

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, August 19, 2009, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair, Sondra Ball presiding, to consider the following requests:

Board members present were:

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

Staff members present were:

- Rick Enos, Zoning Manager
- Christine Lepore, Asst. County Attorney
- Paul Body, Planner I
- Candy Hanselman, Zoning Support Manager

All five regular members were present and voted throughout the hearing. The alternate members did not vote.

The Chair, Sondra Ball, called the meeting to order at 1:30 p.m.

Part of the opening remarks are not on the record, as the recorder was not operational. These minutes pick up at the moment the recorder began operating.

Mary Hillberg - ...for an applicant for a variance. Economic reasons may be considered only in incidences where a landowner cannot yield a reasonable use and/or reasonable return under the existing land development regulations. The applicant must answer a variance hardship worksheet, with six questions. The Board of Adjustment will discuss these questions, today, with each applicant who has requested a variance.

Sondra Ball – Thank you, Mary. And I would like to address our board members, and applicants, as well as the audience. The Chair is asking that all Board members not ask any questions while the applicant is making their presentation. Once the applicant has completed their presentation, we will then begin board questioning with the member who represents the applicant's district. When concluded, questions will open to the full board. I'm asking that the Chair recognize each board member. Once all board members have completed their questions, we will then open it to the audience, who may be here to speak concerning the applicant's application. Anyone from the audience, wishing to speak, will be given the opportunity to address the board only once. At the conclusion of public comment, the applicant will be given additional time for rebuttal, as well as 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're asking that each speaker be concise in what they have to say. It's important to remember staying on the subject. Avoid information that's not relevant. All persons speaking must provide their name and address for the public record. Those wishing not to verbally state their address may ask the clerk at my left, at the podium, for an address card. Fill it out and give it to the clerk. Are there any questions of the board concerning the Chair procedure today? (no response) Seeing none, are there any questions of any applicants or audience? (no response) Seeing none, we will continue with our procedure. Our first order of business today is to approve the minutes from our previous meeting, which was our June meeting. Do I have a motion for approval?

Motion by Mary Hillberg, seconded by Dale Young, to approve the minutes from the BOA meeting on June 17, 2009. The vote was unanimous to approve the minutes, as submitted.

DISTRICT 2

1. MT. CALVARY INDEPENDENCE BAPTIST CHURCH – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2121 (d) and Section 62-1573 (6) (e) to permit a variance of 34 ft. from the minimum 50-ft. setback from the south property line required from adjacent residential parcels and parcels under different ownership for a building for public assemblage, and 15 ft. from the minimum 50-ft. setback from the west property line required from adjacent residential parcels and parcels under different ownership for a building for public assemblage. The property is zoned IN(L) and is described in **Section 19, Township 24, Range 36.** (100' x 102') Located on the southwest corner of Minnie St. & Roger St. (1701 Minnie St., Cocoa)

BOA ACTION: Hillberg/Bovell – APPROVED, according to the survey submitted by the applicant, and with a 10.1-ft. x 19.2-ft. addition on the southeast corner, and with the stipulation that there will be no building addition on the west side. Vote was unanimous.

Sondra Ball – Rick, before we begin, is there any historical update concerning this property that you would care to give us?

Rick Enos – I can say that, several years ago, the Board of Adjustment, back in 1994, approved a variance of the front setback. This, of course, is for the south side and the west side.

Sondra Ball – Thank you. Before we begin questioning today, we're welcoming some of our alternates that are here. From District I, we have Fred Kusterer. And from District II, we have Mike Cunningham, and District V, Wayne Cooper. All these gentlemen have been with us before. Just for the knowledge of those of you that might be speaking today, these people who are alternates always have the privilege of coming and sitting with us. It's a good learning experience. And they also have the privilege of asking questions of you. The time, though, that we have a change is when we vote. Only the voting members that sit here on a permanent basis are the voting members. So, just for your knowledge, we have three people with us today. This falls in District II, which is Mary's district, so we'll open the questioning with her. First of all, I'm gonna ask our applicant if they would step forward. Who's representing the church?

Rene Richer – Rene Richer, 1184 Humay Avenue, in Palm Bay.

Sondra Ball – Thank you. And, sir, do you swear and affirm that the evidence you'll give the Board of Adjustment today is true, so you state?

Rene Richer – Yes.

Sondra Ball – Thank you. You may proceed with your presentation, and then we'll begin questioning with Mary.

