

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, April 19, 2023, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair Dale Rhodes presiding, to consider the requests below:

Board members present were: Sonya Mallard (D1); Kevin McCann, (D2); Dale Rhodes, Chair; (D3); John Thomas (D4); and Dave Neuman, (D5 Alt).

Staff members present were: Jeffrey Ball, Planning & Zoning Manager; Becky Behl-Hill, Assistant County Attorney; Paul Body, Planner III; and Jennifer Jones, Special Projects Coordinator.

Chair Dale Rhodes called the meeting to order at 1:30 p.m.

Paul Body explained the function of the Board of Adjustment; Kevin McCann explained the definition of an undue hardship; and Dale Rhodes explained the procedures of the Board of Adjustment. All speakers were sworn in at the beginning of each item.

Approval of February 15, 2023, Minutes

Motion by Kevin McCann, seconded by Dave Neuman, to approve the February 15, 2023, minutes. The motion passed unanimously.

AKM Gratitude of Prosperity, LLC (f.k.a. Paula L. Herron and Claudia Volland) (Katelyn Malenfant)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-1481(5)(a)(1), to permit a variance of 36.78 ft. from the required 50-ft. front setback for a principal structure in a BU-1-A (Restricted Neighborhood Commercial) zoning classification, currently zoned RU-1-11 (Single-Family Residential). The property is 0.34 acres, located on the south side of E. Merritt Ave., approx. 230 ft. west of N. Plumosa St. (375 E. Merritt Ave., Merritt Island) (22V00021) (Tax Account 2426731) (District 2)

Katelyn Malenfant stated the former property owners intended to rezone the property to commercial use, and the new owners have the same intention.

Kevin McCann asked if it is Ms. Malenfant's understanding that the variance request is for the position of the building in relation to the distance from the road. Ms. Malenfant replied she is not certain about the variance request, but the new owners would like to be rezoned to commercial.

Mr. McCann explained the Board of Adjustment hears variance requests, and there is a different process for rezoning. He said the variance request is for 36.78 feet from the required 50-foot front setback for a principal structure in a proposed BU-1-A zoning classification. He stated the structure in question was pre-existing before the sale of the property, and asked if Ms. Malenfant believes there is sufficient distance from the road for safety purposes.

Ms. Malenfant replied it is short from the mailbox to the road, and it is also a short distance from the driveway to the road. She said she was told it was pushed back for the widening of Merritt Avenue, taking away from the front yard.

Mr. McCann asked if she researched the two properties on either side of the subject property. Ms. Malenfant replied yes, they are both zoned for business and residential use.

Dale Rhodes asked if Ms. Malenfant knows what the new owners plan to do with the structure. Ms. Malenfant replied they want to have a salon and spa business.

Mr. Rhodes asked if the owners will leave the structure in place, or if they intend to tear it down. Ms. Malenfant replied they intend for it to remain.

Public comment.

Carter Hayes, 1210 S. Atlantic Avenue, Cocoa Beach, stated the existing house has been on the property for a long time, and when Merritt Avenue was widened, a lot of the land was lost, and now the house is in violation. He said he is in favor of the variance.

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

Mr. McCann stated he visited the location and is familiar with the area. The two adjacent properties are zoned for commercial and residential combined, and there are businesses operating on both of them. He said when he walked the property it seemed like there is sufficient room between the structure and the road, and he approves of the variance.

Mr. Rhodes stated the request is a 74% deviation from what the code allows, and his concern is once it is approved, if they decide to tear down the structure and build another structure, parking and safety requirements could be an issue. He said he would like to make an amendment to the motion that the variance be approved contingent upon an agreement that the current structure will not be torn down, and that it is the structure to be used for the business.

Mr. McCann stated the structure is currently being substantially remodeled, and in speaking with one of the owners, they said they will not be tearing down the structure.

Paul Body noted the property owners will have to go through site planning to be able to turn the property into a commercial use if it is rezoned to BU-1-A. He said the board can approve the variance for the existing structure only, as depicted on the survey.

Mr. Rhodes stated his amendment is to approve the variance specifically for the existing structure on the survey.

Mr. McCann seconded the amendment to the motion.

John Thomas asked if the amendment is necessary if the property has to go through site planning to make sure it meets Code.

Mr. Rhodes stated if they decide to tear it down, they can build another structure and can come up to the point it is. Even though the County may not want them that close to the road, they can't stop it because the variance has been approved.

Jeffrey Ball explained that the request before the board is for a variance from the front setback. If the variance gets approved, the next step is to rezone the property through the Planning and Zoning Board and the Board of County Commissioners for BU-1-A zoning. If the rezoning is approved by the County Commission, the next step would be to submit a site plan for review, which includes zoning

and other County departments to make sure it meets code requirements, such as parking, stormwater, and other criteria.

Mr. Rhodes stated in the future they might build something that could be more of an issue than the existing building; they could build it taller or wider, which would be an issue, and that's what he's trying to protect against.

Mr. McCann stated his initial motion includes the current structure because it was made based on the application and what is depicted on the survey, and that structure is on the survey. He said he would not want to limit the property owner with repairs should something happen to that structure. He stated he supports his initial motion to approve the variance as depicted on the survey provided.

Mr. Rhodes stated he doesn't think the amendment would preclude them from making repairs to the structure if it is damaged, it just precludes them from tearing the current structure down and building something else close to the road.

Mr. Thomas stated his concern is for the property owner, and there is already a number of steps they have to go through if they want to build something new. He said his concern is creating an undue level of bureaucracy for the owners because if they want to build something new, they should have that right without going through an extra hoop to be able to do it.

