

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, March 18, 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
- Fred Kusterer, Alternate, 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:

- Cindy Fox, Asst. Zoning Manager
- Christine Lepore, Asst. County Attorney
- Elena Scruggs, Land Development Specialist

There were five regular members present, and two alternates. The five regular members voted throughout the meeting.

Sondra Ball – I'll now call to order the scheduled meeting of the Board of Adjustment, and ask the Planning and Zoning Office representative, Cindy Fox, if she would please, explain to our applicants and the audience.

Cindy Fox – Yes, Ms. Chairperson. The Board of Adjustment is a quasi-judicial body, established by the Board of County Commissioners, under 62, Article II, Division IV, of the Brevard County Code. The Board of Adjustment is empowered to hear requests for variances to the Zoning Regulations, and the Sign Regulations, in Chapter 62, Article VI and Article IX. Pursuant to Section 62-254, Brevard County Code, any 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, Ms. Chairperson, you have five items on your agenda today. And I would request that on item number five, which is the Walsh item, Mele/Walsh item, if we could please table that item. There is an ordinance, or a potential Code change, that could come about from a report that has been requested by a Commissioner. And this ordinance, if the Code was changed, per the ordinance, then this applicant would benefit from that Code change. So if we could table item number five to the June 17th, Board of Adjustment, we'll know more, within the next couple of months, if that ordinance is going to go forward.

Ms. Ball – All right. Should I do that before I read our procedure here, Cindy?

Ms. Fox – It's up to you. Either way, I just wanted to throw that out there. And then if you need me to go over the order of the agenda, I can do that, because I know that the comments and the agenda don't match. So we can go over that, as well.

Ms. Ball – I would like to read, for the audience, and our applicants, the procedure that the Board does follow. I'm addressing our Board members, the applicants, and the audience. The Chair is asking that all Board members not ask any questions while the applicant is making their presentation. Once the applicant has completed their presentation, we will then begin the 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 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. And it's important that you stay on the subject and avoid any 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 for an address card. If you would fill that out and give it to the clerk. Are there any questions from any of our Board members, concerning the Chair procedure? (no response) Seeing none, are there any questions from any of the applicants today, concerning our procedure? (no response) Seeing none, are there any questions from anyone in the audience, concerning the procedure today? (no response) O.K. Seeing none, we will move ahead, then. Our first order of business is to approve the minutes from our prior month's meeting, which was February. Are there any additions or corrections to those minutes? (no response) No. Could we have a motion for approval, please?

Motion by Dale Young, seconded by George Bovell, to approve the minutes from the meeting on February 18, 2009. The vote was unanimous to approve the minutes, as submitted.

Ms. Ball – Planning and Zoning – well, before we do that, and get into our variances, I do want to acknowledge that we have two alternates with us today. Mike Cunningham has joined us a number of times. Today, we have a new alternate, who's sitting to my left, Fred Kusterer. And Fred is going to be the alternate, which is my alternate from District I. And we welcome him. Then, before we get into our actual cases, I'm gonna ask Mary, our Vice-Chair, if she would read the definition of the criteria that we go by.

Mary Hillberg – Variance hardship: A variance may be granted when it will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship. The term "undue hardship" has a specific legal definition, in this context, and essentially means that without the 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, sufficiently 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 applicants 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 – Thank you, Mary. Cindy, I know you wanted to explain some of the change in our agenda. You want to do that, and then introduce our first applicant?

Ms. Fox – Sure. Everything is – we're going to follow the agenda order. It's just the staff comments, got a little out of order. So we'll take them in this order: Number one will be Wohlhueter. Number two will be Makowski. Number three will be Cournoyer. And number four is the First Free Will Baptist Church of Scottsmoor.

Ms. Ball – O.K. Thank you.

The agenda items were heard in the following order: 5, 1, 2, 3, 4. These minutes are in agenda order.

DISTRICT 2

1. CHRIS & VERONICA M. WOHLHUETER – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334 (5) (a) to permit a variance of 5 ft. from the required 10-ft. side setback (north) in an AU zoning classification. The property is described in **Section 02, Township 25, Range 36.** (0.19 acre) Located on the northwest corner of Victoria St. & Goldenrod St. (106 Victoria St., Merritt Island)

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

Sondra Ball – All right, sir, if you would give your name and address for us.

Chris Wohlhueter - Yes. Good afternoon. my name is Chris Wohlhueter. And the address is 106 Victoria Street, Merritt Island, Florida. 32952 is the zip code.

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

Mr. Wohlhueter – I do.

Ms. Ball – You may proceed.

Mr. Wohlhueter – Yes. As mentioned, I am requesting a variance to the ten-foot north setback, north required setback, so that we can provide, or extend, the existing structure to the east. The existing structure that is on the property currently is encroaching on the required ten-foot setback already. The required lot size for the particular piece of property, per the zoning classification, is supposed to be a minimum of 150 wide by a 150 feet deep. And that is not the case. The existing property is only 47 feet wide, plus or minus a few inches. And the existing structure is currently 26 feet wide. So with that, again, that northern setback, ten-foot setback requirement is already encroached upon. And with putting on the addition, we're limited to where we can actually extend that existing structure, due to - certainly because the property is - has a septic system, and there's limited area where that septic system can go. There is also - in opposite directions, there's flood zone issues that we would potentially be putting this structure on, or any additional structure on, to increase the living area. There currently is a, or has been, a variance for the property that's been approved. And that particular variance authorized the encroachment of the setback. And that variance had determined that there is no - and, excuse me, I look at the special, you know, the verbiage actually used - I would be granted no favors, or special privileges, that would not be granted to others, by doing so. And that, again, is - was determined in a previous variance that was approved. And most of the other agricultural zoning properties in that area are sufficiently larger, and certainly meet the minimum requirement, required lot sizes, to where that same hardship isn't impacted on them. Additionally, as

far as minimizing the options of extending the property, there are some environmental concerns. not really restrictions, as much. But due to the existing trees, some very old oak trees, and things that, you know, we certainly do not want to impact with digging, or relocating, septic tanks, drain fields, those types of things. And that's really all I have to present is – again, that that minimal lot size, very narrow lot size, that was no fault, or no, nothing, you know, created by ourselves.

Ms. Ball – O.K., Chris. Thank you. And this falls in District II, which is Mary Hillberg. And we'll begin the questioning with Mary.

Mary Hillberg – I have no questions at this time.

Ms. Ball – All right. Then I'll open questioning to the Board. Jim.

Jim Rosasco – I just have one quick question.

Mr. Wohlhueter – Yes, sir.

Mr. Rosasco – The survey that we have, it looks like from the survey tie line to the west, is that 73 feet, additional? I mean, when I look at the photograph, I can see the pool, and it looks like there's quite a bit of – I'm just curious. It has no bearing on your application. I'm just curious that it's apparently be 75, 80 feet to the waterline from the edge of the pool?

Mr. Wohlhueter – From the edge of the pool on the – let me open that back up. From the edge of the pool to the waterline, yes, that is - it looks – well, actually, it appears to be, from the survey tie line, yes, to the waterline, it appears to be 73 feet.

Mr. Rosasco – Seventy-three feet. No big deal. That's the only question I had. I was just curious about the survey. Thank you.

Mr. Wohlhueter – Sure.

Ms. Ball – All right. Dale.

Dale Young – Yeah. How old is the house? When was it built?

Mr. Wohlhueter – The house was originally built in 1959.

Mr. Young – O.K. So it's been there a few years.

Mr. Wohlhueter – Yes, sir.

Mr. Young – The – you said you're adding on to the garage. Where is the garage now?

Mr. Wohlhueter – There currently is no garage.

Mr. Young – Well, you're not going to have a garage in this ten feet, are you?

Mr. Wohlhueter – We are - to try to minimize the impact, we are utilizing some of the existing living space for that garage. You're actually right. So the actual addition would be – the entire addition would be garage, as well as, again, using some of that existing living area to complete a standard two-car garage size footprint.

Mr. Young – Where's the garage going to go in the old part of the house, or...

Mr. Wohlhueter – Well, it would be that new, new ten-foot addition, plus an addition, I think it's eight feet of the existing living area. Excuse me, new 12-foot addition, plus six feet of the existing structure would be made - turned back into a garage. It looks like, at one point, that might have been a carport on that eastern side of the house that – on a previous permit approval by the previous owners, they enclosed that carport.

Mr. Young – And the driveway then comes off Victoria Street, I guess.

Mr. Wohlhueter – Yes, sir.

Mr. Young – What's the WFS back there? Is that wood frame shed, or what's that?

Mr. Wohlhueter – That was a shed. That was removed because of termite damage decay.

Mr. Young – O.K. That's all I had.

Ms. Ball – O.K. Anyone else on the Board, questioning? (no response) No. I was by your property. And do you have – have you conversed with your neighbor to the north that has that adjoining property? It appears there's a lot of open space north of you there. I mean, it definitely, right now, seems like there'd be no impact to that property. Have you talked to this neighbor, and - I mean, I'm sure they got a mail-out from the County, concerning your request, but have you actually discussed your case with this neighbor to the north?

Mr. Wohlhueter – Yes, ma'am. And with talking to her, she seemed very enthusiastic that the house would be improved, or made to look nicer, which is what we hope. She appeared to be in favor of the work; however, I didn't really aggressively pursue, and request, because we are new owners. And, you know, I wouldn't want to make anybody feel uncomfortable, if they truly had an issue, or were concerned about the addition. I didn't want them to feel uncomfortable, you know, saying something about it. I did briefly explain, you know, in general summary, what we were looking to do, and to her, as well as a couple of the other neighbors in the area. And, again, certainly didn't ask for permission, or - not because I didn't – again, I just would not want to put them on the spot to think that, you know, they might feel uncomfortable, if they had a problem, saying so to me. I'd rather give them the opportunity to, you know, convey that concern, you know, in another manner, to where they might feel more comfortable doing so.

Ms. Ball – O.K. Chris, one of the things that we've always asked, in the past, of people who are applicants, in trying to explore every opportunity, before we give variances to be sure that there is the hardship, did you make any inquiry of that neighbor to the north, if they would be interested in selling a small portion of property down your property line that would alleviate even you coming today?

Mr. Wohlhueter – We talked. We talked very briefly about that, in that - and her – she did actually express that, some point in the future, she would possibly consider selling the property. And that - I don't know, I know how I might interpret that, and, you know, is how I feel about that. You know, that could mean any number of things. And there are still, you know, issues with the septic system, trees, without having a detached addition to the property. We do feel, through our architect, and engineer, you know, and other professionals, that we did try to consider all options, and, you know, exercise all options, and coming up with something that would be, you know, certainly within the requirements. And it is very – it's very challenging, and tricky, with such a narrow property, and the existing narrow structure.

Ms. Ball – And that was evident, just what bit I could see, as we drove by. I guess I wanted to ask that, because five feet is a small amount of land, perhaps, to so much open space that she has, and yet a great deal to you.

