

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, April 15, 2009, in Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Vice-Chair, Mary Hillberg, presiding, to consider the following requests:

Board members present were:

- Mary Hillberg, Vice-Chair, District 2
- Fred Kusterer, Alternate, District 1
- James Rosasco, District 3
- Mike Cunningham, Alternate, District 3
- George Bovell, District 4
- Dale Young, District 5

Staff members present were:

- Rick Enos, Zoning Manager
- Christine Lepore, Asst. County Attorney
- Elena Scruggs, Land Development Specialist I

There were four regular members present, and two alternates. The four regular members, along with the alternate from District 1, voted throughout the meeting.

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

Rick Enos - Yes, ma'am. The Board of Adjustment is a quasi-judicial body, established by the Board of County Commissioners, under Chapter 62, Article II, Division IV, of the Brevard County Code. The Board of Adjustment is empowered to hear requests for variances to the Zoning Regulations, and the Sign Regulations, in Chapter 62, Article VI and Article IX. Pursuant to Section 62-254, Brevard County Code, any persons, 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. And you have two requests for variances on your agenda today.

Mary Hillberg – Thank you. George, could you please read the definition of a hardship, for the audience.

George Bovell – An undue hardship: A variance may be granted when it will not be contrary to the public interest, and where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary, and undue, hardship. The term “undue hardship” has a specific legal definition in this context, and essentially means that without the requested variance, the applicant will have no reasonable use of the subject 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 the landowner cannot yield a reasonable use, and/or reasonable return, under the existing land development regulations. The applicant must answer a variance hardship worksheet, with six questions. The Board of Adjustment will discuss these questions today, with each applicant who has requested a variance.

Mary Hillberg – Thank you, George. And I would like to address our Board members, applicants, and our audience, for a moment. The Chair is asking all Board members not to ask any questions while the applicant is making their presentation. Once the applicant has completed their presentation, we will begin Board questioning with the member who represents the applicant's district. When concluded, questioning will be opened to the full Board. I am 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 not be using a time clock for our meeting today. Instead, we are asking each speaker to 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 wishing not to verbally state their name and address may have the clerk – ask the clerk at the podium for an address card. Fill it out and give 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 Chair procedure? (no response) Seeing none, are there any questions from the audience about the Chair procedure? (no response) Seeing none, then we'll proceed. Our first order of business is to approve the minutes from our March 18th meeting. Are there any additions or corrections to these minutes? (no response) Seeing none, do I have a motion to approve?

Motion by James Rosasco, seconded by George Bovell, to approve the minutes from the meeting on March 18, 2009. The vote was unanimous to approve the minutes, as submitted.

DISTRICT 2

1. **THOMAS A. & SUSAN P. ENLOW** – request a variance of Chapter 62, Article IX, Brevard County Code, Section 62-3316 (b) (4) to permit a variance of 6 ft. from the required 15-ft. front setback for a freestanding sign. The property is zoned BU-2 and is described in **Section 35, Township 24, Range 36.** (0.80 acre) Located on the north side of Merritt Island Cswy., approx. 800 ft. east of Courtenay Parkway. (130 E. Merritt Island Cswy., Merritt Island)

BOA Action: Hillberg/Bovell – DENIED. Vote was 3:2, with Young & Rosasco voting nay. V-3290.

Warren Mattingly – My name is Warren Mattingly, with United Signs. My address is 2705 New York Street, in Melbourne, Florida. I'm representing Tom and Susan Enlow, in reference to the sign variance for their property on Merritt Island Causeway.

Mary Hillberg – Thank you. Do you swear and affirm that the statements you're about to give are true, as far as your knowledge?

Mr. Mattingly – I do.

Ms. Hillberg – Thank you. Continue.

Mr. Mattingly – What we're proposing is a sign not to go outside the boundaries of a parking spot that's already designated on the property. We've created a drawing that we feel that would best suit the tenants, the proposed tenants, which are roughly ten proposed tenants at this shopping center. And they're not always leased out, or some may take two spots, and won't need to be on it. But we're thinking in advance that if he leases it all up, there is possibility of ten tenants in there. And then, also, the minimum size that we would need to achieve that, and not go any higher – not higher, but go any bigger than that – I mean, we do have constraints that we want to keep inside of, and that's the spot where we designated it to be the best to display the sign, and also not to encroach on any of the other drive thoroughfare there. So, with that being said, I brought along some pictures that maybe would help visualize what we're talking about, and also a few letters from some of the past tenants that were in there, referencing the lack of a pylon sign to advertise their business. Would I give these to you, now?

Ms. Hillberg – You could give them to me, but they remain the property of the Board.

Mr. Mattingly – That's fine. Now, the way you approach this property, going west on 520, there is property to the east and west of this property we're concerned with. They have pylon signs, beautiful, and they're set back the proper distance. Unfortunately, his property is a little bit closer than those properties. And, taking into consideration driving west on 520, we decided to make it the minimum distance away from the building so that

they can still use the thoroughfare, which is – if a car was parked in that spot, then any vehicle, or any kind of traffic, would still be able to pass through there, and not, you know, have any kind of contact or, you know, being close to the sign, any other than normal. So that's why we chose that. And we wanted to put it in a specific place, where it would be less likely to obstruct a sign that's currently on the wall. We put it in like right in the middle of two bays, two difference tenants. Now, if you look at the – some of the pictures there, going west, you see kind of a progression of shots that I took. There's a little blue car there that shows about where the sign's gonna be. And it shows actually the parking – the parking lot – what we're talking about. Some of the those are going, looking east. But that blue car is going to be pretty close to where the sign would be. It might be a little bit west, one spot. But that shows that – and then, if you look from the west, looking east, you'll see – there's a couple of shots, where it'll show you, looking down that corridor, that that spot is – if we put it in that spot, it's not gonna be any different now than a car – a nine-foot car – some cars are bigger – some cars are longer – some cars are not – but a nine-foot car is gonna be the same as where that sign would be. So it's not protruding out into the drive, the thoroughfare, there. Also, there's a height restriction. It was suggested maybe we could go up above the parapet, and go back. But the building is roughly 15 feet high. The regulations say you can go no more than 20 feet high. That design is kind of what we came up with. I think the variance, really, is just for the setback. We would still have to meet all the County's requirements for the sign size and height. But the – you know, we're trying to get the minimum impact on that thoroughfare, as possible, and still be able to utilize the sign. I have, also – I'm not sure if you have pictures of the proposed sign in your package. Yes. There, again, the size of the sign is, you know, the most narrower that we feel that we could use. And that's, you know, subject to change. But it's not any different than, like I said, having a car in that spot. In some of the pictures, you can see - like I said, going west, it's not – the sign won't block the property to the west of them, 'cause you're moving, say, at 30-40 mile an hour. There's a picture that shows – I think it's the last one – going east, or going west from the east, that the sign - once you get past the big pole there, you'll see that the sign is out in the parking spot. But you're quickly gonna move out of that, and you'll be able to see the next sign to the west of him. Normally – I mean, I've been in the sign business 23 years here. A lot of those obstructions go by so quickly, when you're driving, you really don't notice any kind of obstruction, like from one sign to the next. The County justifiably says you have to be 50 feet from the next sign, regardless of where that sign is on their property. You can't be any closer, any further, closer, than 50 feet from the next sign. So that falls into that. Not that there is a place. There is absolutely no other place on that property that would make it, you know, utilize it as best as that place where we're putting it. I think that pretty much sums up what I had, you know, the ideas that we had for it.

Ms. Hillberg – All right. Now, since I happen to be the representative for District II, I'll go ahead and start the questions with you. When was this property bought by the owners, the current owners?

Mr. Mattingly – I think it's – I'm not real sure, but I think it's probably five-six years ago, somewhere in that neighborhood.

Ms. Hillberg – I see.

