

## BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, December 15, 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, Chairman, District 5; Jack Higgins, Vice Chairman, District 1; George Bovell, District 4; and Bill Huffman, District 5.

Staff members present were: Robin Rogers, Assistant County Attorney; Heather Balsler, Assistant County Attorney; Jeffrey Ball, Planning & Zoning Manager; Paul Body, Planner II; and Jennifer Jones, Special Projects Coordinator.

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

Paul Body explained the function of the Board of Adjustment; Jack Higgins explained the definition of a hardship; and Dale Rhodes explained the procedures of the Board of Adjustment. All speakers were sworn in by the Chairman at the beginning of each item.

### **Approval of November 17, 2021, Minutes**

Motion by Jack Higgins, seconded by Bill Huffman, to approve the November 17, 2021, minutes. The motion passed unanimously.

### **(21PZ00079) Carol A. Hall Life Estate (Thomas Yardley)**

A variance of Chapter 62, Article VI, Brevard County Code, as follows: 1) Section 62-1401(5)(b) to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure; 2) Section 62-1401(5)(b) to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure; 3) Section 62-1401(5)(b) to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure; 4) Section 62-1401(5)(b) to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure; 5) 62-2100.5(1)(d) to permit a variance of 492 square feet over the 600 square feet allowed for an accessory structure; 6) 62-2100.5(1)(d) to permit a variance of 13 square feet over the 600 square feet allowed for an accessory structure; 7) 62-2100.5(1)(b) to permit a variance of 1,498 square feet over the total floor area of the principle structure allowed for all detached structures, in an RRMH-1 (Rural Residential Mobile Home) zoning classification, on 1.94 acres, located on the north side of Brockett Rd., approx. 1,706 feet west of Hammock Rd. (2810 Brockett Rd., Mims) (Tax Account 2110383) (District 1)

Motion by Jack Higgins, seconded by George Bovell, to table the request to the January 19, 2022, Board of Adjustment meeting. The motion passed unanimously.

### **(21PZ00073) Joseph A. Tallman and Carolyn E. Curry; and Mary G. Curry (Regina Dempsey)**

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1932(a)(2) to permit a guest house located forward of the front building line of a principal structure, in an EU (Estate Use Residential) zoning classification, on 1.76 acres, located on the east side of S. Tropical Trail, approx. 120 feet south of Sunset Lane (2080 S. Tropical Trail, Merritt Island) (Tax Account 2524207) (District 2)

Carolyn E. Curry, 2080 S. Tropical Trail, Merritt Island, stated she bought the property in December 2020, and the structure in question was pre-existing; it is an unfinished garage, and she would like to convert it to a finished guesthouse, but cannot do so because it sits in front of the main house.

George Bovell asked if Ms. Curry plans to change the footprint of the garage. Ms. Curry replied no, she does not.

Mr. Bovell stated according to the survey, there is no other place for the garage to be located, and pointed out that even if it is not converted to a guesthouse, it will still be there in the same configuration.

No public comment.

Motion by George Bovell, seconded by Bill Huffman, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

**(21PZ00075) Dean & Patricia Bissey, Life Estate** (Samson Durham)

Variances of Chapter 62, Article VI, Brevard County Code, Section 62-2018(d)(2) to permit a variance of 0.8 feet from the required 7.5-foot west setback for a boat dock, in an RU-1-13 (Single Family Residential) zoning classification, on 0.24 acres, located on the north side of Hiawatha Way, approx. 1,265 feet west of Beverly Ct. (338 Hiawatha Way, Melbourne Beach) (Tax Account 2956495) (District 3)

Samson Durham, 402 Concha Drive, Sebastian, Florida, stated the dock has been in existence since the 1980's. The neighbors to the west have already signed their approval. The owners would like to remove the roof over the dock and put in a new boat lift that is well outside the current setback requirements.

