

## **BOARD OF ADJUSTMENT MINUTES**

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, September 21, 2022, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair Bill Huffman presiding, to consider the requests below:

Board members present were: Jack Higgins, Vice Chair, (D1); Kevin McCann, (D2); George Bovell (D4); and Bill Huffman, Chair, (D5).

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

Bill Huffman called the meeting to order at 1:30 p.m.

Paul Body explained the function of the Board of Adjustment; George Bovell explained the definition of a hardship; and Bill Huffman explained the procedures of the Board of Adjustment. All speakers were sworn in at the beginning of each item.

### **Approval of August 17, 2022, Minutes**

Motion by Jack Higgins, seconded by George Bovell, to approve the August 17, 2022, minutes. The motion passed unanimously.

### **Jeffrey D. & Gayle T. Kluesner**

Variances from Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1340(5)(a), to permit a variance of 12 ft. from the required 20-ft. rear setback for a principal structure; 2.) Section 62-1102, to permit a variance to allow an additional structure to be attached to the principal structure without having a common roof with similar design to the principal structure, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.37 acres, located on the southeast corner of Bahama Dr. and N. Riverside Dr. (595 Bahama Dr., Indialantic) (21PZ00096) (Tax Account 2730449) (District 5)

Jeff Kluesner, 595 Bahama Drive, Indialantic, stated in 2015 he built an accessory building based on what a general contractor said he could do. The contractor told him he came before the board and was granted a variance, and later he found out the contractor lied, but only after the building was built. He said since then, he retained another contractor who explained the variance process. He stated he would like to connect the accessory building to the principal structure, and there is six feet between the two buildings.

Bill Huffman stated he drove by the property and Mr. Kluesner's house seems to be in keeping with others in the neighborhood, so he doesn't have any questions.

George Bovell stated Mr. Kluesner explained his hardship in dealing with the first contractor, and he also has letters of support from his neighbors, so he doesn't have any questions.

No public comment.

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

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for denying the variances.

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

**Joseph V. and Kelly A. Collura** (Tracee Huff/Scott Herber)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2118(d)(3), to permit a variance of 2.3 feet over the maximum 16-ft. projection (20% the width of the waterway) for a boat dock, in a RU-1-11 (Single-Family Residential) zoning classification. The property is 0.20 acres, located on the east side of Artemis Blvd., approx. 0.4 mile east of N. Courtenay Pkwy. (175 Artemis Blvd, Merritt Island) (22V00009) (Tax Account 2418390) (District 2)

Scott Herber, 351 South Lakeside Drive, Satellite Beach, representing the property owner, stated they are asking for a variance of 2.3 feet of an extension into the waterway. The regulations state that no structure can be greater than 20% the width of the waterway. He said he did an aerial interpretation and came up with 78.44 feet; the contractor had someone swim across the canal, and they measured a little over 79 feet. He said for conservative purposes, he is using 78 feet, which means a dock cannot extend further than 15.6 feet. The structure itself, from seawall to seawall, is only 15.5 feet, so it's under the 20% of the width of the waterway, which coincides with what the Army Corps of Engineers requires for navigational purposes. He said the reason for the extension is because the measurement into the waterway is being taken from the property line and not the position of the seawall, which was built further into the water by a previous owner. He said normally, a seawall is supposed to be at the property line or behind, and that is why the dock is extended further out, but still not extending beyond 20% of the waterbody width. He said they are asking for a variance of the 2.3 feet due to the mis-positioning of the seawall.

Jeffrey Ball stated the dock code, Section 62-2118, has been updated, and when talking about dock projection, if on a platted waterway, the width of the canal is the platted waterway. With it being on a seawall, that is where the measurement starts, so they get 20% from the seawall, out into the canal. That is how the current code is written for the projection. He said it is an 80-foot canal width, so he would get 16 feet, and he's asking for 2.3 feet.

Kevin McCann asked when the dock was built. Mr. Herber replied it was built approximately one year ago, by a marine contractor, and it was permitted.

George Bovell noted there are letters of support from neighbors on the canal and they all say there is enough room.

No public comment.

