

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, January 20, 2021, 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, Chair, District 3; Jack Higgins, Vice Chair, District 1; and Michael Hartman, District 2

Staff members present were: Justin Caron, Assistant County Attorney; Paul Body, Planner II; Jeffrey Ball, Zoning Manager; and Michelle Adams, Administrative Secretary.

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

Michael Hartman nominated Dale Rhodes as Chair. Motion by Michael Hartman, seconded by Jack Higgins. Hearing no other nominations, Dale Rhodes accepted the nomination. The vote was unanimous.

Michael Hartman nominated Jack Higgins as Vice Chair. Motion by Michael Hartman, seconded by Dale Rhodes. Hearing no other nominations, Jack Higgins accepted the nomination. The vote was unanimous.

Approval of November 25, 2020, Minutes

Motion by Jack Higgins, seconded by Michael Hartman to approve the November 25, 2020, minutes. The vote was unanimous.

Approval of December 16, 2020, Minutes

Motion by Michael Hartman, seconded by Jack Higgins to approve the December 16, 2020, minutes. The vote was unanimous.

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.

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

1. This item was tabled by staff at the December 16, 2020 meeting

(20PZ00103) Michael and Brandi Noyes request a variance from Chapter 62, Article VI, Brevard County Code, Section 62-2100.5(1)(d) to permit a variance of 504.5 square feet over the 736.5 square feet (50% of the living area of the principal structure) allowed for an accessory structure, in an RU-1-7 (Single Family Residential) zoning classification, on .48 acres, located on the southwest corner of Friendly Street and Oakwood Avenue (5605 Friendly Street, Cocoa) (Tax Account 2304910) (District 1)

Michael Noyes, 5605 Friendly Street. He said he is applying to put in a metal shed structure that is over his allotted square footage. He said they have three vehicles as well as a boat. He explained that he has been at the residence since 2008 and has had three incidents; one was a break in where tools were stolen from his work truck. He said two other incidents were caught on camera, but they were wearing masks and hoodies so he could only show the police that it happened. He said two weeks ago, someone sprayed stuff on his driveway and fence. He shared photos of that incident with the Board members. (Applicant exhibits can be found in file 20PZ00103, located in the Planning and Development Department.) He said he wants to put all of his personal belongings behind his gate in a structure. He said he bought the adjoining lot, so he has the additional space. He said he is worried

about the vehicles and the culprits in the neighborhood; and is just trying to protect his stuff. He said he has pictures of comparable buildings in the neighborhood, on smaller lots.

Jack Higgins said he drove by, before the writing on the fence. He said it's clear that he owns the lot next door, has plenty of room and he did see the boat behind the fence. He said he saw other structures in the neighborhood; his does coincide with the neighborhood and he has no objection to it.

Michael Hartman said there are eight letters of support that were given to them. (Public Comment letters can be found in file 20PZ00103, located in the Planning and Development Department.)

Dale Rhodes asked if there was a letter of support from the neighbors directly next to him.

Michael Noyes said yes, the way the lot is, there are three neighbors and each are part of the eight.

Dale Rhodes asked if this was a garage or a shed.

Michael Noyes said it will be a garage but is a metal shed.

Dales Rhodes asked if it would be advantageous to attached it to his home rather than in the corner.

Paul Body said he wouldn't be able to attach a metal building to his home; code says it has to be architecturally the same as the principle structure.

No Public Comment

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

2. (20PZ00112) Theodore H. and Toni J. Korte

Request a variance from Chapter 62, Article VI, Brevard County Code, Section 62-2118(d)(3) to permit a variance of 1.5 feet over the 17-foot projection (20% of the width of the waterway) permitted for a boat dock, in an RU-1-11 (Single Family Residential) zoning classification, on 0.20 acres, located on the west side of Sparrow Drive, 190 feet north. of Skylark Boulevard (410 Sparrow Drive, Satellite Beach) (Tax Account 2606451) (District 4)

Theodore H. Korte, 410 Sparrow Drive. He said he is requesting a variance on a permit. He said he purchased the home in October and the previous owner had put in a sea wall and a boat dock. He said at the time, the previous owner did not know the permits had not cleared until putting the house up for sale. He said the previous owner ran out of time to try to clear the permits, so he inherited that. He said they put the new seawall on the outside of the old one and the dock on the outside of that.

