

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, September 20, 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 Dr. 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 August 16, 2023, Minutes

Motion by John Thomas, seconded by Sonya Mallard, to approve the August 16, 2023, minutes. The motion passed unanimously.

Barry Moyer

A variance of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1372(5)(a), to permit a variance to allow a swimming pool to be located forward of the front building line of the principal structure; 2.) Section 62-1372(5)(a), to permit an accessory structure to be located forward of the front building line of the principal structure, in an RU-2-10 (Medium Density Multi-Family Residential) zoning classification. The property is 0.57 acres, located on the north side of E. Coral Way, approx. 375 ft. west of Hwy. A1A (108 E. Coral Way, Indialantic) (23V00028) (Tax Account 2716288) (District 5)

Barry Moyer, 108 E. Coral Way, Indialantic, stated he was granted a variance for a pool earlier this year but the pool company didn't include the screen enclosure, and now he needs the screen enclosure.

Bill Huffman stated the property is nicely screened with trees, and noted there is a pile of dirt on the property that may be from the pool. Mr. Moyer replied yes, the contractor left the pool dirt onsite and he's hoping to spread it out if he decides to put cottages on the property later.

Kevin McCann asked if the covered patio and carport are existing structures. Mr. Moyer replied the covered patio was existing, but he tore it down before he found out he would need a variance to re-build it.

Mr. McCann asked if the carport protrudes out further than the screen enclosure. Mr. Moyer replied no, the screen and pool is in front of it.

Dale Rhodes asked why the carport was not considered with the pool variance in February. Mr. Moyer replied he changed the design of the pool and the contractor did not tell him he needed a variance, even though he asked about it before he signed a contract with them. He said at that time, he only wanted the contractor to install the pool. He said the pool was originally going to go out

farther than it is now, but he turned it in front of the house to make the pool and screen enclosure smaller and to make the whole project more economical.

Mr. Rhodes asked if the proposed patio larger than the original patio. Mr. Moyer replied no, it is the same size.

No public comment.

Motion by Bill Huffman, seconded by Sonya Mallard, 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.

K. Gene Harris (Stuart Buchanan)

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2123(b), to permit a variance of 9 ft. from the required 20-ft. setback for a swimming pool on a major natural waterbody, in an RU-1-13 (Single-Family Residential) zoning classification. The property is 0.31 acres, located on the southwest terminus of West Bay Dr., approx. 870 ft. west of Bay Shore Dr. (95 West Bay Dr., Cocoa Beach) (23V00029) (Tax Account 2519416) (District 2)

Stuart Buchanan, PO Box 1545, Titusville, stated the requested variance is for a swimming pool. The pool is located in the rear of the property, which faces the river, so there is no neighbor to the rear. He noted there was a variance granted to the neighbor at 110 West Bay Drive for a swimming pool a few years ago. He said there are approximately 20 supporting letters from residents in the neighborhood, so there is no one in opposition. He asked staff the number of feet for the setback.

Dale Rhodes stated the variance request is for 9 feet from the required 20 feet. Mr. Buchanan stated the staff report is correct.

Kevin McCann stated in looking at the survey, it appears the pool is constructed to the rear and side yard of the residence. It also appears to be the largest area of unconstructed property. He asked the size of the pool. Mr. Buchanan replied it is 1,289 square feet.

Mr. McCann stated the 9-foot variance request is only for one side of the pool, and there is over 16 feet on the other end, away from the property line.

John Thomas asked staff if there are any known environmental concerns with approving the variance.

Paul Body replied it will be reviewed by Natural Resources during permitting.

Dale Rhodes stated the variance that was granted at 110 West Bay Drive was for 3 feet, and this request is for three times that amount. He said if the board approves one person for 3 feet, the next person wants 9 feet, and then the next person will want 12 feet, and it keeps growing. He said the applicant mentioned the neighbor's variance as justification for approving this variance, but the problem is that this request is three times the other variance. He noted he confirmed with staff that double frontage lots require a larger setback than if not on a double frontage lot.

Mr. Body stated the setback for a swimming pool on a lot that is not double frontage is 5 feet from the side and rear property lines, and it cannot be within an easement.

Mr. Rhodes pointed out the pool will still be set back 11 feet on the shallow end of the property.

No public comment.

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

Bill Huffman pointed out there is a 6-foot swale that collects water and directs it away from the river, and he wants to make sure the swale is re-built. Mr. Body stated that will be reviewed by Natural Resources during the permit process.

Mr. Rhodes stated it is his understanding that if the variance is approved, the applicant still must go through the permitting process, which includes many County departments.

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

Mr. Rhodes stated he gets concerned when the board approves variances because if variances are approved and each one is larger than the previous variance, it creates problems and he tends to lean toward being against these types of variances. He said the only reason he is in favor of it is the fact that the setback if not double frontage is 5 feet, and he feels confident the County will review everything during permitting.

