

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, January 16, 2019, in the Commission Chambers, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chairman George Bovell presiding, to consider the following requests:

Board members present were: George Bovell, Chairman, District 4; Jack Higgins, District 1; Michael Hartman, District 2; Dale Rhodes, District 3; Dale Young, District 5.

Staff members present: Alex Esseesse, Assistant County Attorney; Paul Body, Planner I; and Hazel Hernandez, Office Assistant II.

Motion by Dale Young, seconded by Jack Higgins, to nominate George Bovell as Chairman. The motion passed unanimously. Motion by George Bovell, seconded by Dale Young, to nominate Dale Rhodes as Vice-Chairman. The motion passed unanimously

The Chairman, George Bovell, called the meeting to order at 1:30 p.m.

Paul Body explained the function of the Board of Adjustment; Ronald Erickson explained the definition of a hardship, and George Bovell explained the procedures of the Board of Adjustment.

Any documents, letters, or photos submitted to the Board of Adjustment before or during the meeting is part of the public record and can be found in the original file located in the Planning and Development Department.

DECEMBER 19, 2018 MINUTES FOR APPROVAL

Motion by Dale Rhodes, seconded by Jack Higgins, to approve the December 19, 2018 minutes. The motion passed unanimously.

1. (18PZ00136) THERESE ANN WALLACE AND MOLLY LOUISE COBERLY (Richard Romans): Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1340(5)(a), to permit a variance of 5 feet from the 10-foot rear setback for a screen porch required in an RU-1-13 (Single-family Residential) zoning classification. The property is 0.23 acre, located on the south side of Nikomas Way, 1,035 feet west of Arrowhead Lane (351 Nikomas Way, Melbourne Beach) (District 3)

Richard Romans, 5877 Treasure Lane, stated he applied for a building permit due to storm damage on the pool enclosure, a portion of which had a solid roof. Planning and Development staff informed him to make sure not to go into the 5-foot rear easement, and he made a lot of effort to make sure that did not happen. When he submitted the as-built survey staff called him to let him know the roofed portion was supposed to be 10 feet from the rear property line. The pool enclosure was already built, so staff told him to apply for a variance.

Dale Rhodes asked if he was replacing the screen enclosure that was there before. Mr. Romans replied yes. Mr. Rhodes asked if he expanded the enclosure. Mr. Romans replied only the roofed portion. Mr. Rhodes asked when he did the permitting, if it was his understanding that he was building it within code at that time. Mr. Romans replied yes. He further stated that during the permitting process there was a question, but the only thing staff told him was to stay 5 feet from the rear property line, so that it was not in the easement. Mr. Rhodes asked if at that point it was already built, and asked if he was getting a final when he found out what the issue was. Mr. Romans replied yes. Jack Higgins stated he had driven by and did not see any problem on the opposite side when looking back. He said he spoke to a neighbor who was outside, and that neighbor had no complaints.

Michael Hartman asked if there were any other houses with screen enclosures near the subject property. Mr. Romans replied yes, the neighbors on both sides have screen enclosures. Mr. Hartman asked if they came back to the 5 feet, because on the aerial map it looks like theirs go back only 10 feet. Mr. Romans stated he did not know.

Molly Coberly, 351 Nikomas Way, stated they had to do a separate survey before construction started to get the exact lines to show where the 5 feet was before they started building.

Mr. Hartman asked if the deck was two different shades, and if the deck was extended from where it was. Mr. Romans replied it was part concrete and part wood. Ms. Coberly stated the wood was two different directions. Mr. Hartman asked if in part of the rebuilding if he extended the deck farther than it was before. Ms. Coberly replied one section of the deck was 5 feet, and this one was there, and they matched it up to the existing.

No Public Comment.

Motion by Dale Rhodes, seconded by Dale Young, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

2. (18PZ00148) PATRICIA M. TORRES AND MARITZA GONZALEZ; CHARLES F. AND ELIZABETH S. RAHAUSER; DANIEL K. LEDERER; AND JOHN AND PATRICIA A. DORSON (Elizabeth S. Rahauser):

Requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2109(a), to permit a variance of 1-foot over the 6-foot fence limit, in a Planned Unit Development (PUD) zoning classification. The properties are 0.04, 0.03, 0.03, and 0.05, a 0.15 acre total, located on the south end of Sand Dunes Court (3230, 3232, 3234, and 3236 Sand Dunes Court, Melbourne Beach) (District 3)

