

## BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, January 18, 2012, 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: Mary Hillberg, Chair, District 2  
Dale Young, Vice-Chair, District 5  
Fred Kusterer, District 1  
Dave Pasley, Alternate, District 3  
George Bovell, District 4

Staff members present were: Robin Sobrino, Planning & Development Director  
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. There were four regular members present, and one alternate, and they voted throughout the meeting.

Mary Hillberg – I now call the scheduled meeting of the Board of Adjustment to order. Planning & Zoning office, Paul, would you please describe the function and operation of the Board of Adjustment to our applicants and to 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. I would like to read for everyone the definition of 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 requested 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 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.” 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 County Board of Commissioners. And we’ll utilize the 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 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. We will not be using a timer, and we ask each speaker to be concise in what you have to say. It is important that you stay on the subject and avoid information that’s really not relevant. 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. 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, are there any questions from the audience about the board procedure? (no response) Seeing none, our first order of business is to approve the minutes of our previous meeting that was on December 14<sup>th</sup>. Are there any additions or corrections to these minutes? (no response) Seeing none, do we have a motion to approve?

Motion by Fred Kusterer, seconded by Dale Young, to approve the minutes from the meeting on December 14, 2011. The vote was unanimous to approve the minutes, as submitted.

The agenda items were heard in the following order: 4, 1, 2, 3. These minutes are in agenda order.

### **DISTRICT 3**

**1. DENNIS J. & PHYLLIS BLY** – request variances of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-1404 (6) (a) to permit a variance of 18 ft. from the required 20-ft. perimeter setback (north) where the property abuts property zoned multiple-family residential; and /2/ Section 62-1404 (6) (a) to permit a variance of 20 ft. from the required 20-ft. perimeter setback (south) where the property abuts property zoned multiple-family residential. The property is zoned TR-3 and is described in **Section 17, Township 28, Range 38**. (0.02 acre) Located on the east side of Hwy. A1A, approx. 0.27 mile north of Sabal Ridge Lane. (in the Melbourne Beach area, east of A1A Condo Park)

**BOA ACTION: Kusterer/Bovell – DENIED. Vote was 3:2, with Young and Pasley voting nay.**

John DeGrossa – Madam Chairman, board members, good afternoon. I'm here...

Mary Hillberg – Your name and address, sir.

John DeGrossa – My name's John DeGrossa. I'm a resident of the A1A Condo Park, at 207 Liberty Lane.

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

John DeGrossa – I do.

Mary Hillberg – O.K., go ahead.

John DeGrossa – I'm going to address the six items that are on the variance sheet. And you probably have a copy. They were briefly filled in. I want to try to elaborate a little bit as we go along. It'll eliminate you asking me some questions later. Item one: The existing structure, with the roof system – well, that's what the variance is for. We want to put a roof over the existing deck. I'll elaborate on that a little later. The special conditions do not result from the actions of the applicant. They do not. Item three, the granting of the variances requested, the applicant may have special privileges. They do not. O.K., here we go. Item four, the use of the existing deck. That deck was constructed many years ago, and we intend, with your positive variance condition today, to erect a roof structure upon this deck. On the application, it indicates right now that we have about 20 percent of our residents utilizing this deck because of the extreme weather, the hot air, and the storm, and so on and so forth. If we have this roof constructed, which I'll elaborate on a little later, this would probably increase the occupancy of this deck for use of relaxing, enjoying the ocean, and so on and so forth, I anticipate maybe to 70 or 80 percent of our residents. Keep in mind, we have 179 modular type homes in our development. It is a senior development. You must be 55 years, or older, to be an owner/resident. And a lot of our people are retired veterans. And we do have our share of handicapped. Let me go on to item five. The existing deck that's there right now does have some seating. We intend – well, we advised our architect to

design a roof structure, and we're going to call this roof structure a tiki hut, because we're trying to blend in with the elements and the environment of that oceanfront. We advised him not to exceed the outer boundaries of this deck and to keep all the structure members on the inward side of the deck. Also, in doing this, we do not want to penetrate any of the soil, or the dunes, and create any erosion problems in the surrounding deck area because, right now, it is stable, and we want to keep it stable so we don't have a problem with beach erosion on the beach. This is one of the primary factors that we indicated to our architect, to keep the design within the perimeter boundaries of the existing deck. Now, naturally, we know the deck is grandfathered in. Item six: This deck was constructed many years ago. It has a small entrance walk that leads up to the deck. It has a set of stairs that exits from the deck onto the beach. The roof structure will be of a fireproof material or pressure-treated type of lumber. It will have the thatching material on the roof, which will be fire retardant and treated, according to the architectural designs from our blueprints. We have been working on this project, I would say, for about three to four months. We have went to all of the agencies necessary for approval. Now, when I say all, I'm talking construction plans, Building Department. I'm talking local County and State agencies. We have all the approvals. The only one we don't have, guess, it's the one in front of this board. Once we achieve this, hopefully, if we do, we intend to pull our permits and start construction. This will allow our residents to enjoy the beach, enjoy the deck, enjoy the surrounding areas, and they will be protected from the heat of the sun and any of the unfortunate elements that the older people can't tolerate as much as younger can. I think I covered most of the important items. And actually our construction plan that was submitted to your Building Department - which was already authorized, but the permit was not released, due to the variance proceedings - it was designed to handle the wind velocity of 140 miles per hour. It was designed to handle, hopefully, a Class 4 or Class 5 hurricane. And I think, with your approval today, this will give us a, not an eyesore, but it will give us a nice-looking protective unit for our citizens. It will also not create any sight clearance problems for the property on the extreme right, which would be the south side - and that's the condominium property - because we directed our architect to keep the structure to the minimal height requirement that is acceptable by your Building Code, or the Florida Building Code. And my architect did. He kept the - I don't want to get into too specifics, but he did keep the header clearance zone at eight foot, which is mandatory. And from the header zone to the ridge is only another four foot, six inches. So the total height of this unit, or this enclosure, will be - I'm sorry, I don't want to use the word "enclosure". This roof enclosure will only be 12 foot, six off the existing deck. The apartments, or the condos, I'm sorry, on the south side, they're in a V-Zone. A V-Zone requires that the base foot elevation be 11 foot, four off the ground level. That's to the bottom of the floor joist. You have one foot for the floor joist, so when you stand on their lanai upstairs, you're standing on something that's 12 foot, four off the ground. We will just about be at that elevation. But keep in mind, when you're standing there, that fellow's six foot, and that fellow's six foot, your sight clearance zone should pass over this facility. And I don't foresee any problems in that area. Other than that, this would be something that the seniors could enjoy in their closing years. I, myself, and all of the A1A senior members, we appreciate your time, and hopefully we get a positive variance approval in this matter. Any questions?

Mary Hillberg – Thank you, sir. It's District 3.

Dave Pasley – I have to apologize. I'm an alternate for Jim Rosasco. And he called about a quarter after 12:00 and said he wasn't feeling well, and asked me to sit in. So I ran out of the house. I didn't even grab my package. But I am very familiar with your neighborhood. I drive by it every day. I'm very familiar with the condo park. I really have no questions. It looks like you've done your homework. I'm pleasantly surprised that you've gotten through the permitting process on this, knowing some of the issues with getting permits to build anything on the beachside. So I really have no questions.

John DeGrossa – Well, to elaborate on your statement – am I allowed to do this?

Mary Hillberg – Yes. Go ahead.

John DeGrossa – We've been working diligently towards this goal, because it's extremely important to our seniors. The architectural plans submitted to the construction office is basically a structural plan that says, "Yes, this thing will stand up." But, actually, at the last minute, they realized that we had to come in front of the zoning "sic" board. If we didn't have to appear in front of this board today and request this minor variance, we would have actually pulled our permits and started work. I could tell you the agencies that we've dealt with. Any other questions, sir?

Mary Hillberg – Does anyone else? Dale.

Dale Young – This is a private crossover, I assume? It's not a County facility? The walkway...

