

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, June 15, 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:

- Robin Sobrino, Director, Planning & Development Department
- Diana Johnson, Asst. County Attorney
- Paul Body, Planner I
- Candy Hanselman, Zoning Support Manager

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

Mary Hillberg – I now call the scheduled meeting of the Board of Adjustment to order. Planning & Zoning, Mr. Body, if you would you please describe the function and operation of the Board of Adjustment to our applicants and our 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 in the court of competent jurisdiction for the appropriate relief. Ms. Chairperson, you have eight items on your agenda today.

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

Dale Young – Thank you. A variance hardship: A variance may be granted when it will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship. The term “undue hardship” has a specific legal definition in this context and essentially means that without the variance, the applicant will have no reasonable use of the property under existing regulations. Personal medical reasons shall not be considered as grounds for establishing undue hardship sufficient to qualify for a variance. Economic reasons may be considered only in instances where a landowner cannot yield a reasonable use, and/or reasonable return, under the existing 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 County Commissioners. And we’ll 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 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 use a timer. Instead, we ask each speaker to be concise in what they have to say. It is important that you stay on the subject and avoid information that isn't relevant. All persons speaking must provide their name and address for the public record. Those wishing not to state their address may ask the clerk at the podium for an address card. And fill it out and return it to them. Are there any questions from the board members about the Chair procedure? (no response) Seeing none, are there any questions from the applicants about this board procedure? (no response) Seeing none, are there any questions from the audience about the Chair procedure? (no response) Seeing none, our first order of business is to approve the minutes of our previous meeting in May.

Motion by James Rosasco, seconded by Fred Kusterer, to approve the minutes from the meeting on May 18, 2011. The vote was unanimous to approve the minutes, as submitted.

DISTRICT 1

1. THOMAS K. & MARY E. MINYARD – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1341 (5) (a) to permit a variance of 3 ft. from the required 7.5-ft. side setback (south) for an accessory structure in an RU-1-9 zoning classification. The property is described in **Section 27, Township 24, Range 35**. (0.52 acre) Located on the east side of Ohio St., approx. 100 ft. south of Prospect St.; and also having frontage on the west side of Pearl St., approx 100 ft. south of Prospect St. (20 Ohio St., Cocoa)

BOA ACTION: Kusterer/Rosasco – APPROVED, as depicted on the survey provided by the applicant, and for the life of the existing structure only. Vote was unanimous.

Thomas Minyard – I'm Thomas Minyard, 20 Ohio Street, Cocoa, Florida.

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

Thomas Minyard – Yes.

Mary Hillberg – Thank you. Go ahead.

Thomas Minyard – I just am requesting a hardship for a carport that has been there since at least 1989, that they have ruled it too close to the fence line. If I tear it down, I – my house is small, and I use that every day to eat and watch TV outside. So that's pretty much it.

Mary Hillberg – All right. Open questions with Fred. This is your district, Fred.

Fred Kusterer – I don't have any questions right now.

Mary Hillberg – Are there any other questions from any of the other board members?

Dale Young – Yes, Madam Chair. I see that it says part of the permit was to remove these. What's the construction on the carport, the patio? Is it wood frame?

Thomas Minyard – It's wood frame and block.

Dale Young – So the outside wall is block?

Thomas Minyard – There's like two block columns about this high, and then there's metal poles going up to support it.

Dale Young – So it would be kind of difficult to take it back to the seven and a half foot setback.

Thomas Minyard – Yes, it would.

Dale Young – That's all I had.

Mary Hillberg – All right, if there are no other questions – Jim.

James Rosasco – I have a question. Looking at the survey, it doesn't show – like the chain-link fence – it shows a chain-link fence going across the whole front of the property, with no gates, at all. I assume maybe the survey may not be totally accurate?

Thomas Minyard – There's a gate in the front at the driveway. I don't know if I saw on the survey that there was not a gate. But there's a gate in the front on Ohio Street, and there's a gate on Pearl Street.

James Rosasco – The only gate on this whole fence, that I see, is on Pearl Street. And that's why I was sort of curious. It looked like there was a fence in front of the driveway, so it wouldn't be like you were really using that carport.

Thomas Minyard – No, that's not true. That's where we park right there. And we park under the carport, too.

James Rosasco – So the survey is incorrect then?

Thomas Minyard – Apparently, if there's no gate there.

James Rosasco – There is a gate?

Thomas Minyard – There is a gate there.

James Rosasco – Thank you.

Mary Hillberg – Are there no other questions of this applicant?

Dale Young – Yes. Where is this garage? I thought it was this one-story wood frame structure.

Thomas Minyard – It's right behind the carport. That's where they had me put it. I wanted it in the back of the yard at Pearl Street, but they wouldn't let me do it without building it attached to the house. So it's directly behind the carport.

Dale Young – But you drive through this covered patio to get into it?

Thomas Minyard – Yes, sir.

Mary Hillberg – No more questions? You may have a seat. Thank you. Is there anyone in the audience who would like to speak for, or opposed, to this application? (no response) Do we have any letters? No. You can come back up and say your last comments to the board.

Thomas Minyard – I don't know if I have a last comment. I'd like to leave the carport up, if it's possible, because like I say, it's used every day. And I park my car under there. And without it, things will get wet.

Mary Hillberg – Thank you. Any questions? (no response) You're welcome to sit down. We're closed to the public now, and to the applicant. What is the pleasure of the board?

Fred Kusterer – I move that we grant him the request, as shown on the survey. But if that building is ever torn down, that's the end of it.

Mary Hillberg – We have a motion to approve for the life of the building. Is that a correct way to say this?

Paul Body – Can you do it to the life of the building?

Mary Hillberg – That's what they're asking.

Paul Body – Yes.

Mary Hillberg – We have a motion to approve, for the life of the building only.

Paul Body – I would state it as the carport and the ones that are encroaching, the screen closure.

Mary Hillberg – We have a motion. Is there a second?

James Rosasco – Jim seconds.

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

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

DISTRICT 2

2. JAMES P. & CHRISTINE M. TOBIN, TRUSTEES – request variances of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-2118 (d) (2) to permit a variance of 7.5 ft. from the required 7.5-ft. side setback (west), as projected in a straight line into the waterway, for a boat dock; and /2/ Section 62-2118 (d) (2) to permit a variance of 7.5 ft. from the required 7.5-ft. side setback (east), as projected in a straight line into the waterway for a boat dock. The property is zoned RU-1-11 and is described in **Section 14, Township 24, Range 36.** (0.29 acre) Located on the northeast corner of Malaga Ct. & N. Sykes Creek Dr. (200 Malaga Ct., Merritt Island)

BOA ACTION: Hillberg/Rosasco – APPROVED, as depicted on the survey submitted with the application, excluding the portion outside of the applicant's property line. Vote was unanimous.

Paul Body – There is one letter of objection, with an alternative proposal, for this.

Mary Hillberg – Thank you, Paul. Sir, what is your name and address?

James Tobin – James Tobin, 200 Malaga Court, Merritt Island, Florida, 32953.

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

James Tobin – Correct, yes.

Mary Hillberg – Thank you. Go ahead.

James Tobin – I just want to say I purchased the house back in '99, with a boat lift and a dock existing, to accommodate my 22-foot Center Console. At that time, I was not aware that the structure was out of variance, or out of permit. Twelve years later, after I re-decked it, I had a code violation, and that's why I'm here.

Mary Hillberg – I see. I guess I would be starting, since you're in my district. Did you get a permit when you put this decking on?

James Tobin – No. I had started out just re-decking it.

Mary Hillberg – And is the re-decking exactly the same footprint as what was there prior to that?

James Tobin – Basically, yes. I mean, I didn't change the footprint, at all. There's just one area I – it's probably a foot wider. But the layout's still the same.

Mary Hillberg – I see. Those are the only questions I have right now. Does anyone else have a question?
Dale.

Dale Young – Yes, what is the length on this dock? I don't see any dimensions.

James Tobin – The length, right now, is – it runs pretty much the whole seawall, which is 32 feet. It's on my survey. I don't know if you have a copy of that. But it's basically 28 feet long, and it accommodates a 22-foot boat, which it's got an eight-foot gap in between.

Dale Young – Yes, it doesn't show it too well on our survey here. But the 22-foot boat does sit inside the dock, then? You're not hanging out past your property?

James Tobin – No.

Dale Young – Thank you.

Mary Hillberg – Are there any other questions? Fred.

Fred Kusterer – Explain that extra foot. You said the footprint, but you added a foot.

James Tobin – On the west side of the dock, there's a little finger up here. And on that finger, it was 18 inches. Now it's 30 inches.

Fred Kusterer – Did the extra foot go to the outside or the inside?

James Tobin – It went to the outside. You couldn't do the inside, because the boat would hit the dock. I mean, the boat would hit the wood.

Fred Kusterer – I understand. And you did this on existing pilings, but...

James Tobin – Yes.

Fred Kusterer – ...you actually made it a foot wider than it was when you bought the house.

James Tobin – That's correct.

Fred Kusterer – And nobody at closing told you that you were in violation, when you bought the house?

James Tobin – No.

Fred Kusterer – You had a real estate agent, right?

James Tobin – Yes.

Fred Kusterer – He wasn't doing his job.

James Tobin – Well, supposedly, they say anything outside the footprint is not warrantee'd for like a dock, stuff like that. The title companies supposedly don't warrantee anything outside your footprint. So I wasn't aware that the dock was out of compliance before I even bought it. The dock's been there – I've had the house for 12 years. The dock's been in there longer than 12 years, the same footprint, same everything, except for that extra little piece, the little walkway.

Mary Hillberg – Jim.

James Rosasco – I have a question, some clarification from staff. You make the comment that we cannot – “If approved, the variance does not legitimize the portion of dock that extends beyond the side (west) property line, as projected in a straight line into the waterway.”

Paul Body – That's correct. The code calls for it to go up to – it's supposed to be seven and a half foot off of the side property lines, as they project into the canal. So he's trying to get a variance up to that. The portion that is over that would not be included in this variance. It would have to be removed, or there would still be a Code Enforcement problem with it.

James Rosasco – In looking at the survey, that appears to be the north side of the...

Paul Body – Yes, it's the finger...

James Rosasco – The finger that goes across...

Paul Body – I believe that's along the...

James Rosasco – And if that – thank you, Paul. And if I assume, if that finger was removed, since it's in someone else's property lines, you would still have access to your boat through the south side of the dock.

James Tobin – That's correct. But the one pylon that is attached to the motor, that lifts the boat up and down, is a pylon that's outside that seven-and-a-half-foot setback.

James Rosasco – Are the pylons part of a footprint? Pilings, or pilings themselves?

Paul Body – Yes, they are. They're included in the code. They call it out that it includes all pilings.

James Rosasco – Thank you.

Mary Hillberg – Are there any other questions? (no response) I'm going to ask you to have a seat for a moment, please, and we'll see if anyone in the audience has any comment. Is there anyone in the audience that has any comment? You may come up, sir.

Mr. Warden – My name is Warden, and I'm the next door neighbor to Mr. Tobin.

Mary Hillberg – And your address is?

Mr. Warden – Say what?

Mary Hillberg – Your address, please, and your first and last name.

Mr. Warden – 2320 Sykes Creek Drive, Merritt Island.

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

Mr. Warden – Yes, ma'am.

Mary Hillberg – Go ahead.

Mr. Warden – It looks to me like Mr. Tobin is trying to put a six-foot sausage in a five-foot bag, because while he says that he has a survey showing the dock was there, since then he's built all around it. And he's within nine inches of our dock. And he's covered the entire setback area north of the setback line. Now, if I understand what he's talking about here, he wants to build a dock right along the setback line. Well, that is a problem, because he's got a 22-foot boat that's 10 foot wide. Now, he talked about putting the boat north and south. If he puts it in the water, he's got to allow an extra four feet so the boat doesn't hit the cement wall. That means it's a 26-foot boat. And the motor sticks out two feet. Right now, his walkway that he's put in is 18 feet from the seawall. And there's seven feet left to the opening for our property for a boat to go out. So the motor would stick out about halfway, you know, two feet into the waterway with – for our dock. And that doesn't make much sense. Now, he talked about putting the boat north and south. Another thing is he's right against the neighbor's property, and he's right against our dock. So, in rough weather, I'm afraid the dock would be suffering from the boat banging into it. So I can't see how he could put the boat there. And I don't know where he's going to put his boat. If he gets approval to put a seven-foot dock right along the setback line - we're seven and a half feet, plus, back of the setback line. And what should be fair for us should be fair for him. But I realize he's in a bind. But I made a proposal to have his boat be along the seawall, and take out that six-foot projection he's got out, which is turning the boat 30 degrees out, which puts him nine inches from our dock. Now, if he was right against the seawall, and had maybe even a two-foot projection, then he would be five to seven feet from our dock, instead of nine inches. And I don't think that's correct. We're trying to sell our property. It would be probably an adverse situation. A buyer would say, "Look, I don't want to get into that problem." So that's my comment about it. I don't think that – I'd like to see him get any permit. He hasn't described how he's going to put his boat. And his boat won't fit there. And if he puts the – if he gets the permission to put that dock, he can't get his boat out. So it's kind of a Catch 22 situation. That's about all I have to say, at the moment.

