

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, January 21, 2009, in Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chairperson Sondra Ball presiding, to consider the following requests.

Board members present were:

- Sondra Ball, Chair, District 1
- Mary Hillberg, District 2
- Jim 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

There were five regular members present, and one alternate. The five regular members voted throughout the meeting.

Sondra Ball – I'll now call to order the scheduled meeting of the Board of Adjustment. Our first order of business today will be to elect a new Chair and Vice-Chair. Today, we also welcome a new person from our District III, Jim Rosasco. I want to be sure I pronounce that correctly.

Jim Rosasco – Very good.

Ms. Ball – And we also have Mike Cunningham, joining us as an alternate. Just for the info, we'd like to share with the audience, our alternates are always welcome to question those that are applicants, or those giving testimony. It's just when it comes time to vote, they will not be voting as a member. So, at this time, the Chair will accept nominations for the position of Chair for the year '09.

Dale Young – Madam Chair.

Ms. Ball – Yes, Dale.

Mr. Young – Yeah, I would nominate Sondra Ball for Chair for 2009, in view of the job that she's done in the past year.

Ms. Ball – Oh, my. O.K. Thank you. Is there a second?

Mary Hillberg – I'll second that.

George Bovell – Second.

Ms. Ball – All right. We have George and Mary. All right, there's a second. Any other nominations? (no response) All right, seeing none.

Ms. Ball called for a vote, and the Board elected Sondra Ball as Chair, with a unanimous vote.

Ms. Ball – Thank you, very much. I'll accept. And, now, we'll accept nominations for Vice-Chair for this year of '09. Accepting nominations.

Mr. Bovell – Madam Chair.

Ms. Ball – George.

Mr. Bovell – I'd like to – I'd like to nominate Mary Hillberg.

Ms. Ball – All right. We have a nomination of Mary. And is there a second?

Mr. Young – I'll second.

Ms. Ball – All right. We have a second from Dale. Any other nominations? (no response) Seeing none.

Ms. Ball called for a vote, and the Board elected Mary Hillberg as Vice-Chair, with a unanimous vote.

Ms. Ball – Welcome, Mary, as Vice-Chair. O.K. Now, we'll move on to our scheduled meeting, as we normally do. If I could ask Rick, from Planning and Zoning, if he would explain to our audience the function of our Board.

Rick Enos – Yes, Madam Chairman. 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 to the Sign Regulations, in Chapter 62, Articles VI and IX. Pursuant to Section 62-254, Brevard County Code, any person, or persons, jointly or severally aggrieved by any decision of the Board of Adjustment may, within 30 days after the date of the public hearing at which the decision was rendered, but not thereafter, apply to a court of competent jurisdiction for appropriate relief. And, Madam Chairman, you have three variances on your agenda today.

Ms. Ball - Thank you, so much. I'm gonna ask our Vice-Chair now, Mary, if she would please explain to the applicants, and the audience, the definition of hardship.

Mary Hillberg – Yes. Variance hardship: Undue hardship: A variance may be granted when it will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship. The term "undue hardship" has a specific legal definition, in this context, and essentially means that without the requested variance, the applicant will have no reasonable use of the property, under existing development regulations. Personal medical reasons shall not be considered as grounds for establishing undue hardship, sufficient to qualify an applicant for a variance. Economic reasons may be considered only in instances where a landowner cannot yield a reasonable use, and/or reasonable return, under an 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.

Ms. Ball – I would like to address our Board members, the applicants, and our audience, for a moment. 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 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 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're asking that each speaker be concise in what they have to say. It's important that you stay on the subject and avoid information that is not relevant. All persons speaking must provide their name and address for the public record. Those not wishing to verbally state the address may ask the clerk at the podium for an address card. Fill it out and give it to the clerk. Are there any questions of Board members? (no response) Seeing none, are there any questions from any of the applicants? (no response) Seeing none, are there any questions of anyone in the audience? (no response) Seeing none, we're gonna proceed, then. Our first order of business is to approve the minutes from our previous meeting, which was December of '08. Are there any additions or corrections to those minutes? (no response) Seeing none, could we have a motion for approval, then, please?

Motion by George Bovell, seconded by Mary Hillberg, to approve the minutes from the meeting on December 17, 2008. The vote was unanimous to approve the minutes, as submitted.

DISTRICT 1

1. **PRECISION FABRICATING & CLEANING, INC.** – requests variances of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-1544 (6) (a) to permit a variance of 29 ft. from the required 40-ft. front setback in an IU-1 zoning classification; /2/ Section 62-1543 (5) (c) to permit a variance of 66 ft. from the required 100-ft. rear setback in an IU zoning classification; and /3/ Section 62-2100.5 (1) (j) to permit a variance of 15 ft. from the required 15-ft. spacing distance between structures for accessory buildings. The property is described in **Section 06, Township 24, Range 36.** (6.02 acres) Located on the east side of Railroad Ave., approx. 700 ft. south of Canaveral Groves Blvd. (3975 E. Railroad Ave., Cocoa)

BOA Action: Young/Ball – APPROVED, as depicted on the survey provided by the applicant. The vote was 3:2, with Hillberg and Bovell voting nay.

Sondra Ball – All right. Sir, would you state your name, please, and your address.

Joe Sacco – Sure. My name's Joe Sacco. I'm with RK Engineering, at 385 Pineda Court, Melbourne, Florida. I'm here representing Precision Companies, which is the applicant. I think it'd be easiest for me to begin by explaining what we're proposing, and what's going on, why the variances are needed.

Ms. Ball – All right. Joe, do you swear and affirm that the evidence you'll give the Board of Adjustment is true, so you state?

Mr. Sacco – I do.

Ms. Ball – Thank you. You may proceed.

Mr. Sacco – O.K. The current site's been – Precision Companies has been here for at least 40 years, that I know of, maybe longer. The applicant is trying to add four new buildings to his existing site. The new buildings being added - and I say buildings. They're really just work areas. A couple of them are just simply a shed. But it's building 22, which is right here. Building 20, building 21, and then there's a larger 20,000-square-foot fabrication assembly, that will be done as part of phase two, that's located on the southern parcel that this same applicant owns. That's not shown on here, because it doesn't – all the variances are up on the main portion of the site plan. So the first variance is for this group of buildings, which has been, like I said before, has been there for many years, but does violate the 40-foot front setback along East Railroad Avenue. So that's what the first variance is requesting, just to keep these buildings as they've been. The second variance is over here, which is – they're violating the 100-foot setback from residential zoning. And we also had a waiver that was granted for a wall that's required here. And we met with all of these neighbors to explain to them what we're doing here, what we're proposing, and have them voice any opinion they had about the project. And all the neighbors who came to our meeting were very supportive of everything that we were doing. And then the third variance is for building separation. Several buildings violate the 15 feet that's required between buildings. Of the buildings, the only proposed building that that is involved with is here. And we're proposing to have this building up against a trailer that's currently on this site, with a deck that's in between. So it's gonna go right up against the deck. And that's where the violation occurs. So...

Ms. Ball – All right, sir. Any other items you want to add to what you're saying?

Mr. Sacco – No.

Ms. Ball – All right. It's our policy that we begin our questioning with the district person that it falls in, and that is in my district.

Mr. Sacco – O.K.

Ms. Ball – I think you answered one of my first questions is, you're saying that this site has been there for 40 years?

Mr. Sacco – Correct, that I know of, maybe longer.

Ms. Ball – And those buildings, do you have any idea the length of time they've been on the property? Does that 40 years include those buildings?

Mr. Sacco – It includes the main building, building one. I believe there was a site plan in 1992, that was brought in front of the County, to add a number of the smaller buildings. The majority of the buildings that I spoke of have been there since at least 1992, that I'm aware of.

Ms. Ball – All right. Rick, you want to help us here? This site is one that's been there so long. When did our codes go into effect that are governing what these folks are dealing with today?

Rick Enos – Well, the zoning regulations came into effect in the late '50's; however, you know, there have been amendments over the years. Setbacks may have changed over the years. The setbacks that are in place now, have been there as long as I can remember, certainly going back into the '80's. You know, it's not clear to me how these structures got to be in the circumstances they are in. Some may be old enough to precede the zoning regulations. Some may be old enough to precede when the Planning and Zoning Office had a presence in the building permit review process. But, again, it's not clear to me, you know, how he got into this circumstance.

Ms. Ball – All right. You had mentioned in your paperwork that there were no complaints from the public. My greatest concern on this property is the portion to the east that is closest to the residential area. When did you meet with these folks?

Mr. Sacco – It was in December. We requested for – the Code requires that there's a six-foot high concrete wall put between residential and industrial, and we requested a waiver for that wall. And part of that process was holding a neighborhood meeting with the neighbors that are adjacent to us. And the exact date, I don't have, but I'm pretty sure it was in December. And we had four neighbors show up. And once they found out what we were doing, what we were asking, everything was fine. And I should point out – let me take this again so I can use this – you notice this area here. This is actually Precision Fabrication's property. But all these residents have been using this property for as long as they've been here, 40 years or so. And I found out that the owner of this property's father, who originally owned this company, gave this land, not technically gave it, but allowed them to use this land as extra buffering between the two projects. And then here's – there's an eight-foot high chain-link fence, with plastic vinyl covering over it, right now.

