

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, August 25, 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: Justin Caron, 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 July 21, 2021, Minutes

Motion by Jack Higgins, seconded by Bill Huffman to approve the July 21, 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. (21PZ00039) Roger W. Clark and Kathleen M. Clark Family Revocable Living Trust (Chad Lekander)

Request variances from Chapter 62, Article VI, Brevard County Code, 1) Section 62-2121(a), to permit a variance of 10.0 feet from the required 10.0-foot setback for a structure from a seawall; 2) Section 62-1340(5)(a), to permit a variance of 8.1 feet from the 20.0-foot river (east) setback required for a principal structure; 3) Section 62-1340(5)(b), to permit a variance of 2.5 feet from the 7.5 foot side (north) setback required for an accessory structure (shed); 4) Section 62-1340(5)(b), to permit a variance of 3.7 feet from the 5.0 foot building separation distance required between an accessory and principal structure; 5) Section 62-1340(5)(a), to permit a variance of 1.5 feet from the 7.5 foot side (north) setback required for a principal structure; 6) Section 62-1340(5)(a), to permit a variance of 8.1 feet from the 20.0-foot front (west) setback required for a principal structure, in an RU-1-13 (Single-Family Residential) zoning classification, on 0.27 acres, located on the east side of Point Drive, approximately 0.252 miles south of South Tropical Trail (11640 Dragon Point Drive, Merritt Island) (Tax Account 2712675) (District 4)

Dale Rhodes explained to the Board members that variances can be approved or denied separately, they don't have to be approved as a whole.

Chad Lekander, 868 Daytona Drive, Palm Bay Florida. He said he's the contractor and representative for the Clarks. He said on Dragon Point, this started with their back patio and seawall; they are in disrepair and need to be fixed. He said the permit they applied for was denied due to not meeting the setback. He said there are no setbacks it will meet because of the location. He said the house has been sold this way multiple times and they supplied all the deeds. He said they need this to do repairs to their home; there is nothing they can do without it.

George Bovell said he is familiar with the easement or private driveway; it's not a street. He said he has been down there on a couple of occasions for business and today specifically to look at the property. He said applying for a new variance would be challenging, but he is trying to legitimize what has existed since the house was built. He said based on the information before him, almost every

home on the easement would have similar challenges when it's time for their repairs. He said he has no problem with any of the requests, from one to six, as he is asking to legitimize what is existing.

Kevin McCann asked if the repair work to be done would change the footprint of the existing patio and seawall and isn't expanding into the property.

Chad Lekander said correct, they will have to do water retention, so the patio may have to be removed; they are not trying to expand the patio but it will be redesigned.

Dale Rhodes asked if the deck would stay the same size that it currently is.

Chad Lekander replied that all the footprints will stay exactly the same.

No Public Comment

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

2. (21PZ00040) Wineland Family Trust

Requests variances from Chapter 62, Article VI, Brevard County Code, 1) Section 62-1339(5) to permit a variance of 3.0 feet from the required 10.0-foot rear (north) setback for an accessory structure; 2) Section 62-1339(5) to permit a variance of 5.0 feet from the required 10.0-foot side (east) setback for an accessory structure; 3) Section 62-1339(5) to permit a variance of 3.0 feet from the 5.0-foot building separation distance required for an accessory and principal structure; 4) Section 62-1339(5) to permit a variance of 5.0 feet from the 5.0-foot separation distance required for an accessory structure and pool screen enclosure, in an EU-2 Estate Use Residential) zoning classification, on 0.24 acres, located on the north side of Arnold Palmer Drive, approximately 300 feet west of Ben Hogan Way (2049 Arnold Palmer Drive, Titusville) (Tax Account 2112236) (District 1)

Christopher Wineland, 2049 Arnold Palmer Drive. He said they're wanting to build a pool house/bathroom pool cabana to the side of a swimming pool they put in last year. He said they purchased the house in 2016, had it custom built. He said when they went under contract with the builder it was already approved, the engineering plans were done so they couldn't make structural changes. He said when they built the house they had future plans for the pool; if they could have on time, they would have made changes. He said they would have made provisions to have a bathroom towards the rear of the house for easy access from the pool area. He said with the pool in, they have seen the need for a bathroom closer to the swimming pool so dirt and water is not tracked through the house. He said they would like to build a structure in their backyard. He said their neighborhood is governed by an HOA, whose covenants require that any shed or accessory structure must be permanent in nature; no prefabricated buildings. He said since they must build something they figured to have a bathroom, an area to hang out in, and a fridge and sink for prep for a kitchen they use a lot.

