

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, September 21, 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: Mary Hillberg, Chair, District 2
Fred Kusterer, District 1
James Rosasco, District 3
George Bovell, District 4
Dale Young, Vice-Chair, District 5

Staff members present were: Christine Lepore, Asst. County Attorney
Cindy Fox, Planning, Zoning & Enforcement Manager
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 they voted throughout the hearing.

Mary Hillberg – I now call the scheduled meeting of the Board of Adjustment to order. Would the staff from the Planning & Zoning Office please describe the function and operation of the Board of Adjustment to our applicants and to the audience.

Paul Body – Yes, Ms. Chairperson. The Board of Adjustment is a quasi-judicial body, established by the Board of County Commissioners, under Chapter 62, Article II, Division 4, of the Brevard County Code. The Board of Adjustment is empowered to hear requests for variances to the Zoning Regulation, and 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 three items on your agenda today.

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

Dale Young – Thank you. A variance hardship: A variance may be granted when it will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship. The term “undue hardship” has a specific legal definition in this context and essentially means that without the variance, the applicant will have no reasonable use of the property under existing regulations. Personal medical reasons shall not be considered as grounds for establishing undue hardship sufficient to qualify for a variance. Economic reasons may be considered only in instances where a landowner cannot yield a reasonable use, and/or reasonable return, under the existing 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 utilize Robert’s Rules to conduct our meetings. The Chair is asking all board members not to ask questions while the applicant is making their presentation. Once the applicant has completed their presentation, we will begin board questioning with the board member who represents the applicant’s district. When concluded, questioning is open to the full board. I’m asking that the Chair recognize each board member. Once all board members have completed their questioning, we will then open it to the audience who may be here to speak concerning the applicant’s application. Anyone from the audience wishing to speak will be given the opportunity to address the board only once. At the conclusion of

the public comment, the applicant will be given additional time for rebuttal, as well as to present their final comments. Once completed, no further comment will be heard from the applicant or the public. We will ask each speaker to please be concise in what they have to say. It is important that you stay on the subject and to avoid information that is not relevant. All persons speaking must provide their name and address for the public record. Those not wishing to verbally state their address may ask the clerk at the podium over here for a card, and may fill out the card and return it to the clerk. Are there any questions from the board members about the Chair procedure? (no response) Seeing none, are there any questions from the applicants about the board procedure? (no response) Seeing none, are there any questions from the audience about the board procedure? (no response) Seeing none, the first order of business is to approve the minutes of our previous meeting in August. Are there any additions or corrections to those minutes? (no response) Then, do I have a motion to approve?

Motion by George Bovell, seconded by Dale Young, to approve the minutes from the meeting on August 17, 2011. The vote was unanimous to approve the minutes, as submitted.

DISTRICT 3

1. DAVID W. & DIANE L. AUGUSTO – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1336 (5) (b) to allow an accessory structure to be located forward of the front building line of the principal structure in an RR-1 zoning classification. The property is described in **Section 11, Township 30G, Range 38**. (1.30 acres) Located on the west side of Fleming Grant Rd., approx. 510 ft. north of Wilden Rd. (9010 Fleming Grant Rd., Micco)

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

Mary Hillberg – Will the applicant please step forward.

David Augusto – My name is David Augusto. My address is 9010 Fleming Grant Road, Micco, Florida, 32976.

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

David Augusto – I do.

Mary Hillberg – O.K., go ahead.

David Augusto – We'd like to put a metal storage shed on our property. Everything behind the front line of the house slopes down, and we back up against the wetlands. And it would require from five to seven feet of fill for the foundation of the accessory building. And it would stick out like a sore thumb in the rest of the property. It would also make it very difficult to access, being up as high as it's required to meet the flood elevation. And we have a nice dry place in our yard, up front of our yard, and that's where we'd like to place the building.

Mary Hillberg – All right. James, this is your area.

James Rosasco – I notice that one of the comments you're making is the fact that you're going to have quite a difference in elevation. I'm looking at a survey, and I see that your main floor elevation is 17 feet. When you go back to the wetlands, the elevation is like 9.6 feet. So that's what you're talking about.

David Augusto – That is correct.

James Rosasco – The slope difference between your house elevation and when you get down to the wetlands. So it looks like your property drops off fairly dramatically.

David Augusto – It does.