Mr. Mattingly – I knew Tommy before he had it. And I think it's probably five, maybe five or six years ago. And he's done – he's improved it, tremendously, from what it was. He spent quite a bit of money, doing the fascia, and got tenants in there. Unfortunately, he's heard from a lot of them – we do have some documentation on it – that just no signage - people – it's so close to the road, you think it would be visible. But, you know, you're looking like this. It's kind of an active area. There's stop signs coming up. And sometimes it's a curse to be that close up, especially if you want a sign out front. But...

Ms. Hillberg – I see. And for everyone's comfort, can you give us the definition of a pylon sign?

Mr. Mattingly – A pylon sign is a structure that's generally supported by posts that's up off the ground. A monument sign, you would maybe have like you see churches. You might have brick underneath it that's maybe three or four feet off the ground. A pylon sign has a post...

Ms. Hillberg – That supports it.

Mr. Mattingly – Whether it has a – yeah, a support post – whether it's covered or not.

Ms. Hillberg – O.K. And how far – how high would this sign be? How high?

Mr. Mattingly – Twenty feet. The building is five feet – 15 feet high. The sign, we're proposing...

Ms. Hillberg – Would be five feet higher.

Mr. Mattingly - ...would be just a little higher – five feet higher.

Ms. Hillberg – And these pylons underneath the sign would be how long, before the sign itself started?

Mr. Mattingly – I think it's eight foot. Yes, ma'am, it's eight feet high. And we set them in a little bit, because down below it, you know, that gives a car a little bit more. I mean – so, actually, the – you know, below the sign would probably be ten feet.

Ms. Hillberg – All right. I have no further questions, at this moment. Who else would like to speak? Dale.

Dale Young – Yeah. Rick, this doesn't get into the parking spaces, does it? It's 17 parking spaces now.

Rick Enos – It looks like it would encroach into one parking space that's existing there; however, I do understand that the owner does have plans to add parking in the back. And, nonetheless, all that parking requirement would be applied at the site plan stage. So they're gonna probably need to do some reconfiguration of the parking, anyway. And my guess is they'll take the location of the sign into account, when they do that.

Mr. Young – Yeah, I see the picture of the van. And when the van's parked in there, no one's going to get around the back end of it. So it looks the rear-end parking would be a big improvement. I don't have anything else.

Ms. Hillberg – Does anyone else have any further questions? Yes, Mike.

Mike Cunningham – One question on – I'm noticing on the diagram of the proposed sign – and you've got a total dimension of that thing, as far as the vertical, is 23 feet. Is your client willing to modify that to come in compliance with the 20-foot maximum? At least, if I read it properly...

Mr. Mattingly – I think there might be a slight mistake. That three foot is really not included in these dimensions. It's ten, eight, and two, maximum.

Mr. Enos – It looks like the three is part of the ten.

Mr. Cunningham – O.K. All right.

Mr. Mattingly – Yeah, the County will – I mean, 20 feet is – that's it, not a quarter of an inch over. So yes, sir, we will maintain their regulations.

Mr. Cunningham – Thank you.

Mr. Mattingly – You're welcome.

Ms. Hillberg – Does anyone else have any questions of this applicant? (no response) All right. Thank you. You may sit down. Yes.

Mr. Cunningham – Before we go any further, I think I have a procedural inquiry of the Chair.

Ms. Hillberg – Yes.

Mr. Cunningham – We have a board of five people. We have six members, including alternates, sitting. I think we need a ruling for the Chair as to how this is gonna work out, when we go to vote.

Ms. Hillberg – Are there alternates who have their regular district members here? Is your regular district person here?

Mr. Cunningham – No. I'm an alternate.

Ms. Hillberg – You're the alternate. Could you help us, Rick?

Mr. Enos – Yes. The alternate does not vote, if the regular member from that district is present.

Ms. Hillberg – So we have one, two, three, four, five, six people here.

Christine Lepore – I believe Mr. Rosasco is from District III.

James Rosasco – Yes, I am.

Ms. Lepore – Yes. So you would not be voting.

Ms. Hillberg – So Mike would not be voting?

Ms. Lepore – Correct.

Ms. Hillberg – That's correct. O.K. Is that all, Mike? Thank you. Audience – is there anyone in the audience, who would like to speak in favor of this variance? (no response) Seeing none, is there anyone in the audience, who would like to speak in opposition to this variance? Sir, could you please come up to the microphone?

Gary Toenjes - This may not be the proper venue for exposing this, or talking about this. But my name is Gary Toenjes, and I'm the Treasurer of Cape Shores Condominium. And Thomas and Susan Enlow own a unit in Cape Shores Condominium

Ms. Hillberg – Thank you, sir. Do you swear and affirm that the statements that you're going to make are true, so you say?

Mr. Toenjes - Yes.

Ms. Hillberg – Thank you. Go ahead.

Mr. Toenjes – O.K. We – the Enlows, this time, are 25 months – I'm here to speak on the fact that they're not very good corporate citizens, very good neighbors, or very responsible property owners. And to grant them a variance seems kind of strange to me, when – I know they're rich and powerful, have a great mansion, but we

have people, who are on fixed incomes, paying more, because the Enlows are not paying their dues. At the present time, they're over \$10,000 in arrears in their maintenance fees.

Ms. Lepore – Madam Chairman, does this relate to the property that is the subject of...

Mr. Toenjes – It's relating to the people who are trying to get the variance.

Ms. Lepore – This doesn't relate to the property that they're seeking the variance upon, though.

Mr. Toenjes – It's sort of a warning to their fellow neighbors, and other property owners, that...

Ms. Hillberg – We need to keep on course with this particular item.

Mr. Toenjes – Well, I agree...

Ms. Hillberg – So do you have an objection to this signage?

Mr. Toenjes – I do, in the factor that they are not good – I mean, they're renting the property out over \$1,000 a month and refusing to pay their maintenance fees. They're deadbeats, is what I'm saying. And I'm saying...

Ms. Lepore – Madam Chairman, I'm...

Mr. Toenjes – Why should...

Ms. Lepore - ...not sure that this fits in the standard...

Mr. Toenjes - ...we be allowed to give them the variance?

Ms. Lepore - ...for granting a variance. And it's...

Ms. Hillberg – Yes, you're correct.

Ms. Lepore – It sounds like it's...

Ms. Hillberg – Sir, I'm sorry that we have to only address what we're considering under this variance, and that is the signage.

Mr. Toenjes – Correct. I agree there. So...

Ms. Hillberg – Not personalities, or past performance, or what anyone else has done, just the signage.

Mr. Toenjes – So to speak here does no good. Right? That's what you're telling me. I've got no recourse in this venue.

Ms. Hillberg – We have a narrow focus of what we need to speak about, and it is the variance itself.

Mr. Toenjes – Well, I just came down to make sure you knew what kind of corporate, and neighbors, they are. O.K.?

Ms. Hillberg – Thank you, very much.

Mr. Toenjes – Thank you.

Ms. Hillberg – You can be seated. Is there anyone else who has a – any – would like to speak, regarding this variance? (no response) Seeing none, we'll bring it back to the Board. Oh, before we do that, I'd like to note that there is a – one letter of objection to this item. And I'll read the letter. It's dated April 15, 2009. It is to Brevard County Planning & Zoning Office, from Ralph Perrone. "Regarding Thomas A. & Susan Enlow request variance of six feet from required 15 feet for a freestanding sign. I oppose this variance, due to the size of the sign. Please see the attached drawing, 20 foot tall and nine feet wide. I feel the nine-foot width would bring the freestanding, two-pole sign, too close to the sidewalk, and may not leave enough room for UPS-type delivery trucks to drive down the front of the building, without the trucks driving on the sidewalk. A suggestion I made to Mr. Enlow was maybe to go with a single-pole sign, like we did at the building next door, and maybe build the sign less than nine feet wide. Thank you, Ralph Perrone." And he includes a diagram of the Enlow variance request. That's the only letter that I have, I believe. Would the applicant like to return to the mic? You can make your closing statements.