Jack Higgins asked if Coop was the contractor.

Christopher Wineland said yes.

Jack Higgins confirmed that the lot size was 0.24 and not 2.4.

Paul Body confirmed it was 0.24.

Jack Higgins said the lot behind him is empty; that puts his screen enclosure at 5.0 feet from the neighbor's fence.

Christopher Wineland said yes, it's currently at 5.0 feet.

Jack Higgins asked what the neighbor says about that.

Christopher Wineland said they have no objection, he has a letter from the owner of that lot.

Jack Higgins asked who owned the land behind him.

Christopher Wineland answered, Coop Construction, he spoke to him and he has no objection.

Dale Rhodes asked if they saw the letter he submitted.

Christopher Wineland said yes.

Jack Higgins said he had missed it.

Christopher Wineland said he has a separate letter received from them before that one was emailed.

Jack Higgins said if he was his neighbor, he wouldn't allow it.

Christopher Wineland said he received a letter from the neighbor to the east, they are in favor.

Jack Higgins said that's who he was speaking of, the neighbor to the east.

Christopher Wineland said that was Andrew Johnson.

Jack Higgins asked if it was the neighbor with the wood fence.

Christopher Wineland said yes.

George Bovell asked if he applied to the HOA.

Christopher Wineland answered yes, he has architectural approval from the HOA.

George Bovell asked if he had it here.

Christopher Wineland answered yes.

Paul Body said that it is in their package.

George Bovell said okay, he is good.

Dale Rhodes asked if there were other options other than how he has it now.

Christopher Wineland said there isn't due to the setback requirements; even to put the pool in they had to get the utilities easement at the rear of their property vacated. He said there is a 5.0-foot utility easement down the east and west side that there are utilities in, the Natural Gas line is through the east side. He said they can't do anything with that, but are not wanting to go past 5.0 feet. He said there are no other feasible spots in the yard.

Jack Higgins asked if the neighbor next to him didn't object at all.

Christopher Wineland said that is correct and he has a letter from him. He said he is in favor of it because the east sun is bad in the back yard and asked if he could make it taller to block the sun out.

Kevin McCann asked if the structure was going to abut or be directly built into the screen enclosure.

Christopher Wineland said yes, there is currently a wall on the side of the screen enclosure, that wall would be removed and the screen enclosure directly connected to the new.

Kevin McCann asked if there would be access from the pool without going outside screen enclosure.

Christopher Wineland answered yes and there will be a roughly 3.0-foot breezeway between this accessory structure and the home for access to the side yard.

Jack Higgins said the way it sounds, everything would be contained within the enclosure.

Christopher Wineland said the screen enclosure is already existing.

No Public Comment

Dale Rhodes said he did not go through the six points on the first request as it was to legitimize what already existed, not a new building construction; he will go through them in the future if instructed to. He said he will review the six points. He read, do special conditions and circumstances exist which aren't applicable to any other lands, buildings or structures in the applicable zoning classification. He said he doesn't think there are any special circumstances or conditions that exist. He said the applicant had the house built, later wanted to make changes to it but couldn't because of where it was; the applicant built the house and pool. He said there is nothing special about this, nothing in the way such as a lake or wetland. He read, the special circumstances and conditions don't result from actions from the applicant. He said it's something he is wanting to build, a result of what he wants to do. 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 this one is difficult for him because it does in a sense provide special privilege because they are allowing something outside the code. He said anyone could apply for a variance and see if they will be approved, but in his opinion, they are doing something that is a 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 he wouldn't be deprived of anything that is enjoyed by any other applicant or property in the area; he would be deprived of a want. 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's the minimum variance

required for what he wants to do. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such a variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said he is requesting a 5.0-foot variance from the 5.0-foot distance separation, 100 percent.