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

Angelica and Christopher Long-Alleyne

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) Section 62-1336(4), to permit a variance of .04 acre from the minimum 1 acre lot size in an RR-1 (Rural Residential) zoning classification; 2.) Section 62-1336(4), to permit a variance of 20 ft. from the required 125-ft. lot width required in the RR-1 zoning classification. The property is currently zoned RU-1-13 (Single-Family Residential). The property is 0.96 acres, located on the north side of Hield Rd., approx. 720 ft. west of Minton Rd. (3120 Hield Rd., Melbourne) (23V00030) (Tax Account 2806104) (District 5)

Paul Body stated the applicant is in the military and was called out of town. He is requesting to table the requests to the October 18th meeting.

Motion by John Thomas, seconded by Sonya Mallard, to continue the variance requests to the October 18, 2023, meeting. The motion passed unanimously.

William A. Jackson Revocable Trust

A variance of Chapter 62, Article VI, Brevard County Code, Section 62-2109(c), to permit a variance of 2 ft. over the maximum 4 ft. allowed for a fence within the front setback, in an EU-2 (Estate Use Residential) zoning classification. The property is 1.91 acres, located on the west side of N. Riverside Dr., approx. 0.33 mile north of W. Coral Way. (3500 N. Riverside Dr., Indialantic) (23V00031) (Tax Account 2716595) (District 5)

William Jackson, 3500 N. Riverside Drive, Indialantic, stated he bought the house from his parents who built it in 1969, and spent a lot of time designing the classic Georgian home. The fence was built in the mid 1970's, and the front section is in poor condition and cannot be saved. It is 5 feet high and wooden, and it was built one or two feet from the property line. There is no impending issue with anyone getting in or out of the driveway because there is a 55-foot easement in front of the fence. There is a brick post in line with the fence, it is 15 feet high and houses a water softener, so it would be quite expensive to move. He said if he has to adhere to the code and keep it at 4 feet, it would look out of line with the home.

Bill Huffman asked if Mr. Jackson is going to replace the fence with black aluminum tubing that will look like wrought iron. Mr. Jackson replied yes, that's correct.

Mr. Huffman stated it will be in the same location as the current fence, and there is a lot of room between the fence and the road.

Dale Rhodes asked the height of the current fence. Mr. Jackson replied it is 5 feet.

John Thomas stated the new fence will enhance the area and not be a detriment.

No public comment.

Motion by Bill Huffman, seconded by Sonya Mallard, 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.

Mr. Rhodes asked staff the reason for the 4-foot fence height limitation.

Paul Body replied it is a traffic safety issue, especially if there is a sidewalk, but the subject property has a 100-foot right-of-way between the fence and the road.

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

Marian Lynn Allred

Variances of Chapter 62, Article VI, Brevard County Code, as follows: 1.) 0.66 ft. from the required 7.5-ft. side (south) setback for an accessory structure; 2.) 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) (23V00032) (Tax Account 2514500) (District 2)

Marian Allred, 915 Newfound Harbor Drive, Merritt Island, stated she purchased the property in June, and inherited the issues from the two previous owners. The owner she purchased from is who built the structure, and she's trying to resolve all of the issues with the County. The structure is an RV carport that has been on the property for over 20 years. It is 3 inches too close to the house, and 8 inches too close to the property line. After speaking with the neighbors, there has never been a complaint about the carport, but staff identified it when looking at a different structure on the property.

The previous owner had code enforcement complaints for multiple Airbnb's, and the carport was an unintended consequence, but she is trying to resolve everything.

Jeffrey Ball stated the code enforcement complaint has been resolved; however, with complaints, staff looks at the entire property to ensure everything is compliant, and in doing so, staff identified other variances that were needed.

Kevin McCann stated the variance request is what the previous owner was seeking to legitimize his Airbnb activities, and asked Ms. Allred to explain the structure in the back of the house.

Ms. Allred stated it is a detached structure and when she bought the property it had a kitchen and shower. Code Enforcement said it had to be converted back to an accessory structure, so she removed everything that would have made it living quarters, and she also paid the fine that was incurred by the previous owner. The structure is now being used for storage.

Bill Huffman asked about the complaints from the neighbor. Ms. Allred said the neighbor's only complaint was about the Airbnb and the many people who were coming and going from the property.

No public comment.

Ms. Allred stated the carport has been there for 20 years, it would cost thousands of dollars to move it, and the money would be better spent in cleaning up the property.

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

Mr. Huffman stated he recognizes the board often talks about percentages, but this request is for inches, it's not a significant variance. He asked if Ms. Allred intends to live at the property. Ms. Allred replied yes, she purchased the property as her retirement home.

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.

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) This item was tabled from the 08/16/23 meeting.

Motion by Kevin McCann, seconded by Sonya Mallard, to table the variance requests to the October 18, 2023, meeting, for re-advertising. The motion passed unanimously.

Upon consensus, the meeting adjourned at 2:30 p.m.