Mr. Mattingly – Yes, thank you. The – I mean, that's an argument, because of the property, but that is not gonna be – I mean, in my opinion, if there is a car parked anywhere in there, it's not gonna be any different, and it would have to be a short car. I mean, the sign is not gonna be any different than a car parked in that spot. And we kind of put it in the middle. So it's a difficult property, at best. I'm not gonna say that it's – you know, I'm not sure how people pull in there. I've got a big bucket truck, and I've got a crane I put in there. I put up most of his signs. It's challenging, although there is an option, and that's to go in between the two buildings, which I think most of them do. They – you know, they're pretty sharp. They do that for a living, the UPS or delivery, 'cause there's better places – I go around the back. I never come in the front. I go around the back, because it's so easy, if I'm going east. West, I'll pull in there, but I pull in back, you know, between the two buildings, and I park – you know, I got a 100-foot crane I parked over there. My opinion is, it is close, but if there's a car there, it's not gonna be any different than having a sign there. I mean, that's kind of why we designed it. We thought all that out, before we put together a package. And if it means not getting a variance because of one foot, or so, then we may reduce that by one foot. But if you divide nine feet in half, and then you allow for the retainers, and the structure of it, that becomes almost three and a half – almost, well, four feet, six inches. And it's – you know, it gets to be where it's so small, then it's not gonna be as advantageous. But he needs a sign. I strongly believe, with the tenants that I've talked to, and heard, out there, and, you know, the ones that have already written, he needs a sign, I mean, to make it usable for someone to move in there. Did I answer your question, or did I go around the block?

Ms. Hillberg – You summed up your request, very well. Thank you, very much.

Mr. Mattingly – Thank you.

Ms. Hillberg – So we're now closing to the public hearing for – in terms of the public, and to the applicant, and opening it up to the Board. I ask if anyone else has any comments or questions. I have a few, myself. Dale.

Mr. Young – Yeah. The point that was made by Perrone, I think it does show on the one picture that with the van, probably a 12-foot van, parked in there, there's – it's almost impossible to get around behind that vehicle, even with a car, because it's almost sitting back on the sidewalk. And I do think that is going to be a problem, if the trucks are allowed to come in that front way, even the FedEx, or any large box van, because if that's – we've got 18 feet. In fact, there must be a variance on this from some previous time, isn't there, Rick? Have you seen any?

Mr. Enos – I'm not sure. I would also suggest it's possible that that building is so old that it precedes the Zoning Regulations. You know, prior to 1958, there were no setback requirements.

Mr. Young – Yeah, to me, there would have to be some restriction on what traffic went through there. The sign is stuck out front. I understand the need for it. You only have so much space. It does need to be wide enough

to put the tenants on there. You've got ten tenants here, which that's a lot for those front parking spaces. But just my comments. We'll see where it goes.

Ms. Hillberg – Does anyone else have a comment? (no response) Then I would like to present some of my thoughts. I think, in looking at the six questions on the variance hardship sheet, "The special circumstances and conditions exist that are not applicable to other structures." And these circumstances are applicable to all the structures that are there; however, the – as Rick has stated that this building is closer. But all the requirements are the requirements of everyone who has – who have buildings there. The safety issue, I agree with Dale, is paramount. We have a sidewalk that is used in a very, very, very congested, busy area, where the cars are going pretty fast. And, too, some of those pictures really demonstrated it, I thought, very well. Looking down the corridor of space between the buildings and the sidewalk, there is just that one corridor that keeps vehicles off the sidewalk, that prevents them from being, Heaven forbid, any accidents. But I think safety is an issue, if you are going to put signs this close to the sidewalk, and that would impair traffic, as well. Changing traffic in front of that one building might be a complex – more of a complex issue, I think. On number three, the question number three, it says, "Granting this variance will not confer any special privilege to this applicant, compared to the other identical zonings." And the – I think that probably, in my mind, because I've gone to the property, and I looked at it, and I've lived here all my life, and I've seen it, a large sign will definitely be distracting, distracting to drivers, and distracting to all the other businesses there. I don't think that that is necessarily true. The literal – number four, "The literal enforcement of the provisions of this chapter will deprive the applicant of rights commonly enjoyed by the other properties." I think, on the east end of this building, there are – there is an insurance company, and they have very large letters on the front of their building. And its says "Insurance". And they're very large. In fact, that caught my eye, before I realized that that was your – the building that we were looking for. I kind of don't really feel that that's accurate that you – that literal enforcement of not impeding, not being too close to traffic, not being too close to the walkway, and not impeding the parking lot would deprive your – the applicant of having the same visual response. In fact, the closer you are to the road, the more visually, usually, action you get. Number five, "The variance granted is the minimum variance that will be possible to make reasonable use of the land, building or structure." And I don't – in my mind, I don't see that having a large sign in the parking lot gives you – or not having one - reflects on the reasonable use of the property. This is a strip mall, and it's been – the façade has been redone. And it looks like it's been renovated. And it looks like a very attractive place to have businesses. And the size of the insurance letters – I mean, each business, if they put their sign above their business, it would seem to me that would be a very – it would be equal time, if not more. Going down that congested area, I don't read signs. I look at the traffic, because everybody's stopping and turning. And I consider that sort of, in a way, a safety issue, as well, large signs that are so close to the road that you feel that you need to pay more attention to them than you would, normally. And number six, that, "The granting of the variance would be in harmony with the general intent and purpose of the chapter, and that such use variance will not be injurious to the area, and detrimental to the public welfare." Again, I agree with Dale that this is probably a safety issue. And I don't think that that item is true, either. So my feelings are that, unfortunately, since they bought this property several years ago, I'm sure that they are aware – oh, before I go, Rick, could you tell us when this section of the chapter was enacted? I mean, how long has this been? Did it – was it just done?

Mr. Enos – It looks like the sign regulations go back, oh, probably at least 25 years. They've been amended from time to time, '97, '98, '99, the whole sign section. But, in general, that provision's fairly old.

Ms. Hillberg – So you've been keeping signs away from being too close to the road for quite some time?

Mr. Enos – Yes...

Ms. Hillberg – Thank you.

Mr. Enos - ...for as long as I can remember.

Ms. Hillberg – So, in my feelings – to finish up, my feelings are that for these reasons, this may not be an optimal structure. Does anyone else have any comments? Yes, James.

Mr. Rosasco – Was there any other agency from Merritt Island that had some sort of review, or input, about this particular applicant?

Mr. Enos – Yes. The Merritt Island Redevelopment Agency did review the application, and it was approved – recommended for approval.

Mr. Rosasco – They recommended approval?

Mr. Enos – Yes.

Mr. Rosasco – And the parking that they have now, the parking spaces in front, that's all in compliance?

Mr. Enos – No, they are not in compliance to current code. Current code requires 20-foot long parking spaces. Those spaces are not 20 foot long. So that parking layout in the front is nonconforming, which means it doesn't meet current code. But since it's been established prior to code, presumably, then they can continue with that layout.

Mr. Rosasco – So the parking, as it is right now, is basically grandfathered-in, acceptable?

Mr. Enos – That's correct.

Mr. Rosasco – Well, then I can certainly understand the gentleman's argument that the sign takes up no space than a vehicle would. So that's my observation. Thank you.

Ms. Hillberg – Does anyone else have anything to add? Dale.

Mr. Young – Yeah, I think Mr. Perrone does sit on that Redevelopment Board, MIRA. I know he used to, if he's not there now. So...

Mr. Enos – I know he used to. I'm not sure if he does, anymore.

Mr. Young – My question would be, what's the sign company think of that one pylon suggestion?

Ms. Hillberg – You can come up, Mr. Mattingly.

Mr. Mattingly – I can put it on one pole, not a problem. And I can even – we can even cut it to eight foot. I mean, it's – I can – we can cut it to eight foot and, you know, move it a little bit away from it, I mean, keep it at least a little bit out there. I think a suggestion, most of the drivers that deliver, they don't come in – that particular property, they don't come in the front door. They got the whole back parking lot. It's huge back there. They got an alleyway, and driving. And, actually, the property next – I think Perrone has parking behind his. So that's kind of set up for the commercial deliveries are usually in the back. I mean, I'm not gonna say that nobody comes up there, but generally. And I can put in on one pole, and we could reduce it a little bit.