Mr. Wohlhueter – Right.

Ms. Ball – So I was curious if you'd made that inquiry. That's all I had for questioning. If there's no further questioning from the Board, I'm gonna open it to the audience, then. If you would step just aside, for a moment. Is there anyone in the audience that's here to speak for the applicant in their request? (no response) Is there anyone in opposition to this request? (no response) Seeing none, Chris, we'll give you the last word.

Mr. Wohlhueter – O.K. I thank you for the opportunity to submit this request. And I have nothing further to add.

Ms. Ball – O.K. Thank you.

Mr. Wohlhueter – Thank you.

Ms. Ball – O.K. We are closing hearing anything else from applicant or audience. Could I have a motion from the floor, please?

Ms. Hillberg – I move that we approve this request for, as depicted on the survey.

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

George Bovell – Second.

Ms. Ball – O.K. Thank you, George. Any discussion, before I call a vote? (no response)

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. It looks like a unanimous vote. Good luck in your project, sir.

2. **KEVIN & JANINE M. MAKOWSKI** – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-2118 (d) (3) to permit a variance of 14 ft. over the 16-ft. allowed for projection of a boat dock into a man made waterway. The property is zoned RU-1-11 and is described in **Section 24, Township 24, Range 36.** (0.24 acre) Located on the north side of Artemis Blvd., approx. 110 ft. east of Centaurus Ct. (425 Artemis Blvd., Merritt Island)

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

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

Kevin Makowski – Thank you. My name's Kevin Makowski. I live at 425 Artemis Boulevard, on Merritt Island.

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

Mr. Makowski – I do.

Ms. Ball – All right. You may proceed.

Mr. Makowski – O.K. I actually have some documents, some packets, that I'd like to bring up to the Board to review.

Ms. Ball – All right, you may. Thank you.

Mr. Makowski – And, also, before I get started, I also have with me, I don't remember the count, seven or eight notarized letters of support from some of the other folks who live on the canal.

Ms. Ball – All right, sir.

Mr. Makowski – And are within a 200-foot range of my property.

Ms. Ball – All right, sir. And you understand those are ours to keep, once you turn them in. Thank you. O.K.

Mr. Makowski – O.K. I'll be referring to this document that I gave everyone. And it is listed, has some page numbers on it. So it'll hopefully keep things straight. The reason I'm here today is obviously a variance request to allow me to keep the existing dock that I have on my property, a dock that's been there for 20 years, a dock and lift that was there when the house was built new 20 years ago. My request is pretty simple, and it's not actually as complicated as it sounds. The variance application, or request, says I'm looking for 14 feet out into the canal. That's actually not true. What I'm asking for is for an additional three feet, eight inches. There is already a variance on the property, that was granted in 1989, to allow the structure to go out 26 feet into the canal. And that variance is item number one, the first page. As I said, the boatlift, and covered lift, has been on the property, as it stands today, for 20 years, when it was built new. I am the sixth, or actually seventh, owner of the property. There may have been some changes to the decking around the side of the boat lift, but any

of those decking changes are complaint today, and are not at issue at this time. So the real issue is the fact that the outside left corner of the lift, when they built the lift, it was turned to angle down the canal, to go parallel down the canal. And when they angled it, that outside corner now stuck out a little bit farther. If you go to page two, it kind of shows the issue here, shows the dock as it was laid out. And the issue that's highlighted in yellow, it is where the dock is currently is today, noncompliant. I'm here today because a complaint was filed from one of my neighbors, Mr. Borrer, regarding this property. The complaint was filed after 20 years. Mr. Borrer has lived there, I believe, 18 or 19 years, and he decided now was the time that he didn't like the dock. As I said, the dock was built new with the house. I have some folks here today, who will attest that the dock was built with a variance, with a permit, was inspected by the County, and signed off on by the County. My efforts to get back and prove that have not panned out very well, 'cause the County has thrown out all of their records, and discarded them after, I don't – it was either ten or 15 years. So I was also advised that, well, it's up to me to show burden of proof that, in fact, the County did sign off it, and which obviously I can't do, being the seventh owner, and 20 years later. So I'm in a situation where, like I said, as a fairly new owner, I bought the property, expecting it - you know, that it was there with a variance. And now, like I said, I have a problem, a Code Enforcement action problem. As I said, with item number two on the list, in the packet I handed out, the problem was caused by, like I said, when the dock was turned so it would angle straight down the canal. That yellow section there shows what, in fact, the County is asking me to remove. Again, it sounds like a simple request. We'll just cut that, you know, three feet off the end of the dock, and make this go away. And I'm telling you I would love to do that. I've investigated all kinds of options to do that, but the fact of the matter is it's not really possible. There's support pilings that sit outside of that three-foot, or in that three-foot area, that support the roof, the beams, and the lift structure. So, in order for me to move it back three feet, the whole dock, in fact, has to come down, roof come off, pilings move back, and then rebuilt. One of my main issues with this complaint is the fact that - forget the fact that's it's been there for 20 years - but the fact that if I am required to cut that back the three feet, it serves really no purpose. There's no direct impact to the waterway, to the adjacent properties, to anything, other than because it's sits a little bit outside that line, I got to cut it back. Page number three on here shows a picture of the dock, again, as it stands today. Problem being, as I said, the end of the canal is not square. It's not a right angle. So when they measure the 26 feet, it's from the seawall. And, like I said, it causes that outside corner to be three feet out too far. However, if you look at it closely, the way the property sits, and parallel down the canal, if that outside edge was cut back three feet, the inside edge, that's still compliant today, would still be sticking as far out into the canal as the other side. So there's the same distance – I would be the same distance out into the canal as I am today. And, again, no obstruction to boat traffic. I'm on the end of the canal. So there's little, or no, traffic there to begin with. And, like I said, the outside dock will still remain the same distance out into the navigable water into the canal. So it's not blocking anybody. It's not impacting anybody. Page number four here is kind of a - just a better representation. You can see kind of a blow-back picture that shows the way that the property is angled, the canal is angled, and how the dock sits there. So, like I said, if that inside corner, or the corner to the right, is cut back three feet, the left sticks out just as far into the canal as the other side does. And page number five is a picture of the property, of the lift, as it sits today. And, as you can see, there's a boat in there. It's a 24-foot boat that I have, and I had when I moved into the property. It's there. And, again, I'll restate. If I pull this outside piling in, the one that's closest to – on the right hand side - if I cut that, move that back four feet, the boat, and the dock, on the other side will remain the same distance out. And so - I mean, there is no benefit to the County, to the neighbors, to anybody, to cut this back, other than to cause me some harm. As I said earlier, you have letters in your hands. Those letters came from neighbors that were within the 200 feet that were affected,

and/or neighbors who are directly on the canal. Most of the folks that have letters in there are directly on the canal that I live on. You're probably gonna hear from Mr. Borrer, or other folks in the audience, some of his friends, lots of other issues. Again, you don't file a complaint on somebody after 20 years, for no reason. Mr. Borrer and I have had some disagreements. He's got a lot of issues with me. I have with him. But I guess my point to the Board here is, those are irrelevant, irrelevant to this case, irrelevant to this variance. And I hope you guys recognize that. Back to hardship for a minute. Just let's forget about the cost here, for a second, to make a change that has no, you know, positive impact to the community or to the County. It does have some serious impact on me. Number one being, as I state, if I had to push these pilings in four feet – if you look at picture number six, which is again a picture of my boat in the lift, you see where the support beam is underneath the boat, kind of in the middle of the picture, under the dock. If I have to move that four feet forward, I more than likely won't be able to put this boat in this lift. Too much weight will be back on the back of the boat, and I won't be able to keep the boat there. In addition to that, even to try and get it to fit, I got to shove the boat as far forward of the seawall as I can. And in order to do that, as you all probably are aware, there's not a lot of water there, a lot of dirt, so I would have to dredge the canal in order to accomplish that. Page number seven, in this reoccurring theme, you know, there's a lot of effort here being asked from me for something I had nothing to do with, and something, you know, I was not involved in 19, 20 years ago. To make the changes that the County has requested costs some dollars. There's an estimate on here from one of the dock companies, you know, \$5,500, you know, \$6000, to make this change, again, for something that has little, to no, benefit to the community or to the County. So, kind of in review, as I stated, I'm the sixth owner of the property. The dock has been there for 20 years. It was, you know, built with a permit, and a variance, and signed off on by the County, 20 years ago. It's been as it is today for 20 years. The three feet being removed shows, you know – has no positive impact, and has zero impact to navigation, or to the adjoining properties. And just the hardship, and the expense, to me to make those changes seems a little bit excessive for three feet, eight inches. So that's kind of - that's my story, and that's it.

Ms. Ball – All right, sir. Thank you, very much. Your materials are well put together.

Mr. Makowski – Thank you.

Ms. Ball – And we appreciate that, and helping us have a full understanding. There is history here, so I'm gonna ask Cindy if she will give us some background. And I believe we have Code Enforcement action on this. So if you can help us in that department.

Cindy Fox – You're probably wondering why this would come up after so many years. After Mr. Makowski purchased the property, he came to the County, applied for a permit to add a small boatlift off to the left hand-side, which I think is south.

Mr. Makowski – West.

Ms. Fox – West. O.K. West side. And upon that being installed, there was some concern for the neighbors. Code Enforcement was called. And staff looked at the existing dock, and the boatlift, which was added, which met all the requirements under County Code, and it was determined that the dock that was existing did not meet the regulations, nor did it match up with the variance that had been previously approved on the property. So that's why Mr. Makowski is here. That's how the Code Enforcement came about.

Ms. Ball – So, Cindy, the initial request of this gentleman is what prompted something that's an indirect result.

Ms. Fox – Yeah. He applied for a permit to add a boatlift off...

Ms. Ball – Which was legal.

Ms. Fox – Which was legal, and was – he has a permit. Everything's been approved on that. But because that caused some concern for the neighbors, he was turned over to Code Enforcement, Upon investigation, it was determined that the dock's projection is the only element that does not meet the current County Code.

Ms. Ball – All right. Thank you. And, basically - I mean, I don't see anybody here for Code Enforcement.

Ms. Fox – We do have one Code Enforcement Officer out here. I'm pretty familiar with the case.

Ms. Ball – O.K. We don't need to hear from anyone else.

Ms. Fox – We're okay. Yeah.

Ms. Ball – O.K. Thank you. All right. Before we begin, there are a number of letters in the file. There are letters of objection. Mary will take care of reading those. And then, Mr. Makowski, we'll read your letters, which were in support.

Mr. Makowski – O.K.

Ms. Ball – So you can stand, or sit down, while she reads. whatever's comfortable.

