

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, September 16, 2020, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chairman Dale Rhodes presiding, to consider the requests below:

Board members present were: Dale Rhodes, Chairman, District 3; Jack Higgins, Vice Chair, District 1; Michael Hartman, District 2; George Bovell, District 4; and Dale Young, District 5

Staff members present were: Alex Esseesse, Assistant County Attorney; Robin Rogers, Assistant County Attorney; Paul Body, Planner II; Michelle Adams, Administrative Secretary and Robbie Black, Office Assistant I.

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

Paul Body explained the function of the Board of Adjustment; Jack Higgins explained the definition of a hardship; and Dale Rhodes explained the procedures of the Board of Adjustment.

Approval of July 22, 2020, Minutes

Motion by Michael Hartman, seconded Jack Higgins to approve the July 22, 2020, minutes. The motion passed unanimously.

All applicants and speakers were sworn in by the Chairman prior to providing testimony.

1. (20PZ00074) Patrick M. Wigglesworth and Nicole S. Haskins

Request variances of Chapter 62, Article VI, Brevard County Code, Section 62-1336(4) to permit a variance of 105 feet from the 125-foot minimum lot width required, as defined in Section 62-1102 Definition of Lot Width in an RR-1 (Rural Residential) zoning classification, on 1.96 acres, located on the west side of Holder Road, approximately 500 feet south of Robins Hill Court. (No assigned address. In the Mims Area.) (Tax Account 2100263) (District 1)

Patrick Wigglesworth, 2350 Rocky Point Road, Malabar and Nicole Haskins, 917 Brunswick Place, Rockledge. Patrick Wigglesworth said in the early 1980s, his father bought land in the Mims area that he divided into lots and sold, keeping one for himself. He said, in 1983 the lot to the south of the property in question was sold; at that time one of the lot lines was extended an additional 5 feet. He said the deed for that lot reflects that but for the property in question, the driveway that butts up to US 1, is currently listed at 20 feet, making the property unbuildable. He said their deed still reflects that the driveway is 25 feet; between the two deeds back in 1983, an extra 5 feet was given to the property sale to the south. He said nobody realized this until three months ago when his mother who owed the property in conjunction with he and his sister, passed away and they started looking at the property. He stated that this had been an issue since 1983; nobody realizing till now. He said they are requesting a variance to be able to use the property with a driveway where it just meets the Holder Road entrance at 20 feet, the rest of the driveway is 25 feet; the property to the south is slightly longer on the Holder Road side than on the back side of the property.

Jack Higgins said he drove there three times and had a hard time finding the road. Patrick Wigglesworth said he could show a picture of it, where they put up the sign. Jack Higgins asked if it was next to the mother's house, and if his dad's was on the south side of that road. Patrick Wigglesworth answered that nobody lived there. He explained that his dad bought the property, his parents got divorced, he gave that piece of property to his mother. He said nobody ever built in that area, they just owned the property. Jack Higgins said he rode around the whole area, saw the gentleman to the south who told him the road would not take him very far. Jack Higgins said he does

not see how it would hurt any neighbor at all, its right up against the fence of I- 95; the abutted area had one house east of that. He said it wouldn't be a challenge to anybody there; he only spoke to one neighbor because he thought he could get down that road but was told he wouldn't make it. Patrick Wigglesworth said it hadn't been cleared. Jack Higgins said he did not see a problem with it. George Bovell said, what they had here is a typical flag lot situation that comes before them from time to time. He said the only way to get reasonable use of the land is for them to grant the variance which they had done since he had been on the board for 12 years for 100% of the requests and so he does not see any problem with this.

Dale Young asked if the house south of them is occupied. Patrick Wigglesworth said that to his knowledge it is occupied, he does not live in the area. Jack Higgins said it is occupied. Dale Young said he thinks this is a case that will come back to them later today. He said it looked like somebody else's problem; the County, who approved the 20 feet or the surveyor, or somebody else and now they have a paved road to the north side of this. Patrick Wigglesworth said yes, a little way down the road between, facing the driveway, there is a house a good distance from the driveway and there is another driveway right next to it. Dale Young asked, for either of the driveways, had he talked to the person to the south about giving back the 5 feet. Patrick Wigglesworth said he went by once to talk to them but they were not there. Dale Young said they had a nice paved drive on the north side and asked if they had talked to them about a joint agreement. Patrick Wigglesworth said no.

Paul Body said that to get an easement it had to be exclusive. He said they could not get an easement over the flag stem to the north; that would not be approved per Section 62-102. Dale Young said that this plot plan was approved by somebody at the time. Paul Body said no, all you had to do is go to the Clerk of Courts and have the property recorded as a warranty deed with a legal description. He said, this is one of the problems with this lot, they came to get a flag lot approval but it did not meet the Section 62-102 about the flag lot being 25 feet wide the whole width down. Dale Young said it stated that without the variance this lot is unbuildable, this flag lot. Paul Body said they would not be able to get a building permit without a flag lot approval, it won't be given without meeting the lot width for 25 feet all the way down.

