



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 8, 2026

DISTRICT 2

(26V00022) Island Cremations LLC (Matthew Sabatino) request two variances of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-1482(5)(a)(2) to allow 2.8 ft. from the required 25 ft. front setback; and 2.) Section 62-1482(5)(a)(3) to allow 1.1 ft. from the required 15 ft. rear setback in a BU-1 (General Retail Commercial) zoning classification. This request represents the applicant's request to replace a deteriorated vinyl/cloth awning at the building entrance with a permanent roof cover and legitimize the rear setback for the primary structure on the property. The applicant states that the existing awning provides weather protection over the primary entrance and ADA accessible pathway but has required frequent replacement due to tearing and deterioration due to weather exposure. The applicant also states the primary structure was built in 1978 by a previous owner and was in this location when they purchased the property on 4/18/2011. The applicant is not proposing any expansion or modification to the portion of the building that encroaches into the rear setback. The first request equates to an 11% deviation of what the code allows. The second request equates to a 7% deviation of what the code allows. 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 June 23, 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: (1st request) Special conditions exist on this property due to the angle of the property line in relation to the building and entrance pathway which results in a small portion of the proposed entry roof cover extending slightly into the required setback area. The existing building and entrance orientation were established prior to the proposed improvement, and the angled lot configuration creates a situation where a standard rectangular roof structure cannot be installed without a minor encroachment. Additionally, the entryway serves as the primary accessible (ADA) pathway for Individuals with mobility impairments, requiring adequate weather protection for safe entry and exit. The existing entry cover is a temporary vinyl/cloth awning system that has deteriorated repeatedly due to weather exposure, resulting in frequent tearing and replacement.

(2nd request) Special conditions and circumstances exist due to the pre-existing placement of the structure, which encroaches into the required rear setback. This condition is unique to the property as the structure was constructed prior to current setback requirements or under previous approvals, resulting in a lawful nonconformity. The existing building footprint limits the ability to comply with current setback standards without requiring demolition or significant alteration of the existing structure, which is not applicable to most other properties within the same zoning classification.

Staff response: The applicant states that the original configuration of the parcel and the location of the Principal Structure built in 1978 limits building a covered entrance on the building. The applicant also states that the building was built by a previous owner and was in this configuration when he purchased the property.

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

Applicant response: (1st request) The special conditions affecting this request are not the result of actions taken by the applicant. The existing building location, entry orientation, and the angle of the property line were established prior to the proposed improvement. The slight encroachment occurs solely due to the existing site configuration and angled property boundary, which limits the ability to construct a preeminent entry roof structure that fully complies with the setback requirement while maintaining proper coverage of the entry and ADA access pathway. The applicant is only seeking to replace an existing temporary awning with a more durable and permanent structure in substantially the same location.

(2nd request) The encroachment into the rear setback is not the result of any action taken by the current applicant. The condition was created by prior construction and exists as a pre-existing nonconforming structure. The applicant is not proposing any expansion or modification to the portion of the building that encroaches into the rear setback.

Staff response: The applicant states that the original configuration of the parcel and the location of the Principal Structure built in 1978 limits building a covered entrance on the building. The applicant also states that the building was built by a previous owner and was in this configuration when he purchased the property.

(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: (1st request) Granting this variance will not confer any special privilege to the applicant. The request simply allows for the installation of a permanent entry roof structure in approximately the same location as the existing awning that currently covers the entrance. Many similarly zoned properties are able to provide permanent covered entryways that protect building entrances and accessible pathways. Due to the unique angle of the property line at this site, a minor variance is necessary to provide the same functional improvement that Other properties are able to achieve while remaining fully within their setback.

(2nd request) Granting this variance will not confer any special privilege to the applicant that is denied to other properties within the same zoning classification. The request is solely to recognize the existing nonconforming condition and allow reasonable improvements to the property. Similar relief is commonly granted for properties with legally existing encroachments where no further encroachment is proposed.

Staff response: The applicant states that the building was built by a previous owner and was in this configuration when he purchased the property and will not confer any special privilege.

(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: (1st request) Literal enforcement of the setback requirement would prevent the applicant from installing a permanent covered entryway that adequately protects the: primary entrance and ADA accessible pathway. Covered building entrances are a common feature enjoyed by other properties within the same zoning classification. Because of the angle of the property line and the existing entrance configuration, strict application of the

setback requirement would Prevent the installation of a properly sized roof structure in the same location as the existing awning. This would create an unnecessary hardship by forcing the continued use of temporary materials th.at frequently deteriorate and fail due to weather exposure.

(2nd request) Literal enforcement of the rear setback requirement would impose an unnecessary and undue hardship by preventing reasonable improvements to the property, despite the fact that no work is proposed within the encroaching rear area. Denial of the variance would effectively restrict the applicant's ability to utilize the property in a manner consistent with other similarly zoned properties, where improvements and additions are typically permitted.

Staff response: The applicant states that denial of the variance would effectively restrict the applicant's ability to utilize improvements and additions.

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

Applicant response: (1st request) The requested variance represents the minimum relief necessary to allow for the installation of a permanent entry roof cover that adequately protects the entrance and ADA pathway. The design has been developed to minimize any encroachment into the setback area, and only a small portion of the roof structure extends beyond the required setback due to the angled property boundary. The proposed improvement replaces an existing awning and does not expand the overall use of the property or building footprint beyond what is necessary to provide a durable and functional entry cover.

(2nd request) The variance requested represents the minimum necessary to allow reasonable use of the property. The applicant is not seeking to increase or expand the existing encroachment but is only requesting recognition of the current condition to facilitate a separate project which is on the front of the building.

Staff response: The applicant states the variances requested are the minimum necessary to allow reasonable use of the property and is not seeking to increase or expand the existing building.

(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: (1st request) Granting this variance will be consistent with the intent and purpose of the zoning regulations by allowing a modest improvement that enhances the fractionality, safety, and appearance of the building entrance. The proposed permanent roof structure will improve protection for visitors, including individuals using the ADA accessible pathway by providing reliable shelter from weather condition. The encroachment is minimal and will not negatively impact adjacent properties, visibility, access, or neighborhood character. The improvement replaces an existing temporary awning with a more durable and aesthetically appropriate structure, which will enhance the overall appearance and usability of the property without detriment to the surrounding area or public welfare.

(2nd request) Granting the variance will be in harmony with the general intent and purpose of the zoning regulations, as it maintains the existing building footprint without increasing the degree of nonconformity. The proposed front addition will not negatively impact neighboring properties, public safety, or overall community welfare. The request preserves the character of the area while allowing reasonable use of the property.

Staff response: the applicant states granting the variance will be in harmony with the general intent and purpose of the zoning regulations and will not negatively impact adjacent properties, visibility, access, or neighborhood character.