Ms. Ball – I was by the property. That portion was just too hard to see what was going on there. What condition is that fence in today? Has that recently been installed with the vinyl?

Mr. Sacco – The vinyl is just a few years old. The fence itself is – has been a long time, been there a while, but it's in good shape. One of the – one of the things that was mentioned, between the neighbors and this property owner, was to maintain this area. And this property owner has agreed, you know, to keep all the vegetation off the fence, keep the fence in good shape. He gave his business card to all these neighbors who came out, you know, to call him if there's ever a problem, anything, any noise, whatever. You know, he's there to help those people out. So the fence is clear, and you can see it all through here. And then down here, it's a little covered with vegetation.

Ms. Ball – Mr. Sacco, did you get any type of paperwork signed by those people, saying that they agreed with your position?

Mr. Sacco – Well, the County had a representative at our meeting.

Ms. Ball – Oh, they did?

Mr. Sacco – Yes. Rebecca, from Land Development, I believe, was there. She's with Ed Lyons, with his office.

Ms. Ball – All right.

Mr. Sacco – So – a few of them were actually here, but they thought we were here for the wall, so they left, when I told them the wall was approved.

Ms. Ball – Oh. O.K. All right. My take on this property, the whole area is so industrial with the railroad just actually bordering on the road, your access road in there, that, to me, right now, in my mind, it seems a reasonable use of the property to allow it to continue. My great concern was for the folks that live on the east side. And if you say there was a County person at that meeting, that kind of verifies and documents that those folks were satisfied with what you've agreed upon. I guess, right now, I don't have a problem, because it is such a commercial industrial area that I'm not sure qualming over all these setbacks, at this point, is serving a purpose...

Mr. Sacco – Right.

Ms. Ball - ...as to our guidelines that we're given. And I think, in essence, there would be a real hardship, if you had to start tearing buildings down.

Mr. Sacco – Absolutely.

Ms. Ball – So I'm going to pass, and open it up to anyone else on the Board that has questions. Anyone else? Jim.

Jim Rosasco – Yes. I have a couple of questions. According to the memo I have here, you're legitimizing these buildings, is what the efforts to go through here. And I assume you've been talking to the Code people. Have these buildings all been recognized by Code Enforcement? Are they approved, as far as – are we part of the process of legitimizing these buildings, or is this just a first step?

Mr. Sacco – Well, we're...

Mr. Rosasco – You know, I don't want to get into Seinfeld tennis shoe thing episode here that they ask to do something right, and all of a sudden, they got to close up the shop.

Mr. Sacco – Right.

Mr. Rosasco – But I'm just curious, if these buildings – I drove by the property, as well. They look like they're just metal shed...

Mr. Sacco – Right.

Mr. Rosasco - ...buildings that are going up.

Mr. Sacco – Mainly, that's what...

Mr. Rosasco – And I'm not sure if there's any permits ever taken out. If there's any – usually, when a permit's taken out, I think that reflects on a tax roll. I mean, is this part of the total legitimizing the site, or – I'm just not sure where all that leads.

Mr. Sacco – Sure. Well, we're just trying to put the four new buildings on the site. And in doing that, one of the requirements for our site plan is to bring the rest of site up to Code. Landscaping, Storm Water, all the different various aspects of the Land Development Code, one of which is the setback requirements. So we're here so we don't have to knock those buildings down and move them. There are no Code, you know, violations, or – that I'm aware of, or anything like that. It's just one of the steps we have to go through to reach our site plan approval. It's either get a variance for those setbacks, or knock the buildings down and move them around.

Mr. Rosasco – Thank you, very much. Appreciate that.

Mr. Sacco – Sure.

Ms. Ball – Anyone else? Mike.

Mike Cunningham – Madam Chair, I'm inclined to go along with your way of thinking...

Ms. Ball – Mike, Mike, you want to turn the – I believe – there we go. Thank you.

Mr. Cunningham – Normally they tell me to shut up. I'm inclined to go along with your way of thinking on this. I also went by this property, and I spent an hour up there. I parked across the street, and on the railroad side. And even at that time of day, you could hardly hear anything, or any noise, that you would deem offensive. It's an industrial area. Both tracts are highly industrialized. I also went to the east. And I noticed on the request, that variance request number two would be the closest one to Ridgewood Drive. I went over and parked on that street, also. And even with the full-blown operation of this firm, I couldn't hear anything, nothing unusual. So - and inasmuch as all of these requests, basically, are in the interior of this property, I really don't see where there'd be a problem with it, in granting the variance. That's all I have.

Ms. Ball – All right. Thank you, Mike. Dale.

Dale Young – Yeah. What's the nature of the business? What do you guys do?

Mr. Sacco – Well, they do a little bit of everything. One of their main things is they clean large tanks, and get them ready for, like a tank that may have gasoline in it, they'll clean the tank, get it ready for some other sort of gas, or fuel, or liquid that might go in it. The Space Center, obviously, is a big client for them. They have – I mean, they're really anything that needs any kind of metal fabrication, cleaning, pressurized cleaning. You know, they're pretty much a jack-of-all-trades.

Mr. Young – O.K. I assume that the railroad is on the west side?

Mr. Sacco – I have an aerial on the other side, if that would help. I can...

Mr. Young – Well, I see it says "Railroad Avenue", so O.K. O.K. That's all I had.

Ms. Ball – All right. Anyone else?

George Bovell – Yes. Could you explain to me what the buildings that are currently in the setback, what are those buildings used for?

Mr. Sacco – Sure. Just one second. Both setbacks, east and west?

Mr. Bovell – Yes. The two up on the northeast.

Mr. Sacco – Here?

Mr. Bovell – Yes.

Mr. Sacco – O.K. This is building number three. So building three is used as an equipment shed. So it's just for storage. This is building number four. Building four is also a storage shed. So both of these are used for storage. Then for the railroad side; Building 12 is a storage shed, also. So, actually, let's see if any of them aren't storage sheds. O.K. Sixteen is a paint booth building, used for painting the exterior of the large tanks that they deal with. And that's all the buildings here that are affected. Most of the processing is done in the large building, with these two buildings. This building, and then what's proposed here, the new building, handles most of the work, which is a reason why you probably can't hear anything, 'cause everything's right here in the middle of the site.

Mr. Bovell – One more question.

Mr. Sacco – Sure.

Mr. Bovell – The proposed new building, is that gonna be – is it a trailer it's gonna be attached to, or it's just a slab?

Mr. Sacco – Well, this is gonna be on a slab. It's gonna be a metal frame building. This trailer is gonna remain where it sits. And, in between, is a deck, right now. So these are the stairs that lead up to the trailer, and this is a rail raised deck. So they're proposing to put the new building up against the deck.

Mr. Bovell – Now, if you get the waiver for the variance to remove the 15-foot distance in between buildings, what's to stop you guys from just, you know, packing that place up with buildings in the future?

Mr. Sacco – Well, each...

Mr. Bovell – Because you're asking us to waive it and just give you a blanket waiver.

Mr. Sacco – I'll have to go to Planning for this. But I believe the variances are site planned specific. So, if you approve the setbacks here, it doesn't necessarily mean - the next time we'd have to come in front of you again, if I'm not mistaken.

Mr. Bovell – And you're getting a plan – a site plan for that particular...

Mr. Sacco – Yes. This is the current site plan that's in front of the County, right now, for site plan approval.

Mr. Bovell – O.K.

Mr. Sacco – Along with a portion to the south, that's one building, that isn't involved.

Mr. Bovell – O.K.

Ms. Ball – All right. Rick.

Mr. Enos – Yeah. I would suggest that if you are concerned about that, and it's understandable that you are, should you approve the variances, you may want to limit the variances to those that are shown on this survey, specify this survey, and then that will not apply to any new structures.

Ms. Ball – Mary.

Mary Hillberg – Rick, I have a question to ask of you, and then also to the applicant. What is the purpose for having 15 feet, or more, between buildings?

Mr. Enos – That is typically a fire safety issue.

Ms. Hillberg – What – sir, what types of applications are you going to use in that building that you plan on putting next to the trailer?

Mr. Sacco – O.K. It's just a – it's a paint shed. It's actually open on two sides. So it'll be used for painting.

Ms. Hillberg – It'll be used for painting?

Mr. Sacco – Right.

Ms. Hillberg – So that would be a flammable type of thing. And what is the purpose of having it attached to another building?

Mr. Sacco – Well, it's currently not attached. There is that...

Ms. Hillberg – I understand, but why...

Mr. Sacco – Right.

Ms. Hillberg - Why would you want it so close to another building?

Mr. Sacco – Well, that would be best served for the owner of the site. But I believe it's for access around – you know, we laid the buildings out, or the applicant laid the buildings out, so he could still

have a lot of ingress/egress throughout the site. They have a lot of large trucks, large containers, large, you know, different tanks that they have to drive through the site. So we try to keep a 24-foot drive isle in between the two proposed buildings, and keep the distance there to the south. And there's also a large storm water retention pond that's not shown, that's located.

Ms. Hillberg – And it's located where that...

Mr. Sacco – Where the chart is.

Ms. Hillberg - ...chart is?

Mr. Sacco – Yep.