Dale Young said he remembered a similar case on Merritt Island, where the lot owner with extra space said property could not be landlocked and asked if that was the case here. Paul Body said he is not landlocked, just doesn't meet their codes, the width for the flag stem. He said, in 2011 the flag stem was taken out of the code; for 6 or 7 years, everyone had to get a variance for existing flag lots, they could not apply for the flag lot administrative approval. He said there were quite a few who came in for lot width to the flag lot until they put it back into the code.

Jack Higgins asked Paul Body if the hardship clause would come into effect on this; a reasonable return on existing land development regulations. Paul Body said he thought so. Jack Higgins said, it fits the reason.

Dale Rhodes asked Paul Body if there was supposed to be 125 feet of road frontage; the request is not for the 25 feet but for the entire road frontage. Paul Body said yes, the flag lot code is in article two; they can't have a variance to the lot width at the flag lot, they have to ask for a variance to the width of the RR-1 which is a minimum of 125 feet. He said that is why they are not asking for a variance to the flag lot, it is not permitted. Dale Rhodes said he understood.

No Public Comment

Dale Young said this is exactly like one of the examples they will talk about later, so he will say nay to this. Dale Rhodes said he thinks that this is a situation that the code does apply to, if they don't say yes, the property is not buildable, therefore they would not have a reasonable use of the property. He said for those reasons it falls strictly by the guidelines that they are given.

Motion by Jack Higgins, seconded by George Bovell to approve as depicted on the survey submitted by the applicants. The motion passed 4:1 with Young voting nay.

Dale Rhodes said that they are going to move the second case to the end so that they have time to finish getting the permission they need.

3. (20PZ00076) James M. and Mary M. Morgan, Co-Trustees

Request variances of Chapter 62, Article VI, Brevard County Code as follows: 1) Section 62-1340(5)(b) to permit a variance to allow an accessory structure to be located forward of the front building line of the principal structure; 2) Section 62-1340(5)(b) to permit a variance of 7 feet from the required 7.5 foot side setback for an accessory structure in an RU-1-11 (Single Family Residential) zoning classification, on 3.88 acres, located on the west side of South Tropical Trail, approximately 538 feet northwest of Nora Avenue (1335 South Tropical Trail, Merritt Island) (Tax Account 2501431) (District 2)

Mary and James Morgan, 1335 South Tropical Trail, Merritt Island. Mary Morgan said they want to build a garage, it's the appropriate distance from their neighbor. She said if they can build it, it would be a double frontage, which they can't have. She said the other is their shed in back; they have been there for 20 years and it was there when they bought it. She said she does not know how old it is, they just want to build a garage.

Michael Hartman said, the shed had been there for over 20 years, so it's nothing new. He said, in terms of the garage, he had a problem with why the code won't allow building in front of a house that is over 1000 feet away from the road, not near anyone and will not be seen. He said he will be in favor of granting this variance, as it is so far back and can't be put back because of the septic tanks.

Dale Rhodes asked Paul Body why the code is such that it could not be built in front. Paul Body answered that generally, it is in single family zonings that an accessory structure had to be behind the front building line of the house; large lots like this might have a precedence. He said, in Port St. John, where there is less than a quarter acre lot, it would look odd to have a garage stick out in front of the house. He said this lot is a double frontage lot, on the Indian River and South Tropical Trail; it had a precedence set by that it had an existing shed. He said on a double frontage lot, an owner can pick their frontage, they can pick the Indian River as their front and wouldn't have to come in for this. The existing shed is setting the precedence for what is their frontage. Dale Rhodes said, so the existing shed is what is causing the issue. Paul Body said it is making so that its behind the front building line, its toward the rear of the existing house so that sets the precedence of which is the front property line.

Michael Hartman asked if the pool counts. Paul Body said that pools have their own setbacks; a pool on a double frontage river lot can be in front of the front building line, its in the pool code under 62-

2123. He said it does allow a pool to be forward toward the river. Dale Rhodes asked if the request was reasonable. Paul Body said that was up to them to determine.

George Bovell said they understand the reason for the code but when looking at how this property is situated, clearly this is one of the reasons they are allowed to ask for this variance. He said the code does not make sense in their particular situation. He said he is in favor of legitimizing the shed and approving the garage where they want to put it.

Dale Young said they are missing a lot of details on their lot. He said it's a 35-foot garage and is 71 feet from the front of the house and asked what keeps them from moving the garage back. James Morgan said that there is a septic tank and drain fields in the front yard. Dale Young said he finds it hard to have two fronts to a house, but that is the situation.

No Public Comment

Dale Rhodes said that they are approving two variances, one for legitimizing the existing shed and one for building the garage.

Motion by Michael Hartman, seconded by Jack Higgins to approve as depicted on the survey submitted by the applicants. The motion passed unanimously

4. (20PZ00078) Jonathan and Makenzie Wescott

Request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2123(a), to permit a variance of 10 feet from the required 20-foot side street setback for a swimming pool, in an RU-1-13 (Single Family Residential) zoning classification, on 0.23 acres, located on the southeast corner of Shore Drive and North Banana River Drive (1607 Shore Drive, Merritt Island) (Tax Account 2432639) (District 2)

Mackenzie and Jonathan Wescott, 1607 Shore Drive, Merritt Island. Jonathan Makenzie said they were looking to get a pool; his friend designs pools for Best Pools. He said they were on a side lot, if they were to build behind the house they would not have a very big pool. He said they decided to do an L-shaped pool that would start in the back of the house and wrap to the side of the house; the design had it close to the fence and so they are asking for a variance.

