

## BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, August 16, 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); Bill Huffman, Vice Chair (D5); and Joanna Bass (D4 Alt.). The District 4 alternate member was not eligible to vote on agenda items.

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; Bill Huffman 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 July 19, 2023, Minutes**

Motion by Kevin McCann, seconded by Sonya Mallard, to approve the July 19, 2023, minutes. The motion passed unanimously.

### **Penny Louise Amundson** (Gabriel Joseph)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2123(a), to permit a variance of 10.43 ft. from the required 20-ft. side street setback for a swimming pool, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.20 acres, located on the northwest corner of N. Banana River Dr. and Seashell Dr. (1600 Seashell Dr., Merritt Island) (Tax Account 2432702) (District 2)

Penny Amundson, 1600 Seashell Drive, Merritt Island, stated there is a section of property on the side that is larger than most lots because it's at the end of the street. She said the reason for the variance is to be able to put a screen enclosure over a swim spa.

Cody Brooks, 1600 Seashell Drive, Merritt Island, stated the fence line is already moved in approximately 8 feet from the neighbor, and the proposed screen enclosure will be 8 feet further, but there would not be room for it unless it is against the house.

Kevin McCann asked if the pool could be located in the back yard. Ms. Amundson replied there is only 19 feet from the back of the house to the water, so there is no room in the back yard.

No public comment.

Motion by Kevin McCann, seconded by Bill Huffman, to approve the variance 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.

**The 109 Franklyn Avenue Trust (Kelly Hyvonen)**

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2109(c), to permit a variance of 2.5 ft. over the maximum 4-ft. height allowed for a fence in a RA-2-6 (Single-Family Attached Residential) zoning classification. The property is 0.33 acres, located on the south side of Franklyn Ave., approx. 415 ft. west of Highway A1A. (109 Franklyn Ave., Indialantic) (Tax Account 2731681) (District 5)

Kelly Hyvonen, 355 Spoonbill Lane, Melbourne Beach, stated the property owner, Alena Knopfler, is requesting a variance of 2.5 feet to allow for a gate on the front property line that will vary in height, with the highest point being 6.5 feet and the hedges closer to 5 feet. She noted the property is well maintained with a solid fence and hedge around the entire property for privacy and security. She stated the property has special circumstances in that it is a double frontage lot on Franklyn Avenue and Grosse Pointe, and there are various zoning classifications in the neighborhood, which includes transient uses, such as resort dwellings and multi-family. The subject property is zoned RA-2-6, which allows for attached dwellings, and also in the neighborhood is RU-1-11, RU-2-10, and R-2 and R-3 to the south in the Town of Indialantic, as well as commercial zoning along A1A. She stated the house was constructed in 1953, so it met code 70 years ago, but today the proposed gate would have to be 25 feet from the front property line, which would place it next to the garage, and the house itself doesn't set back 25 feet. The property to the east is a single-family house that operates a limousine business, and further to the east is Moo's Ice Cream, Longdoggers restaurant, and Publix, so there are a lot of people walking past the subject property. She said the additional transient guests in the neighborhood use the double frontage lot as a shortcut, which is why Ms. Knopfler would like more security. A gate will prevent people from sneaking around and trespassing on the property and will prevent vehicles from entering the property to turn around, and an elevated 6.5-foot gate provides significantly more security than a 4-foot gate.

Bill Huffman stated he drove by the property and everything Ms. Hyvonen mentioned was evident. He said security and privacy were mentioned, but the gate has openings that anyone can look through. Ms. Hyvonen replied, the security and privacy is in terms of keeping people off the property. Mr. Huffman asked if the gate will open out into the street. Ms. Hyvonen replied, it will open inward, onto the subject property.

Kevin McCann asked if the gate is already installed. Ms. Hyvonen replied it was installed but taken down when Ms. Knopfler found out the permit was not issued.

Mr. McCann asked if the 6.5-foot brick pillars would allow someone to trespass onto the property. Ms. Hyvonen replied someone could also walk through the hedges, but the visual barrier is the most important thing to keep people off the property.

