

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, May 18, 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:

- 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. Will the Planning & Zoning Office, Paul, would you please describe the function and operation of the Board of Adjustment for 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 to a court of competent jurisdiction for appropriate relief. Ms. Chairperson, you have six items on your agenda today.

Mary Hillberg - Thank you, Paul. Will our Vice-Chair, 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 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 development regulations. The applicant must answer a variance hardship worksheet with six questions. The Board of Adjustment will discuss these questions today with each applicant who has requested a variance.

Mary Hillberg – Thank you, Dale. I would like to address our board members, the applicants, and our audience, for a moment. The Board of Adjustment is a quasi-judicial board, with members appointed by the Brevard County Board of Commissioners. And 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. We will not be using a timer this time. Each speaker is asked to be concise in what they say, and please stay on the subject. It is important that you avoid information that is 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 it out and hand it back in. Are there any questions from the board members about the Chair procedure? (no response) Seeing none, are there any questions from the applicants about the Chair procedure? (no response) Seeing none, are there any questions from the audience about the Chair procedure? (no response) Seeing none, our first order of business is to approve the minutes of our previous meeting on April 20th. Does anyone have any corrections or additions?

Fred Kusterer – Page 10 “sic” (should be page 12). I believe it’s supposed to be Fred Kusterer, not Fred Hillberg.

Motion by Fred Kusterer, seconded by George Bovell, to approve the minutes from the meeting on April 20, 2011, with the correction to page 12. The vote was unanimous to approve the minutes, as amended.

DISTRICT 1

1. WILLIAM SPIVEY – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334 (5) (b) to permit a variance of 10 ft. from the required 15-ft. side setback (south) for an accessory building in an AU zoning classification. The property is described in **Section 3, Township 24, Range 35**. (2.47 acres) Located on the west side of E. Little Ct., opposite and approx. 50 ft. north of the western terminus of Canaveral Groves Blvd. (4784 Little Ct., Cocoa)

BOA ACTION: Kusterer/Bovell – APPROVED, as depicted on the survey provided by the applicant, and for the life of the existing building, only. Vote was 4:1, with Hillberg voting nay.

Paul Body – They had an easement, a 7.5-foot public utility easement, that has been vacated on May 10th, where the accessory sits. It was approved.

William Spivey – My name is William Spivey. I live at 4784 East Little Court, in Cocoa.

Mary Hillberg – Do you swear that everything you’ll tell us today is the truth?

William Spivey – I do.

Mary Hillberg – Go ahead.

William Spivey – I put the poles in the ground 15 years ago. And, last year, the money became available, and I finally built the structure where the poles was in the ground for the last 15 years. I’ve been enforcing the rules and regulations the last 49 years, 27 years as a Chief (unintelligible) in the Navy, 23 years as a Federal Marine Enforcement Officer at the Kennedy Space Center. So I’m asking for a lenience of ten feet, where I made the biggest mistake of my life. And on the right-hand side of my property is a canal, and I only have five feet of easement there. I’m the only one in Canaveral Groves Boulevard, and possibly in Canaveral Groves, that doesn’t have a 30-foot easement on both sides of their property. Because of the water going into the canal that goes into the lake behind my house, it has washed it away over the last 30 years. And I’ve told Roads & Bridges they could have – come on my property any time they wanted to and clean that canal out, without having to build 25 more feet of road. And I’ve got \$20,000 in that barn. And I’ve already spent about \$4,000 in fines and fees. And I’ve already got the blueprints. My neighbor helped me build that barn, and it’s a perfect privacy fence behind his house and my house. And he’s here today to speak in my behalf of leaving the barn. It’s not a barn. It’s a structure. And I have a picture of what it is. I’ve already got the blueprints, paid \$1,500

for the blueprints, and I'm ready – I was fixing to – my neighbor was going to lease my property to me for 100 years. He was going to buy it from me, and he was going to lease it to me for 100 years, but I decided to gamble and come before the board to try to keep it in my family, my property in my family, the way it is. So can my neighbor say something?

Mary Hillberg – When they get a chance. Just a moment. We want to start with questions. If that's all your opening statement is, we will start with questions from your district representative, who is Fred.

Fred Kusterer - Being as this is a pole barn, does it have a concrete floor?

William Spivey – It's not a pole barn. It's a structure. It was going to be a pole barn. And it does have three roller doors and a concrete floor. I just put that in last year.

Fred Kusterer – Thank you. I did go by your place on the way down here today, and I did see that building. It's a presentable building. It's a nice building. I'd be proud to have one like it myself.

William Spivey – I can't tear it down. I mean, I can't cut the ten feet off. It would have – everything would have to go.

Fred Kusterer – I understand. Thank you.

Mary Hillberg – Anyone else have any questions? Dale.

Dale Young – There is a Code Enforcement on this?

Paul Body – Yes, there is a Code Enforcement on this.

Dale Young – I wonder where that came from.

Paul Body – Code Enforcement isn't here. But I think it was anonymous. I'm not real sure. Mr. Spivey has said to me that everybody around there doesn't have a problem with it. And he doesn't know who turned him in on it.

Dale Young – The current building, you don't have a permit for, either? You said you put the poles in 15 years ago.

William Spivey – Yes, sir.

Dale Young – But how far have you gone now with the building?

William Spivey – It's completed. It's totally completed. It's got three roller doors, and it's a perfect privacy fence for my neighbor, as far as my back yard and his back yard.

Dale Young – And that's the only person it affects, is that next door neighbor?

William Spivey – Yes, sir.

Mary Hillberg – Anyone else? George.

George Bovell – Is it possible if we can have that picture? When you give it to us, we'll have to keep it.

William Spivey – Sure.

George Bovell – Thank you.

William Spivey – I won't even charge you.

Mary Hillberg – I just want to understand clearly. So you still have not filed for a permit?

William Spivey – I got everything ready to go, both ways, either to lease it for 100 years – I've got affidavits, everything ready to go both ways. I got everything ready to go to pay \$1,000 for the building permit. I haven't did that, until I get through these two boards. And then that's when I'm going to go down and get the three building permits, and fill out the – and start going by the blueprints. I've already got the blueprints.

Mary Hillberg – Does anyone else have any questions? (no response) You can have a seat. Is there anyone in the audience who would like to speak in favor, or opposition, to this variance? Yes, sir, come on up.

Mike Denyer - My name is Mike Denyer. I live at 4756 East Little Court. My property abuts Bill's property from the south side.

Mary Hillberg – Do you swear to tell the truth today in front of this board?

Mike Denyer – I do.

Mary Hillberg – Thank you.