Rene Richer – The presentation is basically that Mt. Calvary has asked us to give them a price on an addition. We have. And, basically, what they're doing is trying to square off their building in the rear to accommodate for their sanctuary, to have an area for the pulpit. The rear of the building on the east side would be – the line would be projected just as the building is, and then it would be squared off in the rear.

Sondra Ball – Anything else you care to add to that before we begin questioning? You have pictures, or anything you'd care to show us?

Rene Richer – We submitted the – some of the pictures.

Sondra Ball – We do have a survey in our packet.

Rene Richer – Basically, what we're proposing is to take the building line on the east side here and project it out and across, to square off this building.

Sondra Ball – All right. All of you down to my right can see that? I'm not seeing a copy of that in our packet here. All right, sir. Anything else you'd care to add before we begin asking some questions?

Rene Richer – I don't think so.

Sondra Ball – All right. Mary.

Mary Hillberg – Hello, Mr. Richer. Your request – I went by your property and saw the church. And I think I can see, without going on your property, and without going around it - because it's pretty difficult with all the over brush in the back two lots – but I think I understand where this little corner here that you're talking about. My question is that you asked for a variance on the south property line. So I understand that. But you're asking for one on the west property line, and I don't understand where the west is coming from.

Rene Richer – It would be on the east property line.

Mary Hillberg – So this would need to be corrected? It should be the east property line?

Rick Enos – There's already a variance on the east side. I misspoke earlier. There are two previous variances; one on the north side, one on the east side. This request is for the south side, and also includes one on the west side. You know...

Mary Hillberg – Where does it happen on the south? On the south, I can see it. On the south is down here.

Rick Enos – Right.

Mary Hillberg – On the west side, I don't see where there's...

Rick Enos – I don't know if they're doing any expansions, but they are just trying to make the existing structure conforming. There's already a nonconforming...

Mary Hillberg – So this is conforming the existing structure?

Rick Enos – On the west side, yes. The one on the south side – the variance on the south side would allow them to square it off. The east side already has a variance.

Mary Hillberg – O.K. I understand. That's all the questions I have. Thank you.

Sondra Ball – O.K. I'll open it up to anyone else on the board. Questions? Jim.

James Rosasco – I don't have a question, as much as a clarification. It looks to me, by looking at this survey, that the building is between 35.9 and 35.6 feet from the west property line. If I'm reading the Zoning Ordinance, it's supposed to be 50 feet. So it just looks like we're cleaning up another variance – another violation, I should say – all at once. We just have – we have – we do, in fact, have two variances we're looking at here.

Rick Enos – Yeah, yeah. That’s – well, two variances tonight. There were two previously approved on the north and east. This is for the south and the west. And you’re right. The west side, there’s no construction there, but it would serve to clean up the existing setback violations, the nonconforming setback on the west side, as well.

James Rosasco – Thank you.

Sondra Ball – Anyone else? (no response) No? Did you have your light on, George?

George Bovell – No.

Sondra Ball – O.K. Sorry. All right, sir. If there’s no other questions from the board, if you want to step aside, I’ll ask is there anyone in the audience that would like to speak either for the applicant – please come forward.

Centi Thompson – My name is Centi Thompson. I live at 4280 Peppertree Street, in Cocoa.

Sondra Ball – All right, Centi, do you swear and affirm that the evidence you’ll give the Board of Adjustment is true, so you say?

Centi Thompson – I do.

Sondra Ball – Thank you. You may proceed.

