



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, February 18, 2026
DATE: January 6, 2026

DISTRICT 4

(25V00094) Bradley D. and Cheryl L. Smith request two variances of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-3316(g)(1)(d) to allow 6.5 ft. from the required 15 ft. front setback for a flagpole; 2.) Section 62-3316(g)(1)(d) to allow 9.2 ft. from the required 15 ft. side (north) setback for a flagpole in an RU-1-11 (Single-Family Residential) zoning classification. This request represents the applicants' request to legitimize an existing flagpole. The applicants state they place the flagpole in 2006. They also state they placed it in this location to avoid well plumbing in the yard; also to avoid interference with overhead or underground utility powerlines; to avoid visual obstruction and to enhance community aesthetics. The first request equates to a 43% deviation of what the code allows. The second request equates to a 61% deviation of what the code allows. There are no variances approved to flagpole setback requirements in the immediate area. There is a code enforcement action (25CE-01502) 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 12/05/2025.

Is the request due to a Code Enforcement action? **Yes**

If Yes, indicate case number **25CE-01502**, and

Name of contractor: **Bradley D. Smith and Cheryl L. Smith (current homeowners)**

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: Without the requested variance, Brevard County Municipal Code Sec. 62-3316, g, specifies a 15' setback from a vacant lot (461 Kenneth lot #2) property line. The setback requirement would require relocation of the flagpole/lighting total of 9' 7" to right; placing it center of residence concrete driveway. Relocation would result in a permitted rerouting of driveway/ access to garage.

Staff response: **Based on staff analysis, the existing flagpole has been in the current location for over 15 years and did not meet the zoning setback requirements when built.**

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

Applicant response: The American flagpole was not placed in 2006 with intention to avoid compliance. The American flagpole was placed in 2006, in the current optimal location to: avoid well plumbing in residence yard; avoid interference with overhead or underground utility powerlines; also, to avoid visual obstruction and to enhance community aesthetics. The American flagpole has been a source of pride for almost 2 decades (19 years) in our neighboring community, especially elderly veterans; family veterans who have passed, also a monument of solidarity for our active Marine Corp family stationed OCONUS.

Staff response: **Applicants state the flagpole's location was to avoid interference with utilities and avoid visual obstruction.**

(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 the variance will not confer on the resident any special privilege as neighboring properties in the same RU-1-11 zoning area have flagpoles. The American flagpole poses no safety issues, line of sight obstruction, nor utility line interference.

Staff response: **Flag poles are permitted in the zoning classification with setback requirements.**

(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: Enforcement of the setback provision would present an emotional hardship for the residents and surrounding neighbors of the beautiful lighted eagle topped American Flag displayed for almost 2 decades. Financial hardship would be realized as residents are senior citizens and retired on a fixed income, so relocating the flagpole by 9' 2" could include safety concerns, permit fees, plumbing, electrical, concrete contractor costs

Staff response: **The applicants state, moving the flagpole would require avoiding interference with utilities.**

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

Applicant response: Minimum variance requested is 9' 2".

Staff response: **The minimum variances required are 9.2 ft. from the required 15 ft. side (north) setback and 6.5 ft. from the required 15 ft. front setback.**

(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 granting of this variance will uphold the integrity of Brevard County Municipal Code Sec. 62-3316, g, by enhancing aesthetic attractiveness with the American Flag display as a manmade attribute. The flagpole location is not injurious nor obstructive to sight or utility lines and has been revered as a neighborhood monument for 19 years. Removal of this American flagpole will further degrade the neighborhood moral and the aesthetic attractiveness of the community

Staff response: **Based on staff analysis, the existing flagpole has been in the current location for over 15 years.**