Mike Denyer – I'd just like to say, in behalf, you know, I think, on Bills' behalf, like he stated, you know, I think he kind of had some plans. As you're probably well familiar, our area in Canaveral Groves, the lots are very long and narrow. I think my lot is 125 feet wide by 374, or so, feet long. Bill's got a lot of boy toys, air boat, and things like that. And he's always kind of parked them along the edge. He's been a great neighbor. I couldn't ask for a better neighbor. He's always kept his place very clean and neat. And, of course, with the hurricanes, and all, all the stuff out in the yard has kind of got to be tied down, and secured, and all that sort of thing. So I think, you know, as time came along, his idea was, "I'm going to stick something..." - also we're butted up to - Lake Wilson is to the west of us. So our properties end at Lake Wilson. So he stuck it kind of in the corner, in the back corner, of his property, I believe with the idea that, you know, it would be nice to stick his stuff inside so it's out of the weather, and so forth. And, as he stated, he came into some money this last year, or so, that he could start doing that. And it was just kind of a process that took over a long period of time, I'm sure. And when he got done with it, it was a very nice-looking structure, well done. It does make a very nice privacy arrangement for both of us. His house and my house are about the same distance off of East Little Court. Oftentimes, if I'm doing something out in my back yard, and he's doing something out in his back yard, we're kind of, you know, looking at each other. So this building makes a nice little buffer. So, on his behalf, I'd like to say I'd like to see it stay because, you know, I'm sure he realizes he made a mistake, and he's got a lot of money invested right now. But to try to correct it, to pick it up and move it, or whatever, I think would be more detrimental than the benefit. It's a well-built building. He went out and got the proper permitting from the engineering groups, and all those sort of things, to make sure it's up to code so that once we know which way this is going to go, he'll know how to file. But, anyhow, I'd just like to say I'd like to see it stay, because I think it's going to be less detrimental in the long run to leave it as is.

Mary Hillberg – Is there anyone on the board that would have a question of this person? (no response). You can have a seat. Thank you, very much. Is there anyone else in the audience who would like to speak to this application? (no response) Seeing none, would the applicant like to have a final comment?

William Spivey – No, ma'am.

Mary Hillberg - We'll bring it back to the board, then. Is there discussion? Fred.

Fred Kusterer – I would move that we grant him the variance, as depicted on the survey. I've got some reasons for that. After a second, I'd like to speak.

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

George Bovell – Second.

Mary Hillberg – There's a motion, and a second. Fred.

Fred Kusterer – As I said earlier, I had drove out there on my way down here today. And the only neighbor that is affected is the one that got up and spoke. So, in view of the fact that the neighbor seems like he's really good with it, I think we ought to go ahead and grant it to him. We're only talking about a few feet. These lots are big - lake behind there. So that's why I'm suggesting that we grant him his request.

Mary Hillberg – Thank you. Is there anyone else that has any – Dale.

Dale Young – Would Fred want to confine this variance to this building?

Fred Kusterer – Yes, I would.

Dale Young – To the life of this building.

Fred Kusterer – Yes, I think that would be a good idea, for the life of that building.

Mary Hillberg – Does that mean the building cannot be resuscitated? We have a motion, and we have a second. I would like to say something. A variance – Dale related what a variance was, and it's a hardship on the land. In other words, something about the land has created this hardship, and you have no use of your property. This property is large, and you have a lot of space. It isn't like this is the only corner that you could put it, or because the land is shaped this way, that this is all you can do. So that's really what a variance is for. It's really not to kind of okay something that was done without a permit, or something that was done incorrectly. So I just wanted to make it clear that that's what this board does. And those six questions, when we ask those questions, like number 2, "These special conditions and circumstances did not result from the actions of the applicant" - so we have to be able to say yes to all these six questions. And when they do result from the actions of the applicant, then it makes it more difficult for us.

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

2. WERNER C. & FAYE M. WEIS – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1406 (7) (d) to permit a variance of 2 ft. from the required 5-ft. rear (south) setback for an accessory structure in an RVP zoning classification. The property is described in **Section 6, Township 23, Range 35.** (0.09 acre) Located on the southeast corner of Coach Club Dr. & Club Cove Dr. (196 Coach Club Dr., Titusville)

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

Charles Hough – My name is Charles Hough. I live at 1112 Citrus Avenue, Northeast, Palm Bay. And I'm representing Mr. & Mrs. Weis on the application.

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

Charles Hough – Yes, ma'am.

Mary Hillberg – Go ahead.

Charles Hough – We're requesting 1.3 feet, a variance, to bring it into conformance of the five feet. This structure that was built on this property originally – I hope that you folks have a survey. If not, I brought some extras to give you.

Mary Hillberg – We do.

Charles Hough – The Florida room was built, encroaching, by a previous builder. Mr. & Mrs. Weis are requesting me to build them a screened enclosure under the existing roof, on existing concrete, that is encroaching 1.3 feet on that back side. The Building Department – we have submitted an application for building permit, which Ms. Susan over there immediately put on hold, because it's encroaching, or has an encroachment. And, as long as this encroachment's on the property, according to the Building Department, they can never build anything on that property, from this point forward, unless we get a variance. So, instead of trying to finagle the thing, and build it three foot back from that encroachment, or anything else, we decided to come through the process to try to get the variance so that this couple – they're from Virginia, by the way. And, evidently, they don't have people up there that takes advantage of setbacks and easements like we do here in Florida. So I counseled them to come through the process, get the property legal, so that they can sell it, or build it, or develop, in the future. And I'm done.

Mary Hillberg – And you are in District I, also. And, Fred.

Fred Kusterer – You said that this was built before these people bought the property?

Charles Hough – That's correct.

Fred Kusterer – And this wasn't pointed out during the sale of the property, apparently.

Charles Hough – No, sir. My conversation with Mr. Weis – see, I'm multi-licensed, one of those licenses being a real estate sales person – and I asked him that exact question. "Did you get a survey?" "No." "Did you get a title search?" "No." We discovered this. And they bought it through the real estate company that's in TGO. And, evidently, those professionals did not counsel them on the right path to take. So they bought the property. Now, they can't do anything with the property, other than what's already there, with it is the way it is. But to answer your question short, they did not know any of this was going on. The survey that you have is – I commissioned that for them. That's the first one they've seen.

Fred Kusterer – Thank you.

Mary Hillberg – Is there any other questions? George.

George Bovell – I'm looking at the survey here, and the one question I have is, you're not going to – this enclosure is going to be under the existing roof?

Charles Hough – That's correct.

George Bovell – And will not encroach any farther into the easement than the building already is?

Charles Hough – That's correct.

Mary Hillberg – Anyone else? Dale.

Dale Young – This was built under a permit, it says, originally.

Charles Hough – Yes, sir.

Dale Young – And I assume that they had a permit, inspection, and a final inspection.

Charles Hough – From my investigation of the matter, as limited as it is, is that – I'm making some assumptions that this was done before – the County, now – and the Building Department requires us builders to have an as-built survey to make sure that we don't encroach into the setbacks, especially when it's so close. And this structure was put in place before that requirement was being enforced.

Paul Body – Yes. From the information that we've been able to come up with, this was done before Zoning required as-built surveys on the building permits.

Mary Hillberg – What year did they start requiring that?

Paul Body – I'm not exactly sure when it was. It think it was in the last '90's, is when it was, though.

Mary Hillberg – Anyone else have any questions? (no response) You may have a seat. Is there anyone in the audience that would like to speak to this application? (no response) Seeing none, would you like to come up and make a final comment?

Charles Hough – No.

Mary Hillberg – Fred, back to you.

Fred Kusterer – This one clearly wasn't the owner's fault. I move that we grant them the variance, as requested.

Mary Hillberg – According to the survey?

Fred Kusterer – According to the survey.

George Bovell – I second.

Mary Hillberg – We have a motion, and a second, to approve. Is there any discussion?

Dale Young – Confine it to the existing structure?

Fred Kusterer – I think that's a good amendment.

