

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, June 17, 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
- 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

Four regular members, and one alternate, were present. They all voted throughout the hearing.

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

The items were heard in the following order: 3, 1, 2. These minutes are in agenda order.

Sondra Ball – I now call to order the scheduled meeting for the Board of Adjustment. I would like to address our Board members, the applicants and the audience, for a moment, please. The Chair is asking that all Board members not ask 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, questioning will open to the full Board. I'm asking that the Chair recognize each Board member. Once the 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 in 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 are 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 wishing not to verbally state their address may ask the clerk to my left at the podium for an address card. Fill it out and give it to the clerk. Are there any questions of Board members concerning the Chair procedure? (no response) Seeing none, are there any questions of any applicants concerning Board procedure? (no response) Seeing none, are there any questions from any audience members concerning our procedure? (no response) Seeing none, we will proceed. Our first order of business is to approve the minutes for our May meeting.

Motion by Mary Hillberg, seconded by George Bovell, to approve the minutes for the Board of Adjustment meeting on May 20, 2009. The vote was unanimous to approved the minutes, as submitted.

Ms. Ball – I'll ask the – I've gotten a little bit out of my schedule here. Excuse me. I'm going back to Rick, if you would, please, our Planning & Zoning Office, would you please explain the function of our Board, and to our applicants and the audience.

Rick Enos – Yes, ma'am. The Board of Adjustment is a quasi-judicial body, established by the Board of County Commissioners, under Chapter 62, Article II, Division IV, of the Brevard County Code. The Board of Adjustment is empowered to hear requests for variances to the Zoning Regulations, and 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 items on your agenda today.

Sondra Ball – I'm gonna ask our Vice-Chair, Mary, if she would, to read the definition of a hardship that we use on our applications.

Mary Hillberg – 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 subject property, under existing development regulations. Personal medical reasons shall not be considered as grounds for establishing undue hardship sufficient to qualify an applicant for a variance. Economic reasons may be considered only in instances when a landowner cannot yield a reasonable use, or a 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.

DISTRICT 1

1. **MICHAEL F. MANGIONE** – requests variances of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-1331 (5) (a) to permit a variance of 20 ft. from the required 20-ft. rear (west) setback, and /2/ Section 62-1331 (5) (b) to permit an accessory structure to be located forward of the front building line of the principal structure in a GU zoning classification. The property is described in **Section 11, Township 24, Range 35**. (210' x 395') Located on the west side of Dakota Ave., approx. 325 ft. south of Greenville St. (4090 Dakota St., Cocoa)

BOA Action: Hillberg/Bovell – APPROVED, as depicted on the survey provided by the applicant. Vote was unanimous. V-3295.

Mike Mangione – Good afternoon.

Sondra Ball – Could you give us your name and address, please.

Mike Mangione – Yes, ma'am. My name is Mike Mangione, and the address is 4090 Dakota Avenue, Cocoa, Florida, 32926.

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

Mike Mangione – Yes, ma'am, I do.

Sondra Ball – Thank you. You may proceed.

Mike Mangione – The first variance I'm asking for is 20 feet off the back setback. I built this house, and I got the CO in 1990. When I purchased it in the mid '80's, there was a road that ran across it on the north side. It ran across the north canal. It crossed the culvert, and it ended up in a square lake, several acres back. And it was used by the locals for a ski lake. They had a ski ramp, and they had buoys, and all kinds of stuff. Well, when I got ready to build, we put the house pad up, and we left the road there. You know, I didn't have any problem with the people crossing it to go back, until I found out that if somebody crossed the lake and got hurt, I was liable, because I allowed access across my private property, and I was there. So they could get me. Not

liking my neighbors that much, I blocked it off. And that's when the problems started. This was an established area. I don't know how long it had been there. I just purchased the property from some people up north, and it looked good to me. I knew nothing about the lake, or anything like that. When the locals couldn't get back to their lake, instead of making another access, they just declared war. And we had all kinds of problems. They would drive their four-wheel drives across the house pad, and it was \$60.00 an hour, for a minimum of two hours, to get it straightened back out. Boards with nails, all kinds of stuff. One of the things that someone did was, they took the stakes that were there, and they were moved 20 feet west. Everything was done to the letter of the law. I had never built a project like this before, so I went and consulted, and followed all the rules that I had. And someone knew exactly what to do, and they moved the stakes 20 feet back; thus, I'm right on the property line. Now, there is plenty of space between the back of the house and the fence. When I put my fence up - I put the fence up because I'm a dog owner, and I believe that the owner is responsible for the actions of the dog. And I asked, before I put the fence up all the way around, if it was okay. And they said you cannot put a permanent structure on that property, but a fence is not permanent. They talked about concrete, as long as you don't concrete it in. And I was watching the locals take fences down with pickup trucks, on a regular basis, until they dug out the canal a little deeper. But, anyhow, the reason the house was built where it is, is the stakes were moved, and nobody caught it. The house has been up for 20 years. Paul found it on an inspection. So I don't know what to do about that. One suggestion was buy the land. See if you can buy that 20 feet. I went upstairs, and the lady said, "No, you have to apply for a variance." So that's what I'm doing now. There is plenty of room for the County to get back there. I have a few pictures. If it's okay, I'll bring them up to you.

Sondra Ball – Certainly. Now, you do understand, once you give us those, they become the property of the County. Is that okay? Thank you.

Mike Mangione – I understand the pictures are now the property of the County. The pink line indicates the back. I have different views. There is 50 feet from the house to the fence. There's plenty of space. If the County ever wanted to get back there, nothing to it. There's no restrictions. There's no permanent structures. If you see that little building in the corner, I have a boat underneath it. And it's poles, and wires. And the wind knocks it down, regularly.

Sondra Ball – All right, sir. Thank you. Any other items you want to add?