Dale Rhodes asked him if he built it.

Theodore H. Korte said no.

Dale Rhodes said it's 1.5 feet and asked if it would impede anyone else's boat trying to get by.

Theodore H. Korte said no, its been like that for about five years. He said it's a dead-end canal, there are four neighbors, only two have boats and no one has complained. He said he measured it at some point but does not have the numbers today; its navigable.

No Public Comment

Motion by Michael Hartman, seconded by Jack Higgins to approve the variance as depicted on the survey provided by the applicants. The vote was unanimous.

3. (20PZ00113) John Jordan

Requests variances from Chapter 62, Article VI, Brevard County Code: 1) Section 62-1340(5)(a) to permit a variance of 6 feet from the required 20 foot front setback for a principal structure, 2) to permit a variance of 2 feet from the required 7.5 foot side setback for a principal structure, in an RU-1-11 (Single Family Residential) zoning classification, on 0.19 acres, located on the south side of Brophy Boulevard, approximately 715 feet NNE of the intersection of South Barnett Road and Pluckebaum Road (3605 Brophy Boulevard, Cocoa) (Tax Account 2409993) (District 1)

John Jordan, 1783 Hazelton Street Northwest. He said he purchased this property in 2007. He said it is his rental property, and last year, a tenant's ex-girlfriend set a car on fire that reached the carport and into the house, burning over 75% of the house. He said he wants to enclose the carport, creating a garage to prevent access to property, making it a safer place for the next tenant. He said he had sent in pictures of the house fire. (Applicant exhibits can be found in file 20PZ00113, located in the Planning and Development Department.)

Jack Higgins said he has pictures of the house. (Board Member exhibits can be found in file 20PZ00103, located in the Planning and Development Department.) He said that John Jordan stated that the garage is in the same condition that it was, but there is new block in the garage.

John Jordan said yes, he is closing in the existing carport.

Jack Higgins said, not only the carport but also remodeling the inside of the house.

John Jordan said yes, there was 75% damage. He said the insurance company said he needed to make it safe after the burn, including burnt trusses.

Jack Higgins said he saw the work and the empty lot next to it. He said it would be an improvement to the neighborhood.

Dale Rhodes asked if he was closing in what was the carport and not increasing the size.

John Jordan said correct.

Dale Rhodes asked John Jordan if he wished to view the pictures of his garage being built.

John Jordan said no.

Dale Rhodes said he did not create this situation, he ended up with it due to the actions of somebody else. He said he would have to take the side of the garage off in order to meet code. He said he thinks it meets their guidelines.

No Public Comment

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

4. (20PZ00114) Ron Viesins

Requests a variance from Chapter 62, Article VI, Brevard County Code, Section 62-1336(4) to permit a variance of 0.56 acres from the one-acre minimum lot size required, in an RR-1 (Rural Residential) zoning classification, on 0.44 acres, located on the west side of Seminole Boulevard, 585 feet south of West New Haven Avenue (2030 Seminole Boulevard, Melbourne) (Tax Account 2800337) (District 5)

Ron Viesins, 20 Paul Rene Drive.

Dale Rhodes asked if he had a rezoning request in to the Board of County Commissions.

Ron Viesens said yes.

Dale Rhodes suggested that this matter be tabled until that rezoning meeting takes place. He said if it is rezoned, everything done there is mute and if it is rezoned, the variance is not needed.

Ron Viesins said he has a hardship situation. He said in March when he purchased the property, he went to the Building Department and asked if there were any restrictions or zoning problems in order to build on the property. He said the two people he sat with said unless he changed and put a shed next to the shed, that it was fine; it was grandfathered in because it had changed so many times. He said he got a construction home loan and a builder in August; everything has to be done in August or he will lose about \$30,000 in deposits. He said he was notified two months ago when the builder got a septic permit, that the zoning was wrong. He said he was misinformed back in March when told there were no issues, when he would have taken care of it. He said he applied for this after speaking to someone in the Building Department, because of time restrictions. He said if he can't build a house, the loan would expire in August and he is lost as to what to do. He said he is going to go through the zoning, having paid for it. He said he tried to do everything correctly, sat with people for an hour in the Building Department. He said some mistake was made.

