

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, March 16, 2011, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair Mary Hillberg presiding, to consider the following requests:

Board members present were:

- Fred Kusterer, District 1
- Mary Hillberg, Chair, District 2
- James Rosasco, District 3
- Dale Young, Vice-Chair, District 5
- Sharon Savastio, Alternate, District 4

Staff members present were:

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

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

Mary Hillberg – We're now calling the meeting to order, the scheduled meeting of the Board of Adjustment. And I'd like to introduce one of our alternate members, Ms. Sharon Savastio, who is taking the place of George Bovell. And she will be voting and asking questions today, as well. The Planning & Zoning Office staff, please describe the function and operation of the Board of Adjustment to our audience and applicants.

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 Regulations, in Chapter 62, Article VI and Article IX. Pursuant to Section 62-254, Brevard County Code, any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment may, within 30 days after the date of the public hearing at which the decision was rendered, but not thereafter, apply to a court of competent jurisdiction for appropriate relief. Ms. Chairperson, you have two items on your agenda today.

Mary Hillberg - Thank you, Paul. Would our Vice-Chair, Dale Young, please explain to our applicants 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 development regulations. Personal medical reasons shall not be considered as grounds for establishing undue hardship sufficient to qualify an applicant for a variance. Economic reasons may be considered only in instances where a landowner cannot yield a reasonable use, and/or reasonable return, under the existing land development regulations. The applicant must answer a variance hardship worksheet with six questions. The Board of Adjustment will discuss these questions today, with each applicant who has requested a variance.

Mary Hillberg – Thank you, Dale. I would like to address our board members, the applicants, and the audience, for a moment. The Board of Adjustment is a quasi-judicial board, with members appointed by the Brevard County Board of Commissioners. We'll utilize Robert's Rules to conduct our meeting today. 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. Each speaker is asked to be concise in what they have to say. It is important that we stay on the subject and avoid information that's not relevant. All persons speaking must provide their name and address for the public record. Those wishing not to verbally state their address may ask the clerk at the podium over here for an address card, and fill that out and return it. Are there any questions of the board members about the Chair procedure? (no response) Seeing none, are there any questions from the applicants about the board procedure? (no response) Seeing none, are there any questions from the audience? Seeing none, first order of business. Our first order of business is to approve the minutes of our previous February 16th meeting. Are there any additions or corrections to those minutes?

Motion by James Rosasco, seconded by Dale Young, to approve the minutes from the meeting on February 16, 2011. The vote was unanimous to approve the minutes, as submitted.

DISTRICT 1

1. KEVIN L. FOSTER – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2100.5 (1) (d) to permit a variance of 396 sq. ft. over the maximum 604 sq. ft. (50% of living area of residence) permitted for a detached accessory building. The property is zoned RU-1-9 and is described in **Section 28, Township 23, Range 35**. (0.46 acre) Located on the south side of Adele St., approx. 400 ft. east of Homestead Ave. (5905 Adele St., Cocoa)

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

Mary Hillberg – Could you please state your name and address.

Kevin Foster – Kevin Foster, 5905 Adele Street, Cocoa.

Mary Hillberg – Thank you. Would you please raise your hand. Do you swear that everything you'll tell us today at this board meeting is true?

Kevin Foster – Yes.

Mary Hillberg – Thank you. Go ahead.

Kevin Foster – About a year ago, give or take, probably a little bit more, I came to the Building Permit building to get a permit to have this building put up. Twenty-five by 40, that's what I wanted to do. And I came down, not knowing what to do. I went in, I said, "This is what I need. I need to know step by step what I have to do to get this building, what permits, what survey, whatever it is it takes. I've got to know what I need to do, 'cause I want to do it step by step. I don't want to come here twice and get screwed up and have to do it all over again." And they said, "Fine, this is what you got to do." And the woman said, "What building do you want?" I told her what I wanted, the size and all. She wasn't sure, so she asked somebody else. She came over. I explained to her. They got on the computer, got the satellite, looked at my property, did all the figuring, said, "You're fine. You can go with your 25 by 40." Great. I bought the building not too long ago. But I had a lot of things I had to do between the time that I got back into it to get the building. Anyways, I went with what I was told. I could have the 25 by 40. They did the measurements. They did what they needed to do. I had to get a variance to get a 15-foot easement taken off the back of my property. I did that. I came back in with all the paperwork, submitted, and they said I couldn't have it. I said, "Why not?" "Oh, well, that's too big." That's not what you told me a year ago. But I did everything I was supposed to do, step by step, according to what I was told. I do not remember who it was that I spoke to. It was just two women. I have no idea who they were. I

