



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 3

(25V00076) Matthew S. and Gretchen W. Solar (Dan Coe) request five variances of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-2109(c) to allow 4.05 ft. over the maximum 4 ft. height permitted for a fence/wall within the 20 ft. front setback along the south property line; 2.) Section 62-2109(a) to allow 2.71 ft. over the maximum 6 ft. height permitted for a fence/wall along the south property line; 3.) Section 62-2109(c) to allow 3 ft. over the maximum 4 ft. height permitted for a fence/wall within the 20 ft. front setback along the north property line; 4.) Section 62-2109(a) to allow 2.95 ft. over the maximum 6 ft. height permitted for a fence/wall along the north property line; and 5.) Section 62-2109(c) to allow 1.86 ft. over the maximum 4 ft. height permitted for a fence/wall along the north property line within the 20 ft. double frontage setback for a lot on a major waterbody in an RU-1-7 (Single-Family Residential) zoning classification. This request represents the applicants' request to legitimize a fence constructed on top of a retaining wall along the neighbors parcels. The applicants state that the extra height is required to meet the State Building Code for fall protection. The first request equates to a 101% deviation of what the code allows. The second request equates to a 45% deviation of what the code allows. The third request equates to a 75% deviation of what the code allows. The fourth request equates to a 49% deviation of what the code allows. The fifth request equates to a 46% deviation of what the code allows. There are no variances to the fence/wall height requirement in the immediate area. There is a code enforcement action (25CE-00612) 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 12/16/2025.

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

If Yes, indicate case number **25CE-00612**, and

Name of contractor: **Life Style Home Builders, Inc.**

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:

Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning classification. The subject property presents unique structural and topographical conditions due to the proximity of the home to the north and south side property lines, as well as its required finished floor elevation (FFE). To support the approved site grading and maintain structural integrity of the elevated lot, retaining walls were constructed along the north and south sides of the home. These walls are necessary to retain soil and ensure proper drainage, as approved through the County's engineering and lot drainage plans. Because the grade falls away quickly toward the neighboring lots, the retaining walls exceed a 30-inch differential on the outside face, triggering mandatory fall protection requirements under the Florida Building Code. These conditions – close lateral setbacks, elevated FFE, and substantial grade differentials - are not typical of other properties in the same zoning classification and create a unique need for this variance request.

Staff response: **The retaining walls were necessary for the amount of fill needed for the finish floor elevation requirement for the single-family home. The retaining walls being over 30 inches from the ground along the neighbors parcels requires guard protection on top of the retaining wall for the State Building Code fall protection.**

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

Applicant response:

The special conditions and circumstances do not result from the actions of the applicant.

The need for the retaining walls and fall protection guards stems from the finished floor elevation (FFE) included in the site and drainage plans, which were submitted to and approved by Brevard County. These plans created a significant grade differential between the subject property and adjacent lots, necessitating the use of structural retaining walls for site stability and the subsequent requirement for guards under Florida Building Code. The applicant followed all permitting processes and constructed the home in good faith based on the County's approved plans. The resulting conditions requiring this variance are not the result of actions taken independently by the applicant, but rather a direct consequence of County-reviewed and approved design elements.

Staff response: **The retaining walls being over 30 inches from the ground along the neighbors parcels requires guard protection on top of the retaining wall for the State Building Code fall protection.**

(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:

The variance requested will not confer on the applicant any special privilege that is denied by the ordinance to other lands, structures or buildings in the same zoning classification. The requested variance does not grant any special privilege, but instead seeks the minimum relief required to safely use the property and comply with Florida Building Code. The retaining wall and guard are not aesthetic or luxury features but are required for safety due to grade differences. The applicant is merely requesting relief to allow what is functionally and legally required under state law, similar to what would be granted to any other owner facing the same physical and regulatory constraints.

Staff response: **The retaining walls being over 30 inches from the ground along the neighbors parcels requires guard protection on top of the retaining wall for the State Building Code fall protection.**

(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:

The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification under the terms of this chapter and would work unnecessary, and undue, hardship on the applicant. Literal enforcement would prevent the applicant from legally completing and using a structure for which a Certificate of Occupancy has already been issued. It would also prohibit the applicant from complying with the Florida Building Code's life-safety requirements for fall protection, exposing them to legal and liability risk. No reasonable alternative exists to install the necessary fall protection without this variance, which creates a functional and financial hardship not encountered by others without similar site conditions.

Staff response: **The retaining walls being over 30 inches from the ground along the neighbors parcels requires guard protection on top of the retaining wall for fall protection per the Florida State Building Code's.**

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

Applicant response:

The applicant is not seeking any special entitlement or overreach of zoning allowances, but rather a practical, code-compliant path forward that balances safety, structural integrity, and neighborhood compatibility. To align with zoning intent and reduce visual impact on neighboring properties, the applicant will begin reducing the height of the retaining wall at the point where maintaining the required minimum 6" elevation above the applicant's grade no longer results in a wall height exceeding 30" from the adjacent property's grade. From this transition point-located near the rear corners of the home-the wall will be angle-cut down to match the height of the seawall and will then continue at that level along the remainder of the rear yard. To maintain aesthetically balanced symmetry, the same treatment will be applied to both the north and south side walls. In areas where the wall height is brought under 30". no guardrail will be reinstalled, consistent with Florida Building Code requirements. Where guardrails are still required, the existing 48" rails will be replaced with 36" units to reduce massing and improve visual compatibility. These revisions ensure that only the minimum necessary deviation from current zoning regulations is being requested, and that the proposed changes will substantially reduce the variance's footprint, while still satisfying life-safety and drainage requirement tied to the finished floor elevation of the home.

Staff response: **The retaining walls being over 30 inches from the ground along the neighbors parcels requires guard protection on top of the retaining wall for fall protection per the Florida State Building Code's.**

(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:

The proposed variance enables compliance with the Florida Building Code's fall protection requirements and maintains public safety. The applicant has offered to reduce the guard height, eliminate its presence where possible, apply stucco and paint to the wall exterior, and add landscaping for aesthetic mitigation - all of which promote neighborhood compatibility and public welfare. The solution seeks harmony with both building safety standards and community aesthetics.

Staff response: **The retaining walls being over 30 inches from the ground along the neighbors parcels requires guard protection on top of the retaining wall for fall protection per the Florida State Building Code's.**