Mary Hillberg - The first letter is from Ron and Kathy LaRochelle, at 1430 Centaurus Court, Merritt Island. "Dear Mrs. Sobrino: Lacking any visibility and/or knowledge to specific plans for subject variance request, we recommend that referenced variance be denied. Why would an approved 16-foot boat dock projection being reduced to 14 feet require a variance? In addition, it would appear that neighbors on either side of the Makowskis could be negatively impacted, either now or in the future. It is not our intent to be unreasonable in recommending disapproval, only that we are being asked to voice our opinion based on an unknown. Sincerely, Ron and Kathy LaRochelle." The second letter...

Mr. Young asked a question, without his microphone.

Ms. Ball – The address?

Ms. Hillberg - 1430 Centaurus Court, Merritt Island. The second letter is from Mr. and Mrs. Dan Lacy, at 1455 Sykes Creek Drive, in Merritt Island. "To whom it may concern: In reference to the variance submitted by Kevin and Janine Makowski, we would like to submit our disapproval, as presented. The variance, on it's own, approving the extension of the dock to 30 feet, appears not to be an issue;

however, looking at this variance, along with the addition of the eight-foot wide walkway to the west of the existing dock, and an additional nine-foot wide dock to the west of the 30-foot dock, to accommodate an additional boat dockage, makes this an unacceptable and unfair configuration. Collectively, this configuration does not allow adequate access to all neighboring properties, and assumes 14 feet more dock/walkway to the west side of the dock than was originally approved by the previous submitted variance. Being original owners of canal front property, we recognize that those of us that invested in property on the canal purchased it with the intent to have water view, as well as water access for personal watercraft. While we understand the Makowskis' desire to obtain approval for the dock, as built, we are not in agreement with the extension of the dock, unless the neighboring walkway is reduced back to the original three-foot width that it had been previously built to. It is only right that all parties be considered in respect to variance approval. Sincerely, Daniel and Carol Lacey." The third letter is from Glen and Patricia Dear, at 1450 Centaurus Court, Merritt Island. "The following comments are in response to the above-referenced variance notice and public hearing presently scheduled for March 18th. An original variance issued for construction of the dock in question was for three-foot walkways, with a projection of 26 feet into the canal, so that the dock would be built perpendicular, and not parallel, to the seawall. This provides convenient access to the dock, and accommodates adjacent property owners, allowing fair and reasonable water access around the end of the canal to all. Since the original variance, modifications to the dock have widened the west walkway from three to eight feet, and a dock/boatlift has been attached to the west side of the dock, restricting water access to the western adjacent property. A fair and reasonable disposition of the variance request would be to approve the existing 30-foot projection of the dock into the canal, with the condition that the western walkway be restored to three feet, and the attached dock/boatlift be removed to conform to the original variance request, as approved. Sincerely, Glen Dear." The next letter is from David Borrer, 405 Artemis Boulevard, Merritt Island. "To whom it may concern: I am requesting the above-referenced variance request be denied, unless the dock in question is restored to the original configuration authorized via the initial variance in 1989. The variance authorized a ten-foot variance in length, and the Board specified it must be centered in the canal and limited to three-foot walkways, and a ten-foot slip, 16 feet total width. That was a drawing submitted, at that time, to comply with these requirements. Since that time, the walkway on the west side has been widened to eight feet in 1996, with no additional variance request, and an additional dock built, attached to that walkway, in 2008, which consumes an additional ten feet of water. Neither of these modifications would be possible without the original variance, which permitted the homeowner to build the dock perpendicular to the seawall, as opposed to parallel, vacating the space, the walkway was expanded and second dock built. It is clear that the intent of the original variance has been compromised, and these additional modifications, as well as impacting neighboring property owners' ability to access the water. All property owners must be considered when granting a variance. The current configuration of these multiple docks and walkways is now 31 feet wide, and up to 30 feet in length, depending on the position. Thank you for your consideration. David Borrer." The next letter is from Gary Farmer, 1455 Centaurus Court, Merritt Island. "Dear Robin: Subject request for a variance by Kevin and Janine Makowski to extend 14 feet over the 16-foot allowance, allowed for projection of a boat dock into a manmade waterway, would create undue hardship for the people living on the end of the waterway, create a hazardous for turning about a boat at the end of subject waterway, and would have the potential to lower surrounding property values. Original variance was granted in 1989, to authorize 10 feet to 16 feet, permitted by Code, 26-foot boathouse. Boathouse had to be centered at the end of the canal and was limited to three-foot walkways, 10-foot slip, 16 total width, same as all other boathouses on canal. Drawing was submitted with plan, and variance was approved. Walkway on the west side has

been modified to eight-foot width. Permit issued in 2008, to add two pilings, two timbers, and associated hardware, to existing dock was utilized to build a second dock on west side of eight-foot walkway. Structure is more than 14 feet over what was originally authorized on the west side in 1989. Request this variance be denied and dock be restored to three foot walkway, and additional dock removed. Thank you, Gary Farmer.” The next letter is from Dean and Robin Ferry, at 1440 Centaurus Court, Merritt Island: “To Whom It May Concern: In regards to the above-referenced variance request, we are requesting that this variance be denied, as written. This request is to permit a 14-foot variance over the 16 foot allowed for projection of a boat dock in a canal; however, it should be noted that this dock has been modified, expanded in width, twice since the original variance of ten feet in length was approved in 1989. At that time, the board specified a ten-foot variance was approved, and the dock must be centered in the canal, and was limited to three-foot walkways on both sides, and a ten-foot slip. The plan, and drawing, approved with that variance was complaint with these requirements. Since the initial construction was completed, the walkway on the west side was modified to eight feet in width in 1996, and an additional dock was constructed next to that walkway in 2008, which takes an additional ten feet of water. The modifications have negatively impacted neighboring properties’ water access, as well as property value. When considering a variance, the impact of all affected property owners should be reviewed. While the original variance approved a 16-feet wide by 20-foot long boathouse, the current configuration is 31 feet wide, and ranges in length from 17 to 30 feet, or 80 percent larger than the original dock approved by the board. A fair resolution to all would be to approve the variance requested for 14 feet in length, under the conditions the walkway on the west side be returned to three feet, as approved by the board, and the second dock be removed. It should be noted, without the variance in length, the water space where the expanded walkway and second dock currently reside, would be consumed by the original boathouse, had it been installed parallel to the seawall, like all the other docks in our canal. And, finally, we are not sure which dock Kevin and Janine Makowski are asking for a variance on, since there are four docks, including their floating dock, on their property. Please attached photos.” That’s all.

Ms. Ball – You want – those are letters in opposition. Do you want to read the ones submitted that are in support of the applicant? Thank you.

Ms. Hillberg – The first letter is from Shirley Healy, at 410 Artemis Boulevard, in Merritt Island. “To whom it may concern: The intent of this letter is to express my support for the zoning variance request submitted by Kevin S. Makowski, 425 Artemis Boulevard. This variance will allow the dock to remain as it was originally built when the house was new. As the existing dock has been there for 20 years, it represents no negative impact to me or other residents. Shirley Healy.” The second letter is from Michael Guth, at 1445 Sykes Creek Drive, Merritt Island. “To whom it may concern: The intent of this letter is to express my support for the zoning variance request submitted by Kevin S. Makowski, 425 Artemis Boulevard. This variance will allow the dock to remain as it was originally built when the house was new. As the existing dock has been there for 20 years, it represents no negative impact to me or other residents. Michael Guth.” The third letter is from Robert and Lois Wessner, 420 Artemis Boulevard, Merritt Island. “To whom it may concern: The intent of this letter is to express my support for the zoning variance request submitted by Kevin S. Makowski, 425 Artemis Boulevard. This variance will allow the dock to remain as it was originally built when the house was new. As the existing dock has been there for 20 years, it represents no negative impact to me or other residents. Robert and Lois Wessner.” The next letter is from John and Helen Berard, 1500 Sykes Creek Drive, Merritt Island. “To whom it may concern: The

intent of this letter is to express my support for the zoning variance request submitted by Kevin S. Makowski, 425 Artemis Boulevard. This variance will allow the dock to remain as it was originally built when the house was new. As the existing dock has been there for 20 years, it represents no negative impact to me or other residents. John Berard.” Next is Roy and Esther Lealman, 430 Artemis Boulevard, Merritt Island. “To whom it may concern: The intent of this letter is to express my support for the zoning variance request submitted by Kevin S. Makowski, 425 Artemis Boulevard. This variance will allow the dock to remain as it was originally built when the house was new. As the existing dock has been there for 20 years, it represents no negative impact to me or other residents. Esther and Roy Lealman” The next one is from Terrance and Frances Thorne, 1490 Sykes Creek Drive, Merritt Island. “To whom it may concern: The intent of...

Ms. Ball – Let me ask you, are all those the same, basically, Mary, or are they varying?

Ms. Hillberg – I don't know. I haven't gone through them all.

Ms. Ball – No, I mean, the content.

Ms. Hillberg – The content appears to be the same.

Ms. Ball – O.K. Let's just read into the record the address and the name of those folks, then.

Ms. Hillberg – The next one is Terrance and Frances Thorne, at 1480 Sykes Creek Drive, in Merritt Island, who are requesting that this be approved. And next is Walter and Carrie Crossley, 1470 Sykes Creek Drive, who are requesting that this variance be approved.

Ms. Ball – Thank you. O.K. Before we begin questioning, Cindy, would you like have opportunity to... (tape turned over) ...that was mentioned in this communication?

Ms. Fox – I think I'd just like to reiterate to the Board that the variance request is regarding the projection of the dock, and the projection out into the canal, not the number of docks, not the width or the side setbacks, but just the projection.

Ms. Ball – All right. Thank you. This is in District II. So, Mary, you get to have the floor, again.

Ms. Hillberg – I would like to ask Mr. Makowski, when did you add these other things? And they were, in fact, you had - were permitted for all these extra additions to your dock? Is that correct?

Mr. Makowski – Yeah. I mean, half the letters that you just heard in opposition, not half, actually all the letters that you heard, were referencing things about additions, and walkway widenings, that weren't in the variance, and all this other kind of nonsense. I mean, the variance is right in front of you. And it simply states that, you know, the dock is allowed to have an extra ten feet projections out into the waterway. Nothing about width. Nothing about, you know, size. Nothing. So, the answer, direct answer, to your question is, I didn't make any modifications to the existing decking that's there today. But I will also add that all of the existing decking that is there today is compliant, as verified by Code Enforcement. It is legal. It's there. It's compliant. So, you know, all this about, well, this was added in '96, in '92, in '91, again, to me, is obviously irrelevant.

Ms. Hillberg – Thank you.

Ms. Ball – O.K. I'm gonna open it up to anyone else on the Board. Jim. Oh.

Mr. Makowski – I'm sorry. I skipped one of your, or a piece of your question. The one change that I did make, as we heard, I did add - that kind of started all of this - I bought a small jet boat. I went to the County, said, "I bought a new boat. Can I put a lift in next to my existing one?" They said, "Yes." I got a permit.

Ms. Hillberg – I'm aware of that. Yes.

Mr. Makowski – And the permit is here. You know, it's all...

