

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, April 20, 2011, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair Mary Hillberg presiding, to consider the following requests:

Board members present were:

- Fred Kusterer, District 1
- Mary Hillberg, Chair, District 2
- George Bovell, District 4
- Dale Young, Vice-Chair, District 5
- Dave Pasley, Alternate, District 3

Staff members present were:

- Diana Johnson, Asst. County Attorney
- Paul Body, Planner I
- Candy Hanselman, Zoning Support Manager

The Chair, Mary Hillberg, called the meeting to order at 1:30 p.m. There were four regular members, and one alternate, present. All members present voted throughout the meeting.

Mary Hillberg – We now call to order the scheduled meeting of the Board of Adjustment. A new member that's with us today is Dave Pasley, who is standing in for Jim. And the rest of us are regulars. Planning & Zoning Office, Paul, would the staff please describe the function and operation of the Board of Adjustment for our applicants and for the audience.

Paul Body – Yes, Ms. Chairperson. The Board of Adjustment is a quasi-judicial body, established by the Board of County Commissioners, under Chapter 62, Article II, Division 4, of the Brevard County Code. The Board of Adjustment is empowered to hear requests for variances to the Zoning Regulation, and the Sign Regulation, in Chapter 62, Article VI and Article IX. Pursuant to Section 62-254, Brevard County Code, any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment may, within 30 days after the date of the public hearing at which the decision was rendered, but not thereafter, apply to a court of competent jurisdiction for appropriate relief. Ms. Chairperson, you have four items on your agenda today.

Mary Hillberg - Thank you, Paul. Our Vice-Chair, Dale, could you please read for the audience a definition of a hardship.

Dale Young – Thank you. A variance hardship: A variance may be granted when it will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship. The term “undue hardship” has a specific legal definition in this context and essentially means that without the variance, the applicant will have no reasonable use of the property under existing development regulations. Personal medical reasons shall not be considered as grounds for establishing undue hardship sufficient to qualify an applicant for a variance. Economic reasons may be considered only in instances where a landowner cannot yield a reasonable use, and/or reasonable return, under the existing land development regulations. The applicant must answer a variance hardship worksheet with six questions. The Board of Adjustment will discuss these questions today with each applicant who has requested a variance.

Mary Hillberg – Thank you, Dale. I'd like to address our board members, the applicants, and our audience, for a moment. The Board of Adjustment is a quasi-judicial board, with members appointed by the Brevard County Board of Commissioners. And we utilize Robert's Rules to conduct our meetings. The Chair is asking that all board members not ask questions while the applicant is making their presentation. Once the applicant has completed their presentation, we will begin board questioning with the board member who represents the applicant's district. When concluded, questioning is open to the full board. I'm asking that the Chair recognize each board member. Once all board members have completed their questioning, we will then open it to the audience who may be here to speak concerning the applicant's application. Anyone from the audience wishing to speak will be given the opportunity to address the board only once. At the conclusion of public comment,

the applicant will be given additional time for rebuttal, as well as to present their final comments. Once completed, no further comment will be heard from the applicant or the public. Each speaker is asked to be please concise in what you have to say, and stay on the subject. It is important that we avoid information that's not relevant. All persons speaking must provide their name and address to the public record. Those wishing not to verbally state their address may ask the clerk at the podium for an address card. And please fill it out and return it to them. Are there any questions from the board members about the Chair procedure? (no response) Seeing none, are there any questions from the applicants about the Chair procedure? (no response) Seeing none, are there any questions from the audience about the Chair procedure? (no response) Seeing none, the first order of business is to approve our minutes of March. Are there any additions or corrections to those minutes? (no response) Is there a motion to approve?

Motion by Dale Young, seconded by Fred Kusterer, to approve the minutes from the meeting on March 16, 2011. The vote was unanimous to approve the minutes, as submitted.

DISTRICT 1

1. JARTARTA & JESSICA POLLARD – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334 (5) (b) to permit a variance of 7 ft. from the required 15-ft. rear setback for an accessory building in an AU zoning classification. The property is described in **Section 3, Township 24, Range 35.** (1.09 acres) Located on the north side of Showdow St., approx. 400 ft. west of West Little Ct. (4520 Showdow St., Canaveral Groves)

BOA ACTION: Kusterer/Bovell – APPROVED, as depicted on the survey provided by the applicant. Vote was 4:1, with Hillberg voting nay.

Mary Hillberg – Is the applicant here? You may come up. And your name and address?

Jartarta Pollard – Jartarta Pollard, 4520 Showdow Street, Cocoa, Florida.

Mary Hillberg – Do you swear and affirm that everything you're going to tell us today is the truth?

Jartarta Pollard – Yes, ma'am.

Mary Hillberg – Thank you. Go ahead.

Jartarta Pollard – I don't really know what to – I mean, I'm just here to apply for a variance, hoping that I can get the allowance from you guys to say that the building's okay where it's at. I mean, other than that – I've never done this before, so I don't know how to start and...

Mary Hillberg – Can you tell us what it is that you – what is the problem that you have, and what you need?

Jartarta Pollard – The problem is that the building's at eight foot off the property line, and I need 15 feet. So I'm seven feet short. And that's what I'm here for.

Mary Hillberg – All right. And you have nothing else to add?

Jartarta Pollard – I've just got letters, and signatures, from all my neighbors, saying that, you know, they back it 100 percent that it's okay. I've got actual neighbors that are here today to back me. And here's the...

