

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, May 20, 2009, in Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Chair, Sondra Ball presiding, to consider the following requests:

Board members present were:

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

Staff members present were:

- Cindy Fox, Asst. Zoning Manager
- Christine Lepore, Asst. County Attorney
- Mary Taylor, Land Development Specialist I
- Steve Kirschman, Code Enforcement Officer II

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

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

Sondra Ball – I'll now call to order the scheduled meeting of the Board of Adjustment. Planning & Zoning, if you would, Cindy, explain to our applicants, and the audience, the function of this Board.

Cindy Fox – Yes, Ms. Chairperson. The Board of Adjustment is a quasi-judicial body, established by the Board of County Commissioners, under Chapter 62, Article II, Division IV, of the Brevard County Code. The Board of Adjustment is empowered to hear requests for variances to the Zoning Regulations, 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 three items on your agenda today. And you have Steve Kirschman from Code Enforcement.

Sondra Ball – All right, thank you. We appreciate you being here, Steve. Thank you. I'm gonna ask our Vice-Chair, Mary, if she would please explain to the audience, and our applicants, the definition of hardship.

Mary Hillberg – Undue hardship. This is for a variance hardship. A variance may be granted, when it will not be contrary to the public interest, where owing to certain special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary, and undue, hardship. The term "undue hardship" has a specific legal definition in this context, and essentially means that without the requested variance, the applicant will have no reasonable use of the subject property, under existing development regulations. Personal medical reasons shall not be considered as grounds for establishing undue hardship, sufficient to qualify an applicant for a variance. Economic reasons may be considered only in instances where a landowner cannot yield a reasonable use, or a reasonable return, under the existing land development regulations. The applicant must answer a variance hardship worksheet, with six questions. The Board of Adjustment will discuss these questions today, with each applicant who has requested a variance.

Sondra Ball – Thank you, Mary. I'm gonna outline, right now, the procedure that the Board will be using today. 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 applicants are making their presentation. Once the applicant has completed their presentation, we will begin Board questioning with the member who represents the applicant's district. When concluded, questioning will 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 will be here to speak concerning the applicant's application. Anyone from the audience, wishing to speak, will be given the opportunity to address the Board only once. At the conclusion of the public comment, the applicant will be given additional time for rebuttal, as well as to present their final comments. Once completed, no further comment will be heard from the applicant, or the public. We will not be using a time clock for our meeting today. Instead, we're asking that each speaker be concise in what they have to say. It's important that you stay on the subject and avoid information that is not relevant. All persons speaking must provide their name and address for the public record. Those wishing not to verbally state their address may ask the clerk at the podium for an address card. Fill it out. Give it to the clerk. Are there any questions from the Board concerning the Chair procedure? (no response) Seeing none, are there any questions of any of the applicants concerning the Chair procedure? (no response) Seeing none, is there any question from anyone in the audience concerning the procedure for the Chair today? (no response) Seeing none, we'll call the first order of business, which is to approve the minutes of our previous meeting. Do I have a motion? Or, excuse me, before I call for the motion, are there any corrections, or additions, to those minutes? (no response) Could we have a motion for those?

Motion by Mary Hillberg, seconded by George Bovell, to approve the minutes from the BOA meeting on April 16, 2009. The vote was unanimous to approve the minutes, as submitted.

DISTRICT 1

1. **DOMINICK & STACY MARCHETTI** – request a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334 (5) (c) (1) to permit a variance of 109 ft. from the required 125-ft. front setback for a barn in an AU zoning classification. The property is described in **Section 15, Township 24, Range 35**. (2.91 acres) Located on the west side of Sorrell Dr., approx. 0.25 mile east of Adamson Rd. (6421 Sorrell Dr., Cocoa)

**BOA Action: Ball/Rosasco – APPROVED, as depicted on the survey provided by the applicant.
Vote was unanimous.**

Sondra Ball – And are you the Marchettis?

Dominick Marchetti – Yes, ma'am.

Ms. Ball – All right. If you would, give your name, and your address, and then I'll swear each of you in, if both of you are gonna speak.

Mr. Marchetti – Right. My name is Dominick Marchetti. I live at 215 Joshua Place, Merritt Island.

Stacy Marchetti – Stacy Marchetti, 215 Joshua Place, Merritt Island.

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?

Mr. Marchetti – I do.

Ms. Ball – All right. You may proceed.

Mr. Marchetti – Good afternoon. We're trying to get a variance to build a pole barn for our horses out here on Sorrell Drive. The reason we ask for the variance is the setback on the front of the property will – it's now presently 125 feet, but the homeowner's association has a setback of 200 feet from the waterline. And the two setbacks kind of jumble each other in the middle there, and it makes the property unbuildable for a pole barn. We would like to situate the barn on the property so that we meet the setback for the water, for the

homeowner's association, and the side setback of 50 foot on the one side. I think it's on the north boundary line. The property right across the street is a thin, narrow strip of land, probably pasture, unbuildable. And then, on the other side of that is I-95. We do have a statement from our neighbors, stating that they have no problem with us building the barn on the property line like we would like. Do you all have the copies of the...

Ms. Ball – Yes, sir, we do.

Mr. Marchetti – O.K., good. We do have some photographs of the area, if ya'll would like to look at those photographs to see.

Ms. Ball – That's fine. They would become the property of the County, when you turn them in.

Mr. Marchetti – That's fine.

Ms. Ball – All right. Thank you.

Mr. Marchetti – Would you like to...

Ms. Ball – Yes.

Ms. Marchetti – Do they want the letter?

Mr. Marchetti – Would you like the letter from the neighbor, too?

Ms. Ball – Anything you want to submit in evidence, yes. We'll read that into the record in just a moment, then.

Ms. Marchetti – That's basically it.

Mr. Marchetti – That's basically the reason why we need the setback, so that we can put the barn on this piece of property. And I would like to stay as far away from the water as possible so we don't have manure runoff, and all that, into the lake. And considering there's nothing gonna be built on the other side, and there's another horse barn right there, within the 15-foot setback. We have pictures of that there. I think the bottom two pictures show you where that – the neighbor's barn is put there. That's basically it. I mean, I don't see anywhere where we're gonna adversely affect the property values, or anything like that, or be in the way of any neighbors, considering it is all horse country back there. And there's a lot of horses back there. So any other information you'd like, I'd be welcome to answer your questions.

Ms. Ball – All right. Before we begin - and that falls in District I, which is my district - I'm gonna ask staff if Cindy would help us with some background here, because we have a unique situation.

Cindy Fox – Yes. I'm just gonna offer my observations here, just by looking – just to help you look at this survey. Pole barns, or barns, in the AU zoning classification have different setbacks than a single-family residence would have. So it would be 125 feet from the front property line, which, in this case, would be the east blue line that you're – the east line that you see on the survey. You would have to come back 125 feet from that thick line, and that would be the front setback. And that is the setback that they are requesting the variance from. There's also the additional setbacks from the sides, which are 50 feet. So, as you kind of put those setbacks together, and move it back towards the lake, which is labeled "Lake Calico" on here – if you look on that survey, you see where that – the label – the lot is - where it actually says, "Lot 1", that is actually the general area where they could put the barn, where the – it would meet the County setbacks. The homeowner's association requirements, which are not within the jurisdiction of the County, have imposed a different setback for the barn to be 200 feet from the lake, as testified by the applicant. So you'd have to start

at the lake side and go back 200 feet. And they've given you some lines here so that you can see. But I wanted to clearly delineate that, really, the area is that area where the label has "Lot 1", in that area.

Ms. Ball – O.K. And, Cindy, can you help us? What – are there any restrictions governing the setbacks for a barn as it relates to this lake?

Ms. Fox – As far as I know, this is a manmade lake, so there are no environmental concerns that I'm aware of. There's nothing in the Zoning Code that says that you, you know, have a – I mean, it would be from the property line. And, in this case, the property line actually is that huge triangle that goes out into the middle of the lake. So there really is no setback, from the County's perspective, from this lake.

Ms. Ball – All right. Thank you. Before I begin questioning, just for those of you that are here, I want you to be aware we have two alternates sitting with us today; one from District III, Mike, and District I is Fred. When we have alternates sitting with us, they're always free to question any of the applicants. It's just when it comes time to vote, they do not vote, as long as the standing member is here. So just to make you aware of that. Tell me, was the choice of putting this right up at the road, was that really your choice, or were you trying to avoid certain things on the property because of homeowners, and runoff, or whatever? Where – was this really your first choice in putting this...

Mr. Marchetti – It was our first choice, because previously on the lot, there was an arena right there. And what we wanted to do was put it as close to the end of the arena as we could, and to stay away from the lake, 'cause we wanted to satisfy the homeowner's association.

Ms. Marchetti – And it's higher, that spot of the...

Mr. Marchetti – Yeah, it's higher ground there.

Ms. Marchetti – Where that "Lot 1" is written there, that's lower ground, and there's a lot of trees already in that area. And where we placed – wanted to put the pole barn, there's no trees...

Mr. Marchetti – No trees.

Ms. Marchetti – It's already higher. And it was just more attractive to...

Mr. Marchetti – Yeah, a better area to put it in to stay dry.

Ms. Ball – Is that referenced on these pictures, what you're saying about where it indicates Lot 1 is on our survey? Is there a picture that shows that area?

Ms. Marchetti – A photograph?

Ms. Ball – Yes, of those.

Ms. Marchetti – I did not turn around and take pictures towards the lake. I didn't – no.

Mr. Marchetti – I do have a topographical that you can look at here, that shows the area, if you'd like to look at it. This might better explain how it looks.

Ms. Ball – Cindy, should – are you prepared to let us have that in evidence? Or, if that's something you want to keep, I would suggest that you just walk in front of each person here...

Mr. Marchetti – That'd be okay, then?

Ms. Ball – Yes, if you need to keep that.

Mr. Marchetti – What we have here – Stacy hold it up. There you go. This is the property right here. Right here's the existing, what used to be part of the arena there. We want to put the barn right at this end of the arena, which is higher ground. Here shows some of the trees in there. And some of this ground in here, this right in here, is real low-lying, and during rain, it really – it floods up, pretty good. So, in order to put a barn there, I'd have to bring in a lot of fill. Here, I don't have to bring in any fill. And it does stay high and dry. And here's 95. And this is the piece of property straight across the street. They have a small retention pond there. And this is barn on the other property that is – there's their property line, right through here. Now, this person that owns this piece of property owns all this back through here. So our impact would be minimal, as far as neighbors, and stuff like that, if we put the barn right here. That was the main reason of picking that area right there, 'cause it was the higher area on the piece of property, when it rained. And we watched pretty good rains come through in the last year, and all that. And it requires us not to have to remove any trees.