James Rosasco – So I can certainly see your argument why you wouldn't want to try to bring in that kind of fill to bring it up. So I have no problem with the application. So I have no other questions.

Mary Hillberg – Is there anyone else on the board who has any questions of this applicant? (no response) You may have a seat, if you're finished. Is there anyone in the audience who would like to address this issue? (no response) Seeing none, would you like to say anything else, Mr. Augusto? No? We'll bring it back to the board. What is your pleasure?

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

Mary Hillberg – There's a motion to approve, as depicted on the survey, from James. Is there a second?

George Bovell – Second.

Mary Hillberg – Second by George. Is there any discussion? (no response)

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

DISTRICT 5

2. WESTPOST MELBOURNE D, LLC – requests a variance of Chapter 62, Article IX, Brevard County Code, Section 62-3316 (b) (4) to permit a variance of 5 ft. from the required 15-ft. front setback for an on-premise freestanding sign. The property is zoned TU-1 and is described in **Section 30, Township 27, Range 38**. (5.18 acres) Located on the east side of Hwy. A1A, immediately opposite of the easterly terminus of Coconut Dr. (1665 Hwy. A1A, Indialantic)

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

Mary Hillberg – Could the applicant please come forward. Your name and address.

Tom Bradford – Tom Bradford, 446 Gus Hipp Boulevard, Rockledge, Florida, 32955.

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

Tom Bradford – I do.

Mary Hillberg – Thank you. Go ahead.

Tom Bradford – We're applying for a break on a five-foot – additional five feet to move the sign closer to the road than what the current code allows. The property has an established landscaped island where the existing freestanding sign is proposed. What we're looking to do - the Double Tree image has been redone, and they're rebranding the property. They have standardized signage throughout the country. They're proposing to put the smallest standardized freestanding sign in. But, still, to meet setback requirements at 15 feet, the new sign would overhang into the parking lot area, and there's a good chance it could get damaged by vehicles driving back and forth. I think that I provided everybody with a site plan so they can see the concept

of – if you look at sort of the magnified view that looks like this is probably the easiest thing to look at. What you'll see is the sign where we would like to put it with the variance, as approved. It still sits way back to the far side of the island, nearest the property and away from the road. There's absolutely no issue with visibility with this, if we can gain this variance. There's actually also a photograph, that I provided for you, that shows a car – and we just got this off of Google Maps – it shows the car exiting the property. And you'll see that where most cars stop to exit the property, and to be able to view oncoming traffic to get onto A1A there, they're well beyond where the existing sign is, or where the proposed new sign would be placed. In essence – obviously, I can only provide photos of the existing sign – we would be moving the new sign, if it's placed in, forward only about 6 to 12 inches from the leading edge of the existing sign. So even though we're asking for a five-foot setback, or for lesser of five feet to a ten-foot setback, in essence, the new sign is going at the same place as the existing sign.

Mary Hillberg – All right. Dale, this is in your district. Do you have questions?

Dale Young – Not really. He's done a good job with the photos and the survey, so I can pretty well see what we have.

Mary Hillberg – All right. Does anyone else have any questions?

James Rosasco – Yes, I have a question. And I have no problem with what you're trying to accomplish here, but I'm just curious, is the measurement taken to the edge of the sign, edge of the footing? It seems to be...

Paul Body – It's to the edge of the sign. And that's what he has on his drawing, showing that it's going to be ten feet to the edge of the sign, not to where the piling itself is – pylon itself.

James Rosasco – So, in fact, being as it's an elevated sign, as well, we're talking about not blocking view of traffic. In fact, since his sign is going to be above any vehicles, anyway, we also have another example of why it wouldn't necessarily block traffic, which is our biggest concern about these things, as I understand it.

Paul Body – That would be correct.

James Rosasco – Thank you. I have no problem with it.

Mary Hillberg – Fred.

Fred Kusterer – The size of the new sign is bigger than the old sign by how much?

Tom Bradford – You know what, I don't know that I have a drawing. I actually think that the new sign, square footage wise, is slightly smaller. It's about eight inches wider, but it's not as tall. Typically, from a permitting standpoint, we're looking at this from a square footage standpoint to make sure that we meet square footage requirements and placement setback requirements, so I do not have a drawing of the new proposed sign. Let me see here. Bear with me just for a moment. Yes, that's correct. If you'll notice on this drawing here, the newly-proposed sign is nine foot, eight inches, wide, and the existing sign is nine feet wide.