Mary Hillberg – If you'd like to pass that up, I can add it to the record, but it stays here with the paperwork.

Jartarta Pollard – Sure thing. I've got pictures, too, for you guys to look at. Where I thought the property line was, it's actually not, until we got the survey. Once we got the survey, we realized that where the fence, which was there, I guess, for 20 years, was a straight line. And ours curves in to go around some trees. And that's actually – in front of the trees is where the property line was. But if you look down the fence and look, you know, all the rest of the neighbors - I have my 15 feet, but it's not where the property line was, due to the survey. I didn't have a survey until all this. I just brought the pictures, just in case you guys want to look at it and see how far actually it is. And behind my house is a drainage ditch, so I'm not encroaching on somebody else's property, nor is the property behind us habitable. I guess it's – you don't have any access to it through Victoria Estates. I guess it's non-buildable, right now.

Mary Hillberg – Do you have paper pictures?

Jartarta Pollard – No. You can look through this, though.

Mary Hillberg – That's all right. We'll imagine. Would you like to hand up the petition that you have? Thank you, very much. And we'll just keep this. Is that all right?

Jartarta Pollard – No problem.

Mary Hillberg – Are there any letters for this?

George Bovell – Yes.

Mary Hillberg – All right. If that's all you have to say, then I'm gonna give you to Fred, who is District I.

Fred Kusterer – I went by your place on the way down here. That's a fine building you've built there.

Jartarta Pollard – It's all built by, you know, hurricane-proof. And the concrete's right, doors are right, wind rated.

Fred Kusterer – I wish you'd got a permit, though, so you knew where to put it.

Jartarta Pollard – Yeah. I mean, I wish – yeah.

Fred Kusterer – Did you listen when Dale read the rules that we have to go by?

Jartarta Pollard – I was listening, but just trying to interpret everything he was saying, as opposed to, you know, by what you say in your statute, as opposed to, you know, terms that I can more or less understand on what he's saying.

Fred Kusterer – Well, the hardship that he read is not what you've got, in my eyes. You built the building without a permit.

Jartarta Pollard – Correct.

Fred Kusterer – So you didn't have the benefit of the County coming out and stopping you before the mistake was made.

Jartarta Pollard – Well, I mean, if I didn't put it where it is, it'd be – you know, you just can't gain access to the doors with a pole barn in it, like pulling a trailer in and out. So I've wanted it as far back as I could.

Fred Kusterer – I understand what you wanted. Seven feet wouldn't have made that much difference, if it means tearing it down and doing it over again. And that may be where you end up today, because I don't see – from what I've seen and heard, so far, I can't support you. I'd like to be able to, because I understand how much it cost you to build that building. And I can also see that it's not really gonna make a whole lot of difference to the neighbors, 'cause your neighbors are pretty far apart there. Everybody owns a large piece of property.

Jartarta Pollard – And they're all fine with the building.

Fred Kusterer – You got a job ahead of you, right now, to convince this board that you've got a hardship there that we need to give you that variance. And, right now, I don't see it.

Jartarta Pollard – Yeah, I mean, it'd be detrimental to me to have to move it. I don't even know the first way I'm gonna move it, you know. It's – I have no clue. So I'm just hoping and praying that you guys are – say, "Hey, seven feet. He's not bothering anybody. It's drainage ditch behind it." I mean, other than that, I don't what else to...

Fred Kusterer – Keep going. You got to convince the rest of us. Thank you.

Jartarta Pollard – Man, you guys are a tough crowd.

Mary Hillberg – Would anyone else like to speak to that? Dale.

Dale Young – Yeah, how long have you owned this?

Jartarta Pollard – The property? I think, not last August, but maybe the August before.

Dale Young – O.K. A couple years?

Jartarta Pollard – Yeah, two.

Dale Young – And I see the survey. You must have just did this survey, then.

Jartarta Pollard – Yes, sir. I had to have the survey done, and coordinates with, you know, everything else that goes along with it. And that's where we found the discrepancy between where everybody else's fence is, and where everybody thinks their property line was, to what is actually physical property line.

Dale Young – Yeah, I see the fence marked on the survey here, where it curves in.

Jartarta Pollard – Yeah, you can see where I'm talking about there, I mean, if you look down where the straight lines, that goes on, I guess, and has been there for 20 years. So, you know, everybody thinks that they have that much property but, in actuality, it's probably ten feet, or however far it is, less that everybody don't actually own.

Dale Young – So this "reserve for canal" is an easement to the State, or the County, or what?

Jartarta Pollard – I would imagine it's the County. I see County go back there, County trucks, every now and then.

Dale Young – And it's zoned AU, agricultural.

Jartarta Pollard – Yes, sir.

Dale Young – O.K. That's all I have now.

Mary Hillberg – George.

George Bovell – I think you'd help yourself if you can tell us why you built without the permit, because I think that's the issue that my colleague – that Fred has. If you had gotten the permit, you'd have known all of this, and you wouldn't have to be here. You may have still been able to put it where it is, right, getting the permission beforehand. But the issue is why did you do it without a permit.

Jartarta Pollard – I wasn't aware of needing the permit. It was making a storage building. I have a pole barn there, also. I mean, I don't know, I don't think they pulled a permit for that whenever it was built. So I didn't see the necessaryness of having a permit. So I hired some people, and they came and put it up. I mean...

Mary Hillberg – Anyone else?

