

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, June 23, 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; Kevin McCann, District 2; George Bovell, District 4; and Bill Huffman, District 5.

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

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

Approval of May 26, 2021, Minutes

Motion by Bill Huffman, seconded by Jack Higgins to approve the May 26, 2021, 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. (21PZ00025) Timothy and Diane Lystlund

Request a variance from Chapter 62, Article VI, Brevard County Code, Section 62-1338(4), to permit a variance of 45 feet from the 150 feet minimum lot depth required for proposed SR (Suburban Residential) zoning, the property is currently in a RU-1-7 (Single Family Residential) zoning classification, on 0.55 acres, located on the east side of Hibiscus Avenue, approximately 240 feet south of Jonquill Lane. (9555 Hibiscus Avenue, Micco) (Tax Account 3009665) (District 3)

Timothy Lystlund and Diane Lystlund, 1501 Eastlake Lane, Sebastian, Florida. Timothy Lystlund said they bought the property which isn't zoned correctly; they didn't do their homework on it. He said they are requesting the change so they can build his wife's dreamhouse so he can relax for a while.

Dale Rhodes said he drove by this property and talked to Mr. Body about it. He said it appears that the properties on that side of the road would never meet zoning because they're all the same size. He said without this requested change he wouldn't be able to do anything with the property, which is the definition of a hardship. He said he doesn't have any issues and asked what they're building.

Timothy Lystlund replied, a single-family residence.

George Bovell said what he sees confirms everything he is saying; it's consistent with the other lots on the same side of the road, they just need the right zoning.

Jack Higgins said none of them are in conformance.

No Public Comment

Dale Rhodes said their definition of hardship states, "if they would not get a reasonable use or return on their property without this variance". He said that applies to this property; if they don't grant the variance, they cannot do anything with it. He said its for the benefit of the community and the County that they approve this.

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

2. (21PZ00027) Francis E. Mosher (Steven P. Mosher)

Requests a variance from Chapter 62, Article VI, Brevard County Code, Section 62-2123(a), to permit a variance of 2.1 feet from the required 5.0-foot south side setback for a screen enclosure in an RU-1-11 (Single Family Residential) zoning classification, on 0.27 acres, located at the end of Aruba Court on the southwest side the cul-de-sac. (476 Aruba Court, Satellite Beach) (Tax Account 2608841) (District 4)

Steven Mosher said he's representing his father, the owner of the house; he lives with him at 476 Aruba Court, Satellite Beach. He said he's here to get a variance to replace the existing screen enclosure. He said he moved there in 1982, the original screen enclosure was there and it's time to replace it. He said when they have a major wind event it moves; its old and crumbling on the bottom. He said they hired a contractor who said they needed to get a variance.

George Bovell said this is straight forward. He said he went by though couldn't see much as the screen enclosure is in the back and he didn't want to trespass. He said he's not asking for anything new, just to replace what is already there.

Steven Mosher said, that's right, on the exact same footprint.

George Bovell said this configuration existed before the code; he supports the request.

Bill Huffman asked if he had any documents that says the neighbor whose setback is being reduced, is in favor or against it.

Steven Mosher replied, that would be the neighbor to the south; there is a six-foot fence there. He said when his dad got there, that was a wooden fence and that neighbor has just moved in within the last year. He said he hasn't heard anything and they have a screen enclosure on their pool. He said they're just trying to update this so it doesn't fall down.

No Public Comment

Dale Rhodes Dale said he will review the six points. He read, do special conditions and circumstances exist which aren't applicable to any other land structures or buildings in the applicable zoning classification. He said that doesn't apply in this situation, they are legitimizing an existing enclosure for replacement. He read, the special circumstances and conditions don't result from actions from the applicant. He said they don't, he doesn't know who built it but it may have been before the code required the setback, but wasn't something he did. He read, that granting the variance and request won't confer on the applicant any special privileges that are denied by the provision of the Chapter to other lands, buildings and structures of identical zoning classification. He said it wouldn't, they've done this on many occasions when something already existed, legitimized or approved it so something could be replaced. He said it's a hazard as is and replacing it will better the community. He read, literal enforcement of the provision of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in an identical zoning classification or provisions of this Chapter will constitute unnecessary and undue hardships on the applicant. He said it would, if he

isn't able to replace that screen he will be without one over the pool enclosure. He read, that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure. He said it is. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such use variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said as already stated, it would be detrimental to the public welfare if they don't allow him to replace it.