Mary Hillberg – As far as I can see from the survey that you've got here, and from the overhead aerial photo, this would be an example of a small amount of land. The layout of the land, and the fact that the houses are very close together – and this is much more of a hardship type of thing than if you had 30 acres, and you were

on top of the edge. You know what I'm saying? So I feel comfortable in agreeing with that, and supporting this variance. Any more questions? (no response)

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

3. **ERWIN G. & SAWSAN KREMPEL** – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1342 (5) (b) to permit a variance of 2 ft. from the required 5-ft. rear setback for an accessory building in an RU-1-7 zoning classification. The property is described in **Section 15, Township 23, Range 35.** (0.22 acre, +/-) Located on the east side of Cedar Ave., approx. 910 ft. south of Devon St. (Cedar Ave., Cocoa)

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

Erwin Krempel – Good afternoon, lady and gentlemen. My name is Erwin Krempel. I live at 6765 Cedar Avenue, Cocoa, Florida, 32927.

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

Erwin Krempel – Yes.

Mary Hillberg – Go ahead.

Erwin Krempel – I applied for granting vacancy about a year and a half ago. And I think there was some misunderstanding between the space was granted to me. And when I put all my plans in for the workshop, the day of my permit, when I should get the permit, the County told me that I can't build that size. We already put the slab, and everything. And, suddenly, I had to go five feet less as what the blueprint said. The County just scratched it off, the numbers, made it less on my blueprint. They said, "Well, go ahead. You can do it this way." We tried to do it less, but since it's a workroom, I'd like to do a (unintelligible) in there. The five foot was missing. I couldn't get all my equipment in. So we decided to build it bigger, the size of the blueprint. And I'm asking now for the additional vacancy and variancy. I spoke with Cynthia Marshall, and she was surprised that, from the first time, I didn't get the whole back yard granted for it. So I am stuck in there now. And I hope you can give me the additional feet. And I also plan, for next year, to put a pool in my back yard. So I really need the whole back yard for vacancy.

Mary Hillberg – All right. Fred, you're up again.

Fred Kusterer – Let me see if I understand what you just said. You said that you went down there, you got a permit, and they said you were planning to build it too close, and you built it too close anyway?

Erwin Krempel – No, no. I kept it two feet. What happened is, in the lengths, I kept my two or three feet from the back. What happened is, the first plan was made like 17 feet. Then I spoke with the County how much I have, total. How much was granted to me. And they told me 23 feet. But we thought the 23 feet is from the five-foot side to my right. But when we poured the slab, then they said, "No, it's 23 feet from the border." So I'm short now five foot. And we poured the concrete for 23 foot. And then they say, "No, you only can do 18 feet on the building." And when we tried to build for 18 feet, I couldn't get all my equipment in. I need to have a lot of workout equipment, (unintelligible) bench press. That alone is taking about 50 square foot of space. And that's exactly the 50 square what was now missing on my building.

Paul Body – Fred, this has already had a previous variance that was granted to the rear setback. And he also has the easement that had been vacated on it. And it appears that the structure was a little bit bigger than what it was for it being on the survey, as depicted on the survey. And that's the reason we're here again.

Erwin Krempel – Yes, it's about five feet. The building got larger. When I went to Cynthia Marshall, I understood, like a year and a half, that the whole back yard was granted to me. She said, "No, no, no, it's just for the building size." And that was the misunderstanding. And, since, the State Health Department gave us a hard time because we had a septic tank before in there. The building could be only in a certain structure, had the L-shape. And everything was delayed for like five, six months. So everything was stretched out until we really got to the final building procedure. And now we moved the septic tank up front, so there is no more Health Department issue, (unintelligible) everything eliminated. And the County told me, "Well, you can go all the nine yards, if you want. And, on the day I was supposed to receive my permit, they told me I can't. So like I was stuck, you know. It's on the very day I had to pick up my permit. "Oh, we apologize, Mr. Krempel, we've got a little issue." And I was, "What is it?" It's like, "You can't build it this size." And I had my blueprints paid for it, and everything was there. And then they just scratched it out with a red pen. It's like, "Well, let's do it this way. You just can go 18 feet, instead of 23 feet." But I need that space.

Mary Hillberg – Dale.

Dale Young – What was the original variance? Was it the same as this one?

Paul Body – It was the same setback, but he has increased it to the – the size of it.

Mary Hillberg – In other words, the variance that he got for this was for a smaller building.

Paul Body – It was lacking about ten feet, I think is what it was, than what he ended up building a little bit bigger than what the variance was approved for.

Mary Hillberg – So when the variance went through, it went through according to the thing. And then they found out it wasn't according to the thing.

Paul Body – That's correct. They looked at the variance application and saw that it was built a little bit bigger than what the variance was required.

Mary Hillberg – Different than the survey.

Paul Body – Yes.

Mary Hillberg – Jim.

James Rosasco – If I understand this correctly, Paul, a variance was given previously for the two-foot variance for the rear-yard setback?

Paul Body – Yes, that's correct. It was...

James Rosasco – And now what he did, instead of being a ten-foot long building along that three-foot setback, is really 18 feet. So the fact that he has been given a variance of two-foot for the setback, that two feet is still valid. It's just a matter of the building is just a little bit longer, going north and south, than it was before.

Paul Body – That's correct. It's a little bit long, going north, that what it was, the variance was approved for before.

James Rosasco – So it's just a matter of it's not really – he's not infringing any more on the easement or setbacks. It's just a matter of the building going north and south is a little bit longer than they thought.

Paul Body – That's correct.

James Rosasco – Thank you, very much.

Mary Hillberg – Are there any more questions? Dale.

Dale Young – Did I hear you say that the drain field is moved to the front of the house?

Erwin Krempel – Yes. We was taking off (unintelligible). So the drain field is now in front. So I don't have anything, any more issues, with the Health Department. Everything cleared.

Mary Hillberg – So now you have an area that could hold a pool.

Erwin Krempel – Yes, if I get granted the whole area. Yes, we decided, hopefully, next year, if we get that extra space, we could get a little bit larger pool in there.

Mary Hillberg – Look out for your setbacks when you do it.

Erwin Krempel – We thought first the whole thing was (unintelligible) at the time before everything was done, until we found out it was just for that space, for the specific space. And everything just got a little bit mingled up in the misunderstanding.

Mary Hillberg – Thank you. You can have a seat. Is there anyone in the audience that would like to speak to this application? You may both come up, if you're both going to speak.

Mark Hovis – My name is Mark Hovis, and my wife, Urmila. We live right behind Erwin.

Mary Hillberg – Do you swear and attest that everything that you are going to say today, Mark, is the truth?

Mark Hovis – Yes, I do. And I was a little bit understanding what the variance basically – Erwin is here to basically become in compliance to what he has already built. This building is now 23 foot long. Before, it was like 17 foot. I guess when he first built the building, he got it all, you know, okayed and everything. Then, after everything was final, I noticed that he cut the building and moved it another five feet, or whatever, to make it the 23 foot it is now, and filled in, in the middle. I've got pictures here that I'd like you to look at. He's also built a fence. He's put quite a bit of fill, probably about four or five foot of fill, to bring his property up quite a bit. You can notice where that old fence is mine, and it's six foot.

Mary Hillberg – These pictures will remain with us. Is that all right?