Ms. Hillberg – I see.

Mr. Sacco – That's a storm water pond.

Ms. Hillberg – So, if you move this building back to comply with the safety, fire safety rules, this wouldn't be, in any way, impacting the business that would be done in the building, or move it to the right?

Mr. Sacco – And if that's the only issue, it could be done. Also, an awning if an awning was over that porch, it would be considered one building, and this wouldn't, you know, wouldn't be applicable anymore. So there are ways to move that one building, if that's an issue or concern.

Ms. Hillberg – That would be my only concern, would be safety issues for the type of work that you're doing with paint...

Mr. Sacco – Right.

Ms. Hillberg - ...and with flammable fluids. Having one incident is one thing, but then having it continue on to other buildings is one of the reasons I think that they require this buffer between buildings.

Mr. Sacco – Right.

Ms. Ball – Anyone else?

Mr. Young – Could I have another question?

Ms. Ball – Surely.

Mr. Young – Yeah. Rick, if these buildings were connected, that would eliminate one request?

Mr. Enos – Yes. If they're structurally attached to one another, then they become the same building.

Mr. Young – So all they need is an entryway or any little canopy, to connect them.

Mr. Enos – I can't tell you specifically, 'cause that'd be like a Building Code matter, but whatever it would take to structurally attach them.

Mr. Young – Buildings 20 and 21, 17, those are connected, aren't they?

Mr. Sacco – Correct. They are.

Mr. Young – So why do we not consider those as one building?

Mr. Sacco – Well, if I may, they're not part of the – part of that variance, with the setbacks between the buildings. They're part of the other variance, too close to the – actually, they're not part of any of the variances. I apologize.

Mr. Young – O.K. And that paint booth, is this a prefabbed commercial paint booth that you're moving into the area? O.K. So it's all enclosed in itself?

Mr. Sacco – With bays on the east and west side.

Mr. Young – Yeah. O.K. That's all I had.

Ms. Ball – Anyone else, before we go to the audience? (no response) All right, sir. If you would, just step aside and let's see if there's anyone in the audience that would like to speak in favor of the applicant, if you would, please step forward? (no response) Seeing none, is there anyone in the audience who is opposed to the request for this variance? (no response) Seeing none, all right. Sir, we'll give you the last comment, rebuttal, anything you want to say. All right. Then, the applicant has no further comment. We'll close it to the audience and the applicant. Do I have a motion on the floor from anyone on the Board?

Mr. Young – Madam Chair.

Ms. Ball – Yes, Dale.

Mr. Young - I would move to approve, as submitted by the applicant.

Ms. Ball – All right. Is there a second? I will second the motion. I guess I need to – do I need to give the gavel to Mary, in order to make the second, or am I – yes? All right. Mary.

Ms. Hillberg – There's a motion, and a second. Can we have discussion?

Mr. Enos – Was that motion intended to apply to the current survey, only?

Mr. Rosasco – Yes.

Mr. Enos – The existing survey. Was that the intent?

Ms. Hillberg – Was that the intent, Dale?

Mr. Young – I didn't hear the question.

Mr. Enos – I was wondering if the motion was intended to apply to only the structures on the survey submitted.

Mr. Young – Yes, as submitted. The site plan that we have.

Mr. Rosasco – As a part of the discussion, are we – is this motion including all three variances?

Ms. Ball – Yes.

Mr. Rosasco – I – is that how it works? I don't – because, personally, I don't think we should allow the variance number two. These are very small wood – I don't know what they're made out of, but very small structures, 158 square feet for one, and 300 square feet for another. To give that much of a – that just doesn't seem that much of an imposition to have those structures in compliance. I agree with variances number one and three, but I don't know how to segregate that.

Ms. Ball – O.K. I think we've got to back up here, don't we Rick, because now this is coming back into discussion, rather than a motion. We've already had a motion.

Mr. Enos – Well, you've already had a motion.

Ms. Ball – So we've got to vote on that motion.

Mr. Enos – Or it needs to be withdrawn, out of the way.

Christine Lepore – No. You take discussion after a motion. You have a motion, and then you have discussion on your motion.

Ms. Ball – Oh. O.K. Go ahead.

Ms. Lepore – And then call for the vote.

Mr. Rosasco – So my part of the discussion is that I would like to see the variance number two removed from the motion. But I don't have any problems with the one and three.

Ms. Hillberg – All right. So you're feeling that you would deny the motion, as it is, because you don't agree with number two?

Mr. Rosasco – Correct.

Ms. Hillberg – Are there any other points of discussion?

Mr. Young – I have a...

Mr. Bovell – Yes. I feel the same way. I'm okay with one and three, but not two.

Mr. Young – Madam Chair.

Ms. Hillberg – Thank you, George. Sir, Dale.

Mr. Young – Yeah. In looking at the site plan, if you were to demolish the small shed at the front, you'd still haven't – O.K. – you still would not be meeting the setbacks. You don't have the 100 feet. You might up here on the east side.

Mr. Rosasco – I believe there's three different variances they're requesting. This one is pertaining to this building, variance two, only pertaining to these two buildings.

Mr. Young – O.K.

Mr. Rosasco - And variance three is the separation of the buildings. So I'm saying I have no problem with variance one, nor three, but two, which only affects these two storage sheds, equipment shed and storage shed.

Mr. Young – Yeah. I'm not privy to why the management wants those storage sheds. But due to the age of this site, and the zoning, the industrial nature, I don't have a problem with where he utilizes those sheds. And I assume that they're laid out this way for the efficiency of his operation. And I'd rather see it approved, as is.

Ms. Hillberg – All right. Are there any other discussion?

Ms. Ball – Mary, I have a comment. I think that – let me go back. Jim, is it because of just the structure, or that there – give us the reason, exactly, here? I mean, they're storage buildings.

Mr. Rosasco – Well, they're – I understand that we have a process that we have. Economic reason isn't just viable to give a variance. These, to me, appear to be fairly small sheds. And to give a variance, just because they're small sheds, I think that we don't know - the existing property owners represented they have no problem. They may sell their property, and the next person may have a problem. It's not that big of a deal. I just think those two sheds – I don't think that particular variance, number two, passes the six-question test.

Ms. Hillberg – O.K. I have something, also. May I, as while I have the gavel, may I have an opinion, as far as the discussion goes? I think that variance number one would probably be suitable. And number two, I hadn't really considered as being so outside. But number three, I felt was a safety hazard, and certainly shouldn't be. And there should be some other condition of, either attaching it and making it – enlarging the building that's there, and making that one building, in some way, if it's only with an umbrella, whatever the Building Department decides. But I don't think it's safe to have flammable operations going on, and you're attaching it to another building. But I don't have any problem with the two, and/or number one. So we have a conundrum. So we call the question for the first vote?

Ms. Ball - One other question here. Rick, on number three that's Mary's mentioning, does that not fall under the guidelines of the Building Department, so far as safety, before they approve something, if they consider it a hazardous area?

Mr. Enos – Well, I'm gonna answer that question indirectly. All we can deal with is the setback issue in the Zoning Code. There may be other codes that deal with that distance between structures, maybe, or maybe not. I don't know. If there are, you wouldn't be able to deal with them, anyway. So I think it's best for you to, you know, concentrate on the separation distance, as it's described in the Zoning Code. If there are other codes, there may be other ways to deal with, or appeal processes, to deal with it, you know. It wouldn't come back to you. So I'd suggest we just deal with the zoning regulations.

Ms. Hillberg – And these are separated into three individual permit – three individual requests?

Mr. Enos – That's correct.

Ms. Hillberg – So we could conceivably agree on two, and disagree on the third?

Mr. Enos – Yes, that's correct.

Ms. Ball – Rick, on number two item, as I recall in the past, restrictions - we've been able to put restrictions on facilities, in that the variance would only be for the life of that building, and for the use, as stated today, which is storage only.

Mr. Enos – Yes, you can put conditions on variances that you feel necessary to, you know, help deal with any issues that you might have with the requests, themselves.

Ms. Ball – Thank you.

Ms. Hillberg – So we call – can we call the question?

Ms. Hillberg called the question on the motion, and the Board approved the variance, as stated above. The vote was 3:2, with Hillberg and Bovell voting nay.

Ms. Hillberg – That was 3:2.

Mr. Rosasco – No, I voted aye.

Ms. Hillberg – You voted aye?

Mr. Rosasco – Yes, I did.

Ms. Hillberg – To approve?

Mr. Rosasco – To approve.

Ms. Hillberg – To approve. So that would be 3:2, is that correct?

Mr. Enos – I didn't get the votes. I think it was 3:2. I don't know which way it went.

Ms. Hillberg – Everyone who voted yes, please raise their hand. (Ball, Rosasco, and Young raised their hands) That's three. And the nays are two.

Mr. Enos – O.K. So it was approved, 3:2.

Ms. Hillberg – Three to two. Yes.

Mr. Enos – Motion carries.

Ms. Hillberg – Your variance.

DISTRICT 3

2. **ROLAND G. & ANN Y. RABITOR, TRUSTEES** – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1404 (7) to permit a variance of 2 ft. from the required 10-ft. minimum distance between structures (east side) in a TR-3 zoning classification. The property is described in **Section 17, Township 28, Range 38**. (0.10 acre) Located on the west side of Hwy. A1A, approx. 0.28 mile south of Oak St. (2580 Hwy. A1A, Melb. Bch.)

