



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 12, 2026

DISTRICT 2

(26V00016) Brian Nicholson requests four variances of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-2109(a) to allow 1 ft. over the 6 ft. fence height limit; 2.) Section 62-1341(5)(b) to allow 1.96 ft. from the required 7.5 ft. south side setback for an accessory structure; 3.) Section 62-1341(5)(b) to allow 0.54 ft. from the required 7.5 ft. rear setback for an accessory structure; and 4.) Section 62-1341(5)(b) to allow 2.19 ft. from the required 7.5 ft. north side setback for an accessory structure in an RU-1-11 (Single-Family Residential) zoning classification. This request represents the applicant's request to legitimize an existing fence and two existing accessory structures (shed and pergola). The applicant states that he needs the extra fence height due to elevation differences, privacy and safety concerns on the property. The first request equates to a 17% deviation of what the code allows. The second request equates to a 26% deviation of what the code allows. The third request equates to a 7% deviation of what the code allows. The fourth request equates to a 29% deviation of what the code allows. There are no variances approved to fence height requirements or to accessory setback requirements in the immediate area. There is a code enforcement action (25CE-01117) 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 11/14/2025.

Is the request due to a Code Enforcement action? **YES. The code enforcement action is for the 7 ft. fence only and does not address the setback issues of the accessory structures.**

If Yes, indicate case number **25CE-01117**, and

Name of contractor: **Owner Installed.**

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: Yes. It sits 7 to 12 inches lower than surrounding lots and is located one lot away from a higher-elevation commercial property (Target) that generates persistent noise. Additionally, there have been repeated police-documented disturbances involving a neighboring resident, including two incidents of fence damage. These combined factors create privacy, safety, and noise concerns that are not commonly shared by others in the same zoning district.

Staff response: **The applicant states, "that the parcel is lower than the surrounding parcels and he needs the extra fence height for privacy and noise concerns". The applicant has not applied for a building permit for the fence.**

The applicant does not address the setback issues of the two accessory structures. The applicant did say that the accessory structures were moved out of the 5 ft. Drainage and Utility Easements. The applicant may be required to apply for building permits for the two existing accessory structures.

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

Applicant response: Correct. The special conditions and circumstances affecting my property were not created by me. The elevation difference was established during the original grading of lots in the 1960s, long before I owned the property. The proximity to a significantly elevated commercial parcel is the result of historical zoning and land use planning outside my control.

The ongoing disturbances and property damage involving a neighboring resident are not the result of any action on my part. I have responded only through lawful, appropriate channels.

Staff response: **The applicant states the properties elevation difference was created when the subdivision was platted in the 60's and is the reason he needs the extra fence height. The applicant has not applied for a building permit for the fence.**

The applicant does not address the setback issues of the accessory structures. The applicant did say that the accessory structures were moved out of the 5 ft. Drainage and Utility Easements. The applicant may be required to apply for building permits for the two existing accessory structures.

(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: Yes. Granting this variance will not confer any special privilege denied to other properties in the same zoning classification. The modest 10-inch increase is narrowly tailored to account for the lot's lower elevation and proximity to a noise-producing commercial use property. This variance serves the same purpose as others previously granted in the county. It addresses site-specific privacy and safety concerns-and does not grant any excessive or unique rights beyond those reasonably afforded to similar properties.

Staff response: **The applicant states the lower elevation of his parcel creates privacy and noise concerns and is the reason he needs the extra fence height. The applicant has not applied for a building permit for the fence.**

The applicant does not address the setback issues of the accessory structures. The applicant did say that the accessory structures were moved out of the 5 ft. Drainage and Utility Easements. The applicant may be required to apply for building permits for the two accessory structures.

(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: Affirmative. Due to lower elevation a standard-height fence fails to provide adequate screening, allowing neighbors to see into my home and yard. Other properties not affected by this elevation difference already receive full privacy from a standard fence. Furthermore, the proximity to a nearby commercial property that sits nearly three feet higher and generates persistent noise, increases the need for both sound and visual buffering. This is not typical for homes in this zoning classification. Finally, there is ongoing confrontational behavior from a neighboring resident. As a result, criminal complaints have been brought, and a modest increase in height would reduce direct exposure and remain a deterrent for further incidents. Collectively, these circumstances justify a limited variance to provide protections and conditions already afforded to others under standard zoning enforcement.

Staff response: **The applicant states the lower elevation of his parcel creates privacy and noise concerns and is the reason he needs the extra fence height. The applicant has not applied for a building permit for the fence.**

The applicant does not address the setback issues of the accessory structures. The applicant did say that the accessory structures were moved out of the 5 ft. Drainage and Utility Easements. The applicant may be required to apply for building permits for the two accessory structures.

(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 requested 10-inch variance is the minimum necessary to offset the natural elevation difference of up to 12 inches between my property and neighboring lots. This modest increase restores a reasonable level of privacy and safety consistent with what other properties in the same zoning classification already enjoy. Without this variance, the fence height measured from my side would be 6 feet-but due to the neighbors' higher ground, it would functionally stand at only about 5 feet in some areas. This reduced height would not adequately deter visual intrusion or protect against unwanted interactions, and thus the requested increase is proportionate to the hardship.

Staff response: **The applicant states the lower elevation of his parcel creates privacy and noise concerns and is the reason he needs the extra fence height. The applicant has not applied for a building permit for the fence.**

The applicant does not address the setback issues of the accessory structures. The applicant did say that the accessory structures were moved out of the 5 ft. Drainage and Utility Easements. The applicant may be required to apply for building permits for the two accessory structures.

These are the minimum variances' required to legitimize the existing fence and the two existing accessory structures.

(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: Yes. Granting this variance is in harmony with the general intent and purpose of the zoning code, which emphasizes flexibility, conflict reduction, and the protection of property rights. The variance addresses specific elevation challenges, improves privacy, and provides a modest safety buffer in response to documented disturbances and nearby commercial activity-without affecting the residential character of the area or harming public safety. The variance does not impair traffic visibility or negatively impact neighboring properties. Instead, it supports the peaceful enjoyment and reasonable use of residential land, fully aligned with the spirit of the code.

Staff response: **The applicant states the extra fence height will address privacy and noise concerns and will not impair traffic visibility or negatively impact neighboring properties. The applicant has not applied for a building permit for the fence.**

The applicant does not address the setback issues of the accessory structures. The applicant did say that the accessory structures were moved out of the 5 ft. Drainage and Utility Easements. The applicant may be required to apply for building permits for the two accessory structures.