Mike Mangione – It got real nasty there. The people were not real happy when I took their lake away. So that's what – and there were plenty of calls to the police, and stuff was destroyed, and all that. Most of it is settled down now. That's the first variance. You want me to stop there, and we'll do the questions, or go to the second one?

Sondra Ball – You know, I think that might be a good idea. Let's take one at a time, since this is a little more complicated situation. That does fall in District I, which is my district. And one of my first questions to you was had you attempted to purchase additional property. And you've answered that. I guess, on that rear lot line, though, have you consulted the County about looking into seeing if the County would vacate, say, 20 feet of that?

Mike Mangione – Yes, ma'am, I did. That was another suggestion. And they said no. They gave me the only option of coming here.

Sondra Ball – All right. Rick, do you have any history on this property, any background, that you'd care to fill us in on?

Rick Enos – No, I really don't. That permitting was apparently done quite some time ago, prior to any availability of the Zoning staff in the building permit process. So we really don't know what happened, and how we got into the circumstance we're in today.

Sondra Ball – There were no final surveys required at that time. Is that correct?

Rick Enos – Prior to mid/late '90's, that would be correct. There was no surveying – as-built surveying required to locate the structure on the property.

Sondra Ball – So was the responsibility to the builder doing this construction, at that time, to catch this problem?

Rick Enos – Yes, that's right. The permit would have been – you know, the builder would have been told what the setbacks were, but it would have been essentially his responsibility to make sure that happened. Sometimes it did. Sometimes it did not. But the County, during those years, were not following up behind the construction and checking to make sure the setbacks, as designed, were actually built that way.

Sondra Ball – Well, given he got his CO here, is there any problem in this gentleman, if he ever wants to sell this property, if he doesn't get this variance, since he's right on the property line?

Rick Enos – Possibly, because once you have a – even though it was CO'd, once you have a structure that's built contrary to the setbacks, then although the structure's vested, and the structure can continue to be used as such, it becomes a nonconforming structure to setbacks. So any additions, any reconstructions, you know, if it got destroyed, or something like that, in a storm, you know, any new construction would have to meet the setbacks. So, oftentimes, the lending agencies are more reluctant to lend for a nonconforming structure. So it can affect the owner when he goes to sell the property.

Sondra Ball – But if I understood you, this could affect a possible sale in future years. He could run into...

Rick Enos – That's correct, yes, depending upon the lender. Right.

Sondra Ball – Would you tell me, again, when was this discovered, this problem?

Mike Mangione – This was discovered two months ago. We went to refinance at a better rate, and the appraiser came and found the discrepancy. And they ordered a new survey. And when the survey came up, I brought it here, and that's when they found it. Now, 20 years ago, I – we were all surprised why wasn't this problem addressed, and all that. I don't think I even knew about the problem, other than – well, there was a problem, but I thought it went away. You know, no one ever said anything. Life went on. I refinanced several times. I thought everything was taken care of.

Sondra Ball – Sir, would you look back, Michael, on – do you have a copy of your worksheet that you gave us?

Mike Mangione – No, ma'am, I don't.

Sondra Ball – This hardship worksheet. You answered – the question was, "The literal enforcement of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by the properties in the identical zoning classification, under provisions of this chapter, and will constitute unnecessary and undue hardship on the applicant." This was your answer: "It would prevent me from having the single-family residence that was permitted." I didn't understand your answer there. What were you intending us to know?

Mike Mangione – Originally, the comment was made that I would have to move the house. O.K.? You can't do that. If I had to rebuild during a storm, if there was a storm, and it took the house out, then I would have all kinds of problems. You know, the insurance companies would balk at it because of it being on the property line. And they could say, "No, we're not going to pay." So, right now, it doesn't bother me. But if something happened, I would not be able – well, it appeared that I would not be able to have the insurance company come through and pay for the damages, even though I've been paying them forever and ever.

Sondra Ball – O.K. O.K., that helps me better understand what you were thinking here.

Mike Mangione – May I make one comment?

Sondra Ball – Certainly.

Mike Mangione – O.K. Under no circumstances was I looking to break any rules or get an extra 20 feet. I have so much land there that it didn't matter where the house went. I went for a remote corner, because I'm nightshift. No neighbors, no noise, that was the original intent. The 20 foot was a rule that really meant nothing to me. If you want 20, I'll give you 20. And that's how we had set it up.

Sondra Ball – And I have to say, in looking at your situation – and I was by your property – I personally could see no reason that you would have a motive to move that property line, as you said. That just would not make sense on your part. You had a lot of land there. So I can understand what you're saying there. That's all I have right now. I'm gonna open it up to anyone else on the Board for questioning. Anyone else? Mary.

Mary Hillberg – Mr. Mangione, on question number six, your answer to the question says, "Yes, the house has been in this configuration since 1990." So was the house built in 1990?

Mike Mangione – Yes, ma'am. I got my CO in April of 1990. And I built it as an owner/builder, from the directions off of packages and library books.

Mary Hillberg – Oh, O.K. And, for Rick, we don't have anything on this from 1990, even?

Rick Enos – Nothing in the Zoning Department, you know. I don't know what kind of records the Building Department may have on it. I have no reason to disbelieve what the applicant's telling me.

Mary Hillberg – Yes, thank you.

Sondra Ball – Anyone else, questions? (no response) Seeing none, O.K. There's no further questions here. And I'll come to the – when we come to the end, I'm gonna ask if there is anyone in the audience. But let's move to item two on your request.

Mike Mangione – Item two is another variance. I put another building up. I knew that I couldn't go back. I knew about the problem from the 20 years ago. So I picked a clear spot that interfered with nothing and put it in the front. Now, originally, I had a walkway. I had to have a walkway that connected the two. The walkway went over a drain field. And not ever dealing with drain fields before, I had heard nothing good about crossing a drain field. The rule was, by the guys that put it in when I first had it built, drive nothing over it, other than a tractor, to put nothing on it, do nothing but cut it in water, and maintain it, and that's it. So I had a walkway that went across it. And I attached this building. And I dug posts in there. I really didn't go as far as I could, because I didn't want to mess with a working drain field. Storms came, and the wind knocked it down, and I never put it back up.