Motion by Kevin McCann, seconded by George Bovell, to approve the variance as depicted on the survey provided by the applicant.

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Mr. McCann stated he visited the property and walked onto the dock, and there is plenty of space for boats to navigate.

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

**Frederick M. and Sandra N. DeArment**

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1334(4), to permit a variance of 45 ft. from the required 150-ft. lot width in an AU (Agricultural Residential) zoning classification; 2.) Section 62-1334(4), to permit a variance of 0.57 acres from the required 2.5-acre minimum lot size in AU. The property is 1.89 acres, located on the east side of S. Tropical Trail, approx. 85 ft. south of River Cliff Lane (892 S. Tropical Trail, Merritt Island) (22V00018) (Tax Account 2501521) (District 2)

Frederick DeArment, 892 S. Tropical Trail, Merritt Island, stated after he purchased the property he found out there was a zoning issue that had existed for nearly 50 years. The code changed in the 1970's which put the property outside of the agricultural size classification. He said the previous owner had used the property agriculturally and applied to change the zoning in order to legitimize it, but the board denied the request, forcing it to remain illegitimate. He said he found out about the issue when he applied for permits to renovate the house.

Public Comment:

Shelly McKenzie, 950 S. Tropical Trail, stated she owns the property next door and she would like for Mr. DeArment to remain zoned agricultural because it is good for the area.

Motion by Kevin McCann, seconded by Jack Higgins, to approve the variances as depicted on the survey provided by the applicant.

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variance.

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

**TGAC Real Estate, LLC** (Sergio Garcia)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1483(5)(a)(2), to permit a variance of 1.3 ft. from the required 25-ft. front setback for a principal structure, in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The property is 3.79 acres, located on the south side of E. Merritt Island Cswy., approx. 0.19 miles east of Newfound Harbor Dr. (1775 E. Merritt Island Cswy., Merritt Island) (22V00022) (Tax Account 2438639) (District 2)

Sergio Garcia, 4301 Vineland Road, Orlando, stated he is the Civil Engineer for the project, which is a boat dealership, Boateka, and the interior has been renovated from a car dealership to a boat dealership. They are now ready to improve the site by bringing the property up to code as far as improving the drainage and asphalt, and the County requires a variance from the existing building setback of 1.3 feet.

Kevin McCann asked how far the property line extends to the street. Mr. Garcia replied approximately 40 feet.

No public comment.

Motion by Kevin McCann, seconded by George Bovell, to approve the variance as depicted on the survey provided by the applicant.

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Mr. Huffman agreed there is a very broad shoulder between the property and S.R. 520, which would mitigate the building being closer to the property line.

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

**Robert J. and Carol L. Anderson** (Woody Donnelly)

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1334(4), to permit a variance of 0.39 acres from the required 2.5-acre minimum lot size in the AU (Agricultural Residential) zoning classification; 2.) Section 62-1334(4), to permit a variance of 75 ft. from the required 150-ft. lot width in AU. The property is 2.106 acres, located on the south side of Pennsylvania Ave., approx. 305 ft. west of U.S. Highway 1. (3845 Pennsylvania Ave., Mims) (22V00026) (Tax Account 2004729) (District 1)

Woody Donnelly, 3855 Pennsylvania Avenue, Mims, stated he is trying to purchase the subject property from his in-laws, who bought the property in 2006, but it is separated by a roadway from an existing house that was built in 1959. He is trying to get that separate piece of property, which they have a separate survey for when they purchased it. He stated the property has a 75-foot easement that would connect it to Pennsylvania Avenue in the future, and not on the private easement he shares with his in-laws.

Jack Higgins asked if he is referring to the vacant house to the south. Mr. Donnelly replied yes, that house had the original piece of property across the easement and then that house had 1.5 acres behind it and it also had property that extended beyond his in-law's.

Mr. Higgins asked if it was a flag lot. Mr. Donnelly replied it was laid out that way in zoning, but when they originally did that plot back in the 1950's it wasn't assigned as a flag lot in zoning.

Mr. Higgins stated the request would blend in with what is already in the area, and he doesn't see a problem with it.

