



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 27, 2026

### DISTRICT 2

**(25V00091) The Edward Misleh Revocable Trust** (Edward Misleh) requests a variance of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-1331(5)(b) to allow 5.8 ft. from the required 15 ft. side setback in a GU (General Use) zoning classification. This request represents the applicants' request to build a 306 sq. ft. accessory structure (pergola). The applicant states the property's GU zoning requires larger setback requirement than other single-family zoning classification. The GU zoning is the original zoning classification for the parcel. The applicant also states the parcel is 0.68 acres in size and the GU zoning has a minimum size requirement today of 5 acres. This request equates to a 39% deviation to what the code allows. There are no variances approved to the accessory setback requirements 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 and provided by the applicant with a revision date of 11/26/2025.

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 lot is not consistent with current zoning regulations; the lot is zoned GU which requires at least 5 acres and our lot is 0.68. Rather than rezone at this time we would like to request a variance.

Staff response: **Based on staff analysis, the parcel is nonconforming to the GU zoning 5 acre requirement.**

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

Applicant response: The above special conditions and circumstances did not result from the actions of myself.

Staff response: **Based on staff analysis, the existing house was built in 2000 by a previous owner.**

(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 granting of the variance will not confer any special privilege.

Staff response: **Accessory structures are permitted in the GU zoning with required setbacks and size 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: Other similar properties of this size have smaller side yard setback that would be acceptable for this design.

Staff response: **There are other single-family zoning classifications that have less accessory 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 structure is designed to be the minimum footprint to cover the vehicle.

Staff response: **A wider accessory structure would encroach more into the setback requirement.**

(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 be in harmony with the general intent and purpose of this chapter and will not be injurious to the area involved or detrimental to the public welfare.

Staff response: **The applicant states, the accessory structure will not be injurious to the area involved or detrimental to the public welfare.**