



Planning and Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

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, August 19, 2026

DATE: June 30, 2026

DISTRICT 2

(26V00045) Sean B. and Sherry A. O'Brien request a variance of Chapter 62, Article VI, Brevard County Code as follows; Section 62-1402(5)(c) to allow 6.2 ft. from the required 7.5 ft. side (north) setback for an accessory structure in a TR-1 (Single-Family Mobile Home) zoning classification. This request represents the applicant's request to legitimize the setback requirement for an accessory structure. The applicant states that the existing accessory structure was built by a previous owner and was in this location and configuration when they purchased the property on February 11, 2025. This request equates to an 83% deviation of what the code allows. There are no variances approved to setbacks for accessory structures in the immediate area. The portion of the 5 ft. Public Utility and Drainage Easement the accessory structure encroaches into was vacated by the Board of County Commissioners. There are no code enforcement actions pending with the Brevard County Planning & Development Department. If the Board approves this variance, it may want to limit its approval as depicted on the survey and provided by the applicant with a date of 09/25/2025.

Is the request due to a Code Enforcement action? **NO**

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: Previous owners (no records found in historical records) built a separate garage too close to neighbor's property line north of us. This caused an issue that is holding us back from getting a home generator on the resident home.

Staff response: The accessory structure appears in aerial views of the property going back to 2010. The current owners purchased the property in 2025.

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

Applicant response: This building was built so long ago that historical records (before we purchased in 2025) cannot find any documentation on it. This building has an active meter (electric) on it. There should be permits/records if a meter was installed but there are none.

Staff response: The accessory structure was built by a previous property owner prior to the current owner/applicant purchase of the property on February 11, 2025.

(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: No special privilege will come to me if a variance is granted.

Staff response: Accessory structures are permitted in the parcel's zoning classification.

(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: Yes, we will not be able to get a permit to install home generator if variance is not granted. We live in a prominent power outage area, and a generator will add peace of mind and security to my household.

Staff response: The accessory structure was built by the previous owner. The structure would need to be modified to meet the setback requirements.

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

Applicant response: Yes, the minimum variance will make possible reasonable use of the land, building, or structure.

Staff response: The variance requested is the minimum variance required to legitimize the accessory structure. The portion of the 5 ft. Public Utility and Drainage Easement the accessory structure encroaches into was vacated by the Board of County Commissioners.

(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: Yes, granting of the variance for the setback will be in harmony with the general intent and purpose of this chapter. Such use variance will not be injurious to the area involved or otherwise detrimental to public welfare.

Staff response: The accessory structure was in its location and configuration when the applicant purchased the property on February 11, 2025.