Ms. Hillberg – I mean, the other things.

Mr. Makowski – Yeah. They're complaint, and everything.

Ms. Hillberg – Thank you.

Mr. Makowski – So that's the only change that I made.

Ms. Ball – O.K. We'll start with George, and then we'll come back to Jim. Go ahead.

George Bovell – It seems to me that the neighbors who would be most impacted are – would be the ones in lot 132 and 35. Are any of those people, who are in favor of, live at lot 132 and 35?

Mr. Makowski – Actually, you beat me to the punch. As I stated, there's very few neighbors who are directly impacted. The only ones that may be impacted are lots 35, 34, and 33, and 32. And all four of those residents are here today in support of this variance. So you'll hear from them, shortly.

Mr. Bovell – Thank you. I'll wait to hear from them.

Ms. Ball – All right. Jim.

Jim Rosasco – Yes. Drawing two, and drawing three, it appears to be a matter of interpretation of where that 26-foot line, and how it runs. It would also appear that the previous Board must have assumed the alignment that's showing on drawing three, which does not show any violation.

Mr. Makowski – My personal belief is that if you take the dock - I mean, when the Board looked at it, said that 16-foot, or, you know, 26-foot total out into the canal is what the variance was for. When the dock was being built, they looked at it – the builders who built it, looked at it, said, okay, if we angle this slightly to make it parallel down the canal, that pushed, as you said, that left corner, out away from the seawall, like this. And, so, that's really, I think, what caused the error here when this thing was built.

Mr. Rosasco – You got a variance for the ten additional feet to get 26 feet.

Mr. Makowski – Correct.

Mr. Rosasco – When the contractor laid this out on the job, you didn't have the drawings for the dock, and you ended up being at this angle. And I'm not complaining about it. I'm just trying to get it straight. You might have it...

Mr. Makowski – That's conjecture. Yeah, conjecture on my part. Remember, I've owned the property for two and a half years, and this was built 20 years ago.

Mr. Rosasco – Well, I can tell you that with my experience going through the docking process – permitting process - and there's an awful lot of interpretation in the field. And I can see the logic of measuring this thing along the axis of the canal. I hate to see neighbors fighting over docks. I had a lawsuit when I put mine in. And it really hurts the neighborhood. I hate to see that. I also believe that probably all the rest of the dock facilities you're talking about have all permitted. The only thing is, we're focusing on, is this three feet.

Mr. Makowski – That's correct.

Mr. Rosasco – That's all I'm focused on. I'm not saying anything about anything else, because that's all I'm being asked to judge today. Thank you, very much.

Mr. Makowski – Thank you.

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

Dale Young – Yeah. The fellow who's doing the complaining, 405 Artemis, how far away from you is that?

Mr. Makowski – That's directly next door. He's in the corner.

Mr. Young – Is that 35, or 132, or...

Mr. Makowski – You can ask him when he gets up here, but, 132.

Mr. Young – O.K. But he doesn't seem to be that impacted. You're well back from the side setback.

Mr. Makowski – Yeah. Mr. Borrer actually has two variances on his property, and has a dock built. And those variance were granted to give him zero foot – zero setback from my boundary line. And my new dock, or the new lift, that I built that he was so upset about, is built 11 feet back from the setback. So he's upset with me. He builds all the way up with zero clearance, or zero setback, and he's upset with me for building something within 11 feet from the setback. Like I said...

Mr. Young – Well, it usually seems these end of the canals are the ones we get. So that's all I had.

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

Mike Cunningham – I just had a question for Cindy. Is this gonna parallel that situation, that issue we had about six months ago, where it was virtually an impasse on these boat docks? And would it also parallel similar to what we tabled on number five?

Ms. Fox – Yes. I will say that the direction that we have received from one of the Commissioners is to try and alleviate the problems that occur in these situations where you have limited canal frontage, particularly on lots that have nonparallel side property lines. And, you know, it's been a very difficult thing to try and tackle. You know, these canals, manmade canals, are actually public right-of-ways. And the County is, you know, allowing these structures to be built in these public right-of-ways. So we have had a lot of discussions about the complications. But, yes, we are doing all that we can right now to look at these situations to try and alleviate these types of issues. Unfortunately, in Mr. Makowski's case, any pending ordinances are not going to deal with the projection, which is why we need to go forward with his variance.

Mr. Cunningham – O.K. So that still brings us back. And we're only concerned, then, with the three feet.

Ms. Fox – That's correct.

Mr. Cunningham – O.K. Thank you.

Ms. Ball – All right. Anyone else? Jim. Oh, no. O.K. All right. I guess, from my point of view, from what you presented, I have an understanding of what we're dealing with. And I'm just going to let you step aside, and we'll hear from any of the audience.

Mr. Makowski – O.K. Thank you.

Ms. Ball – Is there anyone in the audience, who would like to speak in opposition to the variance? If you would, please come forward.

Christopher Coleman – Good afternoon.

Ms. Ball – Good afternoon.

Mr. Coleman – My name is Christopher Coleman. I'm an attorney for Mr. Borrer, lot 132. My business address is 1311 Bedford Drive, Melbourne, Florida.

Ms. Ball – All right.

Mr. Coleman – Kind of threw me off track of what I was gonna say, 'cause I'm gonna address a couple of issues. Number one, I think the ordinance that's being discussed to address your question, Mr. Cunningham, would actual impact, if my client, because he has a small frontage, where coming in, it's addressing those dock issues, rather than this specific Mr. Makowski issue. So it wouldn't necessarily address it, is one issue. I also have a packet that I think may be helpful, if I may pass that out.

Ms. Ball – All right. Thank you.

Mr. Coleman – And I apologize, I didn't know there was two alternates here today. I was told there was gonna be one alternate, so I was one short. But, looking at the packet, tab one is the original variance granted for this property. I'm a little troubled by the applicant's statement that the file had been destroyed by the County, because I was able to obtain copies of it this morning, and exactly the original handwritten application in file V-2119. I did not have an opportunity to make copies of this yet, but I would pass it out to the Board so you can pass it along. But you can see very clearly from it, the original applicant shaded in exactly what they were looking for a variance, that, in fact, was supposed to be to address counsel's position on should it have been parallel to the side lines of the canal, or perpendicular to the lot line of the owner. The original application actually had it perpendicular to the lot line, and thereby closer to the people that are now suggesting they have no problem with this extension. But what happened was, in fact, it was tilted parallel to the canal lines. And I think we all understand why that happened. But it then tilted that dock much closer to my client's property at lot 132. And, in fact, all of the drawings show that it was to be perpendicular, three feet wide, ten feet by three feet. And, in fact, if you look at the tab two, which is the survey of the applicant's property, the dock itself doesn't comply with what was approved by the original Board. It's wider than the three foot, ten foot wide for the slip, and then three foot on each side. What you're hearing in opposition is that there was an additional eight-foot decking on the west side, which is reflected also in the drawing. This decking was not as originally approved by the Board, verbally. Unfortunately, for all of us here, the resolution itself, approving the variance, was not specific on only having three feet wide. The only person, to my knowledge, that was actually involved in the 1989 application was Mr. Borrer, who actually came in, in support of it, on behalf of the original applicant, and agreed that everyone else having parallel dock access didn't make sense for the end of the canal, and that they should have it protruding in. And everyone was allowed 16 feet because of the current code that provided for 20 percent of the width of the canal, which is an 80-foot canal, allowing for 16 feet. So they shifted it, said 16 feet would be too short. Let's allow him an additional ten feet in. But at the time, it was, you also should only be 16 feet wide, like the rest of us. So we understand you'll need to take your dock this way, and stick it out like this, and we'll give you that extra extension. But there was discussion at that meeting, as shown by the drawings, that all you were still doing was 16 feet wide. What happened some nine years later, is a prior homeowner came and extended that dock, obtained a permit - we don't know how they obtained a permit for it - and now extended the decking on that another eight feet. Subsequent to that, this applicant came in and asked for, under the Code, an additional slip. That slip, as you can see by the tab two in the packet I've handed you, now brought the structures, if you will, of this end unit, all the way to lot 132, and leaving only 14 feet. So, now, even if you were allowed the 16 feet, as everyone else, you would be overlapped by two feet. What this really has caused is, if you look at tab five, I've provided some photos of the, essentially the marina, that you have at the end of this canal now. You have, on the very far left in the first picture, this second slip that was added. You then have the extended decking, which the extension is basically from the first piling that you see to the - almost to the second - well, to the second one. It was supposed to be a three feet wide between the two pilings that are further out. You then have the dock in question that extends too far, pursuant to the original variance. And then the boat you see on the far right is the other property owner, which is on the other side, lot 35. And one reason we're fairly certain that lot 35 has no objection is because at some time, there was an agreement that lot 35 could essentially put the dock right there on the applicant's property, and it's been there every since. This is not an issue of this dock has remained, as is, for the 19 years, and the applicant is troubled as to why there is an objection to it now. As he later stated, the objection came when, in fact, this second slip was added. This second slip, thereby prohibiting meaningful use

of my client's water access. To make it worse, if you flip to the last picture, the applicant has taken it upon himself, to use your clerk's words, to put obstructions in the public right-of-way. If you see those two pilings, those PVC pilings, he has driven those into the ground and say, "This is my property." You are standing – this picture is, you are standing on my client's dock. The seawall, you can see it, the immediate bottom. My client's dock basically does not extend out. It is at the seawall, back to his property, up his landward property. So you have the later-acquired boat slip. Then he's decided to put these pilings in, completely blocking access to my client's dock, at all. And that is what prompted a phone call, this extra slip, saying, is all this compliant? We believe, by the way, Code Enforcement missed a bit of an issue, as well. Your Code provides for 600 square feet maximum total space when you can include boatlifts and docks. And this exceeds it by some 30 square feet, as well. Code Enforcement hasn't caught that. But if you take, actually the survey that was supplied by the applicant, tab one, and calculate out the square - or tab two in the package - and calculate out the square footage of the two slips now, and all of the deck space - and this does not include the floating deck that you can see on the fourth picture, or the third picture - the applicant actually has a floating deck, as well, that he installed between the eastern dock, owned by that owner, and his center dock, not even including that, he's over the square footage of that. My client does not object to this variance, if we can get back to the original intent, which was that it is to be three foot wide, so it doesn't continue to protrude onto him. And it does protrude now. So it's a fiction to say that it doesn't impact my client's side of the canal, because as soon as they shifted it to the west, it now is closer, and restricts the access. So this variance does more than impact the west side of the canal. It impacts my client, as well. So we're generally in agreement with it. My client was in support of the original application in 1989. He's the only one here that actually was in 1989, was here. But it all needs to slide over. He has no access to his water now. Even if you, you know, ignore the fact that the applicant has decided to drive these pilings in, and prohibit all kinds of access, the additional boat slip that was permitted, without regard to the intent of the original variance, has limited his access, completely. And I will pass out, again, from the original variance application file, which does still exist with the County. It is over there. This is not the complete file. I've made a couple of copies, but the original application, everything, are in there. So I'm a little troubled by the applicant saying that the file was destroyed. But, very clearly, they were supposed to be perpendicular. So, at least from that perspective, the variance application currently is incomplete, because he should be seeking a variance both in length and in direction, since it was to be perpendicular, and centered in his property line, and it is not. He also should be seeking a variance for it's width, because it is greater than the 16 feet, ten feet on the slip, and three feet on either side that the original application asked for, and was granted. So, for that reason - and we're happy to talk about some sort of - you know, what we would normally do is a binding development, or that we're in agreement with it, if he shifts these other things over, giving meaningful access to my client's water access.