Paul Body said he would butt it up against where the screen enclosure is, he was going to redo the screen enclosure to have access to it. He said that's where that's coming from, there is supposed to be a 5.0-foot distance between structures.

Dale Rhodes asked, if they gave him that variance, does it create a potential health or safety risk.

Paul Body replied that a 5.0-foot separation distance is usually used for fire, he doesn't think the screen enclosure what catch fire the way they are built. He said he is making it like one structure.

Dale Rhodes asked if there was a way he could add to the structure to make it one.

Paul Body answered that it didn't appear that he could make it part of the screen enclosure.

Dale Rhodes said his big concern is if it was a risk.

George Bovell said the screen enclosure and accessory structure will be joined together so there would be no need for space in between.

Jack Higgins said he is removing a wall, making it all one.

Kevin McCann said he is borderline regarding the hardship. He said if the property owners adjacent to the property and the HOA don't have an issue with it, then he wouldn't either.

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

3. (21PZ00042) Carolyn M. Campbell Life Estate (Stacey Kuzman)

Requests variances of Chapter 62, Article VI, Brevard County Code, 1) Section 62-1341(5)(b) to permit a variance of 0.1 foot from the required 7.5 feet side (south) setback for an accessory structure; 2) Section 62-1341(5)(b) to permit a variance of 3.3 feet from the 7.5 foot side (south) setback for an accessory structure; 3) 62-2100.5(1)(a) to permit a variance to allow one accessory structure over the two accessory structures allowed on a 20,473 square foot lot, in an RU-1-9 (Single Family Residential) zoning classification, on 0.47 acres, located on the west side of Dallas Avenue, approximately 132 feet south of Fay Boulevard (6630 Dallas Avenue, Cocoa) (Tax Account 2311032) (District 1).

Carolyn Campbell, 6630 Dallas Avenue, Cocoa.

Kenneth Jacobs, 360 Stacy Grove Road, Oak Hill. He said he is Secure Fence and Rail Titusville and they did a fence for Ms. Campbell in 2016. He said she had an arbor that she wanted remodeled. He said they fixed it up and did a covered area on the back of one of her sheds where her sink is because she does a lot of gardening; they put a cover there where she can wash her hands and stay out of the weather. He said it was called in because the arbor wasn't permitted; they went through the

process of getting a permit. He said that brought to light the shed she had from the 90's when she bought the place; they were put in inside the easement area. He said they're trying to get a variance for the shed and the two structures. He said the arbor had been there since 1995, they had just cleaned it up, she already had a pad set for it and power to it for the one done in 1995. He said they set new posts, new stringers and reset the electrical. He said the new arbor or lean to on the back of the shed was brand new. He said they're trying to take care of something that happened five years ago from an anonymous tip, an ex-employee of his. He said they're trying to get her set up so she can do her gardening; she has letters from neighbors stating they have no issues getting these variances. He said she's a pillar of her community, been there for 30 years; people come to enjoy her arbor, landscaping and flowers.

Carolyn Campbell thanked the Board for allowing them to speak. She said she loves working outside and gardening; she gets such peace out there and is grateful can she do it at her age. She said she hopes and prays they can resolve this today.

Jack Higgins said he went by yesterday; he went to Dallas Avenue where the sign is covered by someone's tree and behind that on the next street was a pump truck so it took a few minutes to find. He said it's a deep lot from street to street, on the backside from Orchard it looks very neat; he doesn't see how it would compromise any neighbors especially on the south side. He said in his opinion it wouldn't be a problem; he took pictures.

Bill Huffman asked if all of the adjacent lots were developed or were any empty around the perimeter.