Fred Kusterer – Thank you.

Mary Hillberg – Are there any other questions from the board members? (no response) Seeing none, you can have a seat, sir. Is there anyone in the audience who would like to speak to this application? (no response) Seeing none, would you like to come back up for a last word? No? It's closed to the audience now. What is the board's pleasure?

Dale Young – Madam Chair, I would move for approval, as submitted, in the location that's shown on the application.

Mary Hillberg – There's a motion for the approval of the variance, as depicted on the survey.

Fred Kusterer – I'll second it.

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

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

DISTRICT 4

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

BOA ACTION: Bovell/Young – APPROVED, as depicted on the survey provided by the applicant. Vote was 3:2, with Kusterer & Hillberg voting nay.

Mary Hillberg – Hi, there. Your name and address, please.

Kelly Palace – Hi, good afternoon. My name is Kelly Palace. My address is 2065, Highway A1A, Apartment 1202, Indian Harbor Beach, Florida.

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

Kelly Palace – Yes.

Mary Hillberg – And is this gentleman going to speak, also?

Kelly Palace – He is not going to speak. He is just...

Mary Hillberg – He's just there for moral support.

Kelly Palace - ...standing here so you will recognize that – may I approach with some handouts for all of you?

Mary Hillberg – Certainly. We have to keep them. You can't get them back.

Kelly Palace – If this case begins to sound a little bit familiar, we're here as a rehearing, based on new information. And that comes – I just want to establish that, going into this, because – these are the minutes from the June 15th meeting, where we had talked about approving our shed to have a few feet shifted in the setback. Mr. Bovell had made a motion that the variance be approved. It did not get a second. And then the discussion was heavily weighted on two things. The neighbor who came and spoke – if you remember her, she was a blond woman that had a lot of issues with the shed that we were trying to get the variance on. Well, just to give you a little background on it, she's completely changed her position now, which is very new evidence. But I wanted to address one of the issues that was put out in the minutes here that says that as a realtor and a broker, we should have been aware the shed was in the easement. And I want to share with you,

Mark and I are both licensed real estate agents, and we work together very closely. But if you have ever worked with your spouse, you know that sometimes you divide and conquer, as we call it. So I was clearly in charge of the, what we call on the ground. I do a lot of the physical part of the cleaning out investment properties, and checking with neighbors, and working with the contractors when we're renovating. So I had, indeed, and in fact, gone to every single neighbor that surrounded that shed, prior to buying the property, and got a written statement from each of them that there would be no coming to a hearing and denying the variance. So Mark was not aware of that. I mean, he said he didn't know that we had the written statement, but I absolutely did. So when he showed up here – I was unable to attend. I was actually very sick that day, or I would have come to the first hearing. And he told me that there was a neighbor that showed up. I said, "No way." I said, "That's impossible." I said, "Who was it?" He said, "Terry Pettit, your neighbor to the..." I said, "No, not Terry, not my blond friend." He said, "Yes, Terry." I said, "Honey, I don't believe you." I don't believe that she actually showed up here, because she – I had checked with her every step of the way. We were in a long renovation process. She had – I had come over, I had checked with her, made sure all the work was up to her satisfaction. She knew exactly what was going on with the shed. I had actually spoken with both her and her husband, and they had said, "Oh, as long as you fix that horrible fence, we don't care about the shed. It's the horrible fence." So, again, when he came home, and I'm sick in bed, and he's says, "The variance was denied, based on what the neighbor said," I couldn't believe it. I just couldn't believe it. And instead of getting mad at the neighbor – I have a success story that I'm hoping to share with you. But she – I saw her the next week. I let myself just breathe for a week, because I didn't want to, you know, run over there and say, "What are you thinking?" I went to our mail box that afternoon. She had mailed the letter that she read to you the morning of the hearing. So Mark was totally blindsided by the neighbor's problem with the shed. He came in here thinking all the neighbors approved. It's been there for 30 years. We didn't build it. We've totally put – we've improved the Brevard County tax rolls. This is a slam dunk, you know, assuming that nobody shows up. We didn't think anybody was going to show up. So this is postdated the day of the hearing, June 12th. And this was her notice to us, which was a lovely long letter that says, you know – which we all know – that said, "I'd like to start off by saying I find you both very likeable. But I want to approach the subject of the dreaded shed." She didn't understand what the word "vacate" meant. Well, I'll leave that, as it may, and say that this could have turned into a very ugly situation with our neighbor. Terry and I are now great friends. We've spent a lot of time working on her issues, at the cost of a lot of money to us. We have sent, in this your handout that you're holding, a letter from her that says she's reversed her position, and signed the document. And this is the improved site (referring to a Power Point presentation). This is the original property when we bought it. You'll notice the lawn was in violation. Mark Herold had been out to the property several times, which is how I knew that Terry had filed the initial complaint. Because I said, "I'm buying the property. Mark, what's going on with the property." He said, "Your next door neighbor, Terry Pettit, has a problem with the fence." And so that's when we worked on this. Then, this is another angle of the house. This is the house, currently, fully sodded, painted, redone, brand new fence all the way around. This is her side of the home, which is understandable that she would be upset with whoever put a fence up like that. This is her current side of the home, which is why she's probably much happier. This is the side of the shed, from her perspective, before it was improved. And now this is her side of the shed. This is the offending shed, O.K.? So it was created by her photos. And, you know, Mark would have brought these photos, had he thought there would be any objection from anyone. But this is the shed that was painted as a dilapidated thing that was going to blow away in the wind, that was a hideous eyesore. It's really more like a pool home. Mark Herold actually tells me I could be 400 square feet larger. It was painted as this gigantic shed that was oversized. Several of the other neighbors that are actually adjacent to us have similar sized sheds in their easements, most likely, because one, I'm looking at a picture I could show you that's right on the line. So this is the shed that we have been talking about, the dreaded shed. And so I am hoping that, based on all the items on this first list here, that, number one, the shed has been there for 30 years and was not built by us, as the applicants. I want you to know that we did our due diligence before buying the property. We were aware that the shed needed a variance. And I did speak with every neighbor, who said that they would support a variance. All the adjacent neighbors are in favor of the variance, including Terry Pettit, who did stand up here and deny it. I ask you to approve it this time, that the last time it was denied was based on both – two of your votes on – a lot of weight,