Mr. Rhodes stated he to ensure that safety is not going to be an issue. If the board allows them to build that close to the road, it can be an issue in the future, which is why he would like to amend the initial motion. If they want to build a new building, they would have to apply for a new variance, and at that point the board can determine if it is a safety issue. He stated the board can vote on the amendment first, if it is approved it becomes part of the motion; if it is not approved, the board can vote on the original motion.

Mr. McCann withdrew his second to the amendment to the original motion.

Mr. Rhodes called for a second to the amended motion, and seeing none, the amendment failed.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Dale Rhodes called for a vote on the initial motion as stated, and it passed 4:1, with Dale Rhodes voting nay.

IR Tiki 2, LLC (Steve Monroe)

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-2105(b), to permit a variance of 11.8 ft. from the required 32.91 ft. (30%) breezeway corridor on riverfront property; 2.) Section 62-1485(5)(a)(4)(a), to permit a variance of 6.59 ft. from the required 15-ft. side (south) setback for a structure, in a BU-1 (General Retail Commercial) zoning classification. The property is 0.96 acres, located on the east side of U.S. Highway 1, approx. 900 ft. south of Coquina Ridge Dr. (4263 N. U.S. Highway 1, Melbourne) (22V00052) (Tax Account 2611662) (District 4)

Steve Monroe, 3080 Brandywine Lane, Melbourne, stated the project is on U.S. Highway 1, north of Post Road and is known as the old Captain Katana's restaurant, and now it is the Marker 99

restaurant. The current owners bought the property in 2020, but the original restaurant was built in 1978. The new owners have done improvements to the restaurant, including taking the septic system offline and installing a lift system and force main, and replacing the dirt parking lot with a new pervious parking lot, retaining 100% of the stormwater runoff. In regards to the variance requests, the existing breezeway was built in 1978, but the code section pertaining to breezeways was codified in 1979. The variance for the south side setback is because the property abuts residential; however, the building has been in existence since 1978. He noted the owners are not proposing any new improvements on the south property line.

John Thomas asked if the breezeway and tiki bar were constructed by an unlicensed contractor. Mr. Monroe replied the breezeway is the portion to the east that has been in existence since 1978; the new owners provided the new tiki bars that are there now. The westerly tiki bar is more of a canopy that can be purchased at Costco or Lowe's. He said staff identified that those improvements needed to be site planned, and it was red-flagged, affecting the breezeway requirement.

Mr. Thomas asked if there are any hardships for the adjacent residences. Mr. Monroe replied there is an existing residence on the south side, the tiki's are on the north side, and the westerly tiki abuts a vacant lot.

Mr. McCann asked if anything has changed with the setbacks or the breezeway since the new owners purchased the property. Mr. Monroe replied the tiki's were installed after the purchase in 2020. Mr. McCann asked if the tiki affected the breezeway or the side setback. Mr. Monroe replied it did not affect the side setback, but it did affect the breezeway requirement. Mr. McCann asked if the construction of the tiki narrowed the breezeway. Mr. Monroe replied yes, it is more of a canopy and open air space. Mr. McCann asked if there is sufficient space on both sides of the building for emergency personnel access. Mr. Monroe replied yes, and one of the improvements that will be gained by improving the parking lot will be the ability to get emergency vehicles in and out, which is part of the site plan review process.

Dale Rhodes asked if the Code Enforcement action is because the tikis were built without a permit. Mr. Monroe replied Code Enforcement identified the tikis and issued a letter to the owner; within 10 days the owners met with Code Enforcement on the site and reviewed the corrective action to get into compliance. He said the next step is site plan approval, then building permits. He said once those things are achieved, the owners will be in good standing.

Mr. Rhodes asked if staff has the ability to deny the tiki huts during site plan approval if the board approves the variances.

Paul Body replied the project is currently under site plan review; the review identified the property did not meet the breezeway requirement, and there was also an encroachment to the existing south building. Mr. Rhodes asked if the side setback is for an existing building. Mr. Body replied yes. Mr. Rhodes asked if the only thing the tiki huts affect is the breezeway. Mr. Body replied yes.

Mr. Monroe stated the owners have accepted responsibility and have taken action with Code Enforcement to take the necessary steps to get things corrected. He reiterated that the site was built in 1978, and the new owners have done a lot of work and upgrades, so the tiki hut might have been an oversight. He noted the tiki hut in question is not a physically built structure.

Mr. Thomas asked if the breezeway affects any residents. Mr. Monroe replied he doesn't feel that it does, because the breezeway is an east-west open space and there are no residences between U.S. 1 and the river; the north side is vacant commercial, and there is a developed residence to the south.

Public comment.

Glen Bryan, 4255 U.S. Highway 1, Melbourne, stated he has lived on the south side of the subject property for 20 years and has never complained; the new owners have cleaned up the property and have made it better. He said there is only 8.41 feet between the building and his fence. They are supposed to have 15 feet between the building and his property, but the building was built a long time ago. He said he can deal with the 8.4 feet, but the wording of the variance sounds like the restaurant is moving further south. He said he is supportive of the restaurant, but he would like clarification that the building is not going to move any closer to him.

Mr. Rhodes stated the variance for 6.59 feet from the required 15-foot south side setback is for the existing structure. The applicant is not asking to build anything closer to Mr. Bryan's property, or anything new, they are asking to legitimize the existing structure.

Mr. Monroe pointed out that the existing building may not meet the breezeway requirements, and if it does not, another variance will be requested in the future.

Mr. Thomas disclosed that the property owner contacted him for questions, but they did not have a conversation.