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

3. (21PZ00028) Nasrallah Family Trust (Richard Vyce/Mike Hayden, Atlas Pool)

Requests a variance from Chapter 62, Article VI, Brevard County Code, Section 62-2123(b), to permit a variance of 4.0 feet from the required 25-foot setback for a swimming pool on a major natural waterbody, in an SR (Suburban Residential) zoning classification, on 1.29 acres, located at the north of Spoonbill Lane approximately 0.25 miles west of Seiler Street. (490 Spoonbill Ln., Melbourne Beach) (Tax Account 2953164) (District 3)

Michael Hayden, 38 Sweetwater Creek Circle. He said this is a unique situation, the way the permit worked out. He said this home is being built by Chris Burton Homes, the permit was applied for by them and the survey was approved with their pool on there. He said once it was approved, the house was being built and six or seven months later they applied for their permit and was kicked back for a four foot inside the setback requirement. He said he had a document to share that shows how much the pool is inside the setback.

Dale Rhodes said they had that.

Michael Hayden said where the area of the pool in the setback, there is a shallow body of water. He said one of his concerns is that if it was in the setback, is how deep the pool is at that point because they are digging into the natural body of water. He said the deck is eight inches above grade at that point, the spa is plus six from there and their spa is three foot deep. He said that area they are digging, is 10- or 12-inches tops., so they are asking a variance for that. He said they could push it to the left; this home for Mr. Nasrallah is his dream home and that view would be destroyed from the center view of the house. He said he wished it was caught earlier from Brevard and themselves, but it wasn't and now the house is already built and they have to figure a way to make it work out.

Dale Rhodes said he drove to the property and tried to see what he could see from the road. He said the owner saw him and came out to ask what he was doing; he gave him access to walk to the back of the property. He said he can verify that he made it clear that he would not and could not discuss the case with him and he never did. He said he just wanted to walk the property and see where this was and he was able to look at it. He asked how difficult it would be to cut four feet off of the deck.

Michael Hayden said its not the deck, the deck meets the setback requirements; it's the setback from the property line to the pool's water edge, the deck is fine, it's the area of the pool.

Paul Body said, it's not from the water, it's from the structure of the pool wall itself.

Michael Hayden asked to show them the document and provided the Board members with an additional survey. (Exhibit can be found in file 21PZ00028, located in the Planning and Development Department.) He said the pink area is the problem; the decking meets the setback of the waterline, the pool bowl doesn't. He said the area in pink is high so when they dig that spot, they are digging 10 to 12 inches tops.

Dale Rhodes asked Paul Body if it's not from the deck.

Paul Body said it's the structure of the pool bowl itself, if they were to put a screen enclosure on it, that screen enclosure structure would have to meet the setback and it's measured off of wherever the surveyor measured the property line off of the river.

Dale Rhodes said, they would have to take four feet off the hot tub in order to be able to meet code.

Paul Body said yes and asked if it was already poured.

Dale Rhodes and Michael Hayden said the house is, the pool is not.

Paul Body said they could maybe move it.

Dale Rhodes said if it's moved sideways it would come right in front of the house and asked if it was possible to shift it.

Michael Hayden said it's an unusually shaped lot, if they shift it more to the left, there are mangroves with bugs that would destroy the area. He said they are trying to keep the pool from the left side as much as they can. He said he wished this was caught in the beginning, so they could change the way the house would sit on the lot, pushed toward the street more to allow for the pool. He said because it was originally approved from Brevard with the survey, they didn't find out until it was too late.

Paul Body said they are only looking at the house, not the pool until the pool permit comes in. He said it wasn't approved by Brevard County, only the house.

Michael Hayden said he understood, previous times they had a stamped survey and it was already approved so he assumed...inaudible.

Dale Rhodes asked if the pool was on the center of the house in the drawings but offsetting git in the actual build.

Michael Hayden said the pool is exactly what is seen on the drawing.

Dale Rhodes asked if the exit from the house is in the u-shape.

Michael Hayden said yes, it's called an infinity edge pool and the way it is sitting, when looking out...inaudible, if you push to the left, they wouldn't get as much land so it changes the entire plan. He said it's a total of 62 square feet of pool water inside the setback and where it is inside of it is so high it's not in the virgin soil. He said he would have a big problem with this if the deep end was in the setback because they would be digging so far down; they're digging maybe 10 inches down.

Dale Rhodes asked if shifting it four feet would be that detrimental; it's a large porch there for the doors coming out the back.