Ms. Ball – All right. Now, it appears the road dead-ends. Because it was raining so much the last few days, I didn't go down that road. I might get stuck.

Mr. Marchetti – Yeah, it gets messy down there.

Ms. Marchetti – It does. It dead-ends right into the neighbor's stables.

Ms. Ball – Is that a home, or strictly stables, at the end of that road?

Mr. Marchetti – There's presently a home built back here now.

Ms. Marchetti – Yeah, she just built a home here. They just closed like a few days ago.

Mr. Marchetti – Yeah.

Ms. Ball – So that's basically the end of the line for that road...

Mr. Marchetti – Yes, ma'am.

Ms. Ball - ...with that property.

Mr. Marchetti – That's the end of the road, right there.

Ms. Ball – All right. How long have you owned this property?

Mr. Marchetti – Since December of '07.

Ms. Ball – All right. Were you aware of the setbacks, and the restrictions?

Mr. Marchetti – No, ma'am. That was my fault. I should have checked into it a little better than I did. And I was not aware of that setback of being 125 foot for a pole barn. I did know that it was 25 foot for a house, which, until I filed for the permit, did I find out it was 125 foot for a pole barn.

Ms. Ball – And it is strictly your intent to use this for horses?

Mr. Marchetti – Horses, only. Yes, ma'am.

Ms. Ball – O.K.

Mr. Marchetti – Horses and fun. That's what we want to do, is have fun on this piece of property, for the kids.

Ms. Ball – Homeowner association, were you aware of their restrictions, when you purchased?

Mr. Marchetti – Yes, we did. We got a copy of their by-laws, and all the restrictions that they had, and we looked through them real good. And that was also another reason why we picked that upper area for the pole barn.

Ms. Ball – Even though you understand from staff that they do not supersede...

Mr. Marchetti – I understand.

Ms. Ball - ...what the...

Mr. Marchetti – Understand.

Ms. Ball - ...County...

Mr. Marchetti – Yes, ma'am.

Ms. Ball - ...has in place?

Mr. Marchetti – Understand.

Ms. Ball – O.K.

Mr. Marchetti – But the main thing is, with the two setbacks, the way they kind of – we were trying to make everybody happy, if we could. And it's gonna be a tug, or a pull, on it. But it kind of made – and the lot is irregularly shaped, anyway, to begin with. It does make it unbuildable, as far as what we need it for. You know, we're not gonna put a house on it, or anything like that. We just want to run horses on it, and a place for the kids to go, and us to have fun, too.

Ms. Ball – O.K. All right, I'm gonna stop here and ask if there's anyone else on the Board that would like to pose a question. Dale.

Dale Young – Yeah, the properties behind the stables, is that all owned by the same guy down at the end of the road?

Mr. Marchetti – Yes.

Mr. Young – Who is the homeowner's association?

Mr. Marchetti – The homeowner's association is...

Ms. Marchetti – Adamson.

Mr. Marchetti - ...the Adamson Homes, I assume. I don't have a copy of their by-laws to tell you exactly what their name is.

Ms. Marchetti – Adamson Estates...

Mr. Marchetti – Homeowner's Association. It is Adamson Estates.

Mr. Young – Looking at the map, how many people are in the Adamson Homeowner's Association?

Mr. Marchetti – Not many. There would probably be – I'm assuming it's all the people around...

Ms. Marchetti – Around the lake.

Mr. Marchetti – Around the lake, and some of those that are across the street, on Sorrell Road.

Mr. Young – O.K. And these are groves that are existing back here?

Mr. Marchetti – No groves. It's all trees, pine trees. Most of it's horses, horse stables and horse barns. The one picture – I don't know if you're looking – the one does – the one lot does have – it was owned by a nursery, at one time, and they were growing palm trees on it.

Ms. Marchetti – Sabal palms.

Mr. Marchetti – Sabal palms.

Mr. Young – O.K. Yeah.

Mr. Marchetti – That might be what you're looking at.

Mr. Young – Looks like it. The dimension on the map that we have here says 220 feet, but it scales out to 200.

Mr. Marchetti – The setback from the...

Mr. Young – What is the dimension to the corner of this pole barn from the lake?

Mr. Marchetti – From the lake, it's 220 feet, approximately.

Mr. Young – So you could move it 20 feet forward, toward the lake?

Mr. Marchetti – I could, but then it interferes with the setback. I kind of positioned it so it wouldn't interfere with the 50-foot setback on the side property. It's kind of butted right up to that. And that gives us the maximum room for the arena.

Mr. Young – Well, it appears you still have plenty of room up there to – if you wanted to move it up to the two – the extra 20 feet. You just have to go a little bit to the side.

Mr. Marchetti – Yeah, but then that impacts the arena. The arena has to be, you know, around 200 feet for the medium-size arena, which is what it shows on the – what we showed here on this guy, right here. The barn is basically impacting this area right in here. If we move it any more to this, I have to come back here and almost put me in the middle of the arena. I kind of would like to stay on this end, if I could.

Ms. Marchetti – The further back we go, the more the land starts getting lower.

Mr. Marchetti – The further back we go, it gets into the wetter land, too. See, all this up here is high and dry. We get wet as we get back into this area, right here. It stays low. And I wanted to stay on this end of the arena.

Mr. Young – Is this a commercial enterprise?

Mr. Marchetti – No, sir, this is a family enterprise. We have four horses, two kids and two adults. We use it for mom and dad, and the kids.

Mr. Young – O.K., that's all I had.

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

Mike Cunningham – Yeah, I just had a couple of questions. What type – I know you mentioned a name, but what type of a homeowner's association is this?

Mr. Marchetti – I really don't know, to tell you the truth. I mean, we haven't attempted to build anything on the property yet, other than get the rule book from the neighbors that have the by-laws of the homeowner association. And we read it ourselves, and read about the setback from the lake. That's primarily what we wanted - was concerned about building the barn out there, and that we didn't, you know, violate any of their rules.

Mr. Cunningham – You know how long they've been in existence?

Mr. Marchetti – I'm assuming as long as the estates have been there, when it originally was plotted.

Mr. Cunningham – Do you know whether or not it's a registered homeowner's association with the State?

Mr. Marchetti – No, sir, I do not know that. No, sir.

Mr. Cunningham – You mentioned, in the hardship form, number three, I believe, another barn that's on building – Lot A. Where is that in relation to your property?

Mr. Marchetti – Maybe 100 foot. That piece of property is right here, and that barn is right there. So catty-cornered from the corner of our property is probably about 30-40 feet, from the corner of our property to...

Ms. Marchetti – From the corner of the property, it's – yeah – from where our barn is and – you know.

Mr. Cunningham – Within the estate itself, within the boundaries of the homeowner's association...

Mr. Marchetti – Right.

Ms. Marchetti – Yeah.

Mr. Cunningham -and on that road?

Ms. Marchetti – Yeah.

Mr. Marchetti – Yes, sir.

Mr. Cunningham – And it's within 50 feet?

Mr. Marchetti – Yes, sir.

Ms. Marchetti – Oh, yeah.

Mr. Cunningham – I see on the aerial, also, on the east side of Sorrell Road, there's a building. There's several buildings, but I'm talking about the one that's closest to the edge of your property. What is that? Is that a barn?

Mr. Marchetti – That's a barn. Yes, sir. Make sure we're talking about the same one. Let me look at this and – this building, right here, you're talking about?

Mr. Cunningham – That one there.

Mr. Marchetti – Yes, that's a barn.

Mr. Cunningham – That's a barn?

Mr. Marchetti – Yes, sir. That's the barn we were talking about, 'cause the property line runs right in front of this, too.

Ms. Ball – We have a problem, again. We need to take the mic, because it have everything on record. Sorry.

Mr. Marchetti – I'm sorry. Yeah, we were just showing him that that building right there is a barn, right now. I think it's like a four-stall barn, has four horses in it. And they use this property back here as their pasture. And it's probably about 20-30 feet from our – corner of our lot to the corner of the barn.

Mr. Cunningham – All the zoning in that area would be the same, then, right?

Mr. Marchetti – Yes, sir. But I'm assuming this barn's been here for quite a while. I don't know if it was different back in the days...

Mr. Cunningham – I'm concerned more about the 200 feet, and I don't see it there.

Ms. Marchetti – You mean the 125 feet from – yeah, the...

Mr. Marchetti – Oh, from the lake.

Mr. Cunningham – Yeah.

Mr. Marchetti – Oh, yeah, this is probably...

Mr. Cunningham – Or on that strip of land across the road.

Mr. Marchetti – Right here?

Mr. Cunningham – Yes. I don't see it. Now, maybe it's there.

Mr. Marchetti – It's there. It's 261 feet. This line is 261 feet, according to this survey.

Mr. Cunningham – I'm talking about from the other barn, out to the east, toward 95.

Mr. Marchetti – Oh, that. I wouldn't know what that distance is. My survey says from the center of the road to the line is 100 feet to the line – to the line of the fence for 95.

Mr. Cunningham – O.K., thank you. That's all I have, Madam Chair.

Ms. Ball – All right. Anyone else? Questions? (no response) No? We have one letter to read into the record. I'll ask Mary to read that.

Mary Hillberg – This is a letter from Sherry O. Foster Scauzillo. "I, Sherry O. Foster Scauzillo, have no issues, or concerns, with the Marchettis in reference to a pole barn being built 16 feet from their property line. I am the owner of the property to the east and south of the Marchetti property." Signed Sherry O. Foster, dated 3/28/09.

Ms. Ball – All right. Thank you, Mary. Do you have anything else you want to add, before I open it to the audience to see if there's anyone to speak?

Mr. Marchetti – No, just if any other questions, we'll feel free to answer questions.

Ms. Ball – O.K. If you'll just step aside. Let me inquire of the audience, is there anyone here to speak in favor of the variance that's being requested? (no response). Seeing none, is there anyone in the audience that would speak in opposition to this variance request? (no response) Seeing none. All right. We'll give you the last comment, or summation, whatever, if you'd like to have anything else to say.

Mr. Marchetti – Well, I hope I explained it the best I could. The main thing this is, we just – we want to build the pole barn to have shade for the horses, and a place where we can gather, just as a family. And, you know, the girls like to practice. We like to have the arena so we can practice, 'cause they do do shows and 4-H. And they do shows on the outside. So it's nice to have that almost full-size arena so they can set up the poles and do the barrels, and stuff, and have the legal patterns. It just helps teach the horse the patterns, and all, so that when they go to the show, they know what they're doing. And we do have a lot of fun out there.

Ms. Ball – O.K. Very good. Thank you, so much.