Sondra Ball – Now, we're speaking of the breezeway?

Mike Mangione – Yes, ma’am. The breezeway wouldn’t connect to an aluminum structure, and then the house. And all I saw was, I put it up, but when nature took it down, I was real happy, because I got away with the drain field not being tore up. The drain field still worked, and everything was fine. I could have put it on the side of the house, but that would have defeated the purpose of the building. There is 77 feet from the corner of the house to the street. So there’s plenty of room there. And if I put it on the side, it just wouldn’t have worked. And I can’t go back. I don’t own the property behind me.

Sondra Ball – O.K., does that conclude that portion?

Mike Mangione – Yes, ma’am. I just didn’t want to tear into a drain field, and I could see nothing good coming from that.

Sondra Ball – All right. Now, what was the purpose of this structure there? It says “office”. A “one-story office” is on our survey.

Mike Mangione – Yes, ma’am. I moved some exercise equipment out there. You buy exercise equipment, and you put it in the living room, and then you put clothes on it. So I moved it out to this building and put clothes on it out there, too. But it is a building that has power. I cannot put a building up, without air-conditioning. But it is there for storage. And it’s a place where I can get away. And it becomes a workshop, and I can built models in it. It’s just a nice place. It’s a nice, quiet place. But we don’t run a business out of it, or anything like that.

Sondra Ball – O.K. Now, when this was constructed, this office building – we’re gonna call it office, because that’s what’s on our survey – did you get a building permit for that?

Mike Mangione – Yes, ma’am, absolutely.

Sondra Ball – All right. And let’s go back to where you’re wanting to put an addition now. Are you wanting to build on to the house? You already have a building permit request in to the office here?

Mike Mangione – I added a room, without a permit.

Sondra Ball – Uh oh.

Mike Mangione – I know.

Sondra Ball – Golly.

Mike Mangione – I know.

Sondra Ball – You went through all the others with permits, and...

Mike Mangione – Never again.

Sondra Ball - ...you didn’t jump through the hoop? O.K.

Mike Mangione – Yes, ma’am. What I’m trying to do is to get permitted for what I’ve already done. The engineers have come and blessed it. We’ve brought everything up to Code.

Sondra Ball – All right. Help us understand, on our survey, is that structure a part of the one-story office, or is that a part over on the actual home?

Mike Mangione – The actual home.

Sondra Ball – O.K. And help us understand, on our survey, where that is located. Is that the dotted line that we have on our survey here?

Mike Mangione – No, ma'am.

Sondra Ball – I wasn't sure what this dotted line was. So is that just second story – where it says "second story dormer", is that the portion?

Mike Mangione – That's the master bedroom of the house. If you go to the right, you will see the one-story.

Sondra Ball – Yes.

Mike Mangione – And then there's a – part of that is the new room.

Sondra Ball – That just extends...

Mike Mangione – May I show you on...

Sondra Ball - ...extends to the north?

Mike Mangione – Yes, ma'am. I have the same survey.

Sondra Ball – All right, sir.

Mike Mangione – Can I come up?

Sondra Ball – Yes. If you need to speak, just take the mic off and walk with it. All right, let's do it for the three of us, and then we'll go to those guys, so everybody can see.

Mike Mangione – The house is there. Half of that is the new room.

Sondra Ball – That's a portion that goes to the south, then?

Mike Mangione – Yes, ma'am, to the south.

Sondra Ball – All right. O.K. All right, thank you. And when was that constructed?

Mike Mangione – That was '98, '97 – 1997, ma'am.

Sondra Ball – All right. And why is this just now coming to light?

Mike Mangione – We refinanced.

Sondra Ball – Oh, that's right.

Mike Mangione – And this time they saw something. Now, we refinanced several times before, but somebody saw something they didn't like.

Sondra Ball – All right. O.K., that's gonna conclude my questioning. I'll open it up to anybody else on the Board. Jim.

James Rosasco – I'm just a little confused. I understand two variances. And you're asking for – we're not even talking about that building permit issue. That doesn't involve us, at all, I don't believe.

Mike Mangione – No, sir. After I take care of this variance, then I go to the Building people, and I go for my permit.

James Rosasco – You'll still get your pound of flesh, I guess.

Mike Mangione – Oh, absolutely. Absolutely.

James Rosasco – So we're just dealing with these variance issues, and the Building issue has nothing to do with it?

Mike Mangione – Yes, sir.

James Rosasco – Would we – if this – Rick, if this was to be granted, and the County wants to do something about this proposed canal, does that expose us – is that a possibility it's gonna prevent the County from using that proposed canal right-of-way?

Rick Enos – No. It wouldn't affect the canal, at all, because the variance applies entirely on his property. He could then, you know, continue to construct on that property line, but it wouldn't affect the canal, at all – canal right-of-way, at all.

James Rosasco – O.K. So we wouldn't – he couldn't come back to the County with some sort of a cause of action that, you know, you have to have the slopes to this canal because it's affecting my foundation, or things of that nature?

Rick Enos – No. All the sloping on the canal would have to be in the canal right-of-way. So it wouldn't affect his property. And anything on his property wouldn't affect the canal.

James Rosasco – Well from – it looks – appears to me the canal right-of-way goes right up to the edge of his property line.

Rick Enos – That's right. Yes, that's right.

James Rosasco – So the slope would start – I guess it could conceivably start right at his property line, which would imply it would start right at his foundation, which would imply it might have an impact on the design of this canal.

Rick Enos – I don't believe so. I think that, you know, the slope may start there, but it wouldn't be below the surface at his property line.

James Rosasco – Thank you.

Rick Enos – It could be designed to not affect it.

James Rosasco – In light of – I don't see any impact on anybody else, except the County, so I would be inclined to be in favor of it.

