

## BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, February 16, 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
- James Rosasco, District 3
- George Bovell, District 4
- Dale Young, Vice-Chair, District 5

Staff members present were:

- Christine Lepore, 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. All five regular members were present and voting.

Mary Hillberg – I now call the scheduled meeting of the Board of Adjustment to order. Planning & Zoning Office, would staff please describe the function and operation of the Board of Adjustment to our applicants, and 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 one item on your agenda today.

Mary Hillberg - Thank you, Paul. Would our Vice-Chair, Dale Young, please explain to our applicants, and the audience, the definition of a hardship.

Dale Young - 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 a 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 would 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. We utilize Robert’s Rules to conduct our meetings. The Chair is asking all board members not to 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 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 the 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. We will not use a timer for the meetings, but we – for your discussions, presentations - but we ask that you be succinct, and stay on the point, and not drift from the subject. All persons speaking must provide their name and address for the public record. Those wishing not to verbally state their address may ask the clerk at the podium for an address card. Please fill it out and return it to the clerk. 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 board procedure? (no response) Seeing none, there are no questions from the audience about the board procedure? Seeing none, first order of business is to approve the minutes of our previous, January 19, 2011, meeting. Are there any additions or corrections for those minutes? (no response) Seeing none, is there a motion to approve?

Motion by James Rosasco, seconded by George Bovell, to approve the minutes from the meeting on January 19, 2011. The vote was unanimous to approve the minutes, as submitted.

### **DISTRICT 3**

**1. RAMON F. & CARMEN MARTINEZ** – request a variance of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-1341 (5) (a) to permit a variance of 5 ft. from the required 20-ft. front setback in an RU-1-9 zoning classification. The property is described in **Sections 20 & 21, Township 28, Range 38**. (0.22 acre) Located on the north side of Richards Rd., approx. 0.25 mile west of Hwy. A1A (280 Richards Rd., Melbourne Beach)

**BOA Action: Rosasco/Kusterer – APPROVED, as depicted on the survey provided by the applicant. Vote was unanimous.**

Mary Hillberg – Will the applicant please step forward to the podium. And if you are both gonna speak, could you please raise your right hand. Do you swear and affirm that everything you're gonna say here is the truth?

Ramon Martinez – I do.

Mary Hillberg – And your name and address?

Ramon Martinez – Ramon Martinez, 280 Richards Road.

Mary Hillberg – Thank you. And your name and address?

Carmen Martinez – Carmen Martinez, 280 Richards Road.

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

Carmen Martinez – Yes.

Mary Hillberg – Thank you. Go ahead.

Carmen Martinez – We are here to request a variance. When we bought the house, we didn't realize – can I show a picture?

Mary Hillberg – Yes, but you can just hold it up from there and talk about it.

Carmen Martinez – This is the house. It's all even, the bedrooms and the porch, the patio, where the screen is. We just assumed it's a room, and we can close, take the screens out. And we ordered windows, and we

ordered doors. We got a larger septic tank to enclose the living, and a larger size air-conditioning. And then we realized that this was unacceptable. We never knew about the 15-foot "sic". And so we are here to ask if we can have this granted so that we can put up our windows and our doors. I spoke to people in the community, and the block, and I have letters from my neighbors. No one opposes to it. I don't know what else to say.

Mary Hillberg – Well, if you have any letters you'd like us to add to the record, or have read into the record, we can take them. We won't be able to give them back to you, though. So if you don't have copies – and if you have any pictures, if you give them to us, they have to be part of the record, also. So that's all you have to say? O.K. District 3 person?

James Rosasco – I am the representative of District 3, and I'm quite familiar with that neighborhood. I've lived down in that area. And what I understand, on your application – just a little bit of confusion. You say that, currently, the existing construction has a southwest bedroom. Isn't that in the southeast corner, not the southwest? When you look – when you're facing your house, the bedroom you're talking about is on the right, isn't it? (The applicants replied without a microphone) On the right. So it's really the southeast corner that's got an existing structure. And what I understand here is the whole – the house itself, right now, is in violation, not the screened patio. All you're wanting to do is enclose that screened patio along the same front building line that that existing bedroom is on. So, really, the fact that you're just really trying to enclose this patio, you really need the variance for the existing structure that is there right now. Is that correct? Is that what I'm understanding from this...

Carmen Martinez – I don't know if when the house was built...

James Rosasco – Well, I'm looking at the survey here, O.K.? And the survey here shows your building line is south – that bedroom wall goes all the way to the street here.

Carmen Martinez – Yes.

James Rosasco - And this is the screened patio that you're talking about enclosing. And the front line, the setback from the street, is the same line as the house that's already sitting there. So we're really legitimizing the existing structure. And, at the same time, that would permit you to go ahead and get your permit to enclose the screened patio. Is that basically what we've got here? So we're saying if we don't give you the variance, you've got five feet of your building you got to tear down. I mean, in simplistic terms, that's about what it amounts to. The building is already built, and it's already extending within five feet into that setback. So what you're really wanting to do is legitimize what's already there.

Carmen Rosasco – Yes.

James Rosasco – The fact that you're enclosing in the screened patio, all that is, it brought to light the fact that you need this variance for the rest of the house. So I have no problems, at all, in granting this variance. I think it's something we have to do.

Mary Hillberg – Thank you, Jim.

James Rosasco – Thank you.

Mary Hillberg – Does anyone else have any questions?

Fred Kusterer – I assume you had a real estate agent, and a title search, and a survey done when you bought the house?

Ramon Martinez – We didn't have a title search, because we bought it directly from the real estate. We had a – like a family member, who was contacting the real estate, and we didn't go for title search, or none of that stuff. We just went for – directly to a closing.