John DeGrossa – Yes.

Dale Young - ...belongs to your private homeowner's association?

John DeGrossa – Yes, we have the survey here. We just had a new survey done. It's actually – the parcel is on Government Lot 7. And we were – do you want to see the survey, ma'am?

Mary Hillberg – No, we have the survey. Thank you.

John DeGrossa – This is to give you a rough idea of what the tiki hut will look like.

Dave Pasley – Where's the bar?

John DeGrossa – If we have a severe weather coming, which we would know ahead of time, our maintenance department will have a net that will encompass the total top of the thatching material and tone it down so that the winds won't bother it. Now, this material – I don't want to get into the construction details. I know you're not interested. But we're trying to do everything possible to meet your Code requirements. But we want to be in harmony with the existing area. We don't want to have anything that's going to be an eyesore. And, believe me, when this is completed, it won't be. It's costing us enough money.

Mary Hillberg – O.K. Is there anyone else that...

Dale Young – What is the size of the hut?

John DeGrossa – The original size of the deck was – bear with me.

Dale Young – Approximately. It looks like 18 feet.

John DeGrossa – It was approximately 15 foot in width and approximately 19 foot in length.

Dale Young – O.K. And...

John DeGrossa – The width side would be the variance side. I don't want to correct the gentleman up there, but I thought we were looking at 20 foot on the north side, 18 foot on the south side. Am I in error?

Paul Body – The survey shows that it is, toward the north, the 18 feet, if you're covering just the deck itself. And the 20 feet would be on the south side.

John DeGrossa – Right. O.K. I think you had said 20 and 20, but, you know, that's not that important. I do have another statement. We did post our public notice sign at the premises more than 15 days before this official hearing. Any other questions?

Dale Young – For the County. The walkway itself, or the deck, is there is similar setback on it?

Paul Body – If it's a crossover, there is no setback. If it does have a deck, it would require the setback on it.

Dale Young – O.K. But the deck has been there for several years.

John DeGrossa – Almost 20 years.

Dale Young – O.K. So was the deck permitted properly, or...

Paul Body – I don't know if it was permitted, myself, on that or not.

John DeGrossa – Sir, I think what happened there is, when the deck was originally granted approval to be constructed, a variance probably took place. But those dimensions, from what I understand, over the years have changed, and they're not the same today. They were changed by your township fathers. So I don't know. I'm not sure. And maybe that gentleman's more up to date on that.

Dale Young – They didn't worry about that 20 years ago.

John DeGrossa – You're right. Any other questions?

Mary Hillberg – Anyone else have any? (no response) O.K., you can have a seat. Thank you. Is there anyone in the audience who would like to speak to this item, or against it? One of you can come up.

Susan Havird – Good afternoon. My name is Susan Havird. I do live in Opus 21, which is south of this crossover.

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

Susan Havird – I absolutely do.

Mary Hillberg – Go ahead.

Susan Havird – I'd like to first ask if you did receive the letter that I sent.

Mary Hillberg – We have received a total of 10 letters.

Susan Havird – Very good. Then I won't name off all the other letters. I received copies - they were emails to me, as well - with their concerns.

Mary Hillberg – We are going to be reading the letters shortly.

Susan Havird – Well, I'll just make it short and sweet, and go to the point, since you already have a copy of my letter. I would like to say that I also am a senior citizen. I elected to purchase my home for many reasons. One was my view of that beautiful ocean. I can sit there, and I can see the launches. I did buy the builder unit, which provides me a special side window, which is not available to all units. So as I can sit in my living room, I look out that area. So view is tremendously important to me. They are three other issues, however. I'm very

concerned, having lived through the last hurricanes that we did, and we saw the destruction that it caused. One of my best friend's gazebo was off in the ocean at the end of the day. Are they going to – if you provide them with permission to build this structure, who is going to be responsible for the damage, should that structure end up in my living room? Would it be our association that would have to pay for the damages, or would they be held responsible? That's a huge question. I think I already know the answer, but I would like to think that they would be held responsible, if it was their structure. I am opposed it to for that reason. The second reason is, of course, my view, the hurricane damage. And, third, we do have a Florida Power & Light pole, electrical pole, that has a transformer, right there, that would most likely be affected. Now, I'm not an electrician, have no clue, but I don't think it'd be too nice to have a dwelling hit that transformer, or the pole, or anything else. So those are three main concerns that I do have. Also, in reference to his stating the 12 feet height, that would be 12 feet, possibly from the ground level of the structure. But the deck is not on the ground. The deck is already elevated. So the height of this structure is not going to be 12 feet. It's going to be 12 feet, plus the distance from the flooring to the bottom, which I very much think is going to obstruct my view. And I hate to call that being selfish on my part, but I bought that property thinking that I have that complete view, and I really don't want it interrupted. Now, as far as it being a beautiful tiki hut, there's no doubt in my mind it probably will be, because they will spend the money and get something nice. That's not an issue. The fact that they're senior citizens, I understand. I also am a senior citizen. The fact that they would like shade, I understand. I also like shade. I take umbrellas out. I have one on my back deck right now. All of those things, to me, are not the issue, at all. It boils down, basically, to safety and views.

Mary Hillberg – Thank you.

Susan Havird – You're welcome.

Mary Hillberg – Dave, do you have anything you'd like to ask this lady?

Dave Pasley – We've had the issue of obstructing views come up on other properties in the County, in the past, and it's always gone with the property owner, rather than the neighbor. I understand your problem. But I believe you stated that the top of this structure is going to be 12 feet (directed to the applicant).

John DeGrossa answered from the audience and is not audible on the record.

Susan Havird – But that would be 12 feet from the base of the deck. The deck is already elevated.

Dave Pasley – That's not what he stated. He stated that it would be a deck of four feet. The structure would be eight feet, giving it a grand total of 12 feet.

Susan Havird – It was my understanding that this part, from here to here, would be eight. But from here to the height – it's got to pitch upwards. It's going to be pitched another four feet, which would be another four feet. So, unless – I would suggest and beg you not to make a decision in their interest, unless we know what this height is.

Dave Pasley – Here's the issue.

Susan Havird – Yes, sir.

Dave Pasley – The view is (unintelligible). It's not something that we can consider as part of what we're doing as the planning board of appeals "sic".

Susan Havird – Oh, O.K.

Dave Pasley – That's their view. You're borrowing it. O.K.? You have been borrowing it, and if they want, and can get, permits to build a property that obstructs part of that view, so be it. There's nothing we can do about that.

Susan Havird – O.K. So what can we do about the safety issue? What happens if his tiki hut is in my living room?

Dave Pasley – Again...

Susan Havird – Where do I go from there?

Dave Pasley – Again, what happens if your living room winds up in his tiki hut? Turnabout is fair play. We can't – that is not part of our mission. Our mission is to grant – help me out here.

Mary Hillberg – We are relieving people of great hardship.

Dave Pasley – Right. And in the case of, you know, trying to appeal a zoning request based on what could happen in a hurricane, I don't know what to do with that.

Susan Havird – O.K. Well, then, I would like – I understand the legal ramification there. What I don't see is where is their hardship. They can carry an umbrella, just like I can. Or they could have elected to put the small tiki umbrellas on the four corners of their deck, which would not bother too many people, like they did down in Ocean Avenue at that little restaurant. They're cute. I'd love one in my back yard, but my association will not allow me to do that because I may obstruct their view, as well. And I'm not being facetious about it. I'm being very up front and very truthful about the way I personally feel.

Mary Hillberg - Thank you, very much. Is there anyone else would like to ask this lady any questions? (no response) I appreciate, very much, your coming up. Thank you. We'll be reading all the letters.

Susan Havird – Excuse me, one more question from me.

Mary Hillberg – Yes.

Susan Havird – If you do rule in their favor, and deem that they have a hardship, would you please identify what that hardship is? Because I really, through all of my consciousness, cannot see that this is providing a hardship. It would provide a pleasure, not a hardship.

