

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, November 25, 2020, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chairman Dale Rhodes presiding, to consider the requests below:

Board members present were: Dale Rhodes, Chairman, District 3; Jack Higgins, Vice Chair, District 1; Michael Hartman, District 2, and George Bovell, District 4

Staff members present were: Abigail Jorandby, Assistant County Attorney; Robin Rogers, Assistant County Attorney; Paul Body, Planner II; George Ritchie, Planner III; and Michelle Adams, Administrative Secretary.

The Chairman, Dale Rhodes, called the meeting to order at 1:30 p.m.

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

Approval of October 21, 2020, Minutes

Motion by Jack Higgins, seconded by Michael Hartman to approve the October 21, 2020, minutes. The motion passed unanimously.

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

1. (20PZ00092) Everette T. Jordan (John R. Campbell)

Requests variances of Chapter 62, Article VI, Brevard County Code as follows: 1) Section 62-1334(4), to permit a variance of 32 feet from the required 150 foot minimum lot width; 2) Section 62-1334(4), to permit a variance of 0.167 acres from the required 2.5 acre minimum lot size in an AU (Agricultural Residential) zoning classification, on 2.333 acres, located on the southeast corner of North Indian River Drive and Blacks Road (101 Blacks Road, Cocoa) (Tax Account 2410743) (District 1)

John Campbell, Land Surveyor, 115 Alma Boulevard, Merritt Island. He said he is representing the Jordan Trust and gave the Board members a survey that was already on file and a deed from 1983. (Exhibits can be found in file 20PZ00092 located in the Planning and Development Department.) He said this parcel of land lies in the northern part of Cocoa near Sharps Road, having a deed that goes back to 1897. He said the property has changed hands very few times; the house is over 60 years old and the property originally extended from river to river. He said it was parceled off to that portion east and west of US1 and his survey represents what the Jordan Trust owns to date; the strip that is approximately 827 feet long and 124 feet at its widest point. He said they are asking for two variances, one for the depth of the lot, its minimum depth has to be 150 feet; they have the right angles, 118 and 103 feet. He explained that the Jordan Trust represents siblings, one lives in California and one in Colorado and could not be here today. He said the property has been in the Jordan family for a long time and is zoned AU which is the zoning they are requesting the variance of. He said the first hardship, the width of the property, was created before zoning regulations were in effect and they are short a few hundredths of an acre to make the 2-and-a-half-acre requirement. He said they cannot use this land without the variance; the realtor hired to sell the property found the deficiencies in the property after contacting the Zoning Department. He said they can't sell land that doesn't meet the building requirements. He said the value of the land exceeds the building which is in poor condition; likely, if the land is sold, the building will be destroyed and a new home built. Referencing the exhibit deed, he said in 1983 the land went into the Jordan Trust; Mr. and Mrs. Jordan were the original owners. He said the quick claim deed is the deed of Trust. He said in 1980,

the property along US1 changed to commercial zoning; the Zoning Board or others did not realize they were leaving a parcel of land in the balance of the parent tract that did not meet the zoning requirements. He said this parcel has existed with the home on it since 1980. He said the original Jordan's have passed and thinks they have a legitimate hardship because the Trust did not create the shortage in acreage or the width of the land. He said they could ask the Board to consider RR-1 zoning or residential which may have allowed two building sites from it, but they did not want to as they would still have to come back with a variance request on the depth of the lot. He said the Trust is asking to keep the current zoning and grant the two variances needed to legitimize the site. He said the division was cut out in 1981; the Trust had nothing to do with the position the land is in now and they had asked a surveyor to explain this as it is technical. He said the land is compatible to anything around it, follows the spirit of the neighborhood, and so asks that the two variances be granted.

Jack Higgins said he believes this is a perfect example of a reasonable return on investment and does not see a problem with the request as depicted.

Michael Hartman said the Jordan's, before creating the Trust, were the ones who sold off the front portion as commercial.