Ms. Ball – Mr. Coleman, if you submit those, those will be ours to keep.

Mr. Coleman – I understand.

Ms. Ball – Thank you. Since – you want to come back, in case there's come questions here? Before our Board begins questioning, Cindy, is there anything you would like to speak on, before we begin?

Ms. Fox – I think I'll just wait for your questions. I don't have anything to add, at this point.

Ms. Ball – All right. Then, this again being in District II, Mary, we'll give you an opportunity to question, if you have questions of this gentleman.

Ms. Hillberg – I don't have any questions of Mr. Coleman.

Ms. Ball – All right. Dale.

Mr. Young – Yeah. I'm still missing this three-foot width. Where did we get that?

Mr. Coleman – If you look at the drawings that are being passed now – and I apologize, I didn't have copies, because I obtained it this morning - it shows the total wide to be 16 feet in width, ten feet for the slip, and three feet, basically walkways on either side of it. And it is being passed around currently with Mr. Bovell.

Mr. Young – So what you're saying is, this was not building according to the permit, originally?

Mr. Coleman – Not permit, the original variance application. Permit is a separate issue.

Mr. Young – O.K. But does it meet the permit?

Mr. Coleman – I don't know the terms of the permit. I don't know if the permit was issued in compliance with the variance.

Ms. Ball – Cindy, you want to address that?

Ms. Fox – I'm confused as to where the width, the limitation on the width, is coming from.

Mr. Coleman – It did not make it into the variance. I am saying that from the file with the application, it was to be 16 feet. And that's always been our position, that the original variance, as drafted, did not included it. There's an ambiguity there as to any width limitations on this.

Mr. Young – Well...

Ms. Fox – But – I'm sorry.

Mr. Young – Go ahead.

Ms. Fox – The previous variance was also only considering the projection. So I think that they probably would not have been able to limit the width, unless they made that part of the resolution, and they did not.

Mr. Coleman – Well, they did make it part of the record. And, I think - and we were trying to get a copy of the transcript of the meeting, as well, but it has been archived, it was my understanding. But it was a condition for the granting of the variance, was the restriction on the width. And I understand it did not make it into the variance. That's been an issue here. And that's why my argument's been – we're arguing what the intent of the original variance was, especially since the applicant is coming in

now, and asking to modify that original variance, because it was not built in compliance, even with the literal terms of the variance, let alone the intention of the original variance.

Mr. Young – Yeah, even if this were the case, we superseded that original variance with a second variance that took it out to 26 feet.

Mr. Coleman – There's not a second variance for 26 feet, to my knowledge.

Mr. Young – Well, there's a second variance that added ten feet to the 16 feet. So, yes there is.

Ms. Fox – That's the same one.

Mr. Coleman – That's the variance. That's the one...

Ms. Fox – There's only been one variance.

Mr. Young – O.K. But, then, if that's the variance, then there is no 16 feet. It's 26 feet.

Ms. Fox – That is correct.

Mr. Young – O.K.

Mr. Coleman – It's a ten – just to be clear. It is a – it was a ten-foot variance to the 16 feet that was permitted under the Code.

Mr. Young – Yes.

Mr. Coleman - And now the applicant here is asking, saying, we didn't construct, even in accordance with - and it wasn't him. Obviously, it was a predecessor, owner. It didn't get constructed in compliance with the variance, let alone the Code, and now I want another variance, varying the original variance, because we didn't construct it the way we were supposed to.

Mr. Young – But what he's looking for now is the four feet.

Mr. Coleman – Three.point.eight feet. That's correct. Or three feet, eight inches, I guess.

Mr. Young – O.K.

Ms. Ball – All right. Mary.

Ms. Hillberg – I'd like to ask Cindy, refresh for me one more time, please, that this variance is for essentially the three feet that is out...

Ms. Fox – That is correct.

Ms. Hillberg - ...of compliance at this time.

Ms. Fox – Yes. That is correct. This all came up because of the addition of the boatlift off to the west.

Ms. Hillberg – Right.

Ms. Fox – O.K. It was a concern, so it was brought in for Code Enforcement. When this was evaluated, per the Code, and we did look at the previous variance file, it was determined that the violation that we saw was the additional - the three feet that was not accommodated.

Ms. Hillberg – Right.

Ms. Fox - And they're parallel, or perpendicular, it was over...

Ms. Hillberg – So that is all this variance is addressing right now.

Ms. Fox – That is all Mr. Makowski has, yeah, applied for.

Ms. Hillberg – And that you mentioned that you were discussing, so that the Commissioner is discussing rewriting the, or working on the item for docks in corners...

Ms. Fox – Yeah, I mean, we...

Ms. Hillberg - ...because this is gonna be a constant problem.

Ms. Fox – Absolutely. I can tell you, since 1989, they have been 23 variances, just in one particular area of the County, which happens to be this property, as well, just for these corner lots and the problems that they've had. So we recognize that it's an issue, and that's what's gonna be addressed. But, again, what is intended on the upcoming Code changes are not going to help Mr. Makowski's request regarding the projection. The projection is...

Ms. Hillberg – The projection itself is the problem.

Ms. Fox – Right. In this case, for Mr. Makowski, the projection is the problem, and it will not be resolved.

Ms. Hillberg – Thank you.

Mr. Coleman – And if I may address that, your statement that that's the only thing the applicant has asked for is correct. We do not believe that's the only problem, because the square footage is in excess of your Code, too, and he's not asked for a variance from the square footage. He's only asked for a length variance. But there is a problem with the square footage, as well. The applicant has chosen not to ask for a variance from your 600 square feet.

Ms. Fox – We would have to review that again. Everything has been reviewed, and we believe he's in compliance with all the sections of the Code, and he's been advised of that.

Ms. Ball – All right. Jim.

Mr. Rosasco – You just mentioned the 600 square feet. Are you including, in that 600 square foot, the wood dock, or are you also including the footprint of the boatlifts?

Mr. Coleman – The footprint of the boatlifts, pursuant to the Code, and the wood dock. Your Code provides that you can have slips, but if there is a lift - and, you know, Attorney Lepore can address this, but...

Mr. Rosasco – I tell you, to tell you the truth, it's really immaterial. I think the question in front of this Board today is, are we going to allow a variance of this three or four feet of the existing dock that's been there for 20 years. All of this conversation about the width, those other things, that's not in front of this Board today.

Ms. Ball – Cindy. Oh, I'm sorry, Dale. Go ahead.

Mr. Young – Yeah. I still can't see all this is going to help your client, because looking at the picture, the edge of his dock is on the edge of the neighbor's property. He has 14 feet now to get his boat in. But even with the 14 feet, he's sitting over the west edge of his property.

Mr. Coleman – Well, the dock is not.

Mr. Young – Well, the dock is right on the property line, according to this picture, and according to the survey.

Mr. Coleman – My client's dock is not reflected on that survey. So I don't' - I'm not sure how you're coming to that conclusion...

Mr. Young – Well, O.K.

Mr. Coleman - ...because it's not...

Mr. Young – But it's showing here.

Mr. Coleman - ...on the survey, at all.

Mr. Young – And it's showing up against the fence, which is his fence, or the common fence.

Mr. Coleman - I don't know what picture you're looking at.

Mr. Young – Yeah. This – maybe I'm wrong, but it shows that his dock comes all the way over to the common boundary. Right? So, where's he gonna put a boat?

Mr. Coleman – Yeah, I believe that to be correct.

Mr. Young – Where's he's gonna park his boat?

Mr. Coleman – Well, as you – the waterway itself is a public waterway.

Mr. Young – O.K.

Mr. Coleman – So, you know - and you are allowed to extend into the waterway at the privilege of the County. But access to it with a boat, it's a public right-of-way. So his dock does not extend beyond that that was granted by the County. And the issue here is, you know, really, you're allowing, in theory, someone who was granted a variance to have much greater rights than anyone else in the canal, and arguably to the detriment of those that are trying to access the public right-of-way. And if we're sticking to the standards that were read, you know, by this Board, whether or not there is a hardship, economic hardship is but one consideration. And the only thing you've heard from the applicant here, is, yeah, it might cost me \$4,000 or \$5,000. There is nothing here presented that he would not continue to have access to his dock, to his waterfront property, much like my client, only has a very sliver access to the public right-of-way.

Mr. Young – I think that's because of the nature of the property, though. This four feet is not going to impact your neighbor's access to whatever he can squeeze a boat into the four feet, doesn't...

Mr. Coleman – It may not, but that's not a standard for the granting of a variance, nor for the granting of an objection to a variance. If that were the standard, then we would only have those that are adversely affected can come before this Board and say, "We object to you deviating from the Code that's been established, because I'm not personally affected?"

Mr. Young – Well, we have had several of these, maybe not a 100, yet. And it's all the same, because you got a 60-foot canal, and you got 40 feet of everybody's docks. And you've got an end of a canal, where there are three people that have a 25-foot frontage. So, yes, this is a Solomon's choice.

Mr. Coleman – I understand. And my client participated in the first time around, and agreed with it, with limitations that, regrettably, a prior Board was not clear about putting in. And so, essentially, he's here now, you know, if you will, revoking that approval.

Mr. Young – But his complaint is a three-foot wide walkway that I don't know where it came from.

Ms. Ball – I believe, in all fairness here, and we're already exhibiting some confusion with what our issue is today, we have to stay on task to what was brought before us for this variance. And I'm gonna call us back to square one here on staying on subject. Your client may have a lot of objections on various things. My only question, I guess, coming to you, since you represent him, is he one of the original owners in this area?

Mr. Coleman – Yes. Well, I don't know what you mean by original, so I don't know if I can answer that.

Ms. Ball – When the home was built?

Mr. Coleman – Yes.

Ms. Ball – All right. If he – here's my observation. If he was one of those original people in that area, and he's been there 20 years, plus, and he's watched the changes to this dock, through those years, if his objection is to walkways, or whatever, he had an avenue to come to County, discuss with them what was going on. Did they have building permits for that? Does it fit Code? He's had that opportunity. And if he came in support of that variance back in, what was it, '89 - if he came supporting variance in '89, and yet he saw a deviation from that, why is it that's he's waited 'til today, which is a different owner, to come and bring all this before someone? This amazes me.