Michael Hartman said he drove by and looked at it. He said he is looking at the survey and asked Paul Body how far the pool had to be from the sea wall. Paul Body answered that it had to be 10 feet from the sea wall and 5 feet from the property line.

Michael Hartman said that he imagined the property line as the sea wall. Paul Body said on the survey, it is running on the outside of the seawall. Michael Hartman said there was only about 12 feet usable behind the house. Jonathan Makenzie said that area of the pool was only 1.5 to 2 feet deep for the kids.

Michael Hartman said he saw they have a fence along the road. He said the neighbors across the street have pools setback 20 feet from the road, but its common in that neighborhood to have pools along the road. Jonathan Wescott said that the people behind them have a pool on County property

and they did a variance to own that property. Michael Hartman asked if that was the circular above ground pool. Jonathan Wescott said yes.

Michael Hartman said that if they want a pool this is probably the only design because there is not much room behind the house; they are fenced all around so nobody will see it from the road. He said he will be in favor of granting this variance.

Dale Rhodes asked if it was going to start at the back by the canal and wrap around the side of the house. Jonathan Wescott said correct. Dale Rhodes asked if they meet the setbacks in the back just not on the sides Jonathan Wescott said he believes it was the side. Michael Hartman said they are 10 feet off the property line instead of 20.

No Public Comment

Dale Rhodes asked if corner lots have a deeper setback than other lots in the area would. Paul Body answered, the normal requires 5 feet off the side or rear property line for a pool; it can't be in an easement; the pool or screen enclosure could be up to 5 feet. He said on a corner lot the pool had to be an extra 5 feet than what the side street setback requires; the side street set back for this property is 15 feet, requiring 20 feet. He said the screen enclosure could be right at 15 feet; they are not proposing the enclosure, just the pool so it would require 20 feet normally. Michael Hartman asked if that was from the side setback. Paul Body answered the side street setback, because it's a corner lot.

Motion by Michael Hartman, seconded by George Bovell to approve as depicted on the survey submitted by the applicants. The motion passed unanimously

2. (20PZ00075) 8265 N Wickham Rd LLC (Zachary Komninos)

Requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1482(5)(a)(3), to permit a variance of 15 feet from the required 15-foot rear setback in a BU-1 (General Retail Commercial) zoning classification, on 1.34 acres, located on the south side of North Wickham Road approximately 440 feet west of Murrell Road (8265 North Wickham Road, Unit A, Melbourne) (Tax Account 2622731) (District 4)

Paul Body confirmed that Chris Kelly, the owner was present and that he agreed to have Andrew Petersen represent him. Dale Rhodes asked if he needed to be sworn in. Alex Esseesse said yes and would need an authorization form.

Chris Kelly, 8265 North Wickham Road and Andrew Petersen, Bowman Consulting Group, 4450 West Eau Gallie Boulevard, Suite 144, Melbourne. Dale Rhodes asked Chris Kelly to verbally state that he gives permission to Andrew Petersen to speak on his behalf and then fill out a form or nothing authorized would be authorized. Chris Kelly said he authorizes Andrew Petersen to speak on his behalf for his Bowman Consulting.

Andrew Petersen said he is from Bowman Consulting Group representing the applicant. He said this is the building known as Gorilla Rides on Wickham Road located east of the Speedway across from Chick-fil-at Sheriffs Drive. He said they would like to build an exterior storage building at the rear of the lot; currently incumbered by existing easements, are requesting a variance of the 15-foot rear setback to 0 feet. He said he brought the site plan but believes it is part of the application. He said

that is the optimum spot for the addition. He said the rear adjacent property is the Brevard Zoo so it is conserved and would not be built upon at any point in the future. He said they went over a few different options on the property, this being the most efficient use based on the current legal incumbrances on the property.

George Bovell said he checked this out, and asked if the existing building had a zero setback as well. Andrew Petersen said he believes it is closer to five, almost zero. George Bovell said that looking at it from the aerial and driving by, they are not incumbering anyone else. He said there are no other objections and meeting all the other building requirements, he does not have a problem with what they are trying to do.

Dale Young asked if they purchased it back in June 2019. Andrew Petersen said he was not sure of the purchase date. Chris Kelly said that was accurate.

Dale Young said there is a 55-foot drainage easement on the back and asked if the FPL easement was 15 foot. Chris Kelly said yes. Dale Young asked if the seller, Salazar, told him about these things. Chris Kelly said he was not sure. Dale Young said there would be little likelihood of adding this building as that 55-foot drainage ditch, drains the entire Suntree and Viera areas. He said they probably have the easement for maintenance. Chris Kelly said that the drainage canal is on the west side of the property and what they are proposing is on the south side.

Jack Higgins asked if the FPL easement posed any problem. Andrew Petersen said that is the reason they cannot put the building up against the existing building, it would be in that easement. He said there are overhead lines there now; it appears on the surveys. Jack Higgins said that the overhead lines are present right in front of where the building would go. Andrew Petersen said, right.

