



BOARD OF COUNTY COMMISSIONERS

**Planning and Development**

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321) 633-2070 Phone

**VARIANCE HARDSHIP WORKSHEET**

Is the variance request due to a Code Enforcement action: ☐ Yes ☒ No

If yes, please indicate the case number and the name of the contractor:

Case Number: \_\_\_\_\_

Contractor: N/A

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 structure was built on the property in 1973, during that time it is possible, and likely, that Brevard County setback requirements were different or that the surveying methods used at the time indicated conformity where a recent survey indicates a minor encroachment. Despite there being no apparent record of permits, there is also no historical record of any code enforcement violation for failure to obtain permits.

2. That the special conditions and circumstances do not result from the actions of the applicant.

Applicant Response:

Clearlake Commercial Center Inc., purchased the property in 1984 with the existing structures in place. The applicant had not needed to pull permits or survey the property since then and was unaware of the minor encroachments which would have arisen from the prior owner's construction of the 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:

The applicant is asking for a variance for a minor encroachment. Several neighboring properties have structures directly on or proximate to the lot lines, well-within the setbacks set by the County. Granting the variance is thus not a special privilege to the owner.

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:

Literal enforcement would deprive the owner rights commonly enjoyed by other properties such as, the right to rely on four decades of apparent nonconforming use, enjoyment of structures in place for over four decades, the right to convey the property free of clouded title due to encroachments, and the right to use the building as it was originally intended.

A denial would cause a hardship to the owner. Compliance would require the Owner to demolish the building or to demolish a portion of the structure, exposing an exterior wall. Removal of the building would require additional funds, and time to re-engineer, replace structure beams to meet the original variance setback. The Owner will further have a loss of property value due to the removal of the structure or a portion thereof. This structure has been in place for over 40 years and would have a major impact on the base footprint of the building and structural integrity causing further hardship on the owner.

The building identified as 300 Clearlake Road, Cocoa, FL 32922 is encroaching approximately 2.24' into the setback requirements.

The building identified as 310 Clearlake Road, Cocoa, FL 32922 is encroaching approximately 0.22' into the setback requirements.

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 encroachment for Building 300 is 2.24 feet. Taking the survey's accuracy tolerance into consideration, a variance for 3 feet would be the minimum variance required to make possible the reasonable use of this land, building or structure.

The encroachment for Building 310 is 0.22 feet. Taking the survey's accuracy tolerance into consideration, a variance for 1 foot would be the minimum variance required to make possible the reasonable use of this land, building or structure.


6. That the granting of the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Applicant Response:

The structures have been in existence for more than 40 years without complaint, code enforcement violation, or harm to the neighbors or the public at large. There is no foreseeable harm or injury that could rise from the approval of a minor variance from the setback.

I fully 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 a Planning and Development representative. I am fully aware it is my responsibility to prove complete compliance with the aforementioned criteria.

  
\_\_\_\_\_  
Signature of Applicant

  
\_\_\_\_\_  
Signature of Planner