BOA Action: Rosasco/Young – APPROVED. The vote was 3:2, will Hillberg and Bovell voting nay.

Sondra Ball – All right, would you please come to the mic, whoever is going to present. If you would, state your name and address for us.

Roland Rabitor – Roland Rabitor.

Ms. Ball – Pardon?

Mr. Rabitor – Roland Rabitor.

Ms. Ball – All right. Sir, if you'd come close to the mic.

Mr. Rabitor – Roland Rabitor.

Ms. Ball – Thank you. And your address, please.

Mr. Rabitor – 2580 South Highway A1A.

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

Mr. Rabitor – I do.

Ms. Ball – Thank you. And are you going to be giving testimony, as well?

Richard Denza – What Mr. Rabor has done is asked me to speak, due to the fact he's a little nervous. So let me start off, Madam Chair, and Chairpersons, good afternoon.

Ms. Ball – All right. Thank you. Would you please give your name?

Mr. Denza – Excuse me. And I will not answer the six questions. Mr. Rabor will do that.

Ms. Ball – O.K.

Mr. Denza – My name is Richard Denza. D, as in David, E, N, Z, A.

Ms. Ball – All right, sir. And your address, please.

Mr. Denza - 2041 Trevino Circle, Melbourne, Florida, 32935.

Ms. Ball – All right. And do you swear and affirm the evidence you'll give the Board is true, so you state?

Mr. Denza – Yes, ma'am.

Ms. Ball – Thank you. You may proceed.

Mr. Denza – You're welcome. O.K. What I'd like to do is maybe start from beginning, if you have a few seconds, how we got to where we are today. Back in '05, after the hurricane, when Mr. and Mrs. Rabor purchased the property, they elected, at that particular time, to put an overhang over on the two doors to their manufactured home. So, at that time, what they did was, they hired a company called Dolphin Company, which is a licensed company within the State of Florida. Also, at that particular time, they went to their ARC Board to get approval to put the overhang on their home, which they do have approval from that Board. The contractor was employed. The contractor came out, did his proper measurements. It seemed like all the paperwork was put in place, except for one thing. Due to the fact back - and I'm not making any excuses for Mr. Rabor - due to the fact back in then, what happened was, there was a lot of contractors coming in to - in '05. So the contractor that Mr. Rabor employed, consequently, he subbed it out to another contractor. Therefore, that particular contractor did not apply for a building permit. Three years later, the Building Inspector comes out, and Mr. Rabor was fined, because the proper paperwork was not completed for the overhang or the - it's not a carport, it's the protection for the two doors. Since that time, Mr. Rabor has been up in front of the Magistrate. He was fined \$350. We also have - we went and applied - we do now have the building permit. It is signed off on. And at the same time, the Building Inspector has come out and has approved the work done by the contractor. Our problem is that, at the particular time, is, when he went up in front of his R - ARC Board, he thought what they say would be fine, not knowing the setbacks for the County. Consequently, what's happening is now that the three poles that are in question, where we're asking the two-foot variance, are just about on the property line. And if I may, we all have - I also have photographs here of other properties within that facility that show that their overhangs, their carports are exactly on the property lines. And if I may show the Board, if they're willing to see, I could show you some of these pictures, if I'm allowed to come up. (tape turned over)

Ms. Ball – Sir, what you give us in evidence is ours to keep.

Mr. Denza – Understood, ma'am. Thank you.

Ms. Ball – Thank you.

Mr. Denza – These two copies within the facility - you can see it was dated - they're built right on the property line. I'm not sure within the documents - do you have - do you have these photos that the Brevard County Inspector...

Ms. Ball – We do have this.

Mr. Denza – O.K. Great.

Ms. Ball – Yes. Thank you.

Mr. Denza – O.K. You can see what I'm talking about. It's protection for the stair wells there, the two steppings going into the property, and to the doors. There's no future plans, or will there be any plans, ever to enclose this, permanently. It's basically there for the protection of the homeowners. Again, like I said, we have now an approved building permit – has been inspected by the Building Inspector. And we would just like, if the Board would grant us, the leniency of the two feet so that they can keep this overhang. We would be very much appreciative.

Ms. Ball – All right, sir. Does that conclude?

Mr. Denza – Yes, ma'am. Thank you, Board.

Ms. Ball – All right. And, Mr. Rabor, do you have anything to say, before we ask some questions here?

Mr. Rabor – No. I think he took care of that, pretty well. Thank you.

Ms. Ball – All right. Thank you. This does fall in District III, which is for Jim. We'll begin questioning with him.

Jim Rosasco – Good Afternoon.

Mr. Denza – Good Afternoon.

Mr. Rosasco – This is my first time, too, so we'll both get through this together.

Mr. Rabor – O.K. Thanks. I hope we both can make it.

Mr. Rosasco – I drove through the development this morning. And from the drive through, I couldn't discern that you had any problem with your structure than any other neighbor would have in their structures. I mean, it seemed fairly typical to the trailer park to have either a canopy or some sort of a

structure adjacent to your home. And I find this one a very nice, as depicted in the pictures, it's not very intrusive. It's only – it's very unitarian in the sense – utilitarian, in the sense that it just covers the walkways themselves, and the stairs. And I see – and with the local architectural review committee, which I understand a homeowners association can be very Gestapo-like at times, for them to approve this, I would think they have the much – I'll turn my mic on now – I would assume they have a much better feel for the compatibility of your structure with the neighborhood than we would. So I would think this thing should be – this variance should be approved.

Ms. Ball – Thank you, Jim. Anyone else on the Board with questions? Dale.

Dale Young – Yeah. Looking at the pictures that the County has, that little concrete pad in front of the steps, is that the property line down here?

Mr. Rabitor – Yeah. That's it.

Mr. Young – And the problem is that the eight feet is from the trailer to that concrete? Is that what we're...

Mr. Rabitor – The pad is an existing pad.

Ms. Ball – Sir, you want to come to the mic, please.

Mr. Rabitor – It's eight and a half feet from that post. And the post, as you notice, they're level with the steps, which I didn't...

Mr. Young – O.K. That's fine.

Mr. Rabitor – And that was all engineered to be that way.

Ms. Ball – Anyone else, questions? (no response) Tell us again, three years later, how did this come to Code Enforcement?

Mr. Rabitor – You're gonna have to...

Ms. Ball – Or, Rick, can you tell us? No?

Rick Enos – No, I really don't know. All I know is that Code Enforcement did become aware of this somehow, and there is an open case on it.

Mr. Rabitor – I was always under the impression we had the permit, because it was right after the hurricanes. It was a new place. It was a valid company in the State that was recommended by the place I bought from up in Cocoa Beach there. And I was never aware of anything. And this was like three years later that I found out about this.

Ms. Ball – Well, sir, it does seem, so many times people do things and come in later and ask, please approve. But it does seem like you really endeavored to do due diligence, in this instance. You went to what you thought was a credible company. And through no fault of yours, somebody subbed it out,

and didn't take care of things the way it was supposed to have been, is what it sounds like. If there's no other questions from anyone on the Board, if you want to step aside, let me just ask. Is there anyone in audience to speak for the applicant? (no response) Seeing none, is there anyone opposed to this applicant's variance request? All right, sir you may speak.

Dallas Powers – O.K. My name is Dallas Powers. I live in the adjacent unit, at 101, address at 2580 South Highway A1A. And I live in the abutting unit, 101, to Mr. Rabitor.

Ms. Ball – All right. And, Mr. Powers, do you swear and affirm that the evidence you'll give the Board of Adjustment is true, so you state?

Mr. Powers – Yes, I do.

Ms. Ball – Thank you.

Mr. Powers – O.K. I'm appearing in opposition to Mr. Rabitor's request for a variance. And the following reasons is that, well, when I – about three years ago, two and a half years ago, my wife and I decided we wanted to replace our unit. So I came down to the County and started talking with the Building Department, and also Zoning. So I was advised by Zoning that I had to stay five feet off the property line, as did Mr. Rabitor. So I began checking it out, and I got a copy of his building permit. And the building permit was issued, based on the survey which he submitted. The survey shows that he is – it does not have – it shows he's off the property line from 7.9 inches to eight, point, or eight feet, one inch. So he was in compliance, as far as the building was concerned. But when he later added the addition, then that's when he violated the zoning law. And I was told that you have to stay ten feet - I would have to stay feet from his new addition, which is added, you know, as a walkway, or to cover-up the steps, which means I would have to decrease – I'd have to move my building over, when I put in a new building, and I'd have to furnish the entire ten feet. Now, when you look to the other side, the neighbor there put up a carport, also without a building permit. And, so, if the variance is granted to Mr. Rabitor, then a variance would be granted to the other neighbor, that would reduce the usability of my lot down to 15 feet. So 15-foot building would be the maximum I could put on it, provided, you know, that I complied with the zoning. So what that does, it decreases the value of my property, and it also decreases the size of the unit I can put on it. Now, at the time Mr. Rabitor applied, I mean, his survey showed that his new building would be in compliance. But once he added the overhang, it no longer was in compliance. Now, if I may, I have a couple of pictures here, which I may approach (unintelligible). Now, this is Mr. Rabitor's side, and this is the other side (unintelligible).