Dale Rhodes stated he visited the property, and asked if the size of the roof would be increasing. Mr. Durham replied the roof is being eliminated, so the footprint will be shrinking. The roof overhang is unsubstantial to the dock overhang, but the roof will be eliminated so that it is able to lift a boat out of the water.

Mr. Rhodes stated there is plenty of room across the canal; two boats can easily pass side by side and not come close to each other.

No public comment.

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

**(21PZ00076) Arthur F. & Esther E. Nesbitt** (John King)

Variances of Chapter 62, Article VI, Brevard County Code, Section 62-1405(6)(a) to permit a variance of 1 foot from the required 7.5-foot side setback, in a TRC-1 (Single Family Mobile Home Cooperative) zoning classification, on 0.09 acres, located on the south side of Marlin Circle, approx. 335 feet west of East Dr. (563 Marlin Circle, Barefoot Bay) (Tax Account 3006888) (District 3)

John King, 1603 U.S. Highway 1, Sebastian, Florida, stated the owners purchased the property in early 2005, and they had the mobile home replaced with a new mobile home. Everything was permitted and signed off on by the County. The property is listed for sale and the buyer had a survey done, which is when it was discovered that the mobile home is encroaching into the side setback by 1

foot on the west side. It is not feasible for them to move the mobile home over by 1 foot because there is an existing raised concrete screen porch area, as well as a storage shed and carport.

Dale Rhodes stated he visited the property, and asked if there were surveys done when the new mobile home was placed on the property. Mr. King replied there was a survey done prior to the new mobile home that showed it was supposed to be 7.5-ft. from the property line, and there is an as-built survey that shows the home is only 6.5-feet from the property line.

Paul Body stated after the 2004 hurricanes the County Commission waived the requirement of as-built surveys for applicants in Barefoot Bay in order to help hurricane victims save money. There were numerous homes that had to be replaced in Barefoot Bay. The home was permitted to meet the setbacks but there was not an as-built survey submitted.

Bill Huffman asked if the home was placed offset of the existing foundation. Mr. Durham replied no, there is no foundation for the mobile home, it is set on blocks.

No public comment.

Motion by Bill Huffman, seconded by Jack Higgins, to approve the variance as depicted on the plans provided by the applicant. The motion passed unanimously.

**(21PZ00077) Gezim & Zamira Doci (John M. Kersting)**

A variance of Chapter 62, Article VI, Brevard County Code, as follows: 1) Section 62-1342(4) to permit a variance of 1,000 square feet from the 5,000 square-foot lot area required; 2) Section 62-1342(4) to permit a variance of 20 feet from the 100-foot minimum lot depth required, in an RU-1-7 (Single Family Residential) zoning classification, on 0.09 acres, located on the north side of Atlantic Ave., approx. 742 feet west of N. Highway A1A. (123 Atlantic Ave., Indialantic) (Tax Account 2716177) (District 5)

John Kersting, 927 Lydia Circle, Indian Harbor Beach, Florida, stated he is the buyer of the subject property and he would like to build two residential homes on the property; it's actually two lots being sold as one, and they don't meet the minimum square footage requirements. He is asking for the variance in order to build two single-family homes. There are numerous examples on the street; one of which was just completed earlier this year.

Bill Huffman stated he visited the properties and the back property line of the two lots are in line with the other lots on the street, so all of the other properties in the area have the same depth problems. He said he did not realize there were two homes being proposed. He asked if the applicant is building a home on each of the properties.

Mr. Kersting replied yes, there are one or two examples of similar lots where there is one large home on two lots, and there are several examples of homes that have been built on lots that have a width of 50 feet.

George Bovell stated there is a recommendation in the agenda packet that says if the lots were combined there can have be a substantial single-family home similar to the ones on either side of the street.

Mr. Kersting stated the one house he referred to is on the south side of the street at 112 Atlantic Avenue; all of the aerial photos still show it as vacant, but there is a home there now that was recently built.

