

Minutes Board of Adjustment

1:30 PM

Call To Order 1:30 p.m.

Approval of Minutes - July 20, 2022

Motion by Jack Higgins, seconded by Kevin McCann, to approve the July 20, 2022, minutes. The motion passed unanimously.

Result: APPROVED

Mover: Jack Higgins

Secunder: Kevin McCann

H. Public Hearings

- H.1.** Indian River Colony Club, Inc. (Michael Allen) requests variances from the eastern and southern property lines, in a PUD zoning classification. (22V00012) (Tax Account 2600723) (District 4)

Michael Allen, Allen Engineering, 106 Dixie Lane, Cocoa Beach, stated the members of the Indian River Colony Club (IRCC) have asked for some improvements to the community facility. He said he was tasked by IRCC to come up with a concept plan that maintains the existing facilities and adds a few things, including a maintenance drive behind the banquet facility for access to the air handler units on top of the building. They also would like to expand the pavilion and add some pickleball courts. He said in order to make the concept plant work they need variances to the 25-foot setback from the property lines to the east and south.

Dale Rhodes asked if Mr. Allen has read the letters that have been submitted. Mr. Allen replied yes, and he knows pickleball can be a noisy sport, but there are ways to mitigate that by using a softer ball, a clay court, and vegetation. He explained the shuffleboard and bocce ball courts already exist and are proposed to be relocated, and there are three tennis courts and a small pavilion. He said they are proposing to add three pickleball courts, enlarge the pavilion area, relocate everything in that area, add some parking, and add a 15-foot drive to access the back of the building.

Mr. Rhodes asked if the pickleball courts will extend beyond the boundaries of the current tennis courts. Mr. Allen replied no, they will not. Mr. Rhodes asked if the courts would be in the existing boundaries. Mr. Allen replied, yes, the relocation of the tennis courts are causing the request for the variances. Mr. Rhodes asked the location of the tennis courts. Mr. Allen replied there are two tennis courts in the northern area, and the third court is where the shuffleboard courts are. He noted they are currently setback a little over 25 feet from the property line. Mr. Rhodes asked if they will move closer to the property line. Mr. Allen replied yes, they will shift to the property line in order to fit the 15-foot maintenance drive behind the building. Mr. Rhodes asked how the building is serviced now. Mr. Allen stated it is serviced with a very expensive extended crane.

Kevin McCann asked if there is any other location on the property that the pickleball courts could be located. Mr. Allen replied there is one area that is currently an RV parking facility, but the members felt it is too far away from the clubhouse amenities. Mr. McCann said there are courts with lines painted on them in a way that they can be used for both tennis and pickleball, and asked if that was considered. Mr. Allen replied the board of directors asked that they be separate so the tennis players can play tennis while the pickleball players play pickleball. Mr.

McCann asked if they could remove one of the tennis courts and put two pickleball courts in its place. Mr. Allen stated it was talked about, but the board of directors want to maintain three courts each.

Jack Higgins stated according to the letters it seems the biggest problem with pickleball is the noise because it is above 72 decibels. He said pickleball is a noisy sport, but part of the problem is that IRCC is an elderly community and younger people are moving in.

Public comment:

Don Glenn, 1521 Valley Forge Drive, Viera, stated he lives across the street from the southern property line in question, and he is vehemently opposed to the variance requests. He said according to the layout, the pickleball courts will be across the street from the pool, and they will be closer to his house than the current bocce ball and shuffleboard courts. He stated quality of life will be diminished as well as property values. He said there are three tennis courts and the residents would like to keep all three. He noted there could also be potential legal action because many new residents were not informed of the proposed changes. He said he has been told by management that if the variances are approved they will conduct an impact study, but that should have been done before they requested the variances.

Mr. Rhodes asked if Mr. Glenn lives across the street from the clubhouse. Mr. Glenn replied yes, and he gets a fair amount of noise from the trucks that make deliveries to the clubhouse and the golf equipment, but he can go inside for a few minutes and not hear it. He stated with pickleball, he will be denied the ability to sit on his porch while people are playing pickleball.