Dale Young – Ms. Chair, I had another question on that. At one time, on Ag, it was not necessary to pull a permit on pole barns. A few years ago. Do we have to have a permit now for a barn?

Paul Body – You should have a permit. You still have to meet the zoning regulations for the setbacks. If you're doing a barn, it'd be even greater setbacks.

Dale Young – So you're saying that under Ag, we do have to have a barn permit now?

Paul Body – I'm not sure. If it's being used for agricultural purposes - it's the Building Department's code. It's not...

Dale Young – But it's zoned Ag. It doesn't matter what it's used for. It's zoned Ag, and that's the only thing that you people use, is the zoning. So is he required to have a permit?

Paul Body – You'd have to check with the Building Department about that. As far as it being an accessory to his house, I would say yes, this needs to have a permit.

Jartarta Pollard – Well, I know we looked that up, and there was no permit required for that pole barn. And...

Dale Young – Well, in the past, they haven't required a – on agricultural zoning, there has been no permit required for a barn.

Diana Johnson – Yes, Dale, you're right. There is an agricultural exception, which requires that they don't have to get a building permit for certain structures on agricultural-zoned land. But I do not think that that's applicable to accessory structures. A pole barn, I think it's a little bit different. But I can definitely look it up for you.

Dale Young – Well, I know one applicant that went through that for five years. And you probably know who it is, too, Otis Lutz. So that settled the question, at that time.

Jartarta Pollard – Well, that's where I'm at. I was unaware that I needed the permit for a storage building, also. I mean, it's just basically a storage building that I store saws, concrete saws and what have you, battery chargers, and this, that, you know, household items. You know, my baby's power wheels is in there. It's not like we have an actual – you said you'd been by the house, so you see how small it is. She's got her toys in

there. I mean, bedroom set, a spare bedroom set. It's not like we're making some sort of recreational function out of this, you know, the shop back there, storage unit. So I just hope it works out, and I don't have to go find somewhere to put all her stuff, my stuff, and everybody else's, you know.

Mary Hillberg – Did anyone else want to speak? Fred.

Fred Kusterer – I got a question about the Code Enforcement issue. Apparently, the County has levied a code enforcement charge against you?

Jartarta Pollard – I don't think I got anything yet, until we know how this is gonna turn out. Code Enforcement's what brought all this about. As far as a charge on me, I'm unaware of any charge.

Diana Johnson – Yes, we don't have anyone from Code Enforcement, unfortunately, here today to give us the specifics on it. But do you have an active violation on this particular piece of property due to the setbacks?

Jartarta Pollard - So it's due to this building.

Mary Hillberg – So there is an active violation?

Jartarta Pollard – Is that what we're here for?

Diana Johnson – No, you'll...

Jartarta Pollard – 'Cause if it's something else, I have no clue what it is, then. I would like to know...

Diana Johnson – No, it would be referenced to this particular problem that we're dealing with today. But whatever is decided today will decide the Code Enforcement issue. So you'll deal with that at a later time.

Fred Kusterer – I was curious about how that Code Enforcement action got there. Someone call?

Diana Johnson – Well, the way the – the Board policy of the Board of County Commissioner's policy is that they will not go out to the property for a violation, unless someone calls, unless they get some type of complaint regarding the issue. Code Enforcement won't just go out to the property themselves and happen to see it, or drive by, or anything. They're actually required to only go out if they're called.

Fred Kusterer – So we're saying that somebody ratted on him, one of his neighbors, or somebody he made mad?

Diana Johnson – Yes, Code Enforcement received a complaint regarding this issue, and that's how they got here.

Fred Kusterer – O.K. Thank you.

Jartarta Pollard – But, as you see, I got all the signatures, and phone numbers, and addresses of neighbors that basically support me.

Mary Hillberg – Dave.

Dave Pasley – Just a question about what the building is. Is this just a pole barn with a concrete floor?

Jartarta Pollard – No, it's not a pole barn, per se. It's basically a storage building that I have. And I don't have any other enclosed storage on my property. The pole barn's open, so, you know, at any given time, anybody could come in and steal anything. And you've seen the house is, what, 900 and something square feet, so it's not like I can put everything I own inside my little house. So that's where I'm at with the building. I just had a kid and, you know, she's got a million and one items. I never thought it would be that many things with having a little girl. That's where some of her stuff goes, and that's where some of our stuff goes.

Mary Hillberg – All right.

Dave Pasley – Just take me through this again.

Jartarta Pollard – Yes, sir.

Dave Pasley – This is not an enclosed building.

Jartarta Pollard – It is closed, and I can lock it - because a pole barn is not. So it's like if I put – and it leaks, you know, the pole barn. If I put our bedroom set that's not being used in the house in there, you might as well just sit it side the road, 'cause it's gonna be wet, mildewed, and nobody's gonna want to sleep on it. Same thing with her toys, and stuff like that. I don't want to sit it in a pole barn, or have my chainsaws, or anything, sitting out in a pole barn for anybody to just walk up and say, "Hey, I'll take it," and take it to the pawn shop, or whatever they would do with it.

Dave Pasley – Thanks,

Jartarta Pollard – No problem, sir. Thank you.

Mary Hillberg – Fred.

Fred Kusterer – I was gonna continue with the description, because I saw it. This is a steel building, a pre-manufactured steel building, 20 feet deep, 50 feet long, maybe, with four rollup garage doors on the south side, and a walk-in door. It isn't a homemade thing. I guess you had somebody build it?