Centi Thompson – When we received the request from the Planning & Zoning Commission, frankly, we were somewhat perplexed, because I have been before the Zoning Board before, and I usually asked all the neighbors surrounding us, first, what their opinions were. And we had not heard anything from the church. But I do not live in the little house to the west. I own it, and I rent it, presently, to an elderly gentleman. And when I read about the 15-foot setback of the minimum 50 foot, he said, “They only have about 37 feet now. So there is something wrong.” Well, I called Planning & Zoning, talked to Mr. Ritchie. And, as Mr. Enos explained just now, apparently, in 1964 or ’68, when the church was actually built, no one did, at that time, look to the side yard, the distances. And instead of the 50 feet, the west property – in other words, the actual building is only 37 feet from our property line. As far as the – and I understand there is no further building planned on the west side, even in the back. I understand the word “straightening out the rear” does not mean going closer to our west line than where it is now. The lady who owns the property on the south side was going to be here, she told me, as of yesterday. But she’s elderly, and I guess she changed her mind. Frankly, she owns those lots on the parallel street to Minnie Street; not one, but a whole row of lots. And she said, “Well, they already are within a few feet, and there is not 50 feet there now.” So I took it upon myself to walk around. I took some pictures. I did not mark them. But this one, in particular, is taken from my yard, over on the west side. And somehow it seems the distance between – it seems the distance between the back line and that little shed building is perhaps four feet. I don’t know the distance of the shed. I presume eight. And there is another two feet, let’s say, to the staircase. This one was taken from the other side, where the not-yet completed Roger Road is located. And I noticed the actual property line on the east side, the church owns ten feet, not 50. But I doubt that Roger will ever be completed. And here is another picture from the west side, showing the shed and the van. And you can see the back, on the west side, has a staircase going up. On the ground floor is like a building, and there is a large air-conditioner on the outside. And you see the fence, which is the property line. Either way you look at it, it looks like no more than 12 feet, total, at best.

Sondra Ball – Ms. Thompson, you understand by giving us these pictures, they become the property...

Centi Thompson – I understand. Yes, you can keep them.

Sondra Ball – ...of the County. Thank you.

Centi Thompson – Now, it would have been nice if anybody from the church would have at least contacted us - we're in the telephone book - they know our address - or talked to the man who lives in our little house. They did talk to the neighbor across the street and mentioned the only thing they wanted to accommodate was a baptismal tank. A baptismal tank could be four, five feet in diameter. I don't think that this would require an addition to the entire building. But if there is going to be additional building taking place – and I must admit, I have looked into whether a survey has been submitted, or a building plan. And I found out a survey has been done, but the builder never commenced with the building. So I would like to know what are the future plans. How high is the building going to be? Because the church is a full two-story. And, frankly, my tenant is very upset, because he said it's peaceful and quiet. But if they start to add a two-story building, there is not going to be any more peace and quiet here. Frankly, I can't afford to lose my tenant. I would like to keep him happy. So if there is any explanation the owners of the church could tell us what they would like to do, what they would like to build. Just for a baptismal tank, I can't see why a two-story addition should be put. And then what are we doing with the air-conditioning, put it on the fence? That's about it. Thank you.

Sondra Ball – All right. Thank you, very much. Anyone else in the audience care to speak? (no response) Seeing none, sir, we'll let you come back to the mic, and we'll give you an opportunity to answer the concerns of your next-door neighbor to the church. And then you can do a summary, if you care to.

Rene Richer – O.K. The addition is to, like I said, to square off the building. It would match the building roofline, just continue it to the ten feet that we proposed. And it would be only the one-story. It would match the church. And it is only on the east side of the church. It is not any addition to the west side, where her property is. It's just basically squaring off the rear of the church. And it is a baptism, and it is – it's a pulpit area, also. And the plans are submitted to the Building Department for the addition, as well as the survey. And the survey was given to Planning & Zoning on a CD disk, along with the plans.

Sondra Ball – All right. I believe, if you'll give us just a minute, maybe. Since this has come about, Dale has a question.

Dale Young – Yeah. This says it's – the building has been there for 48 years. Has it always been a church?

Rene Richer – Yes.

Dale Young – O.K. And Roger Street, this area is not open at this time?

Rene Richer – It is grass, right now. There is just grass.

Dale Young – Where does it go? Does it just dead-end behind you, or what?

Rene Richer – It dead-ends.

Dale Young – It stops?

Rene Richer – Yes.

Dale Young – O.K. And I see it's a 50-foot right-of-way. So – O.K., that's all I had.

Sondra Ball – Anyone else? Jim.

James Rosasco – We're really being asked to grant a variance for the existing structure. The entire conversation about the new construction is really not really part of this discussion, I believe. We're really – the existing building - just as we're talking about granting the variance to the west because of the existing structure, and existing conditions, the variance – the question in front of this board is a variance between the lot line and the existing building. The fact that once you get the variance from this board that legitimizes the existing building, then you can proceed with permitting and doing your construction. So we're not even involved in the discussion about construction of the addition. We're only focusing on the question of the variance, I believe.