Becky Behl-Hill gave a brief summary of the Sunshine Law to the board.

Motion by John Thomas, seconded by Sonya Mallard, to approve the variance requests as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Dale Rhodes called for a vote on the motion as stated, and it passed unanimously.

Catherine S. Baldwin

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1340(4), to permit a variance of 5 ft. from the required 75-foot lot width for a principal structure; 2.) Section 62-1340(4), to permit a variance of 10 ft. from the required 75-foot lot depth for a principal structure; 3.) Section 62-1340(4), to permit a variance of 3,144 sq. ft. from the required 7,500 sq.-ft. minimum lot size, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.10 acres, located on the north side of West Virginia Ave., approx. 380 ft. east of S. Banana River Dr. (1850 West Virginia Ave., Merritt Island) (23V00004) (Tax Account 2514632) (District 2)

Catherine Baldwin, 1850 West Virginia Avenue, Merritt Island, stated she purchased her home in 1998, and it flooded during Hurricane Irma in 2017. She said the Rebuild Florida Program is assisting her in replacing her home. She said plans were submitted to the County when it was discovered that the lot is too small for a house. She said she was told she had a vested interest in the house since 2017, and she was able to get a permit to replace the roof.

Kevin McCann stated he visited the site, and the home needs to be replaced. He asked if the plan is to rebuild the home any larger than the current home. Ms. Baldwin replied no, the last version of plans was approved and the minimum square footage is acceptable.

No public comment.

Mr. Rhodes stated the situation meets the definition of a hardship.

Motion by Kevin McCann, seconded by Sonya Mallard, to approve the variance requests as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Dale Rhodes called for a vote on the motion as stated, and it passed unanimously.

Clearlake Commercial Center, Inc. (Jennifer Altreche)

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1483(5)(a)(4)(b), to permit a variance of 2.24 ft. from the required 5-ft. side (north) setback for a structure; 2.) Section 62-1483(5)(a)(4)(f), to permit a variance of 0.22 ft. from the required 25-ft. side street (south) setback for a structure, in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The property is 2.20 acres, located on the northeast corner of Clearlake Rd., and West Peachtree St. (300 & 310 Clearlake Rd., Cocoa) (23V00007) (Tax Account 2424131) (District 2)

Jennifer Altreche, 508 N. Harbor City Boulevard, Melbourne, stated the structure that is the subject of the variance requests is 2.24 feet into the setback requirements on the north side of the property, and 0.22 feet from the south setback requirement. The warehouse was built in its current configuration over 40 years ago, and her client has owned the property since 1985. She noted nothing has been improved or changed, and there are no plans to make it larger or smaller.

No public comment.

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

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Dale Rhodes called for a vote on the motion as stated and passed unanimously.

Lynn A. Hartman and Carl K. Hartman (Anna Long)

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1371(5)(a), to permit a variance of 7 ft. from the required 10-ft. side (south) setback for an accessory structure; 2.) Section 62-1371(5)(a), to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure, in an RU-2-4 (Low Density Multi-Family Residential) zoning classification. The property is 0.66 acres, located on the east side of Highway A1A, approx. 510 ft. south of River Oaks Rd., and across from Sea Grape Rd. (9115 Highway A1A, Melbourne Beach) (23V00008) (Tax Account 3008507) (District 3)

Anna Long, Dean Mead Law Firm, 420 S. Orange Avenue, Orlando, stated her clients are requesting two variances, both for an accessory structure. The property has double frontage, and the previous owners selected the frontage as Highway A1A, and as a result, anything on the ocean side is in conflict with zoning regulations. She stated her clients purchased the home with the existing structures in 2021, and the chickee hut was built in 2016. There have not been any changes to it, and there was no indication of a code violation during a title search, but her clients want to comply.

Dale Rhodes asked if the code violation is for the tiki hut that existed before they owned the property. Ms. Long replied yes.

Jeffrey Ball clarified the difference between a chickee hut and a tiki hut is when they added the electrical component, it turned into a tiki hut, and no longer a chickee hut.

No public comment.

Motion by John Thomas, seconded by Dave Neuman, to approve the variances as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variances.

Dale Rhodes called for a vote on the motion as stated and passed unanimously.

The board recessed at 2:51 p.m. and reconvened at 2:56 p.m.

Jeremy Cox-Stone and Amber Comrie

A Chapter 62, Article VI, Brevard County Code, Section 62-2100.5(1)(d), to permit a variance of 228 sq. ft. over the 1,280 sq. ft (50% of the living area of the principal structure) allowed for an accessory structure in an RR-1 (Rural Residential) zoning classification. The property is 2.05 acres, located on the south side of Carolwood Dr., approx. 0.30 mile west of Turtle Mound Rd. (4185 Carolwood Dr., Melbourne) (23V00009) (Tax Account 2702772) (District 5)

Jeremy Cox-Stone, 4185 Carolwood Drive, Melbourne, stated he initially contracted with Backyard Buildings for two, 24'x40-foot buildings. He later learned that two buildings would be over the allowable size, and he was approved for one, 26x40-foot building. He stated a concrete subcontractor formed the concrete at the wrong size, and after tracing everything, he found out the contractor did not call in the proper inspections, and the poured concrete and building was constructed at 30x50 feet instead of 26x40 feet. He stated the contractor skipped the form board survey which would have identified that the slab was poured too large. The concrete contractor also installed a temporary culvert at the road in order to be able to get the concrete trucks on the property. Since then, he has not been able to reach the contractor to rectify the problem, nor has the temporary culvert been removed. He stated he met with Code Enforcement this morning and has been granted an extra 30 days after today's hearing. He said if he has to remove the building in its entirety to build it to the right size, he will have to remove all of the concrete and building debris, and then form new concrete, which will be a substantial cost. He said he is requesting a variance in hopes of not having to remove the building in its entirety, and then rebuild.

