

## BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, September 22, 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; 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 August 25, 2021, Minutes**

Motion by Jack Higgins, seconded by Bill Huffman to approve the August 25, 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. (21PZ00044) Robert L. Pfoff and Maureen Grace Pirjevec**

Request a variance from Chapter 62, Article VI, Brevard County Code, Section 62-2118(d)(2) to permit a variance of 5.1 feet from the 7.5-foot side (west) setback permitted for a boat dock, in an RU-1-11 (Single Family Residential) zoning classification, on 0.21 acres, located on the north side of Caracas Drive, approximately 340 feet east of New Hampton Way. (440 Caracas Drive, Merritt Island) (Tax Account 2418764) (District 2)

Robert L. Pfoff, 440 Caracas Drive, Merritt Island.

Maureen Grace Pirjevec, 440 Caracas Drive, Merritt Island.

Robert L. Pfoff said, they're here to request a hardship variance approval for a boat dock built by a contractor they hired. He said the contractor was told by the County when submitting a permit request for both the seawall replacement and boat dock, that two permits were required to complete the work. He said they didn't follow the County's direction and didn't pull another permit for the boat dock reconfiguration. He said the boat dock was there, they were just having it reconfigured to an entry of east versus west for ease of entry. He said he found out about this in June of this year, this all having happened in April of last year, when he was trying to get finalization of the permit. He said he had been talking with the contractor for over six months and got tired of the noise so he came to the County to find out in June of this year, that the permit request was given last year but nothing was ever done. He said he didn't know about it until this year. He said the work that he hired in good faith is in the first paragraph and states the exact wording; they never pulled the permit for the boat dock reconfiguration and that's why they're here today.

Kevin McCann said he wasn't quite following and had some questions. He said he thought he read that the next-door neighbor had submitted an affidavit.

Robert L. Pfoff said he had that here.

Kevin McCann said it wasn't in his packet and would like to review what was submitted to the County.

Paul Body said he had the affidavit from the next-door neighbor.

The Board members reviewed the affidavit from the physical file.

Kevin McCann asked if it was from their immediate adjacent neighbor to the west; the side of the property to which the dock is closest.

Robert L. Pfoff said, to the west, correct.

Kevin McCann asked, if when he contracted with Integrity Marine Construction, if they did not discuss setbacks with him.

Robert L. Pfoff said no.

Kevin McCann asked if there were plans produced.

Robert L. Pfoff said there were drawings produced but he doesn't have them, he tried to get them; he has the original survey of what it was prior to the reconfiguration. He said he has the final as built.

Kevin McCann asked if he knew what the setbacks were.

Robert L. Pfoff said no.

Kevin McCann asked if when the dock was reconfigured, was it constructed closer to the property line than originally was.

Robert L. Pfoff said, correct. He said previously, the dock had an entry coming from the west and the reconfigure has it entering from the east. He said the reason his neighbor signed the affidavit that it was ok is his dock is fairly close and it was pinching. He said he only has a 20-foot runabout boat but it was pinching him to where if the wind was blowing he had a heck of a time getting into that slip. He said he flipped it around and in doing so, left the four poles that held the roof on and removed a front portion of the deck on the existing previous dock and put that in front so now he drives in this way instead of coming in that way.

Kevin McCann asked if he knew how much closer to the side yard property line it was moved.

Robert L. Pfoff said from the previous configuration, no not exactly, probably five feet.

Jack Higgins asked if he ever complained to the state of Florida, the DBPR, about the contractor.

Robert L. Pfoff said he had not, he had only been to this County Zoning.

Jack Higgins asked if he ever thought of that or was informed of it.

Robert L. Pfoff said he wasn't informed, but thought about doing a lot of things if he doesn't get the variance approved; he didn't want to address those until going through this portion of the process.

Jack Higgins said that Mr. Pfoff said he never he was never given a copy. He asked if when he engaged this GC, did he or him think to give you a copy of what he was doing.

Robert L. Pfoff said they had a written statement to identify, it's on the worksheet he gave, first paragraph, it's the statement of work he agreed to. He said he assumed the drawings were requested by the County to go through their approval process; he assumed he was doing that with them.

Jack Higgins asked if there was a drawing left on the board for the inspectors when they come, as required.