Jartarta Pollard – Yes, sir. I had a, you know, professional. It's not like it's junk sitting on a property, where it's an eyesore for anyone. It's...

Fred Kusterer – No, it's not. It's a nice-looking building.

Jartarta Pollard – I had it built, which I thought was the right way, and everything right. And just trying to make a little storage for what we don't have there, that's under, you know, something that's lockable, and I don't have no worries about someone walking off with my stuff, especially people that ride (unintelligible), or whatever, on the other side. They can just hop the fence, and if it wasn't locked up, make a quick getaway across the canal, and it's gone.

Mary Hillberg – Are there any more questions? (no response) You may have a seat. Thank you. Is there anyone in the audience who would like to speak to this issue?

John Walter – My name's John Walter. This is my wife, Gail Walter. We reside at 4555 Showdown. We're neighbors. We don't have any...

Mary Hillberg – Do you swear that everything you'll say today before us is the truth?

John Walter – Yes, ma'am. We have no problems. Since these people moved in, they've cleaned the property up. They've made it look nice. The building – I went around back to see how far the building was from the fire road to get in, and it's more than far enough away. There's no – it's not creating like an obstacle for safety issues. I know they had a – they just had a little baby born. So with our economy that we're in now, and fuel, and everything else, I could see – you can't see it on the outside, when you're driving by – but I could imagine that they're having a rough time, and all, supporting the young one. They're young themselves. But I don't know their economics, so I really can't say. But, as far as the building goes, it's not bothering us. I've talked to other neighbors around who didn't have a problem with it. And it makes the neighborhood look nicer. It makes it where it's more – adds a little more upper scale to our neighborhood, instead of it being like backwards redneckville.

Mary Hillberg – Thank you, very much.

Gail Walter – I'd like to say something about that pole barn.

Mary Hillberg – Did you swear to tell the truth before?

Gail Walter – Yes. The pole barn was built approximately five years ago, and it was built from part of our shed that we threw out. That's what we do around there on that street. You know, if somebody throws something out, the other neighbor comes along and recycles it and maybe puts up a shed, or whatnot. And so that's what happened, and that's how that pole barn got constructed there. He originally had, like a wooden structure there that was half built. So then he used...

John Walter – Not this gentleman.

Gail Walter – No, no, the people that lived there prior to – that owned the property for 20, something, years. And when – they had a partial wood structure, like an open area wood structure, that was already there. And then they used our shed to close it off. And...

Mary Hillberg – So you don't have any objection to this building, as it is here. The pole barn isn't what we're talking about, really.

Gail Walter – No, no. Well, I just wanted to clarify it, 'cause it seemed like there was an – and, in addition to that, because it's out in the Groves, other neighbors have built other buildings. In fact, there's a neighbor across the street that has a structure, and we didn't have any problems.

Mary Hillberg – Thank you. Does anyone have any questions of these people? Dave.

Dave Pasley – Yeah, I just want to clear up a point. There was an existing building before that had not been – been there for years...

Paul Body – No, the building...

John Walter – No, it's been over five years. We've been in there ten years, and that was – it was just a top with a pole coming down. And not the people that moved in, but the person that was there before, he took the metal from our shed and put in on three sides. So it's more like a traditional pole barn where one side's open.

Dave Pasley – So my question was, there was a building of some sort, a structure of some sort...

John Walter – Oh, yes.

Dave Pasley – And these folks tore than down...

Gail Walter – No.

John Walter – No, nothing was torn down.

Paul Body – What they're talking about is, if you look at the survey, there's a pole barn. There's a covered area there on the survey, which has nothing to do with the accessory structure that is...

John Walter – No, nothing.

Paul Body - ...in for the variance, though. There still is the pole barn that's out there, but...

John Walter – Which has been there for years.

Dave Pasley – Thank you.

Mary Hillberg – You may have a seat. Is there anyone else in the audience that would like to speak to this issue? (no response) If not, the applicant can come back up, please, and have any – you have any final words you'd like to say?

Jartarta Pollard – Just final words is I hope you guys are convinced that if I do have to move it, it's gonna be a way setback. I mean, I don't really know how I'd recover from – I don't even know how you would move a building. I mean, either it's gonna be trashed, scrapped, because once it comes down, I can't put it back together. And I just don't know how we'd, you know, move it forward. So I guess if you got it in your hearts, I'm looking for it.

Mary Hillberg – Thank you.

Jartarta Pollard – Thank you.

Mary Hillberg – You may have a seat. There are letters. We've got two letters. George? Thank you.

George Bovell – This first one says, "To Whom It May Concern: This is a letter of support to grant Jartarta and Jessica Pollard a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334 (5) (b), to permit a variance of seven feet from the required 15-foot rear setback. The Pollards have done an amazing job on their property. The previous owners had it looking like a rundown junk yard. They have improved the property by things as simple as mowing the lawn to having a working septic system. Jartarta and Jessica are fine neighbors, and the variance they are requesting is reasonable and will not affect any property other than their own. Sincerely, Lori and Jack Pinkley, 4450 Showdown Street, Cocoa, Florida, 32926." The other letter: "I am writing in response to a notice I received in reference to Jartarta and Jessica Pollard. I would like to say this is not a problem. I also think they should be commended on the major improvements they have made to our neighborhood since they purchased the property in question. It was an unsightly, to say the least, home and yard for many years. The yard was overgrown, and the house was falling apart. As a matter of fact, when we first moved here, we thought it was an abandoned piece of property. I understand the accessory building may be a few feet off, but it does not interfere with any neighboring properties. I believe the next door neighbor has a personal issue with Jay and Jessica. Jay is a very hardworking, enterprising young man and should not be treated so unfairly. I would hope the court will come to the right conclusion and not side with the one and only neighbor who is being completely unfair with her complaints. Unfortunately, I am unable to attend the public hearing, but I would like to request that my comments be read and taken into consideration. Sincerely, Maria Ray, 4780 West Little Court, Cocoa, Florida." And then there's one signed by one, two, three, four, five, six

