus tearing them down. They need building permits to begin the work but cannot get the permits unless a variance is granted.

Dale Rhodes and Kevin McCann asked the applicant if she's seen the letter of opposition that they received. Mrs. Nogueroles stated she has not.

Mrs. Nogueroles commented that she was surprised by this letter of opposition because she has spoken to those neighbors, and they did not address any concerns with her or her husband. They seemed to be in support of their requests.

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Kevin McCann stated that they just wanted to make her aware of the letter, so she had an opportunity to look it over.

Mrs. Nogueroles stated that she was willing to demolish that portion of the stable that is more encroaching on that neighboring side if that could be a compromise.

Mr. McCann asked for clarification that the barn and the stable have been there for 40 years, and when did they purchase the property?

Mrs. Nogueroles replied that they bought the property in November of 2023.

Mr. McCann asked if when the applicants purchased the property was it in this configuration and if they're just trying to legitimize? Basically, a repair and although the photographs show the barn and stable in disrepair, you are going to improve the property. That is your intent, to improve the property, improve the barn, improve the stable something already existing?

Mrs. Nogueroles stated that that was correct.

Mr. McCann didn't have any more questions.

Bill Huffman asked what her intentions are with these structures.

Mrs. Nogueroles replied that it is in disarray but the intention is to clean up the property, repair the structures, and just bring it back to life. We've already cleaned up the lot. We're aware there were a lot of issues between the neighbors because of the previous owners.

Bill Huffman asked if this side structure that is closest to the property and attached to what I would call the main barn structure are you intending to refurbish that and keep that?

Mrs. Nogueroles stated that she was intending to keep it but if this is an issue to continue with the variance, she is willing to let go of that particular piece and take it out if that needs to be. She did reiterate that it was originally there and it has been for approximately 40 years.

Mr. Huffman noted that in the letter and looking at the survey, it appears that the setback variance that they are asking for is to the main barn structure, not to the outer edge of that shed structure. He asked Paul Body if he had copies of that.

Paul Body replied yes, it looks like it is attached to the stable. That should have been included with the variance. It does not show up on the survey like you're pointing out, so it needs to either come back with a variance to that or be removed. The condition could be to remove that as advertised, as the stable is shown on the survey.

Dale Rhodes clarified that we could approve it with the condition to remove that portion and Paul Body acknowledged, that yes, the Board could do just that. Mrs. Nogueroles also stated that she would not have any objections to complying with that with that condition of approval.

Dr. Bass made a motion to approve the variance, with the condition that the agreed upon portion of the stable be remove, as depicted on the survey provided by the applicant. The motion was seconded by Dale Rhodes.

Kevin McCann read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Kevin McCann 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 7.3 ft. from the required 7.5-ft. side (east) setback for a dock and watercraft; 2.) Section 62-2118(d)(2), to permit a variance of 7.3 ft. from the required 7.5-ft. side (west) setback for a dock and watercraft, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.21 acres, located on the southeast corner of Diana Blvd. and Ursa Ave. (305 Ursa Ave., Merritt Island) (Tax Account 2417446) (District 2)

Lawrence Munro and Stacy Goforth stated they are back before the Board with a revised variance application to ask for reduced setbacks once again for a boat dock and watercraft. After much expense and redesign they're proposing a dock that would have minor to no effect on any neighboring parcels.

Kevin McCann Stated that the request originated in his district but due to the thorough presentation, he does not have any questions at this time.

Bill Huffman said that he was comparing the survey to the aerial photo and asked for an interpretation from staff to ensure that the proposed dock does not exceed the maximum 20% of the width of the canal. Paul Body clarified that it does not exceed the 20% limitation.

Public Comment

Denise and Tim Gannon (285 Diana Blvd., Merritt Island) are in opposition of the proposed dock variance. The proposal of the roof deck is what they disagree with most because they believe it will be an invasion of privacy that will allow the applicants to look into their backyard, patio, and pool.

The Gannon's asked that if the Board is going to approve their variance requests, it be limited to a single-story dock, or if it's to have a roof, it must have a minimum 5/12 pitch, no observation desk at all.

They also submitted two letters of opposition who are relatives to Mr. and Mrs. Gannon that currently live in the neighborhood and will eventually inherit their home.

Kimberly McCormick (275 Diana Blvd., Merritt Island) is in support of the applicants and does not feel that the proposed dock would cause any interference or hardship to the Gannon's property, or any other neighboring parcel.

Kevin Makowski (425 Artemis Blvd., Merritt Island) is in support of the applicants. He also believes that the property is tucked away enough that the proposed dock would not cause any interference to any neighboring parcel.

Pamela Steel (203 Sykes Loop Dr., Merritt Island) is in support of the applicants. She believes the canal is large enough and the subject property is tucked away enough that it would not be an interference to any neighboring parcel.

Mr. McCann and Mr. Huffman asked the applicants for more information on the proposed observation platform and Ms. Goforth stated that while they would love to have a platform because they have no room in their lot, they would be willing to forgo that as long as they can have the dock. She also stated that her and Mr. Munro could build a second story addition and it would have the same effect as adding a small platform to the roof of the proposed dock.

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Dale Rhodes made a motion to approve both variances as depicted on the survey submitted by the application, seconded by Dr. Joanna Bass.

Dale Rhodes also stated that if he could change his vote from the previous BOA meeting, he would. He would've given the applicants his full approval.

Bill Huffman made a motion to amend the first motion to include a restriction against having a second floor deck. No second, motion dies.

The original motion comes back to a vote, 3 I's (McCann, Rhodes, Bass) and 2 nay's (Mallard and Huffman); the variance passes.

Upon consensus, the meeting adjourned at 3:43 PM