Mike Ogden, 1513 Valley Forge Drive, Viera, stated he lives directly opposite of where the courts will be located, and he is opposed because he will lose his right to quiet enjoyment, it will depreciate property values, and it will make it harder to sell a home. He said pickleball is the fastest growing sport in the United States, and it's also the fastest growing source of complaints amongst neighbors, creating conflict and lawsuits between neighbors and HOA's. The IRCC has said the pickleball courts will be a direct benefit to surrounding parcels, but it is harmful in terms of enjoyment, and views will be greatly diminished. He stated the County has codes that are in place to protect residents and he hopes the variance requests are denied.

James Dixon, 1112 Ironsides Avenue, Viera, stated his house is across from the existing tennis court, and his biggest concern is noise. He is opposed to the movement of the existing courts 10 feet closer because of the noise level of all of the sports, including pickleball.

Ralph Walters, 1146 Ironsides Avenue, Viera, stated if the variances are approved, his home will be directly behind the extension of the tennis courts, all the way to the berm of the canal. He said it is 15 steps from his back door to the tennis courts, and if the variances are approved it will be closer than 15 steps, and he will walk into a chain link fence that has a wrap-around black curtain that hangs from top to bottom. He said the courts will take away 50% of the view he has from his backyard. He said if the courts are extended to the north they will cover up an area that is less than one-quarter of an acre, but has habitat such as wood storks, sandhill cranes, rabbits, and turtles. He stated the berm is a couple of feet above where the tennis courts are currently located, and in the last 25 years the canal has come up to the bank once during a tropical storm, and once during a hurricane. If the ground has to be leveled in order to move the tennis courts back to the berm, the berm also needs to be lowered in order to have a level piece of ground. The berm is the only protection from water overflowing in the canal.

Nancy Elcox, 1312 Continental Avenue, Viera, stated she has played in a tennis tournament

when there was pickleball being played nearby and it is very disruptive. She said there are other areas for pickleball, and it doesn't need to be next to the tennis courts. She said the clubhouse already has a pool, shuffleboard, bocce ball and three tennis courts, and she is opposed to pickleball next to the tennis courts.

Mr. Higgins asked if there is there anything in the IRCC rules, or if anything has been discussed or voted on by the board of directors.

John Robinson, 2710 S. Courtenay Parkway, Merritt Island, stated he is the General Manager at IRCC, and the HOA documents specifically say what the community has a right to vote on, which would be if a project was going to be over \$2 million, but other than that, the board has the ability to bring in other amenities as long as they are under \$2 million.

Mr. Higgins asked if the community is aware of that rule. Mr. Robinson replied yes, the deed restrictions and bylaws are posted online and available.

Mr. Rhodes stated it was mentioned earlier that not all of the residents knew this project was proposed, and asked if notices were sent to the residents. Mr. Robinson replied meetings were held, it was in the weekly newsletter, and it has been discussed it at quarterly meetings.

Jeffrey Ball advised the board to formally appoint Dale Rhodes as the acting Chair for the meeting.

The board voted unanimously to appoint Dale Rhodes as acting Chair for the duration of the meeting.

Mr. Allen stated it appears pickleball and the associated noise is the main concern, but he would like the board to at least consider the variance on the east side to allow the tennis courts to be moved so a maintenance drive can be added, with the understanding that pickleball is not part of the project.

Paul Body stated the pickleball courts are not into the setbacks. Mr. Allen noted the majority of the complaints are about the noise from pickleball.

Mr. Higgins asked if the board can put that into a motion. Mr. Body stated the board can add a condition that pickleball is prohibited.

Mr. Allen asked if it would better to table the requests and come back to the board with a new concept drawing. Mr. Rhodes asked what the two variances are regarding. Mr. Allen replied they are for the setbacks for the tennis courts. Mr. Rhodes stated it is Mr. Allen's decision to request tabling. The board is dealing with the variances to allow the tennis courts to be moved, but because of the public comments, the board could stipulate the variances are granted provided pickleball courts aren't built.