Paul Body said it requires a 15-foot separation distance; if the easement wasn't there, they would still have to be 15 feet off of the existing building and would still be into the 15-foot rear setback. Jack Higgins asked Paul Body if he was saying they are ok. Paul Body said no, he is just stating there is a setback required.

Jack Higgins said he does not think it meets the overhead clearance on the edge of the building and asked if they discussed this with FPL. Andrew Petersen asked if he was talking about the existing building. Jack Higgins said, no the proposed building. Michael Hartman said it's not in the easement as in the survey. Its just south of it. Andrew Petersen said he measured, the building wall will be about 2.5 feet off of the FPL easement. Jack Higgins said, which encompasses that 15 feet. Paul Body said the setback to the east side is 5 feet; the required rear set back is 15 feet. He said they might have trouble doing maintenance on the building without encroaching on the neighbor's property.

Dale Rhodes asked Chris Kelly if he did a survey of the property when he bought it. Chris Kelly said, yes. Dale Rhodes said, so you knew all these conditions existed when you purchased it. Chris Kelly said when he purchased it he didn't know, there is an existing concrete wall right there. He said, in ignorance, he thought that was the property line, so after the fact, he realized there was 30 feet available behind that wall and wanted to put a storage building there. He said they have about 47 total feet from the building to the back but the easement is what stops them from being off of the property line.

Dale Rhodes asked if when the survey was done, were all these things marked. Chris Kelly said, it didn't register, he thought that was the property line, when he figured it out, he went to these guys to try to help. Dale Rhodes asked what he thought was the property line. Chris Kelly answered, the concrete retaining wall, there is a concrete retaining wall that runs across that property. Dale Rhodes asked if he was talking about further back from where his building is going to be. Chris Kelly showed on the survey where the concrete retaining wall is. He said he thought that was the property line. Dale Rhodes said that his building is going in excess of that wall. Andrew Petersen said, the wall would be demolished to build.

Dale Rhodes asked if he thought that he had less property than he did. Chris Kelly said yes, and he is trying to capitalize on it. Dale Rhodes said so now that you found out, you want to build a building back there.

Michael Hartman asked what the structure was on the north side of the building. Chris Kelly answered, it's like an awning made out of concrete, its open, like a roof with poles. Michael Hartman asked if they were using that for anything right now. Chris Kelly said they use it for display for golf cart sales when it rains, for protection.

Michael Hartman asked why they could not build the new building there. Chris Kelly said they were going to use this new building for storage and did not think it would look good there. Michael Hartman said it would be about the same size as the other building, may stick a little further out. Chris Kelly said they use that space now to store golf carts when it rains and customer's units. Michael Hartman said, oh so you are the golf cart place. Chris Kelly said yes.

George Bovell made a motion to approve the variance that was not seconded. Dale Rhodes said that the motion failed and asked if there was another motion, he could not make a motion. He said they either need to make a motion to approve or disapprove. Paul Body said yes.

Dale Rhodes asked that since they did not have a second to the approval, do they have a different motion. George Bovell said that they need to discuss. Dale Rhodes said they can't do a discussion until they have a motion and a second. Michael Hartman said that he will second it so that they can have a discussion

Dale Rhodes said we have a motion to approve as depicted on the survey and a second, now we can have a discussion. George Bovell said what he is approving is the location, he does not think they are at the end of the process. He said they will have several other entities approve other parts of the project, for example, overhead lines. He said they do not have concrete information to make judgement on that; other offices in the process will rule on those things. He said, right now, it is ok to have that building in that specific location. He said, if he is going to make that best use of the property that he had, yes, he will give him that.

Jack Higgins said that in the FPL easement, the voltage determines the distance. He said they do not know what voltage they are talking about, it's not listed. Michael Hartman said the easement is on the survey; the building would be outside of the easement. Jack Higgins asked if it would be serviceable. Michael Hartman said yes; the only issue he had is he thinks there is an alternative here, to build the building up front where the awning is, it would be 5 feet off the line. George Bovell said, if the building is there, he loses the space for his golf carts, it's taken away for storage.

Dale Rhodes said he does not like that it's a zero setback; if he ever had to work on that building, he had to encroach on the other property to work on it. He said they do not know if the property owner would be happy with that or not, they are not here to discuss that. He said the easement for FPL is 15 feet and asked if they also require a particular distance from that easement to build a building. Paul Body said that would be brought up at site plan, going through site plan there will probably be issues with the drainage on it being right against the property line and maybe some other departments have issues on it. They will have to go through site plan before they can get the building permit.

Dale Rhodes said that Chris Kelly thought the property line was much shorter; that is the reason to do surveys, to know what we are buying and what we can do and look at our future use in it. He said he is not in favor, if for no other reason its because of the zero setback. George Bovell said this is not the first zero setback they have done and the property next to the property line is the Brevard Zoo; if they had an issue, they should be there.

Dale Young said he thinks there are alternatives that would be within the conformance, so he cannot support it. He said he wants to look at the undue hardship clauses of what their permissions are. He said they are having a workshop on it shortly. He said if this context means that without this requested variance, the applicant would have no reasonable use of the subject property; he already had reasonable use of the property. He said this is a desire to build the additional building, but its not keeping him from doing the business he is already doing. Jack Higgins said it does not come under the hardship. Dale Rhodes said, in his opinion it does not.