Ms. Hillberg – Thank you, very much.

Mr. Young – Well, it would not be my intention to have any business denied a sign of some sort. So my two alternatives would be the one pylon, or a sign that said no trucks or vans. But I think the business, regardless of what's been there before, would be eligible for a sign that meets Code. If it goes to one pylon, I would think

that you'd have to keep the bottom of the sign above the 11-foot height to keep the trucks from clipping off the corners. But that's my only comment, now.

Ms. Hillberg – Is there a motion? (no response) May I pass the gavel? I make a motion that this would be denied, due to – this application would be denied, due to the hardship variance worksheet number one, number three, number four, number five and number six, as well as the safety issues that we have discussed.

Fred Kusterer – Hearing a motion, do we hear a second?

Mr. Bovell – Second.

Fred Kusterer – All those in favor, show by the sign of “aye”. It passed unanimously. Oh, I'm sorry. All opposed?

Ms. Hillberg – That's two opposed. I voted “aye”.

Mr. Bovell – I voted against it, so it's four to two, three to two.

Ms. Hillberg – Three to two. Should we have hands?

Ms. Lepore – He voted for the motion.

Ms. Hillberg – He voted for the motion.

Ms. Lepore – O.K.

Ms. Hillberg – Which was to oppose it.

Mr. Enos – The motion was to deny.

Ms. Hillberg – Yes.

Mr. Enos – And the vote was three to two.

Ms. Hillberg – Yes, that's correct. So, I'm sorry, Mr. Mattingly, this has been denied. Thank you for coming.

2. RICKY A. & KATHLEEN L. JOSLYN – request variances of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-1102 to permit a variance of 16 ft. from the required 50.25-ft. (67% of required lot width) chord length between the side lot lines at the intersection with the front lot line. /2/ Section 62-1102 to permit a variance of 23 ft. from the 75-ft minimum lot width at the building setback line. The property is zoned RU-1-11 and is described in **Section 30, Township 24, Range 37**. (0.21 acre) Located on the south side of Morningside Dr., approx. 0.196 mile east of Banana River Dr. (1705 Morningside Dr., Merritt Island)

BOA Action: Young/Bovell – APPROVED. Vote was unanimous. V-3291.

Rick Joslyn – My name is Rick Joslyn. This is my wife, Kathleen Joslyn.

Mary Hillberg – And your address?

Ms. Joslyn – 1705 Morningside Drive, Merritt Island, Florida.

Ms. Hillberg – And do you swear and affirm that what you're about to say is the truth, so much as you know it?

Mr. Joslyn – Yes.

Ms. Joslyn – Yes.

Ms. Hillberg – Thank you. Proceed.

Mr. Joslyn – In 2004, we purchased this property, with our life savings, as a buildable piece of property. We intended to build on it. It was our dream to live on the water. Some medical situations came up with my family. We needed to stay close to them, so we, at that point, needed to sell the piece of property. This is when the housing market went down. Up to that point, everything was fine, and buildable, until we got a buyer in last December. As he went through the proceedings to buy the property, another – the survey was recertified, and checked over again, and come up, the property was unbuildable, due to the chord length. And I don't know exactly what the chord length means, but I think it had to do with the road that was put in.

Ms. Joslyn – What happened – I had just gone to the County – I mean, the office. I wanted to get a little more information. That's why I ran out. We bought it in 2004, in May. About a year later, we came back over. It was after the summer, 'cause that's when my son had surgery. So we came back over, 'cause we needed to sell it. At that time, we realized that, for one, that we didn't realize that we – we thought we owned the whole piece of property that was there. There was another house, building on what we thought was our property, because when it was sold it us, if you'll go by the MLS, it listed the whole back piece of the property on the water. At that point, we were awakened to our first set of problems. So the first problem was that it was real small in the front. We live on a cul-de-sac, and we're the – there's one here. There's one here. There's one here. We're this one. So we get this pie shape. So we're real narrow in the front. Our on survey, it showed that we were – what our lengths were. But it was a buildable piece of property, when we went to sell it. But people were asking, "Is it a buildable piece of property?" So what we decided to do was get a plot plan done by septic engineers. So we had a plot plan done. And according to the survey, from our original survey, from when we purchased it, and what's on our title insurance policy, our deed, they matched in description that it was a buildable piece of property. And so, at that point, we said, "O.K., we'll put it back on the market now. We're not in question that it's a buildable piece of property." So we put it back on the market, and we had a potential buyer in December. And he went and had a survey done on the property. Just the month before that, in November, they constructed the road. And all everybody – just about everybody on our street was in favor of doing the road, as long as they were going to make it a straight road, as opposed to a road that would curve, because there was a ditch on the north side. And the north side of the ditch is where we were hoping to get three to six feet, which wouldn't encroach on the seven properties that are on our side. And there were so many letters, and meetings, that were done. We attended the meetings that we were asked to attend. And we thought, when they put the road in, that it would – that it was supposed to go to the north by three to six feet, where it wouldn't encroach on our property, where they had told us – Mel Scott, when I even called him, he said, "We made sure that your property was taken into very much consideration, because we know it's small, as it is." And so, anyways, there was a – the road went in, in November... (tape changed) ...The gentleman that was gonna purchase our property had a survey done, 'cause he was very interested in it. And he also had – went to the septic department to make sure that if you're gonna build a house, that they're gonna make sure your septic's gonna fit on there, in the first place, 'cause we have to have septic or drain field. And, if you could see on the survey there, it's pretty small. But the septic - Environmental approved of a septic permit. And so now, he was looking into building. And when he went over to Zoning, he spoke with a gentleman, Paul. And he had said, "What you need to do is, the owners need to get two variances on this piece of property." The one in question – two of them – but the one more in question, now, is – with this new survey - is the front piece of property, 'cause the back may have required a setback, if you wanted to build a little bit closer to the water. Instead of a 25-foot setback, it would be a 15-foot. So that was – his opinion was that we needed two variances. So we took it off the market again, trying to think, "O.K., we got to go for two variances." It was the first time, when we went in last month to apply for this variance, that we saw that survey, though. We couldn't understand why the deal fell through. And then when we saw the survey, how it was so different from the

original survey, we understood where his questions were. And the potential buyer was worried about buying it, not knowing if he's gonna get those variances. And, at this point, it's – there's a letter I'd like to give to you. This is done from our neighbor on the street. His name's John Pulverenti. And he bought, and built, on there, and has gone through all the Planning & Zoning, Building, all the areas that he's had to go through to get there. And I'm not sure – it's a joke, when people hear Morningside Drive, because everybody knows about that street, it seems, when you go to all the different Planning, Zoning, Septic, because it really has been a nightmare. And what happened was, in 1986, before we bought the property, it was a full property, a full, I believe, half acre, or so. But the person, prior to it, split it up. And when she split it up, that created the problem, 'cause she didn't – it wasn't like it was split up, and it went through here and got permitted, or she came – she went and just divided the property. This letter here, that I'm gonna give you, is from Mr. Pulverenti, who has done so much research, and had attorneys, because he wanted to make sure that he was covering his property. And he tried to fight for us on the street, as well, to get things done because of the way it was configured, the whole road. The person that it does mention in here – on here – is here to oppose us. And when I tell you that, it's because I believe he lives – he's right next to us – he lives next door to us – but that's where another part of the problem stemmed, because he was the first house on that street. And in order for him to get his building permit, at that time – I'm gonna give you the letter. I'm sorry.

Ms. Hillberg – These letters stay with us. Thank you.