Mr. Higgins suggested approving the variances without pickleball. The applicant only wants the access for maintenance reasons. Mr. Allen stated it would require the tennis courts to shift, which would be an impact to some residents.

Mr. Rhodes asked if the demographics of IRCC has changed in recent years in regards to the ages of the residents. Mr. Robinson replied, slightly, yes.

Mr. Ball stated if the board were to approve the variances, it's not so much to allow the pickleball courts or the tennis courts, it's any recreational use that would be allowed, to move

closer, unless the board puts a condition on the variance to say something is prohibited. If the board denies the variances, they can still have pickleball courts if they meet the 25-foot setback.

Mr. Rhodes asked if they could have pickleball courts if they don't move the tennis courts. Mr. Body replied as long as they meet the setbacks after moving everything around, they can still have pickleball courts.

Motion by Jack Higgins, seconded by Kevin McCann, to deny the requested variances.

Mr. McCann stated his biggest concern is not the pickleball courts because they can be put there now as long as they meet the setbacks, and they can also convert tennis courts to be pickleball courts. He said his biggest concern is lots 1 - 4 on the east side of the property, where the tennis courts are being pushed back 10 feet closer to those homes with very narrow backyards.

Mr. Rhodes stated the second variance request is a 60% deviation from the code, and there is a reason that code exists, it's there to protect residents around a specific property, and eliminating 60% of that protection and buffer could be a problem.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for denying the variances.

Mr. Rhodes called for a vote on the motion as stated and it passed unanimously.

Result: DENIED

Mover: Jack Higgins

Secunder: Kevin McCann

H.2. Robert L. and Theresa A. Sheck (Scott Herber) request four variances for docks in a PUD zoning classification. (22V00013) (Tax Account 2606891) (District 4)

Scott Herber, 351 South Lakeside Drive, Satellite Beach, stated the first variance request for the 5-foot projection is to bring it into compliance with the current code due to the fact that the structure was there prior to the regulation changes, so it is grandfathered-in. He said as for the other variances, the owners would like to be able to put roof over the existing dock, and also to have a finger pier to access the other side of the boat. The finger pier will be between the mangroves and the existing structure, so it will not protrude into the water.

Paul Body stated in order for the dock to be grandfathered, it would have had to have met the code before the code change, so it is not nonconforming to the projection.

Mr. Herber stated it was his understanding that it had already been permitted. He further stated there are letters of support from the community that indicate they would like to see a roof added because it will beautify the property.

Kevin McCann asked if the two existing docks were constructed prior to the current property owners. Mr. Herber replied the second dock was constructed by the current owners and had a permit. The only dock they want to add to is the main dock on the Grand Canal, which has a smaller vessel. The finger pier will be added to wrap around the boat so it will be easy to maintain the boat.

Public comment.

Robert Sheck, 256 Lanternback Island Drive, Satellite Beach, subject property owner, stated he is a licensed boat captain with 25 years' experience navigating the intracoastal waterway and

canals in Brevard County. He said he tried to put his larger boat on the east dock, where he is requesting the variance for the roof, but it would have stuck out far into an already narrow canal and it was dangerous, so he placed it on the north side of the property to keep it out of the way of boaters. He stated he built the finger dock when he moved into the house and he had a permit for it. The east side dock that he wants to put a roof on was there when he bought the house six years ago.

Motion by Kevin McCann, seconded by Jack Higgins, to approve the variances as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Mr. Rhodes called for a vote on the motion as stated and it passed unanimously.

Result: APPROVED

Mover: Kevin McCann

Secunder: Jack Higgins

H.3. Daniel Dee and Brandi R. Chavez request three variances for an accessory structure and minimum lot size in an AU zoning classification. (22V00020) (Tax Account 2403668) (District 1)

Dan Chavez, 5041 Palmetto Avenue, Cocoa, stated he purchased the property in February 2022, which has an existing pole barn that is enclosed on three sides and he would like to enclose the rear and add electricity. He said when he applied for the permit he found out it was too close to the lot lines. He said he bought the property knowing it had AU zoning, so that he can have chickens or a goat in the future, and changing that classification would deny him the right to have an agricultural business, such as growing plants. He stated he bought the home with a pre-existing issue that wasn't identified by any permitting activity, and when he applied for permits, all of these issues came up. He said he's been without a garage for almost six months to store anything in, such as a tractor.