John Campbell said yes, the original Jordan's put the property into the Trust in 1983.

Michael Hartman said the people who created that Trust, were the people who sold off the commercial land; technically the Trust did not, the people who created the Trust, created the shortfall.

John Campbell said there were multiple reasons why this happened; had they not granted the commercial zoning; the balance of the parent tract wouldn't exist.

Michael Hartman said it wasn't a deficient area before they sold off the commercial.

John Campbell said the original land ran between US1 and the river.

Michael Hartman asked if rezoned as RR-1, would the property be deficient and still need to be 150 feet.

Paul Body answered that the Future Land Use being Residential 1 requires an acre of land; each of the zonings, SE-U and RR-1, both require 125 feet of width, so they would still have to ask for a variance to the width.

Michael Hartman said even if they were RR-1, they would still have to get a variance.

Paul Body said yes, to the 125-foot width.

Jack Higgins said, the return was compensated when they sold the first part.

Michael Hartman said the deficiency in the total area was created by the people who created the Trust, it was the family that created the deficiency when they sold the commercial piece off. He said, if they went to RR-1, they would still have to get a variance, because they are at 118-foot width, needing to be at 125-foot width to be buildable.

Paul Body confirmed; to rezone it they would still need a variance to the lot width.

Michael Hartman said, either way, they would have to do a variance, so he has no objection.

Dale Rhodes asked if when the commercial part was sold off, were the current zoning requirements in place then for lot width and amount of land.

Paul Body answered yes, it was subdivided in 1917, before zoning was established. He said when zoning was established, AU required 125 feet of width and depth and an acre of land and in 1975 the code changed to 2.5 acres, 150 of depth and width. He said when it was subdivided, it didn't meet the 150-foot width and was lacking a little of the 2.5 acres.

Dale Rhodes said even if they had kept the commercial part of it, the width still would not have been there.

Paul Body responded that it would still not be conforming to the lot width as established in 1958.

No Public Comment.

John Campbell said the approval of the zoning in 1983 was a result of the balance of the parent tract so he does not know how his folks could have had any part of that.

Motion by Jack Higgins, seconded by Michael Hartman to approve the variances as depicted on the survey submitted by the applicant. The vote was unanimous.

2. (20PZ00094) James D. Hawk

Requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2100.5(1)(d) to permit a variance of 86 square feet over the 640 square feet (50% of the living area of the principal structure) allowed for an accessory structure, in an RU-1-9 (Single Family Residential) zoning classification, on .24 acres, located on the east side of Janina Road, approximately 350 feet northeast of Arbor Avenue (6209 Janina Road, Cocoa) (Tax Account 2308958) (District 1)

James D. Hawk, 6209 Janina Road, Cocoa. He said he is asking for 86 square feet over the 640 square feet for a garage accessory building. He said he did not ask anybody, but Gary Seaman, who lives directly across the street, responded to the notice that he did not object. He said he has lived in the house since 1986 and had a carport for 20 years; with the roof getting bad and hurricane season coming he decided to tear in down. He said he went over the square footage. He said he was having problems, was angry and tried to apologize for his behavior due to medication, the corona virus and losing his job.

Dale Rhodes asked if he had seen Gary Seaman's letter and email of no objection. He said he had seen the letter and was shown the email.

James Hawk apologized for side effects of his medication.

Dale Rhodes stated that he understands he is trying to apologize, but they are not here for that.

Jack Higgins said its pretty crowded there and asked how many boats he had.

James Hawk said he has two boats and three jet skis that are fairly new.

Jack Higgins asked if he is trying to legitimize the building.

James Hawk said yes.

Dale Rhodes asked if the one building is the one he built.

James Hawk said yes.

Michael Hartman said item two states that he had ordered the building prior to the permit being issued.

James Hawk said he did.

Michael Hartman asked, if he knew that the building was 726 feet, why did he apply for a building that was 600 feet.

James Hawk said his thinking wasn't good at that time.