Robert L. Pfoff said he didn't look at the board, it's still up, for the contractor.

Jack Higgins said, yes, where the plans are kept for the inspector. He asked if in that time he ever looked to see anything, because he had been complaining.

Robert L. Pfoff answered that he wasn't complaining until the end.

Jack Higgins asked if the contractor filed an affidavit with the County, a notice of commencement.

Robert L. Pfoff said he assumed he did.

Jack Higgins said that wasn't checked on.

Robert L. Pfoff said in good faith, he contracted with him thinking he knew all the rules and regulations.

Jack Higgins said yes, but as much as it's advertised, everyone has an idea.

Robert L. Pfoff said he knows now.

Dale Rhodes asked if he did some of the work or the contractor, as a minute ago he used the words, I changed the entrance and left the poles.

Robert L. Pfoff said he didn't do any of it, that was the design of why he hired the contractor.

Dale Rhodes confirmed that the "I" was because that's what he wanted but the contractor did all the work.

Robert L. Pfoff said correct, 100% of it.

Dale Rhodes asked if since the board is still there, did he look to see if there were plans it.

Robert L. Pfoff said he did, and there's nothing in there.

## No Public Comment

Kevin McCann said he feels for them but is concerned about setting precedence on putting all the blame on the contractor; they have some responsibility to know what's permitted and not permitted. He said when it's two feet from the neighbor's yard, he finds it hard to believe it's not thought to be too close for a dock. He said he hasn't made his decision yet and hopes to discuss further so the Board can come up with a decision together.

Jack Higgins said he has a problem with the questions he has asked that are pretty common in today's world, it's advertised on TV and radio, and for someone not to know the proper way, he can't offer any more assistance on that.

Bill Huffman said he is inclined to think that since the neighbor singled off and his entrance is the other way, that this is a minor impedance to those two properties.

Dale Rhodes said before he goes through the required six points, he'll give his opinion. He said if they start approving variances after the fact, they set themselves up for a situation where people start building and then come in later saying they didn't know and asking for allowance. He said according to their hardship definition, they cannot accept financial hardship as a hardship. He said he has the right to consult an attorney and would recommend that, DBPR should be notified. He said anytime a dock comes before him, he is extremely reluctant to allow variances because if two feet is allowed here, the next guy wants three feet and the next wants four feet and the next thing you know, there is no gap. He said though the current neighbor may not have a problem, if that house is sold to someone else and they want to build something, they maybe can't maneuver in because their dock is too close. He said he is not a jerk most of the time, the reality is, he feels for them but has to look at health, safety and the purpose of codes and why they're there. He said he had a contractor that didn't do their job, if they didn't pull a permit they certainly didn't comply with what they had done.

Jack Higgins said whatever the case determines, he has a right to file a complaint against that contractor and would probably prevail; he used to sit on the board.

Dale Rhodes said it's a state board, the Department of Business Professional Regulations; they control the licensing of every entity in the state of Florida. He said anytime there's a problem with a contractor or realtor that's in business, a complaint can be registered with them and there is a process they go through to help remedy the situation.

Bill Huffman said his elected representative can help work through that, contact them.

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 there are no special conditions or circumstances that exist that requires needing that extra distance on the dock. He read, the special circumstances and conditions don't result from actions from the applicant. He said it's not him but the contractor he hired so is a result of his actions, the contractor is an extension of 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 in the identical zoning classification. He said if they approve this they would be giving special privilege as they have turned sown many of these that have requested

less distance; they would be giving special allowances. 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said that isn't the case, the enforcement is there for safety reasons and is not depriving him of any rights; everyone else is held to that same standard 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 that is not the case either because he can have a reasonable use of the structure without having the extra five feet. 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 this is not the case either, this could be very much harmful to the public welfare, as he has stated, if somebody else purchased the property next door, they may not be able to build their dock because his is extending too far. He said if they do build a dock, there is the possibility that if storms come, collisions take place.

Motion by Kevin McCann, seconded by Bill Huffman, to approve the variance as depicted on the survey submitted by the applicants. Motion failed, thereby denying the request. The vote was 3:1 with McCann, Rhodes and Higgins voting nay.