Mary Hillberg – Thank you.

Susan Havird – Thank you.

Mary Hillberg – Is there someone else who would like to speak today? Go ahead.

Teresa Novelli – My name is Teresa Novelli, and my residence is 2927 South Highway A1A.

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

Teresa Novelli – Yes, ma'am.

Mary Hillberg – O.K., go ahead.

Teresa Novelli – I, probably out of all of the residents of Opus 21, have the biggest plea in the fact that we're the northernmost unit, and the closest to this property line. Concerns obviously would be – they've been good neighbors, number one. We know them intimately, have many friends. Our problem is not with the association. It's the construction on top of the deck that's being grandfathered in, that no longer meets Code. They have been passionate neighbors in the fact of their diligence to preserve that deck. Should anything happen to it, they cannot rebuild it to its current state. I kind of question, as president of our homeowner's association, how – if it came before us, how a motion would pass, when you're trying to preserve something that cannot be replaced, why they would continue to construct, and add weight, and bulk and volume to something. The deck, in its current condition, is not a bother to us. Like I said, they've been good neighbors. We are intimate in the fact that when you sit on that deck, you look into our living room. You have a perfect view of our home. Basically, from – when we open our sliders off of our living level, half way of our living room over is the view of that deck to the north of us. Right outside our unit, less than 10 yards, is the Florida Power & Light utility pole. And apart from hurricanes, which we are – get plenty of notice from, and our own residents take heed to do what we can to preserve our property - from our vantage point, have seen water spouts form, for which we don't have warning and the ability to go and preserve, and tie down, and whatnot, properties. That would be of greater concern to me, because it has removed the roof from our buildings, which are also coded to withstand winds. And they have landed across A1A Highway. So that would be a concern to us. I've also been in touch with our insurance agent for our personal property because, basically, the property line runs diagonally. It's not a straight property line on the north end. And our buildings run perpendicular with the beach. So, basically, their deck is, so to speak, in our back yard. And how that impacts our insurability on our unit, and risk – and we've been advised to increase our insurance, because now we have an added risk to our property. So this is affecting my pocketbook, which concerns me, as well, as well as my property value, because it is in my immediate back yard and my view. And I understand the height restrictions. One thing that we did ask the association when they were investigating, can they give us perspective of what they were talking about doing. "Can you put us some PVC poles, some flags, something, so that we can get perspective?" And I beg to differ with the gentleman. If the poles that you put up are correct, there is no view. So now you've impacted property value to the homeowners, us, as being...

Mary Hillberg – Could I ask a question? Is your property to the south of this?

Teresa Novelli – No. We are the northernmost – that building that you're seeing there – it's to the south, yes.

Mary Hillberg – So this is the south.

Teresa Novelli – That is Building 4.

Mary Hillberg – That being south. And on this particular...

Teresa Novelli – There is – the property to the north belongs to the, I believe it's Ocean – It's the Trail Motor...

Mary Hillberg – This is your property here?

Teresa Novelli – Yes. That is our unit that we own.

Mary Hillberg – I see. Thank you.

Teresa Novelli – So it's more than view that's impacted. We're talking property values, and we're talking insurance rates that we're going to have to incur the cost for. Everything they do, they do with excellence. It's beautiful. I have no problems. But the tiki's location concerns me tremendously in the fact that it's being built on the dune and on the beach. We don't see a whole lot of construction that way. So the variance concerns me in the fact it's being built on a – they're asking for a variance to build upon a grandfathered deck that no

longer meets Code. I'd like to say build it. I'm sure it's going to look beautiful. But I have a lot of concerns, you know. I'm sure the same would be true if we had river access behind their property if we went and built structures behind it. It ultimately does impact their value, their view and their interest in their properties, as well. So, umbrellas, tiki umbrellas – we take shade tents out. The sun is brutal. I don't deny you that. But we make accommodations for that, as well.

Mary Hillberg – Dave, do you have any questions of this lady? (no response) Does anyone else have any? (no response) You can have a seat. Thank you, so much. Is there anyone else who would like to speak in favor, or opposed to, this item? Yes, ma'am.

Celia Silva – My name is Celia Silva. I am a resident of Opus 21 for 15 years.

Mary Hillberg – Your address?

Celia Silva – My address is 2943 Highway A1A.

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

Celia Silva – I do.

Mary Hillberg – Go ahead.

Celia Silva – Well, I'm glad the ladies in my – my neighbors, they are very educated. I'm educated in different ways. But the bottom line here, I live there for 15 years. The first five, I was still working. I'm from New York. I used to fly out of the Melbourne Airport every Monday to go build the stores for Sears Roebuck up in the northeast. And when 9/11 happened, that was the end of my career. I started living here full time. So you could say since 2001, which now is ten years that I live there all the time. I love the beach. My daughter drug me down here from – she's from New York, too. And I drug the other one, too. So we ended all up here in Melbourne. But I'm the only one that lives on the beach. So they all came, when the children were younger, and enjoyed the beach. They all learned how to swim in the ocean right there. So I drug like all the umbrellas, and the bags, and the diapers, and everything you carry when you have kids, little kids, and their boogie boards. And, through the years now, you know, now they are 14, going on 17, 13, 12, you know...

Mary Hillberg – We need to get as close to the point as we can.

Celia Silva – O.K. Bottom line is that today, I do not get as many visitor children as I did in the past. But the grownups grow, and they love to come. And we bring one of those big tent things that you build on the beach. And at the end of the day, we just put it down and take it in my garage. And we still enjoy it. I carry – I go to the beach all the time. I carry my chair, my umbrella and my bag. It protects the view, not just to us, but for everybody that goes by. It's a beautiful place. It's open. The dangers that I didn't think - but they spoke already, so I don't need to repeat the issue. I don't think that we should allow to build something so huge, because it's going to end up being very (unintelligible), even if it is pretty, because it would impair the look that we have today.

Mary Hillberg – Thank you, very much. Would anyone like to ask this lady any questions? (no response) Is there anyone else who would like to speak for, or opposed to?

Lynn Urvin – Good afternoon. My name is Lynn Urvin. I live at 203 Liberty Lane in A1A.

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

Lynn Urvin – Yes, I do. What I wanted to do is reply to the hardship. We have a lot of residents in our community that are in wheelchairs, walkers, canes. They can't get over there with an umbrella. It's too difficult for them to put up tents and things like that, so they can no longer go to the ocean. And they bought their places because they love the ocean, and now they can't get there. So I just wanted to add that.

Mary Hillberg – Could you tell me – I had heard some place, there were stairs. Where are the stairs?

Lynn Urvin – The stairs are on the back. We have a ramp going up, so they can go up to the deck. But they can't get down, many of them, because there's stairs that go to the beach.

Mary Hillberg – Oh, so there's a ramp that goes to the deck, and then there's stairs. I see. O.K., thank you. Anyone have any questions of this lady? (no response) Anyone else to speak for, or opposed to, this? Come on ahead, ma'am.

Carol Buturla – My name is Carol Buturla. I live at 2965 South Highway A1A. I live in Opus 21, also.

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

Carol Buturla – I do. I would just like to ask the board to please be clear on just how high this structure's going to be, because I live in the further south unit. And I understand, you know, just blocking a view. But when they built the PVC pipes for us, I went out on my deck to take a look, and imagined a roof on top of that. And it blocks - as you look to the north, it would take quite a bit of a view. It's not just like a small little bit of a view. It's going to block everything as you look to the left. Also, I also have a major concern about property values, because I am not a senior citizen yet, almost there. But property values are very important to me. And, as you know, it's a very sensitive subject right now. And, also, I am concerned about hurricane damage. I also have lived in my property for 15 years, and been through a hurricane and a lot of expenses for things that have happened. So I just would hope that you do not approve this variance.

Mary Hillberg – Thank you. Anyone have any questions? (no response) O.K., go have a seat. Would anyone else like to speak for, or against, this item? (no response) Seeing none, we're closing this to the audience. And you can come back up and make a final comment.