couldn't even recognize them if they put them in front of me. I have no idea. But I went with what they had told me. And, I mean, with the variance that I had to go through, the surveys that I've had to go through, what I've been told that I can't have this – it's gonna be a hurricane shelter, as well. It's a 150-mile-an-hour building. There's no windows in it. I've got three garage doors. And I want to use it, not specifically for hurricanes, but I've got some cars I want to put in there so nothing happens to them if a hurricane does come through. But with a building of that stature, I'm better off than I would be in my own house, with 150-mile-an-hour winds. It's a steel building. So, I mean, it's – I don't know. I mean, that's why I'm here, I guess, because what I was told I could have, and now I'm told I can't. You can't see it, except a little bit from the road. Behind my house is Canaveral Groves. There's nobody back there. The east side of me is 95. The only way you're gonna see it is from 95, or if you go around my house, except for a little corner of it. I own the lot next to it so, I mean, there's not any bothersome as far as what people are gonna see, or what they're not gonna see, unless they actually go behind my house. And I don't know what else to do besides come here, like I was told to do, and see you guys, and get a variance so I can have my building.

Mary Hillberg – All right. Is that all? (no response) O.K. Fred, this is your district. Would you like to start questions?

Fred Kusterer – I didn't do a drive-by, so I'm not exactly sure which house is yours. But I am familiar with the area, and I don't think your request is invalid. You say you own both of these lots?

Kevin Foster – Yes, I do.

Fred Kusterer – This one picture here, it shows – your property is encompassed by a white line, and it's showing both lots.

Kevin Foster – Correct. I have my house on one lot, and the other lot is vacant.

Fred Kusterer – O.K. And you're gonna put this building on the same lot as your house. You're not...

Kevin Foster – Correct.

Fred Kusterer - ...going to encroach on the other lot.

Kevin Foster – Correct. Now, I have the survey right here, if you don't...

Fred Kusterer – Well, I got a survey here. I'm just making sure that we're on the same page.

Kevin Foster – Yes. What you see on the survey is exactly how I want – what it's gonna be that I'd like to have it.

Fred Kusterer – O.K.

Kevin Foster – I mean, like I say, I got the survey set up. The surveyor went out. They went, and they – I just got a new survey from them for the drainage, the elevation, everything else that was needed that wasn't on the original survey that, again, I didn't know I needed. I mean, they didn't tell me you need this, and this, and this, and this. So, if I had had that done the first time I had the survey done, I wouldn't have had to do the second one. But, again, they didn't tell me that. And that's the main reason why I'm kind of torqued a little bit, because I went in specifically and said, "What do I have to do? What's it gonna cost?" In a roundabout way, you know, I know one might be more than another, as far as permits and processing, and everything, but just a round figure. Would it be \$1,000, \$2,000, something like that? Well, she gave me like \$200 for this, and \$200

for that, let me also have an idea of about what it would cost me, which is okay. I just don't want to come in and get surprised, like I just did, with your building's too big.

Fred Kusterer – Have you got everything done, except this?

Kevin Foster – I don't have a pad. I don't have a pad, yet. I'm waiting to get this okayed so I can get a pad. But I do have a contractor that's come out and looked at it and told me the price, what I needed to do, and so on and so forth. And I was also told I didn't need a permit for the pad. I could go ahead and put the pad down if I wanted to. All I needed was an inspection. Then I was told by the contractor and the people I bought the building from, "No, you need a permit for the pad." So it's like then I'm stopping, and I'm not doing anything, until I hear from you people and what I can do. Hopefully, I can get this resolved, and I can continue. But, there again, at the Building Permit, they told me I could put a pad down without a permit.

Fred Kusterer – Is this one of those metal buildings?

Kevin Foster – Yes. It's a nine-foot side with a 13 ceiling.

Fred Kusterer – I've got one about the same size as you're talking about, and it's a nice building. I don't have any more questions.

Mary Hillberg – Does anyone else have any questions?

Dale Young – This is strictly for private use?

Kevin Foster – Yes, sir, it is. It is not for anybody to come in and do what they want.

Dale Young – Automobile repair, or anything like that?

Kevin Foster – Excuse me?

Dale Young – It's not for automobile repair?

Kevin Foster – No, I'm not – I mean, I do it at work. I'm not gonna take it home and say, "Hey, look, you know, here's my shop. Come and see me."

Dale Young – All right. The access to this is not a problem, as far as you're concerned?

Kevin Foster – No.

Dale Young – Across your back yard.

Kevin Foster – Yes.

Dale Young – Do we have any letters on it, do you know?

Mary Hillberg – No, we do not.

Dale Young – That's all.

Mary Hillberg – Anyone else have any questions?

Sharon Savastio – I do. The survey doesn't show how you will access this. You said you have three garage bays?

Kevin Foster – Yes, I have two...

Sharon Savastio – Where will your access be on this?

Kevin Foster – I have two garage bays. If you're looking from the road, which will be right behind – I'm gonna have two garage bays there, and one in the back. But that's strictly for air flow. I can open my doors so I can get air ventilated through. But my drive would be coming around to the right side of the house and coming into the garage doors that way.