Mary Hillberg – Is there any board member who'd like to ask a question of this gentleman? Dale.

Dale Young - Yes. I assume that your house is the one to the west? Around to his left?

Mr. Warden - Yes, it's...

Dale Young – He's on your right.

Mr. Warden – Right. He's on our right, to the south.

Dale Young – So your dock – I'm trying to see what it is, from the aerial. It looks like you have one that you come directly in to, from the canal.

Mr. Warden – Yes. To the east.

Dale Young – Yes, these corner canal lots are so much fun.

Mr. Warden – Yes, they're a problem, all right.

Dale Young – That's all.

Mr. Warden – He did tell me, years ago, when he was putting the walkway around, and I called him on it, and he said he got a variance. Well, I assumed, at the time, a variance meant he was approved. But a variance means you just apply for a variance. And I didn't know that.

Mary Hillberg – Are there any other questions of this gentleman? (no response) Seeing none, you can have a seat. Thank you, so much. Is there anyone else in the audience who would like to speak in favor of, or against, this application? (no response) Seeing none, are there any letters?

George Bovell – Yes. I have a letter here that's essentially from the gentleman who just spoke. It's handwritten. Some of it, I do not understand, but I'll try and get the essence of it. It says, "Attached, please find my proposal for placing the Tobin boat hoist and 14-foot walkway in a new position. I believe that this assignment "sic" (arrangement) is fair for both parties," And, essentially, what he's drawn up here is what he tried to describe to us. He says, "On October 14th and 15th of 2010, Mr. Tobin increased his dock size, which covers almost all of the area north of the 45-degree setback line." In addition, he says, "Mr. Tobin did all this dock work without a permit." And down in the last paragraph, he says, "I do not believe that Mr. Tobin should be rewarded for his betrayal "sic" (disregard) of the law." And that's Mr. W.K. Walker "sic" (Warden).

Mary Hillberg – Thank you, George. Will the applicant please return. And if you have any rebuttal, or any issue, any questions you'd like to – or any comments you'd like to make.

James Tobin – I just want to say that, you know, when I purchased the house back in '99, with a boat lift, somewhere in my purchase price was a lift with a dock. And filing for the variance, I won't get – be able to put my boat back – take it out of the water. I'll either have to trailer it or leave it in the water. So that's going to hurt the resale value of my house. On top of that, he did come out with a proposal of putting the boat closer to the seawall, but I'd never be able to make the turn. My boat would hit the seawall first, before I made the turn. That's about it, I guess.

Mary Hillberg – O.K.

James Tobin – I have one other thing.

Mary Hillberg – Yes, go ahead.

James Tobin – I've had it for 12 years and, all of a sudden, now, you know, I have to battle all these procedures, you know. I mean, he thinks I just put the whole boat dock in, recent. And that's not the case. I mean, it's been in there for 12 years, plus. I bought it back in '99. It was there prior than that. If he had a

problem, he should have questioned it back then, you know. I just don't understand why I'm getting punished now,
12 years later, when the dock was falling apart, and all I tried to do was just fix it.

Mary Hillberg – You have a question, Dale?

Dale Young – Yes. This dock was in the same configuration?

James Tobin – Yes, sir.

Dale Young – For 12 years?

James Tobin – Yes.

Dale Young – So you're able to pull in at the angle?

James Tobin – Yes. And it's tight with that angle the way it is.

Dale Young – Yes, I can see the whole property is tight for a dock.

James Tobin – That's correct.

Dale Young – This comes with the property, the problem.

James Tobin – Right.

Dale Young – The added, what, six inches to the finger out there, Mr. Warden is saying that that interferes with his dock.

James Tobin – I mean, it's close, but it's space that will never be utilized. On top of that, his house isn't for sale. And he doesn't even have a boat. He doesn't even come outside.

Dale Young - Well, it doesn't matter about that.

James Tobin - Right. I mean, it is close, but...

Dale Young – The same situation as you, if somebody wants the dock.

James Tobin – That's correct. I mean, even if you cut it six inches, or even if you took the whole finger, it's still close, you know.

Dale Young – And the one to the right of you, it looks like he has a dock sticking out there. The one to your east.

James Tobin – Yes, yes. That's where it's tight, when I pull in and back out.

Dale Young – That's all.

Mary Hillberg – Anyone else? Go ahead, Jim.

James Rosasco - Yes, I'd like to go back, Paul, and revisit this. It seems like the area that's really the problem, where he added the six inches, or 12 inches, whatever it was, that is all outside of his property lines, in any event. Am I correct in...

Paul Body – That's correct.

James Rosasco - ...looking at the survey?

Paul Body – Yes.

James Rosasco – So no matter what we decide today, it's not going to solve the problem of that finger dock being outside of his property line.

Paul Body – That's correct. That's the reason you need a have a stipulation that it only goes up to the property lines, as they project into the canal, and doesn't include anything over that, the variance would. If you are going to do that.

James Rosasco – What are the consequences, or what is the action – what happens to that dock that is outside of his property line?

Paul Body – It would still be in violation of the code.

James Rosasco – And a violation of the code implies – what happens?

Paul Body – He'd still have a Code Enforcement problem.

James Rosasco – How is that problem ever resolved?

Paul Body – Well, he would need to probably cut it off, is what it would do, or reconfigure his whole dock. There is a code that allows him to get together with his neighbor and configure the dock together, to where they could have – both share the end of the cul-de-sac, or the end of the canal there.

James Rosasco – So it appears to me the most objectionable component of this dock is out of the realm of this board's ability to solve that problem.

Paul Body – That's correct.

James Rosasco – Thank you.

Paul Body – You can only get up to where the side lines are projected into it.

James Rosasco – Right. We can only address...

Paul Body – Yes.

James Rosasco - ...the applicant's property lines – within the applicant's lines. We can't go any further than that.

Paul Body – That's correct.

James Rosasco – Thank you.

Mary Hillberg – And I'd like to say something, as well. You've answered the six questions that we ask you to answer. And one of these questions is that you don't have a reasonable use of your property without this variance. And even though you have bought property that is technically on the water, and does have this footage on the water, and you may have had a dock there, perhaps for a smaller - or perhaps at a different time, this was workable. But it's not your fault. We understand that the cut or your lot is an issue. But it isn't your neighbor's fault, either.

James Tobin – Oh, I understand.

Mary Hillberg – And, as Jim mentioned, it's not something that we can – we can't give you someone else's property, or the use of it.

James Tobin – Right. And I understand that. But if his house was for sale, and a new buyer came in, I mean...

Mary Hillberg – We can't suppose that anything might happen, or may not happen, or whatever. That's all. Thank you. Anyone else? Fred, you have something?

Fred Kusterer – What are you going to do if we grant you your request, which allows you to put a dock in up to your property line?

James Tobin – Well, I have a sketch of a drawing. I made quite a few copies, if you guys want to take a look at it. Basically, it's a triangle deck with a roof on it. And I would just have to keep the boat in the water, you know, which keeping it in the water would block his access to his. I don't know if you'd like to see that.

Mary Hillberg – If you want to give those to us, you may, but they stay with the board. You can't have them back. Thank you.

James Tobin – But, even if I had a smaller boat, which I do have a smaller boat that I keep in the garage, the way that the triangle's set, I still couldn't get a lift in there, you know, because one of the poles would be still outside the seven-and-a-half-foot setback. So, basically, it'd be just like a party deck that I would – that I'm asking for, I guess.

Mary Hillberg – I'm not quite sure I understand. You're asking for a party deck?

James Tobin – Well, no. I mean, what I have drawn is basically an area just for me to sit. I mean, it's really not for a boat, you know, even though I'm on the water. I purchased a boat lift on my property, and what I'm asking for, I'll never be able to get the boat back out of the water. So it'd have to stay in the water, and I'd just have a basic triangle deck for – I mean, that's basically all I would have.

Mary Hillberg – We're here only looking at the variance itself. We can't issue permits or...

James Tobin – No, no, no, I understand that.

Mary Hillberg - ...okay that something else is built.

James Tobin – Right.

Mary Hillberg – The variance that you've asked for, this is just what we're looking at, just that.

James Tobin – I understand.

Mary Hillberg - Anyone else? Fred.

Fred Kusterer – Let me clarify what my question was about. I asked you what you could do with the spot, if we granted you the variance you're asking for, because what you got outside of the line on this survey that I have here, you're going to have to take down. That doesn't belong there.

James Tobin - What's existing right now?

Fred Kusterer – Yes.

James Tobin – Yes, that's why I'm filing for the variance, because I'm outside my footprint.

Fred Kusterer – What's outside your footprint is gone.

James Tobin – I understand.

Fred Kusterer – There's no way you can deal with that, unless you can make an agreement with your neighbor.

James Tobin – Right. I understand that.

Fred Kusterer – We can grant you a variance that allows you to go up to your property line.

James Tobin – Which is basically what I just gave you.

Fred Kusterer – That's why I was asking if there was something you could do, if we granted you that variance.

James Tobin – Basically, that's what I would do, is build a deck, and put a roof, and keep the boat running north and south.

Mary Hillberg – My thought is that I thought that the neighbor stated that if there was a hardened surface there that he would not be able to get in or out. Did I misunderstand?

James Tobin – Can I say?

Mary Hillberg – No. I just was asking you, Fred, since you asked the question.

Fred Kusterer – I didn't understand that. I might have missed something.

Mary Hillberg – O.K. You can have a seat. Thank you. We're closed to the public now.

Dale Young – Madam Chair, there is no prior variance here, is there? I keep hearing about a variance.

Mary Hillberg – I don't believe there is. Paul?

Paul Body – No, there isn't a prior variance to the property.

Mary Hillberg – Was there a variance ever applied for?

Paul Body – No.

Mr. Warden spoke from the audience, asking if he could speak again.

Mary Hillberg – No, sir, I'm sorry. You already spoke. And I'm sorry, those are the rules. You know, when we say that someone doesn't have a reasonable use of their property, that has a lot of breadth to it. And because this property is on the water, you could say that this is the only reason that an individual would buy this property, would be because of that piece on the water. However, the rest of the property is very nice. I've gone by it and looked at it, and it's a nice big corner lot in a nice neighborhood. There is reasonable use, in my mind, of the property, without having a boat. And some people have boats that they dock in other places. So my thought would be there is that aspect of it. Anyone else have anything to add?

George Bovell – Yes. I understand that the code allows for him to strike a deal with his neighbor and find a way for them to be able to use that other space so he can maybe keep his dock, or reconfigure his dock so that they both can live with it. So that's another option he's got.

Mary Hillberg – Yes. Jim.

James Rosasco – It appears to me that the part that is outside of his property line is a problem he'll have to address with his neighbor. But what would be left would give him access to his boat. He could still get on and off the port side of the vessel. I think he could do that. And if someone makes the motion to approve this, I would certainly say as depicted on the survey, this particular dock. And going anything else, I think would be a different – I wouldn't want to open that can of worms. Thank you.

Mary Hillberg – Are you saying as depicted on the survey here, minus the area that's taken off, that's to the north, only this piece here that is on the survey?

James Rosasco – This would be what we can permit, and this, we have no control over.

Mary Hillberg – Right. Anyone else have any comments? (no response) May I pass my gavel to Dale? And because I think this is an issue that probably is very difficult, these kinds of problems on waterways – we have a lot of them here – and whenever we have a dock issue, there are usually a lot of things that we have to consider. But, overall, there is the possibility of making a deal with your neighbor, and collaborating with him, and having a joint facility, so to speak. There is the possibility of also having your boat boarded somewhere else, and you would be able to go and get it and use it. The people with larger boats than can accommodate their area can do that, as well. And this is a very hard situation. And, you know, as Jim has said, the part that is outside your property line, as Paul has mentioned, is not able to stay, at all. The part that is in there would be as it is depicted on this survey, and as the dimensions are depicted on the survey. That would be the only thing that we could do with a variance. So I would like to approve the variance for only this piece, as it shows on the survey, excluding the portion that is outside of his property line, and only this odd-shaped there, not the triangle piece that he gave us as a suggestion, but just as it is on the survey. And I would make that motion that we could approve that portion of it.