Michael Hartman said the building permit was approved for the proposed building to be 600 square feet in size and the building application was for 600 square feet in size; that's a big inconsistency.

George Bovell said that James Hawk admitted that he made a mistake, they just need to decide if they will give him the 13%.

Dale Rhodes asked, when realizing the building was larger than 600 square feet, why he did not request an adjustment to the building permit.

James Hawk answered that he already had the building put up.

Dale Rhodes asked if he had the building put up before he got the permit.

James Hawk said he had been okayed partially; got the slab in, and they came to put the building up. He said he went to closing and that's when he had to get a surveyor to come out.

Dale Rhodes asked how far the building is from his house.

James Hawk answered 5 feet off his back porch.

Dale Rhodes asked if he had attached it to his house, would it eliminate the issue.

Paul Body said, he does not have the plans in front of him but thinks it would not be architecturally the same. He said it is about 7 feet from his rear porch and doesn't think he could attach it and meet the code. He said if he attached it to the house, even if structurally the same, it would be part of the principal structure which would require a 20-foot setback and he only has 17.93 feet.

Dale Rhodes said, if he did that, he would still need to come back for another variance.

Paul Body said, without seeing plans, he does not know if he could make it part of the principle structure.

James Hawk said, it's a covered porch in the back.

No Public Comment.

George Bovell said yes, he made a mistake, but thinks he would not be able to tell the difference in being 86 square feet bigger. He said he made mistakes and they can turn him down for that, but thinks it is not significantly affecting anything.

Michael Hartman said he had a real problem with the fact that his application states that he ordered the building before getting the permit. He knew the size of the building he ordered was more than the 640 allowed, but his application said the building was 600 feet. He said the application was done for something that was permissible when the building ordered prior, was not permissible.

Jack Higgins asked if it would be hard to remove 100 square feet as he agrees with Mike. He said its only 13% and doesn't see anything in the neighborhood like it. He said it would be more confined than it looks now, with things stored better and asked if it was possible to reduce the building.

James Hawk said he could reduce the size, but he would not be able to use it for what he intended; to hold the boat with tongue, a car and jet skis.

Dale Rhodes said it could be done but it would not meet the use needed.

Jack Higgins said it would enhance it better with the building as is, doing away with exposed storage.

Dale Rhodes said, undo hardships specifications are that he would not have reasonable use of the property without the variance, not so here as he is already using it. He said his big concern is within the six questions, these special circumstances and conditions do not result as of the actions of the applicant. He said they do in fact result from the actions of the applicant. He said he brings that up because all six don't necessarily have to be met, they are guidelines for approving or rejecting variances. He said they could go through the six and quickly deal with this. He asked if the literal enforcement of these provisions deprive the applicant of rights enjoyed by others, and answered no. He said he does not meet the criteria for a variance; his biggest issue is that he knew the building was bigger than what he was allowed and applied for a permit for a smaller size knowing it was bigger. He said he testified that it was because he needed a bigger building for what he wanted to use it for; so, the question is, was it an intentional act in order to get around the zoning.

George Bovell asked Paul Body if he intentionally applied for a smaller building on the permit.

Paul Body replied that the permit was applied for 600 square feet; the building that he put on there does not appear to meet that size on the as built survey.

George Bovell asked if he ordered the building before applying for the permit.

Paul Body said that is what he claims. He said to make it smaller, might not make the Florida Building Code.

George Bovell said he is also looking at significant financial hardship for 86 square feet, a mistake that could have been avoided. He said he agrees with what the Board is looking at.

Dale Rhodes said that economic reasons may be considered only in instances where the land owner cannot yield a reasonable use or return under the existing regulations.

George Bovell said, looking at the property from the air, everyone has their boats and everything hidden; if this goes away, he does not get to store his stuff and improve the general appearance of the neighborhood.

Dale Rhodes asked if he thinks it would improve the appearance of the neighborhood if they approved the variance.

George Bovell said yes, this is the only yard that's crowded, based on the aerial.