**2. (21PZ00048) Michael and Annette Criss**

Request a variance from Chapter 62, Article VI, Brevard County Code, Section 62-1344(5)(b) to permit a variance of 4.1 feet from the 5.0-foot rear setback required for an accessory structure, in an RVP (Recreational Vehicle Park) zoning classification, on 0.09 acres, located on the west side of Frontier Drive, approximately 683 feet northwest of Shuttle Circle (3111 Frontier Drive, Titusville) (Tax Account 2111574) (District 1)

Michael Criss, 3111 Frontier Drive, Titusville

Annette Criss, 3111 Frontier Drive, Titusville

Michael Criss said he hoped everyone had a nice lunch and said he had been with his bride for almost 30 years. He said four score and seven years ago a shed was erected on their property, for trivia buffs that's 87 years. He said while that's an exaggeration, according to most of his neighbors who were there when the park first began building, it was late 2001 or early 2002 that the shed was put on the property. Google earth has it on satellite image in 2004, that's the earliest image he could see it well. He said back then it was common practice to build structures close to the property line; most of the lots along his fence have the building right on the property line. He said they are not requesting additional encroachment, only using the existing footprint and want to go vertical. He said there's approximately 14 feet behind their existing structure before running into the border fence of the RV park; there is grass and bushes back there. He said on the other side of the fence there's an abandoned overgrown orchard; no one lives behind them for at least a quarter mile to US1. He said eliminating the five-foot rear section of the existing structure accounts for approximately 25% of the proposed building; this creates a hardship due to the lack of room to accommodate new laundry and bath facilities. He said storage is a premium in RV living and this would cut down about 60 square feet of their storage space without this variance. He said the proposed accessory building doesn't block anyone's view or get any closer to adjacent lots. He said they need room for a full-size washer

and dryer, normal size shower and second water closet as an alternative to the RV. He said the accessory building would greatly reinforce the stability of his RV port, it's over the whole thing, as when a post is attached to a framed structure, it becomes almost immobile. He said the variance will allow two additional supports to be attached to the framed structure which will immensely improve the survivability of the RV port in hurricane conditions. He said with the added square feet allowed by the variance, their golf cart could be parked inside out of the weather. He said RV lifestyle requires that their home, the RV, be taken to dealers for repairs on occasion; without the extra space, finding room to place a blowup mattress on the floor would be almost impossible. He said this accessory structure would give the room they need in their retirement years; without it they wouldn't be able to stay there for their remaining healthy years and when he gets sent to the dog house, he won't be surviving without amenities. He said they have spent much time working on their layout which will be for not without variance approval.

Jack Higgins said he went by twice, they're doing a lot of building in there, all over the park.

Michael Criss said it's a beautiful little place.

Jack Higgins said it's in harmony with 90% of the neighbors; he doesn't see a problem with what they are asking for compared to all the neighbors in that crowded area.

Dale Rhodes asked if they wanted to replace the current footprint.

Michael Criss said no, the shed now is 12x12, they're going to leave it where it's at and go straight up, the RV port is going to be the roof of the structure.

Dale Rhodes asked if he was increasing the height.

Michael Criss said yes and moving it forward, away from the property line.

Dale Rhodes asked how the height would give them extra room.

Annette Criss said that is where the storage is going to be.

Michael Criss said there will be a loft up there, an extra five feet of storage that they would not have plus the washer, dryer and bathroom would have to move five feet forward. He said the total square footage is 476 square feet, not a lot of room to get the things needed in there.

Dale Rhodes asked if they were able to go long ways rather than up.

Michael Criss said they are going long ways and up.

Dale Rhodes asked if they were going long ways and up.

Michael Criss said yes, they want to use what's currently there, go up and also go forward in their lot.

Annette Criss said they have a 45-foot fifth wheel that takes up half their lot, plus they have to park their vehicles in front, so doesn't leave a lot of room.

Dale Rhodes said, if he is understanding, they are taking the 12x12, going up; he asked if there was a privacy fence behind them.

Michael Criss said yes, about 14 feet off the back of the existing building; there's nothing behind them.

Dale Rhodes asked if they knew who owned the property behind them.

Michael Criss said no.

Dale Rhodes said he didn't check that out. He asked if they were going up and extending the length of it too.