and great weight, on the neighbor's comparison I just said. To remove or relocate this shed would be a major hardship. There's really no place to take it any further, closer to the house, closer to the pool. It does create great financial problems to this property, because there's no garage. So it's the only place to store your tools, and your lawnmower, and things like that. And, you know, the improvements that we've made to this property have really increased Brevard County's property values. So we respectfully request the shed be allowed the variance, based on the above reasons.

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

George Bovell – I really have no questions. The presentation should speak for itself.

Mary Hillberg – Fred.

Fred Kusterer – I understood you to say that you were aware of the fact that this shed was out of compliance before you bought the home?

Kelly Palace – Yes. Yes, sir.

Fred Kusterer – Therefore, it's a self-inflicted problem. Thank you.

Mary Hillberg – James.

James Rosasco – Do we have – you said that she had signed another letter, or some sort of...

Kelly Palace - Yes, it's right here. You've got a copy of it. On her letter, it says she's reversed – you know, "My name is Terry Pettit. I'm a neighbor. I initiated the complaint against the shed. And I attended the hearing. Since the hearing, Kelly and I have come to an agreement to modify the shed." Just so you know the things that I've done for her, I've replaced two of the windows with – boarded them up - insulated the entire shed, dry-walled in. So just so you know the hoops that I've jumped through for her. I actually had it – the windows boarded up, and everything done. And she said someone – and I had her come over and check the work – someone could cut through the wood. So she wanted me to drywall it. So after I had it fixed with just paneled wood, and insulated, she wanted it dry-walled. So it's now professionally dry-walled, drilled, screwed over it, to make her happy, which I'm happy to do. Like I said, I can understand where she's coming from. I felt her pain. I didn't cause her pain. But I figure we're neighbors, and I love her. I want to work with her. It says, "Kelly has met her end of the agreement." Oh, and we professionally had it hurricane-strapped to code. This shed's been through 30 years of hurricanes and never waived, but we still hurricane-strapped it. So I've met her modifications. And she says, "You can find my signature on the neighbor approval form." Then that's the neighbor approval form right there, with her signature. And I have her original signature, too. And I think if she had a problem, she would be here today.

James Rosasco – Thank you.