Amber Cox-Stone, 4185 Carolwood Drive, Melbourne, stated the building is 228 square feet over what is allowed for the size of their house, which equates to 18%. She said if the building has to be torn down and re-built, it would cause a lot of construction traffic and noise, which would be an inconvenience for the neighbors.

Mr. Cox-Stone stated he talked to the neighbor to the right of him who has said he is fine with the size of the building and would prefer it not be torn down because of the construction noise next to his animals. [Mr. Cox-Stone submitted photos to the board. The photos can be found in file 23V0009, located in the Planning and Development Department].

Dave Neuman asked the purpose of the structure. Mr. Cox-Stone replied it is used to store his father-in-law's RV and his RV.

Mr. Neuman asked if he understands correctly that the concrete company poured an oversized slab, and from that point on, no one noticed and they continued to build the structure. Mr. Cox-Stone replied that is correct, and stated he trusted the contractor to provide what they were being paid for. Mr. Neuman stated he is surprised the contractor didn't tell him it would cost more money to build it to the size of slab that was poured.

John Thomas asked what is on the other side of the building. Mr. Cox-Stone replied his property backs up to a mobile home park and a privately owned street, but there are a lot of trees and shrubbery that guard the appearance from the other side. Mr. Thomas asked if it is his property or an easement. Mr. Cox-Stone replied there is at least 30 feet from the back of the building to the rear property line, and then it goes into a swale that is privately owned by the mobile home park.

Dale Rhodes asked if it is a metal building. Mr. Cox-Stone replied yes. Mr. Rhodes stated metal buildings are a specific size, 228 square feet can't be added, it has to be ordered larger, so at some point they knew they were building a bigger building. He asked if the contractor told him it would cost more. Mr. Cox-Stone replied he did not, but he has only paid a 50% deposit up until now, and he told the contractor final payment would be made when the final inspection was passed.

Mr. Rhodes asked if the contractor increased the cost of the building. Mr. Cox-Stone replied no.

Mr. Rhodes stated when someone orders a metal building, they have to know the size of the building that's coming and know it's not a 26x40-foot, but now a 30x50-foot. He asked if Mr. Cox-Stone had any notification that it would be a 30x50-foot building. Mr. Cox-Stone replied no, and stated he also did not get an updated contract after the County said he couldn't have two buildings.

Mr. Rhodes asked if he has something in writing from when it went to a single 26x40-foot building. Mr. Cox-Stone replied nothing was updated other than the permit by the County.

Mr. Rhodes stated he doesn't know what contractor would build a larger building than was ordered and not charge for it, because he had to know it was bigger than what was ordered.

Mr. Cox-Stone stated when he talked to the contractor after everything came to light, he said he realized his concrete contractor poured the slab incorrectly, but he built the building and hoped it would pass because it would cost him more money to tear out the concrete and re-form everything. He noted the contractor skipped the inspection that would have caught the size of the building; the

post-construction updated form board survey showed it was bigger, and that is when it was failed by the County.

Mr. Thomas asked if he has a sales contract from the initial purchase of the building. Mr. Cox-Stone replied the permit application is what he signed as the contract, and he also signed a Notice of Commencement for \$64,000 for two 26x40-foot buildings, but it was never updated when it went to one 26x40-foot building.

Mr. Rhodes asked if Mr. Cox-Stone had anything showing a single 26x40-foot building being built, or the 30x50-foot building. Mr. Cox-Stone replied no.

Mr. Rhodes stated because there is no documentation, the board has to take his word that he thought it was going to be a 26'x40-foot building and the contractor is taking on the cost of the extra concrete and metal. Mr. Cox-Stone replied it was approximately an extra \$14,000.

Mr. Rhodes asked if Mr. Cox-Stone has talked to the Department of Business and Professional Regulation about the contractor. Mr. Cox-Stone replied no. Jeffrey Ball suggested he call Contractor Licensing to see if there is a resolution.

Mr. McCann asked the original purpose of two 26x40-foot buildings. Mr. Cox-Stone replied his father-in-law wanted to be able to put his RV on one side and manual woodworking tools on the other side, but now that his in-laws moved out of the area, only the RV is stored in the building. He said he wanted a second 26x40-foot building for a future boat for himself.

Mr. McCann asked if the cost was adjusted once one of the buildings was eliminated. Mr. Cox-Stone replied yes, it was adjusted to \$32,000. Mr. McCann asked the current total cost of the building. Mr. Cox-Stone replied he has only paid the contractor \$14,500.

Mr. Rhodes asked if the two vehicles would fit side by side in the building if it was 4 feet less in width. Mr. Cox-Stone replied yes.

Mr. Ball noted Code Section 62-2117 references parking, locating, and storing of recreational vehicles and equipment, motor vehicles, and recreational vehicles for sale. He said the code is written for the property owner, and a recreational vehicle, or recreational vehicle equipment, shall be owned or used by the property owner, occupant, or guest; the code doesn't allow for someone who does not live there to be able to store recreational vehicles.

Mr. Cox-Stone asked if his in-laws could continue to park the RV on his property if they added him as a registered owner. Mr. Rhodes replied yes.

Public comment.