George Bovell asked for clarification that the lot width is because he is developing a flag lot, and the front of the lot is going to be a driveway to get into where he will be building.

Mr. Donnelly stated originally, he was going to use the easement that they all privately share, but its never been County-maintained. He said he owns the house on the corner, at 3855, and Pennsylvania Avenue stops there. His house was built in 1958 and his in-law's house was built in 1987 after the zoning change. He said he doesn't think they designed it that way, but he is applying for the variance on the 75 feet in case he needs to connect it to Pennsylvania Avenue, he would have that option if there was ever a dispute about access to the road.

Jeffrey Ball stated regardless of the board's decision today, the applicant is still required to meet the access code requirements in Section 62-102.

Mr. Bovell stated if the board approves the lot size and lot width, essentially it is saying the flag lot is good.

No public comment.

Mr. Donnelly stated he questioned the wording when his sign was posted, and staff told him he might have to come back for a flag lot, but he hopes to use the existing right-of-way that is already being shared by three houses.

Motion by Jack Higgins, seconded by George Bovell, to approve the variances as depicted on the survey provided by the applicant.

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variances.

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

**Charlotte A. Jillson** (Dwayne Dingus)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1405(6)(a), to permit a variance of 1.8 ft. from the required 7.5-ft. side (south) setback for a principal structure in a TRC-1 (Mobile Home Cooperative) zoning classification. The property is 0.12 acres, located on the west side of Periwinkle Circle, approx. 130 ft. south of Gladiolus Drive. (719 Periwinkle Circle, Barefoot Bay) (22V00027) (Tax Account 3003787) (District 3)

Dwayne Dingus, 3705 Third Avenue, Malabar, stated approximately a year ago he applied for a permit to re-build a screen enclosure under an existing roof. Zoning disapproved the permit because the County has started making every home come into compliance before issuing any permits. He said he is not building outside the existing structure, he's only making improvements to an old home. He noted he has already been granted a vacation of an easement on the property.

No public comment.

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

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variance.

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

**Krodel Properties, LLC** (Keith Krodel/Deborah Wilburn)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1340(5)(a), to permit a variance of 5 ft. from the required 20-ft. side street setback, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.32 acres, located on the southwest corner of S. Banana River Dr. and Orris Ave. (1425 S. Banana River Dr., Merritt Island) (22V00028) (Tax Accounts 2514967 & 2514968) (District 2)

Keith Krodel, 2756 Newfound Harbor Drive, Merritt Island, stated the request is for a 5-foot variance from the 20-foot side street setback contiguous to a key lot. The key lot that is contiguous will never be able to be built on and is completely comprised of a drainage ditch that runs down the entire length of S. Banana River Drive. He pointed out that the lot was platted many years ago before key lots were

an issue, and if platted today it would be a drainage tract rather than a buildable lot. He stated he has correspondence from the County that says the setback would be 15 feet, so he moved forward with building plans and engineering. He said the final comment on the permit from the County was that he needed a 20-foot setback instead of a 15-foot setback. He stated if the variance is granted, there will be a setback of 15 feet that normal corner lots have when not contiguous to a key lot; therefore, there will not be any detriment to the surrounding community.

Public comment.

Jonathan Hey, 1420 S. Banana River Drive, stated he is opposed to the variance unless he had more information.

George Bovell stated the variance is to the side street, not to the front or the back. The house across the street is a similar distance. Mr. Hey stated his house is on the right. Mr. Bovell stated if the variance is granted, it won't be any closer to the street than his house already is. Mr. Hey stated his house is on the other side of S. Banana, closer to the river.

Kevin McCann stated Mr. Hey's house is across the street, and the variance request is for 5-feet from the side setback, which would be Orris Avenue, so it won't encroach any closer to his property.

Paul Body clarified that the house being proposed will be 40 feet off of S. Banana River Drive. Mr. Krodel is asking for 15 feet from Orris Avenue, the side street setback. He said if Mr. Hey is on the Banana River, the proposed house will be 40 feet from his property.

Mr. Hey stated he understands.