Jack Higgins stated he visited the property and met the property owner, and he doesn't see a problem with the requested variances. He noted the property next door has a shed that is against the fence.

Kevin McCann stated the property is currently zoned AU, but it is only one acre, which is why he needs the variance to the lot size.

Mr. Chavez stated when he applied for the permits, the Planning and Development Department identified that it didn't meet the current standard, so they want to change it to what meets the current standard. He said that is not fair to him because not everybody is going to apply for permits at the same time. He asked if it is the intent of the board to rezone everyone in the area that has AU zoning on one-acre lots.

Mr. Rhodes stated unless someone rezones to residential, they would need to get a variance in order to remain agricultural.

Mr. Higgins noted the applicant is only requesting to improve the existing building, he's not asking to do anything else. Mr. Chavez clarified he is not asking to be rezoned, the Planning and Development Department is requesting the rezoning. Mr. Rhodes noted it is not a rezoning, it's a variance to the lot size.

Public comment:

Julie Manahan, 5100 Avocado Avenue, Cocoa, stated she and her mother have been in the area for 40 years and as far as she understands, Mr. Chavez is not trying to change his lot size. She said whomever built the garage built it crooked, and the only thing he wants to do is enclose it.

Jeffrey Ball stated AU is an agricultural zoning classification that requires a minimum of 2.5 acres, and the subject property is one acre so it does not meet the minimum lot size for AU zoning.

Mr. Rhodes stated the current zoning is AU, it doesn't meet the AU requirements, so he needs a variance to the size of the property so he can remain AU. Otherwise, he would have to go through the rezoning process, which is not what the board is doing today.

Motion by Jack Higgins, seconded by Kevin McCann, to approve the variances as depicted on the survey provided by the applicant.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variance.

Mr. Rhodes called for a vote on the motion as stated and it passed unanimously.

Result: APPROVED

Mover: Jack Higgins

Secunder: Kevin McCann

H.4. Shawn M. Beard and Dawn M. Ostovich request three variances for a boat dock in an RU-2-15 zoning classification. (22V00024) (Tax Account 2606765) (District 4)

Davin Erickson, 1246 St. George Road, Merritt Island, representing the applicants, stated they are applying for a variance to reduce the setbacks and exceed the projections into the waterway. He said when they first applied for a seawall permit, they wanted to make sure a boat lift would fit, but with the 7.5-foot setbacks that come in diagonally, they would not be able to fit a boat lift. He stated he had several meetings with Public Works, Zoning, and Natural Resources, and the plan he came up with was that because this is a natural body of water and not a manmade canal, it sits in a different zoning, according to Natural Resources. He said his plan on how to attack the erosion on both sides was approved by the County and everybody seemed fine with it, but the neighbor at 453 Red Sail Way brought opposition to Natural Resources and flagged everything. According to the Public Works code, you are not allowed to exceed more than 4 feet from your property line, but if looking at the property marker to the east side, his clients are inland, and where they wanted the new wall exceeded the 4 feet. He said his original plan was to cut across from the property line to meet the 10-foot setback because if it's a natural body of water they can come inland, but it was considered dredging, so to avoid any complications and litigation, he and Natural Resources decided to just run it on the backside of the existing revetment, and that created an issue with having a boat lift. He said his clients want to bring everything up because everybody to the east is all rock revetment, everybody to the west is seawalls, and the way the property line zigzags, they have a hardship because they are not able to achieve what everybody else has. He said if the seawall was built the way the County allowed, the boat lift would fit fine, but the neighbor's problem is that it is blocking their view, but they still have access from their home for the view. His clients do not want to block anyone's view, they just want the same rights that all of the other homeowners have. He said a misconception is that he is going 30 feet out from the new seawall, but they

had to get an as-built survey, which was approved by the Building Department and Natural Resources. He noted they also took coquina and did a revetment on both corners to avoid any erosion. He said the proposed plan shows only 22 feet on one side and 25 feet from the seawall, but they are asking for 35 feet from the property lines.