Frederick Barnhardt, 4275 Carolwood Drive, Melbourne, stated he lives three houses down from the subject property. He said the applicant is a contractor and runs a dumpster rental business from the property, which is zoned rural residential. He stated there is a roll-back dumpster truck currently in the building, and he has 8 - 11 dumpsters on his property. He said Mr. Cox-Stone moved to the property six months ago and removed all the trees, and he also brought a crane onto the property to dig a

pond, and in the process he tore up the road and blocked drainage from the property. He said Mr. Cox-Stone had the building built in order to run his business from it.

Mr. McCann asked if Mr. Barnhardt would have the same concerns if the metal building was 26x40 feet in size. Mr. Barnhardt replied yes, because of the business. Mr. McCann asked if Mr. Barnhardt's concerns are more about him running a business than the size of the structure. Mr. Barnhardt replied he is using the structure for his business. Mr. McCann asked if his opposition is to the size of the structure, or other issues. Mr. Barnhardt replied it is all incorporated. Mr. McCann asked, if the building was 26x40 feet, and everything else was the same, would Mr. Barnhardt be in opposition. Mr. Barnhardt replied he would have other issues, but not about the building.

Carol Farmer, 51 Phyllis Drive, Melbourne, stated she is the Community Manager of the manufactured home community on the other side of the tree line from the subject property. She said when the building was being constructed, residents in the community had to endure the applicant pumping out a manmade lake in the back yard and flooding their properties. She said she is also concerned with the elevation of the building because it will cause the homes that are 30 feet away to flood.

Mr. McCann asked if her concerns would be any different if the building was 18% smaller. Ms. Farmer stated it would depend on the elevation.

Frank Diamond, Jr., 100 Evelyn Drive, Melbourne, stated he lives in the mobile home park next door, and over the last year since the applicants bought the property, they have drained a pond that had wildlife in it, and cut all of the trees. He said he doesn't know why a contractor would build a metal building that was much bigger than the plans called for and what was ordered.

Mr. Rhodes asked Mr. Diamond why he is opposed to the building in question. Mr. Diamond replied it is a larger building than it is allowed to be, and there are 10 dumpsters on the property.

Mr. McCann asked if Mr. Diamond if he would have a problem with the building if it was 18% smaller. Mr. Diamond replied yes, he would still be opposed.

Carol Crawford, 4250 Carolwood Drive, Melbourne, stated Mr. Cox-Stone told her he was general contractor, but she didn't check to see if he was licensed. She said she called Code Enforcement after Mr. Cox-Stone put in the culvert, and was told a temporary permit was issued for a two-room addition to the house. She stated after that was when the dumpsters were brought onto the property and he began running an illegal business. She said she objects to the size of the building because it is excessive and will hurt property values. She noted she has had a real estate license for 30 years.

Mr. Neuman asked Ms. Crawford if she would still be in opposition if the building was the appropriate size. Ms. Crawford replied she would not be opposed if the building was smaller.

Mr. Cox-Stone stated he met with Code Enforcement and have come to a resolution. He added, he had a permit for the pond and for everything else he did on the property.

Mr. Rhodes asked if he received anything from the concrete contractor that said he built the building too big. Mr. Cox-Stone replied no.

Mr. Cox-Stone stated he considered shortening the building to be within the parameters, but the Building Department said that couldn't be done unless the concrete was taken out because the building has to be fastened on the footers.

Motion by Dave Neuman, seconded by John Thomas, to deny the variance request.

Mr. Neuman stated he has a hard time agreeing to the variance under the circumstances.

Mr. Thomas stated there is insufficient evidence provided by the applicant that shows he was not the cause of the circumstances. He said based on testimony of some of the public speakers, it sounds like the larger building is against the public interest.

Mr. McCann stated the variance request is strictly on the size of the building and whether it is going to be 1,280 square feet, which is allowed, or 228 square feet larger. He noted the majority of the speakers were opposed to things other than the building, but to him, Ms. Crawford's testimony about the decrease in property values was interesting.

Sonya Mallard stated the applicant has to be able to show his phone records to prove he spoke to the contractor. She said she doesn't think there is a contractor anywhere who would do anything free of charge. She stated even though it is going to be expensive to remove the building, it should be re-built the right way.

Mr. Rhodes stated he doesn't believe a contractor is going to order a building larger than what was intended, pour extra concrete to build a building larger than he was contracted to build, and just eat the cost. He said he also believes it wouldn't matter what size building he built, none of the neighbors would want it there, and they are likely to object even if it is built at the correct size. He reminded the neighbors that if the building has to be torn down and re-built, there is going to be more construction on the property.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for denying the variance.

Dale Rhodes called for a vote on the motion as stated and passed unanimously.

Withdrawal of Variance No. 1 of 23V00003, Anthony V. and Kathleen DiLella

Withdrawal of 23V00003, Variance No. 1: Section 21-2118(d)(3), to permit a variance of 2.48 ft. over the 15.52-ft. projection (20% the width of the waterway) for a boat dock. The applicant has amended the request via 23V00010. The property is 0.35 acres, located on the westerly side of Bay Shore Dr., approx. 0.14 mile northwest of West Point Dr. (1742 Bay Shore Dr., Cocoa Beach) (Tax Account 2519528) (District 2) Variance No. 1 was withdrawn by applicant. Letter received 04/05/23.

The board acknowledged withdrawal of Variance No. 1 of Application 23V00003 by the applicant.