John DeGrossa – I heard the young lady's comments. First of all, it's my understanding when a zoning board renders a decision for or against a project that the financial issues do not take a role in that decision.

Mary Hillberg – I apologize, sir. I think we have to read the letters first. And you'll want to probably rebut some of these letters, possibly. So would you like to have a seat and let us go ahead and read these letters first?

John DeGrossa – Oh, O.K. I thought you were ready for me.

Mary Hillberg – I'm sorry. It's my mistake. George, can you read our letters?

George Bovell – They pretty much all say the same thing. But I'll start here with the longest. "We are writing in response to the application for a variance submitted by Dennis J. & Phyllis Bly on behalf of the A1A Condo Park residents. We strongly oppose their request for a variance for several reasons. As stated in the application, they are seeking the variance in the setback perimeter to construct a covered tiki hut over their existing dune covered deck. It is true that the deck has been there for years; however, the deck is no longer meeting current setback requirements, and should it be destroyed for any reason, could not be reconstructed back to its current state. As this deck spans most of our east view from our residence, the construction of a tiki hut would now become our main view, not the ocean and beach view that we considered when we purchased our property. Also, between the A1A Condo Park and the northern wall of our unit/building exists a Florida

Power & Light utility pole that houses a main transformer that feeds the two northern buildings on our property. The stays from the utility pole are anchored less than ten feet from their deck. It is of great concern, as a property owner, that should the structure fail, flying debris could not only endanger our residence directly, but indirectly, if the pole or supporting stays were to be compromised by flying debris. I do understand that the structure is coded to withstand 140 mph winds; however, we have witnessed wind spouts forming off the beach, and on many occasions the winds they produce can exceed this limit. We also have concern as to the insurability of a structure that endangers our home and property, and in turn, how it would impact our insurability, as the structure will be built almost directly behind our unit, not to mention the possible decrease in property value, as we will no longer have a beach or ocean view for most of direct east view. I do understand their desire to allow residents cover from the sun in weather, as do residents of Opus 21. We use beach umbrellas, shade tents, when visiting the beach and back yards of our complex. As none of the residents of A1A Condo Park live east of A1A, they are in a sense building a structure in our back yards, not theirs. I'm sure that they too would feel slighted if Opus were to obtain river access property and building a structure that impeded their view of the river that they considered when purchasing their property. It is our desire that a compromise structure be considered to protect the residents, and the variance be denied. Thank you for your time and consideration of our concerns. Robin and Teresa Novelli.” “Susan Havird. Dear Robin Sobrino, AICP, Director, I am writing in regard to the upcoming variance hearing requested by Dennis J. and Phyllis Bly for the A1A Condo Park. They wish to install a tiki roof on the existing deck, which is directly north of our property at Opus 21. I am opposed to this structure for many reasons. The A1A property in question is described in Section 17, Township 28, Range 38, in Melbourne Beach. First, I purchased an oceanfront home for many reasons, but paid a price required to get an oceanfront view, as well. I do not want this view that came with my property to be obstructed by someone that does not live oceanfront, and did not pay for that privilege. The roof that they want to build would be in direct line with my view of the ocean and launches at the Cape. Second, the roof would be a hazard in the event of a hurricane. That roof would end up in at least one of our homes at Opus 21. Would they take on the responsibility of damage control and reconstruction costs to our association? Would we then have any recourse, other than having to pay for the damages by the association? I do believe it would be better not to have this risk in the first place. Third, there is an electrical pole, with a transformer attached, at the north end of the property that would also surely be affected in the event of a hard storm hurricane. This would be a major problem and expenses to our homeowners and FPL. Thanks, Susan Havird.” “This letter is in reply to the courtesy notice issued with respect to the referenced request. The notice does not clearly describe what the purpose of the variance is, but we have heard, through a third party, that the intent is to erect a roofed structure on, or near, the dune in the neighborhood of a property I own in the vicinity. In one sentence, I am opposed to the suggestion. There are several reasons why I do not agree with the request, but I will mention only a few. First, the dune is environmentally fragile, and for that reason, there is a minimum setback requirement for any structure. All the buildings I can see from my property are lined up far away from the dune. The only structures I see are walkways, which are necessary to protect the dune. Allowing a roof to be built on the dune would amount to treat the people that own legal residences as second class citizens. I also doubt the legality of such a move. But that is for another time and place. Second, I have dished out a lot of my hard-earned money to developers, banks and Brevard County to have the privilege of an ocean view in relative privacy. Allowing a roofed structure near my property would essentially mean I spent all that money for nothing. Third, such a structure would become a hazard if we were to have a hurricane. In consideration of these arguments, I respectfully request the board deny the request. Roger Noury, 2937 Highway A1A, Melbourne Beach, 32951.” “To Whom it May Concern: Please deny the request for a variance from Dennis J. and Phyllis Bly, which is scheduled for a public hearing on Wednesday, January 18, 2012, at 1:30 p.m. I personally feel this proposed structure would be unsightly and would provide a place for late-night partying, et cetera, and noise, causing homeowners a few feet away from enjoying the serene quality of life that they now enjoy. The current structure is a beach crossover, and should remain as is, without additional construction. The proposed variance would not be in keeping with any other crossover in our area, and could be more in keeping with a commercial area. I am the owner, and co-owner with my son of an additional unit, in the Opus 21 townhouse community, 2961 and 2963 A1A. Respectfully yours. George Cosgrove.” “I would like to introduce myself. Carol Buturla, property owner of 2965 South A1A, Melbourne

Beach, Florida, 32951. As you know, property values are very important. And I object to allowing Dennis J. and Phyllis Bly a variance to build next to our property. I am also the vice-president of the Opus 21 Homeowners Association, and have heard from many of our residents regarding their disapproval of this project. The property is zoned TR-3 and is described in Section 17, Township 28, Range 38, east of A1A Condo Park. The building of this tiki hut will block ocean views which residents pay for. I am very concerned about the hurricane damage to our property, if the roof should blow into Opus 21 during a hurricane." "I am opposed to any building, and against this variance. I have never signed anything to okay this building. M. McDowell, 300 Liberty Lane, Melbourne Beach, Florida." "As a property owner, we do not approve of this variance. We approved a variance on the Indian River." Essentially, they're saying put in on the Indian River. There's one last handwritten one. "I am strongly opposed to A1A building a roof over their beach over walk. I live at Opus 21 in the north building, just a few yards from the location of A1A over walk. I had to rent for two years after the hurricane damage to my unit. I do not want their roof blowing into my sliders. One is 15 feet. The other is 17 feet of glass doors on ocean side. Someone from the County needs to come out here to see how close this roof is to our homes. I don't know how they got a permit. There are no such structures any place on the beach. The County would not give us permit to do work or extend over the walkway to the beach. If you allow this, then no telling what we'll have to deal with on the beach. You are opening a can of worms."

Mary Hillberg – Thank you, very much, George. Mr. Bly "sic", you can come up and rebut that.