Kevin McCann asked if the seawall is built further out into the water than the property line. Mr. Erickson replied the as-built survey and the permit he received from Natural Resources specifically says, "new seawall to be placed at the top of the rock revetment". He said he took out all of the rock and gave it to the neighbor to the southwest and they re-did their entire wall. His clients' wall wasn't moved forward any more than what was allowed per the permit, which said the new seawall is to be placed at the top of the rock revetment. He stated his clients would like a finger pier because the boat lift is not intended to lift people, and the finger pier will stay within the property line by 2.5 feet and only go out 25 feet from the seawall, which is no more than 35 feet from the property line.

Mr. McCann noted the seawall is further out than the property line and that's why they are only asking for 30 feet, but they really only need 25 feet from the seawall.

Paul Body stated the most they can project into the water is 30 feet, and that is measured from the property line. He's measuring 35 feet from the property line, but the maximum he's projecting off of the seawall is 25 feet.

Jack Higgins asked why the lift is limited on how much weight it can lift. Mr. Erickson replied there are many sizes of boat lifts, their boat is only 18-feet, and the boat lift is a 10,000 pound lift. He said for liability reasons, he has to say people should not be on the boat while it is being lifted.

Mr. Rhodes asked if the dock on the property to the southwest is on the property line. Mr. Erickson replied it was, but the owner removed it because he had erosion under the dock and there was concrete blocks, cinder blocks, and poured concrete. He stated his clients stayed to the east of that, and filled it with concrete and added rock revetment to shore up the neighbor, which is different than what the neighbor is saying they did, but he has pictures that he didn't submit because he didn't know the argument would be the seawall integrity. Mr. Rhodes asked if the southwest neighbor would be able to have a dock or a lift if the board approved the variances for Mr. Erickson's clients. Mr. Erickson replied the neighbor will be able to get a boat lift straight in. He said he doesn't know how their property lines are, and they might have to apply for variances similar to what his clients are doing.

Mr. Body stated the property to the southwest has the same problem because it is pie-shaped and they might have to come to the board with a similar request.

Mr. Rhodes asked if Mr. Erickson could build a walkway on one side and not the other. Mr. Erickson replied yes, and he can shrink it to 11 feet if needed. Mr. Rhodes asked if that will still allow his clients to do what they want. Mr. Erickson replied yes.

Mr. Rhodes stated a walkway on the west side is the only place he sees that might be a problem if the neighbor decides he wants to do something.

Mr. Body noted there will still be a structure going out 2 feet from the property line extension. Mr. Rhodes asked if the walkway is inside the structure. Mr. Body replied the walkway will be 2 feet from it, there will be poles 2 feet from it.

Mr. McCann asked Mr. Erickson about the structure possibly impacting the neighbors' view. Mr. Erickson replied that is what the neighbors claim. There is a 15-foot setback for a fence from the water's edge back that has to be 4 feet high and the rest of it can be 6 feet high. With that 6-foot line, it still impedes, and they are at a higher elevation, so they will be able to see over the boat. He said it is a matter of interpretation.

Mr. McCann stated looking at the house to the left, it looks like Mr. Erickson is going to extend further into the view of that house. Mr. Erickson replied where the seawall is now, he's only going out 22 feet on that corner.

Mr. McCann asked, if the neighbor wants to do the same thing, would they have room to do that. Mr. Erickson stated they might have to go through the variance process. Mr. McCann asked if they would be able to navigate a boat in there. Mr. Erickson replied yes, because there is nothing on the side of 457 Red Sail Way, and they are able to have theirs as long as the boat comes in straight forward.