Michael Hayden said he understands, its not just four feet it's because of the issue of the uniquely shaped lot, its at an angle. He said shifting it forward would bring the pool too close to the house; it would be about 12 feet total to get the whole thing out of setback to the left.

Dale Rhodes asked Paul Body if they had thought of any resolutions.

Paul Body said that would be up to board members.

George Bovell said he would like to see him leave with this intact. He said he is not an engineer and would like to hear from one or a County employee to tell them that if left as is, there wouldn't be future issues. He said he needs someone who is qualified to tell him that the waterline and the depth they're going to dig, 12 inches, is okay. He said his gut says it is and if he was to vote today he would let him go with it and asked if anyone could tell him it's a problem other than what the code says.

Michael Hayden said the house is built up far from the waterline, the water is four-foot below when standing where the pool deck is and the pool deck would be eight inches above that. He said they wouldn't be digging virgin soil but digging fill dirt.

Jeffrey Ball said there are two options, they can move the pool on the side of the setback or reduce the size of the pool. He said if the board had a problem or needed additional information, that would be for the applicant to provide as far as structural recommendation from a PE or soil boring test to see if it will have any detrimental impacts to the property. He said there isn't staff that can address that issue.

Paul Body said Jeffrey Ball is the Zoning Manager.

Bill Huffman asked if the pool was shown on the original building permit application for the house.

Paul Body answered, he isn't sure if it was or not, he didn't review the building permit. He said the person reviewing it will only look at what the permit is for; they might have seen it, he doesn't know.

Bill Huffman asked if the pool was an afterthought or was on the original permit application.

Michael Hayden said the pool was built with the home builder Christopher Burton Luxury Homes at the same time as applying for the permit, to his knowledge, it was part of the original building permit application, it was on there.

Paul Body said no, it wasn't part of the original permit, it's two separate permits.

Michael Hayden said correct, it was on the drawing.

Bill Huffman asked if they planned all along to have this configuration of pool at that building.

Paul Body said he is not sure, he didn't see the original plans.

Michael Hayden said he believed that it was.

Dale Rhodes said, Mr. Hayden stated earlier that he was assuming that it was because it usually is but was not sure if it was or not.

Michael Hayden said no, when they got the set of plans to design the pool, this was the pool that was on the plans already approved. He said it wasn't part of their actual permit but was on the drawing.

Dale Rhodes said, as staff has stated, they are only looking at the house because that's the permit, they are not looking at the pool at that point because that's a latter permit.

Michael Hayden said correct, typically the survey would have the adequate building information on it; usually it wouldn't have something that would be outside the setback requirement.

Dale Rhodes said they would only be looking at the setbacks for the house at that point because that's the permit they're looking at, they wouldn't be looking at the setbacks for the pool.

Paul Body said, that's correct.

Jack Higgins asked what it would affect, it backs up to the river; it would not affect anybody.

Dale Rhodes said that depends on the perceived impact to the river. He said there's one vacant lot on that peninsula and they have to drive through his property to get on that peninsula which he has given right of way to do. He said there is one vacant lot and the rest are already built up. He said a concern is that when they allow four feet here, the next person wants five feet, the next wants seven feet and soon it's pushed all the way out. He said though they take these individually, it's always a concern because someone will ask why they can't have five feet when they've allowed four feet; their concern is that future doesn't become an issue. He said he doesn't think that will be the case here as there is only one piece of vacant land; the concern is the impact on the river which would impact everyone.

Sameer Nasrallah, 480 Spoonbill Lane, Melbourne Beach. He said the vacant lot is not a vacant lot; his property wraps around and heading south, there are seven houses, one is a vacant lot all the way down almost to Cronin's house; they have that whole point, it wraps around. He said he lives next door and the pool itself is to code as far as the deck and it's also close to the river because they have a 25-foot setback, the depth of the pool alone could impact the river but it's within codes so the hot tub being less at three feet in depth. He said he impact of the pool would be more than the hot tub if looking at the amount and depth of the digging.

Dale Rhodes said he agrees with that, the hot tub would have less impact than the pool if there were a rupture, etc. He said the concern is the digging and if it would cause damage when a storm came through because then there would be problems with the river if they allowed the additional four feet.

Michael Hayden said they have it built up much higher than would normally be and have stem wall construction that Chris Burton does; the pool is at an elevated level and acts like a bulkhead. He said they've talked with Natural Resources, pulled out tons of Pepper trees and put in clam and oyster beds so are sensitive to any impacts. He said they spent 40K putting in more rock all the way around.