Sondra Ball – All right. Thanks, Jim. Anybody else? No? Then – we have a very limited audience today, but I will ask is there anyone in the audience that is here to speak for, or against, this request? (no response) Seeing none, Mr. Mangione, we'll give you the last comment, then, before we go into discussion. You can summarize, comment, answer anything you want that we've asked.

Mike Mangione – Thank you, ma'am. In summary, I understand the rules, and I have no problems following them now. O.K.? It's been a learning experience. Thank you for your time. I will pay more attention to the little details. I set the lines up, and not knowing any better, I assumed they were okay. And they were, originally. But somebody knew exactly how to mess with us. And there was a war going on. I even got shot at out there. So they took it kind of serious when their lake disappeared. But all the ruffraff is now gone. Canaveral Groves is a very nice place to be. We have paved roads and indoor plumbing. O.K.?

Sondra Ball – Good.

Mike Mangione – And thank you, very much, for you time.

Sondra Ball – Now, we do have one – oh, Mary.

Mary Hillberg – May I just ask one question? What type of work do you do?

Mike Mangione – I – technically, now, I am unemployed. But I worked at the Space Center for 26 years. I'm a night shift, senior aerospace technician, lead.

Mary Hillberg – I see. Thank you.

Mike Mangione – We launch space shuttles.

Sondra Ball – All right. Thank you. Now, we do have one letter in favor. You may go ahead and have a seat. But we'll read that into the record that you did have a letter of support.

Mike Mangione – Thanks, very much, folks.

Sondra Ball – Thank you. Mary, you want to... (Ms. Ball and Ms. Hillberg had a discussion, away from their microphones.) O.K., we have a notation here. Can you read, at least, the name that was in favor, Mary?

Mary Hillberg – Sure. This is noted on a letter from – a copy of a letter from Robin Sobrino to the property owner. And it says – it's written in hand – oh, I see. There's a stamp here. "Regarding the above request for variances, I have no objections to the variance being granted. Colin Hayles, 440 Dakota Avenue, Cocoa, Florida, 32926."

Sondra Ball – Thank you. All right, we will come back now, for discussion, to the Board. Could we have a motion? Then we can have some discussion on the matter, if you'd like. Mary.

Mary Hillberg – I move to approve the request for variances, as depicted on the survey, exactly these, just these.

Sondra Ball – All right. And is there a second?

George Bovell – Second.

Sondra Ball - Any further discussion on this by anyone? Jim.

James Rosasco – I – this variance is for this structure? Or is for any structures? I mean, do we limit this? Rick, do we – I guess this is a question to be directed to you.

Rick Enos – The way the motion was made, according to the survey. So the variance is only for the structures on that survey. Was that my understanding?

Sondra Ball – That's correct.

James Rosasco – Thank you.

Sondra Ball – All right. Any other comment? Anyone? (no response) Well, personally, I can see a hardship here, in that if there's a possibility, in the future, that he needed to sell this property, I think it would be a real hardship for him to have to start all over. And I'm not sure, if he's made the request for the 20 feet, he wouldn't be able to come back and ask for it, would he, Rick, to this Board for a variance? The second time.

Rick Enos – You mean if you denied it?

Sondra Ball – Right.

Rick Enos – That's right.

Sondra Ball – I mean, that would really be a hardship to someone. So I'm in favor, as well. Anyone else? (no response)

Sondra Ball called the question on the motion, and the Board voted unanimously to approve the variances, as stated above.

DISTRICT 2

2. **DAVID R. COX** – requests variances of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-2123 (a) to permit a variance of 2 ft. from the required 5-ft. side setback for a swimming pool screen enclosure, /2/ Section 62-2123 (a) to permit a variance of 4 ft. from the required 25-ft. side street setback for a swimming pool screen enclosure, and /3/ Section 62-2123 (a) to permit a variance of 1 ft. from the required 30-ft. side street setback for a swimming pool. The property is zoned RU-2-10 and is described in **Section 23, Township 24, Range 37.** (51' x 129.2') Located on the southwest corner of Ridgewood Ave. & Garfield Ave. (6511 Ridgewood Ave., Cocoa Beach)

BOA Action: Bovell/Ball – APPROVED, as depicted on the survey provided by the applicant. Vote was 4:1, with Hillberg voting nay. V-3296.

David R. Cox – Good afternoon. My name is David R. Cox. My address is 6511 Ridgewood Avenue, Cocoa Beach, Florida, 32931.

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

David R. Cox – I do.

Sondra Ball – Thank you. You may proceed.

David R. Cox – Pardon me, my leg fell asleep, while I had my leg crossed. I'm a little wobbly, and also nervous. I did put a presentation package together, if I may approach and give a copy to each member.

Sondra Ball – That's very fine. Thank you.

David R. Cox – O.K., my leg has woken up. And, pardon me, I am – I've never done this before, so I am a bit nervous, but I am well-prepared. So, hopefully, my preparedness will overwhelm my nerves, and things will go well. But if I lose my thought, please forgive me.

Sondra Ball – No problem. We do not want to pressure you. And that's why we're trying not to use time clocks here, so that you don't feel that pressure. You just be at ease. We're just fine.