Anthony V. and Kathleen E. DiLella (Carter Hayes)

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1) Section 62-2118(d)(3), to permit a variance of 6.38 ft. over the 15.62-ft. projection (20% of the canal width) permitted for a boat dock and a vessel moored at the dock; 2.) Section 62-2118(d)(2), to permit a variance of 3 ft. from the required 7.5-ft. side (west) setback for a boat dock, in an RU-1-13 (Single-Family Residential) zoning

classification. The property is 0.35 acres, located on the westerly side of Bay Shore Dr., approx. 0.14 mile northwest of West Point Dr. (1742 Bay Shore Dr., Cocoa Beach) (23V00010) (Tax Account 2519528) (District 2)

Anthony DiLella, 1742 Bay Shore Drive, Cocoa Beach, stated since the February meeting he has explored every possible scenario, and what he has come up with is what he considers the best solution that allows everyone to use the waterway. [Mr. DiLella distributed a handout to the board. The handout can be found in file 23V00010, located in the Planning and Development Department] He said the size of the structure has not changed since the February meeting; he still wants less than 2.5 feet over what is allowed for the structure, and only 18 feet total. He said he learned at the last meeting that a boat cannot project past the structure, and he was surprised by that because most boats do project farther than the structure. He said his intent is to purchase an 18-foot pontoon boat, and he has added 4 feet onto the request to take the motor into account. He stated he has moved the dock three feet to the west on the survey, which will not encroach on the neighbor to the west because they have 160 - 170-foot wrap around in the grand canal, so that section in the corner will not affect them, but it also puts his structure three feet away from his neighbor who has a boat parked parallel to the seawall. He noted the pier on the right is over land, and it is not over water until a few feet at the end. He said he's come up with what he thinks is a solution, but he also feels it is a short-term solution because if the O'Kane's or another owner decides to change the orientation, he would have an argument because he would be blocked in at that point.

Carter Hayes, 1210 S. Atlantic Avenue, Cocoa Beach, stated he is the Contractor for Mr. DiLella and he is trying to push everything over in order to stay out of the way. He said the drawing shows the fixed structure is at 18 feet, and the moor is just for a boat to come in and out. He stated he understands the 20% rule on a canal, that an owner and people across the canal each get 20%, and that leaves 60% for everyone else to travel, but in this case, it is just for Mr. DiLella to park, it's not a major thoroughfare. If he pulls straight in and parks to the side he will be out of everyone's way.

Kevin McCann asked if he was able to come to a resolution after speaking with the neighbors. Mr. DiLella replied he talked to them, but couldn't come to an agreement.

Mr. McCann asked, if he were to build a dock structure completely within existing code and not require any variances, would it negatively impact the neighbor's use of their current configuration of their dock.

Mr. DiLella replied yes; however, the neighbor's boat sits outside of the setbacks, so if their boat sat within the setbacks, he could do that and not have a problem, but with their boat sitting over the setbacks and over another property line, it's impossible for him to stay within the 15.62 feet; he would have to turn it and not have it parallel to his seawall. He said if he had 7.5 feet over and could back out like that, he wouldn't have a problem.

Mr. McCann asked if he would have sufficient setbacks if he had a dock that conformed to current code and not need a variance. Mr. DiLella replied he wouldn't be able to access his boat with the neighbor's boat there. He said he could do it, but he would never be able to pull his boat in or out unless the neighbors were not there.

Mr. McCann asked how many changes Mr. DiLella has made to his initial plan. Mr. DiLella replied he has paid for six surveys, and Natural Resources has been to his property twice.

Mr. McCann asked if the reason for this is to try to come up with a solution so that he can enjoy his property the way it's intended to be enjoyed, and the neighbor can also enjoy his property as intended. Mr. DiLella replied yes, it's to allow everyone to enjoy their properties.

Mr. McCann asked if the reason for shifting the whole dock structure into the setback is to be further away from the neighbor's property line and his dock, giving him better access. Mr. DiLella replied yes.

Mr. McCann stated ideally, he would want to project out the same distance, or size, of the boat, which would be 18 feet, plus the motor, and he's backing that in a little bit to make more room for navigation of other boats, including the neighbor's.

Mr. DiLella stated that is correct, and when he went under contract it was for 24-foot piers before knowing, because he saw the size of the cove and thought he had that in the realm before seeing the original survey that didn't show the width of the cove, it only showed the plat of the canal.

Mr. McCann stated per code, his allowable projection into the canal would be 15.62 feet, and he would like to go out 18 feet, or that furthest piling, to make the minimum size dock he can have. He said Mr. DiLella is asking for a variance of 2.38 feet for the projection, and then that's for the last piling, last part of the structure, and anything additional he's asking for would be just for the overhang of the boat.

Mr. DiLella stated that is correct, it's the motor that would project past, because it is only an 18-foot pontoon boat.

Mr. McCann asked if the structure can be built without that finger pier adjacent to the neighbor's, and if it can just have pilings with a boat lift attached. Mr. Hayes replied Mr. DiLella is not asking for a boat lift right now, just the dock and wet slip, but yes, he could pull in and not have access to that side of the boat.

Mr. DiLella stated not having access to the boat would be a problem, because most pontoon boats have the entry on that side. He said he wants the piers more than he wants the other part because he wants to launch smaller watercraft, which is part of the plan. He said that was the issue when he talked to the neighbor's, they wanted to focus on his property, but they didn't want to focus on the fact that their boat is 25 feet with the motor. He said he has a hard time with how the board can give consideration to a boat that shouldn't be there when he has to request variances. He said if the neighbor's structure and boat were within code, he would just put his second pier out there, have one that was caddy-corner to it, and be able to launch small watercraft without any problems.

Mr. McCann stated he is trying to come up with scenarios that could satisfy both Mr. DiLella and his neighbors, and as much as he wants him to get the use of his property that he should be entitled to use, he also doesn't want to prevent the neighbors from using their property.