Dale Rhodes said if he remembers correctly, all along the river, they brought in large boulders to protect the edge of the river, which he would not have known if not let back there. He said seeing that made him feel more comfortable because there was protection there, as erosion is a concern.

Michael Hayden said pool was a master plan with the house, engineered by Clayton and submitted together. He said perhaps it didn't go through approval then but was fully engineered by Clayton.

No Public Comment

Dale Rhodes said he will review the six points. He read, do special conditions and circumstances exist which aren't applicable to any other land structures or buildings in the applicable zoning classification. He said as the applicant has said, the land has a significantly different shape than a normal parcel of land. He said he does live next door on a typical lot and this one is not, with all kinds of turns and crooks that would have some different conditions. He read, the special circumstances and conditions don't result from actions from the applicant. He said this would be the result of his actions in wanting to build a pool and enclosure within the setback; he has created it, it wasn't created for him. He read, that granting the variance and request won't confer on the applicant any special privileges that are denied by the provision of the Chapter to other lands, buildings and structures of identical zoning classification. He said he doesn't know that it would give him special privileges as they take each case individually and have allowed encroachments into the zoning in particular situations and in others they have said no. He said it would not confer special conditions on him but they'd be making an exception. He read, literal enforcement of the provision of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in an identical zoning classification or provisions of this Chapter will constitute unnecessary and undue hardships on the applicant. He said it wouldn't deprive him of any rights, it would mess up his view if they make him change it but won't deprive him of rights or create an unnecessary or undue hardship; not getting what you want doesn't create a hardship. He said if it's a situation they had in a previous case where unless they approve it, he can't do anything with it, that's a hardship. He said this is a desire, and they have to determine if the desire is reasonable enough to say yes to. He read, that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure. He said he's not sure that's the case either, they could shift it and be within perimeters, but for what they are wanting it's the minimum. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such use variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said that is the biggest questions, is there going to be an issue down the road if they allow this and they don't know the answer to that. He said that will be for each person to determine.

Motion by George Bovell, seconded by Bill Huffman to approve the variance as depicted on the survey submitted by the applicants. The vote passed 4:1 with Rhodes voting nay.

4. (21PZ00029) Johnette L. Kramer

Requests a variance from Chapter 62, Article VI, Brevard County Code, Section 62-2109(c), to permit a variance of 2.0 feet over the 4.0-foot height requirement for a fence located in the front setback, in an RU-2-10 (Medium Density Multiple Family Residential) zoning classification, on 0.17 acres, located on the northeast corner of South Patrick Drive and Titan Drive, approximately 1.7 miles south

of the intersection of Pineda Causeway and South Patrick Drive. (365 Titan Drive, Satellite Beach)
(Tax Account 2608375) (District 4)

Johnette Kramer, 365 Titan Drive, Satellite Beach. She thanked them for their service to the County and time to consider her variance request. She said with her application she submitted three or four exhibits and asked the board if they had them, she had packets if they didn't.

Dale Rhodes said they do and asked if she saw the letter that came in from Lee and Carrie Ballou.

Johnette Kramer said that it was part of her package. She said they should have the nine pictures which show different angles of where the proposed fence would go and the page detailing the different angles showing that there wouldn't be obstruction to traffic entering or exiting Patrick Drive or Titan, to make the fence two feet higher than the permitted four foot. She said there's also the letter from the property owners just adjacent to her, Lee and Carrie Ballou; they are at 363 Titan which is the other part of the duplex. She said their letter states that they welcome it, have no objection and may even want to get a variance for their own property in the future. She said they had copies of the amended survey, the fence and the map from Professional Grade Fence Company that shows the proposed location of the fence on her property.

George Bovell said he went to see the property that morning and said she definitely needs a fence on Patrick Drive. He said on the Patrick side there is her property then the other property attached to hers going to the north. He asked if her fence will stop where her property ends.

Johnette Kramer said on the survey they abut, there's a concrete porch and a concrete porch, it will go between the two air conditioner units.

George Bovell said he sees it and asked if she was going to link up to the curved wall.

Johnette Kramer said that's what she wanted to do.

George Bovell asked if she was going to link up to the curved wall and her fence will still be not be on the other side of it.

Johnette Kramer said no, the pictures show where she wants to link it and referenced picture number two. (Exhibits can be found in file 21PZ00029, located in the Planning and Development Department.)