Dale Young – Do we have a second?

James Rosasco – I second that motion.

Dale Young – Any other discussion? (no response)

Dale Young called the question, and the board approved the variances, as stated above. The vote was unanimous.

Mr. Warden spoke from the audience.

Mary Hillberg – I understand, sir, but that isn't something that we can do. We're not allowed to do that here in this...

Mr. Warden – Enforcement's been out three times and tried to get us together. And he seems to want to keep the dock as it is.

Mary Hillberg – I know. I understand.

Mr. Warden – What he's got now, he's got a walkway, 18-inch walkway, around on the north side. Is that supposed to come out?

Mary Hillberg – Yes, sir. All the part that is outside the straight line coming from his property to his property, and that section, the outside portion of that. If you would go over there and talk to the folks from Planning & Zoning...

Mr. Warden – Are you letting him build it into the water, on the property line?

Mary Hillberg – Sir, you can go over here and talk to Planning & Zoning, and they'll show you the survey of it. But we have agreed that that portion could be – he could leave it, the part that's against his seawall.

Mr. Warden – I sent in a plan that I would propose...

Mary Hillberg – Sir, we can't accept that. I'm so sorry. And we really can't carry on a conversation, because we've finished with this case. So, if you have other questions, you can talk to Planning & Zoning.

Diana Johnson – If you have any further questions, you can come speak to us after the hearing. We'll be happy...

Mr. Warden – After the meeting?

Diana Johnson – Yes, sir.

Mary Hillberg – After this meeting, yes. Thank you so much.

Mr. Warden - Are you granting him a variance, then?

Mary Hillberg – Yes, sir, for the portion that's against his seawall. Please have a seat, so we can go on.

Mr. Warden – Well, it doesn't seem to me like it's enforcement. It seems like it's accommodation.

Mary Hillberg – Well, that's the way it is. Please have a seat, sir, so we can go on. Thank you.

3. CHARLES C. MEILBYE – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1339 (4) to permit a variance of 73 ft. from the required 100-ft. minimum lot width in an EU zoning classification. The property is described in **Section 12, Township 25, Range 36**. (1.33 acres) Located on the east side of S. Courtenay Pkwy., approx. 720 ft. north of Plantation Rd. (Merritt Island)

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

Paul Body – There is no letters of objection, or in favor, of this.

Mary Hillberg – Thank you, Paul. Could the applicant please come forward. Thank you.

Charles Meilbye – Charles Meilbye. And I currently reside at 380 Carrousel Court, Merritt Island, Florida.

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

Charles Meilbye – I do.

Mary Hillberg – Go ahead.

Charles Meilbye – I think it's all laid out in front of you, ma'am. I bought this property last year. It's been zoned, and platted, since 1979. Since 1993 – I can pull the records from there where this has been zoned and platted. You can see on the Brevard County Appraiser's Office, it's been over 18 years. And I guess my question to you is why I really need a variance for this. I'm applying for it, because the County told me I needed to. The way I read the intent of what I'm looking at here was the lot size would need to be 100 by 100. And I believe the intent of that rationale was solely to make sure the houses weren't stacked upon each other, not for ingress and egress to my property.

Mary Hillberg – All right. Is that all?

Charles Meilbye – I do have pictures, if you would like to see them.

Mary Hillberg – If you give them to us, would they stay with your paperwork? Thank you. Since you are in District II, you are in my district. I did go by, and I saw the driveway. And I can't, obviously, get back there to see anything else. And I don't have any particular questions. Anyone else on the board here have a question?

James Rosasco – Yes. I'm somewhat confused. I didn't get a survey in my package.

Paul Body – You didn't get a survey?

James Rosasco – No one else got a survey. I don't think any of us got a survey.

Charles Meilbye – Sir, I have one here, if you'd like to share it.

James Rosasco – We can, but we can't give it back to you.

Charles Meilbye – That's fine. I got a couple of surveys just for you guys. And I submitted it to the County.

James Rosasco – What I'm getting at, Paul, is this appears, from the photograph, that he's got more than a 100-foot wide lot. So what becomes the problem? Is it the flag pole part, the flagstaff?

Paul Body – Yes. The problem is, is that last year there was an ordinance change to the Land Development Regulations, which removed the flag lot mechanism from the code. And it was effective January, 2001 "sic" (should be 2011). And this is an existing flag lot that was configured, from what we can tell, in 1993. And so the best way to take care of the problem is to get a variance to the width. By the code, the lot width is the distance between straight lines connecting the front and rear lot lines to each side of the lot, drawn perpendicular or parallel to the sides lines. If not parallel, then measured across the rear minimum front yard

line established by the front setback. So that's where we're getting at that he doesn't have the correct lot width.

James Rosasco – Even though he has an 180-foot by 267-foot building pad area, he's got to get a variance because someone, in their infinite wisdom, got rid of flag pole lots in our County?

Paul Body – Yes. They took them out of the code, because they were having a lot of problems with the code. And they're now trying to make a small scale subdivision code for that. There's ways you'd have to come in, but it would be a lot easier for him to get the variance than to go through that process.

Diana Johnson – The Board of County Commissioners took the old flag lot provisions out of the code in an effort to kind of stop people from creating flag lots from here on out. They'd rather do little subdivisions. And this property, since it has a flag lot, and it's been around for so long, it is that flag strip that's the problem. Even though he's got that big chunk that's wide enough, it's those strips that make the problem. So his variance would clear out that aspect, and he'd be able to go on from here, as far as getting his building permit, and all that.

Paul Body – There was an administrative action process for doing flag lots, but nobody ever came it to get this one approved before the code was changed.

James Rosasco – So anyone else in the County that has a flag pole lot is going to come across the same problem?

Paul Body – That's correct.

Robin Sobrino – Let me just clarify, if they did not already receive an AA, in the past, for a flag stem. The situation here was that this was part of a larger parcel of land. The previous owner incrementally came in for administrative actions on just portions as he carved out parcels. At that time, there was no request for an AA on this remnant parcel of land. Since that time, the property was foreclosed. I believe this gentleman may have purchased it from the bank. And in order to now legalize it, and recognize it as a buildable site, since we don't have the flag lot mechanism any longer, we're asking for the variance on his behalf here.

James Rosasco – It looks like you get to pay another \$700.00 for your property.

Charles Meilbye – Yes. I mean, I own the property adjacent to it. That's how I know it was foreclosure. I wanted this property, originally, but I couldn't afford it. It came on the market, and now I have three acres there. But I just find it objectionable that I have to come in and pay \$600 to ask you guys to have something that was deeded over 19 years ago.

James Rosasco – Well, you know, the County needs money.

Charles Meilbye – I know.

Paul Body – The flag lot procedure would be \$629.00, though, actually.

Charles Meilbye – But it should have already been done when the flag lot was established 19 years ago.

James Rosasco – I certainly think you should – we should grant your variance. Thank you.

Mary Hillberg – I think they had some issues, in all fairness to the County, and everybody. They had some issues with the flag lots, as far as safety, and emergency vehicles...

Charles Meilbye – Ingress and egress.

Mary Hillberg – Yes. It was a very...

Charles Meilbye – And I understand that. It's a shame, because I came in, in March to do this, and I had no idea that this was done in January. If it were, I would have been here a year ago, when I purchased the property, to do this. But, you know, when I called up to get an address – I guess 911 issues the addresses – and I can't get an address, because I don't have the 100-foot minimum for the ingress and egress for emergency vehicles, which I don't find an objection to. It's just the amount of money I have to pay to do this, not to be here today.

Dale Young – I'd like a little more clarification from the County. When the County changed this ordinance, they didn't do away with flag lots. They knew there were still several hundred laying around. How did they expect the people to get access to them?

Robin Sobrino – Well, first of all, we built in, through the ordinance, a grace period for people to come in and get their flag lots. The Board approved the minor subdivision ordinance, removing the flag lot ordinance, back in October. And the grace period of it taking effect in January, 2011, was to put the public on notice that there was an opportunity to come in and take care of business for anything that was in the hopper, or anybody who had some imminent plans for development. Unfortunately, Mr. Meilbye didn't have this on his radar screen at this time.

Dale Young – He didn't own the property. I suppose all of the flag lot property owners were individually notified when this ordinance was...

Robin Sobrino – No. Instead, we run a \$2,000.00 display ad that notifies the public. That's how we...

Dale Young – So if you didn't see the ad...

Robin Sobrino - ...notify the public.

Dale Young - ...you were screwed.

Robin Sobrino – Well, that's the prescribed mechanism for running advertisements to notify the public at large.

Mary Hillberg – O.K. Well, thank you, very much. You have something else, Dale?

Charles Meilbye – And that is true. What the man said, that's true. But I've owned this property for over a year. So I didn't – it wouldn't have fallen through the cracks if I was sent a letter from the County. I mean, the County can send letters to people when I have a variance. They can send people letters - around to my neighbors. But when I own a physical piece of property that might have an issue, the County cannot send me a letter? I just find that very taxing. Thank you.

Mary Hillberg – Is there anyone in the audience who has any comment for, or against, this application? (no response) Seeing none, do you have a final comment, sir? (Mr. Meilbye indicated, from the audience, that he had no final comment). We're closed to the public now, and to the applicant, as well. This is also a District II one, and I don't see any problem. I think it is clearly an issue of a problem for the land, and the reasonable use of the land. So I would pass my gavel. I'd like to make a motion that this application is approved, per the survey.

James Rosasco – I second that motion.

Dale Young – It's been moved that the application be approved, as submitted, and seconded. Any other discussion? (no response)

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

4. DAN TROWBRIDGE, TRUSTEE – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1402 (5) (a) to permit a variance of 7.5 ft. from the required 7.5-ft. side setback (west) in a TR-1 zoning classification. The property is described in **Section 15, Township 23, Range 36**. (0.18 acre) Located on the south side of St. Charles Ave., approx. 800 ft. west of Whaley Rd. (415 St. Charles Ave., Merritt Island)

BOA ACTION: Hillberg/Kusterer – DENIED. Vote was 4:1, with Rosasco voting nay.

Paul Body – There are five letters of objection, two from the same person, for this application.

Mary Hillberg – Thank you, Paul. Sir, your name and address, please.

Erwin Trowbridge – Erwin Trowbridge, 415 St. Charles Avenue.

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

Erwin Trowbridge – I do.

Mary Hillberg – Thank you. Go ahead.

Erwin Trowbridge – When we purchased this property 12 years ago, we paid cash for it, so we didn't have a survey, or anything, done. And as it was, the carport and everything was right up to the property line. And then I did a roof-over on it, covering everything that was existing on it. But we didn't change the footprint of the house. I just covered everything with a new roof, and then eventually closed it in, because I was getting tools stolen. And it's been completed like this for five years. I submitted a before and after picture of the place. I don't know if you have that or not.

Mary Hillberg – Yes, we do. Thank you.

Erwin Trowbridge – And I've done a lot of work to it. It's made a great improvement to the neighborhood and the looks of the house. And, as it shows in the first picture, everything was already right up to the fence line. And all I did was put a new roof over it, and enclosed it, and made it a better home.

Mary Hillberg – All right. Is that all?

Erwin Trowbridge – Pretty much, yes.

Mary Hillberg – Since you are also in District II, I'd like to ask you - on the pictures that you submitted, I want to clarify we're talking about – the right side of the picture would be the west side of your house. Is that correct?

Erwin Trowbridge – Yes, ma'am.

Mary Hillberg – So that would be the area that we're discussing?

Erwin Trowbridge – Yes, ma'am.

Mary Hillberg – So the roofline appears to be in one place, and there appears to be an additional section on the wall there. Is that...

Erwin Trowbridge – Yes, ma'am. That's where the existing posts were. But the aluminum overhung past that, all the way out to the aluminum.

Mary Hillberg – The posts were...

Erwin Trowbridge – I didn't have a way to truss all the way out on the original footprint, so I had to put a beam construction there to carry the trusses.

Mary Hillberg – I'm not quite sure I understand. There's an added piece here on the side of your house. Your house stopped here before. And then there's an added piece here on the side. This is the part that you added on?

Erwin Trowbridge – It was covered, originally. But, yes, actually I did add that on. But all of it was originally roof-covered and roofline. I showed several pictures of other houses in the neighborhood where you can actually see right up to the fence line, same construction style.

