
CITY OF MELBOURNE
MINUTES OF THE REGULAR MEETING OF
THE ZONING BOARD OF ADJUSTMENT
MELBOURNE CITY HALL COUNCIL CHAMBER
NOVEMBER 28, 2011 ♦ 6:30 P.M.



1. A regular meeting of the Board of Adjustment was held in the City Hall Council Chamber, this date. Chairman Peter Kostrzewa called the meeting to order at 6:30 p.m.

2. All present gave the Pledge of Allegiance to the Flag of the United States of America.

3. **Roll call:** The following members and officials were:

PRESENT:	Peter Kostrzewa	Chairman
	Brenda Burgener	Member
	Charles Jackson	Member
	Ed Kasold	Member
	Tom Herbert	Member
	Dennis Mannion	Alternate Member
	Haig John	Alternate Member (arrived 6:35 pm)

ABSENT:	James Taylor	Vice-Chairman
	Dale Young	Member

ALSO PRESENT:	Alison Dawley	Assistant City Attorney
	Cheryl Dean	Planning & Zoning Administrator
	Jeffrey Higgins	Planner
	Debra Cote	Recording Secretary

4. Chairman Kostrzewa introduced the Board members and City staff. He advised the audience that the meeting was scheduled to end at 10:00 p.m., unless continued by the Board, at its discretion. Unfinished business will be addressed at a meeting to be scheduled approximately two weeks from tonight. Presentations by the applicant should be limited to ten (10) minutes. Presentations or comments by interested parties should be limited to five (5) minutes. Chairman Kostrzewa reminded applicants that Board members were looking for a hardship in order to approve any variance request and five (5) votes are necessary to approve a variance, and four (4) to deny the request.

5. Requests for Dismissals, Postponements, or Withdrawals

None

6. **Approval of Minutes – October 31, 2011**

Moved (Kasold/Mannion) to approve the minutes of the October 31, 2011 meeting.

Motion carried unanimously.

NEW BUSINESS

7. **V-11-026**

CLINTON & GINGER TAYLOR / 2701 POND ST.

In an R-1A zoning district, the following variance is requested:

Variance of 2.5 ft. to allow a 5-ft side setback.

App. B, Art. V, Sec. 2 (D) Table 2A requires a 7.5-ft side setback.

Ginger and Clinton Taylor, 2701 Pond Street, Melbourne, FL, were sworn in, under oath, by Assistant City Attorney Alison Dawley.

Mr. Taylor said this home is in one of the older parts of south Melbourne and this home is actually a historic site built in the 1940's. He said the existing home was built with a 6.9 foot side setback. He would like to put an addition on the south side of his home.

Mr. Jeff Higgins said this property is located in an older, developed neighborhood. The house was built in 1956 and has 1362 square feet of living space. Most of the lots on this side of the block were platted at 66-feet wide. The house, as originally constructed within the platted lot, does not meet the current side yard setback requirement and the original house is not parallel to the lot lines. The house angles toward this one side yard property boundary and the current setback of the house along one side yard is 6.9 feet. The applicant is planning a residential addition for more living area. Continuing the residential addition building line along this same wall moves to within 5 feet of the side yard property line. The front, rear, and other side yard all meet required building setbacks. This request if granted is the minimum variance that will make possible the reasonable use of the residential expansion. The abutting property owner has written their approval of the variance request. Staff recommends Approval of V-11-026 as presented.

There were no disclosures.

Ms. Burgener asked if the correct address of the property was 2701 or 2705 Pond Street.

Attorney Dawley asked Mr. Taylor if he received written permission from the owner of the property to represent this variance.

After discussion, it was determined that Mr. Taylor was the owner of the property located at 2701 Pond Street and that Mr. Banks owned the property at 2705 Pond Street.

Mr. Jackson said that he can remember when these homes were built; the properties were not surveyed or measured off. He said at that time, the property and buildings were stepped off. He said this improvement would be a plus for the neighborhood.

Mr. Kasold said a variance was granted in 2006 for a detached garage. He asked if the garage was built.

Ms. Dean said yes, the variance was approved in August, 2006.

Mr. Taylor said the garage was built.

There was no public comment.

Mr. Higgins commented there was correspondence from Mrs. Rena Reese and Sammuell Banks at 2705 Pond Street supporting the variance.

Moved (Jackson/Kasold) to approve V-11-026 as presented.