other residents. "We, as neighbors to Mr. & Mrs. Pollard, all agree that the variance they are requesting should be granted. Where the variance is being requested doesn't affect any of us, our property, isn't injurious or detrimental to any of the public welfare. In place of us all being able to show up for court, due to conflicting work schedules, we are signing this letter, giving our approval for the variance."

Mary Hillberg – Thank you, George. We are closed now to the public, and to the applicant. What is the pleasure of the board? Fred.

Fred Kusterer – I kind of put you on the spot on this one. We had a case, not far from where this house is, about a year ago. It was exactly the same, except he had put a homemade structure there. It was nearly as big. It was a homemade structure. And we turned down the variance. The only difference I can see here is this fellow has a lot of support from his neighbors. And, in view of that support, I would recommend we give him the variance, as he has asked, as depicted on the survey. I'll call that a motion.

Mary Hillberg – O.K., we have a motion to approve. Is there a second?

George Bovell – I second.

Mary Hillberg – George has seconded it. Is there any discussion? (no response) I would like to make one point, that I agree with you, and I remember that we have had another case, very similar to this, and it was denied. This is – my map is right around 1,300-square-foot building. That's a pretty big building. And I don't know who sent in the complaint about it, but evidently they chose to remain anonymous, so we don't hear from them. So I do say that this is very marginal on the line of what we're really here to do. That's all.

Diana Johnson – If I may just add in one thing. As the board, you're familiar with the six factors that you have to consider, one of them being the last one, the sixth one, which is that you have to, you know, consider whether it's in harmony. And we know that that's considering the public, and all that. I would just remind you to consider all six factors. Thank you.

Mary Hillberg – Does anyone have any other comments? (no response)

George Bovell – My comment is based on what I've seen here. What he has done is in harmony with Canaveral Groves, the general features of those neighborhoods.

Dale Young – Yeah, this property is at the dead end of Canaveral Groves, all the way against I-95, according to the plot plan. So it's almost invisible to residents, I'd say. So, yeah, I don't see any harm in allowing it, myself.

Mary Hillberg called the question, and the board approved the variance, as stated above. The vote was 4:1, with Mary Hillberg voting nay.

Mary Hillberg – You have your variance.

Fred Kusterer – Your very lucky day today.

DISTRICT 2

2. BONNIE M. TUDOR AND ANNETTE M. RUTH – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2123 (a) to permit a variance of 1 ft. from the required 5-ft. side setback (north) for a swimming pool screen enclosure. The property is zoned RU-1-11 and is described in **Section 18**,

Township 24, Range 37. (0.28 acre) Located on the west side of Jason St., approx. 100 ft. south of Martin Blvd. (2235 Jason St., Merritt Island)

BOA ACTION: Pasley/Kusterer – APPROVED, as depicted on the survey provided by the applicant. Vote was unanimous.

Mary Hillberg – Will the applicant please step forward. Hi, there. Your name and address, please.

Bonnie Tudor – I'm Bonnie Tudor, 2235 Jason Street, Merritt Island, 32952.

Mary Hillberg – Do you swear and affirm that everything you're gonna say here today is true?

Bonnie Tudor – Yes.

Mary Hillberg – O.K., go ahead.

Bonnie Tudor – Yes, sirs, ma'am. I'm applying for a variance on a condition that existed at the time that I purchased the house, related to the screen enclosure, which happens to be flush with the pool deck. But I guess the issue was with the enclosure. Just a small amount of context: When I bought the house I was an Army civilian deployed to Iraq. It was September, '07 – looking at retirement in '09. And I gave my older sister power of attorney and asked her to find a house in her neighborhood and buy it for me, which she did. I'm not saying that - this encroachment was enclosed in the title, and I'm not saying that even if I had been doing the closing, I would have recognized the impact or known how much of a problem it was. Anyway, when I got home in February of '09, I started to look into doing work to the house. And that's when I became aware that there had been a 50-foot easement vacated at the back of the property in the 80's and, somehow, an intermediate easement had not been vacated by the previous owners. So I started to look into curing that. And in August '09, I deployed to Afghanistan for a year. And I just got back from there in October, which is when I really started to follow up on all the things to get them fixed. So, last month, I had the hearing to have the easement vacated that I was encroached on. And during the course of that hearing, the Zoning Board "sic" said, "We have no problem with vacating an easement but, by the way, you're inside the setback variance - or you need a variance for the setback." So I applied for that. Again, I'm just – I realize that – I'm a firm proponent of the concept of contributory negligence. It's not that the encroachments aren't listed in my title. But I'm doing – they existed at the time I bought the property, and I'm doing everything I can to make sure that I can do things legally. If a hurricane takes out my screened enclosure, I'd like to be able to get a permit to replace it. In terms of hardship, I do have a couple of pictures showing that the pool has very little deck around it, anyway. And, as far as whether I could move the enclosure – 'cause I guess the issue is not the concrete pool deck, which also encroaches, but the enclosure – if I move the enclosure, I'm losing – already at the back side of the pool – this is at the north – but on the west side of the pool, I only have 15 inches. This side only has 32 inches. If I have to move it a foot, that gives me two – the two longest sides of the pool have 15 and 20 inches, respectively. The rest of it has very little, also. So I really do think, if I don't get the variance, it almost means I'm gonna have to take the pool enclosure – I mean, the screen enclosure – down and do without one. I don't know. But I am trying very hard just to... (Ms. Tudor walked away from the microphone and handed her pictures to Ms. Hillberg).