Fred Kusterer – You didn't get a survey? This survey was done...

Ramon Martinez – The survey, we did it after, when the County requested it for some of the modeling that we was doing in the house.

Fred Kusterer – Well, maybe next time, you should get a real estate agent, and this may have been pointed out to you. That's all I have.

Mary Hillberg – Anyone else have any questions? (no response) O.K., you may have a seat. We have no letters, except these ones that you've given us here. I don't know if you want to read any of these in. You want to read a couple, or just note that they're all in favor of – not opposing.

George Bovell – “To Whom It May Concern: We have been residents on Richards Road for over 11 years. The home at 280 Richards Road has had two different owners and many different people renting it. The building was pink and a bit run-down. Since Carmen and Fernando Martinez have purchased this home, the improvements have been significant. The front screen room in question always existed. By turning it into a room with walls and windows will only further enhance the home. We have no objection to making this change.” And that's Geoffrey Rossiter, at 330 Richard Road, Melbourne Beach, Florida, 32951.”

Mary Hillberg – Thank you, George. Are you gonna read each one of them?

George Bovell – I'll read one more. This from Rick and Linda DeLuca. “To Whom it May Concern: I am writing this on behalf of Mr. & Mrs. Ramon Martinez, who has purchased a home at 280 Richards Road, Melbourne Beach, Florida. Upon remodeling the house, they want to close in the front screen porch of house. In doing so, they have a five-foot variance from 20-foot setback required. As a homeowner on Richards Road, we have no objections to Mr. & Mrs. Martinez closing in said room as it stands. The remodeling has made said house a beautiful home to look at. Sincerely, Linda DeLuca.”

Mary Hillberg – Thank you, very much, George. And all the rest of these letters will be added to the record, as well, including the petition, which is on the back.

George Bovell – It's a petition to support variance, and it's signed by seven residents of Richards Road. It says, “Attention, Brevard County Board of Adjustments: Ramon and Carmen Martinez, owners of 280 Richards Road in Melbourne Beach, Florida, have requested a variance. They wish to remove the screen from their front porch and enclose their patio, which is currently 15.8 feet from the curb. In doing so, they would have a five-foot variance from the required 20-foot setback. We, the undersigned residents of the same community, hereby sign this petition in support of the Martinez family's request. We affirm that we have no objections to the modifications they wish to make and request that you grant them this variance. We thank you for your consideration.”

Mary Hillberg – Thank you, very much, George. Well, does the – do ya'll have anything else that you'd like to say before the – you're closed off from this discussion? No? O.K., fine. Well, what is the pleasure of the board?

James Rosasco – I make a motion to approve the variance, as depicted on the survey.

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

Fred Kusterer – I'll second it.

Mary Hillberg – And Fred seconds it. For discussion, I would just like to say that I don't have a problem, either, with the granting of this variance. But if you do any further work on your house, or your neighbors have done, or start to do things, if you would remind people that they need to go to the County and get a permit for construction, you know. Those are the rules. And make sure that you stay within the correct code and ordinances, and you've the right amount of feet from the street, from the sides, and so forth, 'cause there are rules for fences, and building, and all kinds of things. So if you could, in the future, please try to get a permit. Then you wouldn't be having to spend this money and do all this. Thank you. So is there any more discussion? (no response)

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

## 2. Election of Chair and Vice-Chair for 2011.

Mary Hillberg – We have one more item on our agenda today, and that is election of a Chair and Vice-Chair for the year of 2011. And this was brought up by Jim, last meeting, and we waited for Dale so we'd have all five of us here. And would anyone like to...

George Bovell – I would like to make some recommendations. I think things have gone well, and the current leadership is doing fine. So I'd like to keep it the same, Mary as our Chair and Dale as a Vice-Chair. If anyone thinks otherwise - I'd like to nominate you two for the same positions.

Mary Hillberg – Thank you, George. Is there any other comment?

James Rosasco – Yes. I'd like to make a comment. I notice that the County Commissioners and the School Board rotate the chairmanship. And I think it's appropriate for all of these boards of this nature to rotate the chairmanship. And I agree completely with George that there has been no problem, what so all, with Mary being our chairman. But I think it's a position that should be rotated throughout the board. And, in that vein, I would nominate Dale Young, who was our Vice-Chairman last year, to be the Chairman this year.

Dale Young – I'd rather rotate Jim Rosasco as Chairman, and I'll work from the Vice-Chair.

Mary Hillberg – Dale, you're nominating Jim, and Jim is nominating you.

Dale Young – Well, I'll nominate Jim as Chair.

Mary Hillberg – O.K., we have three nominations. The nomination of Chair for leaving things as they are for myself as Chair and Dale as Vice-Chair, all those in favor, please say "aye".

Fred Kusterer – Aye.

George Bovell – Aye.

Mary Hillberg – For nomination of Jim for Chair, all those in favor, please say "aye".

Dale Young – Aye.

Mary Hillberg – That’s one. All those opposed?

James Rosasco – Nay.

Mary Hillberg – Jim says “nay”. All right. And for Dale to be Chair, all those in favor of Dale being Chair?

James Rosasco – Aye.

Dale Young – Nay.

Mary Hillberg – And Dale says “nay”. So, evidently, we’re leaving things as they are. And I will continue as Chair, and Dale will continue as Vice-Chair. And I do agree that it’s nice to rotate people. You know, it isn’t any – you know the pay is so different, though, when you’re Chair. Thank you, very much. And this concludes our meeting.

The meeting was adjourned at 1:49 p.m.