Ms. Joslyn – In order for us to – in order for him to have built, from my understanding, in looking at our – going through our archives with that other department over there, that – and St. Johns River Management – he had to basically put the road in the way they wanted to put it in, at that time, to be able to get to his house. He's at the very end of the point. And, at that point, it was a curve. It created a curve in the road. It wasn't a straight line. And when they did the road in November, they were supposed to go along the straight line. And if you could see – I don't have another copy of this. But their proposed road, you can see there's a curvature. And the curvature was what we are fighting against, was not to have the curvature. It was supposed to have the straight road. But the bottom line is, there's been a series of events that have happened that we did not create. If we had know about all the problems, beforehand, we would have never purchased the property. It wasn't until after, and we see, and then talked to all the neighbors, going through what you would just normally do when you build, going through the permitting. But seeing that there were so many problems, issues, it was one step at a time. And we all went through them together. I don't know where we should have fought harder, or stronger. I think we've been trying to do the best we can do, with the knowledge that my husband and I have. And this would be a very big hardship, if we couldn't sell the property, or make it buildable. We'd love to make it buildable with the variance, because it was buildable before the new – before the road went in. And we just need that front part, that front variance part, because, with the plot plan, it shows - even with them taking that part of the road, our plot plan showed that you – where the house structure would be, and what the septic area was. I have a copy of that, if I can give you the plot plan.

Ms. Hillberg – That would have to stay with us. So if you need it - now, we have this. Is that what you were – is that what you have?

Mr. Joslyn – That is it, with the proposed building on it, yes.

Ms. Hillberg – Right. Right.

Ms. Joslyn – Is that it, the plot plan?

Ms. Hillberg – Yes.

Mr. Joslyn – Yes.

Ms. Joslyn – We gave that to – O.K., we gave it to...

Ms. Hillberg – Yes.

Ms. Joslyn - ...Cindy, when...

Ms. Hillberg – Right.

Ms. Joslyn - ...we did that. O.K.

Ms. Hillberg – And these yellow lines show where your issues are. These are the two variance areas.

Ms. Joslyn – O.K.

Ms. Hillberg – Is that correct?

Ms. Joslyn – Yes. And our – the two neighbors next to us, Len Phillips, and Mr. Feliciano – unfortunately, he passed away, just recently – but his lot – their lots are configured – ours is odd-shaped, but it's just the front area. We still have the same type of length, or configuration, that would make it buildable. And I don't understand where...

Mr. Joslyn – What my wife's trying to say is that the land itself has not gotten any smaller, where the property and the septic tank would go. It has to do with the chord length in the front, which wouldn't be – it's just a technicality, at this point. It's not a...

Ms. Joslyn – From our understanding.

Mr. Joslyn – From our understanding. Not where the building itself would be going.

Ms. Hillberg – All right. O.K. All right. That's all you have to say. Let me see if we could have the – this is, again, in my district, so I'll start off the questions with you. You said you bought this property in what year?

Ms. Joslyn – May, 2004.

Ms. Hillberg – Two thousand, four. And could I ask, Rick, is this – was this road – when was this road put in that put that amount of curve on there?

Rick Enos – I don't know when the road was built; however, it does appear that the subdivision actually kind of ended somewhat to the west of this parcel. And then the lots east of that line were divided by metes and bounds. And so, you know, it just appears that it may have been done in phases, and it may have been a dirt road. And I'm not even sure the improvement is in the right-of-way. It's just a very unusual development.

Ms. Hillberg – I see.

Mr. Joslyn – It was a dirt road, until just this past December, or January.

Ms. Joslyn – No, it was October. It's been a dirt road.

Ms. Hillberg – I see.

Ms. Joslyn – It's been that way since Mr. Phillips built his property. And then the road was put in. But, again, it's the – it has taken – because when we went out to the property, just before we came, you could see where the stakes...

Mr. Joslyn – Where they put the metal rebar in, to show your property, is now underneath the street.

Ms. Joslyn – Underneath the street.

Ms. Hillberg – I see.

Ms. Joslyn – And that – we didn't realize that we had done anything to give up that piece.

Ms. Hillberg – I see. Thank you. I have no more questions. Does anyone else on the Board have a question of these applicants?

Dale Young – Did the previous seller – did he make arrangements with the County on this road? Do you know? Is this – someone must have sold some property to the County.

Christine Lepore – I'm not sure what your question is. Who put the road in? I don't know that the County put the road in. This is an unpaved road. I think it was a private party.

Ms. Joslyn – Brevard County Transportation Engineering.

Ms. Lepore – As an MSBU?

Ms. Joslyn – Len would know who did it. I don't know. What is it?

Ms. Lepore – As an MSBU project? Does that sound familiar?

Ms. Joslyn – It sounds – yeah. Yes. We just got the bill for it. I don't remember.

Mr. Enos – And, of course, they would have been interested in the road, not necessarily the lots next to the road. So, you know, this goes back, I believe, to the problem we've struggled with before, where anyone can go to the Clerk's Office and record a parcel in any configuration they want to, regardless of whether it is consistent with the County Zoning Regulations, or not. So it appears that that did happen in this case. And that lot, in that configuration, my guess is, has never been consistent with the codes. And, you know, these folks purchased a piece of property that they were not able to build on. So, you know...

Ms. Joslyn – When – also, when it was originally planned, that neighborhood, the properties ran this way, also. So when they went to redo that neighborhood and get St. Johns to – or another developer go in, the properties changed this way, now running north/south, where they were east/west before. It's been just a mess of development. But it was something that we had no idea of what was happening, until...

Ms. Hillberg – Thank you. I understand. Does anyone else have any questions of this applicant?

George Bovell – Yes. What is the total square footage of your lot?

Mr. Joslyn – It's 0.29 acres. I don't know what the actual square foot is.

Ms. Joslyn – According to our title issue, title policy, warranty deed? Is that what you're asking?

Mr. Bovell – Yes. If the lot was measured...

Ms. Joslyn – The description is the same as the deed – on the survey.

Mr. Bovell – I just wanted to know the square footage of the land that you own, other than just the dimensions. I tried to figure that out today, but it's kind of unusual-shaped. And it just...

Mr. Joslyn – I know the one piece that you have shows the square footage of the proposed building, but I don't know what the square footage of the whole property would be.

Ms. Joslyn – Where would we find that on our survey, our paperwork? I didn't know that was a question...

Mr. Bovell – Well, I'm not saying you (unintelligible) the survey. I used to see it on some surveys, but I didn't see it here. Because it does matter, because, in the Code, it says what the minimum square footage should be for the – that zoning.

Mr. Enos – The survey does show 0.29 acres, which is, you know, more than a quarter acre. So it's probably somewhat over 10,000 square feet. The size is adequate for the Zoning Code. It's just a matter of...

Mr. Bovell – That's what I'm getting to. Yes.

Mr. Enos – Yeah. The size is not the issue. The issue is that narrow width, as those two lots – two lot lines converge at the front.

Mr. Bovell – So they've got enough land to meet the zoning requirements.

Mr. Enos – That's right.

Mr. Bovell – He does need to figure out a way to get his use of it.

Mr. Enos – No, I think the lot's plenty big enough to build on. It's just a matter of the width at just the front.

Mr. Bovell – Thank you.

Mary Hillberg – Is there anyone else that has a question?

James Rosasco – Yes. Rick, would you mind walking through exactly what this variance is, the arc, or – it does sound rather technical.

Mr. Enos – It is. There's actually two width standards for a lot, where the lot lines are not parallel. There is a width standard at the street. And the chord is just simply the distance, the straight-line distance, between the two corners on the curve. And then the second width is the width of the building setback line, which is 25 feet back from the street curve.

Mr. Rosasco – So a lot that has a very small angle, as it meets the street, has to be very, very deep in order to become buildable.

Mr. Enos – Not - well, it depends upon the required lot size. But, yes, that is the case, often. Yeah.

Mr. Rosasco – Thank you.

Ms. Hillberg – Any more questions? (no response) O.K. You may have a seat.

Mr. Young – Let me...

Ms. Hillberg – Excuse me. I'm sorry. Dale has one more.

Mr. Young – But we have no other problem here with setbacks, the way this is situated on the lot.