Mary Hillberg – Is that all you had to say, Bonnie?

Bonnie Tudor – Yes, ma'am, I believe so. I'm just trying to make sure I get everything in place, legally. I can't speak for any permits they may or may not have been applied for when that was – the enclosure existed when I bought it.

Mary Hillberg – So this is as it was when you bought it?

Bonnie Tudor – Yes.

Mary Hillberg – And you've done nothing to change it?

Bonnie Tudor – Now, in terms of my neighbors – 'cause I think this mentions something about – anyway, as far as my neighbors, I didn't get any letters from them. I know they got letters, asking if they had a problem. The main neighbor to the north, he – when I moved in, I tied in to his fence, as far as putting my own fence up. And we've put a – you can see we've put some lattice work on it, and they had no problem with that. They like the flowers on it. So he apparently has no problem with the fact that I'm one foot inside the setback.

Mary Hillberg – All right. I have gone by your house, but I couldn't really see well enough to see, without going in between the yards.

Bonnie Tudor – Yeah, it'd be on the right-hand side, to the back.

Mary Hillberg – It's hard to see back that far with the houses the way they are. But it does look very tight back there. Does anyone else have any questions? Dave.

Dave Pasley – Do you know when the pool and pool enclosure were built?

Bonnie Tudor – No, sir, I don't. The house was '79. As I said, I bought it in '07. I wasn't here, but I believe it was a situation where the sellers might have inherited it from their mother. I think that was the situation.

Dave Pasley – So we can probably guess somewhere between 1980...

Bonnie Tudor – Sometime in the '80's.

Dave Pasley – Yeah, O.K. Good. Thank you.

Mary Hillberg – Anyone else? Fred.

Fred Kusterer – Yes, I have a question. I'm a little confused on the easement. What do you mean, the easement may have been vacated? It says that here on the blueprint.

Bonnie Tudor – Oh, well, I guess, the way I understand it, in the – on the – not the north side – west side of the property - there was a 50-foot County road easement at the back of the property that was vacated in the '80's. But between my property line and the start of that 50-foot easement, there was a five-foot strip that had not been vacated. That's what I got vacated last month. I have that vacating – because my title refers to an easement – anyway, it was during the Zoning Board's "sic" review of my application to vacate that easement that they stated I had a problem with the setback. I do have the paperwork related to the granting of that easement, if that would help clarify it.

Fred Kusterer – I'm trying to figure out where that five-foot easement is. Is it between...

Bonnie Tudor – To the west. No, it's not on the north, where I'm looking for the variance now. That was in the back of the property, was my understanding.

Fred Kusterer – I understand now.

Mary Hillberg – Are there any other questions? (no response) O.K., you can have a seat. Thank you. Is there anyone in the audience that would like to speak to this situation? Come on up.

Annette Ruth – My name is Annette Ruth, 2235 Jason Street, Merritt Island.

Mary Hillberg – Do you swear and affirm that everything you'll say today is true?

Annette Ruth – Yes, I do. I would just like to point out that on that 32-inch strip where the screen enclosure is encroaching, we have the drain for the pool. The skimmer is right there. So we can't really move over – move the screen enclosure in – because that's where the pool skimmer, and filter, and all that, is right there. So we don't have a lot to do right there. That's all I have.

Mary Hillberg – Thank you. Is there anyone else that would like to speak? (no response) Seeing none, I bring it back to the board. I don't think there are any letters on this. Are there? I don't think so. We only have the letters on the previous one. O.K., bring it back to the board. Does anyone have any comment? (no response) I've found this to be not a – it's one foot, and it's – since some of the structures of the pool are involved in that area, I think that it would qualify as a hardship, and make it more difficult, if you can't reach the section of it that requires maintenance. So I don't have any problem with this variance. Anyone else?

George Bovell – Actually, since I've been on the board, we've dealt with this type of situation on several occasions. It is quite common. You build a pool, and the pool is within the setback and, later on, you try to put the enclosure in. And, of course, the enclosure now creates this six-inch or one-foot issue. So I don't see a problem with the request.

Dave Pasley – I'd just like to add that because of the requirement that the pools be fenced off, you're just about between a rock and a hard place, just from the get-go. So on a property that's been there since '79, '80, what else can you do? It sounds like the right thing to do, granting the variance.

Mary Hillberg – Anyone else have anything to say? (no response) Do I hear a motion?

Diana Johnson – If I could have you let Ms. Tudor give her final comments.

Mary Hillberg – Oh, I'm sorry, you're right. Ms. Tudor, would you like to make a final comment?

Bonnie Tudor responded, from the audience, that she had no further comments.

Mary Hillberg – Does anyone want to make a motion?

Dave Pasley – I'll make the motion.