Michael Hartman suggested that there is an alternative location. He said, on the west side of the property, the drainage easement as depicted does not come all the way from the front of the property to the back, it stops about two thirds of the way back. He said there is nothing shown south of that easement to stop from putting this proposed building in that area to the south of the drainage easement and west of his current parking. Andrew Petersen said what they are looking at is a boundary survey so it doesn't show all topographic and elevation features. He said that area does have drainage all the way down; it's not depicting it on this particular survey.

Michael Hartman asked if it was restricted, it shows the drainage easement stopping at a point, according to this survey. He said he is a real estate developer and looks at surveys all the time. He said you are right, I do not have the topography there. Andrew Petersen said he was not following. Michael Hartman, referencing the survey, said, on the west side of the property, you have a 55-foot drainage easement; as depicted here by that line, it only comes down about half way from the north on Wickham going south on the property. Dale Rhodes and Michael Hartman said, and then it stops. Chris Kelly said that is a canal that runs all the way back to the zoo. Andrew Petersen asked if they were talking about the overhead wire. Michael Hartman said no, about the 55-foot drainage easement and asked if it runs all the way back because its not depicted that way. Dale Rhodes, referencing the survey said, the drainage easement that you are showing here, only goes half way down and then there is no drainage easement. Michael Hartman said there is a dotted line that stops right there.

Andrew Petersen said that is currently serving our site, that goes all the way back. Michael Hartman, referencing the survey, said that is not the way it is depicted here, this shows that it stops right... Dale Rhodes said that if they look on the aerial, it shows the ditch going all the way back. He asked if there was any other discussion.

Motion by George Bovell, seconded by Michael Hartman to approve as depicted on the survey submitted by the applicants. The motion failed, thereby denying the request. The vote was 1:4 with Higgins/Hartman/Rhodes/Young voting nay.

5. Board of Adjustment Workshop: Variance Process for the Board of Adjustment

Dale Rhodes welcomed any to stay for the workshop. He asked the Board members if they had their copies to include the addition that was sent out later. He said he requested this workshop because in his opinion, they were looking at situations they were approving variances that do not follow the hardship clause. He said that he wants to make sure that what they are approving is what they should be and following the guidelines they are supposed to be. He said when they approve things it sets a precedence; when we set that precedence, somebody can come in, want it, and now they have a legal challenge to that. He said there are reasons those zoning laws are in place; as discussed today, with the one garage if on a quarter acre lot, you wouldn't want a building sitting out in front of the house, but when it's a thousand feet from the road, it makes sense to say yes to that. He said If we just cart blanche, start approving that kind of stuff, then we create an issue both for neighborhoods and for the zoning board in the future.

Jack Higgins said, the difference for that particular one, was the lot behind it, it was a long distance into the house too, its only because there was an opening and a set of trees behind it.

Michael Hartman said that we have a lot of old neighborhoods in this County, especially in District 2. He said his house is 47 years old and not the oldest in the neighborhood. He said in a lot of cases, they are letting somebody enjoy the property as it would have been enjoyed when the County originally approved the subdivision or lot. He said the flag lot today, that is technically not a flag lot under the law, couldn't be used without a driveway. He said it is hard to write a law for a County this big that applies to every situation. He said, like putting the garage in front of the house, if it's a quarter acre lot, you don't want to put something in front of the house, but if you have 1400 feet off of the road, nobody is going to see it. George Bovell said, that is why we are here.

Dale Rhodes said what he does not want to be doing is setting precedence that creates issues later. Paul Body said they really aren't setting precedence, they might set themselves up for the neighbor saying, they approved the neighbor but denying mine for the same thing, but each variance should stand on its own. Michael Hartman said that is why he was careful today how he worded his two. Jack Higgins said it would be very hard to say the same for everything. Each thing presents its own.

Dale Rhodes said he agreed, each situation needs to be taken individually; they also need to be concerned about what they are approving and it does matter that someone is allowed to enjoy their property. He said, at the same time, there was a property that if he had attached it to the house, there would not be an issue. Paul Body said there might be other ways that people can do things, when he takes in a variance, he tries to ask them why they don't attach it to the house. He said, often the answer is, their septic is there or a 200-year-old oak in between. He said you can often meet the code for attachment with a breezeway, built like the house, and meet the attachment code. Michael Hartman asked if a breezeway counts. Paul Body said a breezeway to an attachment can meet the code, there are limitations to the length. He said it requires a common roof and be designed and built the same way as the house. He said a concrete block house cannot be attached to a storage building and called an addition.

Dale Rhodes said, a rule that had perplexed him allows for two 1000 square foot buildings but requires a variance to build one 1500 square foot building. Paul Body said it all depends on how the math of the living area works out. He said, 1000 square feet can be built on an acre on land, for an 800 square foot house and an acre of land, you can get administratively up to 1000 square feet building. He said they have to look at the square feet, see how much living area there is, it can't be over 50% depending on what zoning they're in, if it's not agricultural. He said, sometimes they might be able to build two 750 square foot buildings and not be over the total square footage of their total house, but 1500 square foot would be over 50%.