Mary Hillberg – Anyone else have anything to say? No? I would like to say something. In the previous – when you first came – let's go to the letter that Ms. Pettit has just sent to us, that you've given to us. This says that since the hearing, you have modified the shed to meet hurricane code standards. You've removed the windows in the shed that face her property, You've soundproofed the shed. And since safety and noise were her two biggest concerns, she's now agreed. One of the questions – you know, when you answer these questions?

Kelly Palace – Yes.

Mary Hillberg – These six questions that you answer when you go for a variance. One of the questions is that the granting of the variance will be in harmony with the general intent and the purpose of the chapter, and so forth, and it won't be detrimental to public welfare. So that was one of the issues that was an issue when you came here at first, that it was in the dilapidated way that we saw in that previous picture, with the roof kind of hanging, and it looking really bad. And this is one of the issues. And another one was, and of course, still is, that the special conditions and circumstances do not result from the actions of the applicant. And, of course, the conditions are not your actions, not that you built it, but that when you buy something that is built incorrectly, it's kind of you're doing it. You know what I'm saying? So those are the technical legal reasons that we would look at, and that's what we're supposed to look at. Now, what we also do is look at the neighbors' opinions, and so forth, and their objections, but in terms of not just if there are 20 people here who don't like it, well gee, that outweighs the five people that do like it, so we'll go against it. It's not that kind of a thing, you know. I don't want you to think that it's a popularity thing, or it's that because everybody has one, then it's okay. We're trying to do the right thing. We're trying to go by these rules. We're trying to answer these questions. And if you answer like, for instance, yes to any one of these questions, you're not technically – you don't technically deserve a variance. You know, if you've made the problem, or if you're doing something that's creating, you know, an unsafe situation, or degrading the value of the property around you, then you don't technically deserve one. But we also put weight on when someone comes up and says, "I'm afraid. This frightens me. It reduces the value of my property. Please make it go away. Don't allow it to happen." So, you know, that's the reason that we said what we did. And I think that was certainly one of the aspects of it. But that's not the only aspect, is what I'm trying to tell you, that these other items were the legal basis for the denial of it at the time.

Kelly Palace – Well, I appreciate you for explaining that. On the very first one that you said, that it was some welfare issue? I mean, that...

Mary Hillberg – It's your...

Kelly Palace – I could show you the photo.

Mary Hillberg – It's question number six. And the question is that the granting...

Kelly Palace – I understand the question. I understand the question. This is what you're stating - this photo right here is what you're stating is the hazardous building. And all we did to correct this was pull that one thing off. That's it. That one thing that's falling down. That's the only difference between this photo and this photo. So what I'm trying to say to you is that Ms. Pettit's depiction of this shed was highly inaccurate. So you were basing your information on complete falsehoods.

Mary Hillberg – Well, when folks come up here, they swear to tell the truth to the best of their abilities. So all we can do is go by the information that we receive. And we don't decide, well they look honest, or they don't.

Kelly Palace – I understand that. I'm just saying that it's – that this is a solid, solid shed built on a concrete slab. It's post and beam. It's sided. It's got a three-shingle tab roof on it. It hasn't moved in 30 years. This is – was not a safety issue. And if it was a safety issue, then we went in, as people who invest money in Brevard County, and made it safer. The last – the second issue that you said, that if we buy something, and we inherit a variance, that we're the same as building that. Is that actually accurate?

Mary Hillberg – No, I...

Kelly Palace – I don't believe that it is.

Mary Hillberg – I didn't...

Kelly Palace – And...

Mary Hillberg – I didn't say that.

Kelly Palace – I...

Mary Hillberg – Excuse me. I didn't say that. But I said the question is that the special conditions and circumstances do not result from the actions of the applicant.

Kelly Palace – And you're saying there's a yes there?

Mary Hillberg – Well, it had...

Kelly Palace – There's...

Mary Hillberg - ...been there before...

Kelly Palace – There's nothing that you can say to me that's going to tell me that that's a yes.

Mary Hillberg – Right. Well, I'm just explaining that when people come with these sort of things, these are the types of...

Kelly Palace – O.K., so let's address...

Mary Hillberg – These are the questions.

Kelly Palace - ...the very last issue of two of – two people voted for the variance to be approved. Three did not. Two of the three said they weighted it on what the neighbor said. So don't try to bring those six questions into it, because there's a no, no, no, no.