Jack Higgins said it would enhance the neighborhood; yes, he made a mistake and it doesn't comply, but it would now cause a detrimental hardship, which they shouldn't consider, but the only thing that is changing his mind is that it's enhancing the neighborhood.

Motion by George Bovell, seconded by Jack Higgins to approve the variance as depicted on the survey submitted by the applicant. The vote was 3:1 with Dale Rhodes voting Nay.

3. (20PZ00095) Michael F. Alles

Requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2100.5(1)(d) to permit a variance of 376.5 square feet over the 673.5 square feet (50% of the living area of the principal structure) allowed for an accessory structure, in an RU-1-11 (Single Family Residential) zoning classification, on 0.57 acres, located on the west side of Palmetto Drive, approximately 1,700 feet east of the intersection of Croton Road and Carlton Drive (521 Palmetto Drive, Melbourne) (Tax Account 2718785) (District 4)

Michael F. Alles, 521 Palmetto Drive, Melbourne. He said he is looking for a variance so he can build a workshop shed and storage area. He said he has 0.57 acres and a small house, under 1,200 square feet, covering the north half of the property; the south half is open except for trees. He said his two-car garage is too small and can't fit his Toyota Tundra. He said he currently pays for an 800 square foot storage facility. He said this is the smallest house he has owned, previous houses were 2,000 and 3,000 square feet, where this would not have been a problem. He said he has looked at every alternative to attach it to the house, having plenty of land, the set backs would not be a problem. He said the house is concrete block and stucco and the price for the garage size he is looking for is prohibitive. He spent some time looking for the right size building for the price and use to store his trucks, trailer and junk. He said when he was in the military, they paid to ship things so he did not throw things out and has household goods from himself, estranged wife and his sister who has passed. He said the storage in Melbourne is full and he would like to move it to his property, transferring those funds to the garage that he can walk out to.

George Bovell said he had looked closely at the presentation and supports it. He said the issue is the size of the primary residence. He said, looking at the aerial of the subdivision, though there has been only one similar variance approved in the last three years, there are many homes with similar issues.

He said the accessory buildings in the area look like they are equal to or more than 50% of the primary structure. He said he has enough land to support the structure and doesn't think it will take away from the aesthetics of the neighborhood.

Michael Hartman asked Paul Body if the one that was approved in 2015, is the one southwest with two structures on Carlton Drive; it appears to be the only property that has a similar situation.

Michael Alles said it was the very next neighborhood.

Paul Body asked the Board if they had the plans that show it on Carlton Drive, one lot past Thompson Road; that was approved five years ago.

Dale Rhodes asked if the Planning Department had come up with any ideas for him.

Michael Alles replied that the Planning Department was excellent as was the permitting Department.

Dale Rhodes said thank you for that and asked if they made any suggestions on how he could avoid the variance.

Michael Alles said he was told it could be attached to the primary house, but architecturally that would have killed it; to go concrete block would be almost a duplicate of his house and the quotes he got were \$75 to \$100 a square foot.

Dale Rhodes asked Paul Body if he could attach it by a breezeway.

Paul Body replied that per code, it has to be architecturally the same as the principal structure. He said if the house is concrete block, to attach it with a breezeway, it has to look the same and have a common roof. He said it is really hard to attach something and meet all the codes.

Motion by George Bovell, seconded by Michael Hartman to approve the variance as depicted on the survey submitted by the applicant. The vote was unanimous.

4. (20PZ00096) Patrick Livezey

Requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334(5)(b) to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure in an AU (Agricultural Residential) zoning classification, on 2.5 acres, located on the north side of Fleming Grant Road, approximately 312 feet east of Mockingbird Lane (9629 Fleming Grant Road, Micco) (Tax Account 3009651) (District 3)

Patrick Livezey, 9629 Fleming Grand Road, Micco.

Dale Rhodes asked if he had seen the letter from Mr. McConKey.