Dale Rhodes asked Paul if he had a personal problem or zoning problem with someone building a 1200 square foot building instead of two 750 square foot. Paul Body said as long as it meets the code, they do not. He said if they had a 5000 square foot living area, they could build 2500 square feet; if they have 800, they are limited to 600 square feet. Michael Hartman asked Paul Body if he knew the rationale for that or when it was passed. Paul Body said it had probably been since zoning was established in 1958, for the size requirement. He said, in the 1990's, it went from 50% to 600 square feet or 50% whichever was greater; they increased it allow 600 square feet no matter what in a Single-Family zoning. Dale Rhodes asked if they can have two accessory structures, 750 square feet. Paul Body said it depends on the lot size, they are limited to how many accessory structures they can have on a property for the square footage of the lot.

Dale Young said to Dale Rhodes that about 20 years ago, the developers went to the Commission and introduced the PUD in exchange for being able to use more of their lots, giving away all of their green space. He said, it came down to a very minimum lot that would fit a house; most of their questions are coming from people who bought one of those houses who have no setback variance. He said they are crammed up against the back sides and front; they have no place to expand, that was created by the County. He asked if they should they be told when they buy this house, you are going to be allowed to add the garage to the back, the front or the sides; that's a problem that they face with most of these variances.

Paul Body said, a lot of variances they see are because people got information from their contractor or realtor instead of checking with the zoning office; they see stuff being built without permits, then a neighbor calls it in. He said that a customer says they were told that they didn't need it. He said he asks them why they didn't check with the zoning department. Dale Rhodes asked Paul Body what advice he had for those situations. He said they may not have done it right, they hired and trusted their contractor and have money laid out, then find out they are out of code. He said their options are, give them a variance or make them tear it down. Paul Body answered that some of them need to be torn down. He said, why would you put something on the property line or a foot or two from it. He said he does not understand the neighbor who waits so long to turn it in to Code Enforcement. Michael Hartman said if its been there for 20 years, he had a problem with the neighbor who had been there for 20 years, turning it in. Paul Body said, the Commission, to alleviate problems with structures that have been there for over 10 years, and can prove it by survey or aerials, waive the fees they can.

Dale Rhodes said they had one today where the shed had been there for 20 years, to tear that down would be unreasonable. He said, if somebody else built that shed brand new and got turned in, now they have the issue of the money laid out, trusted the builder that they were doing the right thing. He said, now they are in trouble and they have the dilemma of saying sorry, you are out all that money or

deciding to give them the variance. He said, that is when he becomes perplexed and is wondering what Paul Body is thinking. Paul Body said he had seen, in Port St. John, a gentleman built a shed and a neighbor complained about it; it was into the rear and side setbacks. He said the Board of Adjustment approved the one that the neighbor was not complaining about, but he had to cut it back in the rear to meet the setbacks to the neighbor that was complaining. He said they approved one variance and denied the other; that was built without a permit to start with. Michael Hartman said, when they go without a permit, he feels less sorry for them. Paul Body said, they created their problem. He says he asks them when they come in for a variance, how they will answer number two, when they already have it built.

Jeffrey Ball introduced himself as the Planning and Zoning Manger. He said, a little thunder is being taken away from Mr. Body's presentation; a lot of the questions and decision being wrangled with will be addressed in the PowerPoint. Referencing the PowerPoint, he read, intended for owners uniquely and severely impacted by the zoning ordinance. He said, that is the key, what is unique and what is severely impacted that would warrant approving a variance. He said they will go through the PowerPoint presentation and leave time for questions.

Dale Young said, for a lot that is 100 x100, where 7 feet is taken of each side and 25 feet of the front and back, two or three thousand feet is gone. He asked if they have a maximum that the County can legislate against the person using. Paul Body said every zoning classification had setbacks, usually the bigger lots have bigger setbacks. Smaller lots may get up to a 5-foot setback for an accessory structure. Dale Young said they had some 50-foot setbacks in New Found Harbor and Tropical Trail. Paul Body said they don't have a 50-foot setback, Natural Resources might. Dale Rhodes said to let Mr. Body could start his presentation and questions would be held to the end.

Authority of the Board of Adjustments

A variance is the right to use or to build on land in a way prohibited by strict application of a zoning ordinance; intended for owners uniquely and severely impacted by the zoning ordinance.

Two types: Use (prohibited per Sec. 62-253(b)); Nonuse/Area (permitted per Sec. 62-251) Sec. 62-253(b): setbacks, lot width and lot size.

The applicant must demonstrate an "unnecessary and undue hardship..." (Sec. 62-253(a)).

Hardship

A hardship means the owner's land is uniquely and unnecessarily burdened; when a landowner "cannot yield a reasonable use and/or [economic] return under the existing land development regulations." (Sec. 62-253(a)).

Personal circumstances are not cause for a variance (i.e. simply wanting a bigger house) (Sec. 62-243(a)); the burden is on the applicant to demonstrate their hardship.

Planners work with applicants to help them understand what does and does not constitute a hardship; applicants fill out a "variance hardship worksheet".

Intake

Applicants discover they will need a variance in these situations, among others; before submitting a permit when they realize they cannot do what they wish due to the lot's irregular shape or configuration. Paul Body commented that if everyone else had a rectangle lot and they have a pie shape lot, it would cause them to have less land to work with.

