

## Board of Adjustment

The Board of Adjustment met in regular session on **Wednesday, February 19, 2025**, at **1:30 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 1:30 p.m.

Board members present were: Sonya Mallard (D1-Chair), Jennifer Clements (D2), Stephen Holmberg (D3-Vice Chair), and Dr. Joanna Bass (D4)

Staff members present were: Greg Hughes, Assistant County Attorney; Paul Body, Planner; Kristen Champion Special Projects Coordinator; and Desirée Jackson, Planner;

### EXCERPT OF COMPLETE MINUTES

#### Approval of the January 15, 2025 BOA Minutes

Motion by Jennifer Clements, seconded by Stephen Holmberg, to approve the BOA minutes of January 15, 2025. The motion passed unanimously.

**Item H.2. Timothy Scott Gannon and Denise Irene Gannon request variances of Chapter 62, Article VI, Brevard County Code as follows, 1.) Section 62-1340(5)(b) to allow 4.9 ft from the 5 ft separation distance required for an accessory structure; and 2.) 62-1340(5)(b) to allow for 7.4 ft from the required 7.5 ft side (northeast) setback for an accessory structure in an RU-1-11 zoning classification. (24V00051) (Tax Account 2417445) (District 2)**

Paul Body read the item into the record.

Denise Gannon presented document(s) during the meeting and explained the purpose of the request which is to resolve a code enforcement case regarding the roof structure on the side of their property. She said "this picture right here was the original picture. As you can see on the side of our house there was an extremely large shed right here and there were three sheds behind that that took up this entire footprint. They have been there for over 21 years. Tim bought the house 21 years ago and they were already existing there." As the years went by and their children reached adulthood they no longer needed the additional storage sheds. They claimed when the backyard was redone they replaced the three sheds with a roofed structure to provide for more protection against the sun. She said "it is exactly the same footprint that was there previously. It blocks no one's view. It is a metal roof. It is fully insulated. It has been through two hurricanes."

Jennifer Clements asked when the roofed structure was constructed

Ms. Gannon replied "2021".

Ms. Clements asked what led to the code enforcement case.

Ms. Gannon claimed the neighbor on that corresponding side issued five code enforcement cases against them. She said the reason for it was in retaliation for the neighbor not getting what they wanted.

Joanna Bass asked if the neighbors have been notified of this request.

Ms. Gannon noted they were notified.

Ms. Bass then asked “obviously it appears to me that on the other side, which would be the left side, your property is quite close to the property line but that is not in question. You are not putting anything on that side correct?”

Ms. Gannon replied yes and added “that was what you approved last time.”

Ms. Bass asked to confirm if the new roofed structure had increased the footprint of the area in comparison to the replaced sheds.

Ms. Gannon said “No. The white shed that you see here was over 12 by 20. There were three sheds behind that. They house like all of our lawnmower and gas and stuff. And so this new structure is literally 14 by 24. You add those three sheds behind that.....”

Ms. Bass stated “so it is larger.”

Ms. Gannon replied no and referred back to the three sheds that were located next to the larger shed.

Ms. Clements asked if the sheds leaned against the home or the fence.

Ms. Gannon stated they were against the fence and clarified this roofed structure is a breezeway that is “the exact same size” and also located off the side of the fence.

Ms. Clements asked how far off the fence.

Ms. Gannon replied “.1”. She additionally noted that this open porch structure is fully guttered. She then presented to board images of the side view of the structure.

Ms. Bass asked if “the roof goes out to the fence level”.

Ms. Gannon responded “it goes .2 per the variance off the fence.”

Ms. Clements asked what the setback should be.

Mr. Body commented 7.5 ft. setback off the side property line.

Ms. Gannon added “and our existing shed went in all the way to the fence and right to the house.” A follow up question was asked to which Ms. Gannon said “no it is pavers and then composite wood”.