David R. Cox – On the second page, it's the agenda. Those are the different things I'm gonna cover. There's really only ten slides with content on them, so I should be able to cover them pretty quickly. Page three is very important. It's the purpose. And the reason that I'm here is to present it at this public hearing to show the special conditions and circumstances associated with this variance request. And, also, it's important that I include any undue hardship justification, of course, and critical information for you to consider properly the assessment of the reasonable use of the subject property. And I'm pursuing to put a screen enclosure, and swimming pool, on my property. And, in the end, I will respectfully request the Board of Adjustment to grant the requested minimum variances to allow reasonable use of the land, in harmony with the general intent and purpose of the regulation. On the next page, four, what I wanted to do was to start off with a little bit of the history of the property since I purchased it. And I'll just describe the photos in clockwise there. You can see, when I purchased the property back in 1999, it was quite barren, and didn't really present very much positive to the neighborhood, other than a structure and a fence. And in 2002, I did a pretty significant exterior modification to help beautify the land and the neighborhood. And then, continuing clockwise, in 2004, I did suffer significant damage from Hurricane Francis, which set me back quite a bit. And now, here I am today. And this picture shows you how the property looks at the time of the variance application. And you can compare that to the picture above and see that I've made significant improvements to the land, and the property values, here in this neighborhood. On the next page, it shows the local neighborhood, satellite view of Avon By The Sea. And you can see the subject property there, arrow pointing to my half of the townhouse there at the corner of Ridgewood and Garfield. And here, within approximately a 250-foot radius, there's a dozen swimming pools, and a few screen enclosures, as well. And, on the following page, you can even see that within the city block, there is four structures. And of those four structures, three have the same exact townhome, with swimming pools. Continuing on to the next page, I just wanted to point out a couple key features of the house that will be important later on, during your consideration. The first, if you look at the top there, there is an existing overhang over my front door, which does stick out four feet from the front wall. And the front wall of the house is exactly on that 25-foot side-street setback. And if you look at the picture on the left, and you look straight down to the adjacent property, you can see that this overhang does not protrude any further than the existing structures further down the street, actually in the immediate adjacent property. And, also, my dog wanted to be part of the presentation, so I included her in that picture. And then you can see that same overhang in the picture on the right. And, again, that's a key feature that I want to draw your attention to. The second key feature is the – on the back wall, on the west wall of the property, you can see there is an existing covered overhang. And that corner of that existing covered overhang is already within the five-foot setback. In fact, it's two feet into that five-foot setback, which is consistent with the next door neighbor's screened enclosure, as well. And, also, all the other townhomes on the previous page, they also have the same three-foot setback on their screen enclosures. Moving on to the next page, I'll go into specifics for each of the variance requests. And I put them in both forms here. So I know some people like to look at the

straight-line... (tape changed) ...And I put together a three-dimensional graphic, as well, since I'm trying to learn more about my house, and get it into a digital form. The first variance is that two-foot screen side setback. And my objective there is to align it with the existing covered overhang. So that yellow, looks like a checkerboard tile area, that is the amount of the setback from the five feet. And it lines up exactly with the existing overhang. This three-dimensional graphic didn't have the screened enclosure software, so I just put like a hatched-looking wall there. But that's meant to be the screen wall, for your reference. The second variance is to the north, which is a side-street setback. My objective there is to tie it in with that existing four-foot overhang along the front door, over the front door, to give it that straight architectural line. And then, finally, the variance number three is just only one foot for the swimming pool to go to the north, to better center it, and align it within the screen enclosure. I'll go ahead and move on to the next page. I guess questions are at the end. Right? O.K. Now, here, I didn't know. Maybe I should have put this hardship justification in front. But now that you are familiar with the property, and the objectives, I thought this might be a better place to put it. The first that I want to point out is that this is a very narrow lot. It starts with only 51 feet. And there are several regulation hardships in the swimming pool and screened enclosure regulation. Hardship number one, which really is addressed by variance request number one, is that five-foot setback on a townhouse that has a party wall. And the hardship is, is I really have no side yard to reduce from. So I'm already starting with a zero-lot-line party wall. The second variance is – unfortunately, since I have a corner lot, I have the setbacks from both the front street and the side street. And this really narrowed my lot by half for usable land. So that is a very significant setback. And then the swimming pool 30-foot side-street setback also reduces the residual space that is available for the swimming pool. And, finally, just to add insult to injury, the six-foot utility easement on the west side of the property limits me from going further back. So, in reality, I'm left with only a 21- by 27-foot back yard available for a screen enclosure and a swimming pool. And that is insufficient usable land for a reasonable screen enclosure and swimming pool, which is commonly enjoyed by the majority of my neighbors. And just to show you that I have done a lot of homework with my neighbors, I took the 200-foot radius and tried to locate as many of the property owners as I could. And, in fact, I received letters of support from both adjacent property owners, as well as everyone that I could find within that 200-foot radius. They did sign a petition of over 41 signatures, showing support of this variance request.

Sondra Ball – All right, sir, are you submitting that?

David R. Cox – Yeah, that's the second handout that I gave.

Sondra Ball – Oh, I'm sorry. Thank you. O.K.

David R. Cox – And then, finally, to summarize, I have made significant improvements to the aesthetics, and property values, in the neighborhood since I purchased the property in '99. And a swimming pool and screen enclosure are commonly used in the same exact zoned neighborhood, even the exact same townhomes. This variance request is minimal, and it is within the intent of the regulation, as well as the existing architectural features of my townhome. And there are several significant hardships that do exist on the property, that prevent me from having a reasonable use for a screen enclosure and swimming pool. And then, as I show in the backup materials, the variance requests are fully supported by the adjacent, and located, property owners. And, in closing, I respectfully request Brevard County Board of Adjustment to grant these three requested variances. And there's the backup materials, which I ran out of time on my way here, so I had to photocopy them separately. And that's why they're a separate package. And thank you, very much, for your time and consideration.

Sondra Ball – All right, sir. I want to tell you, before we begin, you've done a very impressive job. It's not often that we see this type of presentation. It's just outstanding. This falls in District II, which is Mary, and we'll begin the questioning with her.

Mary Hillberg – Hello, Mr. Cox. I've been looking at some of your handouts. They seem a little bit different from the survey that we received, particularly in terms of the shape of your pool, and some of the other aspects of it. You say you have 21 by 27 feet in area for a pool. That's what you have in your back yard now.

David R. Cox – Yes, per the letter of the law, the regulations.

Mary Hillberg – Right. And you have every right to have a pool in your back yard. You know, all the other homes have it, and it's your right. What concerns me a little bit is why you can't fit a pool into your back yard. When did you buy the house? Did you – you say you bought it a while back, and you went through storms. So you – you know, this is not a new – I mean, you didn't just find out that the yard was too small, right, for what you wanted?