Mr. Marchetti – Thank you, very much.

Ms. Ball – All right. We're closing this discussion for the applicant, and the audience. That's in my district. Mary, I'll pass the gavel to you. I'd like to – and I'll explain my thinking here. But I will make a motion that the variance be granted, as stated, the 109 feet from the required 120-foot setback in the AU zoning classification, as depicted on the survey.

Mary Hillberg – There's a motion. Is there a second to this motion?

James Rosasco – I second it.

Ms. Hillberg – James seconds it. Is there any discussion?

Ms. Ball – I believe, in looking at his map - I have a different feeling about his property, after hearing the lay of the land, as well as seeing that there's an arena. It seems the runoff, to put that back on the property could be a real problem. And there's a lot of trees there. I think he's justified in wanting to maintain an arena that's

there, that's functional. I believe he's justified in looking at a reasonable use of his property. So that was why I made the motion that I did.

Ms. Hillberg – All those in – is there any more discussion? Any more discussion?

Mr. Young – Yeah, I have a problem with a homeowner's association that consists of three houses on this side of the lake – two sides of the lake – and their ruling overreaching the County's. But the fact that there are only, it looks like, two owners in that area, I guess it's not gonna bother too many people.

Ms. Hillberg – So is that all the discussion? Anyone else?

Mr. Young – That's all I...

Ms. Ball – One other thing, for the record. I think the property that would be greatest – that would have the greatest impact was that Lot A. And we have the letter from that owner, saying that they support his position.

Ms. Hillberg called the question, and the Board voted unanimously to approve the request, as stated above.

2. **KIM LUCKS** – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334 (4) to permit a variance of 1 acre from the 2.5-acre minimum lot size, as required by the AU zoning classification. The property is currently zoned RU-1-7 and is described in **Section 37, Township 20G, Range 34.** (1.54 acres) Located on the east side of Stamford St., approx. 150 ft. south of Huntington Ave., also having frontage on the west side of Palm St., approx. 300 ft. south of Huntington Ave. (5829 Stamford St., Mims)

BOA Action: Hillberg/Bovell – DENIED. Vote was unanimous.

Sondra Ball – All right. Would the applicant please come forward.

Kim Lucks – I'm Kim Lucks, of 5829 Stamford, in Scottsmoor.

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

Mr. Lucks – Yes, ma'am.

Ms. Ball – All right, you may proceed.

Mr. Lucks – I've got a summary of my comments, I'd like to pass...

Ms. Ball – All right.

Mr. Lucks – First off, I'd like to say thank you to all the staff people I've dealt with, and for your time. Some of the staff people are under pretty much duress, and they've been very helpful. My comments, trying to help you read between the lines of what the package you have in your hands, is this citrus operation has been going on in excess of 50 years, that I am knowledge of. And I've continued it. And I'm trying to get ready to retire, is part of what I'm trying to do. So I'm trying to expand my citrus operation. The neighborhood has a history of citrus production. And if you'll look at the satellite photos, you can see that what I'm saying is true. There's been some development over the years, and some of the grove has been removed. J.D. Hallum built the home that I am in now, in the mid '60's. It was a replacement of a home that burned. And for those of you that are familiar with that north end of the County, he's one of the larger citrus operators in the neighborhood, or historically. He sold the property to the Minnear family, who expanded the home and continued the citrus

operation. Shortly before I bought this property, the Minnear family removed, and sold, the fruit processing building, which is sitting where – you have a picture, I believe, of a truck, and a trailer, and a tractor – and it's sitting in that – what that barn was sitting in that location. My purpose is – if you look at the satellite photos, you can see that trailer on the satellite photos. You can see the barn, if you look at older satellite photos, the citrus processing building. And so there is a history of documenting what I'm saying. Now, I've purchased the available vacant land that's behind – in that picture, is behind the tractor, and it's to the south. So I've got all the land that's available. And I have a lot of vacant land that, currently, I can plant approximately another 50 citrus trees on it to increase the production. Now, I also have a petition of support, signed by the folks in the neighborhood. And the numbering on that petition is – there's some numbers, in circles, that are on the Appraiser's map. Those numbers correlate to where those folks live. So I tried to make it obvious to you where the people – on the petition, people live. There is a family southwest, kitty-corner, across Stamford, that their sole means of support are the drugs that they sell and the stuff that they steal from the neighborhood. That family, recently, because the neighborhood is trying to control them - and we're working with the Sheriff to make that happen - they have brought this issue to my attention. I did not – I was not aware I was in violation of any codes, or any ordinances. I thought I was agricultural. That's what I've been told by the Hallum people. It was what I was told by the Minnear family. And I have come to understand that my property officially, currently, is zoned residential, one unit, which gives me a problem in that I have too many dogs. I have the dogs to protect my property, the dogs to protect my family. They are – those are contained inside six-foot kennel fences, which the thieves, if you will, have come inside that six-foot kennel to get into my home and into my buildings, and three times in the last six months, that I know of. And they're Labs, and they're contained. At night, the Labs are in the home with me. One of the dogs, it's a Pekinese, so she makes a good alarm. And that's what the hooligans don't like, is they don't like the alarm going off when they're trying to do their mischief. And so if you have any questions, I'd be glad to answer them.

Ms. Ball – All right, sir. That is in District I, which is, again, my district. But before I begin any questioning, I'm gonna ask Cindy, if she would, to help us with a little bit of history here, especially the surrounding zoning for this property.

Cindy Fox – Yes, Madam Chair. As the applicant has testified, he actually has an RU-1-7 zoning classification, and this is a historic classification for this area. The majority of the property surrounding the applicant's property also has the RU-1-7 zoning classification. In order for him to maintain his dogs on the property, the zoning classification needs to be changed. So he needs to request – subsequent to this hearing, he needs to request an application for the AU zoning classification. But therein lies the problem. He does not have enough property to actually request the AU zoning classification. So that's why he's here for the variance from the – one acre from the two-and-a-half-acre requirement. So it's a relief from that restriction of needing to have two and a half acres so that he can get the AU zoning, in order for him to be able to maintain the seven dogs on the property.

Ms. Ball – How many dogs is he allowed to have, under the current zoning?

Ms. Fox – The current – the maximum number of dogs, under the current zoning that he has, is four.

Ms. Ball – All right. And can you help us understand a little bit of the history here with the citrus operation, and how that applies to where he is with the current zoning?

Ms. Fox – Well, he has offered some new testimony, today, that I've not been aware of, about that there was previously a packing, processing type facility, and barn on the property. You know, it's true that those may have existed prior to zoning coming into the County, which was in 1958. And it's possible that this property, before it was zoned, was developed with agricultural uses. So that's an additional piece of information that, you know, over time, he's had these agricultural uses on the property, but the zoning was never in line – never accommodated that use. If he was doing groves on his property for his own personal benefit, he would not

necessarily need agricultural zoning. If he was doing agricultural type groves, and things, for profit, or for things off-site, selling off of the property, distribution, things like that, then he would need the AU zoning for that, and he would be limited. So the groves, for his own personal use – I mean, anyone can go out and actually plant an orange – you know, a set of trees in your yard that constitute a grove, or orange grove. It would be the commercial aspect of that, which would require the AU zoning. Is that where you were going with? I'm not sure if I was clear.

Ms. Ball – Right. O.K. Just help clarify – O.K. Let's go back, then, can we, to Code Enforcement, if you could please bring us up to date.

Steve Kirschman – My name is Steve Kirschman, Brevard County Code Enforcement. My involvement in this case originates from a complaint that was filed in January, January 26th, of this year. The basic allegation was that there were seven dogs on the property. My research of the zoning in that area revealed that it's zoned RU-1-7, which is residential in nature. And, clearly, the County Code specifies that in these types of zoning classifications, the maximum number of dogs allowable is four adult dogs. In my conversation with Mr. Lucks, he clearly admitted that he had, I believe it was eight dogs, at the time. One was a pup. And we discussed the issue that you can only have four dogs. He was under the impression that his property was zoned AU, which would permit more than the four dogs. And, at that point, I explained to him that no, it's residential property. He has some options he could explore with the Planning & Zoning Office. And that's basically why we're here today.

Ms. Ball – O.K. Let's go back. Cindy, under AU, what's the maximum number of dogs somebody can have? Is there a limit?

Ms. Fox – No, ma'am, there is no limit, no maximum number of dogs, on AU property.

Ms. Ball – O.K. Since this is District I, I want to begin. On your application, on number four, "The literal enforcement of this provision of the chapter would deprive the applicant the rights commonly enjoyed by other properties in identical zoning classification." What you wrote was, "The literal enforcement cause the removal of some of my labs, and prevent the addition to, and replacement of, existing mature citrus trees." Would you explain that?

Mr. Lucks – Yes, ma'am. As I was – in my explanation earlier – I am, and have been, serious about this citrus operation, and continuing it, and improving it. And I tried to demonstrate that, and prove that, to you. I intend to continue that. As staff mentioned to you, I intend to continue with it for sale, not for personal consumption. And the – my dogs have protected my family, and my home, a number of times that I can prove, and other times that I may not be aware of. And so I'm asking for your support to continue, and to improve, my commercial citrus operation, and to protect my home.

Ms. Ball – Mr. Lucks, where are your trees that are being used for commercial, on our survey? Do you have a copy of the survey that you submitted?

Mr. Lucks – You have a picture in your packet...

Ms. Ball – Excuse me. We didn't get a survey. Now, the aerial, where on this aerial – give me an approximate here on where on this aerial is your commercial citrus gonna begin.

Mr. Lucks – If you – can I approach?

Ms. Ball – Certainly.

Mr. Lucks – There's my home. Here's one outbuilding. Here's another outbuilding. There's citrus in here. There's citrus right back here. You can see, along the fence line, there's citrus in here. And these are all citrus. There's some more citrus up here. And you can see a lot of empty space that I intend to expand the citrus. The trailer I referred to is this trailer right here, in this aerial. And that's where the citrus processing building was.

Ms. Ball – O.K. I was by your property. I went by it a couple of times. And this aerial was '06. And even the property to the north was showing citrus trees there, which, today, all those are gone. And for a neighbor, even having citrus, because they have a very nice garden there – in driving the property, on this south portion here, you say there's citrus trees. Everything I could observe, they're half-dead. I mean, there's hardly a sprig of green on any of the trees.

Mr. Lucks – There is one dead tree. The rest are all good fruit-bearing trees. The fruit is late-blooming, and the fruit comes on in February, and it's virtually gone now. We're no longer...

Ms. Ball – But there's dead...

Mr. Lucks - ...in citrus season. They are not dead. They are live. And you looked at them in the wintertime.