John DeGrossa – O.K., it's going to be a long day. First of all, I could appreciate their concerns, but it appears about 90 percent of the objections are either due to financial problems, insurance, acts of God, and things that are above my control, and I think the zoning board's control. We should keep this in mind. You know, let's follow the State law. The zoning board has certain guidelines, and I think you all know what they are. The setback requirements. The rear building line for their property is approximately 75 to 80 feet back from our deck. So try to visualize that. Our deck is over here, right near the beach. Their building line, which follows the Code, is 70 to 80 feet back. Off the side of our deck, the first building, which would be on the north side, from that deck to their building is approximately 75 feet. So the deck is not right next to the building. It's way in front of the building, and farther north. The first lady indicated that she understood that the tiki hut was going to be eight foot, and four foot/six, which is 12 foot/six. And she was correct. We do have a deck there. And we're going to put the hut on top of the deck. But the deck is only approximately three feet off the ground. So if you add the three feet to the 12 feet, we're still at 15 feet. The homeowners, if they stand on their patio deck on the second floor, they will look over this projection. Anybody on the first floor is going to see what they're seeing right now. They're looking at the deck. So that's not going to change. As far as do we pay taxes on the ground, I just checked with our manager. No, we don't. But keep in mind, we're seniors. We're in a condominium project. We maintain our own streets. We have water and sewer. We pay for it. We have cable. We pay for it. We use the unclaimed water. We pay for it. There is no monies from the outside entities given to our association. We maintain and do everything ourselves. (unintelligible) is under a master deed. Individual lots are described in your County tax place. But we do pay taxes. So you have 179 homes paying taxes, but we don't ask for any revenue from your township fathers, or your tax office. So maybe that's a little bit to compensate for the taxes that we don't pay on the deck. I understand. It's common. Nobody likes to have anything built near their homes. You don't, I don't, we all don't. But we can't stop progress. The deck was given approval years ago, and this is why it was away from the RC3 "sic" zone. Is that correct?

Paul Body – No. It's multi-family zoning.

John DeGrossa – Yes, and it's rated at what?

Paul Body – Yours is a TR-3, but...

John DeGrossa – Oh, O.K. All right. Anyway, the multi-family zone, this is why the buildings are set back farther. I have nothing further to say. I know we're dragging this out. Hopefully, I answered this gentleman (Dave Pasley) some of his questions that he had. His name's not there, so I'll call him a gentleman.

Dave Pasley – You're wrong, but that's O.K.

John DeGrossa – This is extremely important to our seniors. One of our seniors got up and made a statement. How could we put little tents up every day? We can't do that. How could our handicapped people go out there and enjoy this? They can't. We must have some type of protection. If the roof blows off and hits somebody's house, and goes through their window, then the insurance companies are going to have to work it out. But it could be – somebody could come down the highway and crash into their front garage, too. You know, where do you draw the line? I have nothing else to say. I, myself, all of the seniors of the condominium project, I appreciate your time and efforts, and I hope that you could render a favorable decision on our behalf. Thank you.

Mary Hillberg – Thank you, Mr. Bly "sic". We're closed to the audience now. We're closed to the applicant. We're bringing it back to the board. What is the pleasure of the board?

Dale Young – Could I ask one quick question?

Mary Hillberg – Yes, Dale.

Dale Young – Did I hear that permits had been applied for on this?

Mary Hillberg – Yes. They applied for them, but they have not been granted, because of course they couldn't be, because it's out of Code. Any other questions? (no response) I would like to say this on my behalf, since no one else has anything to add at the moment. But we're here to relieve hardships. If you have a hardship, then, you know – and it's not your fault, that you didn't do it, and it's just because of the land, it's a hardship on the land. You remember what I read, initially. And that's what we're here to legally relieve. In terms of the handicapped, it's good that you have ramps going to your walkway. But your handicapped folks have to go over A1A in their wheelchairs to get to this from their home, and I would submit that that is somewhat of a hazard, travelling to – and I don't believe there's even a light there. So I can't see that there is – so that's a thought, too, that it's not a – it would be somewhat hazardous, even for that. But my primary thought is that this is not a hardship that is caused by the land, that this is a very nice amenity. And it would be – I know it would add to your pleasure and the value of your property. But it doesn't qualify, in my mind, as a hardship. I'm having a very hard time seeing that. Does anyone else have anything to add?

Dale Young – This structure also is east of the Control Line by 70 feet?

Paul Body – Yes, it does seem to be east of the Coastal Construction Setback Line. And that's a Natural Resources line setback, and they didn't seem to have a problem with it when it was going through the permitting stages.

Dale Young – They did not have a problem with it?

Paul Body – It meets their codes, whatever their codes are.

John DeGrossa – We have that approval, Mr. Young.

Mary Hillberg – Please, don't speak any more. Thank you. So do I have a motion?

Fred Kusterer – I move for denial.

Mary Hillberg – There's a motion to deny. Is there a second.

George Bovell – I second.

Mary Hillberg – There's a second on the motion to deny. Is there any discussion? (no response)

Mary Hillberg called the question, and the board denied the variance. The vote was 3:2, with Young and Pasley voting nay.

Mary Hillberg – There's three opposed, and two for it. The motion fails. I'm so sorry, Mr. Bly "sic", your variance request has been denied.

Christine Lepore – Madam Chair, could we get clarification? There was a motion for denial. Did three vote...

Mary Hillberg – There was a motion to deny.

Christine Lepore – And three voted in favor?

Mary Hillberg – Three voted in favor of the motion to deny.

Christine Lepore – O.K. You said the motion failed.

Mary Hillberg – I'm sorry. The application failed. I apologize. The motion passed.

Christine Lepore – For denial.

Mary Hillberg – Correct. Your application for a variance has been denied.

#### **DISTRICT 4**

**2. DOUGLAS E. & SHARI L. BALDWIN** – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1446 (d) (3) (a) to permit a variance of 2 ft. from the required 20 ft. rear setback in a PUD zoning classification. The property is described in **Section 2, Township 26, Range 36**. (0.20 acre) Located on the south side of Simerick Lane, approx. 540 ft. north of Tipperary Dr. (1695 Simerick Lane, Melbourne)

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

Shari Baldwin – My name is Shari Baldwin, and I live at 1695 Simerick Lane.

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

Shari Baldwin – Yes, I do.

Mary Hillberg – Go ahead.

Shari Baldwin – I'm here today for a hardship variance to – normally, we would be able to resolve this matter with an administrative waiver of a setback, because we're only asking to go an additional two feet with a cabana that we're building, attached to our existing home, which only gives us six feet, seven inches, to

maintain the 20-foot minimum setback. So we're requesting another two feet to be able to go out eight feet, seven inches with that. However, we cannot get the administrative waiver from both of the adjoining properties, because one of the properties is abandoned and in foreclosure. We do have - the largest property that border us has signed off on Tract H. And that is actually owned by a homeowner's association. So they did give us the administrative waiver, and I believe that's on file. And the other property, the person on the deed has abandoned the property and has participated in what's called jingle mail. And so the property - the lady that owns it doesn't feel that she has the right to sign the paper, because she has mailed the keys into the bank and said, "Take it back." The bank has not taken it back, and their name is not on the deed, and they don't own the rights to the property, and therefore cannot sign the administrative waiver. So that is why we are here requesting the administrative waiver to go an additional two feet with our cabana.

Mary Hillberg – O.K. And you're in District 4. That would be George.

George Bovell – Yes. I live in Capron Ridge, and I'm very familiar with where you live. And I see no problem with your request. I just wish you could have gotten it through the administrative waiver.

Shari Baldwin – Yes, me, too. We would have our cabana by now. But, you know, this is how it goes. Any more questions?

George Bovell – No.

Mary Hillberg – Does anyone else have any questions of this applicant? (no response) You may have a seat, ma'am. Thank you. Is there anyone in the audience who would like to speak for this application, or against it? (no response) Then, ma'am, do you have a final closing statement?

Shari Baldwin – I do not.

Mary Hillberg – We bring it back to the board. There are no letters for this item. So what is the pleasure of the board?

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

Mary Hillberg – There's a motion to approve. Is there a second?

Dave Pasley – Second.

Mary Hillberg – There's a second, and the motion to approve the variance, as depicted on the survey. Is there any discussion? (no response)

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

## **DISTRICT 5**

**3. ROBERT C. & MARIA SEELMAN** – request variances of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-1339 (5) (b) to permit a variance of 5 ft. from the required 10-ft. side setback (north) for an accessory structure; /2/ Section 62-1102 to permit a variance of 14 ft. from the required 25-ft. front setback (west) for an accessory structure on a double-frontage lot; and /3/ Section 62-2121 (a) to permit a variance of 10 ft. from the required 10-ft. setback for construction from a seawall. The property is zoned EU-2 and is described in **Section 14, Township 27, Range 37**. (1.4 acres, more or less) Located on the west side of N. Riverside Dr., approx. 975 ft. south of E. Eau Gallie Blvd. (3840 Riverside Dr., Indialantic)

**BOA ACTION: Pasley/Bovell – APPROVED, as depicted on the survey provided by the applicant, and with the stipulation that it will not exceed the 30% coverage of the buffer zone, as required by Natural Resources. Vote was unanimous.**

Philip Nohrr – Good afternoon, Madam Chairperson, and members of the Board of Adjustment. My name is Philip Nohrr. I'm an attorney in Melbourne. My address is 1795 West Nasa Boulevard. And I represent the applicant.