Mary Hillberg – I see. Are there any other questions from the board members of this – Jim.

James Rosasco – Yes. Would you please walk me through these pictures? The first one on top, is that...

Erwin Trowbridge – I'm not sure which ones you have. (Mr. Rosasco showed Mr. Trowbridge a picture) Yes, the first one is the way the house originally looked when we purchased it. The second one is the way it appears now.

James Rosasco – Can I go back to the first one for a second?

Erwin Trowbridge – Yes, sir.

James Rosasco – To the left – the carport in question is the structure to the right of this picture?

Erwin Trowbridge – Yes.

James Rosasco – O.K. And the second photograph?

Erwin Trowbridge – That is the house as it sits now.

James Rosasco – And the remaining photographs are...

Erwin Trowbridge – Are of houses...

James Rosasco – Houses in the area.

Erwin Trowbridge - ...on the same street. And right across the street, next door, was all the same, right up to the property line.

James Rosasco – O.K., thank you.

Mary Hillberg – Are there any other questions of this applicant? (no response) You can have a seat, sir. Thank you. Is there anyone in the audience who would care to speak for, or in opposition to, this application? (no response) Seeing none, we have five letters.

George Bovell – This first letter is written by Frank Johnson, 425 St. Charles Avenue, in Merritt Island. It says, "To Whom It May Concern: This is my second letter after finding out new information. I have lived here since 1996, at the above address. All that was on the property at 415 St. Charles Avenue was a single mobile home, screen porch, and a carport, which was four feet back from the property line. It wasn't until the Trowbridge family bought the property back in 1999 - it wasn't until later on in late 2000, that Mr. Trowbridge extended the carport and built an enclosed garage over the property line. As property owners for myself and my brother, which put us in jeopardy, since there was no four-foot variance setback. Facts for hearing on June 15, 2011: Safety and Civil Liability. With the garage been built right on the property line, if there was a fire, the Fire Department wouldn't be able to enter the west side of the property. Also being built within eight feet of my house is another safety issue that a fire would endanger my home, very easily. Civil Liability. Again, since the garage being built on the property line, Mr. Trowbridge, or his helpers, have to come to the property at 425 St. Charles Avenue. If there is an injury or accident, Mr. Trowbridge, or his helpers, may sought a tort for damages against my property. This is something I hope will be taken in serious deciding facts. Any attorney will tell you that puts another person at risk. There should have been enough variance left that Mr. Trowbridge, or his helpers, can stay on his property to do the maintenance such as painting and repairs. Then Mr. Trowbridge would be responsible for the liability of himself and his helpers. If needed, reply, and I will send photos. Also, the value of the property is affected, and depreciation. In the event to sell, this will affect buyers, if they would want to buy, where you would also lose privacy, and they would be at risk for civil liability.

Dale Young – Is that letter from the one to the east?

George Bovell – This is the one next to the garage.

Paul Body – Yes, that's the property to the west.

George Bovell – The second letter. "To Whom It May Concern: The way his property has been built will affect the neighborhood. It will make the property value go down and will also have a hazard, because he had no permit. And when a hurricane comes, it would blow his trailer towards his neighbors' homes. I also feel if he gets away with his property being like that, others will follow and want to build out their property. I'm concerned about the children in the neighborhood and their safety." This is from Melissa Ridge, at 450 St. Charles Avenue, Merritt Island. And there is another letter from Mr. Frank Johnson; however, we've already went through that first part. Then, Katherine Bowling, 425 St. Charles Avenue, Merritt Island, Florida. "I have lived here since 1996, at 425 St. Charles Avenue, Merritt Island, Florida, next door to 415 St. Charles Avenue, which is in question. We had to call the Planning & Zoning Office to find out what the green sign was about, since we was told the sign was to be within 10 feet, but was set back more than 10 feet. What was on the property back in 1999, was only a single mobile home with a screen porch and an open carport, which was four feet back from the property line, which didn't bother the privacy of others. It was later on, when the Trowbridges bought the property, when Mr. Trowbridge added on to the property, extended and enclosed the carport to a garage over to the property line. His wife would take me out there and show me the work of the new concrete floor of the garage. Others in the neighborhood saw all the new work being done. No one knew, at the time, permits weren't issued, not did Brevard County issue a variance. Can anyone go there and see where the new flooring was added? Now, Mr. Trowbridge and his friends have to come to the property at 425 St. Charles Avenue to do maintenance, which is in concern civil liability. Plus, we lost our privacy, being so close to our home. There was no problem when the setback was four feet. Also, a fire safety issue when Mr. Trowbridge uses his welder and cutting torches. Being so close could set our place on fire. Please keep it at four-foot setback, as it was before the variance."

Mary Hillberg – Thank you, George. Would the applicant like to come up and have any comments on these letters?

Erwin Trowbridge – They keep saying there's a four-foot setback. There was never a four-foot setback. The columns to the garage were right up to the fence, within a foot, two foot, at the most. Like I said, I feel I've added to the property. It's a structurally sound building. Yes, I do use it as a garage but, as you can see in the original picture, if you go seven and a half foot back on that, I don't even have a carport there. I couldn't even get a car in next to the end of my trailer. I've improved the best. It looks – best looking house in the neighborhood, I feel. But I've got a lot of work into it. I wouldn't have any other use for that land, without the garage being there. I haven't changed the footprint, at all. I just covered and enclosed what was existing.

Mary Hillberg – Sir, when you say that the poles of the garage were already there, you mean that you had a carport?

Erwin Trowbridge – Carport.

Mary Hillberg – An open carport?

Erwin Trowbridge – Right.

Mary Hillberg – Paul, is an open carport...

Paul Body – No, he needs to have his setback measured to where the structure comes out of the ground there. The poles would be where they would measure them off of. It should meet seven and a half feet off the side property lines.

Mary Hillberg – So the poles of the previous carport are not?

Paul Body – They wouldn't be in with the code, no.

Mary Hillberg – Does anyone else have any questions? George.

George Bovell – When it was just a carport, it didn't create some of the issues that the neighbors are concerned about, because there was nothing for you to maintain. There was no need for you to go on the neighbor's property to paint or maintain your property. And that's when it - reading through these letters, that's what the objection is. You have to go on their property in order to maintain yours. And they are concerned that if something happens, they might be liable.

Erwin Trowbridge – There's a fence right there. There's really no maintenance for me to do. Any painting that needs to be done, I can do off of that little roofline. I do not have to go on their property to do any maintenance, sir.

George Bovell – So you've never had to go on their property, at all, since you...

Erwin Trowbridge – No. The only time I've been on their property is – the little fence line that goes out towards the road, I had the good side facing my house, and I had to go in and turn those around, by Code Enforcement's request.

Mary Hillberg – Anyone else? Dale.

Dale Young – Yes, I see in one of our shots here – I take it this is the neighbor to the east of you?

Erwin Trowbridge – Yes, sir.

Dale Young – And I see that that carport post sits a couple of feet off the fence there.

Erwin Trowbridge – Not even that much.

Dale Young – Which is a similar situation with yours, at one time.

Erwin Trowbridge – Yes, sir.

Dale Young – O.K., that's all.

Mary Hillberg – Any other...

James Rosasco – I just want to say, in reviewing the pictures, I think you did make a very beautiful house out of it.

Erwin Trowbridge – Thank you, sir.

Mary Hillberg – Any other comments from anyone? (no response) You can have a seat, sir. Thank you. We're closed to the public now, and to the applicant. This is again in my district. And I would say that the letters that have been sent in, with the safety issues and liability issues, I think have merit. And the fact that this was done without a permit is not an issue that would sway a variance one way or the other, but if a permit had been applied for, you would have known that you would have had this – you wouldn't have been able to go that extra amount. And that would have helped you. And the neighbors are concerned about safety issues, and there is an access problem for emergency vehicles. A carport doesn't have that kind of imposition on a property line as a building structure, cement slab and a wall does. So I would have to hand my gavel here to Dale. Because of these issues, and because the applicant does, in fact, have reasonable use of his property without this extra section, and because of that, he doesn't actually qualify for a variance, in my opinion, I would move that we deny this variance.

Fred Kusterer – I'll second that.

Dale Young – It's been moved, and seconded, to deny the application. Any other discussion? (no response)

Dale Young called the question, and the board denied the variance. The vote was 4:1, with Rosasco voting.

Mary Hillberg – I'm sorry, sir, that you did not have a variance. And you need to go speak to the folks after this meeting here.

DISTRICT 3

5. HENRY E. BECK AND ANNE B. BRIGGS – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1336 (5) (b) to permit an accessory building to be located forward of the front building line of the principal structure in an RR-1 zoning classification. The property is described in **Section 20, Township 30G, Range 38**. (1.17 acres) Located on the north side of Fleming Grant Rd., approx. 217 ft. east and opposite of the northern terminus of River Dr. (9735 Fleming Grant Rd., Micco)

BOA ACTION: Rosasco/Young – Approved, as depicted on the survey provided by the applicant. Vote was unanimous.

Paul Body – There are three letters in favor of this request.

Mary Hillberg – Thank you, Paul. Could the applicant please come forward.

Anne Briggs – My name is Anne Briggs. I live at 9735 Fleming Grant Road, in Micco. And there should be four letters.

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

Anne Briggs – I do.

Mary Hillberg – Go ahead.

Anne Briggs – My husband and I bought the property on Fleming Grant Road in the end of February with the intention of installing a nice little shed for me to do my mosaics, my hobby, to store my mosaic supplies and to make my mosaics. The property was over an acre. We did not know about any kind of setback regulations for any buildings in front of a building line. So we just assumed that we could put the shed where we wanted to. The garage is a two-car garage, and it's full of cars and equipment. So for me to have the full enjoyment of my property, I would like to have a mosaic shed. And I have pictures of where we propose to put it, because I don't think the survey really does it justice. May I show them to you?

Mary Hillberg – Yes. We have to keep those. Thank you.

Anne Briggs – I think that the shed that we would like to put up there will be totally – will blend in with the property. We plan to make it – have the stucco, like T-1, I believe it is called, outside, which would blend with the house. I don't think any of our neighbors object. And it would certainly improve my quality of life, and the property, too, probably.

Mary Hillberg – All right. This is not mine. It's yours.

James Rosasco – Yes, it is. Is this going to be a big enough shed? I don't want you to have to go to the well more than once

Anne Briggs – No, it'll be fine.

James Rosasco – Paul, it looks like they have a CBS garage in front of their residence. Wouldn't that also require a variance?

Paul Body – No. If you look real closely, the survey shows some real tiny columns that are actually attached to this.

James Rosasco – So they have a little walkway?

Paul Body – Yes, they...

James Rosasco – Covered walkway?

Paul Body - ...have a little covered walkway there. I noticed that, too.

James Rosasco – You don't want to put a 200-foot walkway to get to your shed?

Anne Briggs – It might be convenient, but probably an eyesore.

James Rosasco – I know exactly what you're going through. I live where I can't put any accessory structures in front of my house, either. So I know the hardship that creates for you. So I have no other questions. I would certainly support your variance request.

Anne Briggs – Thank you. I don't know if you can really tell from the survey, but from the photos you can see that on one side of the house we have the sewage system, the well. And then there's large oak trees all around, which is beautiful. I don't really want to chop anything down. And then, in the back, there's a pond and a slope.

James Rosasco – I think you've done all you can do to try to get it as convenient as you could for everybody, so I would support your variance.

Mary Hillberg – Anyone else have any questions? (no response) You can have a seat, ma'am. Thank you. Is there anyone in the audience who would like to speak for, in favor of, or opposed to this? (no response) Seeing none, are there letters? George.

George Bovell – Yes, I have three letters here, and two of them are pretty much the same. They're all in support. The first one is from William and Georgia Combs. "We own the property bordering on the west side of the property owned by Henry Beck and Anne Briggs. They are requesting a variance for an accessory building on that side of the lot. We have no objections to having the variance granted. We would support their request." The next one is from K. Helton, at 9685 Helton Lane. "I am a neighbor of Henry E. Beck and Anne B. Briggs, of 9735 Fleming Grant Road, Micco. They have applied for a variance for an accessory structure to be placed the front of the front building line. I have no objection to their placing a shed in front of the building line, and I am in favor of granting the zoning variance." This letter, saying the same thing, is from George T. Decker, III.

Mary Hillberg – Thank you, George. Would the applicant like to come back up and have a last word? (Ms. Briggs replied from the audience) We're closed to the applicants and the audience. What is the pleasure of the board?

James Rosasco – I move to approve the variance, as depicted on the survey, as far as size and location of the proposed shed.