Ms. Ball – I was by there last week. And I'm pretty familiar with citrus trees.

Mr. Lucks – Well, they all have leaves on them today. Some of them have a few pieces of fruit. But they all have leaves – with one exception, they all have leaves on them today.

Ms. Ball – What I saw was a lot of dead wood. But I'm – I was just curious on where this process of all these citrus trees are going to be. And I know you have a wood fence up here that you're saying you've got some citrus trees behind it. But I had a real problem with what I saw on your property. Was the process – you said the processing building is where the tractor picture was?

Mr. Lucks – Yes, ma'am.

Ms. Ball – What was the building? Is that just a storage building that's north of your home?

Mr. Lucks – The – that's a – it's a pole barn that has storage for vehicles and equipment. And there are six bays in that building, plus a machine shop.

Ms. Ball – When you bought this home in '01, and then you bought the additional property in recent years here, did you not look into any of the paperwork as to how this property was zoned?

Mr. Lucks – I looked at my tax statements on-line. And the tax statement on-line gave me an agricultural classification. And it's just within the last year that that changed. And I'm – I don't understand why it – why that change. Again, that was from the Appraiser's Office. And so when the Code Enforcement people came and talked to me, and told me something different, I – you know, this whole thing came to light, and here we are.

Ms. Ball – You're saying you saw a different zoning classification when you purchased?

Mr. Lucks – No, the – there's a land use code on the Appraiser's web site. And I've looked at that land use code a number of times, over the years. And it's just in the last year, it changed.

Ms. Ball – Cindy, you have any comment on any of that? Insight?

Ms. Fox – All I can tell you is that the Property Appraiser has an actual code on their – in their property records that they use to designate the active use on the property. And, unfortunately, it gets confused between the official zoning map, and what's happening on the property, and the actual use on the property. But, yeah, I mean, that – there is a use code there, and if it did say agricultural, that could be misleading to him. But it does not have any relationship to the actual zoning designation.

Ms. Ball – But when he purchased this additional property here – I lost – in '03, wouldn't he not have been exposed to some paperwork that told him what the zoning classification was on this property that he bought?

Ms. Fox – If he was only looking at the Property Appraiser's record, no, he would not have been able to get the correct zoning, at that point. He would have had to have made contact with the County, the Zoning Office in particular, to get the official zoning classification.

Ms. Ball – But that would not be stated on the deed, or any documents, that he received when he purchased?

Ms. Fox – You know, I cannot speak to whether or not it appears on any closing documents. I just know that the official zoning map is kept in our office, and they would have to inquire with us to receive that information.

Ms. Ball – O.K. All right, thank you. I'm gonna move, and open the questioning up to anyone else on the Board that would like to question the applicant. Dale.

Dale Young – Yeah, the house - those are the buildings here?

Mr. Lucks – There are three buildings that I own, yes, sir.

Mr. Young – O.K. Well, Cindy, if this goes AU, then are we creating another problem in setbacks? We've just gone through these 50-foot side setbacks here.

Ms. Fox – We may be creating a nonconforming situation. That's part of it.

Mr. Young – O.K. That's all I got.

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

James Rosasco – Cindy, do you know if there's any other AU-classified properties in the immediate area?

Ms. Fox – Within the radius of the notification, within 200 feet of the property, there is no other AU. There is some within a square mile, but not immediately surrounding his property.

Ms. Rosasco – Thank you.

Ms. Ball – Anyone else? Mary.

Mary Hillberg – I only have a – I have several questions. But the only one I'm going to ask is that, question number five, it says that, "The variance granted is the minimum variance that will make it possible – make possible the reasonable use of the land, building, or structure." I am having difficulty thinking that there's no reasonable use of your land, without having three more dogs.

Mr. Lucks – The dogs...

Ms. Hillberg – That’s essentially it. It’s not the groves. My understanding is that it’s not the groves. It’s the extra animals.

Mr. Lucks – The grove issue is – as she pointed out, the trees are mature, and I need to expand and replace some of them. And I intend to do that for commercial purposes, which I continue. And I have to – I cannot do commercial purpose, if I don’t get the agricultural. It paints me into a corner. It paints me another violation problem.

Ms. Hillberg – Do you live on this property?

Mr. Lucks – Yes, ma’am, I do.

Ms. Hillberg – So you’re living on a property that is zoned a residential – has a residential zoning. It’s hard to understand how you would have no reasonable use of the land, or the building, or the structures.

Mr. Lucks – Well, you know, I cannot – without the AU, I cannot plant additional trees. I cannot sell my fruit. It’s only for internal consumption. And, historically, I’ve been selling – I donate a lot of the fruit to the church. And, historically, when I have sold fruit, on a good year, I’ve sold a couple hundred dollars worth of fruit.

Ms. Hillberg – Thank you.

Ms. Ball – Let’s go back on that. Cindy, he’s – is he prevented from planting additional trees?

Ms. Fox – He can plant additional trees for his own personal enjoyment and use. If he plants trees as a commercial agricultural venture, packaging, processing, selling from the property, then he would need the AU zoning.

Ms. Ball – Is that true where people come in and just do the gleaning of the trees, picking of the fruit?

Ms. Fox – I would call that processing. Yeah, that’s a commercial activity.

Ms. Ball – O.K. Mary, I’m sorry, were you finished? O.K. I’m just gonna – we’ve got a petition, and a letter, in the file. Is there anyone else, though, on the Board that has questions, before we – oh, Mike.

Mike Cunningham – Thank you, Madam Chair. Mr. Lucks, you emphasized in your statements the problem that you have in the neighborhood, and that you have been, I would imagine, burglarized several times, or...

Mr. Lucks – That’s true.

Mr. Cunningham - ...you’ve been the victim of a theft.

Mr. Lucks – Yes, sir.

Mr. Cunningham – Have you made any reports to the Sheriff’s Department on any of those incidents?

Mr. Lucks – Yes, sir, I have.

Mr. Cunningham – O.K. So there would be something on file with the Sheriff’s Department, if that needed to be followed up.

Ms. Fox – I just – we do have some emails, that Mr. Lucks has forwarded to us, that does show that he has had contact with the Sheriff's Office.

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

Ms. Ball – Anyone else? (no response) O.K. I'm gonna ask Mary to read into the record what we've received.

Ms. Hillberg – This is a letter, dated 5/7/09, regarding Kim Lucks's variance. "I am opposed to Mr. Lucks requesting a variance. Approximately 15 years ago, you all made everyone get rid of their animals. Now, this is just an excuse to open up a can of worms. Start with this, and where does it end? Maybe a tax cut for our orange grove. He has approximately 12 orange trees, which are dying out. I do not want animals this close to my residence. Along with the flies, there is the smell. Please consider the neighbors in your decision. Thank you. Robert G. Moore, 5800 Palm Street, Scottsmoor, Florida." The petition states, "I, the undersigned, support Mr. Kim Lucks of 5829 Stamford Street, Scottsmoor, Florida, his application to change the zoning from residential/agricultural on his property so he can continue the citrus operation that has existed prior to his purchase of his property." And there are approximately 15 names on this petition.

Ms. Ball – Do we need to read those names into the record?

Ms. Hillberg – Would you like me to read the names?

Christine Lepore – No. Have you provided this information to Mr. Lucks?

Ms. Ball – It was a part of our packet here, that...

Ms. Lepore – Has he seen this information?

Ms. Ball – Oh, he gave it to us, I believe.

Mr. Lucks – The petition, yes, I did present to you. Yes, ma'am.

Ms. Lepore – No, the – you don't need to read it into the record. That's the record, itself.

Ms. Ball – All right. Thank you. O.K. Seeing there is no other questions from any of the Board members, then, Mr. Lucks, if you'd stand aside, please, and let me ask the audience. Is there anyone to speak in favor of the applicant's application? (no response) Seeing none, is there anyone in opposition to granting this variance? (no response) Seeing none, sir, we'll give you the last comment.

Mr. Lucks – O.K., a couple of things. I have another aerial that shows healthy trees more clearly, and more expanded, that I can present to you, and let you see. The Robert Moore household, that you have that letter from, they signed the petition. So I'm confused. And...

Ms. Ball – Well, there's, I believe, a Bonnie Moore. Let's cross-reference her address here. A Bonnie Moore – it's a different – that's a different address.

Mr. Lucks – There's Moores on both sides of Palm, you know, approximately directly across from each other. And I believe they're both a Robert Moore.

Ms. Ball – All right, sir.

Mr. Lucks – And they both signed. So both households signed. So I'm – again, I'm confused. If the one on the west side of Palm is a direct neighbor, and he's never had an issue, never complained, I don't understand.

Ms. Ball – O.K. Did you want to submit that last picture you had?

Mr. Lucks – Yes, ma'am, I would.

Ms. Ball – All right.

Mr. Lucks – You know, these are the – there's approximately a dozen trees in here that we were talking about. And here's the healthy trees along the fence line that I was talking about. And then there's some other trees up in here in this cluster. And you also see the trees immediately behind my home. Those are all healthy, fruit-bearing trees.

Ms. Ball – All right. All right, sir, we'll give you the last summation, if you want.

Mr. Lucks – I'm just – I'm here, asking for your help and understanding so I can continue forward doing what I have a very substantial investment in. And, with your support, I can continue to utilize that investment.

Ms. Ball – All right, sir. Thank you. We're...

Ms. Fox – Madam Chair.

Ms. Ball – Yes.

Ms. Fox – May I just make a request that if the Board wishes to approve this to please make their approval contingent upon the approval of the AU zoning as part of their motion.

Ms. Ball – All right. Sir, you may have a seat. Do I have a motion from anyone on the Board?

Ms. Hillberg – I would move that this application be denied, for a couple of reasons. One is that it would create a nonconforming entity in the community. The other is, in question number four, it does state that this would deprive them of the enjoyment of other properties in the identical zoning classification. And they have essentially the same enjoyment that the other people around them have now. Number five says that they would – "This is the minimum variance that would make possible reasonable use of the land." I think the land is residential, and it has reasonable use. And I just don't feel this is in the best interest of the community around it. And so I would request – make a motion that this application be denied.

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

George Bovell – Second.

Ms. Ball – George, thank you. O.K., we'll open the floor up for discussion. Any other comment? Anyone? (no response) I have a problem with it, putting an AU in the middle of a different zoning classification, totally surrounded. I have a real problem, too, with the owner having 1.5 acres, and he needs 2.5. That's not a minimum request. That's a lot. I have a problem with that. I think there are some other issues, and factors, in the neighborhood there, maybe. Those are just my comments. Anyone else? (no response)

Ms. Ball called the question, and the Board voted unanimously to deny the variance.