Michael Criss said that's correct; now it is 12x12, when it's done it will be L shaped, 10 feet wide and back where the 12 foot is, it will remain 12 feet.

Dale Rhodes asked if he was going L like this, what if he went sideways.

Michael Criss said their trailer is back that way, they can't go that way.

Dale Rhodes asked if he understood what he was asking.

Michael Criss said yes and he had some pictures he took that morning if they were interested.

Dale Rhodes said that's okay. He asked if there was any other way to get that square footage without having that additional, going further in the L shape that they're going.

Michael Criss said no, not and allow room to park the truck, car, Can Am and golf cart. He said now it's strategically placed and fits in rather well.

Dale Rhodes said the guys got toys.

Michael Criss said the truck has to pull the trailer, he drives to work and she has her car as well.

Jack Higgins said what threw a curve at the end is he said loft.

Michael Criss said it's just a storage loft.

Jack Higgins said shelf.

Michael Criss said it will be a floor where they can put all the things that need to be under air.

Jack Higgins said he had mentioned something about an air mattress.

Michael Criss said that's on the floor, if they wanted to come back there if the trailer had to go somewhere, they would have room where the golf cart would come in and put an air mattress down to sleep on. He said sometimes when the trailer goes in it will be a week, lucky if it's a month.

Kevin McCann asked if he was going up one floor on the existing shed and the additional square footage is going to move toward the front of the property line and the entire thing sit on the existing concrete pad.

Michael Criss said correct, it will.

Kevin McCann asked if that will be two stories as well.

Annette Criss said no.

Michael Criss said only for the back part where the loft will be, the front will be open so it will be ceiling height when you first walk in for the first ten feet. He said the last 17 feet will have a loft over it for storage. He said the only storage they had now is in the RV, he has a cargo trailer that things don't survive well in with the heat; they need room to put stuff that has to go under air. He said right now it's stuffed in the hold of the camper; they don't have a lot of room to put things so would like to have this available under air.

Bill Huffman said looking at their sketches he can see the new addition is pulled from the one-story frame existing that almost touches the back line, he can't see in the photograph, he asked if it was recent.

Michael Criss said he had a picture (on an iPad).

Dale Rhodes said if he gives that to them it will have to stay with them.

Jack Higgins said they will take the iPad

Michael Criss said they don't want it, the screen's all cracked.

Bill Huffman said he is asking if the existing shed has been there for a while.

Michael Criss said he has a satellite picture of it, it was in his package, from 2004.

Dale Rhodes asked if the old building still exists.

Michael Criss said yes, it is.

Dale Rhodes asked if he was taking it down at all.

Michael Criss said they will be reusing almost all the studs.

Dale Rhodes asked if they were going to strip it.

Michael Criss said the siding is coming off, they're going to put nice siding on it, it gets stained easily.

Dale Rhodes asked Paul Body if they were legitimizing the existing building with this variance or was there a permit that allowed that one to be there.



Paul Body said there was a permit to permit this, it met the setbacks on the proposal; at the time when doing the research, it appeared nobody put in for an as built survey. He said when the inspector went out to inspect the shed, he didn't realize there was a 15-foot track behind them that was probably part of their property, they assumed that was the reason and nobody knew exactly where it was until he came in with this. He said with this variance, they aren't supposed to have living area, they can have it as a proposed storage area; they're supposed to live inside their RV unit and that's the reason it's opened up. He said they can have this as an accessory to it for storage or washing.

Dale Rhodes said it's okay to use as a laundry room but heard them state they were putting a bathroom in it.

Paul Body said they can have a bathroom in it, they aren't supposed to be living in this accessory structure, they're supposed to be living in their RV.

Bill Huffman said the tract A that's behind the buildings, 15 feet wide, says it's a buffer and utilities.

Jack Higgins said it's an easement.

Paul Body said he's not sure what it's used for, he didn't read it; it says buffer and utilities so must be used for both of those. He said it's part of the RV tract, belongs to Willow Lakes.

Dale Rhodes asked if he was in the easement.

Paul Body said no, he is onto his property almost a foot, 0.9 of a foot.

Jack Higgins said, where the carport is, a lot of these build on the same thing in the back of them for that use; it's a pretty common thing in these areas.