Mr. Coleman – If I may address that. I'm a little surprised by the question, because in order for him to know that it was three feet, eight inches too long, he would have to trespass on that dock, measure it while it was being constructed. And your point was, he had an avenue while he saw other things being done. That is absolutely true, and he exercised his right. You heard the applicant even complain that he called out the County and said, "I believe this stuff that's out there is not complaint." Now you're chastising him for doing that. I'm a little confused.

Ms. Ball – No. Sir, we're going back prior to the things that you brought to this Board today has primarily been things in the past, prior to this gentleman's ownership. He's been there two and a half years.

Mr. Coleman – No, no, no. He's the one that put this boat slip in, and that's what prompted this.

Ms. Ball – He put the boat slip in. You heard testimony from our staff, saying that that was a legal - legally – Cindy, you want to address it again?

Mr. Coleman – I fully understand. And I'm okay with backing up to exactly what you said we should back up to. We're here for an applicant, asking for a variance to something. Let's just keep it as narrow as that. Has he met the elements, under Brevard County Codes, for a variance? And the answer is no. He has not demonstrated that he does not have economic use of his property. He has not demonstrated it's the character of the property that's resulted in this additional variance. All he's come in and said is, the variance that was there, when it got constructed, someone goofed. That is not a grounds for variance, under Brevard County variance request. I don't have a problem with backing it up to that. I was hoping to give a big picture and say we're in agreement with this, if we can get some other of these things addressed. If this Board does not want to address that, and wants to have them to continue to fight this out in Code Enforcement, I'm okay with that. But let's look at the variance, as it is here. He say's it's just gonna cost me a lot of money, and I didn't do it, neither one of which are the elements, as read, by this council for a variance. Neither one.

Ms. Ball – Sir, but we come back to staying on task. This variance is for the three, plus, feet...

Mr. Coleman – That's correct.

Ms. Ball - ...on the east side, which does not directly impact...

Mr. Coleman – Not a standard, ma'am.

Ms. Ball - ...your lot 132.

Mr. Coleman – That’s not a standard, under your Code.

Ms. Ball – He can give his testimony, and we can consider that.

Mr. Coleman – But that’s not a standard.

Ms. Ball – What I’m saying is, he’s not directly impact, as lot 34, lot 35, which is right there, and could be directly impacted when they take a boat out.

Mr. Coleman – I fully understand that. But I think we could even get, you know, the County Attorney to tell us that is not a standard. Being directly impacted is not something this Board is supposed to consider. This issue is, has the applicant met his burden of proof for establishing that his use of his property is impacted, but for the granting of this variance? And he has not done that. He has said it has been built over it. I would have to spend \$5,000 or \$6,000, based upon an estimate, to fix it. Economic hardship can be an element, but he hasn’t demonstrated he doesn’t have the financial ability to do it. So I am more than happy to stay on task. But you’re not staying on task, if you’re saying that he has to come up and testify, “I’m adversely impacted.” That is not an element for the granting of a variance. I’m sorry.

Christine Lepore – Madam Chair, I think we’re getting a little disrespectful with the Board, here. I understand frustrations are high. We’re not a part of what goes on between the neighbors, but we need to keep it respectful, please.

Mr. Coleman – Then I would respectfully request that...

Ms. Lepore – I understand. You’ve given your interpretation of what you think the law is. They have the six standards. One of those standards does include considering the impact to the neighborhood. And that’s what they’re doing. It is their responsibility to apply the testimony, which the neighbor has not testified.

Mr. Coleman – Actually, he submitted the documents. It was one of his that was read.

Ms. Lepore – Well, we don’t know if what you have provided for the past 20 minutes is all contained in the documents. So your client has not testified. So, to the extent that there’s additional information above and beyond what’s provided in the documents, we don’t have credible testimony to that. So, if you will allow - I know you may disagree, but I think you need to allow the Board to do it’s job.

Mr. Coleman – And, as you know, since this is a quasi-judicial, he has the right to follow me up and come testify with regards to the facts.

Ms. Lepore – Absolutely. Nobody is denying that.

Ms. Ball – All right, sir. Thank you. I’ll open the discussion up to anyone else in the audience who is in opposition to the application. (no response) Seeing none, anyone supporting?

Mr. Coleman – Mr. Borrer would like to come up.

Ms. Ball – All right, Mr. Borrer.

David Borrer – Good afternoon.

Ms. Ball – Good afternoon. Please give me your – state your name and address, please.

Mr. Borrer – David Borrer, 405 Artemis Boulevard.

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

Mr. Borrer – Yes, I do.

Ms. Ball – You may proceed.

Mr. Borrer – Well, you've heard varying opinions here today on the impact of this variance. And as Chris explained - and I understand we're here talking about the 3.8 feet, but the original variance, as granted, for 26 feet, ten foot, over the 16 feet, it does impact my ability, when you look the angle of the dock, as it is now, and the variance that was granted. That ten feet – I don't know if there was a photo there or not - the property to the south of me, on the canal, also has a boathouse sticking out 16 feet. I'm in the corner. Now, this variance that goes out 26 to 30 feet does impact the channel that I can get in and out here, where you've seen the second slip also added, and the pilings driven into the canal to prohibit access to my limited water access. So there is an impact to me, and that variance projecting out into the canal limits the access to the corner lot.

Ms. Ball – All right. Mary, you want to begin?

Ms. Hillberg – Hello. I'm having difficulty, and please help me understand. The part of the dock that is projecting out, that is the issue in this variance, is not on the side where your home is.

Mr. Borrer – That's correct.

Ms. Hillberg – That's correct. So, if we took a saw, and a sawed off that corner of that dock to make it compliant, how could it make it easier for you to access your waterway, if we were able to do that?

Mr. Borrer – That corner is correct. It's on the opposite corner from me. But what I'm saying is, the entire variance, if you give a 16-foot projection, and now a variance has enabled that to go to 26 and/or 30 feet, the entire projection is limited in the corner there. And if the additional walks, and slip, are off limits - and they have to limit it to just the projection, correct?

Ms. Hillberg – Just that projection. That area is the one little piece, and it's on the other side of your property. So, if that – even if that - if that were denied, and we were able to cut off that piece of the dock, this wouldn't impact you. I can't see how it would impact you. Can you help me?

Mr. Borrer – Well, when I was here, I think it was in this same area. In 1989, I stood before this Board and listened to them say that a variance would be granted, only if it had a positive impact on all the three impacted properties. And that was the two corners, and the applicant's property. They said the

variance could not negatively impact any of the homeowners, nor could it positively impact one over the other. O.K. As Chris explained, when you allow that boathouse to be shifted perpendicular to the seawall, with the variance, that has then freed up this additional space where the boathouse would be. But a variance allowed that to be projected outward into the canal. And now the space that that vacated has now been filled up with additional decking, and additional slip, all to my side of the canal. So...

Ms. Hillberg – I understand that. I can see that from the – but can you understand that what - our position? We have no control over what other boards have done. We have no control over the Code Enforcement. We have no control over what anyone has built, or hasn't built, in years past. We are only concerned with the variance that we have in front of us. And even if we denied this variance, I cannot see how that would help you get to your property any easier, or better. It's on the opposite side of the end of the canal. And that's all the questions I have. Thank you.

Ms. Ball – O.K. Anyone else? (no response) No. Mr. Borrer, I come back to the question I was asking your attorney. You were present when that variance was given in '89. And through the years, I don't know how many other owners since you came in support of that, but as things have taken place, have you come to the County with your objections in the past, or is it just now?

Mr. Borrer – O.K. If I could back up again to '89. When most of the neighboring properties voiced their – they didn't want the original variance approved, and it was for personal reasons, not water rights reasons. And I stood before this Board and said that approving that variance would enable the two corner lots to have better water access, and also was a huge favor to the applicant, having head-in parking, coming down the canal, versus a sideways dock with a limited width, trying to swing in and out of that boathouse. So I recommended it be approved. And then, whatever you call, the spokesperson, at that time, said that it would be approved, and it would be limited to the 16-foot width, which we know didn't make it in the resolution, and it would be limited to three-foot walkways, ten-foot slip, 16-foot width, similar to every other boathouse going down the sides of the canal. I stood here, and I heard that. And, subsequent to that, in '96, about the third homeowner there applied for a permit to widen the walkway. And I inquired how that could be possible, without another variance hearing, and they told me that was somehow associated with the original variance. And I don't understand that, because it was a different homeowner, and seven years later, how the walkway got widened from three to eight feet seven years later...

Ms. Ball – O.K. But your testimony is that you did come to the County in complaint, back when you felt like it was not being constructed correctly?

Mr. Borrer – When they expanded the walkway, I came and asked how that could happen, 'cause under the '89 hearing, it was supposedly 16 feet.

Ms. Ball – Did you file a complaint at that time?

Mr. Borrer – I went to Code at that time, and they said there was a permit. I'm not a legal expert, but I didn't know how you permit on top of the approved variance in '89. And then this is the next opportunity since then. That expansion happened in '96, and then this additional slip was built last year. And this is the forum that we're voicing our concern again.

Ms. Ball – O.K. But, again, I'm gonna agree with what Mary was saying. You're on the west. This problem we have is on the east. The three foot, with that little projection coming out into the water – and I'm in agreement with what she's saying, and I haven't heard you saying anything any differently, that shows us how this impacts you.

Mr. Borrer – Well, the three feet on the opposite side, as Chris explained, is not the concern. It doesn't impact me. The whole picture has to be looked at.

Ms. Ball – But you understood - we had staff that gave you testimony that what was constructed on the west side was done legally. And that's what we have to, as a Board, accept that. And all we're doing today is issue of that three, plus, feet projection on the east side, and that's our total concern today. That's how it was advertised.

Mr. Borrer – I understand.

Ms. Ball – So, anyone else? (no response) O.K. Thank you. Anyone else in the audience to speak in favor or the request of the applicant? Yes.

Paul Huchko – Good afternoon.

Ms. Ball – Good afternoon

Mr. Huchko – My name is Paul Huchko. I live at 1465 Sykes Creek, which is right catty-cornered to the applicant.

Ms. Ball – All right.

Mr. Huchko – I am one of these lots. They're all numbered. Right across.

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

Mr. Huchko – I do.

Ms. Ball – Thank you.