Mark Hovis – That's fine. So, like I say - it doesn't have anything to do with the variance - I went ahead and agreed to having him build closer, you know, to okay the variance when he first built. He said it was going to be a shed, a shed. And, basically, I thought this was going to be a small shed. This is a building. And now it's, you know, as you can see, right on top of me. And if kind of, you know, ruins our property, as far as value, I think. But to get back to – there is – the variance situation is not really what this is all about. It has to do with the extension of the building so he can be in compliance. I talked to Erwin about this when I first noticed it was being done. He didn't seem to want to talk to me about it, so I contacted the Code Enforcement people to take a look at it, another look at it. And they told me that everything was done. I says, "Well, you haven't seen it

since he extended the building.” And I know he’s probably not going to, you know, take down the building. But, as you can see, it’s kind of an eyesore from where I have - I have a nice large deck back there. I like to entertain, and this and that. And now we’re looking at a big building behind us. He also extended his house out quite a bit from where it was originally. I’m sure he got all the permits correct on all that.

Urmila Hovis – Could I speak?

Mary Hillberg – Yes. What is your name and address?

Urmila Hovis – Urmila Hovis, 6740 Bryant Road, Cocoa.

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

Urmila Hovis – Yes.

Mary Hillberg – Go ahead.

Urmila Hovis – When Erwin originally requested we sign the okay for the variance, he told us the building was going to be 10 by 17, and it would be no taller than nine feet tall. Our fence is a six-foot fence. If you’re at our fence, and you look up, you can see how tall his fence is. He has since added lattice work on top of that fence. So now you’ve got your six-foot fence that’s the original six foot, and then his buildup of land with a six-foot fence, with lattice on top of that. So when we look over there, all we see is fence, which, you know what, I don’t really care to look in his back yard, but he deceived us the entire time.

Mark Hovis – And he deceived (unintelligible).

Urmila Hovis – And, as far as requesting a variance for the entire back yard, no, he did not ask for that. He told us specifically he wanted it for “the shed”, which has now turned into a building.

Mary Hillberg – Is this building on this picture...

Urmila Hovis – That’s the one that’s supposed to be 10 by 17.

Mark Hovis – The shed.

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

James Rosasco – Yes, I do. A minute ago, in your conversation, you just mentioned that you didn’t expect them to tear the building down.

Mark Hovis – Well, that building, I know it cost them quite a bit to build that building.

James Rosasco – Well, we don’t – in reviewing a variance request, we can’t take into consideration the cost.

Urmila Hovis – O.K. Well, I mean...

James Rosasco – It’s not what we look at. But what I’m more concerned about is, what would you be happy with?

Urmila Hovis – I think it should go back to what it was supposed to be, 10 by 17.

James Rosasco – Then you would desire to have them to take this building down?

Urmila Hovis – And all that fence. I mean, it should be – you know, it's a neighborhood.

James Rosasco – I'm just asking what – you know, at first, you said you don't expect him to take it down.

Urmila Hovis – Well, we didn't think you would...

James Rosasco – And now – I just wanted to make it clear that that is the – if we do not grant the variance, the building will have to be taken down.

Urmila Hovis – Well, that's...

James Rosasco – That's all I'm asking. I'm very sensitive to the neighbors. And I hate to put you on a spot like that.

Mark Hovis – Right, I understand.

James Rosasco – Because you have to live next to each other, and you're neighbors. And we all know where that goes. I just want to get clear, in my own mind, exactly what it was you would be satisfied with.

Urmila Hovis – I really don't know what's right or wrong. I mean, you know, I understand he spent a lot of money on it, but had he been straight up front to begin with, I don't think we'd have these issues, had he not built his property up six feet and then put another six-foot fence on top. I mean, be in our position and look outside. And try to maybe go to sell our house. What do you see? You see a normal six-foot fence with a mini-house, and then that huge wall. It's just – it's not very neighborly. You know, we signed the variance out of the kindness of our heart, and then he turned around and did – he took it to an extreme. I mean, I don't know what you guys do, or how you handle it, you know.

James Rosasco – I'm very interested in what you guys would like, because that's – as I said, we cannot take in the cost into our decision. That's just something we don't take into consideration. But being as you're neighbors, this impacts you more than anybody else. I'm just desirous to understand what would you be satisfied with.

Urmila Hovis – I would have been satisfied had he left it where he said he was going to do it.

James Rosasco – We're in a difficult position. Things have happened, and now we're at where we're at. And that, to me, is an important factor in what we decide here. You're the people that are impacted most, and I really would like to know – you said before you didn't want to – I really what to know what you want done.

Mark Hovis – Yes. Well, you know, first off, it's just such an eyesore. I thought it was going to maybe be just a little bit higher than our fence. As you can see, it's like four or five feet higher than our fence. And I didn't realize he was going to put all that fill in to bring it all up. We've actually got dirt on our side of the fence where it's actually drained. Now, I think he's put some type of wall on half of that area. But, I don't know. I don't know what you could do, other than, you know..

James Rosasco – I believe that's the alternatives, either we grant a variance, and he can keep his building, or we don't grant the variance, and he takes the building down. I don't think there's a whole lot of gray in this matter. This is really – I'm just very, very curious as to how you – I can appreciate you being, you know, feel that you're a bait and switch, and all. All that's history. I'm trying to figure out what we want to do now with the

circumstances we have. And I think it's very important to this board as to what you are most impacted, what you feel.

Urmila Hovis – I think he ought to make his building the size it was supposed to be, 10 by 17. If he needs a bigger lot, maybe he should find a piece of property that's big enough that he can do what he needs to do.

Mark Hovis – Or hide it, somehow?

Urmila Hovis – How are you going to hide it?

Mark Hovis – I don't know.

Urmila Hovis – You look up to the skyscraper in our back yard.

Mary Hillberg – Have you finished your comment? Does anyone else have anything to ask of this couple?

Dale Young – Before they leave, I would ask - since we don't have a copy of this prior variance, I'm a little bit confused. Ordinarily, the variance...

Paul Body – Yes, there is a copy of the – it should be in your package, Dale. There is a copy that shows the 17 by 10 that was approved with Variance 3283. It should be in your package, too. If not, we can...

Dale Young – So it specified the building that was in the variance? So, to clarify, the original variance was for this specific building. It wasn't the...

Paul Body – That's correct. It was for the 10 by 17 building. And since then, he did come back, and he got more of the easement vacated. And that was approved on March 8, 2011, to vacate more of the easement around the building. But that's the reason we're here now, is that the building has been expanded on and doesn't meet the original variance that it was granted for.

Dale Young – What was the height of the original variance for this building?

Paul Body – I don't have a height. This was a variance to the setback.

Urmila Hovis – It was supposed to be nine feet tall.

Mark Hovis – He's put at least five to six foot of fill in there.

Dale Young – Well, the variance – we've heard the variance didn't specify height. So we're talking here about the previous variance. The survey shows that the elevation of the shed floor is one and a half, or 18 inches, higher than the house elevation. So that's what we should be dealing with. It's 18 inches higher than the floor of the house. It's not going to be any higher than the house, I'm quite sure. So I guess that answers my question that the previous variance does not apply to just the setback. It applies to this particular building.

Mary Hillberg – I guess the variance was granted according to the survey at the time.

Paul Body – That's correct.

