

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, April 17, 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: Jack Higgins, District 1; Michael Hartman, District 2; Dale Rhodes, Vice Chairman, District 3; George Bovell, Chairman, District 4; and Dale Young, District 5.

Staff members present were: Alex Esseesse, Assistant County Attorney; Paul Body, Planner II; and Jennifer Jones, Office Assistant II.

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

Paul Body explained the function of the Board of Adjustment; Dale Rhodes explained the definition of a hardship; and George Bovell explained the procedures of the Board of Adjustment.

All speakers were sworn in by the Chairman at the beginning of each item.

Approval of March 20, 2019, Minutes

Motion by Dale Rhodes, seconded by Jack Higgins, to approve the March 20, 2019, minutes. The motion passed unanimously.

All applicants and speakers were sworn in by the Chairman before providing testimony.

(19PZ00042) Merritt Square Realty, LLC; Merritt Square CH, LLC; and Merritt Square Nassim, LLC (Kristen Ferretti)

Requests variances to Chapter 62, Article IX, Brevard County Code, Section 62-3316(b)(2), to permit a variance of 96 square feet over the permitted 2,630 square feet for a freestanding sign, in a BU-1 (General Retail Commercial) zoning classification. The property is 1.18 acres +/-, located on the south side of State Road 520, approximately 0.25 mile east of Plumosa Street. (777 East Merritt Island Causeway, Merritt Island) (District 2)

Kristen Ferretti, 1239 East Newport Center Drive, Suite 113, Deerfield Beach, Florida, 33442, stated she represents the owner of the Merritt Square Mall, of which Chick Fil-A is a tenant, and they are requesting a freestanding. She stated the property owner is currently processing a subdivision, which would make the Chick Fil-A parcel its own freestanding parcel, allowing for its own freestanding sign; however, there are some complications with processing the subdivision, and in the meantime her clients are asking for a variance for the freestanding sign.

Michael Hartman stated once the restaurant is its own parcel the sign would meet all of the setbacks. He stated the answer to number 6 of the Hardship Worksheet states, "Rather, the proposed sign will help identify the Chick Fil-A to vehicular traffic, giving customers advanced notice to safely maneuver to access the site". He noted he has had some bad experiences in other areas of not being able to see a sign due to hedges and small signs, so he supports the variance request.

Dale Young stated there is only one sign for Chick Fil-A, so he assumes the 2,700 square feet is for the whole mall. Ms. Ferretti replied that is correct.

Paul Body stated the Board heard a variance last year for the Racetrac, so they could increase their signage, and also the sign that was there, for the whole aggregate surface of the size, and that is what Chick Fil-A is requesting to increase the total square footage of the sign.

No public comment.

Motion by Michael Hartman, seconded by Dale Rhodes, to approve the variance. The vote was unanimous.

(19PZ00030) HOME DEPOT U.S.A., INC.

Requests variances of Chapter 62, Article IX, Brevard County Code, as follows: 1.) Section 62-3316(b)(5), to permit a variance of 18.66 feet over the 20-foot maximum height limit for a freestanding sign; 2.) Section 62-3316(b)(2), to permit a variance of 232.5 square feet over the 150 square-foot maximum allowable sign surface for a freestanding sign; 3.) Section 62-3316(b)(2), to permit a variance of 82.5 square feet over the 300 square-foot maximum freestanding aggregate sign surface, in a BU-1 (General Retail Commercial) zoning classification, on 9.37 acres, located on the east side of North Courtenay Parkway, approximately 340 feet north of State Road 520. (200 North Courtenay Parkway, Merritt Island) (District 2)

Joe Ware, 12010 Lucas Street, Fort Myers, Florida, with Anchor Sign, authorized Vic Helms to present to the Board.

Vic Helms, 242 14th Street, Panama City Beach, Florida, 32413, stated in 2016 Hurricane Matthew knocked out both signs of the Home Depot, as well as a couple of tenant signs. The Home Depot sign was replaced, but the tenant signs were not replaced. He stated Ross is one of the tenants, and there is another tenant yet to be named, but they have no advertising on North Courtenay Parkway, and the Ross location sits away from the property. He said the request is to replace the existing sign with the same sized sign that was there originally.