Mary Hillberg – I have a motion to approve. Is there a second?

Fred Kusterer – I'll second it.

Mary Hillberg – Thank you. Thank you. We have two seconds. (One of the seconds was made without a microphone; therefore, it is not audible on the record) Any discussion? (no response)

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

Diana Johnson – Who wants to take that second, Dale or Fred?

Mary Hillberg – Dale or Fred? Give it to Dale.

DISTRICT 4

6. BREVARD COUNTY - (Brevard County Sheriff's Office) – requests a variance of Chapter 62, Article IX, Brevard County Code, Section 62-3316 (b) (2) to permit a variance of 522 sq. ft. over the 150 sq. ft. allowed for sign surface area of a freestanding sign. The property is zoned AU & GML and is described in **Section 1, Township 25, Range 35**. (48.92 acres) Located on the south side of Pluckebaum Rd., approx. 0.5 mile west of Range Rd. (2955 Pluckebaum Rd., Cocoa)

BOA ACTION: Young/Kusterer – DENIED. Vote was 3:2, with Bovell & Rosasco voting nay.

Paul Body - There are no letters of objection, or in favor of.

Mary Hillberg – Thank you, Paul. The applicant, please come forward. Are you both going to be speaking?

Commander Susan Jeter – Yes, we are.

Mary Hillberg – Your name and address, please.

Commander Jeter – I'm Commander Susan Jeter, with the Brevard County Sheriff's Office. The address is 860 Camp Road, Cocoa, Florida, 32926.

Major Greg Robertson – Major Greg Robertson, 860 Camp Road, Cocoa, Florida, 32927.

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

Commander Jeter – I do.

Major Robertson – Yes.

Mary Hillberg – Go ahead.

Commander Jeter – Good afternoon. Myself and Major Robertson are here today to request a variance to place a sign at the farm. The location is off 95, at the Sheriff's Work Farm. The sign will be used to display a public safety, crime prevention, or public safety message to the public. It's not a for-profit type of situation, just to inform the public of any issues that might prevent any type of tragic accident or issue. Examples would be, "Don't text and drive." "Don't drink and drive." "Get a Plan. Floridadisaster.org" "Stay alive. Don't drink and drive." "Speed kills." "Crime line, 1-800.432.tips." Something quick and easy for someone to see as they're driving by. Most people only have a few seconds to read a billboard message and, in that short period of time, the visual needs to make an immediate lasting impact. So it needs to be easy to remember and with the tag lines I've listed above. The purpose, as I mentioned earlier, is to provide information to alert the public, or to provide a public safety message to prevent an issue such as drug abuse, driving safety, et cetera, slogans with a message. The Sheriff's Office felt using this area to build and maintain the sign could possibly prevent a tragic event from happening, and a person, or persons', life is worth it. It seems logical and prudent to provide this message to the public and the citizens of Brevard County. We appreciate your time and consideration for this variance. And also, just to – since we are the Sheriff's Department, we are concerned with safety. We did do some research about distractionary driving. Put a sign up of that size, we didn't want it to be a potential traffic issue. So I did some research on billboards along highways and roadways. The research actually supports that this is not the case. It's not a distraction. The University of North Carolina, and others, showed that this was not. It was released in 2001. They prepared research for AAA Foundation. In addition, the traffic

safety experts have studied the relationship between outdoor billboards and traffic accidents since the 1950's, finding no authoritative or scientific evidence that billboards are linked to traffic accidents. The U.S. Department of Transportation, who also, by the way, uses digital billboards, and the State Department of Transportation, who also use some digital billboards – we're not looking at digital - we're just looking at your standard old-fashioned type of message signs along the highways - and Property Casualty Insurance statistics on fatal accidents indicate no correlation between billboards and traffic accidents. Also, a broad sampling from other law enforcement agencies were done in this study again, and nothing supported that it would create an accident situation. Further, the Federal Highway Administration went on record, the Federal Register, March 5, 1999, stating that the agency agrees that billboards do not compromise highway safety. And, again, just like the (unintelligible), we saw this as a good opportunity to provide a message to the public. Major Robertson actually has all the technical aspects of the information. He put all the hard work into it, as far as the dimensions and the specific questions that you might have on the actual size or location.

Major Robertson – I believe you have in your packages - the potential site which we are looking at is at the far south end of the farm, as far away as we can get from any residential area, to prevent any blockage from the residents, or any complaints from the residents of that property. Also, the sign dimensions, I believe, have been given to you, as well. It's going to stand approximately 14 feet, being similar in size as to other billboards in the area, 14 feet off the ground, 14 by 48, which I believe the variance said it was an additional 522 square feet. If you have any questions on that, or any other questions about location and size or dimension.

Mary Hillberg – O.K. George.

George Bovell – Yes. I am very familiar with that location off of the end of Pluckebaum. As a matter of fact, I drive by there almost every day in my work. And I see no problem with what you're trying to do. The dimensions, and the specifics of the sign, and so forth, I guess there are other bodies that would approve that. But I'm sorry that you just had to waste half your day to sit here before us to get this done.

Commander Jeter – It's not a waste. It's important to us.

George Bovell – O.K. But I'm saying, you know, we shouldn't have to go through this for what you guys are trying to do. So I support you.

Mary Hillberg – Anyone else like to speak? Dale.

Dale Young – Yes. What's the motivation behind this? Is there a new grant? How come you came up with this idea?

Commander Jeter – Well, we're always looking at ways to inform the public of any message that can prevent accidents or people getting on drugs. Other than we're always trying to think outside the box – I mean, we continually – Sheriff Parker's very good about looking at innovative ways to get a message across to the public. We do have some forfeiture money that is possibly available to help offset anything as far as what's in the current Sherriff Department budget. But, certainly, that's not a key reason why we looked at this. We always look at programs, adding additional programs to help the community.

Dale Young – Do you have a pull-off parking area to stop and read this sign?

Commander Jeter – It's not meant for that. It's just like any billboard you see along the highway.

Dale Young – This sign would be as big as from that door to that door, and a couple of feet higher.

Commander Jeter – Right. It's a typical billboard sign, with a quick message you see on billboards, currently, throughout the State. It's really nothing unique that you see currently on the roadways.

Diana Johnson – There's probably a little bit of clarification that maybe staff would like to provide the board in regards to signs. There are differences in the code between what's considered an on-site sign and what's considered an off-site sign. An on-site sign is a sign that's obviously located on the property, that has to do with what's on that property. And then there's an off-site sign, which is a sign that's on a parcel, which technically has nothing to do with what's going on. So there's not like an arrow pointing down, or anything like that. In addition, there's a definition in the code for what's considered a billboard. And this is kind of where I want to provide clarification for you. A billboard is an off-site sign, so it doesn't have to do anything with what's on that property of a bigger size. I believe it's 32 square feet, so pretty big. The Board of County Commissioners, right now, has the view where they're trying to – I'm not exactly sure. Robin can provide some clarification. But we do have a restriction right now on billboards. So before the discussion goes any further, I'd like to provide that what they have applied their variance for is for an on-site sign. You won't be able to grant a variance for a billboard. And they're not calling it an off-site sign, even though it is this largeness that you want to call it a billboard. Robin's going to provide a little bit more clarification, I guess, on the Board's direction for billboards.

Robin Sobrino – The County Sign Regulations have addressed new billboard signs. And since October 16, 2003, the code expressly prohibits off-premise signs being erected. And, therefore, the issue is that if this is treated as if it is an on-premise sign, then it is intended to say something to the effect of "Sheriff's Work Farm". That would be an on-premise sign. But the type of information that's going to be provided on that is tantamount to off-site activities, and so, therefore, it has to be viewed as a billboard. And we see that in direct conflict with the prohibition against any new billboards since 2003.

Dale Young – Well, as an on-site sign, then it's going to advertise the owner of the property, or the administrator of the property, I would assume.

Diana Johnson – And they would have to limit, I guess, their variance, if you approved of it. We'd have to put in there language specifically that it would be considered an on-site sign, not an off-site sign. But that's up for the board's discussion.

Dale Young – Well, I can envision that it's certainly going to say, "Brevard County Sheriff", have a name listed there. And, to me - we have an election coming up in 2012. I don't suppose this would have anything to do with political signs, but – not at all. Yes, this is kind of unusual, I'd say. We've had car agencies come in here for decent size signs, and they've been turned down. But the size of this is – this is Mount Rushmore, to me. So I'm not so sure I'm in favor.

Mary Hillberg – Does anyone else have – Jim.

James Rosasco – Yes. I tend to think, this is the Public Safety Department, it's public safety messages. I'm not sure if I agree with your off-premise/on-premise concept. But I'm more concerned about – when you mention it's going to be the south end of the property, we don't have anything that shows where that might be. And I think one of the things, if we do pass this variance, we'd want to pinpoint that down.

Commander Jeter – Absolutely.

James Rosasco – Also, am I right to assume this is going to be an electronic sign? You see these new state-of-the-art things where they change the...

Commander Jeter – No, it's not. It's just your standard old-fashioned billboard. It'll have wood, and it'll have a...

James Rosasco – Oh, you'll put new paper on it whenever you want to change the message, it amounts to? O.K.

Commander Jeter – And, if I might add, it will – we're trying to avoid anything Sheriff Department related. We do not want that to be the impression, as Mr. Young indicated.

James Rosasco – And I was concerned when George was saying he was very familiar with this property. I'm glad he clarified that you were driving by, and not an inmate there, George. I was concerned about that at first. But I'd appreciate getting a better feel for where it might be, because I think that would be something... (other board members called to Mr. Rosasco's attention that they did have photos showing the proposed location of the sign). Thank you, very much.

Mary Hillberg – All right. No more questions. Oh, Fred.

Fred Kusterer – I don't really have – yes, I guess maybe it is a question. How about blowback from the taxpayers on this? Every agency in the County is straining their budget. They're laying off people, except for the Sheriff's Department, because it's not that kind of a budget. Then you put up a big billboard right down there that everybody can see where we're spending our money. That may create some questions. Have you thought of that?

Commander Jeter – Again – yes, of course, we look at that. But it's not money already budgeted with the Sheriff's Department. It's money that's given by the State and Federal Government forfeiture funds. It doesn't necessarily come out of the County taxpayer fund. And we're using inmate labor to construct it.

Mary Hillberg – Do you have any idea how large a regular billboard is? The large regular billboards?

Major Robertson – This is actually based off of that size, the 14 by 48. There's actually a larger one. I don't know the height dimension, but it will go as far as 60.

Commander Jeter – But we're not looking for the largest. We're trying to...

Major Robertson – Right. We're going for 14 by 48.

Mary Hillberg – Fourteen feet by 48 feet. I see. Any other questions? (no response) You can have a seat. Thank you. Is there anyone in the audience that would like to speak in favor of, or apposed to, this application? (no response) Seeing none, are there any letters? No letters. And do you have a closing statement?

Commander Jeter – I'll keep it brief. I do appreciate your time in taking this in consideration. So, thank you.

Mary Hillberg – We're closed to the audience and the applicant now. Does anyone have a motion?

George Bovell – Yes. I move that we make a motion that we approve this variance, as depicted on the photographs, and on the survey that's been provided. No survey? But on the photographs.

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

James Rosasco – I would second, but I'd also add that, if it's acceptable to George, is this would be restricted to public service announcements.

Diana Johnson – Unfortunately, I can't let you do that. Due to First Amendment reasons, I can't let you restrict the content of the sign, even though I know there's good intentions behind it. There's differences, as you imagine, different contents. And I can't have that restriction placed on it. But I can suggest that it be...

James Rosasco – I'm sorry, would you say that again?

Diana Johnson – Sure. For First Amendment reasons, when it comes to different sign issues, I wouldn't feel comfortable with the County placing a content kind of restriction on the sign to be placed.

James Rosasco – I was under the impression the Board of Adjustment can put any restriction on any variance we grant. How is this different than any other variance we would grant?

Diana Johnson – Well, this is the actual content of the sign. Usually, the Board of Adjustment, we're dealing with, you know, the size of it, the location of it, those type of things. When we're actually restricting what a person cannot, and can, place on a sign, that comes down to a Constitutional issue of free speech, and I'm not so sure that I'd feel comfortable placing that restriction on it.

James Rosasco – I'm not sure by restricting this to public safety announcements is a restriction of freedom of speech, but I'll have to defer to counsel.

Robin Sobrino – Diana, could I toss out maybe an idea for discussion that maybe we could approach it in terms of that the sign cannot be leased to a private enterprise for non-governmental purposes, or something like that? Or just it cannot be leased out and, therefore, it's not like it becomes something that's appealing for an income stream for the media to acquire or lease.