Ms. Ball – Sir, I'm sorry, your petition has been denied, as you've requested.

DISTRICT 2

3. **WILLIAM D. LANGSTON** – requests a variance of Chapter 62, Article VI, Brevard County Code, Section 62-1334 (5) (a) to permit a variance of 16 ft. from the required 20-ft. rear setback in an AU zoning classification. The property is described in **Section 14, Township 24, Range 36.** (0.56 acre) Located on the east side of Mimosa Ave., approx. 300 ft. south of Pioneer Rd. (2265 Mimosa Ave., Merritt Island)

BOA Action: Bovell/Young – APPROVED. Vote was 3:2, with Hillberg and Rosasco voting nay.

William Langston – Hi, my name is William Langston. I'm property owner of 2265 Mimosa Avenue. And I'm – I had conversation with the Zoning and the Building Department...

Sondra Ball – Mr. Langston, let me stop you there. Do you swear and affirm that the evidence that you will give this Board is true, so you state?

Mr. Langston – I swear the evidence I'm gonna give is true, so I state.

Ms. Ball – Thank you.

Mr. Langston – Simply said, I purchased drawings from Capstone for my home. There was an existing house on this property. And then I hired Campbell for the survey. They received the prints, and the survey. I turned them in two years ago. I was allowed to draw a building permit pertaining to it, and I built the dwelling. I changed some interiors, and it was caught and reviewed by Robin that she had a question about the setback in the back. They wanted another survey. I called Campbell. They said, "It'll be more money." And I said, "Well, you need to come out and take a look at what you've done. There's evidently several mistakes." We paid for it. They did – their outside boundaries are wrong. Their identifications on the actual survey are wrong. The prints show what was indicated, and it's built two years ago. So I have 16 feet. It's a 20-foot. So I need to use some more of my property, I guess, to allow it to be there. The fence is already two foot off. I've already taken stone wall columns, and fences, partially across the back, down. This is a couple of few months old. I'm just now getting around to being able to deal with all of it. But, pretty much, I had to move the back fence line, and I have to move the corner pole on my fence line, because they're two feet off. Some people that are here today have ordered a survey, next door, for a fence. And then I noticed a new flag stuck in by the one we just recently had, and it seems to be like eight inches off. So I don't really know what to trust. I know that I have a permit. I know that I built it all the way up to the shingles, and the roof, and everything that's on it, in that corner. And I believe we've narrowed it down. I'm a little confused, because the porch seems to be four foot, four. The corner was indicated eight foot, and 11 foot, on the same drawing of the surveys. So what I've got here is, is I spoke to the people about, you know, do I really need to go get a variance. I mean, this has been done, and it's, yes, procedure. So I have to come here, according to what was indicated. My drawings, sealed, say the same thing, with the date back in 2007, along with the drawings of the survey. That's pretty much it. So I need permission for 16 foot of my property for this to exist.

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

Ms. Langston – That's pretty much the statement, yes, ma'am.

Ms. Ball – O.K. Cindy, since that has gone on for a while, before we begin our questioning, is there anything you want to share with us, any history, on this property?

Cindy Fox – Just to confirm that Mr. Langston's testimony is - what the staff believes has happened is that, throughout this process, there apparently was a survey error that has – it's pervaded. It's been continued on,

as he was going through the building process. So that – we have discovered that, as part of finishing out his building permit, that there was this problem that now goes back quite some time.

Ms. Ball – All right.

Mr. Langston – Mr. Campbell was – he said he was gonna be here to testify, but I don't see him.

Ms. Ball – All right. O.K., this is in District II, and we'll begin questioning with Mary.

Mary Hillberg – Hello, Mr. Langston. I'm looking at your variance worksheet.

Mr. Langston – Worksheet?

Mary Hillberg – Variance hardship worksheet, the six questions that we're supposed to be paying so much attention to. And the first one is the special conditions that are not applicable to other lands or things. You have, "The house was in this configuration, when purchased, on the property. Then, number two says, "The special conditions, circumstances do not result from the actions of the applicant." And your answer is, "The house was purchased in this configuration on the lot." How big a house was it, when you purchased this property, and what year did you purchase it?

Mr. Langston – Approximately 600 square feet. And I think I purchased it in 2005, or '04. I don't have that document in front of me. It's approximately '05 - 2005, I believe.

Ms. Hillberg – And how big is the house that you're building now, on top of that house?

Mr. Langston – The permit says 5,137. The...

Ms. Hillberg – So this was a little 600-square-foot house that you've made into a 5,100...

Mr. Langston – Square-foot home. Yes, ma'am.

Ms. Hillberg - ...square-foot home, with the porch extending farther out, the roof on the porch.

Mr. Langston – Yes, ma'am.

Ms. Hillberg – And this other second building – because when I looked on the...

Mr. Langston – Aerial.

Ms. Hillberg - ...Property Appraiser's aerial, it was a much more recent one than this one. It showed the very large house that you have now. And the other very large, this two-story building, is also very large. And they are all attached together.

Mr. Langston – Yes, ma'am.

Ms. Hillberg – Very large.

Mr. Langston – Yes, ma'am.

Ms. Hillberg – So, in other words, the house was tiny, and you've built an enormous house next to it.

Mr. Langston – Yes, ma'am.

Ms. Hillberg – And the – when did you start building that?

Mr. Langston – When I bought it...

Ms. Hillberg – When is the permit for?

Mr. Langston - ...about five years ago.

Ms. Hillberg – So the permit has a 2005 or '06 on it?

Mr. Langston – Do you have that, Cindy? I didn't – I had it, and I left it sit there on the desk. I was in a hurry to get out.

Ms. Fox – One second. I'll find that.

Mr. Langston – It's approximately 2005 or '06. These stamps on the actual prints show '07, 'cause I didn't actually purchase this until later.

Ms. Hillberg – On the Property Appraiser's site, which is not gold, or anything, it says 12/6, that you bought it.

Mr. Langston – Yes, exactly. Yes, ma'am.

Ms. Hillberg – So the permit was for what, '06 or '07? So it's been a couple of years you've been working on it.

Mr. Langston – About three, actually, yeah. I've been working on it little by little, piece by piece, as I can afford it. And it's – actually, the two on the left, the garage and the other, I've managed to complete those. The upstairs is done. The downstairs is at its 90-percent completion. I have blocks, scaffolding, things, sitting for the back, once we're notified about the discrepancy. Of course, finances have been a play in everything – and time. So we're ready to finish the big house in the back, which is the main home of it. But, as far as that goes, the garage, and all, it's complete. It's trimmed, air-conditioning running, everything, on it. We've had power moved underground. It's actually a large asset to that. It was appraised about 1.2, before the recession. So, you know, just thank God I've been able to do it, paid for along the way. And, again, like I said, the discrepancies in these are quite bad. I mean, Campbell's made some serious...

Ms. Hillberg – The concern I have is that you're four feet from the neighboring property. Have you talked to the neighboring owner?

Mr. Langston – Four feet from the back. You mean...

Ms. Hillberg – Yes. You're four feet from that property...

Mr. Langston – I've talked with Sandy and Mike, yes. She came down the other day to take pictures. And her main concern was, was where was the property line, because she has understood, I think, through other sources, maybe the call-in, I'm not sure – but she was down there, and she goes, "Mike can't find the corner property line." And I said, "Because it's behind the pole now." So I have a privacy fence, with concrete block columns that run from the east to the west, dividing that. And it's two feet in now, the new stake. So he didn't walk far enough down to find it. He could see the other stake that was there. So her concern was just my property line, you know, where is it at.

Ms. Hillberg – Well, that's the concern that you're here for, is your property is – line is basically...

Mr. Langston – Closer.

Ms. Hillberg - ...closer to your property than you thought.

Mr. Langston – Yeah, exactly. But, you know, even so, you know, Mary, it was pretty much existing when I turned it in. So, you know, again, I'm...

Ms. Hillberg – And in number four, it says here that the literal enforcement of the chapter would make you – you not be able to enjoy the properties. And your answer, "Would not be able to use the house that was already existing." That 600-square-foot house is way gone now.

Mr. Langston – It's actually still there. It's the kitchen portion.

Ms. Hillberg – It's a kitchen.

Mr. Langston – Yeah, we just – we – yeah, it's the kitchen portion. The septic tank was, believe it or not, was actually between that corner and the property line, with the drain field. It was on that lady's property.

Ms. Hillberg – Your drain field and your septic tank are on her property?

Mr. Langston – It was, the existing. It's been abandoned. And, in order to put the new system in, it would go to the north of the area in question, and east, in order to accommodate, because there's a well in the front, and there's a well over to the other side.

Ms. Hillberg – We usually get surveys. This is a sketch. This is not a survey. But we usually get surveys. So could you point out - somewhere point out, in general, where your septic tank and your drain field are gonna be?

Mr. Langston – Are going to be? Yes, ma'am, certainly. Let me grab the new one.

Ms. Hillberg – Thank you.

Mr. Langston – You know what – excuse me.

Ms. Hillberg – If you'd like, you may just show it to us on our sketch that you've provided us. You can just point it out here. You could bring the mic over and just point it out.

Mr. Langston – This area, right here, shows the tank in the corner.

Ms. Hillberg – So that would be right here.

Mr. Langston – Do you all have sketches? It's right in the corner. If you look – see where she's holding this up at? See where she's holding this up at? Now, I have to redo this permit, too, because it's been time. The tank goes approximately here. The drain field is going to exist this way, and this way. I'm going to approach the engineering of that, in order to minimize it, because of its size – the size of the drain field, and what's needed. It also has a water level that was indicated at the saturation point. So I have to, you know, basically readdress it. It's been so long, as I've been building this - in other words, I have to make sure that those are definitely accurate. But that's never changed, in reality. The first set of drawings show it down on that corner, and the size of the drain field there. And it's so that the garage can reach a 50-foot run, as well as the home, within

accurate fall, so that the solids, and the waste, don't match the Code. So I'm really right there on that corner. You're going to see – it's five-bedroom, five-bath, plus the downstairs.

Ms. Ball – Sir, you want to come closer to the mic? Thank you.

Mr. Langston – It's five-bedroom, five-bath, downstairs. The size of the drain field, and the actual tanks, I've recently discussed, because I'm wanting to make sure that I have a larger capacity, as opposed to a smaller capacity, for preference, for sufficient use, so that there's no trouble. I really am trying to avoid a lift station. If I have to do a lift station, then I need more of that room over there. So, again, you know, the best thing to do was get rain right now, because saturation points are very harsh there. That corner in the back where we're at, the property that's adjacent, it seems that all the water concentrates right there. All the lands, from the condos, and her property, it all comes to that back, and then it flows over to the property, which would be Parcel 509, Dick's. He catches all the water. It fills up there.