George Bovell asked if the request is to replace the original sign in addition to the others. Mr. Helms replied they want to leave the Home Depot sign but add the 5.6-foot by 14-foot cabinet that is the same size as the original sign, for Ross and the other tenant.

Michael Hartman asked if the cabinet that will be placed below will be an L.E.D. cabinet, or will it be two signs. Mr. Helms stated it will be one L.E.D. cabinet, not two cabinets. Mr. Hartman ask for clarification if the pylons were not changing, just what is below. Mr. Helms confirmed it is just the cabinet itself. Mr. Hartman stated he does not think it will make a big difference because there are trees on both sides, so from an aesthetics point of view, he doesn't think it will hurt anything because the pylons are there and they are just lowering the sign a little.

Jack Higgins asked if the sign will be on both Merritt Avenue and Courtenay Parkway. Mr. Helms replied the sign will be on North Courtenay Parkway.

No public comment.

Mr. Helms thanked the Board for hearing the request, and stated the Ross tenant is upset because they do not have a sign on North Courtenay Parkway.

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

(19PZ00036) HENRY G. (III) AND MARIA A. PEEBLES

Request variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1340(5)(a), to permit a variance of 4 feet from the required 20-foot rear setback for a principal structure; 2.) Section 62-2123, to permit a variance of 0.5 feet from the required 5-foot rear setback for a swimming pool screen enclosure, in an RU-1-11 (Single-Family Residential) zoning classification, on 0.19 acres, located on the south side of Aruba Court, approximately 0.19 mile west of Jolly Roger Drive (452 Aruba Court, Satellite Beach) (District 4)

Maria Peebles, 256 Brandy Circle, Southeast, Palm Bay, Florida, 32909, stated she and her husband bought the property on Aruba Court, which was built in 1973, and the roof of the patio and the roof of the house were built together as one structure, and now the whole house needs to be renovated, as the roof is in very poor condition. They want to remove the roof and make the roof structure and the patio as one part, but they will have to build supporting pillars, which would cause them to be within the setback. She said the pool is already there, but they would like to add a screen enclosure, and in order to do that they need a variance of 0.5 feet from the required setback. She said the cement and the patio are already in place, but there needs to be pillars.

George Bovell stated he does not have any issues with the requests, and he would be in support.

Dale Young asked if the posts being referred to are 3-inch posts that have been wrapped. Ms. Peebles replied the posts are not there currently, but they will be for structural support, so there will be a beam and the two posts would support the roof on the south side. Mr. Young asked if the surveyor thought it was a 3-inch post, and that is where the 0.50 feet is coming from. Ms. Peebles replied where the patio is located now is 3.42 feet into the setback, and that is why they are requesting the 4 feet, because she doesn't know how thick the stucco would be around the posts.

No public comment.

Ms. Peebles thanked the Board for its consideration.

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

(19PZ00037) RIVERSIDE 218, LLC (Jeff and Lauren VanWie)

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334(5)(a), to permit a variance of 3 feet from the required 20-foot front setback for a principal structure, in an RU-1-9 (Single-Family Residential) zoning classification, on 0.22 acres, located on the north side of Riverside Avenue, approximately 0.05 mile north of Belair Avenue (520 Riverside Ave., Merritt Island) (District 2)

Lauren VanWie, 520 Riverside Avenue, Merritt Island, Florida, 32937, stated she and her husband are in the process of renovating the home, and they are requesting a 3-foot variance. She explained the garage currently has a side entrance, and they have to go through guy wires to get to it, and that is a concern because boats or trucks cannot get through the wires. She said they are also considering adding a second story, bringing it up to current standards. She stated they would like the garage to have a front entrance in order to make it appropriate for a two-car garage, so they are asking for a 3-foot variance in order to accomplish that.