Dale Rhodes said even if they approve this and the zoning changes, that would change everything.

Paul Body said he was wanting to get a variance for the size because he doesn't have the time; if rezoned, it will meet the size requirement. He said they can proceed if that's what Mr. Viesins wants.

Dale Rhodes said he wanted to make sure they were not doing anything improper.

Ron Viesins said he is not trying to do anything bad to the neighborhood; its based on having a horse or not and he doesn't want a horse. He said he is just trying to move forward.

Jeffrey Ball introduced himself as the Planning and Zoning Manager. He said they can entertain this request; the zoning request that is not before them is scheduled for March 4th. He said that is the timeframe which seems to meet the August deadline for him. He said the remedy for this situation is to rezone the property; if the Board does not find that the zoning he is asking for is compatible and consistent, the next step is to ask for a variance.

Dale Rhodes asked if he should go to the rezoning first.

Jeffrey ball said correct, the first remedy is to rezone the property.

Dale Rhodes said, his builder said if he waits till March, he will not have time to get the house built before August.

Ron Viesins said if the house is not built by August, the loan and building contract gets zapped.

Dale Rhodes asked if his builder said he would not have time to get it done if he waits until March.

Ron Viesins said if he gets approved, he would finish everything by August but if it goes to March or April there is no way anybody can build a house in two or three months. He said he had two meetings at the Building Department because he was concerned that nobody was buying the property and asked if there were any issues, because he would have done this in March, April or May. He said he does not want to point the finger, but a mistake was made; he wanted to do everything right. He said he thinks there was confusion because the property was divided in 1928, into four little lots and then combined into one and whoever separated the lot didn't rezone it.

Dale Rhodes asked, if they table this and wait for the March meeting to take place to rezone it, can he build the house between March and August.

Ron Viesins said no. He stated that the builder said if he had five months, he could complete it and meet the construction perm loan. He said he is still going to zoning; the Planning Department said it's zoning from one acre with a horse to less than half an acre without a horse and he doesn't want a horse. He said they said there should be no issues for a simple rezoning, as it's not for capital gain.

Dale Rhodes said he would have five months after rezoning to get the house done, March thru August.

Ron Viesins said he is concerned that if they wait until March or April for the zoning, then everything would be on path, but he does not know what to do.

Jeffrey Ball said that if the Board approves this variance, there is still a thirty-day appeal process. He said he would have to wait thirty days before he could get his building permit based on this variance.

Jack Higgins said this property divided a while ago and asked if this would not fall under the hardship rule they have been concerned with for the last several months.

Jeffrey Ball replied that one of the previous owners split the lot and lost its non-conforming or grandfathering. He said that is the reason why he has to rezone the property or get a variance.

Paul Body said the property was part of a larger rezoning to RR-1 and then the previous owner had cut off two different parcels, one to the west of Ron's and this one. He said it didn't meet the RR-1 zoning classification requirements, the one-acre requirement, which is why he is here today.

Jack Higgins said someone previously should have been held responsible for this rather than sell this man the land because he has no reasonable return on it, he is stuck with a piece of field.

Jeffrey Ball said, buying a piece of property is buyer beware; unfortunately, in this case, Mr. Viesins bought this property and didn't understand what the prohibitions were. He said he apologizes for staff if he got the wrong information from Building. He said when people ask about setbacks and lots, he highly suggests they talk to zoning folks because they are the ones who can tell whether the lot meets the zoning or not. He said the building folks are looking at structure, he does not know if there is a disconnect with that.

Michael Hartman asked, if he gets his approval at the March 4th Board of County Commission Meeting, does he still have to wait thirty days before he can pull his permit.

Jeffrey Ball said no, after the Clerk of the Board ratifies the decision, he can get a building permit.

Michael Hartman asked if that took a day or two.

Jeffrey Ball answered yes, it is pretty quick.

Dale Rhodes asked, if they proceed and approve the variance, does he need to do the rezoning.

Paul Body answered, no, if he gets the variance approved, he will withdraw the rezoning application. He said if the variance is approved, he still has thirty days before he can get his building permit.

Michael Hartman said, we are talking about a two-week difference.

Paul Body said that is correct.

Dale Rhodes asked if it would be better to do the rezoning for anything else they wanted to do on the property in the future.