Mr. McCann asked if there is a fence within the hedges. Ms. Hyvonen replied no.

Dale Rhodes asked if there is a gate at the rear of the property. Ms. Hyvonen replied yes, a pedestrian gate.

No public comment.

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

Mr. Huffman stated he is not opposed to the variance, he drove through the neighborhood and the property is one of the nicer properties in the neighborhood.

Mr. Rhodes stated because the gate would open inward and is in line with the hedges, he doesn't see any visual issues, and the gate would be in line with the existing 5-foot hedges.

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.

**John Paul Arel**

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1340(5)(b), to permit a variance of 5 ft. from the required 5-ft. separation distance for an accessory structure; 2.) Section 62-1340(5)(b), to permit a variance of 1.2 ft. from the required 7.5-ft. side (west) setback for an accessory structure; 3.) Section 62-1340(5)(b), to permit a variance of 5 ft. from the required 5-ft. separation distance for an accessory structure, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.23 acres, located on the south side of Porpoise St., approx. 280 ft. west of Manatee Court. (2015 Porpoise St., Merritt Island) (Tax Account 2432346) (District 2)

John Arel, 2015 Porpoise Street, Merritt Island, stated he installed a small shed under 100 square feet on his property, and when he looked at the code, he saw that he didn't need a permit, but later he found out the shed still needed to meet setbacks and separation requirements. He said the shed was initially installed on the property line, but the neighbor asked if it could be moved, so he moved it to the side of the house, and the County confirmed it was more than 7.5 feet from the property line, but it was within 5 feet of the house, which is against code. He explained, when the plot plan was updated, he found out that the other shed that has been on the property for many years was also not within code, so the variances are for both sheds.

Kevin McCann clarified that of the three variance requests, two are for the pre-existing shed, and one is for the new shed. Mr. Arel replied yes. Mr. McCann stated although a permit was not required to build the new shed, it still needed to be built within code; however, Mr. Arel was unaware the code required a separation distance of 5 feet from the house, mostly because the other shed is less than 5 feet from the house. Mr. Arel replied that is correct.

Bill Huffman asked if there is room behind the house, toward the canal, for access for emergency personnel. Mr. Arel replied there is room on both sides.

Mr. Huffman stated one reason for a separation distance requirement is for fire separation. There is also a 5-foot public utility easement all the way around the property and the deck on the west side goes over the easement. Mr. Arel stated the utilities are in front, there are no utilities in the back.

Mr. Rhodes stated most of the time, when there is a utility easement, property owners can do what they want in it, but if utilities need to come in, they will have to vacate the easement.

Public comment.

Denise Drew, 1525 W. Central Avenue, Merritt Island, stated she is speaking on behalf of her father, who lives next door to the subject property. She said when Mr. Arel first built the new shed, it was up against the fence, but it has been moved and there is not a problem. She said her father is in support of the current location of the shed, as well as the variance requests.

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

Mr. Rhodes stated his only concern is that the sheds are directly against the house for fire safety. He asked if there would be any other place on the property to put the sheds. Mr. McCann replied no, and stated there is sufficient space in the rear to access the property.

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 4:1, with Dale Rhodes voting nay.

**Anthony G. and Maja Anni Russo** (Jeremy Baker)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2118(d)(2), to permit a variance of 6.8 ft. from the required 7.5-ft. side (south) setback as projected in a straight line into the waterway, for a covered boat lift, in an RU-1-13 zoning classification. The property is 0.19 acres, located on the west side of Mohican Way, approx. 141 ft. north of Beverly Court. (57 Mohican Way, Melbourne Beach) (Tax Account 2956469) (District 3)

Jeremy Baker, 2405 Abalone Avenue, Indialantic, stated his clients are requesting a variance of 7.5 feet from the south side setback for a covered boat lift. He said the issue lies with the property line on the south side because it comes in at an angle, and when you project that property line on the south and you take the one on the north, it creates a small buffer for any kind of structure to be put there. The code allows for a maximum of 600 square feet for a boathouse and dock combined. Most of the neighboring properties max out at that, and his clients are asking for that setback to keep that line. He noted there is currently an existing boathouse and dock structure on the property, and his clients want to make the boathouse larger to fit a bigger boat, and to bring it up higher. Approving the variance would allow a .7-foot setback from the property line. He said he understands it is tight, and one of the reasons why it is tight is because he has to stay off of a drainage line coming down from the street, and also because the neighboring property has old pilings in the way that could allow for a small dock in the future. He said when pulling in a boat, the angle of the boathouse on the survey is the most beneficial for his clients' property as well as the neighboring properties.