Mary Hillberg – You make a motion that we approve this variance, according to the survey?

Dave Pasley – Right.

Mary Hillberg – Thank you, Dave. Is there a second?

Fred Kusterer – I'll second it.

Mary Hillberg – There's a motion and a second. Any discussion? (no response)

Mary Hillberg called the question, and the board approved the variance, as stated above. The vote was unanimous.

DISTRICT 4

3. RONALD J. CAPASSO – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1340 (5) (a) to permit a variance of 6 ft. from the required 20-ft. rear (north) setback in an RU-1-11 zoning classification. The property is described in **Section 23, Township 25, Range 36**. (0.49 acre) Located on the northwest corner of Bonaventure Dr. & Rockledge Dr. (2079 Rockledge Dr., Rockledge)

BOA ACTION: Bovell/Pasley – APPROVED, as depicted on the survey provided by the applicant. Vote was unanimous.

Mary Hillberg – Is Mr. Capasso here?

Ronald Capasso – Good afternoon.

Mary Hillberg – Good afternoon. Your name and address?

Ronald Capasso – Ronald J. Capasso, 2079 Rockledge Drive.

Mary Hillberg – You swear and affirm that everything you're going to say today is true?

Ronald Capasso – I do.

Mary Hillberg – O.K., go ahead.

Ronald Capasso – I'm glad I wasn't first. That's all I can say. Basically, what I have is a house. You have the survey. We'll just start with that. And I was in the process of trying to add a pool, and I went down to the Zoning Department. They said I don't have the required rear setbacks of 20 feet. And if you look at the survey, I don't have a rear setback of 20 feet on either rear. And my intention was, per the fact that I have a corner lot that is a double-frontage lot, that I could elect one of the streets as my frontage in terms of determining where I can put an accessory structure, which was a pool. But this variance isn't really for the pool. It's just to make one of my setbacks be compliant with the existing requirement for 20 feet.

Mary Hillberg – I'm a little confused. This isn't for the pool. It's for your home. Is that correct?

Ronald Capasso – This is the home, yes.

Mary Hillberg – O.K.

Ronald Capasso – Once I have a legal rear setback, I can then do what code permits me to do on this lot, which is to add a pool.

Mary Hillberg – I see. And the pool will be sort of in the front of your house.

Ronald Capasso – Yes, yes, which is not uncommon on Rockledge Drive. There is a number...

Mary Hillberg – And how long did you own this?

Ronald Capasso – I bought the house in 19 – the house was built in 1959. I bought the house in 1991.

Mary Hillberg – District IV, do you have any questions?

George Bovell – Really, I don't have a whole lot of questions for you, because I can see the issue. The house was built in 1959. You bought it in 1991. The one question I have, did you make any changes to the structure of the home?

Ronald Capasso – Yes. I remodeled in 1998.

George Bovell – Did you create this setback issue? The remodeling, did you create that setback issue that you have right now?

Ronald Capasso – I did not change the setbacks.

George Bovell – You did not change the footprint of the house?

Ronald Capasso – No, I did change the footprint of the house, primarily in the front, frontage on Rockledge Drive, the southeast corner.

George Bovell – Sir, look at me, for a second, please (he held up a survey). This is the area right now that we are concerned about.

Ronald Capasso – Yes. I have not changed that.

George Bovell – You did not change that?

Ronald Capasso – No. The house was built that way.

George Bovell – O.K. I'm good.

Ronald Capasso – If you'd like to have a – you've got the survey.

Mary Hillberg – Anyone else? Dale.

Dale Young – Yeah, a question, probably for staff here. The address is on Rockledge Drive. So does this house have two rears, or two sides?

Paul Body – That was the problem that we had when we looked at it. Just because the address is on one side doesn't mean that that is gonna be his front or his side street. We have to look at the depth of the property and see if it meets the codes. And, in this, both of them met code. So neither of them met the rear setback. We look at that, too, and see if it has – one of them will meet the rear setback. Neither of them met the rear setback, where both of them would meet a side setback. So he was trying to establish himself as being the front of his property being Bonaventure Drive, and that will mean the immediate rear would be the one that he's looking for the variance. That way, he could put the pool behind the front building line and still meet the side setback, with the extra five feet going to the pool.

Dale Young – But his address is still at Rockledge, which would lead me to think that everybody else considers that the front of the house.

Paul Body – Well, his driveway's going out to Bonaventure. And Address Assignment are the ones that assign what...

Dale Young – Well, his garage faces Bonaventure.

Paul Body – Yes.

Dale Young – It looks to me like the front door is at the end of a curving sidewalk here on Rockledge Drive. So is this just a judgment call, or what?

Paul Body – Well, that's what it is, kind of, just a judgment call, because we couldn't establish which it was built to be, by Bonaventure or Rockledge. It was built, I think, before zoning was even established.

Dale Young – But if the back end of Bonaventure here is the side, then he only requires what, five feet, seven feet? If that, by chance, were the side...

Paul Body – If Bonaventure was the side street?

Dale Young – No, the – what we're talking about here, the area that's under question, if that was a side setback, instead of a rear setback, it would be five...

Paul Body – No, it would require seven and a half feet.

Dale Young – O.K. That's all.

Mary Hillberg – Anybody else with any comments? (no response) You may have a seat.

Ronald Capasso – I had one other. Per – I'm referring to here...

Mary Hillberg – There's only one variance here. Is that correct?