Paul Body answered, right now the RR-1 allows for horses on the property and a minimum of 1200 square foot house. He said he is trying to rezone it to RU-1-13, which is a 1300 square foot minimum. He said he would have smaller setbacks than the RR-1, including accessory structures.

Jack Higgins asked if they could put in a stipulation that there would be no livestock on the property.

Paul Body said the RR-1 allows for four horses per acre. He would have enough for one horse if the variance is approved.

Michael Hartman said that it is stated that the property was bought on May 12, 2020 and asked Ron Viesins when he submitted for the building permits.

Ron Viesins said the septic permit was submitted in May and took two months to get; he then submitted for the building permit which got flagged by Zoning. He said he is not sure of the exact dates as he hired Springwater Homes to help him on this.

Michel Hartman asked when the construction loan was closed.

Ron Viesins answered, August, as was signing with Spring Water homes, both with twelve-month intervals. He said the construction perm loan people are very strict, if its not completed within twelve months, it voids the contract, he would have to reapply which will cost him \$8,000 in closings. He said the Springwater Homes is willing to work with him a little bit but the loan people are not.

Dale Rhodes asked if he bought the property alone or with a realtor.

Ron Viesins said he had a realtor. He said before buying it, he was concerned that it had sat for a while and made an appointment and spoke to two people. He said one was confused by the change in 1928; the second person said it would be grandfathered in and everything was fine unless he wanted a shed or pool closer to the fence. He said he tried everything.

Dale Rhodes asked the Board members if they wanted to table this, allow him to go forward with the rezoning or hear this case. He said they are looking at a two-week difference.

Michael Hartman said he is inclined to table it because it's only a two-week difference.

Jack Higgins said he is not inclined to table because if it doesn't happen there, it might not happen for the gentleman. He said he thinks there is a hardship here.

Michael Hartman asked staff if this had gone before the Planning and Zoning Board yet.

Paul Body said no, the Planning and Zoning Board meets on February 8th and the County Commission is on March 4th.

Dale Rhodes said it's a tough situation.

Jack Higgins asked Ron Viesins if he would prefer to wait or to proceed.

Dale Rhodes asked if he understood that if they approve this, the difference between the time frame of their approval including him waiting thirty days and having it rezoned which then allows him to do whatever is needed, is a two-week difference. He said every time you go to do something, you will be dealing with this.

Ron Viesins said when he applied, he thought the next date after January 20th that he would get an answer was in March. He said looking at the numbers, it was two months; he was concerned because the builder said two, four or six weeks is a big difference. He said this is all over whether or not to have a horse. He said he is not building it as an investment; it is for he and his son.

Paul Body said if it's tabled to February 24th, he will still not have his rezoning.

Dale Rhodes said, it would have to be tabled till March, and if the zoning does not take place, it would be April before he could get a permit. He said, unless there is an objection, they should hear his case and decide.

Jack Higgins and Michael Hartman said, no objection.

No Public Comment

Dale Rhodes said it appears that he did his due diligence. He said he did not ignore what was there and decide to go forward; he spoke to somebody and got wrong information. He said his real-estate agent had a responsibility to make sure he is able to do what is intended with the property. He said being a real estate broker, he would be amiss if he sold him property that he could not build on. He said his agent should have done those checks; that is the fault of the agent, he took them at their word. He said he did not create this situation himself and it's a hardship; if they do not approve this, he doesn't have reasonable use of the property under the current guidelines. He said they would be justified in approving this variance.

Michael Hartman said looking at the aerial, there are a lot of lots less than an acre there. He said, understanding building pressures, they have a case to approve this variance.

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

5. (20PZ00115) Jazmine E. Underhill (Anthony Underhill)

Requests a variance from Chapter 62, Article VI, Brevard County Code, Section 62-1339(4) to permit a variance of 6.0 feet from the 100-foot minimum lot width required as defined in Section 62-1102 definition of Lot Width, in an EU (Estate Use Residential) zoning classification, on 0.71 acres, located on the west side of North Indian River Drive, 450 feet north of Grandview Boulevard (2917 North Indian River Drive, Cocoa) (Tax Account 2413479) (District 2)

Anthony Underhill, 860 Kerry Downs. He said on behalf of the owner, his wife, he is asking for a variance for this property. He said they purchased the property in 2006 from Lynita Seelie and want to build a family home. He said when they went to get the permits, they realized it didn't meet the EU code, which was not disclosed to them by Ms. Seelie. He said that this piece of land was split in 1983 by the Schmidt-Oliver family. He said it was bought and sold a couple of times before being given to Ms. Seelie and eventually, they purchased it. He said they are asking for a small variance of 5.5 feet in order to build their house under the EU code. He explained that if they are not granted the variance, they will not be able to build on this property, creating an economic hardship as they spent a lot of money for land on Indian River without the ability to build a family home.