Mary Hillberg – Which depicted a smaller building.

Paul Body – That's correct.

Mary Hillberg – And now it's a larger building.

Dale Young – Ordinarily, if we have a variance on a setback, it's for 1.6 six feet, or whatever, from the property line.

Mary Hillberg – And that's why we say according...

Dale Young – Not for the ten feet of the building.

Mary Hillberg – Right. That's why we say according to the survey, so that we know exactly what...

Paul Body - That's the reason it says as depicted on the survey. And whenever he came back in for his code complaint, it was expanded on.

Mary Hillberg – You all can have a seat. Thank you. Is there anyone else here that would like to speak to this application? (no response) Mr. Krempel, you may come back up for a closing, and rebuttal.

Erwin Krempel – Yes. I bought the fence. I have a permit for the fence. I just turned in today for the inspection on Friday. It's legally made. I didn't put five or six feet more dirt on my land. If you go over there, my neighbor is like on a hillside, going this way. And when they built my house, they built a hill. And I put now the fence that's everything, I mean, to the County. I got the permits for it. What it is, my fence, a wooden fence, I built to the top of my property now, on the level of my house. My first fencing is on the property line down the hillside, the slope. My wooden fence is up the level of my house, of the building. But I didn't put five or six foot of dirt, additional, to my property. The only thing what I did, I had a slope in my back yard. We filled that in, and we did a porch area. But that's already the existing level of my building. And the building itself, what I build is seven foot tall. It's not nine foot tall. And the fence, yes, I did it on my six foot, additional one foot is (unintelligible). And I keep that in legal limits. But, as I say, on Friday I have the inspection coming and taking a look at it.

Mary Hillberg - Thank you, very much. You have a question, Dale?

Dale Young – Yes. The survey that we're looking at here, I take it is after your shed was constructed? These are the correct elevations on here?

Erwin Krempel – Yes.

Mary Hillberg – You can have a seat. Fred, this is in your District, too.

Fred Kusterer – I'm having trouble with the five feet added on to the building without the knowledge of the County, or permit, or whatever. I'm not clear on whether that actually happened or not. But apparently it didn't, or they wouldn't have given him a permit. So, with that, I would deny the request.

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

George Bovell – Second.

Mary Hillberg – The motion is seconded to deny. Is there any discussion? (no response) I would say that I would agree with you that I think the spirit of the previous variance was not followed. It wasn't done according to the survey. And I understand that you've had a hard time, and you've gone to get permits for these things,

but it's the adding on, I think, to the building that, to me, personally, that makes it – this problem now is created by the applicant, is what I'm trying to say. So I would agree. Is there any other comment?

Dale Young – Madam Chair, this came about because of what, a Code Enforcement action?

Paul Body – That's correct. It was a Code Enforcement action that brought it up. And the neighbors said that he had expanded on to the shed. So he came back in for more permits, and that's whenever, in Permitting, that they noticed that it doesn't fit the variance that was approved before.

Dale Young – O.K., but it's - the expanded building is under review for the permit. He is getting a permit for the expansion?

Paul Body – That's what came in, yes.

James Rosasco – Excuse me, Paul. What you're saying is, he may have an application for a permit; however, that permit will not be issued...

Paul Body – The permit's...

James Rosasco - ...unless a variance is issued.

Paul Body - ...on hold now, until the outcome of this.

James Rosasco – Thank you.

Mary Hillberg – Is there any other discussion? (no response)

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

DISTRICT 2

4. ALEXANDER ZELNER – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1372 (5) (c) (1) to permit a variance of 9 ft. from the required 25-ft. front setback (north) in an RU-2-15 zoning classification. The property is described in **Section 26, Township 24, Range 37**. (0.13 acre) Located on the south side of Winslow Circle, approx. 75 ft. west of Azure Lane (317 Winslow Circle, Cocoa Beach)

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

Alexander Zelner – My name is Alexander Zelner. Address is 317 Winslow Circle, Cocoa Beach.

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

Alexander Zelner – Yes.

Mary Hillberg – Go ahead.

Alexander Zelner – We are in the process – we have been in the process to relocate to the beach. We have owned a house in Orlando for quite a while. My wife has a medical practice over there. And we've been trying to relocate to the beach, because our older children live at the beach and go to BCC. And we have five

children. We have some small ones and some older ones. But the older ones are all at the beach. They love to surf, and they love the beach. And they're all going to BCC. So we're trying to relocate. And the house that we bought is very old. I guess, after we bought it, we began to realize how old it really was, and it needed work. And so we have moved into the house, but we still, you know, continue working on it. The garage part of the house, it had a very old garage door. I assume it's original. It had been patched several times. It looked really awful. O.K.?

Mary Hillberg – Mr. Zelner, excuse me. Could you – is what you're saying – we're talking about this...

Alexander Zelner – Winslow Circle, yes.

Mary Hillberg - ...variance.

Alexander Zelner – The house at the beach. Right. Basically, what I'm requesting is, I wanted to change the garage door. I wanted to change the garage door. And, actually, I was considering enclosing the garage door, because the garage has not been used as the garage. It's been used as a storage, laundry room, everything else. Surf boards pile up. Anything but the garage. I don't think the car has been parked in the garage for quite some time. So we were wanting to basically replace the garage door with a window, since it wasn't operational anyway, and we weren't planning to use that space for the garage. Whatever it would require, a permit to make it into the space, we were going to pull a permit and do everything, which apply for the permit, and they told me it's a non-compliant structure. It looked to me like it's 25 feet. I measured with a tape measure. It was like 26 feet from the road. But I guess there's an easement of ten feet I didn't realize was there. So anything I try to do to the garage to put a window instead of the garage door, I have to have a variance. That's why I'm here.

Mary Hillberg – Thank you. This is my district. And I would ask you, you went to get a permit, and they told you that you needed to get this variance, and that's why you've come. Is that right? To enclose your garage and close the porch?

Alexander Zelner – Well, actually, the exact events, my son backed into the garage with his car. And so I plywooded the area. And I started the work. And then the next thing happened, I got a phone call from Code Enforcement. And I went in and applied for the permit. And then, with the process of the permit, they told me I have to have a variance.

Mary Hillberg – I see. And when did you buy your property, what year?

Alexander Zelner – It was last year. It was in June or July, last year. It hasn't been exactly a year. It's been maybe nine months.

Paul Body – He purchased the property in July of 2010. And the structure seems to be into the setback, and he was trying to convert it into living area. And it's a nonconforming...

Mary Hillberg - It's nonconforming. Right.

Paul Body - ...to setbacks. So it's an expansion on a nonconforming, is the reason we're here. Plus, he decided he wanted to also take his covered porch and probably enclose it, too, at the same time.

Mary Hillberg – I understand. Is there anyone else that has any questions of this applicant?

Dale Young – I just had a question. You're not increasing the dimensions? You're just enclosing the existing garage and porch?

Alexander Zelner – Everything that we were planning to do is under the existing roof. Even the front porch, there's a roof on there, as you can see on the survey. So the garage was definitely under the same roof. and the front porch is all under the same roof. We're just trying to improve the appearance of the property by doing that, as well. I also have letters from every single neighbor on the street. I think every single neighbor who lives there owns. There's some rental people who rent. I couldn't get a letter to sign. But they're all in agreement with me that it would improve the property. The property has been a rental property for many years, so they're actually happy that we moved in and are trying to improve it.