Mr. Krodel stated he lives in the community and what he's going to do will be a perfect tie-in with the rest of the community and it will be an island-style home. He reiterated the house will be 15 feet from Orris Avenue, and 40 feet from S. Banana River Drive.

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

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variance.

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

**Robert J. Brooks**

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1401(5)(b), to permit a variance of 9.47 ft. from the required 15-ft. side (east) setback for an accessory structure; 2.) Section 62-2100(1)(d), to permit a variance of 2,576.5 sq. ft. over the 1,053.5 sq. ft. (50% of living area of principal structure) allowed for an accessory structure; 3.) Section 62-2100(1)(b), to permit a variance of 1,555.7 sq. ft. over the total floor area of 2,578 sq. ft. of the principal structure allowed for all detached structures. All variances are in the RRMH-1 (Rural Residential Mobile Home) zoning classification. The property is 2.45 acres, located on the south side of Gandy Rd., approx. 0.22 miles east of Hog Valley Rd. (4725 Gandy Rd., Mims) (22V00029) (Tax Account 2002218) (District 1)

Robert Brooks, 4725 Gandy Road, Mims, stated he bought the house in 1998 and it was an old trailer on a nice lot with a nice garage. The trailer was dilapidated to the point it was almost un-inhabitable. He said he hired a contractor to build a new house and have the trailer removed, but he had to stop working because the garage was too big for the house, and that's why he's asking for approval to keep the garage that has been there and allow him to build a new house.

Jack Higgins stated it looks like there are some campers on the property. Mr. Brooks replied he has a motor home on the property now because a couple of weeks ago there were some people entering the property and stealing things off of the property and out of his garage.

Mr. Higgins stated what Mr. Brooks plans on doing is an improvement from what was there.

No public comment.

Motion by Jack Higgins, seconded by George Bovell, to approve the variances as depicted on the survey provided by the applicant.

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variances.

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

**Jerry G. and Lennie G. Ballard** (John and Robin Karlovitch)

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1334(5)(b), to permit a variance of 6.5 ft. from the required 15-ft. side (west) setback for an accessory structure; 2.) Section 62-1334(5)(b), to permit a variance of 13.2 ft. from the required 15-ft. side (east) setback for an accessory structure in an AU (Agricultural Residential) zoning classification. The property is 5.19 acres, located on the north side of Milwaukee Ave., approx. 138 ft. west of LaVeta Dr. (3280 Milwaukee Ave., Melbourne) (22V00030) (Tax Account 2802092) (District 5)

John Karlovitch, 200 Orlando Boulevard, Indialantic stated he boards two horses on the property and he is trying to purchase part of it. He stated the plan started out as 1.5 acres and an easement agreement, but when he contacted the Planning and Development Department he was told he can't put anything on the property because the County doesn't accept easements, and he would need to apply for a flag lot, so he applied for a flag lot. He said it took a long time to get a survey for the flag lot in order to get a preliminary approval letter. He stated when he submitted everything for the other parcel, there is a structure on it that doesn't meet the setback requirements. It was built in 1971 by Mrs. Ballard's father, and that is why he needs the variance, so he can purchase the property. He noted there is another small structure that is a lean-to for a horse shelter that is too close to the flag stem, and that met the setback requirements, but because of the flag stem it is too close. If approved today, he still needs a preliminary approval letter to be able to have a flag lot.

Bill Huffman asked if the sheds can be moved. Mr. Karlovitch replied he plans on removing the sheds, or re-building them. The one her father built has sentimental value, but he doesn't see them staying very long, and it is something they can address.

Mr. Huffman stated Mr. Karlovitch is looking for a 32-foot access to the rear property, according to the survey, but the code is a minimum of 25 feet, and asked why he can't get away with 25 feet.

Mr. Karlovitch stated the surveyor was the one who came up with that. He said he started out with 1.5 acres and the County said he needed 2.5 acres for AU zoning. He noted he doesn't have any real plans for the property at this time, but he needs the flag stem if he were ever to build a home, and he have an agreement to use the common easement. He said the surveyor would not put the easement on the survey because of the flag stem. The reason he made it 32 feet is so it didn't come up too much onto the Ballard's property, because the front line would come up too close to the structure that he needs the variance for. He stated that's why the flag stem is so wide, because if it was thinner it would be too close to the structure needs the variance.