Huchko – I, too, am new to the area. I actually looked at the applicant's house to purchase, right before he did. And one of things that both the realtor pointed, out and my wife, at the time, saw is that this is great place, 'cause you can look right down the canal, and there's lots of deck space. And it was quite a – in my mind, anyway, an improvement to the property, and actually would have helped me purchased it, rather than if it had not been there. But I purchased the house right across from it. I'm new to the area. I'm a new boat owner. I bought a boat. My slip faces down the canal. But the canal, as you may be, or may not be, aware, is extremely shallow. So there's often times when I can't get my boat into my slip, and if I do, I can't it out. My boat happens to be 30 feet long. To me, sometimes it seems like 50 feet long. But what I am required to do sometimes, when I want to make sure I can get it out, is not put it in there. So to do that, I need to turn it around and face it up the canal, so I can leave the canal, or park it down and turn it around to go up. When I saw the first

variance letter, at first, it set me back, because I thought that Mr. Makowski was asking for 14 more feet on top of 16 feet, which would put him out there about 30 feet out. And I thought, my goodness, I'll never get my boat turned around. But when I read it, and understood it - and I have turned my boat several times in that canal area. And, as I said, this is the very first boat I've ever had, and I'm not very good at it, but I've had no trouble turning that boat around, at all. Seems to me, there's been plenty of space there. And it's - from where I come from, if you don't fess up to something, or face something when it first happens, you don't wait 20 years to do it. But that's a whole different point. My thing is, here, as a novice boat owner, who often times has trouble getting the boat in the dock, I've had no trouble turning within the radius of that dock, with three feet on. Or you could add three more feet, and it still wouldn't make any difference to me turning my boat around. And I've seen another neighbor, who happens to have issued an opposition letter, whose boat's longer than mine. And he's turned it around in the same area. So I don't see it being an issue.

Ms. Ball – All right, sir. Thank you, very much. Anyone else?

Mr. Walsh - My name's Mike Walsh, at 1485 Sykes Creek Drive, Merritt Island.

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

Mr. Walsh – I do. My property is directly to the east of Mr. Makowski's. So I guess I'd be the one most impacted of that three, plus, feet. And I've been there in the house since 2000, and it's never been a problem. And I can get my boat in and out, with no problems, at all. So just to keep it brief, I think if anybody's impacted by this, it's me, and I'm not impacted at all. So I hope it gets approved.

Ms. Ball – All right, sir. Anyone else on the Board, question? (no response) That was my observation, that your lot 35, which is yours, was the one that would be most directly impacted, because you're on the east.

Mr. Walsh – And it's not, at all.

Ms. Ball – All right. Thank you, sir.

Mr. Walsh – Thank you.

Ms. Ball – Anyone else?

Frank Sebree – How you doing?

Ms. Ball – Hi. Give us your name and address, please.

Mr. Sebree – I'm Frank Sebree, 1475 Sykes Creek Drive.

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

Mr. Sebree – Yes, ma'am.

Ms. Ball – You may proceed.

Mr. Sebree – I am one of the several original owners of property in that end of the canal, as are a number of the people who you have letters submitted by. And I, if anyone, besides Mike, would be impacted, because I have to back my boat in. And so I turn in front of Mr. Makowski's dock each time I come back from boating, and back my boat in. And it's in no way a problem. I've been neighbors to many of these people, including to Mr. Borrer, and it hurts me to have to come and state how I feel. It's against him, but I feel like the fair thing to do would be to honor Mr. Makowski's request. Thank you.

Ms. Ball – Thank you. Anyone else in the audience? Sir?

John Berard – Thank you. My name is John Berard, 1500 Sykes Creek Drive, Merritt Island, 32953.

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

Mr. Berard – Yes.

Ms. Ball – Thank you.

Mr. Berard – I have a little bit different bipartisan concern, so to speak. It's environmental. Any time we do construction in these canals, it disrupts the seabeds and the grass. We have manatees that inhabit these canals. And I'm opposed to doing construction that is totally unnecessary. As far as – I don't live on that canal, but I've been down it. I have a 20-foot boat. It turns around fine. Mr. Borrer shouldn't have a problem, since he doesn't own a boat. And from what I understand, he's never owned a boat. So I just don't understand the big issue. The neighborhood's been polarized, like the nation has been. I don't want it to be. I want it to be happy. I want to put this to rest. And I ask that you approve the request of the applicant to put this to rest. Thank you.

Ms. Ball – All right, sir. Thank you. Anyone else? (no response) All right. Mr. Makowski, we'll give you the last comment.

Mr. Makowski – I guess I just want to say I appreciate the Board patience. And accept my apologizes, 'cause I truly did not want to be here today, as you've heard. I tried, on many occasions, to make this go away, and to no avail. And without, like I said getting into any details, as you heard, for some reason, Mr. Borrer believes he has some rights to my back yard. And he's made those clear, and made my life difficult, over the last year and a half, because of it. I was gonna spend all kinds of time refuting 95 percent of what his attorney said, but I don't believe I need to do that.

Ms. Ball – All right, sir.

Mr. Makowski – I think you guys have the facts, and I'm hoping you'll side with me and grant the variance.

Ms. Ball – All right. Thank you, very much. All right. Any testimony is closed off from the applicant and the audience. Could we have a motion, please? George.

Mr. Bovell – Motion to approve the variance, as requested in the survey.

Ms. Ball – All right. Second?

Ms. Hillberg – Second.

Ms. Ball – O.K. We had second from Mary. All right. Any further discussion? (no response) No. Then 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 – I want to be sure that was unanimous. Dale? Jim? O.K. All right, 5:0 is the vote. Sir, your variance has been approved. And I would like to add one comment from - on behalf of the Board. It does greatly sadden us when we see these instances come in, and this is not the first. But I want to encourage all of you, as neighbors, when you walk out the door there, if somehow you can't shake hands and begin this afternoon in a new mode, in a new frame, a positive one for your neighborhood. I think it'll be beneficial to all of you. And thank you for your time. O.K. I'm gonna call for a ten-minute break. Thank you.

DISTRICT 3

3. GEORGE & DIANE COURNOYER – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1405 (6) (a) to permit a variance of 14 ft. from the required 20-ft. side street setback (west) in a TRC-1 zoning classification. The property is described in **Section 09, Township 30, Range 38**. (0.09 acre) Located on the northeast corner of Bird Dr. and Oriole Cir. (1000 Bird Dr., Barefoot Bay)

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

Sondra Ball – All right. If both of you may give testimony, I'm gonna ask both of you to give your name and address, please.

George Cournoyer – My name's George Cournoyer, at 1000 Bird Drive, Barefoot Bay.

Ms. Ball – All right, sir.

Diane Cournoyer – I'm Diane Cournoyer, 1000 Bird Drive, Barefoot Bay.

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

Ms. Cournoyer – Yes.

Mr. Cournoyer – Yes.

Ms. Ball – All right. You may proceed.

Ms. Cournoyer – Our home got hit by the tornado.

Ms. Ball – You want to come a little closer to the mic? Thank you.

Ms. Cournoyer – Our home got hit by the tornado in August. And all we were doing was replacing what had been destroyed, with addition to our front porch. Well, after we went through the stuff with the insurance companies, we went to the County to apply for our permit. Then we went and got our engineered blueprints.

Mr. Cournoyer – The blueprints.

Ms. Cournoyer – We submitted it. I filled out the application, submitted all my information, with the as-is survey on my blueprint, to the County. They approved my permit. We picked it up, and we did the work. So then when I called for the final inspection, they said I needed another survey. So I got another survey. And then they told me I didn't have another – I didn't have enough footage. So they told me I needed a variance. And here I am.

Ms. Ball – All right. And, sir, do you have anything you want to add to that?

Mr. Cournoyer – No. That's about it, really.

Ms. Ball – No. O.K.

Ms. Cournoyer – We thought we were doing everything by the book.

Ms. Ball – O.K. And we appreciate that you jumped through all the hoops, and still it didn't work out.

Mr. Cournoyer – Well, we tried going through everything, you know, legal, and everything, and still got it...

Ms. Ball – All right. O.K. This falls in our District III, which is Jim Rosasco. And, Jim, will begin some questioning with you.

Jim Rosasco – I have no questions.

Ms. Ball – All right.

Ms. Cournoyer – Good, 'cause I don't know if I know the answer.

Ms. Ball – Anyone else on the Board, any questions? Mike.

Mike Cunningham – Thank you, Madam Chair. This also is in my district, and I happen to know that this area of Micco was hit pretty hard when that tornado hit, and there was quite extensive damage. I drove by the property. I see no problem with this request. It's something that will repair damage that was done, will have – I can see no impact on any of the neighboring properties. And it's - if anything, it's a request that's based on a necessity.

Ms. Ball – O.K.

Mr. Cunningham – That's all I have. Thank you.

Ms. Ball – Thank you, Mike. Sir.

Mr. Cournoyer – Thank you.

Ms. Ball – O.K. Any – George?

George Bovell – Just one question. I'd like to verify that, or confirm, that what you replaced was exactly what was there before.

Mr. Cournoyer – Except the front porch.

Mr. Bovell – What was the except...

Mr. Cournoyer – The front porch was - it was a walkway, and it was, maybe, five by five. And I extended the walkway, even with the carport. I come out even with the carport, and I made the porch maybe - it was – now it's about nine by ten.

Ms. Cournoyer – It's on the blueprints.

Mr. Cournoyer – It's on the blueprint.

Ms. Cournoyer – It was all submitted on the blueprints, the new addition to the front porch.

Mr. Cournoyer – It was just the front porch addition on.

Mr. Bovell – And the front porch was permitted?

Ms. Cournoyer – Yes.

Mr. Cournoyer – Yes.

Ms. Cournoyer – It was all approved.

Mr. Cournoyer – It was approved.

Ms. Ball – All right. If that concludes our questioning here, you want to step aside, and I'll just ask is there anyone in the audience to speak in opposition to this request? (no response) No. Anyone to

Speak in favor of this request? (no response) Seeing none, we're gonna give you the last comment, if you'd like to have it.

Mr. Cournoyer – Yeah. We had about 25 people that wanted to come down here, and we said no, no. All that talking...

Ms. Ball – Well - and I will share with you, from the Board's perspective here, we've dealt with a number of situations from Barefoot Bay. We know you suffered greatly in that neighborhood. And in looking at it from my perspective, by having that right-of-way on out to the street, I see - I'm with Mike. I see no impact, either. But we do have concern for the hardship that you've had to go through.

Mr. Cournoyer – Thank you.

Ms. Ball – So thank you, very much. And I'll close any further discussion from the applicants. If you want to have a seat. And could I have a motion?

Mr. Rosasco – I motion to approve the variance.

Ms. Ball – All right. Thank you, Jim. And second?

Mary Hillberg – Second.

Ms. Ball – Mary seconds. Any further discussion? (no response)

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. Unanimous vote.

Ms. Fox – As depicted on the survey?

Ms. Ball – As depicted – as depicted on the survey, Jim?

Mr. Rosasco – As depicted on the survey.

Ms. Ball – And Mary?

Ms. Hillberg – Yes.

Ms. Ball – Thank you.

Mr. Rosasco – Thank you.

Ms. Ball – All right. Good luck.

Mr. Cournoyer – Thank you.

THIS FOLLOWING ITEM WAS TABLED FOR RE-ADVERTISING FROM THE FEBRUARY 18, 2009, MEETING.