Ms. Hillberg – Thank you.

Ms. Ball – O.K. Anyone else? Questions? Dale.

Dale Young – Yeah, tell me again, on your permit plans, what's the dimension shown off that corner to your property line?

Mr. Langston – This one, right now, sir – this one, right now, on the new one, shows eight foot, nine, to the corner of the house, and four foot, three, to the porch. On the old, it shows eight foot, nine, on one front and 11 foot, four, on the other, which means not the porch. It was actually the corner. The survey was done with two different dimensions on it, on the original. It shows here, 11 foot, three one, of an inch, and 11.31 of an inch on this survey. And then the other shows eight, four.

Mr. Young – O.K.

Mr. Langston – And I'm also two foot – there – what I mentioned earlier about the recent survey the Buffkins have just done, I was noticing, as I was studying this last night, up late, the point/three, and something, that come with the coordinances of the survey, they seem to be different on my right corner as they do on my left, from my old and my new. And, just for information, when they were there, tracking across my property, I'd made note – 'cause I'm in construction – it is my line of work – I said, "Gentlemen, are you having a problem?" "Oh, no, oh, no." This was the first time, a couple of years back. And I'd made the request to please find the benchmark on the main street. So I know, right now, that if his actual flag, that they've just put in, is sitting about six to eight inches different from my corner. So I'm gonna go back to Mr. Campbell, and I'm gonna say, "Which – where's the real corner here, mine or his? Do we got a six-inch variance down through there, or what?" So, again, ladies and gentlemen, that's pretty much it.

Mr. Young – We're showing groves behind this corner. Who's back there now? What's the...

Mr. Langston – There's orange grove, five acres, I believe. I'm not sure of the accuracy. That's approximately what Sandy and Mike says. And their home sits up on Butler, all the way to the front. They cut a piece out of it and then left orange groves back there. And from what I understand, they vowed, through the will, when they received the land, and stuff, to not build on it. Dad's request. There's 15 acres in there, and each of the kids have five, or something to that nature. I could be wrong with the exact amount of land. But, as it snakes its way back towards the river, it's all land in there.

Mr. Young – Do you know if it's zoned AU?

Mr. Langston – I believe so. I'm not sure. Is it, Cindy?

Ms. Fox – Yes, it is zoned AU.

Mr. Young – So there can't be anything within 50 feet.

Ms. Fox – Well, that's barns. That's different. That's...

Mr. Langston – I can't have any cows.

Ms. Fox – Houses, you could. A house, you could. Houses have different setbacks than barns in AU.

Mr. Young – What's the setback, 25?

Ms. Fox – If you're – the side property line, it's ten, I believe. I'd have to go back and look at that.

Mr. Langston – Yes, one's ten, and one's ten, and the other's 20 and 25.

Mr. Young – O.K.

Mr. Langston – I had to come before the Board and get – back when I first moved to that property, years ago, the hurricanes had come through, and I had to actually take the contents of what I was building my other home with. The deal fell through, anyway. It destroyed the building, and we were deemed inhabitable. I had to pull out. Contract fell through, when I bought this land, and moved there. And I had lots of materials in order to build the home, and I couldn't get a permit, unless I complied with the actual change of zoning. And I wanted the agricultural use. So I came before the Board to get my agricultural use, but I was advised the best way to do that was to ask for a BU-1, and a BU-2, and if they were denied, then I could get the former use returned. So then I did that, and I was able to go forward with the drawings, and the prints, and everything. But, anyway, that's long ago. It was all done, and turned in, and accepted. And I built it, and here I am.

Ms. Ball – Mary.

Ms. Hillberg – You said you're in construction, so you understand construction.

Mr. Langston – Yes, ma'am.

Ms. Hillberg – And you've built on AU property in the past?

Mr. Langston – No, ma'am, I mean, as far as agricultural. I usually do insurance restoration, or remodels, things like that.

Ms. Hillberg – Oh, I see. Well, when you bought the house, though, the residence was not suitable for occupancy. Is that...

Mr. Langston – No, ma'am. I had lived in that home. It was there. Walter Ingram built it. There was new windows, new stucco. There was new flooring put in there. There's actually even – we discussed this, too – to the east – excuse me – to the north of the property in question, there was a concrete slab there, poured, like a porch, where I abandoned the septic tank and took it out, and the whole nine yards.

Ms. Hillberg – There's a patio there.

Mr. Langston – Correct.

Ms. Hillberg – Right.

Mr. Langston – O.K., that's to the north. There was – the patio was on the south. And he declared – his field rep said, "I know it's there. I'm gonna put it in the drawings." He didn't put that in the new drawings, either. So...

Ms. Ball – Anyone else? Questions? (no response) All right, sir. I only have one question. Seeing that there is grove in the back – I know you explained a family situation there – always, we want to know, though, have you attempted to purchase the amount of 16 feet in the rear from the owner of that property?

Mr. Langston – The answer is yes and no, because they made it very adamant, "We're not selling any of our property. My father deeded me this property, and we're gonna keep it for the kids." "Cause I'd had conversations with Sandy, and them, before. Yes, ma'am.

Ms. Ball – All right. Yeah, we always want to know if you've attempted.

Mr. Langston – Yes, ma'am.

Ms. Ball – All right. Thank you. All right, sir, if there's no other questions from our Board, I'll ask you to have a seat, or step aside. Is there anyone in the audience, who would like to speak on behalf of the applicant for the application? (no response) O.K., seeing none, anyone in the audience in opposition to the applicant's application? Please, step forward.

Ms. Fox – Just so you know, Madam Chair, we do have there – they've submitted speaker cards that have their names and addresses. Do you like those, or do you want...

Ms. Ball – That's fine. We'll just have them give their name and – thank you.

Ms. Fox – O.K. Thanks.

Sandra Natowich – Good afternoon. I'm Sandra Natowich, 321 Pioneer Road, Merritt Island.

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

Ms. Natowich – I swear.

Ms. Ball – Thank you.

Ms. Natowich – Thank you. First of all, what I would like to really say is, this is not my first rodeo with this situation. When I was on Planning & Zoning, Bill came before us, and he asked for a business. He asked to have his piece of property be able to have a business designation. That whole area is AU, and AUR "sic". And we all came together and went all the way up to the very top. And his request for BU was denied. It wasn't that he wanted AU and asked for BU, instead. He asked, because he wanted to run a business there. He is still running a business there on agricultural. Howsomever, this gargantuan place that he has built on this tiny piece of property is not the fault of anyone else but him. And Bill has this difficulty, sometimes, of doing what he wants to do and then asking for forgiveness, later one. As a contractor – as he has said, he is a contractor... (tape changed) ...should have been very sure, before he built this property. I respectfully request that you not make an exception, and that you deny his request, because if we let everybody in our tiny

community, which is all agricultural/residential, do anything, willy-nilly, they want to, then why do you all need to be here? We wouldn't have to be here, and it would be a hodge-podge there. And, also, while I'm at it, this kind of property has caused such a great difficulty. We would like to see him finish it so that we can live a peaceful life over there. He has encroached. He has trespassed. There is noise going on there, seven days a week. He has – at the last meeting, where he spoke on behalf of one of the other neighbors, he said that he was the brat of the neighborhood and that all Mrs. Natowich was trying to do was make the place a nice place, and that he respected her for that. Well, I wouldn't call him the brat of the neighborhood. I wouldn't even go that far. All I would say is that he is the insensitive builder in our neighborhood. So I would ask, though, that you please deny his request for this waiver and make him toe the mark, like you would anyone else who did the same things. Thank you, very much.

Ms. Ball – All right. Is there anyone with questions?

Ms. Natowich – I do have a complete drawing, just so you could get a feel for where we live in relationship to his property. And if you care to see it, I'll bring it up.

Ms. Ball – Thank you.

Ms. Natowich – It's not difficult to know what's going on over there, the heavy machinery, and everything else. It goes on all the time. And the piece of property that you are asking about, that was grove property, is the Fahey Trust. That's this large piece of property right here. It goes all the way out past that area. And it is a trust. It's a family trust. The rest of the properties, all the way on this side, are all agricultural/residential. There is no business of any sort. And everybody else is nice and quiet. Sometimes, when they harrow their groves, but that's no big deal, because they don't do it at 6:00 o'clock on a Sunday morning.

Unidentified woman - Does this give you a reference point, by any chance, for...

Ms. Natowich - Yes, this is Pioneer West, where we live. There is his property right there. Where am I here? Here on Mimosa. It shares the corner right here. Nobody that owns the condos, with the back porches here, have a pleasant life in the back, anymore, because of the ongoing constant noise. And if it's not that, it's the dog that barks, barks, barks. But, anyway, please, I ask you, make him toe the mark. Let's get this building finished so we can get back to somewhat of a normal life.

Ms. Ball – O.K., Sandra, I think maybe there was a question or two for you. Mary.

Ms. Hillberg – Sandra, I just wondered what – when this building was beginning to be built, did anyone notice how close it was to the property line, or did anyone...

Ms. Natowich – It wasn't that close. The little building that was there wasn't that close. The building that he's built over the top of it exceeds the smaller building.

Ms. Hillberg – I see.

Ms. Natowich – And, yes, he built a fence around it. It's not my fault he built a fence too close to the property line. If a mistake has surely been made, then he's going to have to find a way to mitigate it. But as things stand, right now, he encroached with his building, by building it the size that he did.

Ms. Hillberg – Thank you.

Ms. Natowich – Certainly.

Mr. Young – So you're saying he should remove enough of this building to meet the setback? Or are you saying let him go ahead and complete the building? I heard both.

Ms. Natowich – I mean – when I say complete the building, whatever happens, whether he has to remove part of it, or what, I don't know. But we'd certainly like to see the project done, period, and get quiet over there for once in five years.

Mr. Young – Well, there's not much we can do about that end of it. That's not the question.

Ms. Natowich – I know you can't. But if he got the building finished, maybe something would quiet down over there. As for taking part of the building down, why not?

Mr. Young – O.K.

Ms. Natowich – If he's done it wrong, he's done it wrong. He's the – he's a self-professed construction person. He should know that.

Mr. Young – Thank you.

Ms. Natowich – You're welcome.

Ms. Ball – All right, anyone else? Questions for Sandy? (no response) All right. Is there anyone else in the audience? Yes, please come forward. Since you've turned in a card, just give your name, please.

Christina Buffkin – O.K. Christina Buffkin.

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

Ms. Buffkin – Yes.

Ms. Ball – Thank you. Go ahead.