Ms. Ball – Sir, just for clarification, on the picture that we have, is your property the property in this to the west?

Mr. Powers – Mine would be the east of that post.

Ms. Ball - You're not facing this structure, then? You're not facing his entry?

Mr. Powers – (Unintelligible) common property.

Ms. Ball – Pardon?

Mr. Powers – Yes. We have a common property line.

Ms. Ball – All right. So your property is facing, or abutting, to where his – your access is affected, you're saying, by these steps, and this entry.

Mr. Powers – (Unintelligible) entry to the building.

Ms. Ball – All right. Thank you. Just help us.

Mr. Powers – So, anyway, I reviewed - you know, I got a copy of the application for a variance, which that's for the hardship. And as I go through here, there was an item two that says, "Special conditions and circumstances do not result from the action of the applicant." And this clearly results from his actions from having to put up a building that was not in compliance, or put up an overhang extension of the roof that's not in compliance. And it does not prevent him from fully utilizing his property; whereas, it would, in my case, if I put a, you know, if I put up new building. So he doesn't comply with the definition of a hardship and the six statements, which are, you know, in the application that he would have prepared. Now, when I go to sell my property, I'm required - if I sell it, I'm required to disclose any defect in zoning, or setbacks, or otherwise. I have a copy of that, if I may present it to you.

Ms. Ball – Sir, you understand that that would be ours to keep?

Mr. Powers – Yes. I had the (unintelligible) back section of it, where it sets out what a seller's required to disclose, upon the sale of the property.

Ms. Ball - You need to be speaking in the mic, Mr. Powers.

Mr. Powers – I'm sorry. And one other item I have here, which accompanied the building permit, which is furnished to me by the County, and it's clearly stamped on it, "The issuance of the permit does not relieve the contractor, or the owner, of the requirements to follow the Building Code or the Zoning Code." So, bottom line is, if the variance is granted to him, neighbor on the other side comes in for a variance on his, then I'm limited to a 15-foot building. The lot's only 32 or 33 wide, and so I'd be furnishing the setback for Mr. Rabor, as well as on the other side.

Ms. Ball – All right, sir, if that concludes, then we'll begin questioning from the Board. Jim.

Mr. Rosasco – I'm confused how you're saying that your lot - the building envelope that you can build is impacted by this variance.

Mr. Powers – Absolutely.

Mr. Rosasco - This variance, you don't have to have ten feet between the buildings. So you don't lose two feet, because we've given him that two feet. Your building envelope would remain the same, if I'm not wrong, Richard. Am I not?

Mr. Enos – This is a very unusual circumstance. Yes, in most subdivisions, you've got setbacks measured to side lot lines, and a variance on one lot won't affect your setback on a neighbor's lot.

That's not what we have here. What we have here is a distance between structures. This is set up as a condominium. And, so, in this case, you know, the ten feet is measured between structures, regardless of whether that – where that imaginary lot line is. And, you know, although it's easy to say you've got a five-foot setback on one side, and five on the other, to add up to ten, that's really not the case. What you have – the only code we have here is the distance of ten feet between structures. So, if we're already at ten feet, then, technically, neither one could build any more on that side.

Mr. Rosasco – I stand corrected. Thank you.

Ms. Ball – All right. Dale

Mr. Young – Yeah. Do you know when this park was platted?

Mr. Powers – No, I do not. No.

Mr. Young – And is this 30 feet the standard lot size?

Mr. Powers – I don't know whether it's standard lot. I think they vary in size that go through there, but some are 30, some - you know, some are larger, some are smaller.

Mr. Young – O.K.

Mr. Enos – We have variances going back to 1970, in this park.

Mr. Young – O.K. And I guess I'll have a question, in when the applicant comes back up.

Ms. Ball – All right. Anyone else on the Board, questions? (no response) If I understood the applicant, we're talking about where these posts are placed.

Mr. Powers – Well, I'm talking about the roofline, because my understanding, in talking with the representative from Zoning, that the roofline is, you know, where it's measured from. But the posts are virtually at the roofline, anyway. If it's measured from the extended roof, which he has added, then you might have to...

Ms. Ball – So the two feet are hanging over the steps?

Mr. Powers – No. It's more than two feet.

Ms. Ball – Well...

Mr. Powers – That may be what his application says.

Ms. Ball – The request for the variance is for two feet.

Mr. Powers – Well...

Ms. Ball – Correct, Rick?

Mr. Powers – That would...

Mr. Rosasco – The survey shows it to be actually 1.38 feet.

Ms. Ball – And we always have to round.

Mr. Enos – And the reason for that is, you know, you've got more than ten feet now, without the – or going from structure to structure. So even though the covering is more than, you know, is four feet wide, or something like that, two of that would be okay. It would still meet the ten-foot separation distance. So he needs another two feet.

Ms. Ball – Mr. Powers, do I understand you're saying if Mr. Rabitor had a covering for these steps that went back two feet, which would be, it appears, putting it right even with the concrete of the steps, where they go up, you would be satisfied?

Mr. Powers – No, I don't know that I'm agreeing with that, because it's – in other words, I'm gonna have to have to build a building ten feet from his, wherever his roof is, right? That's what I'm being told. I've have to build from ten feet from wherever his roof is, or it's where my building would start. And so I don't know that that ten foot, or that two feet, is an accurate measurement. I can't say.

Ms. Ball – Well, I think all our Board is charged with today is two feet from the required ten-foot minimum distance.

Mr. Powers – Well, that's his request, but I don't think two feet is adequate.

Ms. Ball – Well, this is what staff has given us in paperwork. Rick, you want to address this?

Mr. Enos – Yes. There is - you know, that sidewalk, or concrete pad, is about four or five feet wide. O.K. Distance from the wall of the structures, you know, not including the covering over the pad, the distance between the walls of the structures is about 13 feet, or so. O.K. So without the covering over the concrete, you've got more than enough of a setback. You've got ten, you know, 12 feet, or so. But because the width of the concrete pad, and the covering over the concrete pad, is four to five feet wide, then you're down to eight feet between the structures. So that's why we have a violation of two feet of that distance between structures.

Ms. Ball – All right. Dale.

Mr. Young – Are these stairs included as part of the structure – steps?

Mr. Enos – Typically, they are not, particularly if they're just concrete steps. I'm not sure what we have here, what the circumstance is.

Ms. Ball – Well, Rick another question. Oh, I'm sorry, Dale.

Mr. Young – Where the two steps going into the entries, are these part of the building? So you've got to have ten feet from this to that. Right. O.K. That's all, for now.

Ms. Ball – Rick, one other question. When someone is putting a covering over steps like that in a park that involves senior citizens, does safety come into effect, where there needs to be a covering over steps for entry, or not?

Mr. Enos – I honestly don't know, Madam Chairman. I don't know the answer to that.

Ms. Ball – All right. Mary.

Mary Hillberg – If safety wasn't an issue in the previous one, I don't think it's an issue in this one. And I would – I had no idea that these were quite as close as they were. Just looking at the survey, I didn't realize that these were as close as they are. Should I read this letter?

Ms. Ball – We do – well, let's finish testimony with this gentleman. Mr. Powers, just a moment. Jim.

Mr. Rosasco – I have a – Rick, I have a question. I'm confused, a little bit. I get, from this gentleman's main concern is, if he has to rebuild he's gonna be penalized, 'cause his pound of flesh is coming out of his skin. This condominium structure you're talking that they have there, if we grant the applicant's variance, can't we tie that to a variance in anticipation of that this gentleman isn't penalized to lose his ten feet. I mean, wouldn't that go with the land, this variance, if we grafted it to say that sort of thing?

Mr. Enos – I don't know how you could do that, to grant a variance in anticipation of a possibility of another one in the future. I'd be uncomfortable with that. You know, it's almost like first come, first serve, in this circumstance. You got a distance of ten feet between structures, but no one owns that ten feet. It's owned in common. So everyone has a right to whatever it takes to get your structure down to ten feet. So, you know, either one of them would have the right to build – you know, right now, there's about 12 feet between them, 12, 13 feet. Either one of them would build the right – would have the right to use that additional two or three feet to get down to ten feet. So I can't sit here and say that, you know, a variance to one is gonna eliminate rights to the other.

Mr. Rosasco – Well, why couldn't we...

Mr. Enos – Because they both have the right to it.

Mr. Rosasco – Why couldn't we give the variance that between these two lots they're allowed to have less than ten feet? They can have the 8.32 feet.

Mr. Enos – Yes. I think, if you do that...

Mr. Rosasco – I mean, if we're talking about a variance for a...

Mr. Enos – I think if you give a variance of eight feet between the structures, it applies along that entire property line. And, you know, in one case, one could add on, and the other case, you know, further down the property line, the other neighbor could add on.

Mr. Rosasco – I mean, wouldn't that be the way to solve the problem? Say, this is – the variance is distances between structures.

Mr. Enos – That's correct.

Mr. Rosasco – It's not distance from a property line.

Mr. Enos – That's correct.

Mr. Rosasco – So by granting this variance, how do we – that doesn't preclude this gentleman from building to where he could now.