Mary Hillberg – Would that be a restriction of not only leasing out, but political types of things, as well as retail types of things? Or is that pushing the envelope?

Robin Sobrino – I would defer to counsel on that. But I'm thinking that when it comes to election-related messages, that they're really all exempt from our sign regulations to begin with.

James Rosasco – Well, if I could elaborate. My concern is, what if the County decides to sell this property and, all of a sudden, we have created a commercial billboard? So I want to know how we can grant this variance, which I'm certainly in favor of. But how do we make sure that Sheriff Parker doesn't decide this is going to be his political sign? How do we decide that if this property is sold in order to get more revenue for the County, that the new people don't have a billboard sign to put up where they want to? We're being presented here with an application saying, "We're going to put public safety messages on this sign." And that certainly weighs heavily in my decision. And now to turn around and tell me that, "No, we can't restrict it to that," well, I'm very skeptical. I'm not from Missouri, but this bait and switch does come across my mind. So how – you explain to me how we can address this dilemma. We are being presented with an applicant saying they are going to do public safety messages. And that certainly is a very, very strong selling point, to me the most significant one. And then to turn around telling me, "No, you have to grant the variance for a billboard," and you sure hope they're going to be able to do what they're saying. How do I get comfortable with that?

Diana Johnson – And that's something that staff, we actually had a meeting on this one to discuss, because we've never had one like this before. Our concern is that, you know, technically, if you grant the size variance, it meets the definition of a billboard, basically. But the only way to not make it be a billboard is if we limit it to

the content perhaps to on-site. If we specifically say the variance is granted for on-site, instead of off-site, content, then that may solve the issue. Does that make sense?

James Rosasco – Well, that's where I went in the first place. I disagreed with your concept this being an off-site sign. In my own mind, this isn't owned by the Sheriff's inmate farm. It's owned by the Sheriff's Department, or by the County. So I'm just asking you how do we address the dilemma? As far as I'm concerned, I think we ought to approve the variance, with the restriction for public notices, and if the Sheriff's Department wants to sue us because it would be too much of a restriction on that, so be it. But in the spirit of what they're asking for, and the spirit of what we want to cooperate with, I think we should grant the variance, with the restriction that it's for public safety messages only, or public service, I should say, public service messages. And then let whoever wants to fight that out, let them fight it out.

Diana Johnson – Well, unfortunately, I'd be the attorney on the case, and that's why I wanted to – I just wanted to give you my advice that there are a lot of cases out there regarding signs, and content, and non-content, especially – you know, there's a difference between commercial and non-commercial content. There's a lot of things around this. And my advice was just to be careful of restricting the content of the sign. But it's your board, and you make the decisions. I just wanted to give you my advice.

James Rosasco – So I don't have to defer to counsel.

Diana Johnson – Technically, no. My decision just is to give you advice.

James Rosasco – My amendment to your motion stands. I would restrict this to public service announcements. Whether that's acceptable to George, or not, I don't know.

George Bovell – I personally took them at their word, because we do so for other things that come before us, that this is a public service sign, If it's used for anything other than that, when – you know, in the future, when we see that, then we can challenge it. So I obviously didn't see the need to add that additional this is what you have to put on it, because I took it for granted that that's what it's going to be used for. So I'd like to leave my motion, as is, and we either vote for it or not.

James Rosasco – I withdraw my second.

Mary Hillberg – So your motion is to approve it, as depicted in the pictures.

George Bovell – Yes.

Mary Hillberg – And you seconded that. May I ask counsel one other question? What is...

Diana Johnson – We haven't – I'm sorry, we haven't had the second for George's motion.

Mary Hillberg – He withdrew, and he withdrew?

George Bovell – I did not withdraw. My motion remains as...

Diana Johnson – Did we get a second for George's?

George Bovell – Yes, we just need a second.

Diana Johnson – Yes.

Mary Hillberg – Did you second George's?

James Rosasco – No, I did not.

Mary Hillberg – George made a motion...

George Bovell – Somebody needs to second it.

Mary Hillberg – O.K., George made a motion to approve it, as depicted in the pictures, only. Is there a second? (no response) The motion dies for lack of a second. So do we have another motion?

Dale Young – I'll make a motion. I would move to deny the application for a whole number of reasons. Number one, I fail to see a hardship here. I don't know where this would come to us, to begin with, as a hardship. I can understand the variance, certainly. What is being offered is duplication of what DOT has. It's overkill, to me. It's an added expense to the Sheriff's Department at a time that he shouldn't be looking for new expenses. I fail to see the purpose of these public service messages. I think that we're inundated with public service messages. "Fasten your seatbelt." "Keep your kids in a safety seat". Et cetera, et cetera. And I see no purpose in approving this application.

Fred Kusterer – I'll second that.

Mary Hillberg – There's a motion, and a second, to deny the application. Is there any discussion?

Fred Kusterer – I'd say the same thing that Dale did, but he covered it very well. Thank you.

Mary Hillberg – My thought is, the size of it is just extremely large, even as public service messages. It's just so, so large, in an area that really allows you to concentrate on driving as you're going, you know. And there's nothing that takes your eyes off the road there. This is very large. And I would have a thought of that, in addition to the retail possibilities, because we can't limit that.

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

7. KEVIN J. & BEVERLY H. HOWALD – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1341 (5) (a) to permit a variance of 4 ft. from the required 20-ft. rear setback in an RU-1-9 zoning classification. The property is described in **Section 13, Township 26, Range 36**. (0.31 acre) Located on the east side of the western portion of Lake Victoria Circle, approx. 100 ft. south of Vizcaya Ct. (585 Lake Victoria Circle, Melbourne)

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

Paul Body – There are three letters in favor of the request.

Mary Hillberg – Thank you, Paul. Could the applicant please come forward. Your name and address.

Kevin Howald – Kevin Howald, 585 Lake Victoria Circle, Melbourne, Florida, 32940.

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

Kevin Howald – I do.

Mary Hillberg – Thank you. Go ahead.

Kevin Howald – We're applying for a variance to the setback. It's a 20-foot setback, and we need four more feet to accommodate an extension on the back of the house. The variance is necessary because of the shape of the lot line. We're on a water body. And there's a point in the property line behind our house, and from that point to the proposed structure, we're short by four feet. The proposed structure would not go any further back than an existing screened-in enclosure behind the house. So what we're wanting to do is extend from the back of the house a covered porch that is the same width from the back of the house as the existing pool cover. So the problem with the proposed structure is purely because of the point in the surveyed line. We've discussed it with the neighbors. As you mentioned, we have three letters of support. We have more, if necessary. But, really, when you look at a vertical photograph, for example, there really is no impact, whatsoever.

Mary Hillberg – Thank you. George, this is yours.

George Bovell – Yes. I really don't have any questions for you. I look at the drawings, and the survey, and so forth, and it all makes sense to me. I certainly support it.

Mary Hillberg – Anyone else?

James Rosasco – It appears you had to put a little jog in your porch to accommodate that easement? Is that why...

Kevin Howald – Yes.

James Rosasco – Didn't miss it by much, did you?

Kevin Howald – We tried.

James Rosasco – I would support it, as well.

Mary Hillberg – Anyone else have any questions? (no response) You're welcome to have a seat, sir.

Kevin Howald – Thank you.

Mary Hillberg – Is there anyone in the audience who'd like to speak in favor of, or opposed to, this application? (no response) Seeing none, are there any letters?

George Bovell – Yes, I have three letters. The first one is from John Buck. It says, "The Board of the Vizcaya Estates Homeowners Association has reviewed the architectural drawings submitted by Kevin and Beverly Howald for a roofed screened porch addition. The Board unanimously voted to approve the building of this addition. The architectural design is in keeping with the character of the neighborhood and meets all of our association requirements for porch additions. If you have any questions, please feel free to contact me at the above address." Post Office Box 410141, Melbourne, Florida, 32941. Second letter from Runell and Nelson Nance, from 561 Lake Victoria Circle, Melbourne, Florida, 32940. "To Whom It May Concern: We have seen the architectural drawings of Kevin and Beverly Howald's rear porch addition. We have no objection to their building this addition. Our house is located immediately next door to the Howalds on the south. The design of the porch is in keeping with the character of the neighborhood and can only be viewed as an asset to all our property values. Also, in no way does the addition infringe on our property or the back yard privacy that we enjoy." And the last letter says, "I write this letter in support of the Howalds' rear porch addition. I live next to Kevin and Beverly, on the north side, and believe that the porch is a great addition for

their growing family. The porch will not affect my property or my privacy.” And that’s from Michael Rivera. That address is 592 Lake Victoria Circle, Melbourne, Florida, 32940.

Mary Hillberg – Thank you, George. Would the applicant like to come forward and have any comment on those letters? (The applicant replied from the audience) We’re closed to the audience and the applicant. What is the pleasure of the board?

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

Mary Hillberg – We have a motion to approve the variance. Is there a second?

Fred Kusterer – I second it.

Mary Hillberg – Any discussion? (no response)

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

8. MARK & KELLY PALACE – request variances of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-1340 (5) (b) to permit a variance of 4 ft. from the required 7.5-ft. side setback (east) for an accessory structure; and /2/ Section 62-1340 (5) (b) to permit a variance of 4 ft. from the required 7.5-ft. rear setback for an accessory structure, in an RU-1-11 zoning classification. The property is described in **Section 26, Township 26. Range 37.** (0.18 acre) Located on the north side of West Claridge St., approx. 585 ft. west of Third Ave. (357 West Claridge St., Satellite Beach)

BOA ACTION: Kusterer/Rosasco – DENIED. Vote was 3:2, with Bovell & Young voting nay.

Paul Body – There are one letter of objection.

Mary Hillberg – Sir, would you give us your name, please.

Mark Palace – Yes, ma’am. Mark Palace.

Mary Hillberg – And your address.

Mark Palace – 2065 Highway A1A, Apartment 1202, Indian Harbor Beach, Florida, 32937.

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

Mark Palace – I do.

Mary Hillberg – Thank you. Go ahead.

Mark Palace – Thank you very much for the opportunity to speak to you folks, and for your service as leaders in our community. I really appreciate it. And, also, I just wanted to let you know that our shed is a beautiful A-frame shed on a concrete slab, right there in Satellite Beach. And it’s barely encroaching on the northern boundary of that setback there. And we actually went around to all the neighbors and spoke with them at length, and they all said they were very happy to have us in the neighborhood to take this foreclosed property that was the doghouse in the neighborhood, to beautify it, to gentrify, to improve their property values and to welcome us as their neighbors. So the fact that there is a letter here of objection is mindboggling, befuddling and extremely surprising to me.

Mary Hillberg – Is that it?

Mark Palace – Yes, ma'am.

Mary Hillberg – George, that's you.

George Bovell – You said that shed was there when you bought the property?

Mark Palace – Yes, sir.

George Bovell – O.K. It seems that way.

Mary Hillberg – Does anyone else have any questions?

Dale Young – Is this your residence?

Mark Palace – Not right now, because it's being renovated. But, hopefully, we'll have a certification for occupancy here soon, and we can move in there. It's a beautiful home, bamboo floor. You'll love it, Dale.

Dale Young – Didn't your realtor tell you about this?

Mark Palace – I was the realtor on the job, representing myself. And, unfortunately, it was something that we didn't know about on the east easement. On the north easement, we knew about it. But there was nothing we could do. We're looking for the highest and best use. It is a very minor encroaching issue. We're talking about several inches on the northern boundary. And the neighbor to the side is very excited about us having that shed there. In fact, all of the neighbors have sheds that are encroaching, and we're not going to mention them. Well, actually, I just did, I guess. But we're not going to make a point of going to the authorities to make them go through this process, because they've been there, like this shed, for many years. And everybody's happy, harmonious and peaceful with their sheds in their back yards.

Mary Hillberg – Thank you. George.

George Bovell – I don't have anything else. I'm good.

Mary Hillberg – No one else has any more questions. You can have a seat.

Mark Palace – Thank you, ma'am.

Mary Hillberg – Thank you. Is there anyone in the audience who would like to speak in favor of, or as opposed to? Come forward, please. Your name and address.

Terry Pettit – My name is Terry Pettit. My address is 349 West Claridge Street.

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

Terry Pettit – I do.

Mary Hillberg – Thank you.

Terry Pettit – Before I proceed, did the board receive the whole packet from my husband, including the photos, notarized letter?

George Bovell – We have. I have a letter, and some photos attached to it.

Terry Pettit – So you do have the four photos?