Michael Hartman said he is very familiar with this drive. He said, from the air, its hard to tell that one lot is different from the other. He said if he can't build on it, it is creating a hardship under their rules, losing the enjoyment of the property. He said he will be making a motion to approve the variance.

Paul Body said he could apply to rezone.

Michael Hartman said, it's a very small variance.

Jack Higgins said he agrees with Mike.

No Public Comment

Anthony Underhill said he did look at the rezoning requirements, which would allow them to build a much smaller house, which would not help their neighbors, so they chose the variance request.

Paul Body said, those are just minimal requirements not maximum.

Anthony Underhill said the only other thing possible was an EU-2.

Dale Rhodes said that the requirements are for the minimum not the maximum of the house. He said he would be able to build the size house wanted if rezoned. He asked Anthony Underhill if he wanted to look at rezoning.

Anthony Underhill said he understood and no.

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

6. This item was tabled at the December 16, 2020 meeting per applicant request.

(20PZ00105) Danuel R. and Judith G Hoskins (Kirschenbaum) request a variance from Chapter 62, Article VI, Brevard County Code, Section 62-1336(4) to permit a variance of 0.17 acres from the one-acre minimum lot size required, in an RR-1 (Rural Residential) zoning classification, on 0.83 acres, located on the north side of Dairy Road, 372 feet west of North Carpenter Road (No assigned address, Titusville) (Tax Account 2107122) (District 1)

Jack Kirschenbaum, 1795 Nasa Boulevard. He said he is a lawyer with Gray Robinson, representing the applicants, the Hoskins. He said his client's own lot sixteen in Silk Oak Estates Plat; they purchased this lot in a platted subdivision in 2003. He said, in 1985, the County approved this Plat, zoned RR-1; the minimum area to build a home is one acre. He said this platted lot that the County approved in this zoning is .83 acres; seventeen one hundredths of an acre shy of being a buildable lot. He said his clients are seeking a variance to allow a variance of 0.17 from the one-acre requirement; if not granted, the lot is not usable because it's in a subdivision that has been previously platted, with homes built around it. He said a rezoning is really not an available possibility and requests this minimum variance in order to use the land. He said it's not an unusual request, it has happened in this neighborhood before and the hardship is not of his client's making. He said they expected a platted subdivision approved by the County to meet the RR-1 zoning requirement.

Dale Rhodes said there was one variance in that area in 1988. He asked Jack Kirschenbaum if he had seen the letter of opposition.

Jack Kirschenbaum said that he had.

Dale Rhodes said he wanted to make sure he had an opportunity to see and read the letter as all of the Board members had.

Jack Higgins said he had pictures of the property and was very aware of this property. He said he almost purchased the property to the west years ago though it had some faults. He said the letter stating that they don't want it, is the person adjacent to it in the back, which would ruin the woods view. He said the request coincides with numerous ones in the neighborhood and he does not see any problem with the property and the request. He said he had pictures of the property that wrote the objection letter and several pictures of this property. He said he sees no problem at all.

Michael Hartman said there are houses on lots 13,14, 15, 17 and 18 and all of those lots are smaller acreage than this lot and they all have houses on them.

Dale Rhodes said the opposition letter stated that there was not appropriate signage on the property and asked Jack Kirshenbaum if he sent in the response.

Jack Kirshenbaum said his clients sent in the response.

Dale Rhodes said there are pictures of the signage being in place and asked Jack Higgins if he saw signage.

Jack Higgins said yes, he did.

Dale Rhodes said they have answered the question to the opposition letter requesting to be tabled.

No Public Comment

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

Upon consensus, the meeting adjourned at 2:29 p.m.