Elizabeth Rahauser, 3232 Sand Dunes Court, Melbourne Beach, stated she was speaking on behalf of the other homeowners who are also on the application. She said the fence in question is behind all four of the properties, and according to the Homeowners Association regulations it has to be straight across. She stated that she and her husband purchased the property 3 years ago with the intent that they to make sure they were in a place with very good zoning like Brevard County, and also in a planned community that could assure strict guidelines, so they were shocked to find out there was an issue. She said the fence has been there for 30 years, and they had no idea the fence was 12 inches over the 6-foot minimum requirement, because visually from that side lot, the way the headway ran it was elevated. The area had suffered a hardship when Beachwood, the next phase of development, was added; they pushed the land up to provide better drainage, so they ended up sitting down lower. In 1997 the homeowners association said it was fine for those four properties to have a 7-foot fence in order to have the same kind of privacy that the other units in Beachwood had. She said they had no idea at the time, because the fence looked consistent with everybody else's fence, because of the dip in the land, and none of the other homeowners around them had any idea either. She stated a complaint was made about their 7-foot fence, and exhibit 7 shows where the complaint came from, which is from the opposite side of the development, and the owner that complained was facing the opposite direction of the fence, so it could not have had a negative effect on him.

Mr. Rhodes asked if the fence had been replaced within the 30 years it has existed. Ms. Rahauser replied yes, and placed on the exact same lines. Mr. Rhodes asked if she had replaced the fence. Ms. Rahauser replied no. Mr. Rhodes asked if a permit had been issued for the replacement of the

fence. Ms. Rahauser replied she had no record, because the woman they purchased the property from is deceased. Mr. Rhodes remarked that the homeowners association granted permission. He stated he has visited the property, and it is obvious that it is higher than the others, because of the side fence being a foot lower than the back. He noted he also did not see any other fences from their back fence. Ms. Rahauser stated they had a laser measurement done, and it shows how much lower it sits on the property; the fences all along there look equal in height. She said that was the intent of the homeowners association during that time period, to make everything look consistent. Mr. Rhodes stated the side fence is not permitted to be higher, and asked if only the back fence was allowed to be. Ms. Rahauser replied no, the property at the end, she believed they put the fence lower simply to allow more light. Mr. Rhodes asked about her property specifically, and if the fence running along the side visibly between the house going towards the back fence was not extended to be higher. Ms. Rahauser replied she believes it was supposed to be consistent the whole way around. Mr. Rhodes stated it was not. Ms. Rahauser stated she believes only one property was not. Mr. Rhodes asked if it was permitted for both the side and the back to be at 7-foot. Ms. Rahauser replied the homeowners association granted permission for it. Mr. Rhodes asked if at one end they decided not to raise the fence on the side. Ms. Rahauser replied that was her understanding. Mr. Rhodes asked if she knew the last time it was replaced. Ms. Rahauser replied it was in 1997 and she had documentation.

Mr. Hartman noted the letter she submitted states that it was also replaced in 2009. Ms. Rahauser replied that was correct. Mr. Hartman asked if she knew of a permit that was pulled for the fence. Ms. Rahauser replied she had no idea, because she was not the homeowner at the time. Mr. Hartman asked staff if there was knowledge of a permit. Paul Body replied he was not sure, but if it was stated at 7 feet it would have been rejected until they corrected it. Mr. Hartman asked if a permit is required. Mr. Body replied yes, but if only 50% is being repaired then the Building Department does not require a permit. Ms. Rahauser stated she did not know how much of it was replaced, but it was possibly after storm damage.

Mr. Higgins asked if the Code Enforcement issue was due to the fence height. Mr. Body replied yes, which is why they are asking for the variance. Ms. Rahauser stated she tried to trace it back, but was told there was no documentation after a certain number of years. Mr. Higgins stated he walked through there, and he could not tell the non-conformity except for the one side.

John Dorson, 3236 Sand Dunes Court, stated he wanted to clarify the side fence was only 6 feet high, and that option was given to the homeowners.

George Bovell read two letters in support of the variance into the record. Ms. Rahauser read two letters in support of the variance into the record.

Motion by Dale Rhodes, seconded by Jack Higgins, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

3. (18PZ00149) SEAN P. AND JULIE KNOELL:

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1340(5)(b), to permit a variance of 3 feet from the 7.5-foot (south) side setback required for an accessory structure, in an Single-family Residential (RU-1-11) zoning classification. The property is 0.20 acre, located on the east side of North Montego Bay, approximately 225 feet north of Becora Avenue (1090 North Montego Bay Drive, Merritt Island) (District 2)

Sean Knoell, 1090 North Montego Bay Drive, stated he was requesting a variance for his shed that was placed three and a half years ago by a shed company. The previous shed was demolished because it was rat infested. He asked the shed company if he needed a permit, and he was told if replacing an existing fence, he did not need a permit. He said over the summer Code Enforcement issued a citation.