Mr. Enos – Yeah, that appears to be correct. We don't have a setback issue on that proposed residence. It's only the lot width at the street, and 25 foot back from the street.

Mr. Young – And do all these lots have the 25-foot public roadway utility easement? I don't see how that could be possible.

Mr. Enos – I don't know.

Mr. Young – O.K.

Ms. Joslyn – I have a – the road, when they put it in. I don't know if that'll help you, 'cause I – but people, four houses down to the left of us, did lose some of their easement. It became a roadway, unusable at that time, when they did the road. And that's something that we didn't realize that that could hurt us, at that time, if it has hurt us. But it's not what we would build on.

Ms. Hillberg – All right. You may be seated. Thank you. We have no letters on this item. Is there anyone in the audience who would like to speak for this application? (no response) Seeing none, is there anyone in the audience that would speak against this application? Please, come up.

Howard Phillips – My name is Howard Phillips, and I live at 1725 Morningside Drive, which is directly east of the property under question.

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

Mr. Phillips – I do.

Ms. Hillberg – As far as you know. Thank you.

Mr. Phillips – My wife says I ramble, so I wrote this. And then I'll answer any questions, after it. It might shed some light into the problems that they're having. Just a little bit of history. All eight of the lots on the south side of Morningside Drive, at one time, were determined unbuildable. A number of concessions had to be made to change that. I personally worked the engineering, the owner financing and the construction, along with other permitting issues, to build the road, with the original lot owners. To this day, I still have responsibility for the St. Johns Water Management permit, and for the road, and all the individual swales. I've been working with St. Johns for the past several years, trying to ensure that the swales on the property are built correctly, and that the – and trying to turn the swales back over to the owners, and the County – the property owners and the County. Let me just stop real quick. In order to put the road in, the right-of-way for Morningside Drive was only 35 feet. The ditch that's to the north, that meanders east/west, took 15 feet out of the right-of-way. So, in order to have a 50-foot right-of-way to meet the zoning requirements, all property owners were required to give up 25 foot on the north side of their properties to give the 50-foot easement. And that was a road and utility easement on the north side. And that was all eight properties on the new section of the road. In 1998, I owned all four lots on the east side of Morningside, which was 105, 106, 107 and 108. And I have, just so you know exactly what I'm talking about, this. And I own the four lots at the end. They're odd-shaped lots. I went to buy one of them. The existing owner says, "Well, I'll make you a deal. You can buy all four." Sounded like a good deal, to me. I bought all four and then proceeded to find the issues with the road. In order to make these lots buildable, I grouped 105 and 106 together, even though they were individually platted, you know, with the public records. But I grouped them together. And I built on 106,107, on the east side. And I sold 105 and 106, together, on the west side. Because of the easements that had to be given up in order to build the road, that was the only way that that could be built. In retrospect, I should have put a - deed restrictions, or something,

on there so that they couldn't be split back apart. And what's happened is, Lots 105 were separated. During the permit process, again, it showed the four lots, two and two, all four lots was two buildable lots. And they were linked together to ensure at least two houses could be built. I built on 106, 107, and then sold Lots 106 to Carol Bates, like I said, with the clear understanding that the two lots needed to remain together in order to be buildable. Unfortunately, she sold them separately. And a series of buyers have come and gone. And they've run into these same problems, again and again, with the setbacks and the easements that have been, as they had said, from the beginning of time, on this road. Each property owner had his own problems with the road, with the canal, with the property. So everyone's had to go through these same problems. At the time, Carol had hired an engineer to demonstrate that the on-site swale limitations could be worked, and was able to convince the County, and the St. Johns, that 105 could be buildable. And she was able to sell the lot. When the contractor began building the house on 105, they ran into a number of setback problems. And after they got started, they required additional variances. And one of the variances actually puts the road into the right-of-way. And that is shown on this drawing here.

Ms. Hillberg – May we keep this? Thank you.

Mr. Phillips – The – but the lot was just too small. Variances for – I believe variances for septic, and other things, has to take place to make that lot buildable. And now that 106 is actually smaller than 105, and an odder shape, the problems associated with 106 are compounded, now that it's no longer tied to 105. All the issues, I believe, should be addressed at once. Any variance, a partial variance, does not address all the problems. One of the biggest problems that – I had a list of them here. I'll rattle them off, and then I'll come back. But the major problem here is there is an easement for the road – that's one – which led to the distance. But there's also on-site swale easements, under permit to the St. Johns Water Management, that I believe has not been taken into account. And that needs to be addressed. You know, it's important to note that the lot is up for sale. And I can appreciate the problems that the owners have. But it's masquerading a lot size, and issues here, to someone else. There'll be someone else before the Board in the next owner. And I eventually - or whoever wins, or doesn't win - I'll eventually live next door to them. So I feel an obligation to bring all this out into the open. The lot, as they said, is located on the cul-de-sac, which pushes it towards the canal, and the (unintelligible) further – is further reduced by the 20-foot easement on the road. And that's gonna – that's the variance ahead of you. The properties require septic tanks, large drain fields, based on the house that would be built. The septic tank permit size would be based on the square footage, and it requires a minimum of a quarter of an acre. And I guess that one's been satisfied. The St. Johns permit, number 4209-2759AN-ERP, currently requires on-site storm water swales on all eight of the lots. Property easements were required to ensure these lots were built properly, and maintained. All these original easements are documented in quit claim deeds and filed, along with the road and utility easements, with the public records. Lots 105 were treated as one property in the St. Johns permit. When 105 was separated, sold, and permitted for the house, the permit issue was raised to the owner, at that time, that she was in violation of St. Johns permit for the new on-site swale configuration for 105 and 106. And she's never satisfied that issue. And that's one of the reasons I still have the open permit to build the lot, with – not the lot, but open permit for the road. I've had it for – since 1999, almost seven years. All building setbacks must take into account these on-site swales, septic tank, drain fields, and the setbacks from the canal. And based on the – when I put my septic tank in, you had to be so many feet away from a wet ditch, so much away from a dry ditch. And that whole area is filled with ditches. And that's one of the other areas I believe needs to be addressed. And then, finally, all the homes on the street are larger, upper-scale homes, and taxed that rate. I checked the tax rates, and some of the folks on that street are paying close to \$15,000 a year in property taxes. Allowing these types of variances to permit someone to site a very small home, with essentially zero lot lines on the road, the river, and the other property lines would only decrease the value of the properties, and destroy the aesthetics of the neighborhood that we carefully built. I request that the variance be denied, based on all the unanswered siting issues, and open permit with the St. Johns, and the fact that the lot – because of circumstances, five and six were taken apart. Six became basically unbuildable, still, what I believe. I would love to have seen one house built on both of those. And I think that's where the current owners had the problem. When they looked, there was no house there. It looked like a large lot. But when you looked at it, she had actually only sold them half, or one plot. So

to illustrate what (Mr. Phillips continued speaking, away from the microphone; therefore, his remarks are not audible on the record).

Ms. Hillberg – And this would be ours to keep. Thank you.

Mr. Phillips – And, as far as the road, this is the original drawing for the road. And I'll provide this to you, too, so that you can see. But it shows the last four lots are right here, and they were treated as one property. So as far as St. John is concerned, these are still one property. And this is the piece. 105 was able to put enough swales on site, in order to build the property, which pushes the same requirements onto 106, which, unfortunately, they have less property (Mr. Phillips continued speaking, away from the microphone; therefore, some of his remarks are not audible on the record). The road pavement is aggravated, because you could actually see the pavement on individual properties. I didn't wander, too much. That's all I have.

Ms. Hillberg – Well, I have a question for you, Mr. Phillips. You mentioned that this property to the west of the subject property used to be in conjunction with it, one piece. Is that correct?

Mr. Phillips – It was one piece in the – when the permits. It was sold as one piece, and it was permitted as two houses.

Ms. Hillberg – Two houses. O.K. And you said because this property to the west of the subject property was large enough, it could handle the swale situation. Well, that – this document you gave us here says this property to the west is 0.23 acres, which is smaller than the applicant's property.

