



Planning and Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

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, April 15, 2026
DATE: March 5, 2026

DISTRICT 2

(26V00018) Michael J. and Carolyn J. O'Malley request a variance of Chapter 62, Article VI, Brevard County Code as follows; Section 62-1338(5)(b) to allow 1.1 ft. from the 5 ft. spacing distance required for an accessory structure in an SR (Suburban Residential) zoning classification. This request represents the applicants' request to legitimize a new accessory structure (garage) for the building permit (25BC08235) review approval. The applicants state that when they were building the accessory structure, they did not realize it required a 5 ft. spacing distance. The applicants also state their lot is a pie shape lot which gets narrower towards the rear of the property and does not leave as much distance between the property line and the accessory structure as other rectangle properties in the subdivision. This request equates to a 22% deviation of what the code allows. There are no variances approved to the spacing distance requirement for an accessory structure 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 revision 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: The property is pie shaped, the width getting 33 feet smaller as you go east. Almost all of the other four sided properties in the subdivision are rectangular.

Staff response: **Parcel is not a rectangle parcel.**

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

Applicant response: When the plot plan was submitted initially, before the cement slab was poured, I was told I needed to include dimensions on the drawing including distance to the property line and house. Nothing was said about distance to the pool enclosure. I included the dimensions to the property line and house and resubmitted the drawing. The plot plan and the building permit were approved. I assumed everything was fine and proceeded to have the slab poured. Much later, after the garage construction had already begun, I found out I needed a foundation survey. It took months to find a surveyor and to get it done due to the surveyor's schedule. By that time the garage frame construction, including roof, was completed. I submitted the survey only to find out about the 5 foot spacing to the pool enclosure requirement. I contend this issue is not my fault as I had followed instructions and had received an approved plot plan and permit.

Staff response: **Per Brevard County zoning code, Suburban Residential (SR) section 62-1338(5)(b) states: *Accessory buildings shall be located to the rear of the front building line of the principal building, and no closer than ten feet to the rear and side lot lines, but in no case within the setback from a side street, with a minimum spacing of five feet.***

The Building permit (25BC08235) for the accessory structure was applied for by owner builder. The property owner should have read or requested a copy of the Suburban Residential (SR) code Section 62-1338 requirements for setbacks and minimum spacing requirements for an accessory structure.

(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: Granting this variance will not deny anyone the right to submit a variance for a similar issue.

Staff response: **Accessory structures are a permitted use with conditions for setback, separation distance and size requirements in the SR zoning classification.**

(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: I can't move the garage now without destroying it and I found out I can't move the small area of the pool enclosure without a new permit and an engineering analysis showing the modification is okay. This would probably cost thousands of dollars. To replace the whole pool enclosure would be in the range of 20,000 to 30,000 dollars. To change things now would cause an unfair hardship considering the tiny area affected.

Staff response: **The pool screen enclosure could possibly be reconfigured to meet the 5 ft. separation distance requirement for the accessory structure at a cost to the homeowner.**

(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 requested is a 7 degree triangle with the short end 1.1 feet and the long end 9 feet. The 1.1 foot length is the difference between the 5 foot requirement and the actual 3.9 foot spacing between the garage and the pool enclosure. This area is only 0.4% of the pool enclosure area.

Staff response: **The requested variance is the minimum variance required for the accessory structure.**

(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: The area involved is not really visible as it is 150 feet from the street and hidden from the neighbor by the garage.

Staff response: **There is no code enforcement action for the accessory structure.**