Michael Hartman noted two of the neighbors agree with the variance requests. He said it appears they will still be 25 feet off of the street, so he has no objections and is in support.

No public comment.

Ms. VanWie stated she appreciates the Board's consideration.

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

(19PZ00038) ROBERT D. & JACQUELINE R. SPINNING

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2109(a), to permit a variance of 2 feet over the maximum 6 foot allowed for fence height in an EU (Estate Use Residential) zoning classification, on 1 acre, located on the south side of Maemir Way, approximately 240 feet east of South Fiske Boulevard. (975 Maemir Way, Rockledge) (District 4)

Paul Body noted the staff comments indicate there is not a Code Enforcement action with Brevard County, but there is a Code Enforcement action with the fence because it was already in place and they needed a permit; they have applied for a permit, and the requested variance is for 2 feet over the required height limitation for a fence.

Robert Spinning, 975 Maemir Way, Rockledge, Florida, 32955, stated they initially applied for a fence permit, and they installed the fence, but there was a communication problem. They installed an 8-foot fence so they would have privacy in their backyard. He stated there is a 2 – 3 -foot wall that belongs to the development behind them, and if he puts up a 6-foot fence the residents in the adjacent development can look into his backyard, so he would like some privacy.

Jacqueline Spinning, 975 Maemir Way, Rockledge, Florida, 32955, stated the elevation of the development is 2 – 3 feet higher than theirs. She said in January 2019 she applied for the fence permit and she asked staff twice about the fence and was told it was okay to put up an 8-foot fence, but when she went back the third time to apply for the fence permit, on January 22nd, she was told she could not have an 8-foot tall fence, and she was limited to 6 feet, but they already had partial panels installed, and that was when they realized the development behind them was elevated higher.

Ms. Spinning stated the development behind them installed their fence long before she installed her fence and it is an 8-foot fence. She noted there was communication regarding the good side of the fence versus the bad side of the fence, but she had her fence done board-on-board so that both sides would look good. She stated the neighbor adjacent to the complainant has an 8-foot fence, and because of the elevation difference, it would have looked ridiculous not matching what their neighbor put up.

Mr. Spinning stated when he built the fence he put a board on the bottom because they have water intrusion from Lot 5, so he has been trying to stop the water intrusion. Ms. Spinning stated because of the elevation of the development being 3 feet higher, they have water runoff, so they thought a fence would help with privacy and the water.

Mr. Bovell stated the fact that they built the fence without a permit complicates things. Ms. Spinning stated there were only four panels in place before they got the permit in January, and the lack of

communication was that they were waiting to hear from the County on whether they could have a 6-foot or 8-foot fence. She said they were communicating by email, and then she did not receive an email.

Mr. Bovell asked if they were written up by Code Enforcement when there were only four panels in place, or was the entire fence installed. Ms. Spinning replied she didn't know until today that they were written up; she only knew there was a complainant on Lot 5 behind her, who complained about the fence being 8 feet tall. Mr. Spinning stated they never received any written notification from Code Enforcement.

Mr. Bovell stated normally, if they would have asked for a permit and were told they could not build an 8-foot fence, they could come before the board to request a variance. Ms. Spinning stated that is what they did, and when the County told them they could not build the additional 2 feet they applied for the variance. Mr. Bovell stated the fence was already in place. Ms. Spinning noted only four panels were up, and she was not aware there was a complaint about the fence. Mr. Bovell asked how much of the fence is complete. Mr. Spinning replied 70%.

Jack Higgins stated he visited the property and there is a 2-foot easement between the properties, and there is a block wall the developer installed, with a fence on top of it, and then there is the foundation on either side of the houses, so it measures a little over 8 feet. An 8-foot fence would almost match what they have behind them.

Mr. Hartman asked when the permit was issued. Mr. Body replied the permit was never issued for 8 feet, but it might have been issued for 6 feet.