A roll call vote was taken.

Motion carried unanimously.

8. V-11-027

CLIFFORD PEARSON / 3222 PECAN ST.

In an R-1A zoning district, the following variances are requested:

1. Variance of 24 sq. ft. to allow a 324 sq. ft. shed.
App. B, Art. VII, Sec. 1 (C) allows a 300 sq. ft. shed.
2. Variance of 3.5 ft. to allow a 1.5 ft. side setback.
App. B, Art. VII, Sec. 1 (G) (2) requires a 5 ft. side setback for an accessory structure.
3. Variance of 4 ft. to allow 6 ft. rear setback.
App. B, Art. VII, Sec. 1 (G) (13) requires a 10 ft. rear setback for an accessory structure.
4. Variance of 1 ft. to allow a 4 ft. structure separation.
App. B, Art. VII, Sec. 1 (H) requires a 5 ft. separation between structures.

Clifford Pearson, 561 Dream Avenue SE, Palm Bay, FL was sworn in, under oath, by Assistant City Attorney Alison Dawley.

Mr. Pearson said he would like to request four variances to put a 12-foot addition on his shed. He said when the shed was installed they followed the old fence line which gave him the 5-foot setback along the side. He said that when a real survey was done, it was found to be non-conforming with today's requirements.

Mr. Higgins said the applicant wishes to expand an existing storage shed on their residential property. Storage sheds are allowable accessory structures per the City Code. The original placement of the shed was built along the fence line and the fence does not follow the property line. The fence encroaches as far as 4-feet into the neighbor's property. The original shed was setback 5-feet from the fence line. The shed, originally constructed in 1989, has been setback 1.53 feet from the side yard and 7.35 feet from the rear yard since that time.

Mr. Higgins continued stating that the addition was started by covering an existing slab, creating the larger size (324 sq. ft.) and continues along the same angle as the original placement of the shed, encroaching into the rear setback along the rear property line where it is setback 7.35-feet on one end and 6.11-feet on the other end. The shed encroaches into the 5-foot side and 7.5-foot rear easements.

The applicant's need for storage has prompted the property owner to remedy the code problems. The applicant has successfully applied to abandon & vacate portions of the easements. With portions of these easements being abandoned & vacated the shed may remain intact in its current location. The utility companies' issuance of

approval for the A&V makes the shed location code compliant with respect to the easements. The rear yard area and easements limit the ability to relocate/resize the shed. The house and shed must have separation by code. The original shed and slab are fixed in the ground. Placing the shed in another location of the rear yard requires the shed length to be altered to meet the structure separation requirements and would not make use of the existing concrete slab. Easements along both sides and the rear restrict the accessory structures placement. There is also an existing tree in the rear yard that would have to be removed to place the shed in another part of the rear yard. Staff recommends Approval of V-11-027 as presented.

There were no disclosures.

Mr. Kasold asked staff for clarification that the addition is to an existing slab on the existing shed and not an additional shed.

Mr. Higgins said this is correct.

There was no public comment.

Mr. Mannion questioned the easements.

Mr. Higgins said these were 7.5 foot utility easements and Mr. Pearson has been successful in having portions of the easements vacated and abandoned, allowing the shed to remain in its existing location.

Ms. Burgener asked if there would be sanitary facilities in the shed.

Mr. Pearson said no.

There was no correspondence.

Moved (Burgener/Jackson) to approve V-11-027 as presented.

A roll call vote was taken.

Motion carried unanimously.

9. **V-11-028** **PANTELIS MARKOGIANNAKIS – 2483 PINEAPPLE AVE.**
In an R-2 (6) zoning district, the following variances are requested:
1. Variance of 10 ft. to allow a 10 ft. front setback.
App. B, Art. V, Sec. 2, (D) Table 2A requires a 20 ft. setback.
 2. Variance of 15 ft. to allow 20 ft. setback from the mean high water line.
App. B, Art. V, Sec. 2, Table 2A requires a 35 ft. setback from the mean high water line.

Ms. Dean asked to address the Board. She said this is a new variance request. She said the plans have changed to reflect the concerns of the Board of Adjustment. Mr. Markogiannakis went to City Council and was successful in obtaining a waiver for the

six-month waiting period. Ms. Dean said this lot is being developed as a multi-generational property with two separate homes. The lot is buildable, but it does have an inwardly curve along the shoreline, creating the need for the variance.