Mary Hillberg – We'll look at those now. Just a moment. What is the first picture, up close, with a measuring tape? Is this the distance that it's over?

Terry Pettit – It's the distance – well, I'm not exactly sure which one you're looking at. But I have one that is the distance...

Mary Hillberg – The very close shot.

Terry Pettit – I have the aerial photo.

Mary Hillberg – No, it's a very close shot.

Terry Pettit – Very close. That is the distance from the structure to the other side of the fence, and to my back yard.

Mary Hillberg – I see. So you live directly behind...

Terry Pettit – No, I live beside them.

Mary Hillberg – Beside them. I see. Next to the shed.

Terry Pettit – Yes. The other up close is the roofline to the property line. And there should be an aerial photo in there. I have a copy, if you don't have it.

Mary Hillberg – This is the aerial photo?

Terry Pettit – Yes, ma'am.

Mary Hillberg – Paul, this is from the Property Appraiser's Office?

Paul Body – It says it's from Jim Ford, Brevard County Property Appraiser.

Mary Hillberg – O.K. And the depiction is that the building is substantially on the other property.

Paul Body – Yes, I don't think the graphics are correct with the property lines. I would go by the survey that the surveyor – with the package.

Mary Hillberg – O.K.

Terry Pettit – As you can see from the aerial photo provided, I am the neighbor that is directly affected by this structure. The structure is located in the upper right-hand corner of Block 21, and my property is Block 20. This property has been in my family since 1971. I purchased it from my mom in 2002. I am here in hopes of maintaining the original judgment set forth by Code Enforcement to remove the shed and the surrounding fence that is in violation of Brevard County Code. Being unaware of the dual definition of the word "vacate", I

unknowingly signed the form to vacate the shed, based on the only definition that I was aware of at the time, and that is to remove from, or to leave. I thought I was signing a follow-up to my original complaint to Code Enforcement, and that the property owners were trying to come into compliance with Brevard County Code by removing the shed. My husband, who shares ownership of the property, was not home at the time and therefore did not sign consent to vacate the shed. I assume that the owners were informed by the bank, prior to purchasing the home, that the shed was in violation, it would have to be removed, and they chose to purchase the home anyway. Although the new owners have yet to move in, I have recently discovered that the house is already listed for sale, and I would like this issue resolved before the property changes hands yet again. Since the current owners have no intention of moving in - and I have evidence of this, if needed - they can't guarantee what the structure will be used for. The owners that took over the property in 2006, converted the shed to a workshop for a construction business, with power tools running by 7:00 a.m., six days a week, eight to ten hours per day. This was a real problem, as the shed is only 13 feet from my bedroom window, and I work nights. The shed in question is a safety hazard. It was constructed in 1981, from plywood, and bared the brunt of 25 years of the elements and hurricane seasons, before being covered up, as is, with siding, in 2006. Prior to being disguised with siding, the condition of the plywood structure was deplorable. I'm afraid that the siding has disguised more than the condition of the plywood, but perhaps wood rot, termites and mold, in which case, it now becomes a health hazard, as well. It has since had another five years of punishment from the elements. I think it is safe to assume that the shed is not up to hurricane code standards. I feel pretty confident that the next hurricane strike from the west will have the shed relocated to my property, causing serious damage, and this has me very concerned. The shed, and I use the term loosely, is enormous, approximately 280 square feet. It is only 38 inches from my property line, with the roof overhang being only 24 inches from said line, not the four feet that is mentioned in the variance letter, and nowhere near the seven and a half feet required by Brevard County Code. The roof of the shed towers a good eight to ten feet above the fence line. My husband has submitted photos to verify these facts; however, I do have additional copies, if needed. Due to the lack of maintenance over the past 30 years, the structure, as a whole, is a complete eyesore, as well. Last, but not least, it is not in compliance with Brevard County Code, nor is the fence surrounding the shed in question. In closing, I would like to ask each of you to consider your own back yards and ask yourselves if you would like to have this 30-year-old dilapidated safety hazard of a structure 24 inches from your property line, when rendering your decision. Thank you so much.

Mary Hillberg – Does anyone have any questions of this lady?

George Bovell – You said that there was previous Code Enforcement to remove the shed.

Terry Pettit – Yes.

George Bovell – Do we have a record of that?

Paul Body – We don't have anything on the Code Enforcement case here.

Diana Johnson – I don't have anything, but it could be possible if – I don't know if you did, or someone else – that the Code Enforcement could have looked into the issue, or maybe received a complaint, and something happened afterwards, and it never actually got filed as a notice of violation.

George Bovell – One next question. Do you have any proof with you that that property's for sale?

Terry Pettit – Yes, I do.

George Bovell – May I see it?

Terry Pettit – As you can see by the listing, they're encouraging people to come by and choose their own colors. I have to assume that that means that they have no intention of moving in. And they, themselves, describe this shed as a huge A-frame shed - went so far as to change the font and make it all capital letters on the listing.

George Bovell – Thank you. That's enough. I've heard enough.

Mary Hillberg – Anyone else have any questions of this lady? (no response) Would the applicant like to come back up and address these comments?

Mark Palace – Yes, ma'am. Thank you, very much. First of all, I'm so sorry for the misunderstanding (to Ms. Pettit).

Mary Hillberg - Please address the board, sir.

Mark Palace – O.K. Thank you. So, board, dear board, I'm very sorry for the misunderstanding in the verbiage on the form that we asked all the neighbors to sign off on. Obviously, there was a misunderstanding, and hence we have this sort of bit of animosity and ill will, and I'm very sorry for that. I'm trying to always keep the peace, finding the highest and best use. I am a real estate broker, licensed, and a real estate investor. That's how we make our living. We have a portfolio of properties that we own, and we're always looking to move into one, and living in the other one. And, right now, we are facing a foreclosure in our oceanfront condo, because we bought it for about \$700,00.00, and now it's worth about \$400,000.00. And the bank, any second, is going to take that condo from us, in which case we will have to move into – not have to, but we get to move into...

Mary Hillberg – We need to stay focused on this variance, please.

Mark Palace – Yes, ma'am. I'm just trying to give a little background as to why the property is my home, and I look forward to moving into my home next to you, to my neighbor, to becoming a good neighbor with you, and eating your mangos that you've offered to us. Thank you. And, yes, I want to move into that home. I love the home. I want to move in; however, the home is indeed for sale, because if we can sell it and make a profit, then maybe we can get a modification on our loan with the bank and stay in our condo. We don't know. That's hit or miss. So, yes, we have a "for sale" sign in the front yard, Palace Properties International, right next to the required sign from Brevard County, requesting this public hearing for a variance. Our intent is to move in, to use the shed to store our lawn equipment, a lawnmower, pool equipment - we have a pool there - and, indeed, to take that dilapidated fence down. We are working from the inside of the home to make it livable, and then we'll work on the exterior of the home. And, finally, we'll take down the fence. We have no knowledge of any problems with - any official complaints, or anything, on the shed. But we do have knowledge of a complaint on the actual fencing around the property. So that is going to be definitely taken care of, as well, because what happened was, the owner before us put the fence backwards. And so we're going to have to take up it, turn it around, and put it in properly. As far as the shed goes, I don't think it has – I truly believe, as a son of a general contractor, having built homes my entire life throughout the United States of America, that this shed is solid. I've been inside it. I've climbed around it. It is solid. It's on a concrete slab. It has withstood all of the hurricanes of '04. It has withstood all of the tropical depressions that have come through this area. It's a solid edifice, a solid sound building. I think that it would be a shame, and it would be very wasteful and injurious to me as the homeowner, to have to destroy that shed and be left with a little concrete slab, especially when all of the neighbors have sheds that are actually encroaching. And those other ones are actually dilapidated, and they could be dangerous. But this one is solid. And it's unfair, it's unjust, to have to take this down in my property when all the others have it. And it's looking for justice, and equality and fairness.

Mary Hillberg – All right. Does anyone have any questions of this – Dale.

Dale Young – Yes, I'd just like to state that Mark and I know each other very well. We've sat on committees and gone to conventions as fellow realtors. So I just want to put that in the record. And I probably won't be making a motion on this. However, we're not the Code Enforcement Board here. This is the – what we're dealing with is a setback condition, so we really shouldn't care too much what the fence looks like, or what the shed looks like, for that matter. I think we need to confine ourselves to the question that has been submitted. And it sounds to me like we're getting off into a whole bunch of other areas. So I'd like to stick to this application.

Mary Hillberg – Is there anyone else that would like to...

Diana Johnson – Dale, you are going to actually have to vote. But I do appreciate that you've brought forth your relation to this applicant.

Mary Hillberg – I think he said he wasn't going to make a motion, but he would vote.

Diana Johnson – Just providing clarification.

Mary Hillberg – Does anyone else have anything to add? Fred.

Fred Kusterer – I'm not real clear on how far over the setback this shed is. You're saying inches, and according to the paperwork we got on it, it says four feet.

Mark Palace – According to this drawing here, it looks like it's barely in that northern easement there. Hopefully, this is in the packet that you folks have. It's right there on that northern boundary. And that was the main concern and issue. The whole issue that it being in the setback to the neighbor, and Lot 20, was a surprise. We didn't even know about that. That was unbeknownst to us when we purchased the property. We found out about the encroachment on the east side of the shed, next door to the good neighbor, when we actually applied with Brevard County Government, with Planning & Zoning, to actually go forth with this application. They said, "Oh, wait a second. It looks like you guys actually have to do a double variance, not just one variance." I said, "What?"

Fred Kusterer – You're doing the same thing your real estate dealer did. You ain't answering the question.

Mark Palace – What was the question, sir? I'm sorry.

Fred Kusterer – How far over the setback is your shed on both sides?

Mark Palace – That's a great question. I don't know the answer to that. But I do know that, according to our survey company here, it says, "The purpose of the sketch: vacation of a portion of the five-foot PUE due to a shed encroachment." So what would that mean?

Paul Body – The survey depicted it at 3.7 feet off the north property line, which is the rear, and also off of the east property line, which is the side. We round off. It would be 3.8 feet into the setback, but we round off, so it's requiring four feet, Fred.

Diana Johnson – I think when the applicant's talking about inches, he's mistaken. He's thinking it's inches away from the easement line...

Mark Palace – Thank you, ma'am.

Diana Johnson - ...not from the property line.

Mark Palace – Thank you, ma'am. That's what I meant. I'm sorry for not...

Fred Kusterer – Thank you. That was my point.

Mark Palace – I'm sorry, sir. Thank you.

Mary Hillberg – Then I have a question. You were just saying that it was so many feet...

Paul Body – Yes.

Mary Hillberg - ..from the rear, and also on the...

Paul Body – Side, east, property line.

Mary Hillberg - ...side setback, as well.

Paul Body – Yes.

Mary Hillberg – But we're only...

Paul Body – No, we're to have two variances for this property.

Mary Hillberg – That's right. I remember now.

Paul Body – And, also, he has a vacate coming up on July 12th, for the portion in the easement, and that's what is shown, also, on the survey.

Mark Palace – So how far is it, then, into the north? It's just a few inches, actually. It's against the (unintelligible), or it's breaking into that encroachment by a few inches on the north?

Paul Body – It needs a seven-and-a-half foot setback, and you're at 3.7. So you're three feet, eight, into that seven-and-a-half foot setback.

Mark Palace – So it's not inches. Thank you. I appreciate that.

Paul Body – Surveyors use tenths, not inches.

Mark Palace – So it's 3.7 feet into...

Paul Body – No. It's 3.8 feet into the seven-and-a-half-foot setback.

Mark Palace – On the northern boundary.

Paul Body – On both.

Mark Palace – It's actually identical on both. O.K. Thank you.

Mary Hillberg – Does anyone have any further questions of this applicant? (no response) You can have a seat, sir. Thank you. George.

George Bovell – I move we approve his variance, as depicted. Obviously, he didn't build the property there, and it's pending the Board of County Commissioners' public hearing later on, anyway. So it's subject to results of the public hearing.

Mary Hillberg – All right. Anyone else? (no response) There's a motion to approve. Is there a second? (no response) Motion dies for lack of a second. Is there another motion?

Fred Kusterer – I move we disapprove.

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

James Rosasco – I'll second.

Mary Hillberg – There's a second to that. Any discussion?

Diana Johnson – Would the denial be to both the variances? For clarification purposes.

Fred Kusterer – Yes.

James Rosasco – Yes.

Mary Hillberg – Is there any discussion.

Fred Kusterer – Yes. I hang a lot of weight on the neighbors. In this particular case, his neighbor had a very defined legitimate argument, and presented it very well. I feel like that ought to be considered.