Mr. Body stated the parcel Mr. Kersting is referring has a variance for the minimum lot width, but they changed the zoning so they wouldn't need a variance for lot depth. It is a single-family home on the same sized lot, 50 x 80.

Mr. Huffman asked if the homes will fit within the setbacks. Mr. Body replied the setbacks for a house are 20 feet from the front and rear property line, and 5 feet from the side property lines.

Mr. Rhodes stated the board's biggest concern would be that the lots are in conformity with the rest of the neighborhood and that Mr. Kersting is not being given something that nobody else in the neighborhood has. He asked if Mr. Kersting has had any conversations with the neighbors. Mr. Kersting replied yes, and they are happy to see the lots being developed.

No public comment.

Motion by Bill Huffman, seconded by George Bovell, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

**(21PZ00078) Gezim & Zamira Doci** (John M. Kersting)

Variations from Chapter 62, Article VI, Brevard County Code, as follows: 1) Section 62-1342(4) to permit a variance of 1,000 square feet from the 5,000 square-foot lot area required; 2) Section 62-1342(4) to permit a variance of 20 feet from the 100-foot minimum lot depth required, in an RU-1-7 (Single Family Residential) zoning classification, on 0.09 acres, located on the north side of Atlantic Ave., approx. 792 feet west of N. Highway A1A. (125 Atlantic Ave., Indialantic) (Tax Account 3021741) (District 5)

John Kersting, 927 Lydia Circle, Indian Harbor Beach, Florida, stated he would like to ask for the same variance as the previous item.

Bill Huffman stated he accepts Mr. Kersting's testimony from the previous item.

No public comment.

Motion by George Bovell, seconded by Bill Huffman, to approve the variance as depicted on the survey provided by the applicant. The motion passed unanimously.

**(21PZ00080) James D. Ladd**

A variance Chapter 62, Article VI, Brevard County Code, Section 62-1402(5)(c) to permit a variance of 2.7 feet from the required 7.5-foot rear setback for an accessory structure, in a TR-1 (Single Family Mobile Home) zoning classification, on 0.16 acres, located on the south side of Ronald St. approx. 105 feet west of Cherry Ave. (321 Ronald St., Cocoa) (Tax Account 2317176) (District 1)

James Ladd, 321 Ronald St., Cocoa, Florida, stated his shed was built in 1965.

Jack Higgins stated there are lot of similar sheds in the neighborhood, so it does conform.

No public comment.

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

**(21PZ00084) Deborah Hobbs (Tommy Hobbs)**

Variances from Chapter 62, Article VI, Brevard County Code, as follows: 1) Section 62-1402(5)(c) to permit a variance of 1 foot from the required 7.5-foot rear setback for an accessory structure; 2) Section 62-1402(5)(c) to permit a variance of 2.4 feet from the required 7.5-foot rear setback for an accessory structure; 3) Section 62-1402(5)(c) to permit a variance of 0.3 feet from the required 7.5-foot rear setback for an accessory structure; 4) Section 62-1402(5)(c) to permit a variance of 0.4 feet from the required 7.5-foot side setback for an accessory structure; 5) Section 62-1402(5)(c) to permit a variance of 5 feet from the required 5-foot minimum spacing between structures; 6) Section 62-1402(5)(c) to permit a variance of 5 feet from the required 5-foot minimum spacing between structures; 7) 62-2100.5(1)(a) to permit a variance of one more accessory structure than the two accessory structures allowed on a 8,063 square foot lot, in a TR-1 (Single Family Mobile Home) zoning classification, 0.18 acres, located on the north side of Norfolk St., approx. 228 feet east of Kinsley Rd. (3306 Norfolk St., Mims) (Tax Account 2103038) (District 1)

Deborah Hobbs, 3306 Norfolk St., Mims, Florida, stated the three structures in her backyard were there when the mobile home was put on the property. She said she is replacing the current mobile home with a new mobile home and that is why she needs the variances.