Mr. Enos – I think, if you just leave open the variance, if you approve it at two feet, then it would apply along the entire length of the both structures. That might be the fairest way to do that.

Mr. Rosasco – I think this would solve the problem. You would not lose any square footage to build, but you'd have eight feet between the structures. But, you know, you could take that - you could take that piece. We're giving a variance of – a variance of the ten foot between structures. So I don't think that would impact your economic interest, I think.

Mr. Powers – Well, I don't - you know, I don't want to question, you know, authority over that, but I don't see how that can work, 'cause it's not an easement. And in Ohio, that wouldn't work, and that's where I'm from. I mean, you can't grant a variance, you know, which would impact the other property, because, in a sense, it's almost using your right of eminent domain to take my property.

Mr. Rosasco – But under my scenario, we're not taking your property. You're gonna be able to build out exactly where you can build.

Mr. Powers – I don't think so. Well, you might be right, but I don't understand it that way, and it wasn't explained to me that way by the Zoning people.

Christine Lepore – Mr. Rosasco, if I could interject.

Mr. Rosasco – Sure. Help us out.

Ms. Lepore – I'm not questioning your theory. That might be a good approach to it. Legally, the variance request was advertised for lot 102, Mr. Rabitor's lot. So we have a problem with the legal advertisement, and the scope of what you're proposing not being consistent with how this item was advertised. So I don't think you could make that decision today. It would have to be readvertised to include both properties, as the variance structure that you're proposing would address both of Mr. Rabitor's property and the gentleman's property.

Mr. Rosasco – So what you're saying is, this variance would give lot number 102 the variance, but lot 101 wouldn't get that variance.

Ms. Lepore – Right. There's an advertising...

Mr. Rosasco – ‘Cause we’re saying the variance is ten feet between structures.

Ms. Lepore – For each application before the Board of Adjustment there’s an advertising requirement.

Mr. Rosasco – Oh, I understand all that.

Ms. Lepore – Right. And this Board can’t take an action that is outside the scope of what was required – what was advertised.

Mr. Rosasco – I understand that completely.

Ms. Lepore – O.K.

Mr. Rosasco – I understand that completely. What I’m saying is, taking what you’re saying, we have to advertise for lots 101 and 102, because the variance is between the structures of those two lots.

Ms. Lepore – Correct.

Mr. Rosasco – So I’m not sure if you’ve advertised correctly in the first place. Is the variance between these two lots?

Ms. Lepore – This was not advertised to accomplish what you’re suggesting. So, if you want to, you would need to table this and have it readvertised, if you want to entertain that.

Mr. Rosasco – O.K. I want to step back just a second. The variance request is a variance between these two structures. It’s not between these two lots. It’s between the two structures of the lots. So it would appear to me that this has been advertised incorrectly, because it is, in fact, impacting this gentleman, lot 101. It’s not the typical property line variance. So it’s more than one property. I can be wrong here, and I’m the new kid on the block.

Mr. Enos – The entire structure, however, would be on lot 102. So I do feel like we’ve advertised it properly.

Ms. Ball – All right. Mr. Powers, if you would, take a seat. And let’s see, is there anyone else in the audience to speak?

Mr. Powers – If I may make one other remark.

Ms. Ball – All right, sir, quickly.

Mr. Powers – O.K. It caused quite a havoc within the government part of the unit, there when he built his unit. Actually, the Leisure Living requires seven and a half feet off the property line. And, Mr. Rabitor is fully aware that he violated that. The County’s is five, but I mean, but within Leisure Living it’s seven and a half feet. And they finally permitted him to leave it there, because it’s already up.

Ms. Ball – Sir, the guidelines we have to go by are the County.

Mr. Powers – I understand. (unintelligible)

Ms. Ball – Not homeowner.

Mr. Powers – But he was selling the fact that the ARC Committee had approved it, and I haven't seen that. Thank you.

Ms. Ball – Thank you. Is there anyone else in the audience to speak for denial of the variance that has been stated and discussed? (no response) And I call one other. Is there anyone else in the audience to speak in favor of this request? (no response) Seeing none, we have one letter of objection that was in the file, and Mary will read that.

Ms. Hillberg – This letter of objection is related to the unit 102 in the subject application. It states: "I ask you not to grant the variance requested for the following reasons: As a past President of the Association, he, Mr. Rabitor, knows the by-laws, rules, and regulations of this association. He knew, or should have known, that when he built his new structure that the County and association's regulations required, as far as setback, or space between structures required. If he had applied for a County permit, as required, he probably would not have built it in violation of a rejected permit. If this association gave him permission to build, as is the prescribed procedure of this association's documents, and he is in violation of a County Code, than let him seek relief from the association for an inappropriate action." The second point is: "I live in the same association as they, and we, 109 units, live close enough in manufactured homes, mobile homes, not houses, that the noise level between structures, and their thinner walls and insulation, is much more noticeable than it would be between regular-built homes, meeting County homes. This is only one of the reasons the association documents chose to opt to regulate space between structures to no less than seven and one half feet, other than those that were grandfathered, because they were in place when the association became incorporated. I have nothing but goodwill towards the Rabitors; however, if it was my next door neighbor, I would be very disappointed, if it happened to me. Therefore, as a member of this association, I feel obligated to object and have it not become a precedent for others to copy. Sincerely, Verle Drinkwater, Unit number three."

Ms. Ball – Thank you, Mary. O.K. I think we have exhausted our opportunity with the audience. I'll give the applicant their last opportunity to come for any final comment or rebuttal.

Mr. Rabitor – Something – see we – after the hurricanes, I had a place in there. My mother had a place. I had a place for her in there, in the park. Right. After the hurricane, my unit was - in Hurricane Frances, was demolished. Right. I had to replace something. I don't have a place to go up north to go home. I live there year round. So what I did is, my mother happened to be in the nursing home at the time, so I moved over to her place. Then Hurricane Jeanne came, three weeks to the day later, if you recall. That unit went. We were over in the school over here, and that unit went, when we got back. So I had to rent for eight months. Now, I got all kinds of information from the County. There was complete chaos, if you recall, after the hurricanes. All different things were going on. So we went, and we thought that what we would try to do is get a unit that was gonna last us the rest of our lives. So we went all the way over to Jacobson, which is on Snug Harbor, on the other side Tampa. And we had this thing – we were going to be able to put in some similar - we had

a double-wide before. Right. So what happened is, is the County, and that man that you just read that letter from - he happened to be on the Board at the time - and the County, if you recall, said that you could put it on the same footing. You could put it back on the same footing. That Mr. Drinkwater said no. He said, you have to follow our park regulations. Now, if I'd been able to - I went from a 24-foot wide to 20-foot wide, which cost an extra 20 some thousand dollars just to have it made special. If I'd been able to put that unit back where it was supposed to have been in the previous time, but Mr. Drinkwater said not you can't do that, I would have had no problem, whatsoever, with any of these things going on now. It's a long story, and I've been going through this for - ever since 2004, trying to get all of these things regulated. And the reason that the park gave me permission to do this is because they considered it was back on the same footing as the other one. That's why they said it could be done, the problem here with the overhang over the doors. So all we're trying to do - we live here year round - we're trying to - and all of these - a lot of these people, they just come down for few months, or maybe a few weeks of winter, and then - and one further thing is, is I have to say this, is that according to our park regulations, if he is to put his unit - put a new unit in there, he has to move his over two and a half feet, because he is two and a half feet over his line. So it's a very complicated thing. And I've been going through this for so long that, at this point, I just don't know which way to turn. It's - all we try to do is - my wife is over here, and we just try to live our lives out down here, and try, without any major concerns and problems, and somehow these things all develop. I'm sure that if this company that I hired to do this would have gotten a permit to do it, I bet you it would have been granted, and we never would have had any of these problems and concern. And the other thing is, is our park is considered a nonconforming park. And Mr. Ramsey told me that he would be here today. And he's been through the park several times. And he said that he would be here and recommend that there are several places that are much, much worse than this particular unit. So, I don't know, you people have to make a decision, but I'm just hoping that you can consider our situation. Thank you.

Ms. Ball - All right, sir. Thank you, very much.

Mr. Young - Could I ask - just a minute. Could I ask a couple of questions? Probably should have got these before, but...

Ms. Ball - Let's make it short, Dale, because, yes, we did cut off questioning. Go ahead.

Mr. Young - Yes. You put this in, in 2004?

Mr. Rabitor - What, the...

Mr. Young - The mobile home.

Mr. Rabitor - Mobile home? I don't think it was delivered until January of 2005.

Mr. Young - O.K. And the steps, were they there originally, or did you put these steps in, when you put the house?

Mr. Rabitor - Those steps, all of that came with the unit.

Mr. Young - So the steps have been there since the unit's been there?

Mr. Rabitor – Exactly.

Mr. Young – And putting the posts up doesn't change any dimensions, as far as distance between structures?

Mr. Rabitor – No. No. And it was all engineered, to my knowledge. I had the engineered papers. I had everything from this company. And like, what Mr. Denza said, it was a rogue company that did things on the side. I don't even know if I should say this, but the checks that I made out to the company, the Dolphin Company, they were cashed in a bar in Ohio.

Mr. Young – O.K.