Attorney Dawley said from time to time a property is so unique that it becomes necessary to consider other variances in the area and if they can be used to support a variance request. Every piece of property is unique and that fact limits the application of one variance into another variance request. She said however, if the Board is not consistent in applying its variables, the variance decision can be challenged as being arbitrary. She said it is not that another variance is inapplicable; it is just that the factors in another variance are not always the same. She said that when the Board does apply variables, the Board should be consistent with their reasoning. Otherwise, she said this could be challenged as being arbitrary. Attorney Dawley said the variance granted in 2004, to the property to the north, was very similar to this variance request and the minutes state that the Board granted the variance due to the unique shape of the property. She said that property is also part of that conclave shoreline. She said, in that way, the variance to the north gives some kind of insight as to how the factors might apply. She said the Board was provided the minutes from the meeting when the variance to the north was approved. She said this property is shaped even more severely than the property to the north. On that property they were able to turn the house to follow the shape of the river line, but that is not possible with Mr. Markogiannakis's property because he is even more severely within that conclave. He has to follow the property line.

Attorney Dawley said that also instructive on the property to the north, relevant to the front setback, is the safety of parking. The idea was that the property to the north, recognizing that the property itself created a hardship, was that the safety issue be recognized and to get relief from the setback requirements by keeping the garage further back on the property allowing the cars to turn around before they exit. She asked the Board to be aware that the house on the property to the north is not the house the variance is approved for. The people have not started construction. The house that will be allowed on that lot is where the outline is shown. That property is further out than the subject property tonight. Attorney Dawley told the Board that Mr. Markogiannakis's property is more extreme, creating more of a hardship. She said in an effort to avoid confusion, it would be helpful if the Board looked at this as two different houses and first analyze what the front and rear setbacks are for what will be the daughters house on the north side and then the front and rear setbacks for what will be Mr. Markogiannakis's property on the south end of the property. She said the burden is on the petitioner to show hardship and she would submit that the mere shape of the lot is establishing his hardship. Once that hardship is established, the Board should look at other facts to support a denial in light of the fact that there is a hardship.

Mr. Mannion asked about other variances in the neighborhood.

Attorney Dawley said she did not bring the minutes on all the variances, but she referenced another property that was given a front and rear setback. Another property received a side setback variance. Others, she was not aware of the reasons.

Ms. Dean said if this lot is looked at as two houses, you can see each of the houses on the plan. It is a father in one house and his daughter in the other and considered as multi-generational living, which is allowed by Code. The house to the north, on the narrow part of the lot, is where the property has the least amount of room (63 feet). If the actual setbacks were adhered to, one would have an 8-foot deep building from front to back. She said in the rear, the main purpose for a 35-foot setback from water is about protecting the view and protecting the view of the adjacent property owners. She discussed how the other adjacent properties jettied further out into the water than this property and said the 35-foot setback does not help the daughter's house because of the curvature of the shoreline. The front setback has been revised to request a variance of 5-feet. She said that backing out was a concern previously, and the applicant has re-designed the plan and reduced his requests to address the back-out parking concerns of the Board and based upon these facts, staff recommends approval of these variances.

David Bogenrief, 621 South Magnolia Drive, Melbourne, Florida was sworn in,

Ms. Burgener asked if the garage would be as shown in the plans. She said the variance to the north is instructive to this case to help analyze the reason for the front and rear setback.

Ms. Dean said the garage would be as shown. She said the applicant hired a professional to design a plan that would address the Board's concerns regarding the parking issue. She said the building has been setback another 5-feet in the rear and now has a 15-foot setback. She said the property to the south is also non-conforming. Ms. Dean said with the new plan, the applicant has attempted to address all the Board's concerns.

David Bogenrief, 621 S. Magnolia Drive, was sworn in, under oath, by Assistant City Attorney Alison Dawley.

Mr. Bogenrief said that without a variance, the lot is unbuildable. What they are presenting is in harmony with what was built to the north and the building has been specially engineered, due to the contours of the land, to be architecturally pleasing and will improve the neighborhood. He said the homes would fit nicely there in the cove.

Attorney Dawley asked Mr. Bogenrief what qualified him to represent that the building is specially engineered.

Mr. Bogenrief said he has been a Professional Engineer for 20 years in the City of Melbourne.

Chairman Kostrzewa asked for disclosures.