Jack Higgins asked if there were any permits on record for the three structures.

Paul Body stated there are no record of any permits, as paper records of any permits would have been destroyed after 10 years.

Ms. Hobbs stated she has written consent from her neighbors. [the letters can be found in file 21PZ00084, located in the Planning & Development Department]

Mr. Higgins asked what the structures in the rear of the property are made out of. Ms. Hobbs replied one is concrete; the one in the middle is a metal carport; and the one to the right is wooden. There is a concrete building attached to the current mobile home that will be removed, and it will not be replaced.

George Bovell stated if the mobile home wasn't going to be replaced she wouldn't be before the board. He said as long as the footprint of the mobile home is not increasing, he does not have a problem with things as they are.

Mr. Rhodes stated his concern is that all the exterior structures are next to each other, and if there is a problem with one of them it's going to take out the entire property. He said the board has a responsibility to ensure safety, and he does not see that this is safe. He said if there were just the three in the back and the one in the middle wasn't there, it wouldn't as much of a problem.

Mr. Bovell stated the house to the left is similar, and that's the nature of the neighborhood. He reiterated if the mobile home wasn't being replaced the applicant would not be before the board asking for a variance.

No public comment.

Ms. Hobbs stated as to the metal shed in the middle, it has six-foot tie downs, and everything is secured.

Motion by George Bovell, seconded by Jack Higgins, to approve the variance as depicted on the survey provided by the applicant. The motion passed 3:1, with Dale Rhodes voting nay.

**(21PZ00085) Howard L. Gasman (Robert & Mary Gasman)**

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1334(4) to permit a variance of 0.78 acres from the 2.5-acre minimum lot size required for proposed AU (Agricultural Residential) zoning classification. The parcel is currently in a GU (General Use) zoning classification, on 1.72 acres, located on the north side of Cangro St., approx. 617 feet west of Osprey Ave. (5640 Cangro St., Cocoa) (Tax Account 2402174) (District 1)

Robert Gasman, 4660 Tangerine St., Cocoa, stated he would like a variance in order to get the zoning changed to agricultural, which would allow him to build an accessory building for agricultural purposes.

Jack Higgins stated the request is in uniformity with the neighborhood.

Dale Rhodes asked staff if the applicant has to get the variance before he can rezone the property.

Paul Body replied yes.

Mr. Rhodes asked if the other properties in the area are zoned GU or AU. Mr. Body replied the area is a combination of GU and AU.

No public comment.

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

**(21PZ00086) Doris Gonyea (Tawnya Brown)**

A variance from Chapter 62, Article VI, Brevard County Code, Section 62-1402(5)(c) to permit a variance of 2.5 feet from the required 7.5-foot side setback for an accessory structure, in a TR-1 (Single-Family Mobile Home) zoning classification, on 0.17 acres, located on the west side of Blue Bonnet Dr., approx. 145 feet north of Elder Road (6857 Blue Bonnet Dr., Cocoa) (Tax Account 2318124) (District 1)

Ed Mander, 6857 Blue Bonnet Dr., Cocoa, stated his mother had a mobile home replaced by Rebuild Florida; the new home is 1.5 to 2.5 feet closer to the property line on the side, and it's closer to the

garage than what it is supposed to be. The new home is longer and wider than what was there previously. The garage is over 40 years old; it is concrete block. The neighbor who owns the adjoining property signed an affidavit stating he had no problem with the difference in closeness to his property line, as long as it didn't exceed his property line.

Dale Rhodes asked staff if the board is legitimizing only the concrete structure.

Paul Body replied yes, it is to legitimize the accessory structure for the permit.

No public comment.

Motion by Jack Higgins, seconded by Bill Huffman, to approve the variances as depicted on the survey provided by the applicant. The motion passed unanimously

Upon consensus, the meeting adjourned at 3:05 p.m.