Mary Hillberg – You're an attorney. You don't need to be sworn in.

Philip Nohrr – I was hoping that was the case, but thank you. I will try to make this as concise as I can. We're here today because of an unusual situation, and I will go through it. But I'm going to probably end with it, so I might as well start with it. A mistake occurred. It was my client's mistake. We're not saying it's anyone else's mistake. Yes, we accept responsibility for it. In a zeal and hurry to get something completed, they went ahead and built the structure, not thinking about needing of permitting and setbacks. But, again, that's not an excuse, and it did happen. Now, stepping back from that for a moment, what we have is we have a home that fronts the Indian River Lagoon. We're talking about a structure that is adjacent to the seawall on the north property. In a few minutes from now, there's someone in the audience, one of our good neighbors to the immediate south who, with your permission, will come up and will tell you that they are in favor of it, that it's something that doesn't create any eyesore. It's not a nuisance to the community. As important as that is – and you also have a letter from the neighbor to the north, which perhaps is somewhat even more important, because of the five-foot setback that infringes towards the setback to the neighbor to the north. They also are in favor of it. This is a unique structure, built primarily for a unique purpose. It is seen by nobody, unless you go on the property, and you go into the rear of the property. So we are not trying to do anything to take anyone's view away, anyone's use of the river away. It is just a structure that got built, and we are trying to rectify the process that we should have gone through to begin with. Talking a little bit more about the uniqueness, which is one of the criteria that I believe that you will be looking at, when the Seelmans acquired this property, this property extended an additional 20 – a little less than 21 feet west into the river. They made a decision at that time not to utilize that property. In essence, what they've done is they've given that property back to the river. And they placed the seawall in such a fashion so that the land is basically lost to them. The next thing the Seelmans did, and I might add without my advice, they went and they planted mangroves, which is something I probably would not recommend that a person do. But that's not the point. What is the point is, is we start to get to the intent of what the Seelmans were trying to do. They were trying to be good stewards of this property. They were trying to be good stewards to the lagoon. So, as you go through your deliberations, to the extent that it has any bearing, clearly their actions have demonstrated, all along the way, that they have been trying not to be harmful to the lagoon and, in some ways, try to enhance it. Now, why did this structure get built? This structure got built because Mrs. Seelman, as part of her commitment to the community, is involved in something known as Children's Home Society. Each year, really since the year this structure was built, she puts on a function at the house. This function is extremely successful, and extremely beneficial, to the Children's Home Society. As they open their property for this function, one of the thought processes that was going through their mind was inclement weather, because these are outside functions. This structure, although I haven't talked about it, is a gazebo. It's open, but it does provide shelter, and a place to go from the elements, if you need it. So that was the thought process that gets us to the point that we're at today. When you look at the structure – and, by the way, the structure has been reviewed by structural engineers. It meets all codes. In fact, it exceeds them. The rebar in it is quite substantial. So I know the item, two items ago, was talking about hurricanes. That's not an issue here. That structure ain't going nowhere, at least during our lifetime. So the structure is sound. It's not a nuisance. It's not known. It's not seen, or presents a prohibition of views at any time from either of our neighbors. It was done to enhance a civic function. That doesn't justify it. But I'm giving you the whole background of what has happened here. And what we would like to do today is to begin the process of getting this thing done right. We've started the permitting. We can't conclude it,

unless we get your blessings to do that. And that's, in essence, what we're asking for today. This is unique. I've practiced law a long time, and I've not seen a situation like this, where we were actually giving up property to the lagoon. And now that selfless act is partially coming back and causing us some difficulty. Again, I mean, things happen, nothing intentional, but that's how we find ourselves in this situation. You do have a letter in the file from the neighbor to the north, Mr. Henry, Jack and Judy Henry, in support of the application. At the risk of – I have a letter from Mr. and Mrs. Andre, who are in the audience, but since they've sat here all this time, I think they would like the opportunity to come up and also echo their support. When you go through your six criteria, it all starts with number one, and it all starts with the uniqueness of their land extending into the river, and then giving it back, and how that shapes this whole process that we're in. So that is the short, and hopefully the rather brief, reason or background as to why we're here. I do have Mr. and Mrs. Seelman in the audience, to the extent that if there are some questions asked of me that I can't answer. And one other thing I think I probably have forgotten, and should mention, there is a Department of Natural Resources review that has already taken place. I have interfaced with them. Given the limited amount of impervious surface within the 25-foot setback, they are not objecting to this structure. So we have, I believe, cleared the path, except for this last hurdle, to allow us to go forward for our permit. With that, I'd be pleased, Madam Chairperson, to take any questions or comments that you all may have.

Mary Hillberg – Thank you, Philip. Dale, this is yours.

Dale Young – Yes, these mangroves, I guess are to the riverside of this retaining wall. Is that it?

Philip Nohrr – Yes, sir.

Dale Young – So they're looking through the mangroves at their view, then. O.K.

Philip Nohrr – Yes. Not with my advice.

Dale Young – But the edge of that gazebo sits on top of that retaining wall?

Philip Nohrr – It comes right up to it, yes, sir.

Mary Hillberg – Would anyone else have any questions of the applicant? Dave.

Dave Pasley – This may not be relevant, but you say they gave the property back to the river. Did they get it dedeed, or just the way that they constructed the riprap and the mangroves, and they still retain to the waterline? Correct?

Philip Nohrr – Yes. I was being – taking a little liberty with the speech.

Mary Hillberg – Poetic liberty.

Philip Nohrr – Yes. But you really can't get to – it's theirs, but it ain't theirs.

Dave Pasley – I have mangroves in my back yard, too, so I really appreciate this.

Mary Hillberg – Anyone else have any questions of this applicant? (no response) Thank you, very much. You may have a seat. Is there anyone in the audience who would like to speak for, or against, this? Sir.

Ed Andre – My name's Ed Andre. I live at 3800 North Riverside Drive, in Indialantic.

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

Ed Andre – I do.

Mary Hillberg – Thank you.

Ed Andre – The first thing I'd like to say is my wife and I are here unsolicited. No one asked us to come up here and say anything. When I got the notice, I talked to my wife, and I said, "I'd like to go up there and speak." Because we've been in the gazebo. We go to the children's fundraiser every year. And it is a nice – and I'm not going to try to address hardship. That's your job. But it is a well-built, very nice structure. It's pleasing to look at. And you can't see it. I can go in my back yard, and because of the way the mangroves are situated between our properties, I really can't even see the gazebo. It's just – everything over there about it's nice. And we built, about the same time, on an existing seawall. They have a partial. They had enough that you could have said, "Look, I kind of have an existing seawall." They not only put their seawall in behind that, but they put riprap in. I didn't put riprap in. I put a beach area in with riprap later. So they went above and beyond in protecting the environment, and I commend them for that. And just short and sweet, I recommend that – I would request that you all approve their variance request. Thank you.

Mary Hillberg – Thank you. Is there anyone else here that would like to speak for, or opposed to, this variance? (no response) Seeing none, I bring it back to the board. Mr. Nohrr, do you have a final statement?

Philip Nohrr – Nothing. I'm just available to answer any questions.

Mary Hillberg – Well, what is your pleasure, board? Oh, I'm sorry, we do have one letter.