Mary Hillberg – Do you have those letters? Are you going to give them to us? We can't give them back to you.

Dale Young – So this house was built 49 years ago, and you didn't pick it up and move it when you bought it.

Alexander Zelner replied without a microphone.

Dale Young – O.K.

Alexander Zelner – I actually like it where it is, very much.

Mary Hillberg – Jim has a question for you.

James Rosasco – It's more of a discussion thing. When I look at this survey, Paul, I see it's at 16.09 feet to the edge of the structure. In my experience on this board, we get into discussions about support poles, rooflines, things of that nature. I want to make sure our applicant here realizes that, you know, he's got to stay within the support structures of the porch and the garage. I mean, we've had this discussion before that the roofline is one thing, but we're actually talking about the columns...

Paul Body – Yes. It's to the structure itself, where the house is sitting, not to the roofline. Roofs can extend four feet into the setbacks. But this being – the variance is to the structure of the garage itself.

James Rosasco – That's the point I was making to you to make sure you don't get into a problem. But you can't go any further than the structures that supports the roof. Is that correct? The columns, the walls, things of that nature.

Paul Body – Yes. I'm not sure if it's a framed or a concrete, but it would...

Alexander Zelner – It's a block.

Paul Body - ...be to that – I thought it was block.

James Rosasco – But you just can't go any closer to the road than the existing structures. Other than that, I see no reason not to...

Alexander Zelner – Yes, we have no plans to change any structure supports, or anything like that. If we were going to do anything, we were going to build within those to enclose. And, actually, that would add the strength to the building that I would imagine, not take away from it.

Mary Hillberg – Thank you, very much. Anyone else have a question. Fred. Fred has a question for you, sir.

Fred Kusterer – Yes. This probably doesn't even pertain to the variance request, but I noticed on the back of the house, you've got a concrete pad there that actually extends over the property line.

Alexander Zelner – Right. That was there when I originally bought the house. There was like a tent over it, like a canopy over it. And it was all tore up, and all. We took it down. And maybe that's why nobody could – people – it wasn't really visible there was a concrete pad there. But it's an old pad that was there when we bought the house.

Fred Kusterer – Thank you for the explanation. That may cause you a problem down the road a little bit.

Paul Body – There is a variance to that corner of the house, though, Fred, just to the corner, not to the slab that's out there. And that was done quite a few years ago. It's variance number is 755, so it was done quite a while ago.

Fred Kusterer – Yes, I was aware of the variance. I read about that. But I was just concerned about that concrete pad going into the other peoples' property. That may cause you problems down the road.

Alexander Zelner – It was there when we moved in.

Mary Hillberg – Thank you. You can have a seat. Is there anyone else here that would like to speak to this application? (no response) Seeing none, would you like to come up and make a final statement?

Alexander Zelner replied from the audience.

Mary Hillberg – Before that, George, can you read these letters he brought?

George Bovell – I have five letters. It's a form letter. They're all the same. I'm not going to try and decipher the handwriting for the actual people who signed the letter. But, essentially, this is what it says. It says that they have no objection to Alexander's enclosing the garage on the property at 317 Winslow. "This renovation will improve the appearance of the property."

Mary Hillberg – Do you have any comments, sir? Final comments? O.K. Bringing it back to the board. Since it's in my district, I think that the applicant's request is reasonable, and this is a nonconforming property. And I think that it's reasonable, and that it's not something that he has done to create the closeness of the roofline. And I would move to approve the variance.

Diana Johnson – Mary, could you pass the gavel, I think, to Dale, before you make the motion?

Mary Hillberg – That's right. I can't do that. I forgot all about that. Dale, take that gavel.

Dale Young – You're recognized.

Mary Hillberg – Thank you. I move to approve the variance, as depicted on the survey, exactly the way it is on the survey.

Dale Young – We have a motion. Do we have a second?

Fred Kusterer - I'll second it.

Dale Young – Any other discussion? (no response)

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

5. SEA RAY BOATS, INC. – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1542 (5) (b) to permit a variance of 49.5 ft. from the required 50-ft. side setback in a PIP zoning classification. The property is described in **Section 11, Township 24 South, Range 36 East.** (14.4 acres, +/-) Located on the northeast corner of Sea Ray Drive & Courtenay Pkwy. (100 Sea Ray Dr., Merritt Island)

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

Philip Nohrr – Good afternoon. My name is Philip Nohrr. My business address is 1795 West Nasa Boulevard. And I'm here on behalf of the applicant, Sea Ray Boats, for the variance that staff has just announced to the board.

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

Philip Nohrr – I do.

Mary Hillberg – Thank you. Go ahead.

Philip Nohrr – Thank you. As I stated, I'm here on behalf of the applicant, Sea Ray Boats. And the property in question, although it's been generally described by staff, it amounts to 20, plus, acres. It's on the north side of Sea Ray Drive. It's very close to North Courtenay Parkway. And it's on the south side of the Barge Canal. The property in question, as you can see from the survey, it's got five main buildings on it. The buildings were developed at separate times between a time period between 1973 and 1984. There are some minor structures on the project, on the property, but I think for the purposes of what we have here today, I would like to draw the attention to the board to what is known as Building D, which is on the rear of the property by the Barge Canal, the easternmost building that actually fronts the Barge Canal. And the parcel, or the building, that is in the encircled property, which is what we call – I think it's called Building E on the survey – and that is Sea Ray's research and development building. And just so that we know, as I go through this presentation, Sea Ray is going to maintain the ownership of that building. The employment is not changing. That will be Sea Ray's continued use of that facility. What is going on here is that there is a contract to purchase the rest of the property. And that is what is causing us to come here today, because by virtue of purchasing the rest of the property, the result is that we will then come into violation of an existing 50-foot side setback, which then necessitates our requesting the variance. I want to stress, if I can – and I'll perhaps repeat myself – nothing about this property are we asking to change as far as its physical – the way it's physically developed now. The buildings are the buildings. We're not asking to move them. We're not asking to enlarge them. We're not asking to increase their height. The footprint of these buildings are to remain the same. The problem comes in, is by virtue of deeding the four buildings to the east – I'm sorry, to the west – that we will run into a problem. We then will have two ownerships, rather than one, because Sea Ray will maintain the ownership and the use of the easternmost building. The other thing that I would like to emphasize to the board is, this particular building, Building D, is located in excess of 500 feet north of Sea Ray Drive, 500 feet north of Sea Ray Drive. We do not believe you can see this building from Sea Ray Drive. There are all kinds of shrubs, and what have you, out on Sea Ray Drive. There is buffers that this building sits back and is really not noticeable to the general public in that area. That other thing that I would point out is, as you look at the survey, there are two ways that you can get to this property. You can get to the property by the east, down by the building that Sea Ray is going to continue, that is a gated access. And you can get to the building towards the west side, near Courtenay Parkway. Both are gated. And, generally speaking, the general public does not have access to this. So when we talk here about a variance, we're talking about a matter that really is going to be between the two property owners themselves. It's not going to affect the general public. The buildings are already there. The infrastructure's already there. There is nothing that's going to take place by the granting of this variance that is going to alter, in any way, the way this property is used. The only thing that is really going to