Public comment:

Dawn Ostovich, 449 Red Sail Way, Satellite Beach, subject property owner, stated previously there was a boat slip and a dock on the property that they had to remove in order to put in the new seawall, and that total square footage of the boat slip and dock was 750 square feet and it did not interfere with the neighbor's property to the southwest. She said she her boat came in and out of that slip every weekend and there was no interference. The neighbor to the southwest had a boat slip, but removed everything except the pylons, so both sides were pulling boats in and out and there was never an issue. She said the new boat slip will be less than 300 square feet. She said she is not asking for anything out of the ordinary, and she doesn't think it is unreasonable.

Curt Chandler, 492 Jolly Roger Drive, Satellite Beach, stated he owns 453 Red Sail Way, and his parents live there, it is to the west of the subject property. He said his property has a very small waterfront, at 30 feet. He said it is important that his property line extended straight on either side, giving a wider view of the waterfront. He said the subject property owners first got a permit on the left side, the point that is between his property and the subject property, and it's a witness point that was 10.25 feet off of the property corner with the shoreline that was represented as the property line to the homeowner's association, and represented as the property corner to the contractor and the County. He said he met with the contractor to ask about his 10.5 feet that is going to fall into the water, and asked how he was going to protect it. The contractor's first response was that it is his clients' property and they can do what they want, but subsequently he told him not to worry, that he would take care of it. He said the contractor threw some rock up there, but it didn't stop the erosion. He said he felt that was a problem, so he brought it to the attention of LeeAnn McCullough from Natural Resources who gave the approval. He said when he pointed out that it was a witness point 10.25 feet off of the property she immediately wrote a letter of apology and retracted the permit only to go to a revised permit. He said the permit was granted with the demand that the new seawall be placed at top of rock revetment, and the contractor said he put it inland and they most certainly did, they put it inland of that revetment, the new line was on the inside of the revetment; however, the County's permit demanded it be at the top, but if you look closely at the drawing and where the new wall is proposed, then look at this, which is the as-built drawing that they submitted with the variances, the new seawall is moved in even further.

Mr. Rhodes stated the board is not dealing with the seawall, it is dealing with the dock, and that is where Mr. Chandler needs to focus.

Mr. Chandler stated the reason he brought up the wall is because they've changed the angle of the wall so that it points even more toward his property and had they left the straight line that the County plat had, it would be different. He said he does not believe they followed the permit for building the wall, so he doesn't believe they will follow a variance. The shoreline was moved in. He said his mom enjoys the view from the kitchen sink and it is important to her, and if the variances are approved, his mother's view from her dream house will be reduced. He said he does not believe the subject property owners have followed the permit rules; the wall was not built at the top; the recent seawall construction created erosion problems on both sides; and they talk about the existing dock, but it was not a lift, which is much more vertical, the existing dock they mention in the worksheet doesn't exist, and that's disingenuous because when they put in the wall and changed the angle and moved the wall inland they removed all of that, so it does not exist today. He said the real hardship will be the reduction of view that his mother has from the kitchen sink, and granting the variances will decrease the value of his property.

Jack Higgins stated compared to what it was, it looks like the new seawall is an improvement. He said he understands Mr. Chandler's feelings about the view, but the board also has to understand the people on the other side and what they want to do.

Mr. Chandler stated it's an improvement from an erosion of their property; however, the angle and placement of the wall created erosion on his property.

Mr. Higgins asked Mr. Chandler if his wall is concrete. Mr. Chandler replied, based on the erosion that moving the wall inland created, yes, he paid a contractor \$40,000 to put in a wall to shore up his property that was exposed.

Mr. McCann asked Mr. Chandler if there a dock on his property. Mr. Chandler replied no, for similar reasons, he had to put up a wall to shore up the erosion problem; the dock that was there was dilapidated and he currently does not have plans for a dock.

Mr. McCann asked, if he ever wants to have a dock similar to the neighbors, does he think there is room for one, and if there is room for both property owners to navigate boats into that area.