### **Public Comment**

Lawrence Monroe, present to be not in favor of the variance. He said “the first time that we had to bring our case um we were told its pretty bad that they had to take a day off to come here to rebut us to do the County’s job for them. And I am paraphrasing. There is a few points that I just noted. First of all, were the three existing sheds ever permitted that this now the replacement structure to. Were there pert tests done? Were there variances obtained. As Mr. Body mentioned their setback are setbacks set by the County. Our case involved obtaining setbacks for a dock which everybody has and everybody should be entitled to in Florida and we are very nautical by nature. But anyway that is us. But we had to obtain setbacks to build a proper structure and they objected to the mere reasoning of getting a setback on our property.”

Sonya Mallard asked Mr. Monroe to clarify their public comment in relation to this current variance application.

Mr. Monroe provided and referred to written public comment that was previously submitted.

Ms. Clements asked when Mr. Monroe purchased their property.

Mr. Monroe replied it was in 2021. He states they started construction/renovation in 2022 and as of now they have lived two years in their home. He stated "We are almost in objection to this for the rest of the neighborhood that have structures they have had to come in here and apologize. The enforcing cliché is build first, ask permission later. And we did not have that privilege. We were here three times. It cost a lot of money. A lot of time. A lot of effort. A lot of angst. And we finally obtained ours. So there is due diligence as the words have been quoted in there that they did all their due diligence. Well this is their fifth violation. So we just wanted a variance. There are other neighbors that could not obtain dock roofed structures because of the setbacks.

Ms. Clements asked if the structure for this current variance was in place when Mr. Monroe purchased their property.

Mr. Monroe responded no. It was under construction. He believes it was built after Miss and Mister Gannon's dock was constructed. He noted the roofed structure to be substantial and hurricane proof. "But they could not obtain there is no access. The picture you saw was an old picture. The new picture shows the existing structures on the west side. There is no access down the west side. And limited access I will give them limited access because it is a breezeway. It has been described that way on our east side. But they could not access their property. We were doing demo and we had construction and the next thing I know trucks and bobcats are going through our property through our seawall to access theirs to finish their projects. That went on for months. Being a new neighbor and compassionate person I had no problem with it. I did not have anything there. Now we are having our own construction but they could not access their own property" he said.

Ms. Mallard asked for clarification regarding the Gannon's access within the subject property.

Mr. Monroe stated because heavy equipment was involved "they can't access their own property to get to their backyard".

Ms. Mallard further asked "but now they have to still come through your yard?"

Mr. Monroe replied "if they needed to they would. But it depends on what they if they need heavy equipment. There is no way to bring it underneath that breezeway. It does not matter whether they need heavy equipment or not. What I am stating when we were in construction they had to access our property. There is no way they could go through even before the breezeway maybe not under construction maybe it was."

Ms. Mallard asked again for clarification of the reason of Mr. Monroe's objection to this variance request.

Mr. Monroe said he wants a car port of his own up to the fence line similar to how the existing roofed structure is. He talked about the purpose of the setbacks in terms of fire hazards and safety. He mentioned the roofed wooden structure is "within 11 ft. of the peak of our back". He expressed that

other neighbors would also want to build structures within their property situated similarly to their property lines.

Ms. Mallard reiterated that the discussion today was in regards to this variance request only, not any future plans made by others. She further noted to Mr. Monroe to submit his variance application if he so wishes to staff so that he may follow the appropriate measures for his variance request to be heard and considered.

Mr. Monroe understood but noted there was a blatant code violation. He argues that the Gannons built the structure first, created the violation, and then submitted their variance. He said it followed the saying "build first ask permission later."

Ms. Clements "asked was the structure there or not there when you purchased the home."

Mr. Monroe deferred the question and then stated it was not completed back then.

Ms. Clements asked if he was experiencing any additional noise.

Mr. Monroe commented no and added "people have spilled out of that area into our property during a nine-year-old party".

Ms. Clements asked for clarification and said "you have not mentioned anything about it changing your comfort in your own home. It is just about the space in which it occupies."

Mr. Monroe agreed. He said "you are stating what we wrote and I did not object to anything that way. We did not state it that way. This was trying to be as factual as possible about the evidence in front of us which is this was one of many code violations and..."