Mr. McCann asked if a small kayak dock could be affixed to the seawall for launching, such as directly in the middle of the seawall, between the west and east property lines. Mr. Hayes replied if he had a step-down dock to the left of where the boat will be, it would still be in the way.

Mr. McCann asked how many pilings would be needed on the east side of the pontoon boat to create a structure. Mr. Hayes replied approximately three pilings.

Mr. McCann asked if there could be a finger pier from the seawall to that middle piling so he can access the boat from the bow and not have that finger extend all the way to 18 feet, which will allow 3 more feet of navigable water for the neighbor at the end, but in the middle it wouldn't be necessary.

Mr. DiLella stated he would like to see what that would look like in design, something that would not abruptly stop.

Mr. McCann stated it is a complicated variance request. The reason it was tabled the last time is because it would not have been approved as presented. He said extending the finger pier out 18 feet all the way to the rear of the boat to the stern of the boat, he is eliminating 3 more feet of navigable water that the neighbor could use, because his biggest concern is his ability to get his boat in and out. He said if the board gives him 3 more feet, he has plenty of space to come in and out; if that three feet of water is eliminated, he's not as comfortable with his ability to come in and out. He stated he thinks the only solution is to give Mr. DiLella half of a finger pier so he can access his boat, put a small launching platform down there, and lose the full finger pier, as opposed to losing the entire finger pier, or as opposed to having the variance denied.

Mr. DiLella asked if it would be acceptable to come from that three feet and work back to that piling, which is 1 foot, and he wouldn't add any other space.

Mr. McCann asked if Mr. DiLella wants the 3-foot finger pier up until the first piling, and from the second piling to the last piling, have that taper down to 1-foot.

Mr. Ball reminded the board that the variance before it is a 6.38-foot deviation from what code allows. With the finger pier coming out 18 feet, and an additional 4.38 feet to allow for the boat itself to stick out, the only time there would be relief is when the boat is not at the dock.

Mr. Rhodes stated even taking the finger pier out, he's still going to need the 6.38 feet because of his boat. If the board approves that, it can't necessarily say it's going to approve the 6.38 feet, but he can't have the finger pier go all the way to the end.

Mr. Ball stated his concern is that when staff is issuing the permit for exactly what the board approved, it becomes a gray area of what the board meant.

Mr. McCann stated removing the finger pier allows three extra feet of space between his pilings and the next door neighbor, which could be necessary.

Mr. Rhodes stated at the last meeting, there was discussion about removing one of the finger piers and just having it on one side. Mr. DiLella stated the small watercraft part is important to him, and if the variance is denied he will go the other route and build within the setbacks and deal with the consequences.

Mr. Rhodes asked if Mr. DiLella needs both piers, or can he launch from one pier. Mr. DiLella replied the boat will be in the center, so he will have to go on the outside of the left pier. Mr. Rhodes asked if he could launch a kayak or paddle board off of the seawall. Mr. DiLella stated more poles would have to be put in the water for a step down and he still wouldn't be able to access the door of the pontoon.

Mr. McCann stated if he took his suggestion, he would have the first length of finger pier as the step down. Mr. DiLella replied that is an option, but if he wasn't going to have any of that pier, he would go the other route.

Public comment.

Gwyn O'Kane, 1732 Bay Shore Drive, Cocoa Beach, stated he lives on the east side of the subject property. He said over 20 years ago the County told him that the lot lines project to the center of the circle and that he was allowed 12 feet, so the only option he had was to put in a lift that sits alongside the dock, and he was allowed to get a permit.

Mr. Rhodes asked if Mr. O'Kane's boat is within the parameters of code. Mr. O'Kane replied yes, he is not aware that it is not.

Mr. O'Kane stated he would like for the DiLella's to be able to build something, and he thinks there is a solution; however, he also thinks the variance is contrary to public interest and he doesn't believe the DiLella's will suffer undue hardship due to the requests being denied. He said at the last meeting there was a second option that was an attachment to his letter to the board, and it was an image with the proposed dock sitting along the DiLella's seawall as opposed to projecting 22 feet into the cul de sac of the canal. He said he met with the DiLella's, but there was no discussion because the variance application had already been submitted. He stated his option is the best option for himself in terms of how he enters and exits the dock. He said he is concerned that the DiLella's boat will project out 22 feet and he might hit it and either damage his boat or Mr. DiLella's boat; however, if the dock is alongside the seawall, he's confident he can clear it.

Mr. McCann asked if the dock would be parallel with the seawall, and not perpendicular. Mr. O'Kane replied yes, Mr. DiLella would launch the same way he does, backing in with the engine in the deep part of the water.

Mr. O'Kane stated when the DiLella's originally applied for a permit, they were told three times by the County that there was a deficiency, that they could only project out 12 feet, and from that 12-foot deficiency, it is now projected to be 22 feet, which is an 83% difference in terms of projection. He said he has been trying to find out where the 15.62 feet in the request comes from, and it looks like they chose one corner on the other side of the DiLella's property, straight across the canal. He stated he still doesn't have an answer on if the projection is based on the 90 degrees from the dock, or from the water line. To add further confusion, the neighbor on the other side is now building a seawall and a dock, and has been approved for the 12-foot projection. He said as far as the second variance request, he did get an answer from the County in terms of where the lot lines run, which is from the corner of the property straight out into the water. Mr. Vitale in the Surveying Department stated, "In our opinion, in the Survey Division, is that riparian rights to the lots that front the circular waterways is established from the marker along the rear lot lines as shown in the plat, to the center of the circular canal".

