



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, May 20, 2026  
DATE: April 27, 2026

### DISTRICT 2

**(26V00025) VH Properties LLC** (Davin Erickson) request two variances of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-2118(d)(3) to allow 2.1 ft. over the maximum 14 ft. encroachment allowed into a manmade waterway; and 2.) Section 62-2118(d)(2) to allow 0.2 ft. from the required 7.5 ft. side (east) property line setback, as projected in a straight line into the waterway in an RU-1-11 (Single-Family Residential) zoning classification. This request represents the applicant's request to legitimize an existing dock to final the building permit (25BC05909). The applicant states that the proposed dock and lift were approved on the survey plot plan for the building permit. The applicant also states there is a discrepancy between the original boundary survey (used for permitting and dock construction) and the as-built survey which was done by a different survey company. The applicant states the as-built survey shows the rear property line 2 ft. different than the original boundary survey used for permitting. The first request equates to a 15% deviation of what the code allows. The second request equates to a 3% deviation of what the code allows. There are two variances approved to the dock projection requirement in the immediate area. There are no variances approved to the dock setback requirement in the immediate area. There is no code enforcement action 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 with a date of 11/03/2025.

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: Special condition exist due to discrepancy between the original boundary survey (used for permitting and dock construction) and the revised as-built survey. The original survey placed the property line at the waters edge further inland allowing the dock position. The as-built survey shows the line 2 ft. different. The survey discrepancy is unique to this lot and not present on neighboring properties.

**Staff response: There appears to be a 2 feet discrepancy between the original boundary survey (used for permitting and dock construction) and the as-built survey, which was done by a different survey company, of the location of rear property line. The applicant does not address the dock setback variance request.**

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

Applicant response: The contractor built the dock further into the canal than what was originally proposed. I was not known until the as-built survey was complete.

**Staff response: There appears to be a 2 feet discrepancy between the original boundary survey (used for permitting and dock construction) and the as-built survey, which was done by a different survey company, of the location of rear property line. The applicant does not address the dock setback variance request.**

(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 requested variance will not confer any special privilege. Neighboring properties in the same zoning classification have docks the project up to the 20% allowable

limit. The variance simply allows the existing dock to remain in its as-built location without expansion.

**Staff response: The canal is 70 feet wide per subdivision plat. All parcels abutting the canal would have a maximum dock projection of 14 feet (20% of canal width) as measured off the rear property line of the parcel. The applicant does not address the dock setback variance request.**

(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: Literal enforcement would require removal of the dock, depriving the owner of reasonable canal access and boat docking rights that are commonly enjoyed by similar properties on RU-1-11 zoning. This would create unnecessary and undue hardship because the dock was constructed in good faith reliance based on original survey.

**Staff response: Without an approved variance the dock would have to be rebuilt/cutback to the required projection. The applicant does not address the dock setback variance request.**

(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 variance is the absolute minimum – only 2 ft. overage shown on the as-built survey. No greater relief is requested.

**Staff response: The requested projection variance is for 2.1 feet over the 14 feet projection permitted. The applicant does not address the dock setback variance request.**

(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: granting this variance is in harmony with the code and not detrimental to the public welfare. The dock is existing, small in scale, does not obstruct navigation or neighboring properties, and was built to serve the residential use of the property. There is no environmental or safety impact.

**Staff response: There are two previously approved variances to the dock projection requirement in the immediate area. The increased projection might obstruct navigation of the canal.**