happen, and it's sort of an exciting thing, if this goes through - and this contract is contingent upon this variance - that this piece of property, which has stayed vacant and dormant, the western part, for a long period of time now, because of the unfortunate situation of the boat industry, that there's just no need for this kind of capacity, is going to be put into economic use. That is going to be a very positive and plus for our economy in our area. So it's something that we frankly are excited about. And we're hoping that while this - and I think the Chairperson has mentioned it - economics can play some role in your decision - that we think this is going to be a plus for the entire County, if this particular variance goes through, and the property is purchased. The only other thing that I can really talk about here is that I heard the word earlier, "public interest". I believe that the description I've just given to you goes to the fact that this is in the public interest. It's in all of our interest when we can have developed property put into productive use, help our economy, help jobs where we can. And, again, we're not doing anything to our infrastructure. The roads are already there. The capacity's already there. Nothing is going to change. That, ladies and gentlemen, is my presentation. I have a member of Sea Ray Boats here, if there are some particular technical questions I cannot answer. Those of you who are familiar with this area will know that in addition to what you see depicted here, if you go further west - I don't believe it's connected to this property - it's separate parcels to the east - they do have other facilities going to the east, that is not being affected here. Those facilities are staying. They're in production. Nothing's going to change there. So, in closing, we believe this is an exciting development. It's one we hope that you can concur in the granting of this variance for. And, again, it's just brought on by the fact that ownership is changing for part of it, and now we have a side setback to deal with. I should mention, before closing, that this is a minimum variance that we can ask for. I worked with staff on it. We were - I don't want to use the word "playing" - but we were looking at moving the line slightly. To do that would have dragged in the remaining parcel that Sea Ray owns. And what we're trying to do to make it the minimum variance possible is just deal with Building D and the larger parcel. So that's why you see the configuration that's here. I thank you for your time. And if I can answer any questions, or take comments, I would be pleased to do so.

Mary Hillberg - I have a question. Mr. Nohrr, is it?

Philip Nohrr - Yes, ma'am.

Mary Hillberg - You say there's a contract to buy this property. What is the business that is buying it?

Philip Nohrr - I have to be a little careful here, because there is some confidentiality. But the name of the buyer is Arnett Industries, which is not a complete stranger to those of us in the County. They already have a presence here.

Mary Hillberg - I guess my question would be more is this a manufacturing organization that's doing this? This is not a condo buying this?

Philip Nohrr - No.

Mary Hillberg - This is a commercial/industrial/manufacturing...

Philip Nohrr - It's commercial/industrial/manufacturing, yes.

Mary Hillberg - Does anyone have any questions? Jim.

James Rosasco - The survey, not the one you just handed out, but the other one, it highlighted, Paul, a number of other areas besides that half the foot setback. Do you see what I'm referring to? On the top side of the survey, it looks like there's other...

Paul Body - Yes, it's going to cover all those setbacks.

James Rosasco – So it's all of these individual...

Paul Body – It's not just for the one on the east. Whenever he came in - it's for all the different setbacks. And the least was the one that was only a half a foot away.

James Rosasco – But we're also talking about these other setback encroachments, as well.

Paul Body – That's correct.

James Rosasco – Thank you.

Mary Hillberg – Are there any other questions? (no response) You may have a seat. Thank you. Is there anyone in the audience who would like to speak to this application? (no response) Seeing none, Mr. Nohrr, do you have a closing statement? No. This is also in my district. And I'm very familiar with Sea Ray and the work that they've done. And we're all facing these economic difficulties now. Normally, if a person causes the situation that requires the variance, it would not be proper to give them the variance; however, this is a situation that has come over a long time, and I don't believe, or it doesn't seem, that Sea Ray has planned to do this when they originally built Building D. And the only option would be to destroy Building D, which would be – I haven't multiplied it out to see how large a building it is, but it looks large. So I have no other comments on that. Anyone else have any? (no response) I'll pass my gavel again.

Dale Young – Madam Chair.

Mary Hillberg – I move that we approve the variance, as depicted on the survey, this survey that we have.

Dale Young – We have a motion. Do we have a second?

George Bovell – Second.

Dale Young – George seconded. Any other discussion? (no response)

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

DISTRICT 4

6. JOE M. MITCHELL, JR. – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2109 (c) to permit a variance of 2 ft. over the 4-ft. height limitation for a fence within the front setback in an RR-1 zoning classification. The property is described in **Section 14, Township 27, Range 36**. (2.36 acres) Located on the south side of Carol wood Dr., approx. 0.22 mile east of Hurlock Rd. (4635 Carol wood Dr., Melbourne)

BOA ACTION: Rosasco/Young – APPROVED, as requested. Vote was 3:2, with Hillberg & Bovell voting nay.

Scott Wider man – My name is Scott Widerman. I'm at 1990 West New Haven Avenue, in Melbourne, Florida.

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

Scott Widerman – I will.

Mary Hillberg - Thank you.

Scott Widerman – We're asking for a two-foot variance to the four-foot requirement of a fence that's within 25-foot setback of the right-of-way. And, if I can... (Mr. Widerman walked away from the microphone. He handed out paperwork to the board)

Mary Hillberg – These will stay with the board. Thank you.

Scott Widerman – On the first page there, what you can see is, in the upper left corner, there's a picture of our property, across the front of the property. You can see there, in the background, there's a hedge. On the picture immediately top right, you can see our neighboring property has a six-foot wrought iron fence. The rest of the pictures down the bottom show a little close-up of the six-foot wrought iron fence. If we then go to the second page, you can see the opposite, in the upper left corner – and this one is sideways – but if you look at it, in the upper left corner, as you look it up and down, you – probably not the greatest picture because copy machines being what they are – but behind that car is the neighboring fence with a hedge. And, again, in the upper right corner, you see that the size of that fence there is also six foot. The bottom left corner is the front of our property. What we're ultimately asking to do – and the neighbors have already been through the process – is get a two-foot variance so that we can raise and match the fence along the front property line with the neighbors. In order to comply with the strict adherence to the Code, we would have to put a six-foot fence 15 feet back from the setback. Twenty-five feet back on our property is where the propane tanks are buried for purposes of running various things in the house. We're also looking to match the aesthetic of the neighborhood. We're going to be putting up the opaque style fence, like you see in the first page. It's wrought iron that is easily seen through. We also – my client also takes – he's a local attorney in town - he has to take vacations. For security purposes, he would also like to make sure that his family is safe and secure. And a six-foot fence would also help that. He does have some larger dogs. He would also like to make sure they stay maintained. So, for that purpose, we would like to match the neighboring properties and make our six-foot fence, instead of four, match the frontage as our neighbors have.

Mary Hillberg – George, it's yours.

George Bovell – I am very familiar with that area over there in Lake Washington. And, you know, I just think that you can go cherry pick a few properties and, I don't know, for whatever reasons, they may have a six-foot fence. I know there are six-foot fences around entire communities, because that's subdivisions. But a six-foot is an exception, rather than the rule. I could go out there, and I could have brought you probably 200 photographs today of other properties that are expansive, acres or more, that comply with the four-foot height fence. So the issue with the dog, and the security, and so forth, you know, that's really not the issue for me. This one that you showed here with the wrought iron fence, does that wrought iron stretch the whole length of the front of the property, or just that small portion there? The rest of it seems to be a four-foot high kind of a picket type fence.