Mr. Hartman asked if the old shed was the same width. Mr. Knoell replied he believes it was the same width, but not the same length. Mr. Hartman asked if the old shed extended into the 7 ½-foot setback. Mr. Knoell stated assumes that it did, but he never measured it. Mr. Hartman asked if anyone ever complained about the shed before. Mr. Knoell replied no. He stated at the same time he was getting his shed, he was also having a dock built, which was permitted, so he had building inspectors on his property, but it never came up until three and a half years later.

Mr. Hartman asked staff if the shed company was wrong when they informed him that he did not need a permit. Mr. Body stated yes, they should have told him that he needed a permit. Mr. Higgins stated he spoke to two neighbors who said they had no problem with the shed.

No Public Comment.

Motion by Jack Higgins, seconded by Michael Hartman, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

4. (18PZ00151) MICHAEL R. AND BRENDA J. WALTON:

Request a variance of Chapter 62, Article VI, Brevard county Code, Section 62-1336(5)(b), to permit an accessory building to be in the front of the principal building, in an Rural Residential (RR-1) zoning classification. The property is 1 acre, located on the east side of Bobcat Trail, approximately 1,355 feet east of Windover Way (2630 Bobcat Trail, Titusville) (District 1)

Brenda Walton, 2630 Bobcat Trail, stated they recently purchased an RV that they parked on the side of their driveway, but the neighbor's sprinklers were causing water damage, so they decided that since they have an acre, to clear an area for a cemented pad with an awning to protect it from the sun. She said they had been told that in Brevard County there are regulations that do not allow a structure to be in front of a house. Their house is set back quite a way from the street. She explained that the previous owner of the house put the septic tank on the larger side of the yard, but the other side of the yard was narrow. She said they tried to put the RV on the side, but then realized they would not be able to get into the backyard because of the width and the easement. She stated that after speaking to Mr. Body they are before the Board asking for a variance to place a cement pad.

Jack Higgins stated he does not believe it would pose a problem for any neighbor.

Mr. Hartman asked if the neighbor to the north had a structure. Ms. Walton's reply was inaudible. Mr. Hartman stated she said it was narrow on one side but the north side on the survey looks like there is 42.7 feet from the property line to the house, but on the south side there is 42.26 feet. Ms. Walton replied that was the math she came up with, with having a 20-foot easement that they could not put anything into, because they want to put in 16 feet of cement so they can wash the RV. Mr. Hartman stated he was looking at the 42 feet, and they could drive on the easement they just cannot build on the easement, so if they built the pad next to their house, that would be 42 feet minus 3 feet for the air conditioner which would leave them 39 feet, and the pad they were showing is 16-foot wide, so it

would still leave 23 feet between the pad and the property. Michael Walton stated there was not enough room. Mr. Hartman stated the problem is that there are some trees in the easement.

Mr. Rhodes asked if they would be placing a driveway. Ms. Walton replied there was one there already when they bought the house, and the only thing they are going to do is pour a pad of 16 feet by 38 feet. Dale Young asked if they had a fence. Ms. Walton replied no.

No Public Comment.

Motion by Michael Hartman, seconded by Jack Higgins, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

5. (18PZ00152) HOWARD AND PAMELA BEHAR (Jordon Levy):

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2123(a), to permit 2.53 feet from the 5-foot (south) side setback required for a swimming pool, in an Estate Use Residential (EU) zoning classification. The property is 0.56 acre, located on the east side of Highway A1A, approximately 10 feet south of Sea Dunes Drive (5465 Highway A1A, Melbourne Beach) (District 3)

Jordon Levy, 4301 N. Wickham Road, Suite 13, stated his company designed and constructed a pool for Mr. and Mrs. Behar; the superintendent took the measurements, and then they placed the pool. He noted that three feet from the pool is a 6-foot high concrete wall, so the pool is not visible to anyone next to them. He stated when the form board survey was released they found out that they were 3 feet away from the pool tank to the block wall, and the code requires 5 feet, so they are asking for a variance to leave the pool in its current location, because it would be a hardship to cut it out. He stated it was a mistake of a measuring tape, which does not happen very often.

Mr. Rhodes stated he visited the property, and asked if Mr. Levy's company knew they had to be 5 feet from the property line. Mr. Levy stated it was the superintendent's only job to make sure, and something happened with his tape; maybe he read it wrong, but he no longer works for them.