Mary Hillberg – I'm sorry, but this is how the board works. And this is how we're charged to do things. And it's...

Kelly Palace – Well, if you say that you're fair, and that you're about – then, you know, I'm just – I'm not – I want it to go on record that those two items that you're bringing up are not yeses. They are nos. And I'd like that on the record.

Mary Hillberg – I'm sure it's on the record, since you put it there. Also, in addition, the idea is that you would have no use of your property, which, of course, you do have use of your property. And there are other items, too. But that's all I had to say about it. Would you have something to say, Dale?

Dale Young – Yes, Madam Chair. The age of this shed is 30 years. The average age of properties in this area is 40 years, probably. So there are all kinds of situations.

Mary Hillberg – Yes.

Dale Young - And that's why we're here, is to take care of these situations that have developed with age.

Mary Hillberg – Yes, I agree.

Dale Young – So I think the shed was existing. It's been taken care of. And, to me, it looks like the problem's solved.

Mary Hillberg – Thank you. Yes, James.

James Rosasco – Yes. I would just like to add that I agree with the applicant, totally, that when they bought this property, they shouldn't be held to the same standard as someone who had committed the variance. I agree with you 100 percent there. I can appreciate the fact they have a value judgment to make. We have an opportunity to buy a piece of property. It looks like there's going to be a variance required. Sounds like they did their due diligence, went to their neighbors to say, "Well, we're going to get that variance, because none of our neighbors are going against it, and it seems reasonable." And they made a business decision to run that risk. And, granted, that was a risk. But I certainly don't think, by any stretch of the imagination, that they should be – I mean, you get to the position that how would this shed be brought into compliance by anybody. They're doing what – if they hadn't bought the property, they'd be doing the same thing. They're trying to apply for a variance. So I think it's doing a real disservice to chastise them, and to get on them, about buying it because they knew the variance was there. They did their due diligence. They talked to the neighbors. They said, "We're going to – and, yes, they took the gamble that we would grant them the variance. But I think it's totally off base to jump all over them about that. So I would support it. Thank you.

Mary Hillberg – I thank you...

Kelly Palace – Thank you.

Mary Hillberg - ...very much. And I hope that it doesn't sound like I've been jumping all over anyone. It certainly wasn't my intent. My intent is to explain that the board goes by these six items. And we look at them carefully. And we look at how the property changes would affect other areas. And, at the time, we felt that we made the right decision, according to the neighbor. Now that she's changed her mind, and that you've made all these modifications, that presents a different look to the situation. Does anyone have anything else to add?

Kelly Palace – I would...

Mary Hillberg – Fred.

Kelly Palace - ...also just like to – I'm sorry.

Fred Kusterer – As far as I'm concerned, question number two, the fact that you're both in real estate business, and were aware of the fact that this was going to create a problem before you bought the house, this problem now belongs to you. It's a problem that you created on your own, because you knew the problem was there when you bought the house.

Kelly Palace – How will the problem ever be corrected? Will anyone ever get the variance?

Fred Kusterer – Probably not.

Kelly Palace – Never? Well, this is what I...

Fred Kusterer – Unless you can bushwhack somebody into buying the house, and not knowing about it.

Kelly Palace – This is what I wanted to bring up, too, especially to you, Mr. Kusterer, is I may not look 50, maybe I do, but I've been a real estate investor since I bought my first investment property at age 21 in college. And I have gotten ten variances on properties. So it's not uncommon. It's not out of my realm of looking at a

property. There are properties that I walk away from, and there are properties that are very liable to get a variance. In fact, I believe the original hearing that we sat in, when we were first denied, there was another shed that was approved. So I fully believe – I guess I ask you all this as an integritas question. If that neighbor had not shown up here, would that have passed? And I think if you look in your soul, it would have passed. And how - if we want to raise Brevard County's property, and we can't turn around and sell this with a clear title, it hurts us all. I mean, we've put \$100,000 into this property. And we hope to sell it, maybe break even. But somebody's going to buy a beautiful four-bedroom, three-bath, pool home in Brevard County because of the work we did, and the variance that was passed today, with clear title. And if you're going to deny that, I – you know, I shouldn't be a real estate investor. And we've put a lot of money into a lot of contractors' pockets in Brevard County, fixing up that property - people that are feeding their families, and buying products in our County because of the money we've put into this property. We can pack up and go to southern California, you know, and just like half the other County. But we're here. We've been here seven years. We want to make this our home. And I ask that you approve this variance and take care of people that are taking care of other people here.