Ms. Ball - All right, Dale.

Mr. Rabitor – So I tried to do the best I could through all of this, And sometimes it doesn't work, I guess.

Ms. Ball – Thank you, Mr. Rabitor. O.K. Our – We're cutting off our discussion any further with the applicant, and the audience. Could I have a motion, please?

Ms. Hillberg – I have a motion to deny this request for variance for – due to the item number – we have the six items that we follow. Number one, number two, number three, number five, and number six would not be able to be answered in the affirmative, and, also, the objections from Mr. Drinkwater, and the neighboring building, and the objections of the other side of the building, Mr. Powers. It seems to me that the problem is the overhang. It's not the stairs. It's the overhang, and it does make it narrower. And if this variance is changing the value of the property next door to it, that would be in violating one of our six. Is that correct? Could be – ya'll let me know here.

Ms. Lepore – I can't draw your conclusion for you. I don't wish to comment.

Ms. Hillberg – No. My question is, if we have impacted other property's value by granting a variance.

Ms. Lepore – That's a thing for you to consider.

Ms. Hillberg – That's one of the six items. Is that correct?

Ms. Lepore – That's a thing for you to consider.

Ms. Hillberg – And number one item is that these special circumstances are not applicable to other structures in the compatible zoning. And they are, in fact, applicable to all the other structures. Is that correct, also?

Ms. Lepore – Yes, of course, the setback is applicable to all the other structures. I think you have to look at the circumstances, is what that section...

Ms. Hillberg – And then also for number two, that these were actions by the applicant, so that that would be correct, also. O.K.

Ms. Lepore – Again. The Board needs to draw it's conclusion.

Ms. Hillberg – I'm just asking you, as far as my interpretation of this. So my motion would be to deny this application, as it is right now, and perhaps, if the applicant could bring it within another way, or perhaps take off the overhang so that it doesn't impact their neighbors. Thank you.

Ms. Ball – All right. Is there a second?

Mr. Bovell – I second.

Ms. Ball – All right, George. Any discussion? Any further discussion on the motion for denial? Dale.

Mr. Young – Yeah. The overhang is not the issue, as far as I can see. The steps were there. They didn't comply. They didn't conform, from day one. So adding the convenience of the overhead, or overhang, doesn't change anything. This is a mobile home park. It's not the first time we've seen this situation. I'd say it's 95 percent of the time. It's apparent from the other photos that the mobile home park suffers from this situation in more places than one. And, as Jim had said, the only damage to the neighbor would be if he has to tear his down and start over. The addition to the new mobile home looks like it went in on the same footprint, or even less. So denying this would not change the nonconformance, one iota.

Ms. Ball – All right, Dale. Any other comment?

Ms. Hillberg – May I ask Rick one more question? Is it not the overhang considered the edge of the building? Is it not the overhang?

Mr. Enos – The setback is actually measured to the supporting posts.

Ms. Hillberg – So the overhang is not an issue.

Mr. Enos – You can have a slight overhang, but the setback would be measured to the post for an open porch like that.

Ms. Ball – And I just have a comment, and an observation, of this picture. The posts are even with the steps. This just seems unreasonable on technicalities to deny the request. I just can't see, where a post is even with the steps, how that is depreciating someone's property, interfering with his ability to build. That's just my comment. O.K. George.

Mr. Bovell – Just one clarification. Without the posts, the separation between buildings now goes to the wall, not to the steps, right?

Mr. Enos - Yes. If there were no posts there, no cover, then it would be wall to wall.

Mr. Bovell – Thank you.

Ms. Ball – All right. No further discussion here, then I'm gonna call the question. Those in favor of denial the request, as stated, please say aye. All right. We've got two votes, so that's pretty much gonna determine where we go. Those in favor of denying the request, as stated, please say aye. All right. That's 3:2.

Ms. Lepore – I'm sorry. It's my understanding the motion was to deny. So you need to call for those all those in favor of the motion, all those in opposition to the motion, not the application.

Ms. Ball – I'm sorry. Those in opposition to the motion.

Ms. Ball called the question on the motion, and it failed 2:3, with Ball, Young and Rosasco voting nay.

Ms. Ball – So that is defeated. No?

Mr. Enos – Right. The motion failed. So now you'll need another motion.

Ms. Ball – Now we need another motion.

Mr. Rosasco – I make a motion to approve the variance.

Ms. Ball – All right. Is there a second, please?

Mr. Young – Second.

Ms. Ball – Thank you, Dale. Any further discussion on the motion, as stated, for accepting the variance, as stated? (no response) Seeing none, I'll call the question.

Ms. Ball called the question on the motion, and the Board approved the variance, as stated above. The vote was 3:2, with Hillberg and Bovell voting nay.

Ms. Ball – Sir, your variance has been granted. And good luck.

DISTRICT 4

3. RETHA V. MINOR-BEASLEY AND GARY L. BEASLEY – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1340 (5) (a) to permit a variance of 11 ft. from the required 20-ft. rear setback in an RU-1-11 zoning classification. The property is described in **Section 23, Township 26, Range 37.** (0.21 acre) Located on the corner of Second Terrace & Sea Gull Dr. (620 Sea Gull Dr., Satellite Bch.)

BOA Action: Bovell/Young – APPROVED, as depicted on the survey provided by the applicant. The vote was unanimous.

Ms. Ball – All right sir, would you state your name and address please.

Corey Lancaster – It's Corey Lancaster. I am a certified contractor for Harland Property Development. Address is 1060 West King Street, Cocoa, 32922.

Ms. Ball – All right. Corey, do you swear and affirm that the evidence you'll give the Board of Adjustment is true, so you state?

Mr. Lancaster – Yes.

Ms. Ball – Thank you. You may proceed.

Mr. Lancaster – O.K. Good afternoon. What we're proposing here is to add a one-car garage to the rear setback of 620 Sea Gull. The first proposal was to do a two-car garage at the front entry of the property, which I can hand you this here. This is the house here with the...

Ms. Ball – All right, sir. And you understand that's ours to keep. Thank you.

Mr. Lancaster – There, where the driveway is – has a turn to it, is not conforming to Brevard County driveways. Their new code, it has to be a 40 feet from any radius or any – what's the word I'm looking for here – or any radius on any corner home has to be a 40 foot from the radius that you can put a driveway in. And, right now, his house is not conforming to that, so we could not do the two-car garage there. So what we planned to do is remove that driveway for two – for one reason, first of all, is for the safety hazard. He has kids now who's back home, and they're trying to back out that driveway at the intersection. And we have traffic coming from all three ways. So we want to remove that driveway there. Now we are now conforming to the new code for driveways. And we're asking to put the garage next to his one-car garage now, which will cause no hardship to anyone. And I believe that you have a piece of paper that was signed by five of the neighbors that actually adjoining three in front of his home, one to the west side, and one to the back side of him, has approved it, and signed off, and said it would not be a hardship to them, either.

Ms. Ball – All right, sir, anything else? That conclude?

Mr. Lancaster – No. That concludes it.

Ms. Ball – All right. Before we begin questioning, I will let Mary go ahead and read this petition that we will enter into the record.

Mary Hillberg – “October 16, 2008: Dear Neighbor: I am requesting a variance from the Brevard County Building Department to build an additional one-car garage, adjacent to the existing garage. I am requesting your approval for this addition before the request is submitted. I would like to submit your agreement with this plan by requesting your signature and address below. Thank you for your support in this endeavor.” The five listed are (tape switched) “Lucita Gerber, 741 Sly “sic” Gull Drive.

Mr. Lancaster – Sea Gull.

Ms. Hillberg – Sea Gull Drive. “Norma J. Best, 701 Sea Gull Drive; Jeanne Bedard, 201 NE 2nd Terrace; Jan Ford, 721 Sea Gull Drive; Rita Lewis, 640 Sea Gull Drive.”

Ms. Ball – All right. Thank you. I'm gonna open questioning up. The District that this falls in is George, in District IV.

George Bovell – Thank you. Have you considered - in the interest of using up as the minimum of the variance that's possible, have you considered just expanding this garage to turn this garage into a two-car garage, other than build another garage next to this one, which would require more room?

Mr. Lancaster – Yes, sir. But the feasible amount, moneywise, would be more to tear that garage down to extend it over another seven to - six to seven feet.

Mr. Bovell – So you say it's cheaper to add another garage to it.

Mr. Lancaster – Yes. It was cheaper to add it to it.

Mr. Bovell – And the other question that I would have was how did your neighbors feel about this, and that was answered by the letter that Mary read.

Mr. Lancaster – Yes.

Mr. Bovell – That's all I have.

Ms. Ball – All right. Anyone else? Jim.

Jim Rosasco – Yeah. I have a question. It appears to me that this is a rear yard setback, although, in fact, it looks like a side yard.

Mr. Lancaster – Correct.

Mr. Rosasco – I drove the neighborhood this morning, and it didn't dawn on me that this really is a side yard, even though – I mean, they say it's 640, or 620 Sea Gull, which is the street it faces, but they had to decide some sort of a back yard I guess, so they chose this particular side to be the back yard setback.

Mr. Lancaster – Correct.