Rick Enos – Partially right. What you said is true regarding the west line, 'cause there's no new construction on the west line. And the variance on the west side is just to legitimize what's already there. But the piece in the southwest "sic" corner – you can see how there's a little cutout there that's 10.1 by 19.2. That's the area that they want to add on to. Now, the existing structure is already only 16.7 feet from the rear lot line. So the variance on the rear does both things. It will legitimize the existing structure, where it's only 16.7, and it will also allow the property owner to fill in that corner, which is what they are planning to do. So the variance on the south serves both purposes.

James Rosasco – Well, I understand. I think the second part is as a consequence of us granting the variance, 'cause we're granting the variances parallel to the property line. And what happens once that variance is there, he could build up to that variance, I would assume.

Rick Enos – Yes, that's correct.

James Rosasco – So, really, it's back to the real question is, we're legitimizing the existing structure. And after we make that decision, whatever happens is another issue, I believe. It's just my interpretation of it. I don't think we're talking about approving the construction of the structure, as much as we're creating the variance to a point on the survey, and that point is the existing structure. So I think the conversation about the new building isn't really before this board.

Rick Enos – Well, it is, in the sense that if the variance on the rear was not improved, it would leave the existing structure nonconforming, and it would also allow, or require, any new construction to meet the 50 feet, which it can't.

James Rosasco – I see.

Rick Enos – So the variance...

James Rosasco – I see it. O.K.

Rick Enos - ...would both approve the existing structure and permit the addition on the same line.

James Rosasco – I see.

Sondra Ball – Mary.

Mary Hillberg – Mr. Vicker "sic", the concern that Ms. Thompson has to the west of you is that there will be increased building closer to her property line.

Rene Richer – That is not...

Mary Hillberg – That is not your intention?

Rene Richer – No. The building...

Mary Hillberg – The building...

Rene Richer – The addition will be on the southeast...

Mary Hillberg - Right.

Rene Richer - ...corner.

Mary Hillberg – The southeast is where you're gonna put your little addition?

Rene Richer – Correct.

Mary Hillberg – There'll be no building to the west?

Rene Richer – No.

Mary Hillberg – And no building to the southwest corner?

Rene Richer – No.

Mary Hillberg – There's no further building up, or building out, in that area...

Rene Richer – No.

Mary Hillberg - ...at all. So that should – her view, and her house's view, and her tenant's, won't be affected, at all, by this construction. Is that correct? Thank you.

Sondra Ball – Anyone else?

Rene Richer – She's welcome to come and look at the plans, if she wants...

Sondra Ball – And, you know, I would encourage you, when we conclude, you might – if this is approved, that you might want to just meet with her...

Rene Richer – Sure.

Sondra Ball - ...and lay your plans out, and help her just better understand what's taking place.

Rene Richer – Absolutely.

Mary Hillberg – And all the neighbors, and all the folks that are around there, to make sure that they understand, as well.

Sondra Ball – Anyone else? Any comments? (no response) Sir, you – last comment?

Rene Richer – No.

Sondra Ball – O.K. We'll close that...

Rene Richer – Thank you.

Sondra Ball - ...to the audience, and the applicant. Do I have a motion, please?

Mary Hillberg – I move to approve the variance request, according to the survey, and with the understanding that there's no building to the west side of the house included in this.

Sondra Ball – All right. Thank you. Is there a second?

George Bovell – I second.

Sondra Ball – Thank you, George. O.K., we'll open for any further discussion.

James Rosasco – Yeah, I'm – when you said approve it according to the survey, the survey doesn't have the addition in it. So I want to make sure if we're going through this exercise because of the construction of the addition, we're not saying according to this survey. So don't we have to modify that motion?

Rick Enos – Yeah, I think it'd be best if you say according to the survey, with the 10- by 19-expansion.

Mary Hillberg – I so amend it that way. And so I've made that motion, but I would also like to say that I also recognize that not approving the survey, that this request would not make the property unusable. And I understand that, but this is a reasonable request, and I think that this church is not asking anything out of the – usually out of the ordinary.

Sondra Ball – And, Jim, you've made the second, so you – no, I'm sorry, it was George. George, you agree with the amendment?

George Bovell – Yes, I agree with the amendment that it's according to the survey of the plans that depicts the extension, or the new building on the southeast corner.

Sondra Ball – All right. Any other comment, any board member? (no response)

Sondra Ball called the question, and the board voted unanimously to approve the variance request, as stated above.

Sondra Ball – And, sir, you've been granted your variance. And good luck on your construction. And we'd appreciate it if maybe you can get together. Thank you.

The meeting was adjourned at 2:01 p.m.