Michael Criss said, yes, it is.

No Public Comment

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 he's not sure that special circumstances and conditions exist other than that the building was there when they acquired the property. He said his understanding is that if they aren't adding onto it, there is no violation at this point, but because they are adding on, this is where this comes in. He said that would be the only circumstance that would be applicable to this. He read, that special circumstances and conditions don't result from actions from the applicant. He said they did not build the structure that currently exists, in the case of the part they are dealing with, which is the setback, they didn't create that. 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 he always has a problem with this question because Mr. Higgins is telling him there are other properties that have the same type of thing; in that case, they wouldn't be granting any special privilege. He said however they are making an exception to what the setback is so with that condition they're giving a special privilege. He said that's where he has a conflict when trying to answer this question. He said if there are other

properties in the area that they've allowed that to, then it doesn't allow special privilege. He said this building existed prior to so doesn't give then 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said he that doesn't apply in this case; what they want to do is a want, it doesn't keep them from using the building or property, or enjoying the property, it just keeps them from having the shed they want, if they said no. 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 that's not the case, they still have a reasonable use of the land and structure that exists. 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 would defer to Mr. Higgins, having gone out there, has said that other properties have similar type structures already in existence; so, it does become in harmony. He said he asked if it got into the right of way for a welfare issue; in this case it doesn't appear to be. He said he doesn't see anything that says it's dangerous if they do this, somebody getting injured or the fire department can't get in; they don't have that case. He said being that the structure already existed, he doesn't have a problem with that if remodeling, but they are adding on. He said his question about coming forward or going lengthwise was if there was a way to do it and not be in the setback, he thinks there is but because of the multiple vehicles, it creates a parking issue. He said he is not sure the parking issue is what he needs to be concerned about, it's the structure and variance being requested.

Jack Higgins said he went by twice and it is in harmony with the entire development in that area.

Motion by Jack Higgins, seconded by Kevin McCann to approve the variance as depicted on the survey submitted by the applicants, with the condition that the accessory structure not be used as living space. The vote was unanimous.

### **3. (21PZ00049) Julio Henriques**

Requests a variance from Chapter 62, Article VI, Brevard County Code, Section 62-2123(a) to permit a variance of 3.5 feet from the required 5.0-foot side setback (north) required for a swimming pool screen enclosure, in an RU-1-13 (Single Family Residential) zoning classification, on 0.23 acres, located on the west side of Mohican Way, approximately 450 feet north of Beverly Court (83 Mohican Way, Melbourne Beach) (Tax Account 2956473) (District 3)

Julio Henriques, 83 Mohican Way, Melbourne Beach. He said he is seeking a variance to the side setback to replace the pool screen enclosure. He said the house was built in the early 70's, the third house built in the community. He said when he bought it, it was exactly the way it was built, there were a lot of repairs and new improvements; the original enclosure was there when he purchased the house. He said like the other stuff the enclosure was in bad shape, bolts were rusting; he had to take some of the pieces down because the bolts would rust and fall off and pieces were dangling. He said the other big problem is it's not like the new enclosures today that go up like the hip thing, it was attached to the roofing shingles across the back, so he had leaks. He said it was unsafe, he had to take a lot of it down initially and looked to get a contractor who came over and made him aware that even putting it up in the exact same spot, which is what he wants to do, he needed an easement

vacate first. He said he went through that process, completed in and was approved, then a variance before he would even apply for a permit.

Dale Rhodes said he went out to look; he had already answered his question about the enclosure, its been removed. He said he assumed it was becoming dangerous. He said the concrete deck of the pool is a 1.5 or 2.0 feet from the fence, he didn't measure because he is not able to; its very close and he can see where the other enclosure was. He asked if he was putting the enclosure in the exact place or pretty close.

Julio Henriques said yes, the pool is the problem, if he had enough room or patio he could move it over, even with the screen enclosure in the exact same line, it's only 2.5 feet.

Dale Rhodes said he only has 3.0 feet from the edge of the lip to the pool.

Julio Henriques said during this process, because the sign was out front, he found out why the situation occurred from another original owner who knew the Poseys that were there. He said it's the only house in the neighborhood that's canted on the lot, they originally wanted a one car side entrance garage. He said that's what forced everything to one side; there would have been plenty of room to put it right in the middle but they canted the house.