Patrick Livezey said he had and Kyle Harris in Planning and Zoning, forwarded that letter to Natural Resources to help him out. (Public Comment letter can be found in file 20PZ00096 located in the Planning and Development Department.) He said his variance request is for an accessory structure to be built in front of his front property line; it is 35 or 40 feet past the line. He said his house is set on a flag lot and is cocked a bit; if it was parallel, it wouldn't be a problem. He said the owner before

planned a structure for the same place; having already started a driveway and an FPL pole where the structure would be, just needing a line split off. He said, toward the back of his property are 300-year-old oak trees; he would hate to tear down. He said if he had to put it in the back it would triple the driveway length and require another power pole.

Dale Rhodes said he went down his lane but not on the property. He said he could not see what he was doing from the road; it will be well secluded from anyone not on the property. He said he could tell where the structure would go from the descriptions and looked as far back as he could to see the trees; nobody wants him to tear down 300-year-old trees. He said his concern, raised also with Paul Body is of the neighbor's flooding issue. He said that Paul Body explained that if they approved this variance, he still had to go through that part of zoning and them assuring it will not cause a flooding issue for the neighbors. He asked if he had dealt with any of his neighbor's flooding concerns.

Patrick Livezey said, no but he prepped a visual aid to show where the water sits. (Applicant Exhibit can be found in file 20PZ00096 located in the Planning and Development Department.) He said 9625 is the property directly in front of him; they moved in a lot of fill dirt which might be what is affecting 9619, the McConkeys. He said the black arrows are the way the water drains, the gray road at the bottom is Fleming Grant Road. He said the McConkey's are on lot 9619; they have wetlands in back that they are aware of. He said where the water sits would drain out to the black arrows and along the ditch. He said, across the street is a ditch that comes under the road to a pipe at his mailbox; it comes to the corner of Fleming Grant Road, under the road and out to the Sebastian River.

Dale Rhodes asked if where he has 9619 should be 9621.

Patrick Livezey said yes, he messed up.

Paul Body said lot drainage is not in the Zoning Code, it's in the Land Development Code; handled by the Building Department under the Building Codes. He said he will have to address that whenever he gets his building permit and may have to build a swell to keep from draining onto his neighbor's lot.

Dale Rhodes said, it's nothing they need to deal with.

Motion by Michael Hartman, seconded by Jack Higgins to approve the variances as depicted on the survey submitted by the applicant. The vote was unanimous.

5. (20PZ00098) Harry A. Kelley (Wayne Rogers)

Requests variances of Chapter 62, Article VI, Brevard County Code as follows: 1) Section 62-2100.5(1)(d) to permit a variance of 63 square feet over the 600 square feet (50% of the living area of the principal structure) allowed for an accessory structure, 2) Section 62-1401(5)(b) to permit a variance to allow two accessory structures to be located forward of the front building line of the principal structure, in an RRMH-1 (Rural Residential Mobile Home) zoning classification, on 1.15 acres +/-, located on the west side of Woods Trail, approximately 810 feet south of Micco Road (8250 Woods Trail., Micco) (Tax Account 3006663) (District 3)

Wayne Rogers, 8350 Woods Trail. He said he is here for Harry Kelley at 8250 Woods Trail. He said affecting this property is Barefoot Bay Water District, running water down Woods Trail into River Grove where he lives. He said the east side of Woods Trail is where the utilities are; FPL denied them