DISTRICT 1

4. FIRST FREE WILL BAPTIST CHURCH OF SCOTTSMOOR, FLORIDA, INC. – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1573 (6) (a) to permit a variance of 3 ft. from the required 25-ft. front setback in an IN(L) zoning classification. The property is described in **Section 37, Township 20, Range 34.** (1.86 acres) Located on the southwest corner of Huntington Ave. & Travis St. (5818 Travis St., Mims)

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

Sondra Ball – All right. Sir, if you'd give your name and an address for us, please?

Michael Shamblin – My name is Michael Shamblin, and I live at 5829 Vermont Street, Scottsmeer.

Ms. Ball – All right.

Mr. Shamblin – I'm the pastor of the church.

Ms. Ball – All right, Michael. Do you swear and affirm that the evidence you'll give this Board is true, so you state?

Mr. Shamblin – Yes, ma'am.

Ms. Ball – All right, you may proceed.

Mr. Shamblin – Well, I'm asking for the variance because of what was already done. Really, I'd like to say I have two regrets in this. One, that I didn't do it the right way that I should have, you know, went through the permitting process, but I didn't. And, really, my greatest regret is the reproach upon the church, you know, that it would. But I'm kind of in a situation like we endured there a little while ago. It's a personal vendetta in the community against other preachers, not me, but former preachers of the church. But why I'm asking for this – well, it would be a hardship on the church to – the room was already completed before any of the legal part of it started. So had it – had I known before, I would have stopped the, you know, stopped any construction, and took care of it first. But it was fully completed, the room. It was a carport. And to me, I didn't feel that, even now, that I created the hardship in this whole thing, because the load-bearing - the header for the load-bearing on the trusses and the wall are existing. The house was built in the '60's, early '60's. And, of course, from my understanding the – with Code Enforcement, the zoning, that was established, law established, in the '50's, sometime. So they – the house was built after the fact, even. But where the header is, and the rafters, it's all built in one. It was a carport, an existing carport. And what I done is, I built two walls – I boxed in the carport is what I done. And the header for the rafters, I mean, the house rafters itself, and the load-bearing wall, it goes – it is what is encroaching upon the zoning area. So I just built a wall directly underneath it, which it was already existing. The header was there, the load-

bearing wall. And so, you know, I didn't create this part of it, but I did create the wall. And I hate that part of it. But to tear it down, it would consist of me tearing the wall down, setting it back, which I think it was actually like two foot, eight inches, or two foot, six. And they kind of round up on this. But it's three feet. It's written on there. So – but I may be wrong on that. But, you know, for me to tear that wall down, I'd have to tear it completely down, then rebuild, or completely do away with all of it. It was just – it was a church project, is how it began, just to tell you. The folks in the church just started bringing material. We started throwing it up. And I asked them in the beginning. And they said, "Oh, no, we're all so we so far back in the woods, and up at the north end of the County, that nobody really even cares." Well, somebody cared. And this is the result of it here. But I'm no big talker. I'm a preacher. I preach out of the pulpit and the house of God. So, as far as talking to people, I just talk plain. Mama always said don't act above your raisin', and I'm not one that does.

Ms. Ball – O.K.

Mr. Shamblin – I'm not an eloquent speaker. I don't have big words, you might say, just plain. But there's my case that I can only plea in that way. So any questions you have for me, or whatever I need to do.

Ms. Ball – O.K. Before we begin that, Cindy, there was Code Enforcement on this. Do you want to address that?

Cindy Fox – Yes. I believe that it was just – he was cited after a complaint for work without a permit. And he has since brought in the permit, and needs this variance to final out everything.

Mr. Shamblin – Yes.

Ms. Ball – All right, sir. All right. Sir, before we begin questioning, which District I is my district, let me have Mary read - we have one letter of objection in our file. Oh, O.K. I thought that was - O.K. I'm sorry. No, we don't. That was another one.

Mr. Shamblin – No, they've concealed their self. They've...

Ms. Ball – O.K. I guess they have.

Mr. Shamblin – Yes.

Ms. Ball – No. That was pertaining to the case we tabled. I'm sorry. O.K. I was by your property, actually last month, when we were gonna have it on our agenda. It – is this property, all this that's enclosed in the boundaries here, is this all owned by the church? It's not your home? It's basically a parsonage?

Mr. Shamblin – That's correct. It is the parsonage.

Ms. Ball – All right. And, in looking at your survey, and what I was seeing, it appeared to me that the only residence that could be impacted is up on, is it Travis Street?

Mr. Shamblin – Yes.

Ms. Ball – There's one house that adjoins property. But that lot runs all the way back to, what is it, Vermont?

Mr. Shamblin – Yes, ma'am.

Ms. Ball – So what I was seeing is not even an adjoining property had a home on it, because there were animals in there.

Mr. Shamblin – Right.

Ms. Ball – In this area. And the other consideration I was seeing with this property is that basically you have the equivalent of lot 4, 5, and 6 open space that even comes out to the next property line. So there's a lot of acreage, and distance, between your property and the next.

Mr. Shamblin – Yes, ma'am.

Ms. Ball – And then, across from you, in my observation, I couldn't see an impact there, because that was all, wasn't it groves?

Mr. Shamblin – Yes, ma'am. It's all just a lot of undergrowth there.

Ms. Ball – Right. It's undeveloped.

Mr. Shamblin – Right.

Ms. Ball – So I couldn't see where there could be any impact on property for someone else. And I'm pleased to hear you say you wish you'd gone through proper channels. I wish you had, too. But lessons learned. That's okay, as long as it's lesson learned.

Mr. Shamblin – Right.

Ms. Ball – And so I'll pass the questioning on to anyone else on the Board that might have a question. (no response) No. O.K.

Dale Young – I just had one question.

Ms. Ball – All right, Dale.

Mr. Young – You said they owned the entire area all the way back to lot 6?

Mr. Shamblin – Yes, to the south.

Mr. Young – O.K.

Mr. Shamblin – Yes.

Mr. Young – I see you have a concrete-block pump house here that's sitting two feet off the line. They didn't complain about that, huh?

Mr. Shamblin – No, and that was drilled some time in the late '60's. I even asked them, over here at zoning, and they said don't mention that. I said, well, I'm just being – I said, I'm honest about - well, why that allowed then? So, you know, I figured if we had to make this right, I was gonna move the pump house.

Ms. Ball – O.K. Oh, dear.

Mr. Shamblin – Get everything in line, so that way I could – I one that tries to find peace with all my neighbors.

Ms. Ball – O.K.

Mr. Shamblin – And, you know, it's...

Ms. Ball – That's important. That's very important.

Mr. Shamblin – Yes, it is. And I appreciate ya'll having that type of heart, too, wanting neighbors to get along.

Ms. Ball – Yep. All right. Anybody else on the Board? (no response) No. All right, sir, if you want to step aside. Anyone in the audience to speak for or against the applicant? (no response) No. All right, sir, we'll give you the last comment, if you have one.

Mr. Shamblin – I've said all I can say. Thank you.

Ms. Ball – O.K. Thank you. Discussion from the audience, from the applicant, is closed. Could we have a motion, concerning the variance request, please?

George Bovell – Motion to approve, as depicted on the survey.

Ms. Ball – All right. Thank you, George. And second? Mary...

Jim Rosasco – I'll second.

Ms. Ball – ...will you take the gavel, and I'll second.

Mr. Rosasco – O.K.

Mary Hillberg – Is there a second?

Ms. Ball – I'll second.

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

Ms. Ball – All right, sir. You're out of troubled area now. Good luck.

Mr. Shamblin – I'll stay out of trouble.

Ms. Ball – All right, sir. Good luck, and thank you.

THE FOLLOWING ITEM WAS TABLED FROM THE FEBRUARY 18, 2009, MEETING.

DISTRICT 2

5. **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: Hillberg/Rosasco - TABLED to the June 17, 2009, meeting. The vote was unanimous.

Ms. Ball – O.K. Could we have a motion, concerning item five from our agenda today, to postpone that? And that was a date-certain, Cindy?

Ms. Fox – Yes, please, June 17, 2009.

Ms. Ball – To June 17th. Could we have a motion, please?

Mary Hillberg – I move to table this item to the June 17th Board meeting.

Ms. Ball – Thank you. And is there a second?

Jim Rosasco – I'll second.

Ms. Ball – All right. Jim Rosasco does give a second.

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

At the conclusion of the regular agenda, the following discussion took place:

Sondra Ball – O.K. Jim.

Jim Rosasco – I just have a comment, just as general protocol. I know that when we take testimony from the applicants, the district, whose applicant falls in, usually has the first choice to ask questions. I wonder if it wouldn't be appropriate in the protocol to also give that - the districts, where the

applicant is coming from, the first option to make a motion. I hate to get into a beat the clock, pushing the buttons. And it seems to me like it would be - follow the same logic, if you get someone to ask the questions, to let someone from the district make the motion.

Ms. Ball – You know, and you have a good point, but there are times you'll find that you might not have a real strong conviction in making the motion. And you may not want to be that person, but it can put you on the spot, one way or the other.

Mr. Rosasco – No, I'm not you saying necessarily have to make a motion, but I'm saying it seems like it would be appropriate to give that person the opportunity, rather than to get into a race to hit the button.

Ms. Ball – We can do that.

Mr. Rosasco – That's all I'm suggesting.

Ms. Ball – Surely.

Mr. Rosasco – As a protocol, you know, look to that person first.

Ms. Ball – Right.

Mr. Rosasco – If there's no motion being made...

Ms. Ball – Right.

Mr. Rosasco - ...open it to the floor. It's just a suggestion. I'm a new guy on the block. But I don't want to play beat the clock.

Ms. Ball – No, that's good. That's very good.

Mr. Rosasco – Thank you.

Ms. Ball – Anybody else, any comment? (no response) No. Cindy, any updates? Anything you want to – oh, George.

George Bovell – On that – if we are thinking about doing a motion for – I don't mind chasing the button.

Ms. Hillberg – I don't have any problem with it the way it's always been, either.

Ms. Ball – O.K. Well, in the future, I'll try to just look over, when it comes time for a motion, and if somebody wants to be the person, then...

Mr. Rosasco – Well, in other words – well, maybe I have to make a motion to see if this is gonna pass. I mean, you two don't – you feel, you're comfortable with the way it...

Ms. Ball – I'm comfortable with the way it is. I think that all the Board works together, pretty well. And, usually, it's generally - that's the way it happens.

Mr. Rosasco – Well, then I'd like to make a motion.

Ms. Ball – All right.

Mr. Rosasco - I'd like to make a motion to accept the protocol that you give the individual whose applicant - whose district it falls in, gives the first opportunity to make a motion, if they'd like to.

Ms. Ball – Do we have a second?

Mr. Young – Yeah, I'll second.

Ms. Ball – All right, we have a second from Dale. Any further discussion? (no response) All right.

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

Mr. Rosasco – Thank you, very much.

Ms. Ball – All right. We'll go with that. Thank you.

Ms. Fox – Nothing else.

Ms. Ball – O.K. Thank you.

The meeting was adjourned at 3:42 p.m.