Mr. Huffman stated it sounds like the surveyor said he needs 2.5 acres, so he widened the flag stem in order to make up the 2.5 acres. He said Mr. Karlovitch doesn't need the 32 feet, he could get away with the minimum 25 feet, and asked if there is any other way to make up that acreage. Mr. Karlovitch replied no, not according to the surveyor, and Planning and Development said they would not approve an easement.

Kevin McCann asked if Variance #1 is for the larger of the two sheds on the west side of the property. Mr. Karlovitch replied yes. Mr. McCann stated that is definitely not changing, it's a pre-existing shed since 1972. He asked if Variance #2 is the smaller shed on the east side of the property. Mr. Karlovitch replied yes, and originally, he was going with a smaller flag stem which put it in compliance. Mr. McCann stated the smaller shed was in compliance with code until he now wants to make the property a flag lot and the stem of the flag lot encroaches toward the shed, which only creates a distance between the shed and the property line of 1.8 feet. Mr. Karlovitch replied that is correct. Mr. McCann asked what kind of shed is the smaller one in variance #2. Mr. Karlovitch replied it is 4x4 posts, basically a horse stall with a roof and three sides so an animal can have shelter. Mr. McCann asked if that shed could be moved. Mr. Karlovitch replied it would be difficult with the way the posts are cemented.

Mr. Huffman stated there is a note on the survey that says the sheds will be removed for flag lot application approval. Mr. Karlovitch stated he spoke to Planning and Development, and because they are shelters for animals and they will either be removed or repaired, staff agreed to allow them.

Paul Body pointed out the property is zoned AU, which can have accessory structures that are accessory to agricultural uses, and that's what the sheds will be used for.

Public comment:

Jerry Ballard, 3280 Milwaukee Avenue, West Melbourne, stated when he built the structures, the County told him to build them to code and gave him all of the setbacks. The sheds are all hurricane clipped and built according to code. He said Mr. Karlovitch has volunteered to help maintain the property, as well as the sheds.

Motion by Kevin McCann, seconded by George Bovell, to approve the variances as depicted on the survey provided by the applicant.

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variances.

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



**Donald K. and Maria K. Kosick, Trustees (Kris Kosick)**

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1337(5)(b), to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure, in an SEU (Suburban Estate Use Residential) zoning classification. The property is 2.59 acres, located on the west side of S. Tropical Trail, approx. 0.42 mile south of Hilliard Lane. (7105 S. Tropical Trail, Merritt Island) (22V00031) (Tax Account 2605898) (District 2)

Donald Kosick, 7105 S. Tropical Trail, Merritt Island, stated he bought the land in 2020 and built the house on the back 1/3 of the property, and put the septic and drainfield behind it to keep it as far away from the river as possible. The garage will take up less than 1% of the total area of the land, and the only place he can put the garage is in the front yard because the back yard has the septic tank and drainfield. He noted nine of his other neighbors have the same situation.

Kevin McCann asked what the structure will look like. Mr. Kosick stated it will be a combination two-car garage and two-car carport, approximately 40 feet long and 25 feet wide. Mr. McCann asked if it will match the aesthetics of the house. Mr. Kosick replied yes, and it will be single-story.

Bill Huffman stated the County is trying to get more people onto sewer near the river, and asked if Mr. Kosick has heard of such a program. Mr. Kosick replied no, but he looks forward to that, and he hopes sewer is planned in the area, because he is very ecologically minded.

George Bovell noted there is a letter of opposition, but clearly the person doesn't understand. The reason he put the septic and drainfield in the back is to protect the river, so essentially, the best place for the garage is in the front.

Mr. Kosick stated the letter is from Mr. Saladino who is his neighbor and he has two accessory structures in front of his house, including his garage, so it seems strange he would object to his.

No public comment.

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

Bill Huffman read aloud the six criteria for a hardship and explained the justifications for approving the variance.

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

Upon consensus, the meeting adjourned at 3:13 p.m.