David R. Cox – Yeah. About three years ago, I had started to do some homework to have a pool put in. And I quickly found that the prices of the pool were excessive, and that I also had some issues with it being a corner lot. When I purchased the house in '99, it was my first corner home. And I was not aware that there was also side-street setbacks, which I agree makes sense. I agree with the intent there of not having something protruding into that area.

Mary Hillberg – I think it's a safety issue. Rick, is that correct? These setbacks from the sides are generally safety issues for emergency vehicles, and so forth?

Rick Enos – Yeah, it's partly that, you know, because you want to be able to see around the corner. So there's further setbacks from the corner. When you're driving your car, you want to be able to see the traffic coming. Also, it lines up the structures with the structures to the west, which are facing to the north, onto Garfield Avenue, 'cause they all have a 25-foot front setback. So this lines up his side setback on that same line as the other houses on the street to his west that have a front setback to the north.

Mary Hillberg – So would there be a problem with him having the pool, if he had a smaller pool that would fit in his yard?

Rick Enos – No. No, not at all, unless there's some hardship that he can show you as to why he can't have a smaller pool than that.

Mary Hillberg – And is there – have you heard of splash pools, or (unintelligible) pools, or those kinds of things? Is there a reason that you need to have one quite this large?

David R. Cox – Yeah, actually, it really isn't that large. When I first did the drawings for what was within the regulations, the pool companies told me that it wasn't worth doing the pool. In fact, it was so much smaller than what their minimum price was that here they said that it wouldn't be any additional cost for a pool much larger. It would be the same exact cost as this small, really insufficient, swimming pool. So, right away, I knew that – I even spray painted it in my back yard, and you couldn't even fit two rafts in it to lay in the pool area. So it was extremely small, once you actually drew it out on the land. And it really isn't very – it isn't useful.

Mary Hillberg – You wanted a larger pool.

David R. Cox – I wanted a pool that would allow me, for myself and my wife, that we lay on rafts in it together. It wouldn't support that.

Mary Hillberg – Could you – I'm looking at the six questions that you answered. Number two question says, "The special conditions and circumstances do not result from the actions of the applicant." And your answer is,

“Special conditions and circumstances did not result from the actions of the applicant.” Can you explain your answer?

David R. Cox – Yeah. I didn’t do anything specific that made these variance requests come forward. I didn’t put a structure where it didn’t belong, or I didn’t violate a building code. I didn’t built something without a permit. I followed all the laws. And that’s why I’m coming here first, of course, because I’m the kind of person that asks for permission, rather than begs for forgiveness. And I haven’t done anything...

Mary Hillberg – Yes, I know. I’ve seen your house, and it’s like a duplex type of thing. But my question was, you’ve answered a question with exact words from the question. I think the question is asking the reasons that you’re coming here for variances are not your fault. But it’s because you want the pool, the larger pool. Is that right? So that would be you. The second – the third question is exactly following the question, also. Your answer is, “Granting this variance will not confer on the applicant any special privileges,” and so forth. And your answer is exactly the same as the question.

David R. Cox – In working with the Planning & Zoning folks, they suggested that I use consistent wording to answer the questions. So I followed their guidance. And where there was something that was more specific, I included that. But if it was accurate, as stated, then I just repeated those words.

Mary Hillberg – O.K. May I ask Rick something, also, please? Rick, is there any reason for, as a safety issue, or anything, that this would create any kind of a problem in that area to allow a larger pool than the lot is – can handle?

Rick Enos – Probably not the pool itself. I think...

Mary Hillberg – The enclosure.

Rick Enos – I’d be more concerned about the enclosure, which he’s lining up with the overhang. Now, you can have an overhang on the street side, because you can see through the overhang. When you’re at eye level, you can see through the overhang.

Mary Hillberg – But you can’t see through this screen enclosure.

Rick Enos – I’m presuming that’s gonna be an opaque enclosure. And you can’t see through that. Now, of course, it is further back from the corner, so it may present less of an issue than if it were closer to the corner. But, you know, that would be the reason, my only concern, on that.

Mary Hillberg – And there would be no issue for emergency vehicles or...

Rick Enos – No. No.

Mary Hillberg – O.K., thank you. That’s all the questions I had.

Sondra Ball – Anyone else?

Wayne Cooper – Mr. Cox, my name is Wayne Cooper. I know I don’t have a name badge. I haven’t earned that right, yet. But I’m working up to it. It is a great presentation. I just have to ask, are you an engineer?

David R. Cox – Yes.

Wayne Cooper – O.K. I’m a CPA. We do the same thing. But very nicely done.

David R. Cox – Thank you.

Wayne Cooper – Going back, are there other homes in the area that are situated like yours, on a corner? Townhomes?

David R. Cox – Yes. There's one at the opposite end of the block.

Wayne Cooper – What do they have in their back yard?

David R. Cox – Their back yard has a screened enclosure, but does not have a swimming pool.

Wayne Cooper – O.K. And you said, when you bought the property, it was about three or four years ago, or something?

David R. Cox – It was ten years ago.

Wayne Cooper – Ten years ago, excuse me. Was that your first home?

David R. Cox – No, but it was my first corner lot.

Wayne Cooper – And the realtor, or the person who helped – did you use a realtor?

David R. Cox – I did. Actually – yes, it was a...

Wayne Cooper – Did ya'll ever discuss why there wasn't a pool back there?

David R. Cox – No. The only thing that we did discuss, which was what showed up on the survey, was the FPL easement on the west side of the property of six feet. So, that, I was fully aware of, and I was willing to deal with that. And you see none of these variance requests ask for any impingement into that six-foot area, because I was fully aware of it.

Wayne Cooper – And you never discussed with the like neighbor, like yours, that doesn't have a pool, why they've never built one, I guess?