Paul Body – That's correct. To the rear setback.

Ronald Capasso – I just wanted to read from the code ordinances that says "Lot line, front: In the case of a lot abutting on only one street, the front lot line is a line separating such lot from the right-of-way of the street. In the case of double-frontage lots, easement lots and flag lots, one such line shall be elected by the owner to be the front lot line for purposes of this article." And it goes on.

Dale Young – So you elected Bonaventure?

Ronald Capasso - For the purpose of submitting an application for a pool, I am electing Bonaventure. Obviously, my front is on Rockledge Drive. And I have seen other houses...

Dale Young – O.K.

Ronald Capasso – Thank you.

Mary Hillberg - Is there anyone else here that would like to speak to this issue? (no response) Seeing none, I bring it back to the board. And that would be - George, that's yours. Tell us what you think.

George Bovell – That's really - of all the discussions we had, the only issue we are talking about right now is that small area that happened to be encroaching in the current easement. And he didn't create it. The house

has been in that configuration since 1959. So I recommend that we approve his variance, as depicted on the survey.

Mary Hillberg – Thank you, George. Is there a second to this motion? Dave will second it (Mr. Pasley's second was made without a microphone; therefore, it is not audible on the record). So we have a motion and a second. Is there any discussion? (no response)

Diana Johnson – Did you provide Mr. Capasso with the opportunity to have a final statement before the motion?

Mary Hillberg – No, I didn't do that again. Would you like to have another statement, sir?

Mr. Capasso indicated, from the audience, that he had no further comments.

Diana Johnson – Sorry, I just have to ask.

Mary Hillberg – I'm sorry. I should be paying more attention. You're so helpful.

Mary Hillberg called the question, and the board approved the variance, as stated above. The vote was unanimous.

4. J.P. MORGAN CHASE, NA – requests a variance of Chapter 62, Article IX, Brevard County Code, Section 62-3316 (b) (4) to permit a variance of 6 ft. from the required 15-ft. front setback for a freestanding sign. The property is zoned BU-1 and is described in **Section 36, Township 26, Range 36**. (0.75 acre) Located on the west side of Wickham Rd., approx. 560 ft. north of Post Rd. (4050 Wickham Rd., Melbourne)

BOA ACTION: Bovell/Kusterer – APPROVED, as depicted on the survey provided by the applicant. Vote was unanimous.

Julia McAfee – Good afternoon. My name is Julia McAfee. My address is 364 Oak Place, Port Orange, Florida.

Mary Hillberg – And do you swear and affirm that everything you're telling the board here today is true?

Julia McAfee – Yes.

Mary Hillberg – Thank you.

Julia McAfee – I've been hired by Chase to come in – they went through a rebranding of all of their signage back in 2008 to 2009. And, at that time, they pulled a permit, and received that permit, to put up the existing monument sign that's in place right now. It's a 20-foot overall height. The sign code requires a 15-foot setback from the property line. This particular sign only has a nine-foot setback from the property line. So we've done some research, and we haven't been able to determine how that initial permit was issued, but it was. Since that sign is in place, when you're heading north down Wickham Road, it blocks visibility to the adjacent shopping center sign, the Post Commons pylon sign. And it's created this dispute between the landlord of the shopping center and Chase Bank, because they're saying it's obstructing the visibility for all of their tenants. What Chase has agreed to do, if you guys would grant the variance, they would remove the existing 20-foot tall structure and bring it down to a low monument sign that's about six feet in overall height. That would make the shopping center happy. Chase is okay with it. And it would seem to resolve that issue. The only issue that we would have is the 15-foot setback. There's only one location on this property that a monument sign would

really fit, being this one. So they're requesting that we be allowed to continue the existing setback of nine feet, basically the same setback that the current sign sits at.

Mary Hillberg – I see. Is that all?

Julia McAfee – I think so.

Mary Hillberg – All right. Go ahead, George.

George Bovell – My office is just down the street from this office. I'm very familiar with it. And I really don't have any questions. It was laid out quite easily for me to understand. And I believe that their request is reasonable.

Mary Hillberg – Thank you. Anyone else? Dale.

Dale Young – How long has this been there?

Julia McAfee – The permit for the sign that is existing was pulled in May of 2009. A year and a half, maybe, close to two years.

Mary Hillberg – And anyone else? (no response) All right. Is there anyone in the audience who would like to speak to this? (no response) Seeing none, would you like to come back and make a closing statement?

Julia McAfee – No, I think that I covered everything. Thank you, very much.

Dale Young – Has the new sign been submitted?

Julia McAfee – No, it has not, not until we go through this to find out if it even would be approved. But it is...

Dale Young – But as far as you know, the dimensions fit all the other codes?

Julia McAfee – Yes. They have actually reduced it in overall square footage. I think the existing sign is roughly 80 square feet, and the smaller sign comes in at about 60 square feet. So it's actually a smaller sign. Thank you.

Mary Hillberg – I would like to say that I'm all in favor of signs that are very tall to become shorter, if they must belong there, at all. Bring it back to the board. What's your flavor?

George Bovell – Approve the variance, as depicted on the survey.

Mary Hillberg – Thank you, George. Is there a second?

Fred Kusterer – I'll second it.

Mary Hillberg – Fred seconds it. Is there any discussion? (no response)

Mary Hillberg called the question, and the board approved the variance, as stated above. The vote was unanimous.

The meeting was adjourned at 2:31 p.m.