Mary Hillberg – Anyone else? (no response) I'd like to say, also, that I would put a great deal of weight on the immediate neighbor's issue. Not that this is any admonition, in any way, but if you are a realtor, and a broker, and as efficient and proficient in all these areas, this would be something that would be something that you would be looking at, I would assume, when you're buying the house. So, just as an aside. I don't have any other things to add.

Dale Young – Well, I'd have to take exception to that statement that the realtors are know all, be all. And they certainly do not know all the regulations, have no reason to. That's outside their jurisdiction.

Mary Hillberg – Well, you do, Dale.

Dale Young – Well, yes, I do. But I can't get it across to other people.

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

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

Mary Hillberg – We have a great letter from George. May I read your letter, George?

George Bovell – Please.

Mary Hillberg – "What is the procedure to get the Planning & Development Department, or the County Commission, to change the Code for the height of fences for the front of properties in RR-1, and similar areas,

from four to six feet? The reason for my question is, it seems that the current mood of the Board of Adjustment favors six-foot fences in these areas. Such a change would give the property owners the flexibility to build a six-foot fence with a permit, without having to waste time, and money hiring lawyers, to come before the Board of Adjustment to make a case which amounts to need for security to keep a dog in, and my neighbor two doors over has one, none of which is among the six criteria for establishing a bona fide hardship. Please share my request with other board members.”

Diana Johnson – As you all know, the Code currently states the four-foot height limit in that specific area. And whatever the reason being for, at the time when they drafted it, that was their reasoning. In order to change that, we would have to do an ordinance, which would amend that portion of the Code to change the height. For that process, I believe the Board of Adjustment would send a letter, as a body, whether there is something you would like to suggest the board to do or not. Eventually, it would come down to staff seeking legislative intent from the Board of County Commissioners, whether they’re interested in changing it or not. It would then – if it was something they wanted to do, then it would come back to staff. We’d make the changes. And eventually it would go through the public hearing process and be amended by ordinance. That’s it, in a quick sum. So, you know, it’s up for discussion whether that’s something the board wants to do or not.

George Bovell – Let me explain the reason why. The last three fence issues that came before us, two of the applicants completely misrepresented what they put before us. And they sent their lawyers here, who actually lied. For example, the last one that was before us convinced us that there was a six-foot fence next door, and granting him a six-foot fence would be in harmony with the rest of the community. No such thing exists. For example, to his left was a four-foot fence. To his right is a bushed-up yard. And down the road, there was one that we, in error, I believe, granted a year ago, because that person also misrepresented the facts. They brought two or three photos before us which were six-foot fences that were around subdivisions. And, of course, we granted them a variance, not necessarily ignoring the evidence that I provided, but based on a need for security, and I want to keep my dog in. Basically, that was all it was. And, essentially, this guy last month, that’s what he did. So if we just want six-foot fences, then we need to just try and change the Code, or we need, as a board, to pay attention to the six questions, or else, you know, we’re just wasting our time here. That’s how I see it, when it comes to fences. A lot of people’s time.

Dale Young – Yes, it seems the four-foot fence was – if we’re talking about the ten-foot setback for front fences?

Diana Johnson – I don’t know if George is specifically talking about the setback, or the height, or both?

George Bovell – I’m talking about the height of the fence that’s on the property lines. For these fences, the fences are on the property line. And if it’s on the property line, it has to be a four-foot setback “sic”. If it’s going to be a six-foot fence, it has to be – has a 30 – I think something like a 30-foot setback.

Paul Body – It has a setback of whatever the principal setback for the zoning is. It could be 20, could be 25.

George Bovell – That’s right. But in that zoning, everybody has their fence on the property line, who chooses to have a fence. It’s all on the property line. And, as a matter of fact, the photographs – I went to look at the photographs again. And essentially what they did to us was they took like four or five shots of the same property from different angles and presented that to us as their example of other properties that had six-foot fences.

Robin Sobrino – Madam Chair, if I can make a suggestion, the six-foot high fence would require that a variance had been granted. We do the research in every neighborhood, and we have a list of those variances that were approved within the immediate community. That is provided with any variance application, so that in the event somebody comes to this board and makes a representation that, “My neighbors have a six-foot front fence,

and I'd like to have one, too. And here's a photo," we would be able to verify, through the records that we bring here, whether the neighbor did get a variance for it or not. There was a period of time when fences did not require building permits. They thought, because it's a minor structure, it's a big hassle for somebody to have to come down to County Hall and get a building permit. And, granted, it is a minor inconvenience to do that. But the other side of the coin is, we've ended up with a lot of fences out there that don't comply with Code. The fact that we don't require a building permit does not relieve them from the responsibility of complying with Zoning Regulations but, unfortunately, it results in an ignorance of the Zoning Regulations. So when you have a question as far as did the neighbors get a variance, we're here to try to answer that for you at the appropriate time.

Mary Hillberg – I'd like to say, in terms of what George has said as far as six questions, I do feel that looking at hardships, it is really better all around if we focus on whether or not it's a real hardship. And having a six-foot fence – because I think I remember this one and the one before – and I believe, I'm not sure, I think that I felt the same way about both of them. They were six-foot fences in the front of the property, and then down the sides there were four-foot fences. Now, if your dog isn't smart enough to jump over the four-foot ones, probably he's not going to be a good watch dog. So, you know, the idea of security, and things like that, were not – I mean, I didn't consider them. And I don't consider having – if you have animals that are wild, they need to be in cages. But I do think that this is – that it's very important that we look at hardship from the land, and we look at our six questions, not just for the continuity and the fairness to the whole community, but also for our poor attorney here, who is going to have to...

Diana Johnson – I've only had to deal with one of them. And ya'll actually did look at those factors that time, so I do thank you. But if someone were to appeal your decision, I don't know if you are aware, but it does go to circuit court and, from then on, our office takes it. Basically, my argument is whether or not the variance was denied due to those factors. And I have to describe why. It's not something you consider, but it's definitely your decision.

Mary Hillberg - Your predecessor told us that she wanted to make sure...

Diana Johnson – She's actually going to come back. Today's my last day. I'm actually moving.

Mary Hillberg – Oh, my goodness. We'd have brought you candy, or something, or baked you a cake.

Diana Johnson – So Christine will be joining you again.

Mary Hillberg – Well, we're sorry to see you go.

Diana Johnson – So you'll be back to the six factors. But, no, I didn't want to pressure you into it, but you are required to – I mean, it's a "shall", not a "may", or pick one and choose one kind of deal. And that's why Christine's very adamant about it.

Dale Young – The fence ordinance hasn't been given enough attention, as far as I'm concerned. We have open metal fences, ornamental fences, that are six feet. We have chain-link fences. The last fence I think we got into, the driveway set back about 35 feet from the street. So it didn't make any sense to have a four-foot fence. I always thought the six-foot fence was something about visibility. It is with – in other considerations that we get into. But 50 feet back from the street...

Mary Hillberg – Then you could have it, right?

Dale Young – There is no consideration. It's six-foot fence, or it's four-foot fence, and it doesn't take in where you're putting the fence.

Mary Hillberg – Right. But...

Dale Young – If it's built up six feet, or it's...

Mary Hillberg – The folks who come here, though, want it on their property line in the front.

Dale Young – Yes, but it doesn't – I agree, a person, if he's putting up a fence, he really has a reason to put up a fence. He either wants to shade his pool, or he doesn't want people looking in his back yard. It serves a purpose.

George Bovell – I beg to disagree with you, because here is the deal. The one that came in for a type of security and keep my dog in – I sell real estate over there. I drive by that property probably a dozen times a month. And since he's put his fence up, number one, it's some type of bar type fence. The gate has never been closed. And you can walk around the side of the fence to go in the yard. So those excuses were just excuses, and they didn't meet our criteria.

Dale Young – Well, they would, in my mind, if I wanted a security fence. I'm not talking about individual people who come up here and lie. That's probably happened once. But talking about the general ordinance, it should deal with the property.

George Bovell – Well, that's what I'm saying. Let's deal with the ordinance, and let's deal with these people who come before us, accordingly, because...

Dale Young – Yes.

George Bovell - ...what they...

Dale Young – I agree.

George Bovell - ...present to us does not measure up, period.

Dale Young – If it doesn't shape up, it shouldn't be considered.

Mary Hillberg – If we're only following our six questions, it won't matter. Right? Basically, I mean, it won't matter if – regardless of what anyone says, if we're following our six questions, we're doing the right thing. Is there any further business? Should we do something about this? Do we take a vote?

Diana Johnson – Well, you haven't decided any action. Did you want to take any action? Or do you just want – I mean, you can definitely go back, individually, to your Commissioners and discuss it.

Dale Young – Apply for a grant?

Diana Johnson – No, we don't have that kind of money.

George Bovell – I think it's (unintelligible), as a board, to have this discussion, because I know with 100-percent certainty that the last two we granted in that particular subdivision, we granted in error, granted based on false information. And I think we also need to pay more closer attention to the person from that district, who actually goes out there and looks at it, because I could tell you that on that street, there are two fences. There was only one fence. And it's a long street. No one else had a fence. And he took pictures from several different angles, basically to give us the impression that there were several fences of six foot high for a single-

family home on that particular street. And it just didn't measure up. You know, my instinct would probably to challenge him and go back and revoke the variance, based on the information that he provided to us. But the question is, should we go forward and ask for the ordinance to be changed? If not, then we just need to pay better attention here when folks come to us with fences.

Dale Young – I think we've got to ask them to give us the reason for their thinking on a four-foot, or a six-foot, fence.

Diana Johnson – And they may not know, because at the time when they wrote that code, different Commissioners. And it changes.

Mary Hillberg – In my mind, it isn't a hardship to not have something six feet tall in the very front of your property. So if we would go by our six questions, particularly when there's no fence anywhere else, then we don't have to worry.

Dale Young – You're allowed 15 feet in Miami, with barbed wire.

Mary Hillberg – Do you want to make a motion that we would write something to the Commission and ask them?

George Bovell – Honestly, I don't think it's going to go anywhere. I just hope that – we've had a discussion here – and in the future, when folks come up in those type of subdivisions with fences, that we really pay attention. If it's in District IV, I guarantee you I'm going to go out, and I'm going to look, and I might even take some photographs, if it warrants it. I want to help people. I don't want to – I want them to have the best use of their property. I'm not here to be, you know, use the power to just deny folks. But if it's not warranted, it's not warranted. And we just need to pay attention to the six questions and deal with it that way.

Mary Hillberg – I would agree to that.

James Rosasco – I just want to say one thing. I hope we're not being prejudiced for, or against, the next person that comes up for a fence variance. That's my first comment. My second comment, I don't think, George, in all due respect, it's appropriate for us to introduce evidence into these hearings. So I would like counsel's opinion about George bringing photographs.

Diana Johnson – Yes, if you brought photographs, I wouldn't put them in the file.

James Rosasco – I'm sorry?

Diana Johnson – If you brought photographs, they would not be allowed to go to the file, because whatever's entered here, whatever Paul gathers, is what I'm only allowed to take to court, if there's an appeal. Because that's only...

James Rosasco – And I understand what you're trying to say, George. I thought that was a pitfall. We'd better not go down that slippery slope.

George Bovell – And I think we need to probably pay more attention to the person from that district, because I basically – I went out there, and I know the character of that neighborhood. And I was really against it, simply because – as a matter of fact, the lawyer that came before us, he didn't go out there. He just came and presented what was before him. Because if he knew what he was putting before us, he would not risk his license doing that.

Mary Hillberg – I would agree. And, also, I think that in the past we have gone by, deferred, to the person who knows their district, and who knows, and is more familiar with it, for the most part. So that, and along with the six questions, I'm very much in favor of.

James Rosasco – One more last comment. I'm wondering about the drive-bys that we do. Is that appropriate?

Diana Johnson – Yes. You are allowed to drive by.

James Rosasco – O.K. I just want to make sure we're not...

Mary Hillberg – We never go on properties, other people's properties...

Diana Johnson – Yes, don't go on the property, don't look over fences, those kind of things. That's all.

Mary Hillberg – We don't go on other people's property next door, and taking pictures, and doing things.

James Rosasco – Then I would like to make a motion. Can we adjourn?

Robin Sobrino – One last thing before you do that. Speaking of exhibits, Mr. Tobin had given you all a picture of an alternative deck which, although the board did not approve it, it was entered into the record, and we don't have one for our record. So if somebody could spare one.

Mary Hillberg – I will provide it.

The meeting was adjourned at 4:01 p.m.