George Bovell said, looking at the survey, it's outside of the wall and are linking it up to..

Johnette Kramer said it's going to abut that wall and then go straight down. She said picture number three shows little white plastic fences where her air conditioner units are; its going to go right there, straight down her yard and tie into the wall.

George Bovell said he understands what's going on. He said for the benefit of the rest of the board who haven't seen it, she could do well with a fence and a six-foot fence is reasonable given the location. He said it would be consistent with the other properties on Titan Drive. He said the other property next to her on Titan Drive has a six-foot fence as well so sees no problem and supports what

she is trying to do. He said as long as Mr. Body doesn't see any issues with line of sight from the stop sign, which he didn't see when he was there, he would support it.

Jeffrey Ball said that on the proposed survey there is a gap of about a foot between the existing curved concrete wall to where Ms. Kramer's fence is proposed. He said if their desire is to have the connection between the existing wall and the fence, it needs to be made clear in their motion.

Jack Higgins said, to abut the wall.

Jeffrey Ball said correct.

Johnette Kramer said that's not how the fence company wanted to do it, they want to put that fence right up next to that wall.

Dale Rhodes said that's not what is showing in the drawing. He said if they were to make a motion for example, they would say they would approve it provided the fence goes up against the concrete wall, rather than having the gap as it shows on the survey.

Johnette Kramer said it would defeat the purpose if she left a gap.

Dale Rhodes said they couldn't approve by saying as depicted on the survey which is what they usually do, and that is what he was addressing.

Dale Rhodes asked Mr. Body if this has a line of sight issue.

Paul Body said no it doesn't, it's out of the sight triangle.

Dale Rhodes said anytime they talk about a fence that's along a road, that's his major concern; if it's in the line of sight, that's an issue. He said since this one is not in the line of sight he is with Mr. Bovell and does not see an issue with it.

Kevin McCann asked how tall the block wall was.

Johnette Kramer said the block wall was four foot.

Jack Higgins referred to picture three and asked if the edge of the fence was going to where the plastic fence was or coming out further.

Johnette Kramer said no, those are little stick fences to stick in the ground.

Jack Higgins asked, in relation to that, where would the fence be.

Johnette Kramer referenced picture three and pointed out the existing wall and said, it's going to run here along the top of the bank of this ditch and then tie into this wall.

Jack Higgins said he is trying to understand it in relation to number six.

Dale Rhodes said if they change the drawing to where it's going along the block wall it would bring it closer to that plastic fence as well.

Johnette Kramer said that plastic fence just pulls right up.

Jack Higgins asked if it would be closer.

George Bovell said it's not going to affect anything, right now that fence, based on the survey, has a gap between where the fence ends and the wall begins. He said all they will probably propose is that the fence goes all the way to the wall to close the gap.

Jack Higgins said, to abut the blunt end of the concrete fence.

George Bovell said, that's correct.

Johnette Kramer said that's how she wanted it.

Jack Higgins asked if the stop sign was pretty far from it.

Dale Rhodes said yes.

Kevin McCann asked if her proposed fence was going to make a complete enclosure. He asked if she was using the block wall to assist with the enclosure of her yard.

Johnette Kramer said no, she is going to put a gate from that wall. She referenced picture number one and pointed out the firepit and tree with two chairs. She said that's the end of the curved wall there, she is going to put a gate across from that part of the wall over to the corner of the house. She said she is going to take the fence from the brick wall to the corner of her house and said there would be a gate so she can get in from the outside and the rest of the fence would tie into the wall.

Kevin McCann asked if the wall would be outside the enclosure.

Johnette Kramer said the wall would remain where it is, the fence would abut it. She referenced picture number two and showed the edge of the wall and the corner of the house, she showed where she was going to put the fence across in the front with a gate and then tie it into this part of the wall on the side, down the bank; she pointed to where she would tie it in.

George Bovell said that wall is built by the community that goes from South Patrick and curves onto her street to form a semi-gate as an entrance to the rest of the community. He said she is tucked in right behind that. He said on the front side of Titan, she is going to put a gate and on the west side, South Patrick, she is going to have the fence.

Johnette Kramer said what he just described can be seen in pictures four and five, picture four shows the stop sign on Titan Drive with the ditch and number five shows the entrance to her subdivision with her wall. She said number six shows a different angle of South Patrick Drive, the sign and beginning of the subdivision.

Jack Higgins asked if the intent would be to tie into that community wall.