Mr. Rosasco – Is there any – is there a problem, as far as the lot coverage concerned? I mean, isn't there some sort of a number, like 60 percent, or 70 percent, of a lot coverage? Have you checked that with the Building people?

Mr. Lancaster – Yes. Actually, Land Development gave me the idea of putting in back ii the back.

Mr. Rosasco – I'm sorry.

Mr. Lancaster – Actually, Land Development's the one who gave me idea of putting the extra garage there, instead of trying to go where we were trying to go the first time.

Mr. Rosasco – So you don't think there's any problem, as far as the lot coverage is concerned?

Mr. Lancaster – No. No, sir.

Mr. Rosasco – And I notice this is a third attempt at a garage. They have the driveway coming off the radius, and they have the garage that they have now. And they're gonna build this one adjacent to the existing garage.

Mr. Lancaster – Correct.

Mr. Rosasco – And I assume they'll remodel that into some sort of living quarters, or something?

Mr. Lancaster – Well, no, the first one there is already a enclosed area. It actually has glass up, and everything. It was like that when he bought the home.

Mr. Rosasco – Right.

Mr. Lancaster – It must have been a garage, at one time.

Mr. Rosasco – Sure.

Mr. Lancaster – And they remodeled it and changed it over. But now what it is, is that the driveway is now nonconforming to Brevard County Code.

Mr. Rosasco – I understand that. My question was, this second addition, the single-car garage is there right now. I assume they're gonna turn that into living quarters, and that's why they need the third attempt to have a garage?

Mr. Lancaster – No. There's – it's only one garage there.

Mr. Rosasco – Oh, that driveway goes up – I thought that was a...

Mr. Lancaster – No, that's actually an entrance into the house.

Mr. Rosasco – My main point was, it looked to me like this is more like a side yard setback application than a rear yard setback. And driving the neighborhood, it would not appear out of character.

Mr. Lancaster – Actually – right. It would not appear out of character, at all. Actually, when you look at the front, where the front, when you get to Sea Gull, that is actually is the side street. And we are - right now, we're at about 27 feet setback on that, which we can actually can be a 15 – it's a 15-foot minimum for right there where the screen – where the screen porch is.

Mr. Rosasco – Thank you.

Mr. Lancaster – Thank you.

Ms. Ball – Anyone else? (no response) No. Corey, is this - your request for the 11 feet, is that the minimum for this request that you can get by with?

Mr. Lancaster – That's enough just to put a one-car.

Ms. Ball - Or is that desirable number?

Mr. Lancaster – That's actually a minimum. That's just a one-car garage. It's actually a – the garage itself door is nine feet, and you have one foot for a footer here, and one foot for a footer there, which would be at – would be 11 feet. That is like the minimum to put a one-car garage up.

Ms. Ball - Can you give us an idea of what the cost differential is, if the question was can you not just...

Mr. Lancaster – Tear down the...

Ms. Ball - ...take the wall out – yeah, and just - because we've asked...

Mr. Lancaster – We're probably somewhere looking at a \$6,000 difference in cost.

Ms. Ball – All right. Thank you. Anyone else? Any other questions of him? (no response) Seeing none, Corey, if you'll step aside, we'll just ask a question. Anyone in the audience that cares to speak on behalf of the applicant? (no response) Seeing none, anyone in opposition of the applicant's request for a variance? (no response) Seeing none, Corey, we'll give you the last comment.

Mr. Lancaster – I really have no comment. I explained it all.

Ms. Ball – Oh, that's simple. All right. Thank you, very much. You may be seated.

Mr. Lancaster – Thank you.

Ms. Ball – We'll close off any discussion further, other than to accept a motion from the Board. George.

Mr. Bovell – Yes. I make a motion to approve the variance, as depicted in the survey. And my reason - one of my reasons is he looked at how the house was positioned on the lot, and it did not make the best use of the land. For example, on the front side, the house is set back 26 feet, when you really could be – should have been about – they said the normal setback should be 20. So the house is not positioned correctly on the lot.

Ms. Ball – All right. Thank you. Could we have a second, please?

Ms. Hillberg – Second that. And I agree that I don't see that – I think that the land itself has caused the hardship for the applicant.

Ms. Ball – All right, Mary, thank you. O.K. We're open for any further discussion or comment from the Board. (no response) Seeing none, I'll call the question.

Ms. Ball called the question on the motion, and the Board approved the variance, as stated above. The vote was unanimous.

Ms. Ball – All right. You have a unanimous vote. You've been given your variance. You're welcome, sir.

The following discussion took place after the regular scheduled meeting:

Ms. Ball - Any other comment, or whatever, from the Board, before we close today?

Ms. Hillberg – We have to go over this.

Mr. Bovell – It's good to have you back.

Ms. Ball – Pardon?

Mr. Bovell – It's good to have you back.

Ms. Ball – Well, thank you. Thank you, George. Rick, do we need to go over this letter that you were sending to the Board of County Commissioners from us? Is there anything concerning that?

Mr. Enos – Let me state very briefly that we did take that to the Board. The Board agreed, and they have directed us to proceed with an ordinance. And that is in process. It should take about probably another couple of months.

Ms. Ball – Great. Good news. Thank you.

Mr. Young – Madam Chair.

Ms. Ball – Yes, Dale.

Mr. Young – Would anybody be inclined toward trying to correct the situation we just had of a distance between buildings, instead a distance to a property line? Since one property, if it's a platted project, should not have any reliance on the building next door.

Mr. Enos – I don't know how else to do it, when there are no property lines.

Mr. Young – Yes. It should go to the property lines.

Mr. Enos – There is no property line, Dale.

Mr. Young – I think we should make the suggestion to the Commissioners that they should visit this ordinance.

Mr. Enos – Dale, there is no property line. It's a condominium.

Mr. Young – Isn't this - these people own this property. Or are they just renting the...

Mr. Enos – No, they own – they own a condominium unit, which means that they own a share in a condominium, with an exclusive right to a piece of property that looks like a lot, plus actually a condominium unit.

Mr. Young – O.K. Withdrawn.

Mr. Rosasco – To me, that sounds like more like a co-op than a condominium. Condominiums, I've always understood, is a three-dimensional space that you own. You've got a survey here with property lines. I'm very confused, Rick.

Mr. Enos – Yeah. It's an unusual circumstance. But if you look at the deed, it does describe it as a condominium.

Mr. Rosasco – It's a condominium, and it doesn't – they don't have individual three-dimensional property ownership.

Mr. Enos – Well, it's three-dimensional in the sense that they're from the ground all the way, you know, up to the size you want to go.

Mr. Rosasco – Well, you say they own the ground. Then they must...

Mr. Enos – They don't actually own the ground. They own the space – they own a space hovering over the ground.

A man in the audience spoke away from the microphone, which was unintelligible.

Mr. Enos – That is a matter of interpretation. Let me just state that...

A man in the audience spoke away from the microphone, which was unintelligible.

Mr. Enos – Let me just state that the Code describes distances between structures, does not describe setbacks to lot lines. The Code says that the – in a TR-3 zoning classification, it's either a mobile home park, a rental park, where the ownership is, you know, a management company that rents out spaces. Or it is organized as a condominium, where the condominium association owns the, you know, the real estate, and the people of the condominium own condominium units. I'm not a real estate attorney...

Mr. Rosasco – That's as clear as mud.

Mr. Enos - ...so I can't really explain it, too well. I'm not a real estate attorney.

Mr. Young – Not my understanding from...

Mr. Enos - All I understand is that there is a difference between a subdivision and a condominium.

Mr. Young – That's not what we're hearing over here, that they do own the property, and they got a property tax.

A man in the audience spoke away from the microphone, which was unintelligible.

Mr. Enos – Yeah. Every condominium owner is gonna get a tax bill, because he owns property.

A man in the audience spoke away from the microphone, which was unintelligible.

Mr. Young – What is that ordinance number? What's the ordinance number?

A man in the audience spoke away from the microphone, which was unintelligible.

Mr. Young – It's on the - I guess...

Mr. Rosasco – Is that it? No. It doesn't give it.

Mr. Young – They do on Melbourne. I guess we don't. I've got to understand that myself.

Ms. Lepore – It's 62-1404.

Mr. Enos - Paragraph seven.

Mr. Rosasco – What is – Rick, what does this survey represent, if isn't a piece of real estate? I mean, how do they get these boundary markers? And how do they get these – the surveyor come up with property lines, if that doesn't...

Mr. Enos – My understanding, and this was explained to me many years ago, and I don't understand it any better than anyone else. O.K. A condominium, where a piece of land is described, is no different than a condominium where a block of air is described. You own a share in the condominium, which owns the land, and then you own an exclusive right to use a space, whether it's a space sitting up in the sky, which is what you have in a multi-unit building, or a space on the ground, which is what you have in this circumstance, or even if it was the first floor of multi-story condominium. In this case, because you don't have different floors, you can describe what looks like a lot. And for all intents and purposes, it is a lot, but it is not the same as a lot in a subdivision. And that's the best I can do. You know, like I said, I'm not a real estate attorney. I'm not gonna be able to do any better than that.

Mr. Rosasco – Thank you.

Ms. Ball – All right. I guess we're meeting adjourned, if that's the last of the questions. Thank you, Rick.

The meeting was adjourned at 3:13 p.m.