Dale Rhodes asked if he owned the empty lot next door.

Julio Henriques said no.

Bill Huffman asked if the screen enclosure abuts an empty lot.

Julio Henriques said no, that side is the clearing, there is a lot of distance, the lot is canted this way, so that end of the pool and screen are closer to this house.

Dale Rhodes said the empty lot is to the south, the pool is to the north.

Bill Huffman said the variance is for the house next door, between him and the house next door.

Julio Henriques said yes.

Bill Huffman asked what his construction is, block, wood or stud; his and the house next door.

Julio Henriques said it's block, the house itself.

No Public Comment

Dale Rhodes said having visited the site, there is nowhere else for him to put this; he didn't build it, it existed previously and he did the reasonable and safest thing in removing the one that was falling down. He said to deny him from putting a screen enclosure back where the other one was would not be right to do. 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 there is a little bit, the house was built at an angle as the applicant discussed, with that there are conditions that exist that will not be applicable to other lands, buildings or structures. He said if the house was built straight

like everybody else's, they're probably not there; he didn't do that. He read, that special circumstances and conditions don't result from actions from the applicant. He said that is true, he didn't build it or create it, and isn't asking to extend it beyond where it already is. 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 they have approved many structures of this nature where a screen has come down or is falling apart and they needed to put it back up, so it doesn't give him any special privileges or rights. 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said if they said no to this it would create an unnecessary hardship in that he wouldn't be able to put back a screen enclosure over his pool or if he did it would be right on top of the pool and they would swim into the screen 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 a variance will not be injurious to the area involved or otherwise be detrimental to the public welfare. He said it would not be detrimental to any public welfare, it's in harmony with what was intended.

Bill Huffman said he wanted to commend him for bringing this up ahead of time before building. He said he found a responsible contractor and can see he went to the County to vacate the utilities easement as well as this preceding, well done.

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

#### **4. (21PZ00050) Robert F. Erario and Jeremy Sothea Sun**

Request variances from Chapter 62, Article VI, Brevard County Code, 1) Section 62-1334(4), to permit a variance of 27.0 feet from the required 150.0 foot minimum lot width; 2) Section 62-1334(5), to permit a variance of 9.0 feet from the required 15.0 foot side setback for an accessory structure; 3) Section 62-1334(5)(b), to permit an accessory structure located forward of the front building line of a principal structure; 4) Section 62-1334(5)b, to permit an accessory structure located forward of the front building line of a principal structure, in an AU (Agricultural Residential) zoning classification. The parcel is currently zoned BU-1 (General Retail Commercial) and AU (Agricultural Residential) zoning classification, on 7.24 acres, located on the west side of US 1, approximately 497 feet south of Aurantia Road. (4740 Hwy US 1, Mims) (Tax Account 2001826) (District 1)

Robert F. Erario, 4740 US Hwy 1, Mims.

Jeremy Sothea Sun, 4224 Grand Meadows Boulevard, Melbourne.

Robert F. Erario said they were looking to rezone, they are going to be starting a wholesale plant nursery; the portion of the property they wish to do it on is commercial and were told it needed to be zoned agricultural to be able to take advantage of everything. He said they need to rezone it and request a variance to do so; eventually his wife wants to get a horse for their daughter, they need to rezone it for that purpose as well.

Dale Rhodes said, they aren't rezoning here.

Robert F. Erario said right, they need a variance to rezone.

Jack Higgins said they have in the middle, a proposed building, that building is there.

Robert F. Erario said yes, it's existing, they're expanding on it.

Jack Higgins asked why it says proposed.

Robert F. Erario, said he wasn't sure, because right now its an open pole barn, they're extending it out and closing it in.

Jack Higgins asked if the property belonged to Gray Beards before.

Robert F. Erario said it did, Frank and Michelle Bodyke.

Jack Higgins said there are a few buildings there.

Robert F. Erario said yes, there are several.

Jack Higgins asked if there were permits on the proposed.

Robert F. Erario said he's not 100% sure, it was there when they purchased it almost three years ago.

Jack Higgins said, for the rezoning, there is already a structure on the part wanted for the nursery, the display.