Johnette Kramer said she owns part of the wall. She said she is not tying into it, just abutting it.

Jack Higgins asked if she was attaching it to the wall.

Johnette Kramer said no, there are posts and then the fence would start.

No Public Comment

Johnette Kramer thanked them for their time and consideration.

George Bovell proposed to approve the variance with an exception. He said on the survey there is a gap between the fence and the wall on Patrick Drive. He said they should approve a variance that makes the fence abut the wall.

Paul Body said that's okay, approved as on the survey with the fence abutting the existing four-foot wall.

George Bovell said a six-foot fence is needed on the South Patrick side and on the Titan side, a six-foot fence is consistent with what is on that street.

Dale Rhodes said he will review the six points. He read, do special conditions and circumstances exist which aren't applicable to any other land structures or buildings in the applicable zoning classification. He said although there hadn't been any variances approved, according to Mr. Bovell, there are other six-foot fences in her area so it would be in keeping with what had been observed. He read, the special circumstances and conditions don't result from actions from the applicant. He said this is a direct result of her actions as she is wanting to put up a six-foot fence. He read, that granting the variance and request won't confer on the applicant any special privileges that are denied by the provision of the Chapter to other lands, buildings and structures of identical zoning classification. He said they take these on a case by case basis and could possibly deny somebody else, depending on the conditions as they had one that was in the line of sight and so didn't approve it. He said saying yes to this would not give her any special privileges. He read, literal enforcement of the provision of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in an identical zoning classification or provisions of this Chapter will constitute unnecessary and undue hardships on the applicant. He said it does not deprive her of anything other than a desire to have a larger fence than is permitted, but not of rights that others enjoy in that area. He read, that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure. He said a six-foot fence is what she desires so that is the minimum. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such use variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said it won't be injurious to the area but an enhancement to her property, blocking from traffic, lights and noise and is in keeping with what's been observed in the area.

Motion by George Bovell, seconded by Kevin McCann to approve the variance as depicted on the survey submitted by the applicant with the condition that the fence abuts the 4.0-foot wall. The vote was unanimous.

5. (21PZ00031) Joshua E. Motta and Virginia L. Rymer

Request a variance from Chapter 62, Article VI, Brevard County Code, Section 62-1334(4), to permit a variance of 0.27 acres from the 2.5-acre minimum lot size required for proposed AU (Agricultural Residential) zoning classification. The property is currently in a GU (General Use) zoning classification, on 2.23 acres, located on the west side of Fishtail Palm Avenue, approximately, 1.1 miles southwest of the intersection of Port St. John Parkway and I-95. (5340 Fishtail Palm Avenue, Cocoa) (Tax Account 2314015) (District 1)

Virginia Rymer and Josh Motta, 1355 Lester Court, Merritt Island.

Virginia Rymer said the land they own is 2.23 acres and the zoning changed in 1978 from agriculture being one acre to 2.5. She said they are requesting a variance so they can move forward with the agricultural zoning; there are multiple agricultural lots in the area of Canaveral Grove.

Jack Higgins said he extensively studied this; he went all over the area and there are numerous ones of the same footage. He said just to the west there are horses and to the north there are horses; there are horses all around and they're identical pieces of property. He said he doesn't see how it wouldn't conform to the area; everything looks like it's conforming if it's the same as theirs. He said the one on the east doesn't look to have animals.

Virginia Rymer said no he doesn't, he had citrus trees that got diseased and had to be taken out; he did previously, she has spoken to him, he is very nice.

Jack Higgins said he doesn't see a problem with it.

Dale Rhodes asked if all of the properties adjacent to theirs are in the Agricultural zoning.

Virginia Rymer said most of them, there are still some General Use and Agricultural, it's mixed.

Public Comment. Karen Kimsey, 5380 Fishtail Palm Avenue, Cocoa. She said she is in opposition. She said she welcomes them to the neighborhood, she has seen their little girl and is excited. She said there are two reasons she is in opposition, one is because she lives there and had not been approached, given no chance to dialogue back and forth to hear about what they are going to do with their property. She said she is in favor of living off the land and not being reliant on commercialism to take care of yourself and loved ones. She said she does a lot with edible landscaping, buying plants such as sea grapes, so is in favor of that kind of use of the land. She said her first opposition is that there has been no relationship; she looks forward to getting to know them but is disappointed there has been no interaction. She said she has not had a chance to ask what they are doing with the property; the only information she has had is second hand, told there would be cows, pigs and chickens on the property. She said some of that might be good, but the property is very low and in order to make it livable for animals, they would have to bring in fill dirt which will put the properties on each side at risk of flooding during hurricanes. She said when she bought her house twenty-six years ago, two lots down, the one with the cool two-story white house, the lot to the south was undeveloped. She said by the time they moved in, that house was being built; he had to grade it and build it up to meet code. She said she looked at her property in hurricane season and it was dry, but now whenever there is a hurricane, she has a moat all around her house; she is the low spot between two high spots. She said in order for that property to maintain and support animals, they would need