Antonio Owen, 303 Peregrine Drive, stated when building on the beach, working with sand, you do not have the dirt all the way to the edge of the pool form, and the sand is basically 2 feet away from where it is being measured, so there may be some possible angles due to the ground not being level. Mr. Rhodes stated he knew that they had a short lift around the side of it, and he asked if there was decking going around that. Mr. Levy stated they had decking going around, but on that side they were only going 12 inches.

Mr. Rhodes asked if this variance would include what they need for that decking. Mr. Body stated the decking did not have a setback; it was only to the structure of the pool. Mr. Owen stated the wall was actually inside their property line. Mr. Rhodes asked if he thought that he measured to the pool or the edge of the pool rather than including the concrete that is being placed around it. Mr. Owen replied it was highly likely that he could have been thinking the inside wall to the property line. Mr. Rhodes asked if there was any intent to build the pool, and then ask for a variance. Mr. Levy replied no, it wouldn't help them to do that, because they lose money by doing that. Mr. Rhodes stated the reason for the question was because of one of the letters the Board received addressed that, and he wanted to clarify that concern. Mr. Owen stated the owner had no clue that there was even an issue until they did the survey, because the site plans show a 5-foot setback. Mr. Rhodes asked if no one looked at it, and thought to squeeze in more. Mr. Levy replied no, the homeowner had no idea, and never asked

for the pool to be bigger. Mr. Rhodes stated he didn't think the pool was made bigger he just thought the measurements were off or miscalculated. Mr. Owen stated he was the building contractor and Mr. Levy was the pool contractor, and he would be losing money by making the pool bigger. Mr. Rhodes stated he didn't think anyone made it bigger, the size of the pool was the same, but maybe they didn't have enough room, so they were going to place it and then come back. He noted that is what is being questioned in one of the letters. Mr. Higgins stated being built the way it was he does not see a problem unless the lot next door is built, and then that neighbor would be able to see the pool. Mr. Owen stated the pool's setback does not affect the neighbor's construction. Mr. Higgins asked if the wall was 6 feet, or if it measured higher than that. Mr. Owen stated it was 6 feet. Mr. Rhodes stated he walked around the land and it was quite low, but the wall was built up above that area, so it'll give the appearance of being taller. Mr. Hartman asked if the block wall was laid before the pool. Mr. Owen replied yes.

Mr. Rhodes read into the record a letter in support, and a letter of objection. He noted that with the objection letter he wanted to make it clear that the Board is not addressing the size of the structure or any of those things; the Board is only addressing the setback.

Mr. Hartman asked if anyone knew where the person lives who is objecting. He noted the person who wrote a letter of support lives up the street, so they have a vested interest, but he doesn't know if the person objecting lives in the area and has a vested interest.

Motion by Dale Rhodes, seconded by Michael Hartman, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

6. (18PZ00158) RONALD MILLS (Terry Salber):

Requests variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 1340(5)(b), to permit 3.2 feet from the 7.5-foot rear setback for an accessory structure; 2.) Section 62-2121(a), to permit 10 feet from the 10-foot setback required for a structure from a seawall, in an Single-Family Residential (RU-1-11) zoning classification. The property is 0.23 acre, located on the south side of Yount Drive, approximately 100 feet east of North Banana River Drive (1565 Yount Drive, Merritt Island) (District 2)

Matt Denyer stated when they originally submitted the variance application they were approved for an outdoor kitchen for the customer-specific hardship. He explained that the size of the home versus the size of the lot does not allow a safe place to barbeque, as the backyard has a hill and there is a tree in one corner. He stated a variance was approved, but the original survey that was done by a previous surveyor was incorrect, and when the as-built survey was submitted, that was when it was recognized that the survey was incorrect, so they are now applying for a new variance. Mr. Hartman asked if this was built after the original variance was approved. Mr. Denyer replied yes, the structure was built, then they went through the variance process, and they had finished the structure by putting decorative material on it and placed the grill on it.

Mr. Hartman asked if the first surveyor staked the property. Mr. Denyer replied the first surveyor did not, they actually had the structure built, and the reason applied for the permit was because the customer decided to add some electrical outlets, but originally it was a simple outdoor kitchen, but once he decided to place the electrical, that was when the permitting process started. Mr. Hartman asked if they did not have to pull a permit for building the grill itself. Mr. Denyer replied yes. Mr. Young asked if this was a covered grill station. Mr. Denyer replied yes, it is an outdoor kitchen with a propane grill, a charcoal grill, and a burner.

No Public Comment.

Motion by Michael Hartman, seconded by Dale Rhodes, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

Meeting Adjourned at 3:00 p.m.