Mr. Rhodes stated there were four panels installed, and asked when the rest of it was done that they are now 70% complete. Mr. Spinning replied they have been working on it on the weekends. Mr. Rhodes asked if they have been doing it without a permit. Mr. Spinning replied yes, but they were told by the County that they could go ahead and put up the fence. Mr. Rhodes asked if they had a permit allowing them to continue construction. Mr. Spinning explained no, they applied for a permit but never heard anything about it. He said they went online to check the status and that is when they were told they needed a variance for an 8-foot fence.

Mr. Rhodes asked if they kept building the fence without a permit. Mr. Spinning stated they were told by the Building Department that as long as they applied for the permit it was okay to build the fence. Mr. Rhodes asked if the different fence on the bottom was constructed with the purpose of the water retention. Mr. Spinning replied he put a board on the bottom and attached everything that way. Mr. Rhodes stated it is two different fences; there is one fence on the bottom for 2 feet. Mr. Spinning stated there are some panels with different wood tones.

Mr. Rhodes stated there is an easement between his property and the neighbor's property, so he could have gone on the other side. Mr. Spinning explained that the neighbors would not let him on their property.

Mark Engle, Code Enforcement Supervisor, stated Code Enforcement Officer Amber Rutgerson responded to a complaint on March 4, 2019, regarding a fence built without a permit. She did her research and found there was a fence that was built without a permit, and she sent a Notice of Violation. The case is on administrative hold pending this variance to the height.

Mr. Higgins asked if the board is only to consider the height of the fence. Mr. Body replied yes, the board is only considering the height of the fence, but there are codes that say all the posts have to be toward the fence owner's property, and the inspectors will look at that when they inspect the fence.

Mr. Bovell stated the board has to decide whether an 8-foot fence makes sense for their particular situation. He said he's not fond of the idea of building without a permit because they could have easily stopped building the fence and come to the board for a variance.

Public comment.

Laura Blackman, 985 Maemir Way, stated she lives directly west of the subject property. She clarified that there is no easement; the retaining wall that was built for the development is in the City of Rockledge. She said the problem is that the people behind them could not build a fence on top of their wall because it is serpentine. What they did was put it on their property, so that's why the fences are lower. She stated in order for there to be some uniformity it would be an issue, because they can stand on their property and look in our yards over a 6-foot fence.

Mr. Bovell asked if Ms. Blackman is in favor of the variance request. Ms. Blackman replied she is in favor.

John Riner, 942 Casa Dolce Casa Circle, Rockledge, stated his issue and complaint is that there was no permit issued for the fence; therefore, it was not inspected, and his concern is that a higher fence has more surface area and sail area, and high winds from hurricanes can be a missile hazard for the whole neighborhood. He wants to make sure the fence is inspected and installed in a soundly structural manner.

Mr. Bovell asked if Mr. Riner was okay with an 8-foot fence if it's done correctly. Mr. Riner replied yes.

Ms. Spinning stated the fence is very sturdy; the materials that were used at the bottom of the fence are individual slats, and they match the top of the fence, but the reason it looks like it doesn't is because of the tone. She apologized for the permit issue, but they did apply for a permit in January, and when she found out in February that the County was waiting for a response, she immediately went to the office and that's when she found out they needed a variance. She further stated she did not receive anything from Code Enforcement about the fence.

Mr. Bovell passed the gavel to Vice Chairman Rhodes, and made a motion to approve the variance as depicted on the survey provided by the applicant. Jack Higgins seconded the motion.

Mr. Bovell stated Mr. and Mrs. Spinning could have made their lives a lot easier and simpler had they stopped when they were told in the permitting process that they needed a variance for an 8-foot fence. The requirement for an 8-foot fence makes sense to him in this instance, and that's why he is in support.

Mr. Rhodes stated he has an issue with the fact that they knowingly constructed the fence without a permit, but knew they needed one; they may not have known they needed the variance, but they knew they needed a permit. Also, the fact that they built the fence on the weekends, because no one is looking, and continued to build.

Mr. Rhodes called for a vote on the motion as stated, and it passed 4:1, with Mr. Rhodes voting nay.