After submitting a new building permit and discovering their lot does not meet the zoning requirements; Paul Body said that if somebody subdivided the lot again, it may not meet the size requirements for the zoning classification.

After submitting a foundation survey where an error was made; Paul Body said many might have somebody stake it out instead of a surveyor, to blame it on. If they do, there is a 10% error that allows for that administratively or if there is a mistake made to a one-story house, there is a 20% error to one setback.

When trying to sell the property, an administrative waiver can be used for increases of not greater than 10% (Sec. 62-1153. & 62-1154); it requires the signature of the neighbor(s) abutting the property receiving a waiver but does not require a public hearing. Paul Body said that is done administratively, signed by the Director.

Prerequisites to Granting of Variance

"That special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the applicable zoning classification." (Sec. 62-253(a)(1)).

A variance is not the appropriate remedy to a problem impacting the entire neighborhood. It must be peculiar to the property.

"That the special conditions and circumstances do not result from the actions of the applicant." (Sec. 62-253(a)(2)).

For example, an applicant puts an accessory structure on their property line despite having room elsewhere is not grounds for a variance. Paul Body said that they saw that today.

"That granting the variance requested will not confer on the applicant any special privilege that is denied by the provisions of this chapter to other lands, buildings or structures in the identical zoning classification." (Sec. 62-253(a)(3)).

"That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the identical zoning classification under the provisions of this chapter and will constitute unnecessary and undue hardship on the applicant." (Sec. 62-253(a)(4)).

"That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure." (Sec. 62-253(a)(5)).

“That the granting of the variance will be in harmony with the general intent and purpose of this chapter and that such a variance will not be injurious to the area involved or otherwise detrimental to the public welfare.” (Sec. 62-253(a)(6)).

Common Reasons to Deny a Variance

The unnecessary hardship is general to the neighborhood or community rather than peculiar to the property.

The issue was self-created (i.e., dividing a lot into two substandard lots without checking the zoning regulations). Paul Body said, or somebody building a shed and then asking for relief for it.

The only reason given for the variance is personal circumstances (i.e., to build a bigger house). Paul Body said, or wanting a bigger accessory structure.

The variance requested is excessive.

Examples

Staff presented an example of a lot (20PZ00061) that was split by previous owner, creating a nonconforming lot that needs to be legitimized (Presentation Lot image can be found in the Planning and Development Department). They requested 64.5 feet from the 125 feet minimum lot width in RR-1, a 52% increase. Paul Body said that in his opinion, this lot had a hardship, there is no other way to deal with it as long as the person did not create it themselves.

Jack Higgins asked if this was the one that backed up to 528. Paul said yes. If they subdivided it themselves, they created the problem. Someone cannot say that they split this property then decided to sell it, find out from the guy they were selling it to that it doesn't meet the minimum lot width, and then ask for a variance so they can sell it. He said they need to know how it was subdivided and how long ago.

Staff presented an example of a lot (20PZ00063) (Presentation Lot image can be found in the Planning and Development Department.) They requested an accessory structure of 2,489 square feet over the 891 square feet permitted by Section 62-2100.5(d) for a total of 3,380 square feet, a 279% increase. Paul Body said, this is one they should attach; they are taking an accessory structure and making it bigger than the house. He said it does not make sense that it be an accessory to the house that way; they have an accessory structure that appears to be the house now. He said there are other ways they could have done it, had it attached with a breezeway, attach it directly to the house with a garage. Dale Rhodes said that this is the one that prompted him to ask for the workshop. He said they approved this and should not have. Paul Body said there were other ways to remedy their problem; they could have attached it with a breezeway that had a common roof and it would be attached by our code, instead of it being an accessory to the house, it would be part of the principle structure.

Dale Rhodes asked, regarding the unnecessary hardship general to the neighborhood, would that be something similar to the entire neighborhood only being allowed to have a 4-foot fence and they are requesting a 6-foot fence, would that fall into common reasons to deny the variance. Paul Body responded that they have to look and see what else is in the whole subdivision. He said, today, they had a lot that was three acres, the house was extremely far back and to consider if they have the right

to develop anymore of their lot, as they are prevented from putting an accessory structure in their front yard. He said, in Port St. John where they have .23 acre, they see someone put a carport over top of the driveway, and then want a variance because their neighbor complained about it being in the front yard and it doesn't meet the 20-foot setback. He said they really need to look at the neighborhood as a whole.

Dale Rhodes said, most of the time they do that, look at what others have done and try to stay in accordance with that. He said they had one where the property was lower in their back yard, people were able to see over and so they wanted a higher fence. Paul Body said they have had a few fence variances where people have said that their neighbor is a peeping pervert. He said he tells people to grow Bougainvillea, they have thorns and grow fast, or bamboo, there is no height requirement for plants.

Michael Hartman asked about the need for a variance if a pool needs replaced. He said he used to live in Diana Shores, where the pool, having been built in 1988 under a building permit, would not meet the current code of being 10 feet off of the sea wall. Paul Body said he is not sure when that code was implemented, but the reason is to not undermine the bollards holding the seawall up. Michael Hartman said he understood that, if someone comes in to replace their pool, he had a hard time saying no because they are replacing an existing structure that was built under a building permit. Paul Body said, that is the reason they are here.

