

## VARIANCE HARDSHIP WORKSHEET

Is the request due to a Code Enforcement action?

☐ Yes. If Yes, indicate case number \_\_\_\_\_, and  
name of contractor \_\_\_\_\_

☒ 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:

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

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(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:

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(over)

(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:

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

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(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:

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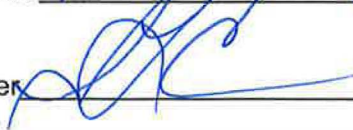
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I understand that all of the above conditions apply to the consideration of a variance and that each of these conditions have been discussed with me by the below-signed zoning representative. I am fully aware that it is my responsibility to prove complete compliance with the aforementioned criteria.

Signature of applicant

X Francis Scott Kelly

Signature of planner



## Variance Conditions

- 1) Multiple special conditions do exist at this property that create a unique circumstance and a specific need for the proposed variance.
  - a. This property is located only one plot away from the ever-increasing traffic of Highway 528. It is common knowledge that in 2022, 2023 Port Canaveral was the busiest cruise ship port in the world. This creates a unique and specific need along the only major roadway that enters the port, to mitigate the noise level in any way possible. This is not only an obvious problem today, but one that will continue to grow in severity as the years go by and the traffic continues to increase. Granting this variance will allow placement of the proposed building in an East to West orientation. This will allow it to be approximately 50% more effective in this capacity as an auditory shield from the increasing noise.
  - b. The triangular shape of this property creates a unique opportunity to shield a large portion of the proposed building from the view at the street. The combination of a previously existing fence and lush natural vegetation and trees will provide a natural barrier that will shield the majority of the building from view, thereby maintaining the natural look of the landscape. This can be attained only if the variance is granted and the building can be placed in the East/West orientation.
  - c. The history of this property includes it being in the ownership of a local arborist for over four decades. As a result of his tireless efforts, the land was transformed into the shining example native flora that it is today. This plot is quite literally covered in a wonderful display of native plants and trees. The only way to avoid the needless killing of several Live Oaks and other trees and shrubs while installing the proposed building is to have this variance approved and have the building placed in the East to West orientation proposed. If the current buffer of fifteen feet is enforced, the only reasonable way to utilize the building would be to turn it North to South which would require killing of the Live Oaks and other trees. In addition, the view from the street would be substantially less attractive to the community and the all too important auditory shield from Highway 528 would be reduced by 50%.
- 2) The location of this property and the noise created by the neighboring highway 528, the unique triangular shape, and the well-established forestry that exists there are all conditions which are not the result of actions by the applicant.
- 3) This variance would grant no special privilege to the applicant.
- 4) The literal enforcement of the provisions of the chapter would deny the applicant the commonly enjoyed right of being able to effectively shield his backyard from the roar of the trucks on the highway and enjoy his outdoor space as all other Floridians are able to. It would put him at a distinct disadvantage through no fault of his own. In addition, given the seemingly frantic pace of development and expansion in our cities, maintaining the existing beauty of the land and the neighborhood to the fullest extent possible should be counted among the highest of our priorities. It would further leave the applicant with no reasonable choices except for the undesirable option of killing multiple live oak trees while leaving the building wholly visible from the street and leaving the applicant's outdoor recreation areas victim to the ever-increasing noise levels of the neighboring highway.

- 5) The variance granted would be the minimum necessary to properly orient the proposed building in such a way as to prevent the needless killing of several Live Oaks, maximize the use of the building as a sound barrier against the increasing highway noise, and rendering it substantially less visible from the street.
- 6) It has been clearly articulated that the granting of this variance would be in harmony with the spirit and intent of the chapter and the only member of the public who could possibly be affected(neighbor to the north), has agreed that there would be no negative impact to either him or to his property.