Carolyn Campbell said there's an empty lot on the south side where one of the buildings is.

Jack Higgins said its wooded.

Bill Huffman said his concern is for the utility easements. His concern is if the empty adjacent lot were developed and needed use of the utility easement.

Kenneth Jacobs said in his years doing work in this county, he would say it's not an issue; she has been there since 1995. He said if there was a house built there, everything would be coming in from the front; he doesn't think there is a gas line through there. He said everything would be coming from the adjacent road, Dallas.

Jack Higgins asked if utilities were street side.

Kenneth Jacobs said yes, everything would be coming from that side so there shouldn't be an issue.

Paul Body said each lot has there own 6.0-foot utility and drainage easement on the side property line so they would be using their own easements, not hers.

George Bovell asked, regarding request two, how long the little shed in the easement had been there.

Carolyn Campbell said they moved into the house in 1993 and put it in soon after for the lawn mower.

George Bovell said it's been there for 27 or 30 years, no problem.

Dale Rhodes said he understands that she is not adding any buildings, just legitimizing what's there; the only construction they are dealing with is the lean-to he built.

Kenneth Jacobs answered yes.

Dale Rhodes said he's not adding a third building, they're approving a third building that's already on the property.

Kenneth Jacobs answered yes.

Dale Rhodes asked, out of curiosity, if he knew he needed a permit before he built the lean-to.

Kenneth Jacobs replied, when they first started, doing arbors, he didn't think it was that big of a deal but now he knows. He said now they take care of that and have not had that issue in a long time.

Dale Rhodes said that didn't answer the question. He asked if he knew he needed one or thought he needed one and just didn't do it.

Kenneth Jacobs answered no, because it was a remodel on something existing there; he didn't know or have first hand knowledge that it needed to be. He said after doing more research on arbors in Brevard County and talking to Maggie in License Regulation, he was schooled on what needed to be done and what was required. He said in his generation in Florida it was, own your own land do what you want, but those days are over. He said he pulls hundreds of permits a week.

Dale Rhodes asked if they had seen the letter signed by all the area residences.

Kenneth Jacobs said she got that letter today and has seen it.

Dale Rhodes said he wanted to make sure she saw it and confirmed the Board members had as well.

Jack Higgins asked Paul Body if there was an allowed dollar amount without having a permit.

Paul Body said he is not sure, he would have to ask the building department. He said for an accessory structure a permit is not needed if it's less than 100 square feet and not on concrete, like a movable shed; it would still need to meet the zoning setbacks.

No Public Comment

Dale Rhodes asked if he needed to go through the six points when it's legitimizing.

Justin Caron said he should.

Dale Rhodes said he will go through the six points. He read, do special conditions and circumstances exist which aren't applicable to any other lands, structures or buildings in the applicable zoning classification. He said the only special condition or circumstance that exist is that these buildings already exist, at least one had been there 18 or 20 years. He read, the special circumstances and conditions don't result from actions from the applicant. He said it's something he is wanting to build, it's a result of what he is wanting to do. He said that's debatable, she is the one who put the sheds

there so she created the situation. He said he doesn't know what the codes were in 1993 or 1995; he can't address that but either way, she created the situation. 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 in the identical zoning classification. He said it doesn't, as with the first one today, when a structure exists, unless its really egregious, they tend to approve those variances. He said in that case they aren't conveying 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 if they denied it, that wouldn't deprive her of something anyone else enjoys. He said she would have to remove sheds that exist and apply for permits to put up different sheds; likely two instead of three. 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's the minimum variance to allow her to keep the sheds on the property but not for use of the property; she can use the property without the variances but would have to remove the sheds. He read, that granting the variance will be in harmony with the general intent and purpose of this Chapter and that such a variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said according to Mr. Higgins it's a deep piece of property; the neighbors have said it's not intrusive and don't have a problem with it. He said it wouldn't be out of harmony with the community nor dangerous to the public welfare.

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

Upon consensus, the meeting adjourned at 2:12 p.m.