George Bovell – "To Whom it May Concern: We are the adjacent neighbors on the north side of the Seelmans' house on Riverside Drive, Indialantic. They built a very nice gazebo in their back yard. It doesn't affect our view of the river and does in no way detract from our house or enjoyment of our property. If there are any questions about this which we could answer, please feel free to contact us. Sincerely, Jack and Judy Henry, 3862 North Riverside Drive, Indialantic, Florida, 32903."

Mary Hillberg – Thank you, George. And I'm assuming you have no rebuttal to this.

Philip Nohrr – No. I would say thank you.

Mary Hillberg – All right. It's back to the board. Do we have a motion?

Dave Pasley – I make a motion to accept.

Mary Hillberg – Dave has made a motion to approve this request, as per the survey. Is there a second?

George Bovell – Second.

Mary Hillberg – And George has a second. Is there any discussion? Fred.

Fred Kusterer – Even though this is a self-inflicted problem, I think that the only alternative – if we turned him down, he'd have to tear that up, which would be more disturbance to the environment. So I'm in line with supporting it.

Mary Hillberg – Thank you, Fred. I would like to say that the idea of a hardship can be argued because this – actually, their property - they have not utilized all of their property. And their hardship appears to be due to the

shape of the land. So since it is a hardship of the land, or due to the land shape and the water's edge, I would also not have a problem with that. So is there any further discussion? (no response)

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

Mary Hillberg – You have your...

Paul Body – One of the things that we wanted to add to the approval, if this was going to be approved, was that it does meet the Natural Resources 25-percent coverage – does not exceed the 30-percent Natural Resources coverage of the buffer zone. And, from what the survey shows, it says it meets 23.6. But we wanted to add that stipulation into your approval.

Mary Hillberg – Yes. Then, does everyone agree that that should be added into the approval? All those in favor of adding that to the motion, please say aye. (All of the board members agreed). Then, so approved. Have a good day.

**THE FOLLOWING REQUEST WAS TABLED FROM THE BOA MTG. ON 12/14/11:**

**DISTRICT 2**

**4. KENNETH A. & ROBERTA T. REAUME** – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1340 (5) (a) to permit a variance of 8 ft. from the required 15-ft. side street setback on a corner lot for a detached shed in an RU-1-11 zoning classification. The property is described in **Section 23, Township 24, Range 36.** (0.23 acre) Located on the southwest corner of Surfspray Dr. & Typhoon Dr. (1165 Typhoon Dr., Merritt Island)

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

Mary Hillberg – Will the applicant please step forward to the podium. Give your name and address, please.

Kenneth Reaume – Kenneth A. Reaume, 1165 Typhoon Drive, Merritt Island, Florida.

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

Kenneth Reaume – Yes, I do.

Mary Hillberg – Thank you. Go ahead.

Kenneth Reaume – First, if I may, I'd like to ask Mr. Body if he received our variance worksheet, our amendment worksheet that we faxed to you yesterday, and sent it to you over the weekend. You did? Thank you. If I may, I'd like to take this opportunity to address each of the six questions individually. And, if I may, would it be all right if I just reference the question and proceed with the answers?

Mary Hillberg – Yes, that would be great. Thank you.

Kenneth Reaume – In reference to question number one: When constructed, our particular house was located farther back towards the southwest corner of the property than most in the area, or in the neighborhood. And the fact that it's a corner lot with such a large front yard, there is not much usable rear yard. As a result, the possible location for a placement of a storage structure anywhere on the property, while meeting the current

zoning and setback requirements, is extremely limited. Reference question two: We feel that the special conditions causing the hardship was a result of the home's original builder and the site planners determining the location for the home, originally, in 1964, when the property was built. Early last year, in order to increase the reasonable use of our property, we installed new wood fencing to the north-most property line, adding approximately 1,350 square feet of usable new yard. The structure was moved and placed evenly between the house and the new fence, again, to improve the setbacks that we understood to the eight feet, from five feet, which we had in the back of the property where it originally was installed. Again, we were attempting to mitigate the hardship of the home placement on the property. Reference question number three: We are simply attempting to minimize the hardship and better utilize a newly-added available space on our property. We are not seeking, or do we expect, any special privileges. The contents of the shed are all personal tools and equipment that I've accumulated over 30 years. And, basically, everything is used to maintain the property and the residence, and my motorcycles and my cars. There is no commercial items of any kind stored in the structure, nor does any member of the family operate any type of business, commercially or whatever. It's all personal items. We feel that anyone in the area can do the same thing to their property, if so desired. And a number of the neighbors that we've noticed have done so. Reference question four: There are other homes in the area that are better placed on their lots. And, again, we are attempting to mitigate a special condition of the home's poor placement on the property. Many residents in the neighborhood have added similar structures and have more usable property to work with. In researching this issue, my wife and I have driven around the area and observed many structures installed on many different properties in the neighborhood that are in violation of the now better-understood easement requirements in the area, including side yard requirements and easements. We have pictures. Reference question five: We feel that moving the structure to the north side of the property, we are maximizing the use of the land and minimizing a hardship. We are requesting the minimum variance possible, considering the limitations of the yard's dimensions. Being centered between the house and the fence, we are attempting to improve the setback conditions. Reference question six: We feel that the structure is not an impairment, nor injurious to any of the residents of the area, nor does it visually interfere with any vehicular or pedestrian traffic in the intersection of Surf Spray and Typhoon. It's placement in the yard, being surrounded by many mature palm trees - more being planted - and the fence will ensure that it's hardly noticeable, which you can see by the photographs that it is. It's in perfect harmony with the surroundings, and I plan to only make it better in the future. Thank you.

Mary Hillberg – Thank you, Mr. Reaume. Since I'm the representative for District 2, I have a question that I could ask. How do you know that your house is built farther back than all the others? Have you measured other houses, or just by looking...

Kenneth Reaume – Just by observation of the properties that are in the immediate vicinity. Everywhere we – you know, you can look at the homes that are adjacent to us, and many have twice the rear yard as we do. And if you look at the street, and the way the street was laid out, you can tell that towards my house, which is at one end of Typhoon, the street basically – the homes all gradually are farther set back on the properties to where I am on the corner.

Mary Hillberg – I see. Could I ask Paul something? Paul, is there – this overhead aerial map that we have, it looks like visually on that, that he is in fact farther back from the house behind him that's on the corner. Do you see that, too?

Paul Body – Let me get to that aerial.

Mary Hillberg – I think it has to do with the layout of the house. Some houses, the layout puts them farther back on the lot.

Paul Body – They all appear to me, on the aerial, to be lining up. But it does require only a 20-foot front setback, and the property...

Mary Hillberg – His setback is further than that.

Paul Body – It looks like almost 25. The surveyor doesn't give an exact distance on the front setback.

Mary Hillberg – So that would be fair to say that his house is set back further than it would necessarily need to be?

Paul Body – It could be. The 20-foot setback is what it would be required for the zoning.

Mary Hillberg – Thank you. That's all the questions I have. Do other board members have questions of the applicant? George.

George Bovell – By the survey I'm looking at, your home here is kind of set back to the southwest corner of your lot. And you've got a lot of front yard, but not a lot of back yard.

Kenneth Reaume – That's correct.

George Bovell – The biggest argument that could be made, or would be made, is that your shed would have a visibility. But what I'm seeing right now, on the north side you have a fence. Right?

Kenneth Reaume – Yes. We just added that the beginning of last year.

George Bovell – That fence provides – if the fence is legal, it's a bigger obstruction than your shed would be. So I have no problem with the location of your shed. And by the way your home is configured, is set up on the lot, I don't see any visibility problems created on Surfside "sic" or Typhoon, if people need to be turning, or people need to be backing out their driveways, and so on. So I would support you, sir.

Mary Hillberg – Is there anyone else would like to speak? (no response) You may have a seat.

Kenneth Reaume – Thank you.

Mary Hillberg – Is there anyone in the audience that would like to speak to this item?

Roberta Reaume – I'm Roberta Reaume, and I'm the co-owner of the property.