David R. Cox – No. Their back yard is even smaller than mine. And so it's pretty obvious to me that they would not have sufficient space for a swimming pool.

Wayne Cooper – I could certainly understand, and share, your pain, 'cause I live on a lot with similar problems. And our pool is small, compared to other neighbors, but within the setback provision. So the pool company said they couldn't build a pool where – it's like a, you know, can't dive in it, or anything. But, I mean, were you and your wife – I don't know if you have – you have kids?

David R. Cox – We're trying.

Wayne Cooper – Trying. Don't have them. You lose your hair. Anyway – no, do have them. Share our pain. Anyway, so they definitely – have you talked to other pool companies, or just one?

David R. Cox – I have. I've talked to three pool companies now.

Wayne Cooper – And all of them said that they couldn't build a smaller size pool to fit the setback provisions, that could be enjoyable?

David R. Cox – Yeah, they said it wasn't worth it, were their words.

Wayne Cooper – O.K. Thank you.

Sondra Ball – Jim.

James Rosasco – Good morning "sic". I look at this, and we have really three variances. And two of these variances are related to the screen enclosure, and the third one, the location of the pool about one foot difference in the setback. And I notice your pool is only a 14 by 16. So, like you say, you don't have a whole lot of room there to reduce the size of the pool. I think the people are probably telling you that they can build a pool, but it's gonna be expensive. You're not getting cubic feet of water for the same price, and all. But I also notice, from your presentation – again, I commend you on it, because it was very, very professional – I only see, of all of these pools that you've identified, one that has a screened enclosure. So, to me, it looks like maybe the tail's wagging the dog here. It's not that you can't really get a pool, but it's more of a case of the pool enclosure. And being as everyone, but one of these, do not have screen enclosures, is there a particular reason why that is so important to you?

David R. Cox – It really is. The screen enclosure prevents the mosquitoes. And it keeps you from enjoying your house, once you're outside, once you get to dusk or dawn. And that's a period of time where it cools off outside, and that's the time of the day where I really enjoy being outside. So I also wanted to have an outside area that would be protected from mosquitoes. And that's why I was trying to incorporate both into – since I don't have much room, I want to incorporate both into the same design.

James Rosasco – Thank you.

Sondra Ball – Anyone else? George? I'm sorry, let's go back to Wayne.

Wayne Cooper – I meant to ask you one other question. I'm sorry for being a pain, but I'm alternate, so this gives me my one chance to be on TV here. The – and this might go to Rick. I'm looking at this picture, where - the one where you – the page he has the dog on, but not that picture, the one next to it. And the discussion was about sight line at a corner lot. And I'm looking at these trees. And I guess, you know, if a corner lot – he's got a lot of trees there. Is that more of an obstruction than a pool enclosure, or am I looking at this wrong?

Rick Enos – You're asking about the – whether the trees...

Wayne Cooper – The question was – and about – we talked about the pool, and then the pool enclosure, which was brought up, and it's a good point about this – you were talking about the sight line intrusion or obstruction. But are those trees just as bad, though?

Rick Enos – Well, they can be. You know, trees tend to have a higher canopy than the car, so you can see underneath the canopy. So I don't know what kind of trees he has there but, you know, as you get closer to the corner, even the vegetation is restrictive. But in that location, it would not be restrictive.

Wayne Cooper – So a screen enclosure, in where he's talking about, would - considering what we see from this view from the top, would that be worse than having those trees?

Rick Enos – Well, it could be. You know, it's hard to know, because, you know, who knows what those trees look like on that property. But, certainly, if they were thick enough, then the trees may be more of an

obstruction than the screen enclosure, particularly since the screen enclosure would be further in back of the house, which is further away from the corner. And the closer you get to the corner, the more concerned you are about those sight lines.

Wayne Cooper – O.K. I appreciate it. I just wanted to get a clarification on that. That's all my questions. Thank you.

Sondra Ball – All right. Anyone else? (no response) I frequently visit 410 Garfield, which is diagonally across from you. And you've done an outstanding job with your landscaping on this property, and really improving your neighborhood. I guess – especially in your pictures here, I just can't see that a screen enclosure is going to affect any more line of sight than a tree up at that elevation. But I'll leave it to the group here. We'll come back to that. Anybody else with any other questions for Mr. Cox? (no response) Seeing none, and seeing no one else in the audience, Mr. Cox, we'll give you the last comment, or summary.

David R. Cox – Well, Ms. Ball, I do have a photograph, at car level, of those trees. And you can see that they're trimmed up to the six-foot height for the canopy. If that answers Mr. Cooper's question. You know, I took this very seriously. And, unfortunately, I was unaware of the restrictions of a corner lot when I bought it. I saw that it was a beautiful piece of land. And I saw lots of grass area. And I thought that I would have reasonable use to be able to put in a swimming pool and a screen enclosure. Three years ago, I was extremely disappointed to find out that, in fact, I couldn't do what I wanted to do, which was much more elaborate than what I've presented today. So what I brought forward today, to me, was in truth to the intent of the neighborhood, which is to keep in line with the existing other architectural features, and that would be that four-foot overhang. Believe me, I would much rather have an even larger pool, and an even larger screen enclosure. But I took it to heart, when I read all the documentation that said to make them minimal. So I think what I've brought here today is consistent with the guidance that is provided within the documents. And I have made it minimal, which I feel is really a happy compromise for the narrow lot that has an extreme amount of restrictions on it, and yet also affords me to be able to have two rafts, where my wife and I can lay next to each other in the pool. I do appreciate the Board's genuineness. I was really impressed with how you guys handled the first case. It made me a lot more comfortable, coming to present my case. So I really appreciate how you guys take care of your job. And I very generally appreciate your consideration today. Thank you.

Sondra Ball – All right, sir. Thank you. You may have a seat. And we'll close this to the applicant, audience. And this falls in District II. Mary, if you'd like, you do have the opportunity to make a motion. If not, we'll move on to someone else.