so they ran the water piping on the west side of Woods Trail. He said they had a large swale that ran to the cul-de-sac, as seen in the bigger pictures. (Applicant Exhibits can be found in file 20PZ00098 located in the Planning and Development Department.) He said, at the end is a swale the County maintains, it runs out to wear all the water runs out; the pond on the property is the end of all the water. Referencing his pictures, he said the pond across the street goes under the ground into this pond and the little canal ends here; the swale goes past the property. He said the 18-inch culvert ends under the driveway. He said they did not put it back, went right to ground level so the pond is flooding the back of three properties. He said Harry bought a 29-foot travel trailer and a dooly and wants to put this carport up. Referencing a house in his picture he said, this house is being knocked down and there are three high points on the property. He said, the far-right rear of the property is good land and pointed to the flood zones and high spots. He said the old septic is destroyed and needs replaced. He said where he lives, he owns the trailer but not the land. He is putting in a new doublewide on the property. He said Harry is retiring after 37 years of truck driving; he will be traveling and wants to put in the carport first. He said the surveyor said he was in front of the property and to get this done. He said the swale let all the water up, now they have a massive problem. He said his original plan was to put the house high in the back, get the septic on the right-hand corner, and on the third highest point, the carport and with the house that will be knocked down, he comes in the drive way and drives around to get in. He said the trees are 70 to 100 years old, down the center of the property, to tear them up would get them into the water again. He said the water pump is in the gray shed and oak trees all around the property would conceal the carport.

Dale Rhodes asked Wayne Rogers where he lived.

Wayne Rogers answered that he is in River Grove too.

Dale Rhodes asked if he was adjacent to the property.

Wayne Rogers answered, no; he is five minutes away but on the property all the time; they have been working on this for years. He said they will tear the house down within a couple of years.

Dale Rhodes said he went to the property and saw the water, which is an issue that they don't deal with. He said that the request is for a variance that is 63 square feet over what is permitted because of the amount of.... He asked if this was a carport not a garage.

Wayne Rogers said yes.

Dale Rhodes said there is a carport on the next property, about the size of what will be built. He asked if anyone had talked to the pink house across the other side.

Wayne Rogers said yes, the gray shed blocks it.

Dale Rhodes asked if they had any issues.

Wayne Rogers said no, she would have come but it was the anniversary of her husband's passing.

Dale Rhodes asked why he wouldn't build the carport in the back and put the house toward the front, eliminating the need for the variance.

Wayne Rogers said if he brings the house up front, he would have to rip out the trees.

Dale Rhodes asked if it could go where the existing house is that will be torn down.

Wayne Rogers said no, because when coming in the driveway with a 29-foot trailer, he has no where to move around, so that's going to be the new driveway. He said he is going to come around the new house and be able to pull right into the carport; they will have to build up the driveway because water is coming in on the left side where the house is.

Dale Rhodes asked if it would be plausible to put the house where he is planning to put the carport and put the carport in the back.

Wayne Rogers said no, they just put the pad down for the carport and the old septic and leaching field is right there. He said the new septic is where the pepper trees are and he is going to put the house up there where the highest point is.

Dale Rhodes said that makes sense.

Dale Rhodes passed the gavel to Mr. Higgins.

Motion by Dale Rhodes, seconded by George Bovell to approve the variances as depicted on the survey submitted by the applicant. The vote was unanimous.

6. This item has been tabled by staff until the December 16, 2020 meeting

(20PZ00097) Michael H. and Fredrika Erdman request variances from Chapter 62, Article VI, Brevard County Code as follows: 1) Section 62-2123(a) and Section 62-1337(5)(b) to permit a variance to allow a lap pool forward of the front building line of the principal structure, 2) Section 62-1337(5)(b) to permit a variance to allow an accessory structure forward of the front building line of the principal structure, 3) Section 62-1337(5)(b) to permit a variance of 14 feet from the required 15 foot side setback for an accessory structure, 4) Section 62-2128 and Section 62-1337(5)(b) to permit an accessory structure (tennis court) forward of the front building line of the principal structure, in an SEU (Suburban Estate Residential Use) zoning classification on 1.05 acres, located on the west side of South Tropical Trail, approximately 1,542 feet north of Crispi Street (5405 South Tropical Trail, Merritt Island) (Tax Account 2520907) (District 2)

Motion by Michael Hartman, seconded by Jack Higgins to table item until the December 16, 2020 meeting. The vote was unanimous.

Upon consensus, the meeting adjourned at 2:45 p.m.