Dale Rhodes stated he visited the property and was granted access to the river by one of the neighbors, but he did not discuss the variances with the neighbor. He asked how far off of the setback is the current structure. Mr. Baker replied he does not know the exact number.

Mr. Rhodes asked if the new boat dock will be closer than the current dock. Mr. Baker replied it is approximately 0.7 feet off of there, and they are trying to go further out, so the structure is being changed.

Mr. Rhodes stated the variance is not to go further into the waterway, it is for the setback. He said he agrees that the angle is very cohesive with everybody else, and it makes it easy to access and doesn't get in the way of anyone else. He asked if the dock is staying in the same place on the side of the property. Mr. Baker replied yes. Mr. Rhodes asked how long the structure has been there. Mr. Baker replied approximately 25 years. Mr. Rhodes asked if Mr. Baker is not going any closer to the property line than the structure that currently exists. Mr. Baker replied yes, that's correct.

Mr. Rhodes asked if the new roof will be larger than the current roof. Mr. Baker replied it will be longer, but the width will be approximately the same projection into the water. Mr. Rhodes stated it is important to know exactly how wide it will be because what the variance being requested includes the roof.

Paul Body advised the board that the setback is calculated to the roof line on the survey.

Mr. Rhodes stated the proposed dock is appealing and useful; it will extend further into the waterway, but that does not appear to be an issue. The only issue is the corner that goes to the property line, and he does not see any other way it could be placed on the property and be in better compliance and more neighborly to everybody than the way it is being done.

Bill Huffman asked if there are letters in support of the variance from the adjacent neighbors. Mr. Baker replied he does not, but if it would help, he will get letters.

Mr. Huffman stated on the aerial map, it looks like the lot the furthest away from the corner has a boat tied to the seawall. Mr. Rhodes stated there is a small dock there.

John Thomas stated regarding the neighbors with the pilings and small dock, it looks like if the applicants' dock goes out further, that gap will be narrowed between the two, and asked if it would impede the neighbor in any way. Mr. Baker replied no, it would not. Mr. Thomas stated as long it does not impede the neighbors, he doesn't have an issue.

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

Mr. Rhodes stated the structure has been in place for over 20 years, it is not proposed to be any wider than it is currently, and they don't need a variance for the depth. It is a uniquely shaped property, and because it has worked in harmony for 25 years, to change it would create a problem that doesn't exist.

Mr. Huffman stated it is not unique in the sense there are so many other properties in the area that have a similar situation.

Mr. Rhodes asked how far the new dock will extend beyond the current dock. Mr. Baker replied it will extend 5 feet or less.

Mr. Body noted the abutting property to the south has variances for the docks of 7.5 feet from the side setbacks on both sides because it is so narrow.

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 4:1, with Bill Huffman voting nay.

**Stacy L. Goforth and Lawrence I. Munro**

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-2118(d)(2), to permit a variance of 7.5 ft. from the required 7.5-ft. side (east) setback for a boat dock; 2.) Section 62-2118(d)(2), to permit a variance of 7.5 ft. from the required 7.5-ft. side (west) setback for a boat dock, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 0.21 acres, located on the southeast corner of Ursa Ave. and Diana Blvd. (305 Ursa Ave., Merritt Island) (Tax Account 2417446) (District 2)

Stacy Goforth, 305 Ursa Avenue, Merritt Island, stated the variance requests are for a dock and a lift. She said the property is in Diana Shores Subdivision and is pie-shaped, which makes the back very narrow, and the seawall is only 31 feet wide. She said the unusual shape of the lot is because it is on a corner and is not a result of anything they have done. The granting of the variance would not confer to them any special privilege that is denied to other properties in the identical zoning classification. She noted she has pictures of other lots in the neighborhood that are the same shape, and either have zero side setbacks or have extended beyond the lines of the property.