to build it up; there's nowhere for the water to go. She said that cows and pigs attract flies and mosquitos; their property butts up to a canal so there is already a breeding zone for mosquitos. She said she is concerned that the insect population will increase; she is a fan of honeybees but not of flies. She said she knows the County sprays for mosquitos and might be incorrect but thinks the way the County sprays for mosquitos is based on the land use. She said the mosquito trucks drive up the driveways of properties that have horses to spray; the variant used when having a cow is different than with a horse. She said if she's wrong she'd be happy about it but isn't sure. She said if what she has heard about the property usage is correct, she is not a fan of pigs and doesn't want to be anywhere around them, has smelled them and doesn't know how that could be avoided. She said she lives two miles from the dump and already has to drive by it and celebrate it frequently so does not want to live two houses down from that environment. She said if that's not the intended use of the property, she will rescind her objection, if it is, she is very distressed and would have to object.

Jack Higgins said she said subjected to flood, it would be no different than others around there; he's a contractor and looked. He said he agreed with the pigs but cows and horses have the same kind of flies. He said he doesn't think flood would be a problem other than what's normal in that area. He said the elevation doesn't look much different than any to the surrounding area where horses are. He said the saddest thing, which often happens in Mims, is that people buy the wrong place and had the wrong ideas, if they want to live near livestock or not.

Karen Kimsey said she thinks someone should consider when purchasing property, what they want to do with it; if someone wants to buy property where they can raise livestock, then do it where they can. She said Mims is zoned for that or a five acre lots or buy two side by side and get the variance for that, there are other options. She said she had been there for 26 years.

Paul Body said this variance is for the size of the lot so they can get the AU zoning; they also have to go through two more meetings, the Planning and Zoning Board and the Commission, to rezone it. He said she might want to come to the Commission meeting if the variance is approved for the zoning and ask if they can provide a binding development plan that would limit the amount of farm animals. He said this is just to legitimize the size for their request of the rezoning, they still have to go through two zoning meetings.

Karen Kimsey said she is well aware of that.

Jack Higgins said that land would not support a lot of animals.

Bill Huffman said she mentioned that she lived several lots away.

Karen Kimsey replied, two houses down to the north, with all the trees in the back.

Public Comment. Jay Demming, 5360 Fishtail Palm Avenue, Cocoa. He said he lived next to them to the north between them and Karen Kimsey. He said he is in opposition. He said they have met and talked about some of the things they are planning and he has some reservations.

Dale Rhodes said he is going to do something he should have done before. He asked if his objection was to the adjustment to the size of the land and not what they are using it for.

Jay Demming said, that's correct; it doesn't meet the minimum requirements and is partial wetland. He said his concern is, once the home is built, it reduces the size of the lot.

Dale Rhodes asked what size his lot was.

Jay Demming said 2.23 acres. He said the concern that he has is the way the lot is designed, very narrow, so the lot line is 65 feet off the corner of his house.

Dale Rhodes asked if his lot was less than what is required.

Jay Demming said yes and he is GU and isn't looking to rezone.

Jack Higgins asked if it would be more in line with what they want to use it for.

Jay Demming said he is not opposed to a goat, everyone would like to have one, it's the number of animals.

Jack Higgins said there should be restrictions on that.

Dale Rhodes said, that is another meeting. He said he wasn't trying to cut him off, but Mr. Body had made a statement that brought it to his attention. He said they're here just to deal with the size of the property, not what they are using it for; what they choose to use it for is for a different group of people, another meeting he may want to attend. He said they're dealing with it if it's okay for them to adjust the size requirement so they can do something with the property. He said he didn't want anyone to feel slighted or unheard.

Virginia Rymer said they're more concerned about the use of the land and she agrees with Karen, she doesn't want pigs, she can't stand them. She said she was previously with animal control, has gone to hoarding houses and done many neglect cruelty cases so is aware of the number of animals for an amount of land. She said she doesn't want a crazy number of animals, she has two dogs and may like something else for their daughter to learn responsibility.