Ms. Buffkin – We have the property that is south of his property. I think that what is in question is a different line. But we recently had ours surveyed to make sure that we knew where our property line was. Before this is settled, I do wish that you would consider that we need to make sure we know where the property lines are accurate. We think ours is. He thinks his is. So that's all I ask. His building is very, very close to our property line. My mother lives on the property, very quietly, at the age of 88. I, too, would like to see this thing settled. O.K.?

Ms. Ball – All right. Thank you. O.K. Anyone else from the audience that would like to speak concerning this? No. All right...

Nancy Carswell spoke from the audience.

Ms. Ball – I'm sorry, if you want to speak, why don't you come up. If you turned in a card, just give your name.

Nancy Carswell – Nancy Carswell.

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

Ms. Carswell – Yes.

Ms. Ball – Thank you.

Ms. Carswell – We're aware of Mr. Langston, too. I know, in September '05, he did come for commercial, because he does run a business, and continues to run a business, out of there. Like Sandy said, it is so much easier to do everything wrong and say I'm sorry. Built a fence, without a permit, "I'm sorry." Make it six foot high, cut it down, "I'm sorry." Mary, if you've been by that property, it's a cluster of unbelievable. And, then, all of this has expanded into the neighbors' yards. Now, I own two condos in Pioneer West, which are both townhouses, which overlook. And, for lack of a better word – I don't even know how to describe it – a humongous amount of whatever he has accumulated over the years that has spread into the property to the north, that has spread onto the Fahey Trust. In the back - there's heavy equipment is stored in the back. Mimosa Avenue, we have – we also own warehouses there, BCO. If we ever had an emergency, we could never get emergency vehicles down Mimosa Avenue, because there are trucks. There's been some flatbed that has cones around it. He has just total disregard for everyone. It's just like, "Let me do what I want, and then I'll say I'm sorry." And, sometimes, life doesn't work this way. But whatever you decide is your business. But it's a source of frustration, with total lack of regard. I don't know who's wrong, Mr. Campbell, Mr. Langston. We're contractors. Before we start construction, we know where our – we have to have where the septic is. We can't even get a permit, without it being approved. So I don't even know how you're gonna get him on a septic system there, with five bedrooms and five bathrooms. So, that's all. Thank you.

Ms. Ball – Let's see if there's some questions.

Ms. Hillberg – I would say that I have, in fact, gone by the property. And your description is similar to my impression that there is an enormous construction there. And there is an enormous amount of things there, buildings, and trailers. And it's very different...

Ms. Carswell – Sheds.

Ms. Hillberg – It's very different than...

Ms. Carswell – Yes.

Ms. Hillberg - ...the surrounding area, I would agree.

Ms. Carswell – Yes, very different. And, also, on Mr. Jones's land, he had parked all his flatbeds, dump trucks, everything, so that when you came into the condominium, all you saw was all this heavy equipment. Now, I don't know, somebody complained, because it was gone. But I lost a tenant, because they came, and I had a vacancy, and they looked and saw what was next door, and said, "There's no way I could live, you know, with this next door to me." So, financially, it's hurting me. Thank you.

Ms. Ball – I have a question, because a lot of what we're hearing seems to come back to Code Enforcement.

Ms. Carswell – Yes.

Ms. Ball – And I'm wondering, are the folks in that neighborhood not contacting Code Enforcement on things that seem to be in violation?

Ms. Carswell – I know they were contacted because of all of the trucks on the road. I don't know who – we – because we're in the business, we don't do a lot of contacting, because I'm always afraid it's gonna come back to us. But I know that, at one point, Code Enforcement came, and a lot of the trucks were gone for a while.

But, then, as soon as they're gone, all the trucks are back there. All the vehicles are parked along Mimosa. I know, obviously, Code Enforcement came because all of the heavy equipment, and everything was moved to Mr. Jones's land. Now, all of his construction materials, business materials, that he has there are still on Mr. Jones's land. They're on the Fahey Trust. There's just a lot of stuff. I know he was having furniture companies come in. He was doing furniture sales off the property. He was doing tool sales off the property. I don't know what Mr. Langston does, to be perfectly honest. You'd have to ask him what he's doing with this property, 'cause it's a mystery to all of us.

Ms. Ball – All right. Anyone else? Questions? (no response) O.K., thank you. Cindy, go back and review with us, a little bit, this agricultural zoning. You know, we're talking about a home here, and yet it sounds like a business. Help us understand.

Ms. Fox – What I can tell you is that I believe, because he is in construction, and he has been renovating, and building, on the property, he probably has had an amount of equipment and supplies on the property to do that with. So maybe he can better testify whether or not he's been questioned under a Code Enforcement violation, in the past. But I believe that, you know, that's what his – from our perspective, that's what's come about. I mean, he has AU property. The lot is undersized for AU; however, it was nonconforming so, therefore, it was allowed to be used as a single-family residence. So that's about all I can add to that.

Ms. Ball – All right. Jim.

James Rosasco – Yes, Cindy, could you give me the setbacks for this AU zoning, the rear setback, and the side setback, for a residence?

Ms. Fox – I apologize, but I don't have that with me today. I mean, I believe that you are looking at a ten-foot side setback. And I believe the setback for AU is 20 feet.

Mr. Rosasco – Well, the paperwork says 20 feet for the rear setback.

Ms. Fox – Right. So the side would be ten.

Mr. Rosasco – But I'm looking at a survey, and it appears that his side setback, he's only got a seven-foot clearance to the building, as well.

Ms. Fox – Yeah, you have to remember, a portion of this property contained the existing home that was there prior to the zoning classification. So I believe that the rear setback is the one that has required the variance, because, number one, the rear property line is moved, and that's the portion of the house that has been expanded.

Mr. Rosasco – The discrepancy in the surveys, what magnitude of error was that? Was that a 15-foot error?

Ms. Fox – I don't believe so. I think that, you know, as you've heard testimony today, you know, Mr. Langston has proceeded with the best information that's been available, provided to him by the surveyor that he employed to find his property lines and lay it out for him. And that's the person who he relied on when he started construction, or the renovation of the existing home on the property. The fact, now, that a different surveyor has gone out, and it's still up in the air, I mean, that's – that does happen. There are disagreements between surveyors. But Mr. Langston has proceeded with this variance, based on the best information of the surveyor that he employed, to move forward with this. So...

Mr. Rosasco – I'm confused with that last bit. But...

Ms. Fox – It's possible...

Mr. Rosasco - ...in other words, we're talking about a...

Ms. Fox – I guess what I can say is, it's possible that, in the future, the property line could exist in another location. And then, therefore, the variance that he's requested now, based on this survey, may not be 100-percent accurate. At that time, Mr. Langston would have the opportunity to come in with a new survey, and a new application. Based on new information, he'd have to go through this process again.

Mr. Rosasco – Is there – just as a hypothetical question, if an application for variance is denied at one point, can they come back and reapply for a variance again?

Ms. Fox – They cannot apply for the same variance, unless there is new evidence that was not discoverable at the time of the first request. And Christine can correct me, if I'm wrong. So it would be something like that, that was not discovered by this applicant.

Mr. Rosasco – And I hate to keep going back to it now, but I'm confused. We're basing this variance on a survey that is in question, and they're still trying to resolve where the actual property line is? So there's a potential that the survey we're basing this variance on may be incorrect?

Ms. Fox – This is the one that the applicant has submitted as part of his application. So this is the best information that we can go forward with. As you heard testimony today, from the applicant, and the neighbors, that there's been other surveyors employed, and that still – they have it as a question. This is offered up as testimony. So, yes.

Mr. Rosasco – Thank you.

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

Mr. Langston – Thank you. Thirteen or 14 complaints, I believe, with the Code Enforcement, all of them Sandy Natowich. I've never been confronted by any of the neighbors, like I tried to confront them when I first got there. I was brought up to not criticize, ridicule, or condemn, or be rude. I've had nothing but trouble. I've conformed. I've paid my dues. I've gotten permits. And, as far as business goes with cabinets and stuff, that's the warehouses across the street. They pull up there. They have trucks. I have a backhoe. I have a dump truck. I have equipment. I'm a contractor. I am building an elaborate home. I've had probably over \$75,000 worth of lumber, sitting on that ground, that was a problem. And every bit of it's in that house. I purchased it from Scotty's when they went out of business. I've done as best as I can to comply with what's going on. But I wrote a check to come in for a hardship on a variance, not to be criticized, and cannibalized, by the past that's already been settled. Things are getting out of control, and solutions are not being handled. As far as to answer your question as best I could, from hearing you, sir, I'm questioning Campbell. This is the third time. This gentleman here, and her, are saying the same thing. I'm not happy with paying money to get inaccurate border lines and boundary lines. As far as the home, as far as Ms. Carswell, I've never spoke to her anything outside of this. She stands here and chews me up, instead of coming to me and talking to me about things of concern. The things of concern are, if she was this interested, she'd know that the home exists, and is built over the top of it. It doesn't cantilever left or right. It never moved. I didn't move that home. And I'm sorry, I'm frustrated, and I'm angry, because I constantly get this battering. If they want it done, let me finish. If they want to see me out of there, and quiet, and silent, work with me like adults. Don't stand behind me and chew me up, when I'm here spending my money. It's dollar after dollar, I come back. I just don't need any more problems. I confronted my attorney, prior to coming here, based on the facts of acceptance of permits and issuances, based on the facts of misconstruing lines pertaining to a paid survey company. To go no further with an acceptance of variance here means I have to go into litigation. It means I have to file. And

that's gonna hold it up even longer. I'm looking for 16 foot of my own property that's butted up to nothing. Mrs. Natowich can't even see my property from where she lives. But I constantly, and constantly, review the documentations that go down for her against everything, and everybody, around that neighborhood. If she truly wants peace, then work with us. I'm not gonna go any further with this, as far as that goes. I came in here for a hardship variance, based on a miscalculation, and an acceptance of a permit. Cindy's worked with us on a constant basis. I've got hours up here, I've got dollars up here, looking at how did they make these mistakes. I was off working in another state, when things were issued and brought from one office to the next. Sure, I have clientele. I have people that pick up things and turn it in. I'm asking for my variance. I'm asking that these people here – I'm sorry, I apologize, publicly, to you, and as well to you all, that I have not meant any harm to anybody. But I'm not wealthy, and I've made a move to build a home. I got caught in a Catch-22, and I've made the best of it. And, right now, by the grace of God, I'm being given more work. I have money, and I can finish this thing out in a short amount of time. If I go backwards, it's gonna be a long time. Number one, that home, and tearing down one corner of a house, of an existing home, as well as the home over top of it, that I have a permit, that's already got issued, that's already been inspected, then we've got serious problems, because I was given the right to do it, and did it, and it's two years old. So I'm asking you, forgive me for this kind of disturbance. Forgive me for these things that are happening here. But I don't owe anybody any apologies, behind me. All I ask them to do is come to me, talk to me, and we'll work anything out that needs to be done. But I pay my taxes, I live here, and I want to build my home, and I want to be done with it. That's all I want to do. So, again, thank you for your time. And that's all I really have to say.