Mary Hillberg – Your address.

Roberta Reaume – 1165 Typhoon Drive.

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

Roberta Reaume – Yes, I do.

Mary Hillberg – Go ahead.

Roberta Reaume – I just wanted to bring up a couple of points. Recently, we've had - as recently as November 27<sup>th</sup>, we've had burglaries in our neighborhood. Our cars have been vandalized in years past. And that was one of the reasons why we purchased the shed, and it was in the back of the property to secure our vehicles. My husband takes a lot of pride in his vehicles. We like to keep them in the garage. We like to keep our property secure. I know that's probably not relevant. And we've had the shed since 1999, and we had it in

the back. And we moved it, only because we were going to build a pool, which is now built. We don't have anywhere else to put the shed on the property, at this point. And we relied – even though ignorance is not bliss, we did rely on several pool companies that came out to see our property, and we had told them that we moved the shed. Also, these were professionals, and we kind of relied on them. And my husband actually – we were both kind of proud, because we had to do quite a bit of work to get our property ready to put a pool in the back. And he was like, "We moved the shed, and we redid the sprinkler system." And we take a lot of pride in our property. I guess what I'm trying to say is that we – no one told us that we needed a further setback. Had we known, we would have come to the board before we moved the shed, and probably wouldn't have built a pool. Now, it's after the fact, which we know. At the last meeting when we were here, I know, Madam Chair, that you had mentioned about that you could see the structure a little bit over the fence. And, as my husband did mention, we took a lot of pictures. And to be quite honest, until this happened to us, we really didn't even notice that there are a lot of violations. And we don't want to get anyone else in our neighborhood in trouble. There's a lady one street over – and we have a photo – her shed's pretty much in her front yard, with no fence. And we do try to make our property look nice. So even though we may have violated this, we do have it – you know, we have it maintained, and it looks nice. It's not sitting out there, you know, so it's making the neighborhood look - less value to the properties. And that's all I have to say.

Mary Hillberg – And I'd like to say, in driving by your house, your house is very well maintained. It looks very nice. And this is one of the reasons, I believe, that these ordinances are the way they are, is to keep continuity in the community and to keep the neighborhood together. And, of course, if other people are not following the law, then that's unfortunate. But, you know, you are the one that's here. And I want to thank you very much for coming. Would anyone like to ask this lady anything? (no response) You can have a seat. Is there anyone else in the audience that would like to speak to, for or against, this application? (no response) Mr. Reaume, would you like to have a final comment?

Kenneth Reaume – Thank you. Like I said, we were trying to mitigate a circumstance that we were dealt with when we bought the home in the late '80's. We didn't choose to create any problems with the zoning. We attempted to make the situation better by actually increasing my setback by moving the structure to the north side of the property, adding almost 1,400 square feet of yard. I've added the additional fence to better utilize my property, and the lot, the way it was situated with the home. Like I said, it's all a lot of equipment and tools that I use to maintain the residence and the property. I've accumulated these things over 35 years now. And, quite frankly, with a two-car garage, you're limited. You don't have a whole lot of place to put things. So we added the shed a long time ago. And until last year, I guess, we ran into a hardship situation, which is more apparent than we first thought. But trying to better utilize the property, we – like I said, we opened the yard up, tried to get more easement to lessen our hardship. That's all I have to say. Thank you.

Mary Hillberg – Thank you. You can have a seat. We're closed to the audience and to the applicant. Because this is, again, in my district, I would like to say that the reason that there was an issue with this the last time you came up was because of the definition of a variance. It's hard to understand where your hardship is, because it just really actually needed a smaller building, not quite such a large building. It was fine in the back, where it was, but you really need a smaller building to go with the Code. However, the information that you've given us now, and looking at the maps, it does appear that your house is further back than many of the houses here, and of a different configuration. And I can understand that. So is there any more discussion? (no response) Is there a motion?

George Bovell – Motion to approve the variance, as depicted on the survey.

Mary Hillberg – There's a motion to approve, as depicted on the survey. Is there is a second? Dave has seconded (Mr. Pasley's second was made without a microphone; therefore, it is not audible on the record). 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.

At the conclusion of the regular agenda, discussion took place, as follows:

Mary Hillberg – Do we have any further business?

Christine Lepore – Yes, before you adjourn, I wanted to talk with you all about the reading of the letters into the record. I'm not sure where that practice started. As you know, I've been the Board of Adjustment attorney on and off for a long time. And when I came back, I noticed you had the practice of reading letters. Letters are provided as we receive them - as Candy receives them prior to the hearing. Everything that's part of the record, everything that you get, the applicant also gets. And that's part of the due process that the applicant is owed throughout this process. So to the extent that you have letters in the record, if the applicant has already received them, there's no legal reason for you to read the letters into the record at the hearing. There are some instances, for example, on the tiki hut, on Bly, there were a few letters that came in this morning, so Candy didn't have a chance to get them to the applicant. So, of course, reading those basically to the applicant in the course of the hearing was legally required. I just didn't know if there was a preference of you all, above and beyond what's legally required, to read letters into the record.

Mary Hillberg – No, I don't believe there's necessarily a preference. It was my understanding, and I don't know if it was everyone's, that we were required to read the letters, and I've never heard anyone say that the applicant received copies of the letters. So it would seem like the right thing to do.

Christine Lepore – That's what I wanted to call to your attention. Again, I wasn't sure why the practice started. But I wanted to bring to your attention that the applicant does get copies as much in advance as we get copies.

Dale Young – Is there a way that...

Mary Hillberg – Is there a way for us to tell which ones that the applicant has?

Christine Lepore – We can let you know at the beginning of the meeting. If Candy just received a letter and hasn't gotten a chance to give it to the applicant, we can let you know that.

Mary Hillberg – O.K. All right. That would be fine. Because, sometimes, you know, if this were a dock incident or something, we could have, you know, a lot of letters.

Christine Lepore – Right. And you notice that the meetings of the Board of County Commissioners, they don't read every single letter into the record.

Mary Hillberg – That's true.

Christine Lepore – At the meeting, it becomes part of the record, and it's provided to the applicant in advance, as well. So they're fully aware of what's before the Board.

Mary Hillberg – So the significance of these colors, does this mean one of them – is there a significance that says this has been received by the applicant, and these haven't?

Candy Hanselman – No. Your memo shows that if it's an objection, it's red, and if it's in favor, it's green. I will give you a note telling you which ones the applicant has not received.

Mary Hillberg – O.K., wonderful. That would be great. That will save us time.

Dale Young – Can we have a letter folder that we can peruse for the letters, just so we, as members, can see them?

Mary Hillberg – This is a folder. As soon as we get here, we could. But otherwise, it would have to be mailed to us, and...

Dale Young – No, no, no. I mean just to glance through to see what the comments are.

Mary Hillberg – Sure. We could pass this back and forth, because George has volunteered to read them. So we could pass this...

Dale Young – Well, we don't want to burden George with the reading for 30 minutes.

Mary Hillberg – Well, George is happy not to have to read.

George Bovell – (unintelligible), especially when somebody handwrites.

Mary Hillberg – You did a spectacular job with your reading, spectacular. Well, then that takes care of that. Then, is there anything else that we need to talk about?

Christine Lepore – I'm sorry, I was asking Candy if she had letters from interested parties at the time she's ready to send out your packages, she will include those with your packages.

Mary Hillberg – Oh, that would be great.

Christine Lepore – Like I said, people will send letters to us up until the day of the hearing. So we try to keep on top of that. Do you prefer updates by email, or would you rather just get new letters...

Mary Hillberg – If they come when you send out the packages, send them out. And if they're newer, and they haven't been given to the applicant, she can just put a little note down there to say the applicant has not received these, just so that they know what's been said.

The board discussed the issue among themselves.

Christine Lepore – Even if it's at the meeting, while you're waiting, you're fine with that?

Mary Hillberg – That's fine, as long as there's a note here.

The meeting was adjourned at 3:20 p.m.