Bill Huffman asked if they going from AU from GU was partially what they were voting on today.

Paul Body said yes, instead of GU they are requesting AU; AU requires the 2.5 acres, so they're trying to get a variance to the size of it.

Bill Huffman asked if there are animal restrictions listed with the AU.

Paul Body said it allows for farm animals and does restrict how many pigs are allowed. He said if people were objecting to how many or types of farm animals they could have, it could be brought up to the board and the board could restrict how many they could have with a binding development plan.

Bill Huffman asked if that would be a separate meeting.

Paul Body said that is the next meetings they're going to, the Zoning Board and the Commission.

Jack Higgins asked if there was a set number of animals that can be supported per acre.

Paul Body said no, not for personal use, just on the pigs.

Virginia Rymer said the variance would also allow them to add accessory buildings if they do get the AU zoning; it's not just for farm animals it's for a shop in the back so they can store a jet ski, boat and four wheelers.

Paul Body said the GU zoning restricts how big an accessory structure can be and doesn't allow for a barn or any agricultural use unless you have five acres. He said the agricultural allows an unlimited size, with setbacks. He said it allows barns that have bigger setbacks.

Jack Higgins said the other places around there do have barns that are the same size.

Paul Body said there is a lot of agricultural property out there that allows for barns and such.

Jack Higgins said, that are 2.23 acres.

Paul Body said yes.

Jack Higgins said he would like to make a motion but is confused by the circumstances that have arisen and what can go on there. He said before making a motion, it's allowed and then all of a sudden, something changes.

George Bovell said he would make a motion to grant the variance to go from GU to AU because anything else that was brought up here needs to be dealt with at another meeting.

Paul Body said they should state the amount that is requested because they are not getting a variance to the GU, but to the size of requirements of the AU.

George Bovell said they are allowing the 11%.

Dale Rhodes said they aren't changing the zoning of the property, but allowing for the size of the property only.

Paul Body said it's for a proposed change in zoning.

George Bovell said the proposal is for the lot which is 2.23 to be approved for agricultural use, which amounts to an 11% deviation from the 2.5 acre that the code requires.

Paul Body said they should state the motion as written on the hardship worksheet.

Dale Rhodes said, they are not dealing with what they're using the property for, they're dealing with if it's reasonable to give an adjustment on the size of the property and then be able to use it.

George Bovell said looking at the size of the other lots, his assumption is that many are of similar size and some have agricultural zoning. He said he doesn't think they are conferring special privilege to them that is not applicable to similar land in the nearby area.

Dale Rhodes said he will review the six points. He read, do special conditions and circumstances exist which aren't applicable to any other land structures or buildings in the applicable zoning classification. He said as Mr. Bovell has stated, it appears that other properties in the same area are the same size as theirs, so they're not giving them any special privileges. He read, the special circumstances and conditions don't result from actions from the applicant. He said they didn't design the property; they purchased it as such. He read, that granting the variance and request won't confer on the applicant any special privileges that are denied by the provision of the Chapter to other lands, buildings and structures of identical zoning classification. He said, other properties in that area are the same size from what he is seeing so they're not conferring on them any special privilege. He read, literal enforcement of the provision of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in an identical zoning classification or provisions of this Chapter will constitute unnecessary and undue hardships on the applicant. He said if they don't approve this, they can't use the property to build a home on, accessory structures or property of that nature; it would be detrimental to them not to allow it. He read, that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure. He said yes. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such use variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said they're dealing with the size of the property only, it wouldn't be detrimental to other properties and is in keeping with the other properties in the area.

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

Jeffrey Ball said for the past couple of fence variances they've heard, there has been a lot of discussion about where the proposed fence is, so staff is going to do a better job highlighting that on the plans to take the guesswork off of them for where the fence is and isn't.

Dale Rhodes said thank you and his biggest concern is the line of sight. He said as long as it's not in the line of sight, most of the time he doesn't see a problem; in the line of sight he has major issues.

Jack Higgins said when it involves traffic it's a big deal.

Jeffrey Ball said with the last one, the way it was drawn, it was difficult to see if the dimension lines were a fence or not. He said they will do a better job next time to take out the guess work.

Dale Rhodes said they can always make a phone call and encouraged the board members to call. He said Mr. Body gave him time before the meeting to discuss the situation.

Upon consensus, the meeting adjourned at 2:54 p.m.