

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, November 20, 2019, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Vice Chairman Dale Rhodes presiding, to consider the requests below:

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

Staff members present were: Justin Caron, Assistant County Attorney; Paul Body, Planner II; and Mary Taylor, Land Development Specialist.

The Vice 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 George Bovell explained the procedures of the Board of Adjustment.

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

Approval of October 16, 2019, Minutes

Motion by Jack Higgins, seconded by Michael Hartman, to approve the October 16, 2019, minutes. The motion passed unanimously.

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

1. (19PZ00122) Bonnie E. Douglas, Trustee (Connie Douglas)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1404(6)(a), to permit a variance of 6 feet from the required 15-foot perimeter (north) setback required for the TR-3 (Mobile Home Park) zoning classification, in an RU-1-9 (Single-Family Residential) zoning classification, on 0.52 acres, located on the west side of U.S. Highway 1, approximately 250 feet south of Garretts Road. (8440 U.S. Highway 1, Micco) (Tax Account 3010260) (District 3)

Motion by Michael Hartman, seconded by Jack Higgins, to table the request to the December 18, 2019, meeting, as the applicant failed to present the sign posting affidavit. The motion passed unanimously.

2. (19PZ00123) Steven G. and Deborah Wondrely

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2118(d)(3), to permit a variance of 8 feet over the 20-foot projection (20% the width of the waterway) permitted for a boat dock, in an RU-1-11 (Single-Family Residential) zoning classification, on 0.26 acres, located on the north side of Inlet Avenue, approximately 100 feet west of Basin Street. (240 Inlet Avenue, Merritt Island) (Tax Account 2417767) (District 2)

Steven Wondrely, 240 Inlet Avenue, Merritt Island, stated their property is at the dead-end of a canal and they have a problem getting a boat into where the lift is located, and he knows people have been granted variances for similar situations in Diana Shores. He said rather than tear down the boat lift, a surveyor told him he could move two poles toward the edge of the covered boat lift, making it wide enough to pull the boat straight in. He said it's a common problem at the end of dead-end canals.

Dale Rhodes asked if he will be coming straight in rather than turning the boat. Mr. Wondrely stated the boat will go straight under; half of the boat will be covered and half would not.

Michael Hartman stated in looking at the aerial map of the neighborhood, if Mr. Wondrely went out 28 feet, the neighbor to the east would be able to put in a dock, but with maneuvering room for the neighbor to the west, the farther out Mr. Wondrely's dock is, the less maneuvering room that neighbor would have if he wanted to do the same thing.

Mr. Wondrely stated the original seawall is not the property line, and 3.8 feet has been taken away between the original seawall and the new seawall; the property line moved out when they replaced the seawall. Mr. Hartman asked if he could do it with fewer feet. Mr. Wondrely replied he is doing as least as he can; he has a 1-foot clearance from the bow to the seawall. Mr. Hartman stated he understands that the dock is 24 feet from the existing seawall. He said the neighbor to the west will be stuck with no more than 20 feet from his seawall and still have enough room to have a boat. Mr. Wondrely stated he is as far from the neighbor to the west as he can be without encroaching into the 7.5 feet from the property line.

Jack Higgins asked if the existing canopy is being remodeled. Mr. Wondrely replied no, it is not.

Mr. Rhodes asked the width of the current dock. Mr. Wondrely replied it is 18 feet, and he is asking for 8 feet more than would be allowed without a variance.

Mr. Hartman asked if the new seawall was permitted when it was built 3.8 feet farther out than the original seawall. Paul Body replied yes, Natural Resources Management allows a seawall to be in front of an old seawall, and it was permitted. He stated Mr. Wondrely is 3.8 feet from the property line to the outside of the new seawall.

Public comment:

Ray House, 1780 Canal Court, Merritt Island, stated he leases the house with a right to purchase the property. He read a letter into the record from Sean Campbell, owner of 1780 Canal Court. (The letter can be located in file 19PZ00123 in the Planning and Development Department). Mr. House stated as a resident, he does not think it's applicable that the Wondrely's would be able to claim an undue hardship, as the property has been recently and continually used for boating purposes. He said an undue hardship affects someone financially and their ability to use the property. The property has been used by the current owners for the intended purpose, and he believes it's only because they purchased a boat that exceeds the footprint of their existing structure that they're now applying for the variance. He said currently, he and his family enjoy the presence of manatees and their young in the canal. He said any additional construction in the canal is going to disturb the ecosystem and have adverse effects. He stated the 5th Amendment of the Constitution allows the right to property and peaceful enjoyment of property; and what is being requested now would change his ability to enjoy his property in the current state, and he believes that is a violation of his constitutional rights. He asked the board to reject the variance request.