Scott Widerman – His entranceway gate to the – in the upper right corner of the first page, does go to his side. He has a space between an adjoining to the right side there that is also – and, again, I've seen the original picture – has – it's a fencing material. It's not exactly chain link, but it does cut across. And I believe that whole frontage is six foot, after that gap.

George Bovell – Anyway, what I'm saying to you is that it's been my observation, because I work in that area, and I'm there almost every day, a six-foot fence on those types of properties, along the frontage, is an exception. I don't know - those few that have a six-foot fence, I don't know if they came here for a variance, or they built it without a permit, one of those kind of things. And, so far, I don't see an argument where we should grant you a variance. And, as I said before, I could have – if I thought about it, I should have just taken the -

because I figured this was probably before us today – cherry picked a few properties. But I can show you 100 properties in 30 minutes that are conforming. So, basically, what you're asking us to do today is to add another one to the few that are nonconforming, or comply with the hundreds of properties over there that have a four-foot fence along the front of their property. That's all I have.

Mary Hillberg – Jim.

James Rosasco – Yes, I have a question. When I look at the survey, it appears that the east and west property lines have a fence, either by your neighbors or by the applicant. Am I correct in that assumption? There's some fences the whole length of the property on both sides?

Scott Widerman – The fences the whole length of the property on both sides are the neighbors' fence, yes, sir.

James Rosasco – On the east, and on the west, both sides?

Scott Widerman – Yes, sir.

James Rosasco – Are those fences six-foot fences?

Scott Widerman – I know, as it abuts to the front of the property, it is six foot. I don't know how far back that six foot goes, or if it then drops. I'm only speculating that it is six foot the whole way, because once you get past the variance, which the neighbors did get, you're allowed six foot anyway. So my suspect is that it's all straight. In the pictures that I have, and that I was given by my client, I don't see that hedge, or the side, changing levels at any time. So, again, supposition. I can't tell you truthfully whether it is or isn't. I believe it is.

James Rosasco – And what did you say the material the fence is going to be made of?

Scott Widerman – We're going to have a wrought iron see-through fence, just like the neighbors have.

James Rosasco – In that case, I see no reason not to approve the variance myself. Thank you.

Scott Widerman – Thank you.

Paul Body – It does give you the height of the fence on the surveys. It says "four-foot chain link fence" is what it is. CLF.

Mary Hillberg – On the sides?

Paul Body – Yes, from what I can read on the survey.

Mary Hillberg – It's so tiny.

Paul Body – It is very tiny. But it does say "four-foot CLF", and that would be chain link fence.

Mary Hillberg – I see that now, yes.

Scott Widerman – And, again, I certainly wasn't making representation to the board that it wasn't. I just simply can only say the side fences have that built up. What's underneath it, or how high that hedge is now, I can't speak to. I apologize.

Mary Hillberg – Dale, did you have a question?

Dale Young – Yes. I'm looking at the pictures here. It looks like these driveways, the fronts of the property, are at least 25 feet from the edge of the road. The purpose of the four-foot fence is to allow some visibility to oncoming traffic, and that's not a problem in this case. A four-foot fence is about the same as painting a yellow line for your property dimension. So no security, no purpose. I think four feet would be kind of a waste of money. A fence is to provide security, or appearance, or something else. So I don't see a problem with it.

Mary Hillberg – Does anyone else have anything to say? (no response) You can have a seat. Thank you. Is anyone here who would like to speak to this application, in the audience? (no response) Seeing none, do you have a final comment, sir?

Scott Widerman – Mr. Bovell, the only thing that I would like to add for our purposes is, we do have the propane tanks that are at the 25-foot mark. I understand your position, very well. I truly do. Adding the whole totality of being the one in the middle that is just going to look different sitting back, along with where we would end up having to put that fence if we wanted to put that security in, I think the neighborhood would be better suited to be uniform. But I do, believe me, understand your position. Thank you.

Mary Hillberg – Back to the board. And, George.

George Bovell – I do not buy into the idea of allowing a six-foot fence, because I drive around Lake Washington all the time, and I see properties like this. And every property you go by, with very few exceptions, has a four-foot fence. And, like I said, the few that do not conform, I do not know why they don't. I don't know if they had a variance, or they just built it anyway. So I do not support the request for the variance. I say that we should deny the variance.

Mary Hillberg – There's a motion to deny. Is there a second? (no response) I'll pass this gavel again. Do I have to pass the gavel to make a second?

Dale Young – Mary.

Mary Hillberg – I'd like to second George's motion. And the reason I would, would be that I don't see any hardship to the land. This is a large beautiful lot, and that's a beautiful area. And I don't see the hardship to the land. It's not causing you any hardship, the applicant any hardship. So that would be my reason for not – I'm going by the six questions that we're supposed to look at.

Dale Young – Any other discussion?

James Rosasco – Yes. I would like to reiterate your observation that the reason we have this four-foot fence limitation within 25 feet of the front property line is really for safety reasons for traffic. Being as this is a wrought iron fence, I don't believe – and the setback, as you also pointed out, is in excess of 25 feet from the road – I don't believe that the intent for the reason for having a four-foot limitation is valid in this particular application. I also think there ought to be some consideration given to the fact that the neighbors are both six-foot fences. To then have one in the middle would be a little disharmonious to the community. So I would support giving the variance. So I would support not voting for the denial. Thank you.

Paul Body – There was also a variance that was granted, two lots down, for three feet over the four-foot height limitations on the front setback, back in May of 2008.

Mary Hillberg – But we don't consider other variances.

Paul Body – No, I was just bringing that up since he was bringing up the six foot along the front was there.

Dale Young – Just a comment of my own. I think that the point was made, this is a very large property. And I think security becomes even more important with the property this size, that you can't see who's out front. The fact that there are other variances granted along this stretch for six-foot fences sort of indicates they feel the same way. So just my comment. Any other discussion on this? (no response)

Dale Young called the question, and the motion failed with a 2:3 vote. Fred Kusterer, James Rosasco and Dale Young voted against the motion.

Dale Young – Do we have another motion?

James Rosasco – I make a motion we approve the variance, as depicted on the survey (see below for the reconvening of the meeting to change the wording of this motion), and grant the two-foot variance, making it a six-foot fence.

Dale Young - I'll second it.

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

The meeting was adjourned at 3:01 p.m.

Paul Body – Excuse me, board, but on the – you all granted it to be on the survey, and it really isn't depicted on the survey. It would be just to the front setback, is what that – needs to be done.

James Rosasco – Well, I would amend my motion to that.

Diana Johnson – Do you want to reconvene?

Mary Hillberg – We reconvene the Board of Adjustment meeting.

Diana Johnson – Just to be proper, so we can...

Mary Hillberg – Reconvening the Board of Adjustment meeting of May 18th, at 3:04. And we're amending the last variance that was approved to be as...

Diana Johnson – Let's go on and make another motion, properly stated.

James Rosasco – I'll make a motion to approve the variance of a six-foot high fence.

Dale Young – As depicted on the survey.

James Rosasco – No.

Mary Hillberg – It's not on the survey.

James Rosasco – It's a motion to approve a six-foot high fence.

Dale Young – I'll second that amendment.

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

The meeting was adjourned at 3:05 p.m.