Sharon Savastio – So, in other words, you'll be coming around this way.

Kevin Foster approached the podium to show Ms. Savastio the access.

Kevin Foster – It will be coming from the right side of my driveway, from the right side of the house, and into each garage door.

Sharon Savastio – O.K. I guess my question here is, you have like seven and a half feet from – well, actually, you're in the easement on the one side here. How do you intend to go around the structure? I mean, how wide will the driveway be?

Kevin Foster – It's not a real driveway. It's just where the grass is...

Sharon Savastio – O.K.

Kevin Foster – ...so I can drive behind it. So there is no driveway, as far as a cement driveway.

Sharon Savastio – O.K.

Kevin Foster – It's just where I have enough room to drive by the property, between the property lot and my house, to drive into the building itself.

Sharon Savastio – You mentioned the drainage is not going to be an issue. That's already been taken care of?

Kevin Foster – Exactly. And I have the survey right here, if you would like to look at it to see.

Sharon Savastio – O.K. No, that should be fine. Thank you.

Mary Hillberg - Any other questions? (no response) I have a question. Paul, could you explain what – for the record, why it is too large?

Paul Body – Yes. An accessory structure in the residential zoning classification cannot be more than 50 percent of the living area – 600 square feet or 50 percent of the living area. His living area came out to be, I think it was 1,208, so he cannot build more than 604 square feet. So he's asking for the variance of 396 square feet over that. Plus, he was talking about a variance, earlier. It's really not a variance. He had his easement vacated, 15 feet of the drainage easement around his property. That's what he was talking about.

Mary Hillberg – Yes. Thank you. Thank you for that clarification. I have no questions. You may have a seat. Is there anyone in the audience that would like to speak to this issue? (no response) So, seeing none, I bring it back to the board. Board, would you like to discuss it?

Fred Kusterer – I move that we grant him the request, as depicted on the survey.

Mary Hillberg – There's a motion to grant the request. Is there a second?

Dale Young – I'll second.

Mary Hillberg – Seconded, Dale. Is there any discussion? (no response)

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

DISTRICT 2

2. BARBARA J. PRUSAS – requests 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 (west) in an RU-1-9 zoning classification. The property is described in **Section 2, Township 25, Range 36**. (0.17 acre) Located on the north side of Moore Ave., approx. 230 ft. east of S. Tropical Trail. (36 Moore Ave., Merritt Island)

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

Barbara Prusas – Barbara Prusas, 36 Moore Avenue, Merritt Island.

Mary Hillberg – Could you raise your hand. Do you swear and affirm that you're going to tell the truth to this board today?

Barbara Prusas – I do.

Mary Hillberg – O.K., go ahead.

Barbara Prusas – I have a carport, and I want to make my carport into a garage. And, apparently, when the house was built, a five-foot variance was all that was needed, and now it's a seven-and-a-half-foot variance. I was assuming since it was there originally, there would not be an issue. But there is an issue. So, I mean, the roof is there. The slab is there. I'm gonna put a wall up, and a garage door. That's all I want to do.

Mary Hillberg – O.K.

Barbara Prusas – Instead of a carport.

Mary Hillberg – All right. Thank you. If that's all you have to say, is there anyone to speak to this issue in the audience? (no response) No. Then I'll start the questions with you, because I'm District 2. And I went by to see your house today, and you are correct, it is very, very tight. A lot of the houses have more distance between them, but those two particular houses are tight. When was this house built?

Barbara Prusas – I don't know. I think I – I think we bought it in '92, but I don't know when it was built.

Mary Hillberg – There seems to be two of them that seem to be very similar, yours and the one next to yours.

Barbara Prusas – Yes. So you can see what she's done to hers – my neighbor. I mean, you know, it's gonna look a lot better than that.

Mary Hillberg – Right. Well, that's all I have to say. Does anyone else have anything to ask? (no response) O.K. You can go have a seat. Thank you so much. Paul, is this an issue of the – those two houses are simply...

Paul Body – Well, the house was built, apparently, about 1964, according to the Property Appraiser's site. And it doesn't meet the seven-and-a-half-foot setback requirement. What she's trying to do is to enclose the existing carport, and that would be an expansion of a nonconforming structure setback. So that's the reason she is here right now. I'm not sure how it got permitted back in '64, or not, whether it required five feet, or if the – I don't think the zoning has changed on it. It might have, somewhere along the line.

Mary Hillberg – I see. Well, what is the pleasure of the board? Bringing it back to you. Do you have any other further comments, ma'am. (Ms. Prusas replied from the audience.) O.K., since there's no comments from the applicant, and there's no one in the audience that wishes to speak, is there anything else from the board? (no response) Do we have a motion? I'll pass the gavel to Sharon. And I move that this variance is approved, per the survey provided.

James Rosasco – I second that motion.

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

The meeting was adjourned at 1:51 p.m.