Mr. Chandler replied, the way their property lines come in at a sharp angle, he doesn't think so. The way they've angled theirs to come in straight as they are backing their boat out is going to cause a lot of backwash onto his property because they would be cutting across his property to dock their boat because of the angle. On the left side, the wall is in about 5 feet, and on the right side it is out about 5 feet, to create a straight line.

Shawn Beard, 449 Red Sail Way, Satellite Beach, subject property owner, stated he purchased the home in December 2019 after it had been abandoned for almost two years. [Mr. Beard submitted photos to the board. The photos can be found in file 22V00024, located in the Planning and Development Department]. He said they built the wall to improve the property and to stabilize the coquina wall that was there. After being abandoned for almost two years, the coquina wall was completely covered up. He said Mr. Chandler may not realize that the coquina was approximately 2 feet thick across the front and it covered the grass. He said they followed the rules, the seawall was approved, and they moved on to the boat slip. He said he would be happy to negotiate if it gets his boat on the water. To not allow him to do this, and with tearing down the previous dock, the financial loss on his property value will be close to 10% to 15%, which on the water is close to six figures, which is substantial. He said as for the erosion, what he had done shored up both sides more than they were before. Since Mr. Chandler has started his seawall he's removed a lot of the rock that was on the side that he did to protect his side.

He said if Mr. Chandler wants a boat dock, he won't challenge his variance if he wants a boat slip because he's capable of doing it within the property lines. He concluded by saying he's asking for the minimum that he can do to put his boat in a slip.

Mr. McCann asked, prior to purchasing the house, did Mr. Beard expect an issue with the size and configuration of the property in order to put in a boat slip or boat lift at some point. Mr. Beard replied he knew there were restrictions, and he wasn't sure he could repair the one that was existing, because the back pylons were on the property line.

Mr. McCann asked if there will be a roof on the dock. Mr. Beard replied no, because he knew it was already hampering views and things like that because he talked to them previously.

Tamara Hunsuck, 481 Red Sail Way, Satellite Beach, stated she is the daughter of the Chandlers at 449 Red Sail Way and she is opposed, and she disagrees that the seawall is an improvement because there are gaps where the yard used to be, and it's not been that long.

Mr. Rhodes noted the board is not dealing with the seawall.

Ms. Hunsuck stated the subject property is too small for a big boat.

Donna Morris, 465 Red Sail Way, Satellite Beach, stated Mr. Chandler said the applicants didn't follow the rules, but if that is true the variances will not be approved. Everything will be inspected and if it doesn't pass inspection they will have to re-do it. She said when she looks at the waterway she doesn't see any evidence of erosion. She said the view is an issue because it is a beautiful view, but the old dock was 750 square feet, which was in the view, dilapidated and falling apart, and it is being replaced by a finger dock of 325 square feet, so she does not think the view will be greatly diminished.

Mr. Erickson stated he is just trying to get a boat within the property lines. He said the slip is parallel to each section to try to square it off.

Mr. Rhodes asked if they will pull the boat straight into the dock. Mr. Erickson replied they will pull in parallel. Mr. Rhodes stated it will be straighter than the old dock. Mr. Erickson stated yes, he always designs docks on canals straight.

Motion by Jack Higgins, seconded by Kevin McCann, to approve the three variances as depicted on the survey.

Mr. McCann stated although he seconded the motion, he's not sure he supports it. The property is unique, and pie shaped lots at the end of canals have always been an issue. He said Mr. Erickson's solution is probably the best solution to put forward and he doesn't disagree with that. He stated he doesn't like limiting peoples' use of their property, and they should be able to use their property as they see fit as long as they are within code, or within a reasonable variance from the code, unless it impacts the community or other neighbors. He said he is not convinced that approving the variances will negatively impact the neighbors. He stated for him to support the variances he would like the applicants to pursue the minimum variance needed, the minimum width needed on the dock, and to do that, maybe lose one of the finger piers on the side of the house next to the neighbors to the southwest. He said he's not sure that will satisfy them, but he thinks it's reasonable and would allow a few more feet of view from the house.