Dimitri Lagges, 260 Inlet Avenue, Merritt Island, stated he is concerned about protecting his future rights; he does not have a boat at this time, but would like to in the future. He said he doesn't have a problem with the request, but he would like more information about his future rights.

Mr. Rhodes asked if Mr. Lagges is in opposition to the variance, or if he is in favor. Mr. Lagges replied he is in opposition because he doesn't have enough information to make an informed decision.

Mr. Wondrely stated the boat is titled at 22 feet, plus 2 feet for the motor.

Mr. Rhodes asked if Mr. Wondrely took into the consideration the size of the dock when he purchased the boat. Mr. Wondrely replied yes, and they knew it would not fit, but he has seen similar situations in Diana Shores with variances that he did not think it would be a problem.

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

Mr. Hartman stated for maneuverability, pulling straight in will be a lot safer. If the neighbor to the east had a boat, the boat lift could not be used because the boat couldn't be pulled out. He stated with Mr. Wondrely's dock being straight out, it makes the dock to the east more usable as far as ingress and egress. He said as for the property to the west, he doesn't see where it impedes the sight line.

Mr. Rhodes asked if the extension to the dock will hamper the neighbor to the east. Mr. Hartman replied no, it would not.

Mr. Rhodes called for a vote on the motion as stated, and it passed unanimously.

3. Gerard J. and Teresa M. Weber

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2100.5(1)(d), to permit a variance of 326 square feet over the 1,323 square feet (50% of the living area of the principal structure) allowed for an accessory structure, in an RR-1 (Rural Residential) zoning classification, on 1.02 acres, located on the south side of Janewood Lane, approximately 446 ft. west of Carewood Dr. (4075 Janewood Dr., Melbourne) (District 5) (Tax Account 2734118)

Gerard Weber, 4075 Janewood Drive, Melbourne, stated the main reason for the larger accessory structure is aesthetics; they were allowed to build two structures of 1,300 square feet, but they would like just one structure. He said the accessory structure will look like the principal structure.

Dale Young asked if Mr. Weber has a motor home. Mr. Weber replied yes, he has a travel trailer. Mr. Young asked how many vehicles Mr. Weber will have in the accessory structure. Mr. Weber replied in addition to the travel trailer, he has a 1938 Chevy.

No public comment.

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

4. (19PZ00128) Louis D. Cox, Jr.

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2123(a), to permit a variance of 3 feet from the required 5-foot side (south) setback for a swimming pool screen enclosure, in an RU-1-11 (Single-Family Residential) zoning classification, on 0.18 acres, located on the west side of Eagle Drive, approximately 827 feet north of Skylark Boulevard. (444 Eagle Drive, Satellite Beach) (Tax Account 2606494) (District 4)

Louis Cox, 444 Eagle Drive, Satellite Beach, stated he hired a contractor to replace a pool enclosure and found out a pool enclosure cannot be located within five feet of the property line, and in one

corner the enclosure is 2.7 feet from the property line. He said the house was built in the '70's and he purchased it in 1998, and pool enclosure has been there since then but is starting to fall apart.

Dale Rhodes asked if he is just replacing the current enclosure. Mr. Cox replied yes, and the footprint is not being expanded.

No public comment.

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

Discussion:

Requirement to read into the minutes any letters submitted to the Board of Adjustment.

Dale Rhodes stated presently, there is a rule that if a letter is submitted in reference to one of the items on the agenda, it has to be read into the minutes. He stated the question is if it is necessary to read each letter into the minutes. Instead of reading the letters into the record, the board can state that letters have been received and are in the official record.

Michael Hartman stated letters can be just entered into the record and not read out loud.

Jack Higgins agreed with Mr. Hartman.

Dale Young stated it would depend on who is in the audience, as it may be of interest to them who is objecting or who is in favor. He said if there are no objections, there would not be reason to read a letter into the minutes.

Mr. Rhodes asked if letters are provided to people who object to a request. Justin Caron, Assistant County Attorney, replied anyone can receive a copy if requested. Mr. Rhodes stated for letters submitted at the last minute, the board can give a copy to the applicant, allowing them to rebut anything in the letter when they make final statements.

Mr. Hartman stated the board could read into the record the name and address of the person who wrote the letter, and whether they are in favor or opposition. Mr. Young stated if there are objections, people would like to know what they are.

Mr. Caron stated if directed, he can draft an amendment to Resolution 10-01, Section 5.5, to reflect the board's discussion.

Motion by Michael Hartman, seconded by Jack Higgins, to amend Board of Adjustment Resolution 10-01, Section 5.5, to allow the board to announce into the record the number of public comment letters, the names and addresses of citizens submitting letters, and if they are in favor or objection to agenda items. The motion passed unanimously.

Upon consensus, the meeting adjourned at 3:27 p.m.