Dale Young – Madam Chair, I'm kind of at a loss here to understand the contention. They bought a property that had something that required a variance. They came and got the variance, or applied for the variance. They did the right thing. They fixed the property up. I don't – it escapes me what's the contention here. They've done what they were supposed to do, whether they're realtors or doctors.

Mary Hillberg – I'm not sure that there's a lot of contention, Dale.

Dale Young – I'm hearing contention.

Mary Hillberg – O.K. James.

Kelly Palace – I'm just glad I'm in George's district.

Mary Hillberg – Excuse me.

James Rosasco – Yes, I'm very concerned that my colleague is – seems to have a different standard - because these people bought this property, knowing they were going to have to go for a variance. And I think that's totally inappropriate. I don't think that has any value to this discussion. That, to me, is just jumping on someone that – that's just totally inappropriate. It's just totally inappropriate. Thank you.

Mary Hillberg – Thank you. George.

George Bovell – Thank you. My position is, we should not penalize somebody who's trying to do something that – the property was in that condition for 30 years. I'm talking about the location of the shed. And what they have done, in my opinion, too, is reasonable. Because the shed needed a variance, that is no reason why they should not buy the property. They bought the property, and they did the right thing by coming, asking for a variance. Now, if they had bought the property without the shed, and went and put the shed there, then it would have been self-inflicted. But they didn't do that. They tried to improve it the best they could, where it stood. So I'm in full support of these two young people.

Mary Hillberg – O.K. We're not doing a motion, just yet. We have – I don't think there's anyone else here. Is there anyone else here to speak to this issue? (no response) There's no one in the audience to speak. And you have...

Kelly Palace – May I say one last thing?

Mary Hillberg – You have final rebuttal, yes.

Kelly Palace – It's not a rebuttal, but it's – George just brings up a great point. We are risk-taking investors. This property sat there, and sat there, and sat there, and no one would buy it because of the variance on the shed. Everyone knew it. The homes around this are beautiful manicured lawns. Great people have lived there for 20 or 30 years, watching that dead lawn, the horrible condition of the home, just hating the fact that it was sitting there un-purchased. And no one would buy it, because they didn't want to have the risk of going into a hearing and trying to get a variance. So it could have literally sat there up-purchased for years, bringing the value of the neighborhood down. But that's another great point, that someone had to buy it, knowing that it had a variance problem, and it was us.

Mary Hillberg – Thank you. You can have a seat.

Kelly Palace – Thank you.

Mary Hillberg – This comes back to the board.

George Bovell – I recommend that we approve the variance, as depicted on the survey.

Mary Hillberg – We have a motion to approve, as depicted on the survey. Is there a second?

Dale Young – I think there was a caution from the County that there is a hearing on the easement in October, that we should address this as being contingent on the easement vacation. Is that part of the motion, or not?

Mary Hillberg – There were two variances that this came under when it first came through. Could you help us with those?

Paul Body – There is two variances. The property is in a five-foot utility easement, also. And it's scheduled for an October 4th meeting. But I consulted with the attorney here, Christine, and she said this doesn't have anything to do with the variance, that if you approve the variance, and they didn't approve the utility vacate, it would still be in the easement.

Dale Young – I would second the motion.

Mary Hillberg – Make it more clear. I didn't understand. I'm sorry.

Christine Lepore – Right. If the easement vacating wasn't approved, it's still encroaching in the easement. Should there be a need to relocate it because it's conflicting with the utility easement, at some point in the future, then that would be an issue addressed at that time. So, again, that's another risk that the applicant would take.

Mary Hillberg – Would we be addressing that, or would...

Christine Lepore – No, you would not address that.

Mary Hillberg – So the two variances are – the first one is a four-foot from the side, and the second one is four feet from the rear. So there are two variances here.

Paul Body – Yes, that's correct.

Mary Hillberg – So we have a motion to approve, and a second. Is there any discussion? (no response)

Mary Hillberg called the question, and the board approved the variances, as stated above. The vote was 3:2, with Kusterer and Hillberg voting nay.

The meeting was adjourned at 2:15 p.m.