Mr. Erickson stated the only issue he would have is anything less than 2 feet, having two poles

next to each other undermine each other. There is a cantilevered system, but they only last about five years, so he tries to stay away from those and always use a 2-pole system.

Mr. Rhodes asked if he would still be able to put in the dock if the board denied the west variance. Mr. Erickson replied, not within the 7.5 feet, he would still have to be within that 7.5 feet. If he makes the boat lift 11 feet on center, on the slip, then 2 feet on the east side, that gives him 13 feet.

Mr. Rhodes stated the request is for a 5-foot variance from the 7.5-foot setback, so he's coming within 2.5 feet of the property line, and asked if there is a way to move that so he's within that 7.5 feet. Mr. Erickson replied yes, if the board can get him to the 0 property line on the east side. Mr. Rhodes stated the board can't do that because then the other neighbor will be impacted.

Mr. Erickson stated he will stay at the 2.5 feet and then that's 13 feet, he is asking for 16 feet wide, a minimum of 13 feet without the west side walkway. He said he can shrink the slip to 11 feet because the boat is only 18 feet long.

Mr. Rhodes asked what the west variance would need to be. Mr. Erickson replied if he's subtracting 3 feet, he would estimate 5 or 5.5 feet from the property line.

Mr. Rhodes stated the board could adjust the variance from the one side to 2.5 feet instead of 5.5 feet. Mr. Erickson stated he's asking for 2.5 feet on both sides right now.

Mr. Ball stated on the second variance, instead of being 5.5 feet it would be 5 feet.

Mr. Rhodes asked if the board can make that adjustment. Mr. Ball replied yes, as long as it's less than the variance that was requested. Mr. Rhodes stated the board can change it to 2.5 feet from the 7.5-foot setback. Mr. Body stated yes, it would be 2.5 feet from the 7.5-foot setback, and that would leave them 5 feet.

Mr. Rhodes stated that gives them another 5 feet that is not protruding into their area and it also provides more safety if someone wants a boat dock in the future. He asked if Mr. Erickson was agreeable to the change.

Mr. McCann stated Mr. Erickson would have to eliminate the finger pier on the west side. Mr. Erickson stated that would be fine as long as he can have one on the east side.

Mr. Rhodes stated the board is going to approve 2.5 feet instead of 5.5 feet, which means they will be further away than they were before, on the southwest side.

Mr. Higgins stated he would like to amend his earlier motion.

Motion by Jack Higgins, seconded by Kevin McCann, to approve Variances 1 & 3 as depicted on the survey provided by the applicant; and approved Variance 2 as 2.5 ft. from the required 7.5-ft. side (west) setback for a dock.

Dale Rhodes read aloud the six criteria for a hardship and explained the justifications for approving the variances, with a modification to the second variance request.

Mr. Rhodes called for a vote on the motion as stated and it passed unanimously.

Result: APPROVED AS AMENDED

Mover: Jack Higgins

Seconder: Kevin McCann

Public Comment

Adjournment

Pursuant to the Florida Rules of Appellate Procedure, any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment may, within thirty (30) days after the date the order is signed, apply to a court of competent jurisdiction for appropriate relief. Speakers must provide their names and addresses for the public record.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in the proceedings, please notify the Planning and Development Department no later than 48 hours prior to the meeting at (321) 633-2069.

Assisted listening system receivers are available for the hearing impaired and can be obtained from SCGTV staff at the meeting. We respectfully request that ALL ELECTRONIC ITEMS and CELL PHONE REMAIN OFF while the Planning and Zoning Board is in session. Thank You.

This meeting will be broadcast live on Space Coast Government Television (SCGTV) on Spectrum Cable Channel 499, Comcast (North Brevard) Cable Channel 51, and Comcast (South Brevard) Cable Channel 13 and AT&T U-verse Channel 99. SCGTV will also replay this meeting during the coming month on its 24-hour video server nights, weekends, and holidays. Check the SCGTV website for daily program updates at <http://www.brevardfl.gov>. The Agenda may be viewed at: <http://www.brevardfl.gov/Board Meetings>