Ms. Ball – All right, sir, thank you. We'll close any further input from the applicant, and the audience. Before I call a motion, let me ask Cindy, with the discrepancies that have been voiced by a neighbor on these survey situations – and the applicant acknowledges that, as well – would it be prudent, on our part, to give an extension on this, without a resolution today, giving them some time that those two parties can possibly get together, since the discrepancy seems to be between the applicant and one of the owners that has adjoining property, and see if, together, they can't work this out with a surveyor, and come up with what is agreed upon as their property lines, before we jump into it?

Ms. Fox – Certainly, that's an option for you to table the request. I would ask the applicant, and the neighbors.

Ms. Ball – O.K., but that would be...

Ms. Fox – You could table the request to see if any new information comes out about the surveys. But it would totally be up to the applicant and his neighbors to bring that information forward. That's not something that staff can get involved in.

Ms. Ball – Right. I understand. Yeah, I'd just like to see, instead of us giving an answer here today, a real resolution, because it's obvious there's not a resolution, right now, with owners. So, Mr. Langston, if you would come back to the mic for a moment, before I call a question to the Board. Would you be amenable to something like that, where we would table this, give you a little bit of time, see if you could work out, with other adjoining properties, these discrepancies on the survey, perhaps using the same surveyor, see if you can't come to some agreement on that, before we would render a decision for you?

Mr. Langston – I really respect that. And I think it's a perfect question, seeing as how you have to deal with so many things. So I want to bring a fact up. We can discuss, between Robert, Mr. & Mrs. Buffkin, about that side, because it's inches, just for accuracy and records. But, as far as the back, and the variance granting today, 16 foot's not something that's going to be overlooked by any new survey. It's a far-off mistake on existing building, a rule and regulation, and issuance of a survey, and then a review by the Board, and a print that was accurately showing it there. So that kind of amount of reevaluation, and a new survey for that back, there's never gonna be that kind of resolving. It's a mistake made, and issued, and built, and done. And

16 feet, no matter how many time they go back with a light, or a survey pole, they're not going to find 16 feet. They're gonna find maybe thirty-three-quarters of an inch, one inch. I'm all about us getting together and, you know, feasibly approaching Campbell about, you know, let's get an accurate survey and have it checked, or we're gonna end up with somebody's liability insurance, or we're gonna end up in a lawsuit all the way around this Board, because this has already got me down. And, grant you, I want to make you understand that I've been building this out of funds. And it's almost there. And I've got access to funds and private lending, now, to get done. So this last installment to get here has just been to get this cleared up. But when Campbell made their mistake, they made it on documentation, as far as the plotting, the footing, right down to it being issued by the review board, and the planning, and stamped and handed to me. And it was all there, drawn in, to begin with. So I'll go with as far as talking to the Buffkins about getting that resolved. But, as far as continuing, I just don't think it's a good idea, because it's just going to draw out the same thing. We're gonna be right back at the same place.

Ms. Ball – All right, sir. I'm – if I'm understanding you correctly, you're saying you would like the Board to render a decision today. Is that what you're saying?

Mr. Langston – Yes, ma'am, because I think your question was, should we get the survey accurate. Correct?

Ms. Ball – Well, there just seemed to be a lot of discrepancies with property lines there. And I just wondered if it might not be in the best interest of all the people in that neighborhood to see if you couldn't come up with surveys that would be amenable to each one.

Mr. Langston – Well, I believe it's a good point to have done. I don't think it stops the issue, today, of what I'm after. I need the variance to move forward. I'm sitting with material on the ground. I'm ready to finish the back of this building up. And if it gets stopped, or we come back – and the adamancy that I've seen from the neighbors, it seemed to be more about, like you said, Mr. Young, about do you want to finish it, or do you want him to tear down the building. Then we're just gonna end up drawn out for another year or two with litigation, and it just doesn't make sense.

Ms. Ball – All right, sir.

Mr. Langston – Thank you.

Ms. Ball – Thank you, very much. O.K. I'll, as Chair, entertain a motion. This is in District II. And, Mary, I'll give you an opportunity to make a motion, if you so choose; otherwise, we'll give that opportunity to someone else.

Ms. Hillberg – Thank you, Madam Chair. You know, in recognizing that there were errors made by other agencies, the surveyors that were initially used, this has happened before, many times, in cases that we've seen. And, you know, that is really between the applicant and the surveyor. It's not something that the County is responsible for. Zoning isn't responsible. We're not responsible. It's not something that we can, you know, resolve. That is an issue between the person who hired that professional and the professional. But, in looking at this particular case, because I have gone out and seen the property, and I have seen the surrounding area, and I have done my own research on the Appraiser's site, and so forth, I'm having some problems with the – even the matching of the structures there. You know, if they were within the bounds, they would seem to not even match the surrounding area. That's a special little area that is AU, that is like a little enclave of AU. And it's been a special little area for a long time. It's different from the surrounding areas. I recognize that. And we've had other cases in that area. I would ask that – I would move that we would deny this applicant, for the factor - due to the difficulty with factors number one from the variance hardship worksheet, number two, number three, and – those three would be enough. Due to those. So I make that motion, Madam Chairman.

Ms. Ball – All right. Your motion is to deny. Is there a second?

Mr. Rosasco – I second.

Ms. Ball – All right. There's a second on the motion for denial. I'll open it up for discussion. Jim.

Mr. Rosasco – I really have a problem understanding a survey would make a 16-foot mistake. I just – it – that's – it just doesn't add up to me, so I'm very uncomfortable with it. That's my comment.

Ms. Ball – All right. George.

George Bovell – The survey, I think, was just a matter of inches, that we're talking about, the boundaries. The issue I have is that he got permits to build the property on the land that he has. You know, I don't know how old that permit that was allowed, but he was permitted. He didn't just go and build it, without a permit. And even if they – he was to be given a variance today, the variance was approved, I think the resolution of his boundary is just a matter of inches, and it's not anything that would affect, significantly, where the house is right now.

Ms. Ball – All right. Anyone else?

Mr. Young – Yeah.

Ms. Ball – Dale.

Mr. Young – Yeah, this isn't new to this Board. We, quite often, have applicants who come in with an approved permit, and they later find out that the foundation is not where it's supposed to be. Now, there is a foundation inspection. But, too often, it comes at the tail end, after the damage is done. He has a permit that's approved. He's had his inspections. It would seem to me, this would have been caught quite early in the process, when you come out of the ground. So there's more at fault here than just the applicant, in my mind. And I might have a little problem with the motion.

Ms. Ball – All right. Jim.

Mr. Rosasco – As I understand the permitting process, George, you may have a permit, but it doesn't necessarily mean the permitting officials are gonna go out and stake our your property. I think that's the responsibility of the contractor, the owner, as far as where he locates that building he has a permit on. It just – to me, it's just too big of a mistake. A 16-foot setback is a big setback. I can't imagine that being – I'm sorry, that's all I have.

Mr. Young – Well, just to clarify – and I'm sure the builder can clarify it a little bit more – but, no, the County does not stake it out. But they do inspect to see that it is where it's supposed to be. That is one of the inspections that they do. So I'm really at a loss how this continues to happen that they're off by 10-15 feet. It doesn't make any sense to me. There's a lot of money paid for those inspections, and those permits.

Mr. Bovell – I have one more comment.

Ms. Ball – George.

Mr. Bovell – Also, I didn't hear too much disagreement about where the house is positioned. I think what I've heard today was really the nuisance being caused by this ongoing construction. They want it done. So I

haven't heard a lot of disagreement about, you know, where the house is located. And I don't think anybody is advocating that we tear down a piece of the house to get it, you know, within the easements.

Ms. Ball – Anyone else? (no response) My observation is that this gentleman was given a permit to build on top of an existing structure. And that's the whole picture right there on this survey sheet that we have. He didn't change anything. I would have a real problem, if he'd gone in and put new construction back against a property line like that. But he was issued a permit to build, and extend, on an existing structure that was already right there at the property line. And I don't believe – with him getting a permit, I do believe there was - call it a comedy of errors, whatever, there have been a lot of slipups in different departments. But I don't believe this gentleman should be penalized, because he did, it appears, try to jump through the hoops. Now, surveys, all that have been here a while know the discrepancy that comes in surveys is monumental, anymore, with these various companies. and sometimes even the same company coming back out and doing a second one. But I don't believe an applicant should be penalized for a situation like this. This is a hardship. He did get a permit to build over an existing structure that was already close to the property line. And, yes, there are some discrepancies with the neighbors, and it may come down to inches. Hopefully, they'll get that resolved. But I do believe that the gentleman needs to be given the variance so he can get this project finished. Mary.

Ms. Hillberg – I just wanted to mention that I agree with you, entirely; however, the building that was there was 630 square feet. And he applied for a second story to that building. The entire building is now 5,100 square feet. It's a lot different than building on top of a building that's there. He said that the old building was the kitchen now.

Ms. Ball – But, still, we're...

Ms. Hillberg – So it's changed.

Ms. Ball – We're not about – our purview today is not about square footage. It's about these setbacks. And where that existing property was, the house doesn't change.

Mr. Young – Yeah, Madam Chair, if he built 10,000 feet there, that wouldn't have anything to do with the question before us today.

Ms. Ball – Right.

Mr. Young – We're dealing only with the 16 feet.

Ms. Hillberg – Correct.

Ms. Ball – O.K. Any other comment? (no response) I'm gonna call the question.

Ms. Ball called the question on the motion to deny. The motion failed, with a 2:3 vote, with Ms. Ball, Mr. Young and Mr. Bovell voting nay.

Ms. Ball – All right. It fails, three to two. I'll call for a second motion, please.

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

Ms. Ball – All right. Thank you, George. A second, please.

Mr. Young – I'll second it.

Ms. Ball – All right. Dale has seconded. Any further discussion? (no response)

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

Ms. Ball – You've been given your variance, sir.

Mr. Langston – Thank you for your professionalism, people. I really appreciate it.

Ms. Ball – You're welcome. And trust that all of you involved will be able to work out these situations in the future, and make it a happy situation.

Mr. Langston – My door is open.

Ms. Ball – Best wishes on finishing.

The meeting was adjourned at 3:34.