Dale Rhodes asked Paul Body if those were the things he did not have a problem with. Paul Body said, as long as he thinks there is no other way to remedy the problem. He said that about 50% of the stuff they see, he thinks people could remedy especially on accessory buildings being way over the 50% rule. He said, if they have a couple acres of land, where others have the same, they might be preventing them from using the property in a way other zoning would allow them to. He said they may want to look into agricultural zoning, then there would be no limit to the size or how many structures they could have. Michael Hartman said, in an area like that where its rural.

Dale Rhodes asked if there was anyway to get that information from him, that is not information he knows off the top of his head. Paul Body said they could call the Zoning department or look at the code. Michael Hartman asked Paul Body, when they are considering a case, if he is allowed to tell them what they could have done in the alternative. George Bovell said, on certain cases that are complicated, he had stopped by Paul's office, and asked him to explain it to him, that had helped him. Paul Body said that George had asked him to explain it but not for his opinion.

Michael Hartman asked Paul Body if he could give alternatives to the variance as part of the staff presentation. Dale Rhodes said, on one, they were told after the meeting, that if they just built a breezeway, they didn't need it. He said if he had known that he would probably have turned that variance down. He asked if there a way they can get that information while they are making that decision. Jeffrey Ball said they could start adding options for them to consider...Paul Body said that when they do staff comments they can put in other options. Michael Hartman said if they could include that it would help; they would be turning down a number of these things if they saw that there was a reasonable alternative.

Jack Higgins asked if today would have been a good example of that, for the guy with the golf carts. Paul Body said he does not think it's a good idea to give alternatives. Alex Esseesse said that the

goal is to focus on what is in front of them, if it seems reasonable and it meets the six factors, then that should meet the threshold. Otherwise they are going to have... Paul Body said one of the things they might want to ask the person is if there is any other way they can do this so that they are not here. Dale Rhodes said yes, that would be a good question to ask.

Michael Hartman said he didn't want to get that surveyor upset, but they can talk about it since that case is decided. Alex Esseesse said that it is possible they could come back seeking a different variance. Paul Body said they cannot seek the same variance. Alex Esseesse said they could come in a foot shorter and it would be a different variance.

Michael Hartman said that if there was a drainage canal the whole way along it was not on that survey, that's a deficient survey. Paul Body said it was not a true survey it was a site plan from an engineer, engineers are allowed to give surveys and lay over their work; it had all the easements on that. Michael Hartman said it had all the elements of a survey.

Paul Body said he was looking at that during the staff comments and wondering why they did not put it in another place. He said they were putting it in on the property line and asked how they would control the lot drainage, possibly with gutters. Dale Rhodes said it did not help when they said that they thought the property line was in a certain place, found out they had more, so they want to build there. Paul Body said, if someone does not know where their property lines are, they should ask their surveyor. He said the markers they put up are not the property corners, those are rebar and concrete monuments.

Dale Rhodes said, page two refers to an economic hardship when they can't realize a return, he asked what that meant. Paul Body answered, it is like the one today with the flag lot that is only 20 feet along the road; that would be an economic hardship, they are not going to be able to have someone develop that without a variance to the width. He said, you can't get a variance to the flag lot width the way the code is, it's in article two not six or nine, that would be economic.

Dale Rhodes asked Paul Body, if on old properties where they don't have the width or the length, would that be considered an economic hardship. Paul Body said it depends, anything that is at least 50 feet wide and 75 feet deep that was configured before zoning was established in 1958, and had at least 5,000 square feet of land is considered a non-conforming lot. He had seen lots that are smaller than that and people get a variance to it. He said they had a gentleman who had a lot that was 49 feet that was BU-1 zoning, he had to get a variance to the 75-foot width, he had a house on it before that was built pre-zoning, it was demoed because it was condemned. He said it was platted that way and it still didn't meet the nonconforming section. Dale Rhodes said in that case he would not be able to use that property without a variance, that is what a variance is for.

Dale Young said in the south beaches, that happens quite often, the neighbors do not want those little lots built down there. Paul said there are a lot of nonconforming lots that were platted in the south Melbourne beaches area, they are not conforming to the future land use that was imposed back in 1993. He said they changed it to an acre, there are a lot of subdivisions that meet the size requirements that could be built, but they have trouble subdividing the property.

Dale Rhodes asked if there were any more questions and thanked everyone for coming. He said he wanted to get a clear understanding, to make sure they were doing what's right. Jeffery Ball said if

they had any questions about a case, they could call or email them, they are here for them. The presentation included the code section in case they wanted to review it. Jack Higgins said they hit things very well. Dale Rhodes said there was just a few that came up recently that he had concerns about, that is what prompted this.

Alex Esseesse suggested that from a legal standpoint, they should refer to the factors listed in the ordinances, talking about special conditions, circumstances, etc., as they go through their deliberation process. He said, explicit use those buzzwords would help in creating a record if an appeal was to come up. Dale Rhodes said they have tried to do that more today and agrees that they need to refer to what the rules say. Alex Esseesse said if it misses out on one of those six, they have grounds to deny it, they have to have all of them.

Upon consensus, the meeting adjourned at **3:07** p.m.