



BOARD OF COUNTY COMMISSIONERS

Inter-Office Memo

TO: Board of Adjustment Members

FROM: Paul Body, Senior Planner

Thru: Trina Gilliam, Planning & Zoning Manager

SUBJECT: Variance Staff Comments for Wednesday, March 18, 2026

DATE: February 24, 2026

DISTRICT 1

(26V00001) Mayda Janet Morales (Anna Ciani) requests six variances of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-1341(5)(b) to allow 6.5 ft. from the required 7.5 ft. side (north) setback for an accessory structure; 2.) Section 62-1341(5)(b) to allow 4.5 ft. from the required 7.5 ft. rear setback for an accessory structure; 3.) Section 62-1341(5)(b) to allow 17 ft. from the required 20 ft. side street setback for an accessory structure; 4.) Section 62-1341(5)(b) to allow 17.2 ft. from the required 20 ft. side street setback for an accessory structure; 5.) Section 62-2100.5(a) to allow one accessory structure over the two maximum accessory structures permitted; and 6.) Section 62-2109(c) to allow a fence 2 ft. over the 4 ft. height required in the 20 ft. side street setback in an RU-1-9 (Single-Family Residential) zoning classification. This request represents the applicants' request to legitimize three existing accessory structure and a 6 feet high fence. The applicant states that two of the accessory structure were built by a previous owner and were in this location when the property was purchased on June 22, 2018. The applicant also states that other properties around them have fences with the same height as theirs. The first request equates to an 87% deviation of what the code allows. The second request equates to a 60% deviation of what the code allows. The third request equates to an 85% deviation of what the code allows. The fourth request equates to an 86% deviation of what the code allows. The fifth request equates to a 50% deviation of what the code allows. The sixth request equates to a 50% deviation of what the code allows. There are no variances to the accessory setback requirements or fence height requirement in the immediate area. There is a code enforcement action (24CE-02014) pending with Brevard County Planning and Development Department. If the Board approves this variance, it may want to limit its approval as depicted on the survey provided by the applicant with a revision date of 2/26/2024.

Is the request due to a Code Enforcement action? **YES**

If Yes, indicate case number **24CE-02014**, and

Name of contractor **Unknown work was done prior to my ownership. One accessory structure and the fence were installed by applicant.**

Prerequisites to granting of variance:

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

In order to authorize any variance from the terms of this chapter, the Board of Adjustment shall find all of the following factors to exist:

(1) That special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the applicable zoning classification:

Applicant response: The existing structures except one were built by a previous owner before we purchased the home. And was unaware that permits had not been obtained. The placement and structures follow the natural layout of the property and removing or relocating them would create unnecessary hardship.

Staff response: **Applicant may be required to get a building permit for the existing structures, the new accessory structure (shed) and fence.**

(2) That the special conditions and circumstances do not result from the actions of the applicant:

Applicant response: The unpermitted work was done by the prior owner before we bought the property. We relied on regular inspection during the home purchase and was never informed of any violations. We have acted in good faith since discovering the issue and now working to bring everything into compliance properly.

Staff response: **Two of the three accessory structures existed when the applicant purchased the property. The fence and one of the accessory structures (shed) were installed by the applicant.**

(3) That granting the variance requested will not confer on the applicant any special privilege that is denied by the provisions of this chapter to other lands, buildings or structures in the identical zoning classification:

Applicant response: if you stand on the corner of our property and look at the immediate surrounding five, six or more house you will notice that their fences are of the same height of even taller. We went out there with our neighbors to check. Our property sits on a higher ground. The house right across from us also a corner lot house is half a foot higher than ours. We don't have a special privileged fence. It's simply consistent with the neighborhood existing conditions.

Staff response: **Applicant states there are other properties with the same fence height as theirs. Per section 62-2109(c): fences or walls shall not exceed four feet in height within the required front setback or within the required side street setbacks on a corner lot. The property is a corner lot; a fence cannot be over 4 feet high in the 20 feet side street setback along Brandon Court. The applicant does state a response for the existing accessory structures or the accessory structure (shed) they installed.**

(4) That literal enforcement of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the identical zoning classification under the provisions of this chapter and will constitute unnecessary and undue hardship on the applicant:

Applicant response: Strict enforcement would require removal of existing parts that have been there in some form for decades and is consistent with the neighborhood. This would impose unnecessary financial and practical hardships without serving any public benefit. And everyone in the immediate 5-6 house next to mine would have to do the same since they are higher.

Staff response: **The property is a corner lot; Accessory structures cannot be located in the 20 feet side street setback along Brandon Court. Fences cannot be over 4 feet high in the 20 feet side street setback along Brandon Court.**

(5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure:

Applicant response: We are only asking to allow the existing fence and structures to remain and they are. No expansion or additional construction is being requested.

Staff response: **Applicant is seeking variance for the accessory structures and the fence height to remain in their existing locations.**

(6) That the granting of the variance will be in harmony with the general intent and purpose of this chapter and that such use variance will not be injurious to the area involved or otherwise detrimental to the public welfare:

Applicant response: Approving this variances maintains the neighborhood consistency, safety and reasonable use of the property while avoiding unnecessary hardship.

Staff response: **The applicants state the variances will maintain safety and reasonable use of the property.**