



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 4

(26V00008) Shep's Towing LLC (Gregory Shephard) requests two variances of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-2109(c) to allow 2 ft. over the 4 ft. height limit for a fence in the required front setback and in the required side street setbacks on a corner lot; and 2.) Section 62-2109(b) to allow 2.5 ft. over the 3.5 ft. height limit for a fence in sight triangle in a BU-2 (Retail, Warehousing and Wholesale Commercial) zoning classification. This request represents the applicants' request to construct a 6 feet high fence around the parcel. The applicant states the 6 feet high fence is required by the Police for a Tow Service Storage Facility to Secure the parcel. The first request equates to a 33% deviation of what the code allows. The second request equates to a 42% deviation of what the code allows. There are no variances to the fence/wall height requirement in the immediate area. There is no code enforcement action 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 date of 11/11/2025.

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: Police require Tow Service Storage Facilities to Secure area using a six (6) foot chain-link Fence

Staff response: **Brevard County fence code states fence cannot be over 4 feet high in the required front and side street setbacks and 3.5 feet high in the sight triangle. Moving a 6 feet high fence to the required setback might reduce the size of the secure area for a Tow Service Storage Facility.**

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

Applicant response: No Action previously performed.

Staff response: **Brevard County fence code states fence cannot be over 4 feet high in the required front and side street setbacks and 3.5 feet high in the sight triangle.**

(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 privileges requested, only necessary to meet the conditions of the Law Enforcement Agencies.

Staff response: **The applicant could move a 6 feet high fence to the required setbacks; however this might reduce the size of the secure area for a Tow Service Storage Facility.**

(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 only deprivation to the applicant is the inability to meet the Law Enforcement fence objections which could cause job losses.

Staff response: **The applicant could move a 6 feet high fence to the required setbacks; however this might reduce the size of the secure area for a Tow Service Storage Facility.**

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

Applicant response: In accordance with Law Enforcement guidelines storage facilities are required to secure areas with a six(6) foot chain link fence with locked gate.

Staff response: **The applicant could move a 6 feet high fence to the required setbacks; however this might reduce the size of the secure area for a Tow Service Storage Facility.**

(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: Totally in compliance with the statement.

Staff response: **A 6 feet high fence in the sight triangle could be a hazard to traffic at the road intersection.**