Mr. Phillips – It's shaped differently. If you'll notice, there's a line here that there's 70-foot requirement for the permit for the – away from the canal, for the septic tank and the drain field. And just geometry – I'm always doing – laying this out, because, believe me, had it been able to be built with two houses inside here, I would have sold them as two houses and reaped all the profits that they have reaped over the past few years.

Ms. Hillberg – It would appear that since the applicant states that they have already received permission for the application for their septic that it fits right in this little area here that is St. Johns required line for it, or the line that is required for it. It seems to fit in that area.

Mr. Phillips – I've not looked at their plot plan. But does it take into account the swales to meet the St. Johns Water Management permit?

Ms. Hillberg – Well, I notice there's a weir on the south...

Mr. Phillips – The weir, that's part of the road easement.

Ms. Hillberg – Right.

Mr. Phillips – That's not...

Ms. Hillberg – So that's where your swales would be emptying into, I'm assuming.

Mr. Phillips – There's a certain square footage that has to be maintained on the property.

Ms. Hillberg – Absolutely. That's the public easement. And the weir is in that.

Mr. Phillips – No, that's the – the weir is in the easement for the road. You're talking about the one in the cul-de-sac, in front of lot 107?

Ms. Hillberg – Yes.

Mr. Phillips – See, that's...

Ms. Hillberg – I just drove by that, and I saw a weir down here, right where they have the picture of a weir.

Mr. Phillips – When we built the property, I had to keep the storm water out of the canal to the north, which required me to put – slope the road to the south. And I was required to put swales in that last 15 feet of easement that I got from the property owners. And then it comes around the cul-de-sac, goes into a cistern, and then it goes over into the north canal, and then on out to the river, as they fill up. Each property is required to have on-site swales, in order to maintain the certain volume of water, based on the hydraulic calculations for the road permit. And what I represent here, in the sketch I gave you, was where the easements, recorded easements, were.

Ms. Hillberg – Yes. And they would appear to be pretty much compatible with the survey that we have here.

Mr. Phillips – And so that reduces it to 2,800 square feet. And you put the septic tank in there. And the house comes out to how many square feet?

Ms. Hillberg – I haven't calculated how much the house is. What was it, Rick? Did you say?

Mr. Enos – I'm showing 58 by 32.

Mr. Phillips – That's not part of the application. But I'm just asking...

Mr. Enos – No, it's not. That's correct.

Mr. Phillips - ...you to take all things into account, that there's an open permit with the St. Johns Water Management that must be satisfied.

Ms. Hillberg – Thank you, very much. Does anyone else have any questions of this...

Mr. Young – Several. Yeah, what – you sold 105 and 106?

Mr. Phillips – Together.

Mr. Young – O.K. But I don't get your connection here with St. Johns. Are you employed by St. Johns, or what?

Mr. Phillips – No, I'm not. I am the unlucky recipient, or the first guy to build out there. And I'm at the end. And, as they said, I had to build the road. So I, (unintelligible) as a homeowner/developer, to put in the road for the County, all the utilities, and all the permitting to put in the road, in order to make my house, and all these other properties, buildable. That's my...

Mr. Young – But these properties have since been sold. Right?

Mr. Phillips – Some.

Mr. Young – So how do you still retain the responsibility...

Mr. Phillips – That's part of my argument with St. Johns. I have a signed letter by St. Johns that says I have it.

Mr. Young – All right. There's a 70-foot setback from the canal that applies to all these properties. Right?

Mr. Phillips – For the septic.

Mr. Young – O.K. And these are drainage easements.

Mr. Phillips – Right.

Mr. Young – Or setbacks. So the swales are allowed in the drainage easement. That's not a problem. So that wouldn't enter into any calculations here. I think we've established that what's been presented to us meets the setbacks. What you're talking about is when they go to get a permit. It doesn't have a lot to do with this application, and it's outside our purview to determine what can be built here. I have – I don't understand. You sold 105 and 106, and then the person you sold it to split off 106? And she didn't get sued?

Mr. Phillips – No, surprisingly. What she got for the lot, she could afford a lawyer.

Mr. Young – O.K. Well, go ahead here. I have other questions, but go ahead.

Ms. Hillberg - Does anyone else have any questions?

Mr. Bovell – Yes. Is there any limit in this subdivision to the size of home that could be put on a lot?

Mr. Phillips – I understood it to be 1,100 square foot, is the minimum house size.

Mr. Bovell – Who established that?

Mr. Phillips – I think it's based on the zoning. That's what I always understood it to be, 1,100.

Mr. Bovell – Eleven hundred square feet, yeah, right. No, one thousand, one hundred square feet, not eleven hundred.

Mr. Phillips – Yeah, one thousand, one hundred.

Mr. Bovell – I think I have it here.

Mr. Phillips – Did I say 11,000, earlier? It's 1,100. And it's not a deed-restricted area.

Mr. Bovell – Yeah, it's 1,100 square feet, is the – but – so no one has changed that, in terms of a deed restriction, or anything like that?

Mr. Phillips – No, not that I know of. No.

Ms. Hillberg – You have any more questions?

Mr. Rosasco – One more. I want to make sure I get this straight in my mind with Rick. The variances are being – are necessitated because of the property lines, themselves. It's not the structure. It's not the septic tank. It's nothing, except the fact that these property lines are coming at such an angle, or so short. It's strictly the property lines. It has nothing to do with the building envelope, or anything else.

Mr. Enos – That's exactly right.

Mr. Rosasco – The property lines, themselves.

Mr. Enos – That's exactly right, and only in the front.

Mr. Rosasco – Thank you.

Ms. Hillberg – O.K., you may be seated. Thank you. All right, we're closing it to the public, and we're asking for the pleasure of the Board? Dale.

Mr. Young – Yeah, I would move...

Ms. Hillberg – I'm sorry, hold on a minute. Is there anyone to speak against this issue? Did we not – I see. Come up. Go ahead. I'm sorry, I didn't see you. What is your name?

Linda Foutch – My name is Linda Foutch.

Ms. Hillberg – Foutch.

Ms. Foutch – And I live across the canal. I don't live on Morningside Drive.

Ms. Hillberg – What is your address?

Ms. Foutch – 1750 Richardson Road.

Ms. Hillberg – And do you swear and affirm the testimony you're giving is true, the best you know?

Ms. Foutch – All that I know, yes. I've not seen any of these plats. I don't know, you know, what all is really going on. O.K.? When I saw they wanted to move the house back – I think, originally, when they bought this lot, there was an eight-foot easement that ran across the back of that whole property. O.K.? It might not show on your plats now, but at one point in time, it was. So I think ever who, the first person that bought the lot, knew about that eight foot from the canal. Those lots originally didn't have any waterfront properties. O.K.? They came down eight foot from the canal. This canal is not even 50 foot wide. It's not a wide, wide canal. And the way I understood this, they wanted to set the house back onto the lot, 16 foot from the rear property line. Is that correct? Is that what I heard someone say, earlier?

Ms. Hillberg – I believe so.

Ms. Foutch – Well, if that's true, you know, 16 foot from the back of their house to that canal – and that's canal's not even 50 foot deep, or 50 foot...

Christine Lepore spoke, without a microphone.

Mr. Enos – No, the rear setback is 20 feet from the property line. The property line is outside of the physical edge of the canal body.

Ms. Foutch – So, are you saying that the...

Ms. Hillberg – So the canal's out here.

Mr. Enos – They're not asking for a variance on the rear setback.

Ms. Hillberg – Yes, it's only the front setback that we're talking about.

Mr. Enos – It's only the lot width in the front.

Ms. Foutch – So they're not trying to move the setback...

Ms. Hillberg – Right. We're not bothering with the back of it. We're only talking about these two variances for the front, not the back.

Ms. Foutch – So they're not gonna move the house back?