Ms. Clements said "but you do not mention anything about what you just said about the spilling over or the..."

Mr. Monroe agreed and confirmed he was not experiencing any sort of disruption.

### **End Public Comment**

Ms. Gannon said "facts there is a five foot gate. A wheelchair can fit through the gate. We have 100% access to our property. It is a breezeway. It is a covered patio. We do not have parties. We are pretty boring. We have nine grandchildren. We are trying to get them out of the sun, swim in our pool, and be on our own property. We have done everything that we can. It is in no one's view. There is no place else on our property to put this." She reiterated that the sheds were preexisting prior to Mr. Gannon's purchase of the property over 21 years ago. They no longer have need for the extra storage but rather would want to have coverage from the natural elements.

Ms. Clements asked if there is access from the house to the patio.

Timothy Gannon replied "not like a door that connects it to."

Ms. Gannon added "that is off our master bedroom. So they talk about fire hazards. That is off our master bedroom. We would never put anything off of our.."

Mr. Gannon clarified that there are no attachment points.

Ms. Bass asked “what is the overhang for the metal roof? How close is that to the property line?”

Ms. Gannon demonstrated the distance on an exhibit.

Ms. Bass asked if there is room for Fire Prevention members and their equipment “to get through between their fence and the neighbor’s house.”

Ms. Gannon asked if she had meant between their fence and their own house.

Ms. Bass reiterated that she had meant the neighbor’s house “because they said the that overhang for his house was very close to your fence.”

Mr. Gannon replied “he does not have a fence. Our fence just goes straight up. He has no gate no nothing. It is a fence line. There is nothing changed that is there.”

Ms. Bass asked “the Fire Department can go through there? On your property?”

Ms. Gannon said yes. She claimed with the previous sheds in place Fire Rescue would not have been able to get through. Now with the sheds removed they can go through.

Ms. Bass asked about the drainage.

Ms. Gannon responded and said the structure has gutters all around it.

Mr. Gannon pointed out the location of a tree on their property and noted that the downspout is directed towards that tree.

Ms. Gannon then added “in Diana Shores everyone is constructing newer and everything. We are part of that regeneration of Diana Shores. Those houses were built in the [1960s]. We went through the neighborhood. There is 38 more of these throughout the entire neighborhood. In addition, right across the canal from us there was a variance approved for the same thing in I think November of [2022] for a structure breezeway for coverage for sun coverage.”

Steven Holmberg asked about an easement and read from a document stating “the Board of County Commission vacate public utility’s easements resolution 2024-62”. He then asked what it meant.

Mr. Body explained the subject structure is situated on a vacated 5 ft. easement. There were no utilities within the easement.

Mr. Holmberg asked if there were code violations issued for the subject property.

Paul Body explained that there were several and there is still a current code enforcement action for this structure.

Ms. Gannon went further to reiterate the purpose of the variance request and the process they went through to have the easement vacated.

Ms. Clements asked “when was that done”

Ms. Gannon said in 2023 and added “once we learned about this process”.

Mr. Body noted “they were done in last fall I think weren’t they?”. Ms. Gannon agreed. He furthermore added “one was to the coverage of their roof area for their dock and the other was to the setback for their shed that was over on the westerly property.”

Ms. Clements asked when this was completed.

Ms. Gannon replied that it was in early 2021.

Ms. Clements questioned “was this right around the same time you purchased?”

Ms. Gannon responded “right around the same he [Mr. Monroe] purchased. The picture I showed shows the land completely clear over there no grass. So it was...they were still under construction when we were done”.

Jennifer Clements asked staff about the type of precedence a decision on this matter would entail.

Mr. Body responded “you have to look at each variance as stand on its own.”

Motion to approve item H.2. as depicted on the survey dated January 8<sup>th</sup> by Jennifer Clements, seconded by Sonya Mallard. The motion failed 2-2.

Motion to table item H.2. to the March 19, 2025 Board of Adjustment meeting by Jennifer Clements, seconded by Sonya Mallard, the motion passed 3:1.

The meeting was called to adjourn at 2:50pm.