Lawrence Munro, 305 Ursa Avenue, Merritt Island, provided exhibits to the board. The exhibits can be found in File No. 23V00027, located in the Planning and Development Department.

Ms. Goforth stated other property owners on corner lots are going right to the property lines. She said they had attempted to go straight out and not have to have the setbacks, but when they went to the County, Paul Body explained they could not extend the dock past the red lines he drew on the survey. She said they thought they would have to start over and keep the dock within those lines.

Paul Body clarified the applicants could apply for a variance up to those lines.

Ms. Goforth stated the surveyor re-designed the dock to accommodate their 20-foot boat, and that's how they ended up with that shape of dock because it stays in the lines extending out. She said they have owned their 20-foot seacraft since 2004 and use it weekly to enjoy the recreational privileges of living on the water, and it would cause an undue hardship to own property in a canal community where they could not have a minimal dock to lift, access, and properly maintain their small boat. She stated they originally tried to do it a different way, but were told it could not go straight out, and what has been designed is the minimum that would fit the boat in order to be able to maintain it and lift it out of the water.

Mr. Body noted the variance application is only for setbacks for the dock, it doesn't include any setbacks for a boat moored at the dock, which is also 7.5 feet from the property lines. He stated if the boat is 20 feet and it will be parked along the easterly side, it's going to be parked over the property line extension, and will not meet the setbacks for a boat.

Mr. Munro stated the lift is incorporated in the structure itself.

Mr. Body replied there is nothing on the survey that shows that, and it doesn't show where the boat will be located on a lift. Right now, the variance is only for the proposed dock on the survey.

Ms. Goforth stated she thought when they provided the paperwork to the County that it included the boat with that dock, but they will have to come back and do that.

Jeffrey Ball suggested the board table the request to give the applicant time to meet with staff and straighten out the request.

John Thomas asked if a variance was granted on the property to the east to build their boathouse so far to the west. Mr. Body replied the abutting properties do not have variances.

Ms. Goforth explained the adjacent neighbors come in from the opposite side of their property, so it would not affect their access.

Motion by Kevin McCann, seconded by John Thomas, to continue the requests to the 09/20/23 meeting. The motion passed unanimously.

**Vivian Wasef** (Kim Rezanka)

A Variance of Chapter 62, Article VI, Brevard County Code, Section 62-1406(6)(a), to permit a variance of 0.82-acre from the required 5-acre minimum parcel size in an RVP (Recreational Vehicle Park) zoning classification, currently zoned TR-3 (Mobile Home Park). The property is 4.18 acres, located on the east side of Imperial St., approx. 227 ft. south of Fortenberry Rd. (250 Imperial St., Merritt Island) (Tax Account 2426831) (District 2) This item was withdrawn by the applicant. Letter received 08/10/23.

**Broderick E. Bolton**

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1932(a)(6), to permit a variance of 1.75 ft. from the required 10-ft. side (south) setback for a guesthouse; 2.) Section 62-1340(5)(b), to permit a variance of 0.66 ft. from the required 7.5-ft. side (south) setback for an accessory structure; 3.) Section 62-1340(5)(b), to permit a variance of 0.15 ft. from the required 5-ft. separation distance for an accessory structure, in an RU-1-11 (Single-Family Residential) zoning classification. The property is 1.14 acres, located on the west side of Newfound Harbor Dr., approx. 140 ft. north of Harbor Pines Dr. (915 Newfound Harbor Dr., Merritt Island) (Tax Account 2514500) (District 2) This item was withdrawn by the applicant. Letter received 08/07/23.

**Board of Adjustment Workshop**

The board heard a presentation by staff on the variance process for the Board of Adjustment and the Government in the Sunshine/Florida's Public Meeting Laws.

Upon consensus, the meeting adjourned at 2:31 p.m.