Mary Hillberg – Well, I will. I would say, prior to this, that my feeling is that he has enough room to have a pool. It's not as large as he's wanted. And my thoughts on being on this Board, and doing this volunteer work, are that I'm a big rules person. I like the rules. If we don't have the rules, then we kind of fall apart. And I don't feel that there's any place for being unfair to anyone, or punishing people, because of these rules. So, you know, if they have a situation that is – makes it untenable, and they can't use their property, and they can't get a return on their property, and so forth, they have a real hardship, then we should. I don't think that this qualifies as a hardship. I think that the hardship is caused by the applicant. I don't – I think – I also agree that Mr. Cox has done a wonderful job with his presentation. And I'm sure that what he constructs won't have any problems from zoning, as explained. So my feeling is that he hasn't answered the questions correctly, for me, and that he doesn't qualify for a variance, in my mind; however, I'm not the only member of this Board. So I'm going to bypass putting in a motion. And those are my feelings. Thank you.

Sondra Ball – All right. George.

George Bovell – I make a motion to pass the variance, as it's depicted on the survey. I think that the biggest question that came up was a safety issue, which vehicles have to traverse Ridgewood and Garfield. Well, at

the vehicle level, the fence is more of an obstruction than this pool enclosure would be, all the way in the back of the building. So that's why I recommend that we approve it, as it's depicted on the survey.

Sondra Ball – All right. Thank you, George. And I'm gonna second that motion. All right, we're now opening the floor for any further discussion. Wayne.

Wayne Cooper – I guess, being new here today, I just want to get some clarification and discussion here, I guess. You said, I think, Sondra – you said, at the beginning, that every property owner should be entitled to build a pool in their back yard, I guess. On, Mary said that. I'm sorry. I'm sorry for the age thing here, you know.

Sondra Ball – No problem.

Wayne Cooper – They said if I grew hair, I could have good memory, but..... Anyway, Mary, you said that. And I realize Mr. Cox bought this property, and no pool was in the back yard. Maybe he should have asked the right questions. Maybe there should be a book potential new homeowners should get about the rules and regulations. And then, on the other hand is, well, there's other people have corner lots that maybe have not built pools, that can't build pools, that this Board might have ruled on in the past. So my question is, is this setting precedent, or do we get a lot of these type of situations that come about here?

Sondra Ball – Rick, you want to answer that? Or, Christine is our attorney. She'll answer for you.

Christine Lepore – Yes. Each application for a variance is considered on its own merit. So I don't think you are setting a precedent that anybody who comes in here, asking for a variance to accommodate a swimming pool, must be granted. What you want to do is look around and see how the neighborhood has developed, in the particular area where the variance is being requested, to see if it's – the requested variance is related to items which are typically enjoyed, and part of the development, and the neighboring community.

Wayne Cooper – To finish up, then, if - I guess safety being an important issue, and that's why we have some of these setback issues - and George pointed out about the fence - and I was looking at the trees, forgot all about the fence - those are probably more of a concern than a pool enclosure. So if – and he's got all these letters from his neighbors. I would be inclined to be for it, given those items. And, as long as we're not setting some type of every person on a corner lot's gonna come here so they can build their pool, that this is specific to this situation, then I would be more inclined for it.

Sondra Ball – Thank you. Anyone else? (no response) I believe Mr. Cox has a reasonable expectation for his property. And to think of somebody having just two rafts – a pool being big enough to have two rafts in it, that's a reasonable expectation for a pool, I do believe. He's not asking for anything, I don't see, any more that what is there. He already has a fence line. He's shown a good-faith move in taking care of his property and landscaping it well, maintaining a fence well. I don't believe he's encroaching, or infringing, upon anyone. If he were, he would not have this huge number of signatures of people surrounding him. So I do believe he has a reasonable expectation for using what he has. Any other comment, before I call the question?
(no response)

Sondra Ball called the question, and the Board approved the variances, as stated above. The vote was 4;1, with Mary Hillberg voting nay.

THE FOLLOWING ITEM WAS TABLED FROM THE BOA MTGS. ON 2/18/09 & 3/18/09:

DISTRICT 2

3. **MICHAEL P. WALSH & TAMARA K. MELE** – request variances of Chapter 62, Article VI, Brevard County Code, /1/ Section 62-2118 (d) (2) to permit a variance of 7.5 ft. from the required 7.5-ft. side setback (north), as projected in a straight line into the waterway for a boat dock; and /2/ Section 62-2118 (d) (2) to permit a variance of 7.5 ft. from the required 7.5-ft. side setback (south), as projected in a straight line into the waterway for a boat dock. The property is zoned RU-1-11 and is described in **Section 24, Township 24, Range 36.** (0.21 acre) Located on the southwest corner of Artemis Blvd. and Sykes Creek Dr. (1485 Sykes Creek Dr., Merritt Island)

BOA Action: Rosasco/Hillberg – TABLED to the BOA mtg. on 9/16/09. Vote was unanimous.

Rick Enos – Staff would like to ask that you table Item 3, which is Michael P. Walsh and Tamara K. Mele, if you would table that to September 16th, please. There is a pending ordinance that the Board of County Commissioners will be considering that may affect this application. We've talked to the applicant. He agrees that he would like that tabled to September 16th. So I would need a motion from the Board.

Sondra Ball – Thank you, Rick. May we have a motion concerning the tabling of this item.

James Rosasco – I'll move.

Sondra Ball – All right. Thank you, Jim. And before we go any further, let me introduce today an alternate that we have. District V, for Dale Young, we have Wayne Cooper. And we welcome you, Wayne. Glad to have you on board as an alternate. So I believe you started to make a motion, as well, Wayne, so – all right, we need a second, then.

Mary Hillberg – Second.

Ms. Ball called the question, and the Board voted unanimously to table the request, as stated above.

The meeting was adjourned at 2:43 p.m.