Ms. Hillberg – I can't speak to that. All I can say is that what we're talking about today, right now, at this hearing, is the front two variances. Did you have a question, objection, to those?

Ms. Foutch – I do. Now, we are lucky. We have city water and city sewer. O.K.? And I am back on the canal, because my house was built back in 1963. O.K.? We also looked at this piece of property that this gentleman bought back here, back in 1998. Nineteen ninety eight, the County sold us, and the City told us, you can buy that property, you know. You can set on it, probably for the remainder of your life. But there are no way, or no permits, in the future, for that to have septic tank. O.K.? I mean, I don't mind septic tanks. I really don't. But I want to make sure, if a house goes there, that there's gonna be plenty of swales on the property so that runoff would not come into our small canal. That is my big, big concern, right there.

Ms. Hillberg – We aren't discussing swales, though, and the rear, and swales, and the water drainage, only the front – these two front lines, setbacks. Thank you, very much. Is there anyone else, who would like to speak for, or against, this item? Come on up.

Ms. Joslyn – This was the plot plan that we had done. And when we originally bought the property, we did go to see what the zoning, and everything, was. And I believe it was 1,100 square feet. But when we had our plot plan done, we did it – we wouldn't want someone putting a one-story house there, because it's at the end of the point. So when we bought it, we bought it – we would build a two-story home, because it has beautiful views, where it's located, of the Port, and of the other bridge, where the Navy Base was. This here plot plan shows that we had a plot plan done for a 2,800 – sorry – a 2,254-square-foot home, with the septic on there. And that's not including if we wanted to go for a 15 – a variance in the back. This was the house that would have been suitable for us. But it would be 2,254 square feet. We're not trying to make the neighborhood look little and put an 1,100, or even – someone said a 1,400-square-foot home in there. We want to keep the neighborhood looking just as nice, if we were gonna still build on the piece of property. If we can't sell it, we'll have to do something with it, ourselves.

Ms. Hillberg – O.K. And you're the applicant, so that you're making your final statement now?

Ms. Joslyn – Yeah. And I wanted to give you this, if you didn't already have it, where it shows that we did all that, where we were planning to put a – we would have put a beautiful home on there. And I know that land – I don't have anything against anybody. I just wish people would get along and just – you could build a nice house. The bottom line to us was, he still – the point is, he created all these problems. He didn't create all of them. St. Johns did, when they gave him that. But he was also part of it. And I understand that he would have liked the house to be built on 105 and 106 that was a nice mansion, as his is, bigger, because he has a bigger piece. But this is still a very nice house for that size. And then all the neighbors on our street have comparable pieces of property to this. And they're all, except for the first three, with – have been built since 2005. All the houses, I believe, besides Len, and the first three are all new, four years new, on the street.

Ms. Hillberg – I'll add that to our – thank you, very much.

Ms. Joslyn – It's hard to comprehend everything that has happened, or explain to you, without getting you more confused than what it may seem. But this is the confusion every time something has come up. We have

had to deal with it. But to say that you can't put a septic, or he's worried about a septic, or all the swales in there – we've had everything done by engineers – which he's an engineer, too – to fit that. We went and did that extra stuff, because when we found out that some people were questioning whether it was a buildable lot, we said, "Well, we got to do that," because we could never sell a lot that – we know about these problems. We don't want anyone else to inherit those problems. And we have been up front with all of our... (tape changed) ...in the property. We have told them up front about these things. And that's why we're here today. I hope you grant us our variance.

Mr. Young – Madam Chair, I had a question. You mentioned, before, that – about the canal side, that there was property you didn't own back there. Are you just speaking of the easement, or what?

Ms. Joslyn – I didn't mention any property in the back that we didn't...

Mr. Young – O.K.

Ms. Joslyn - ...own, not that I – there is a discrepancy going on, but it's not with this issue, at all, this way. It doesn't have anything to do with the building part of it.

Mr. Young – All right. That's all.

Ms. Hillberg – Rick, can you enlighten us any further?

Mr. Enos – There's some question as to whether this parcel has frontage on the canal. But regardless of the outcome of that question, that is not relevant to this issue. This issue is just, again, the lot width.

Ms. Hillberg – Thank you. All right. Is that all?

Ms. Joslyn – Yes.

Ms. Hillberg – Thank you, very much.

Ms. Joslyn – Thank you.

Ms. Hillberg – Now, we close the public hearing. Oh, I'm sorry, there's one more.

Ms. Lepore – Ms. Chairman, you would need to allow the applicant to respond, because, again, you're opening up to public comment, where you had already closed it.

Ms. Hillberg – Could you advise me on just a question?

Ms. Lepore – You would need to allow the applicant an opportunity to respond. We don't know what the question is, so I don't know if it's appropriate that there would need to be a response. But...

Ms. Hillberg – O.K. All right. Come on ahead.

Ms. Lepore - ...I just want to call that to your attention.

Ms. Hillberg – Please, state your name and address.

Kim Anderson – My name is Kim Anderson, and I live at 1730 Richardson Road, which is straight across the canal.

Ms. Hillberg – Do you swear and affirm that the testimony you're giving is the truth...

Ms. Anderson – Yes.

Ms. Hillberg - ...so far as you know?

Ms. Anderson – Yes.

Ms. Hillberg – Thank you.

Ms. Anderson – The question is, you said you're not discussing, right now, the back variance. There is a – like a – when I bought my property, nobody was allowed to build back there. And that's one of the reasons I bought. The other thing is, when are they gonna do the variance on the back? Because, right now, we have all the manatees coming in, and the dolphins. And there's like, you know, all the mangroves. And there was none. They cut back, when I lived there, when I moved in.

Ms. Hillberg – Well, this item, though, only covers the front two variances, right on the street. It doesn't address the back. That would be a different – at a different time.

Ms. Anderson – So my whole question is, when is that gonna come up?

Ms. Hillberg – I don't – wouldn't know.

Mr. Young – Madam Chair, I would like to ask one question. You said the opposite side of the canal, or what we're talking about here, was not supposed to be built on?

Ms. Anderson – None of that was supposed to be built on.

Mr. Young – For what reason? Too wet, or what?

Ms. Anderson – It was non-buildable lots. They were already...

Mr. Young – Well, we're talking about eight lots back there.

Ms. Anderson – Right. And they were non-buildable. There was no City water back there. There was not any – you weren't allowed to have septic tanks, none of that.

Mr. Young – O.K.

Ms. Anderson – But I, you know...

Ms. Hillberg – Thank you. Are there any further questions, or comments, from anyone in the audience? (no response) Going once, going twice. Would the applicant like to speak again, and have your final comments?

Ms. Joslyn – There are – I don't even know if we should comment on that, because all the houses are built on there. It is where it is today. And everything has been approved by the County for building on there. The issue, I believe, that they had was showing up from the other side of the street, has nothing to do with this. But they are trying – they don't want people to have docks on the other side of that waterway, is what they want – don't want. And they have already had two docks permitted there. And I think that's what it is. And we are – have a pending – almost pending – lawsuit against it. And that's where it comes from. Fraudulent lawsuit. But it doesn't have to do...

Ms. Hillberg – But it doesn't have to do...

Ms. Joslyn - ...with wildlife coming in...

Ms. Hillberg - ...with this variance.

Ms. Joslyn - Has nothing to do with manatees, or wildlife. All the homes, except for two lots, have been built on there. We went there today. There were fish jumping. And I thought someone was throwing rocks in it, 'cause it was so full of life.

Mr. Joslyn – Yeah, but the only thing – we're just trying to get the lot buildable, at this point. That's all we're concerned about today.

Ms. Hillberg – Thank you. Now, I'm closing it to the public, no more chances. And what is the pleasure of the Board?

Mr. Young – Madam Chair, I would move for approval of the variances requested for the Joslyns.

Ms. Hillberg – I hear approval. Is there a second?

George Bovell – I second.

Ms. Hillberg called the question on the motion, and the Board voted unanimously to approve the request.

The meeting was adjourned at 3:10 p.m.