Robert F. Erario said there is.

Dale Rhodes asked Paul Body if he needed the variance in order to rezone.

Paul Body said yes, he is trying to rezone the front portion, it's currently zoned BU-1; he is trying to rezone that portion of the property so they can use it for agricultural purposes. He said the existing structure there was used for commercial use. He said their house is building number three on the survey; there are two buildings located forward of the front building line, they need to get it rezoned. He said this property was at one time all AU property, then the portion to the front was rezoned, that little dog leg to BU-1, now they're wanting to rezone it back to what it was.

Dale Rhodes asked, in current BU, if the issue was the width of the road, or at least the first issue.

Paul Body said that's what the first variance is for, it requires 150 feet to meet the AU zoning width.

Dale Rhodes asked if in BU, that wasn't needed.

Paul Body said BU-1 only required 75 feet.

Dale Rhodes asked Robert F. Erario if he knew the width of the massive piece in the back.

Robert F. Erario said he doesn't.

Dale Rhodes said that's alright, he knows that if it extended to the road he wouldn't have an issue. He said this is a common situation, that he has a piece going to the road that's not the right width. He said he has a huge piece of property in the back and in order to build, he has to get a variance because he doesn't have the road frontage. He said it's a common situation he sees as a land specialist, he sells a lot of land and deals with that all the time. He said there are multiple structures on the property and asked if the one he had proposed already existed.

Robert F. Erario said to a point yes.

Dale Rhodes said that's what he needs to understand because he isn't seeing anything given and maybe it's not applicable to what is being asked, as to what is being proposed to build. He asked Paul Body to correct him if needed. He said when he says it's a proposed building, they are doing several variances here.

Paul Body said it's very hard to see the existing structure there, it's dotted and dashed and then they have this proposed building; they are going to expand on that. He said on the survey, it shows a dash line, it's going to be quite a bit bigger, maybe 50% bigger than exists now.

Dale Rhodes said part of the variance is to allow a structure forward of the principle structure. He asked if that was this one.

Jack Higgins said yes.

Paul Body said there are two of them, the one proposed will be in front of the front building line, of the house. He said the house is building number three on the survey, building number seven is a smaller one. He said there are actually two accessory structures that are in front of the house.

Robert F. Erario said that building seven is more like a shed, it can be moved.

Jack Higgins said an entrance drive was recently put in, as well as that building, it's new.

Robert F. Erario said it's at least five years; he has owned it for three and it was there before he bought it.

Jack Higgins said he guesses the trees were covering that area coming in, that entrance wasn't there.

Robert F. Erario said it was put in right before they purchased it.

Dale Rhodes said when these structures were originally built, because of the zoning, they were okay. He asked if it was the rezoning that was going to create these issues.

Paul Body said that's correct, the BU-1 just has to meet primary setbacks for structures and it also has to meet separation distance, it doesn't call out that it has to be in front of the front building line of the principal structure.

Jack Higgins said he believes it's a pole barn.

Robert F. Erario said it's currently a pole barn.

Dale Rhodes asked if whatever he is going to do to that building has anything to do with what they are approving today.

Paul Body said he is expanding the one building that is in front of the front building line already, but it does show it on the survey, the proposed.

#### No Public Comment

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 they are doing a rezoning so is not sure how to answer that question; since it's a rezoning, what they are giving the variance for is for the purpose of the rezoning which would change the entire view of that question. He read, that special circumstances and conditions don't result from actions from the applicant. He said they did not build the buildings that exist, however the variance is because they want to do a rezoning. He said though they didn't create the buildings that exist, they are creating the condition because of doing the rezoning. 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 he doesn't believe it does. 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 under the provisions of this Chapter and will constitute unnecessary and undue hardships on the applicant. He said this is hard for him to answer because the whole purpose is to change the zoning. He said when they say are they giving any special rights in an identical zoning classification, probably not because they've approved a flag that needed more road space, they've approved those variances on numerous occasions. He said he doesn't think it does. 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 that is correct. 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 this was all at one time agricultural land so taking it back to that is not going to be injurious to the welfare and is in keeping with the intent of the use of that property.

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

Upon consensus, the meeting adjourned at 2:40 p.m.