(19PZ00039) DANIEL F. KOCH

Requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1340(5)(a), to permit a variance of 10.3 feet from the required 20-foot rear setback for a principal structure, in an RU-1-11 (Single-Family Residential) zoning classification, on 0.17 acres, located on the south side of Davis Drive, approximately 0.10 mile east of North Banana River Drive (1675 Davis Drive, Merritt Island) (District 2)

Daniel Koch, 1675 Davis Drive, Merritt Island, stated he came to the board a year ago for variance to build a porch in the back yard, and that request for 10 feet was granted. Along the way, everything was built, but when it was time for the final inspection, the as-built survey showed 9.7 feet, so it was 3 inches too far into the setback.

Michael Hartman stated from looking at the survey, it appears the porch columns are no closer than the pool deck. If you look at it on Google Earth, there are other houses that have structures just as close, so he is in favor of the variance.

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.

(19PZ00040) MICHAEL A. DOIG AND MELISSA JARAMILLO-DOIG

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2118(d)(3), to permit a variance of 0.8 feet over the 18-foot projection (20% of the width of the waterway) allowed for a dock, in an RU-1-13 (Single-Family Residential) zoning classification, on 0.24 acres, located on the north side of Hiawatha Way, approximately 0.18 mile west of Beverly Court (320 Hiawatha Way, Melbourne Beach) (District 3)

Melissa Doig, 320 Hiawatha Way, Melbourne Beach, stated they hired a dock builder and trusted that he got a permit; he built 90% of the dock and then stopped, and they have not been able to contact him. In trying to finalize the process they had a survey done in order to get the final inspection completed, and that's when they found out the dock builder built the dock 0.8 feet into the waterway.

George Bovell asked if the dock builder was paid up front for the work. Ms. Doig replied they had installments, so they had paid almost all of it, but he didn't complete the process.

Dale Rhodes stated he did not see any issues with the request. He asked if a complaint was filed against the dock builder. Ms. Doig replied they are trying to finish the dock and get it approved, but they are filing a complaint.

No public comment.

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.

(19PZ00031) SHELDON D. AND JUDITH A. STEVENS

Request variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-2123(b), to permit a variance of 3 ft. from the required 20-foot setback for a swimming pool on a major natural water body; 2.) Section 62-2123(b), to permit a variance of 8 feet from the required 20-foot setback for a swimming pool screen enclosure on a major natural water body, in an RU-1-13 (Single-Family Residential) zoning classification, on 0.25 acres, located on the south side of West Bay Drive, approximately 30 feet west of Bay Shore Drive (110 West Bay Drive, Cocoa Beach) (District 2)

David Woodrow authorized Danielle Nelson to present to the board.

Danielle Nelson, Intercoastal Pools, stated they were approved for construction of a swimming pool at 110 West Bay Drive, Cocoa Beach; the permit was issued on September 11, 2018, and the pool was completed in early December 2018, when they had to do an as-built survey as requested by the County. Based on that survey, there was a response from the County that said the pool was within the setback and that the County would take some responsibility because the permit was approved, and they would give us the things we would need for a variance. She said Intercoastal Pools accepts responsibility for being in the easement. She stated the variance is being requested so they do not have to tear apart the deck.

George Bovell stated it is a double-frontage situation.

Paul Body stated the survey was reviewed by two different people; the pool permit was reviewed by one person, and the screen enclosure by another person. Both employees didn't realize it was a double-frontage lot on a major waterbody, which requires the front setback for the pool and the screen enclosure to be the same.

Michael Hartman stated the house three doors to the east has a pool that is 10.2 feet from the canal, and the pool deck is 7.6 feet, so there is another one three doors away that is closer to the seawall than this one. I would be in favor of approving this request.

Mr. Body stated the codes might have been different when that pool was built.

Dale Young asked if the contractor designated the waterbody as a canal. Ms. Nelson responded yes, that's what happened, someone overlooked it as a canal and not the Banana River.

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.

Approval is contingent on authorization from David Woodrow for Ms. Nelson to represent the request.

Upon consensus, the meeting adjourned at 2:55 p.m.