Mr. McCann asked if he believes that if Mr. DiLella put in a dock parallel with the seawall, according to code, that he can still back his boat out of the lift and not be obstructed. Mr. O'Kane replied yes, if it is 12 feet, and he believes he could still do it if it was 15.62 feet.

Melissa Byron, 1722 Bay Shore Drive, Cocoa Beach, stated she is in favor of the requested variances. She said she also spoke to Mr. Vitale and he explained that when you measure the cul de sac you measure the diameter, and the radius is 40 feet, so 80 feet is the diameter, and 20% of 80 is 16 feet. She said Mr. DiLella is at 15.2 feet because of the radius of the plat, and his is a little smaller where he goes across than where she goes across, and Mr. O'Kane's is even smaller. She said there are only three of them in the cul de sac and they need to work together, and she's not going to complain when Mr. O'Kane's boat comes into her property, which it does because he can't get his boat out without coming onto her property. She stated when Mr. O'Kane built the lift he had a smaller boat, and now he has a bigger boat, so he has to back in. She said Mr. DiLella should get what he wants, she's going to get what she wants without a variance; she's going to be 16 feet and will also have a lift, and she will keep her 7.5-foot side setbacks. She said Mr. O'Kane's boat is on her property line, but it's okay because they're good neighbors, and she wants Mr. DiLella to get what he wants. She said Mr. DiLella has been reasonable in trying to work with the neighbors, and what he is asking for is reasonable, which is to have a pontoon boat that's 20 feet with the motor.

Mr. Rhodes asked how Ms. Byron would be affected if the dock is built sideways. Ms. Byron replied it probably wouldn't affect her, but he wouldn't be able to get out because Mr. O'Kane's boat is such that he couldn't make the turn because he backs up, then turns forward and goes out, which is fine. She said her dock is not perpendicular because the way the cul de sac comes around there is not the angle to bring the boat in and get it in the lift.

Anne O'Kane, 1732 Bay Shore Drive, Cocoa Beach, stated Ms. Byron told the board she applied for a 16-foot dock permit, but her boat is 18.5 feet without the engine, and asked how would that fit. She said everyone in the cul de sac should go parallel, because it's such a small area.

Collette Charpentier, 1722 Bay Shore Drive, Cocoa Beach, stated the reason herself and Ms. Byron get 16 feet is the angle at which the boat lift is going to sit will allow them the 3.5 feet extra to pull the boat all the way to the seawall and then lift it up, and the engine sticks out 1 foot, making the boat 19.5 feet. She said Mr. DiLella is asking for a 7% increase. She stated with Mr. DiLella's request to move his dock closer to the mouth of the canal, it actually leaves them a larger circle in the canal from which they can all pull their boats in or out. She said they've gone through it many times trying to accommodate the O'Kane's boat. She stated her old dock stuck out 16 feet into the canal, and they will continue to use that 16 feet, but because it will be at an angle, it shouldn't be an issue with the O'Kane's boat because they will have more space. She said she recognizes that the O'Kane's do not have as much space as everyone else, but they have an existing structure that everyone else has to work around, and anything that moves closer to the O'Kane's property is going to cause them a problem. She said Mr. O'Kane encroaches on everyone's property and no one has complained.

Mr. DiLella stated in February the board tabled his request because the boat would stick outside of the structure, but the O'Kane's have a 25-foot boat in a 12-foot space. He said before coming to the meeting he went to Code Enforcement to make sure he understood, and the option is that Mr. O'Kane would have to move his boat because he's outside the setbacks; he will still be able to get his boat in and out, but should he choose to turn it, he would have to apply for a variance because his boat is not within setbacks.

Mr. Ball stated suggested the board make a clarification on the projection, one for the dock itself, and one for the boat. He said one request is for the projection, and one is for the setback on the east side.

The board can clarify that the first variance for the dock projection is “x”, and the boat projection is “y”. The second variance is for the side setback.

Motion by Kevin McCann, seconded by Sonya Mallard, to approve Variance No. 1 as 2.38 ft. over the 15.62-ft. projection (20% of the canal width) for a boat dock as depicted on the survey provided by the applicant, and 6.38 ft. over the 15.62-ft. projection (20% of the canal width) for a vessel, including motor, moored at the dock, as depicted on the survey provided by the applicant.

Mr. McCann stated he appreciates the positions of both the applicant and the neighbors, but he thinks the applicant has done everything in his power to accommodate his neighbors and minimize any hazard or extension by reducing the size of boat and dock.

Mr. Rhodes stated his concern with waterways is that when allowing additions to what code allows, it sets a precedent, and he is not in favor of it for that reason.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving Variance No. 1.

Dale Rhodes called for a vote on the motion for Variance No. 1 as stated and passed 4:1, with Dale Rhodes voting nay.

Mr. McCann stated on the second variance he believes the 3-foot finger pier increase is the projection towards the concerned neighbor’s property and the use of his boat, and any additional space for him to navigate in and out of his dock should be accounted for. He said he is also supportive of half of a finger pier coming out from the seawall, extending out to the middle piling, which would give the applicant access to his boat on the starboard side and also allow for a kayak launch.

Motion by Kevin McCann, seconded by John Thomas, to approve Variance No. 2 with the condition that the east finger pier project 12 ft. from the second piling.

Dave Neuman stated he would agree with a half finger pier.

Ms. Mallard stated she is in favor of the motion.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving Variance No. 2.

Dale Rhodes called for a vote on the motion for Variance No. 2 and it passed 4:1, with Dale Rhodes voting nay.

Upon consensus, the meeting adjourned at 5:10 p.m.