Mr. Kasold said he disclosed previously and the only thing he noticed was the steep drop on the property.

Mr. Herbert said he drives by the property frequently and most recently two weeks ago.

Attorney Dawley reminded the Board that this is a new application and the Board must stay within the factors it is allowed to consider. She said the Board cannot venture into engineering issues or structural integrity, etc.

There were no further disclosures.

Mr. Kasold asked if the 35-foot setback along the water was in place to help ease erosion and now the Board is being told it is for the view.

Ms. Dean said not necessarily that it is for erosion. She said that is one of the things that is looked at. She said the 35-foot setback was considered a view setback.

Mr. Kasold thanked the engineer for the photograph. He said the visual is very helpful in understanding what the property would look like when built.

Mr. Haig asked if a wall would be built along the road.

Mr. Bogenrief said no.

Mr. Herbert said the Engineer said this lot is not buildable without both variances. He asked if both variances were required for the lot to be buildable.

Mr. Bogenrief said the applicant paid a lot of money for the lot and wants a decent size house on it. He said the view and driveway considerations went into the design and this is where they currently are.

Mr. Haig asked if the Board was setting a precedent if this variance is approved. He asked if this variance would be brought up at another time for another variance.

Attorney Dawley said this is a difficult distinction that she was trying to draw before. Every property is unique. It is very rare that you have two properties next to each other that are looking for exactly the same thing and the one that is even less restrictive in building is already granted a variance. The area of the lot is big enough for the two homes, but there are many other factors that play into whether the house could be built. She said this is such an extreme example, that it would be unusual for this fact pattern to apply to another property.

Ms. Burgener asked about a property right to build on the lot and the entitlement of a view. She said the code is very specific, but it may change depending on where the property is located.

Attorney Dawley said it is not a property right in terms of due process to a view. So the Code can change and changes can be made without it being considered a taking. She said that is an important distinction and is not the same as the idea that we have our code for 35-feet to honor the neighbor's view, does not give them the right to the view. She said it is only an acknowledgement that the City thinks it is a good thing to have. It is not a due process right.

Chairman Kostrzewa asked the square footage of the lot they approved the variance for as to this lot.

Ms. Dean said the property to the north is approximately 7500-8000 sq. ft.

Mr. Pantelis Markogiannakis, 1850 Charlesmont Drive, Indialantic, FL, was sworn in, under oath, by Assistant City Attorney Alison Dawley.

Mr. Markogiannakis, owner of the property, said the lot to the north has the same on the south side (his north) and he said he saw 95-feet on Pineapple Avenue. He said he has 200 feet on Pineapple Avenue.

Chairman Kostrzewa opened the public hearing.

Rudolph Grosse, 2425 Pineapple Avenue, was sworn in, under oath, by Assistant City Attorney Alison Dawley.

Mr. Grosse said he had no objection to the building or the size of the building. He questioned the seawall. He said the seawall has a retaining wall behind it with tiebacks running from the main seawall into the retaining wall. Those tiebacks are 25 feet long and he asked how close the building would be to the tiebacks.

Attorney Dawley cautioned the Board that these were engineering issues that are not relevant for the Board of Adjustment.

Mr. Grosse said he would like to see the tiebacks protected. He said he was involved in the building of that wall.

Mr. Kasold asked how one would know and there is no way this Board would have any control over that.

Mr. Bogenrief said the structure has yet to be designed but that will be addressed.

There was no correspondence.

Mr. Kostrzewa said he is not buying the argument that this variance has to be granted. He said he does not agree that the two properties are identical, but there does need to be a variance on the property.

Attorney Dawley stated that the properties are not identical, but they are both unique.

Ms. Dean said that the property to the north received a variance and this property curves even more.

Moved (Kasold/Jackson) to approve V-11-25 for a variance of 5-feet to allow a 15-foot front set back and a variance of 15-feet to allow a 20-foot setback from water; with the condition that the building plans shall be reviewed by the Engineering and Planning Departments prior to issuance of a building permit.

Aye – Burgener; Jackson; Kasold; Mannion; John.

Nay – Herbert; Kostrzewa

Motion carried.

10. V-11-029 GLOVER OIL CO., INC. – 3109 MAIN ST.

In an M-1 zoning district, the following variances are requested:

1. Variance of 14 ft. to allow a 6 ft. front setback.
App. B, Art. V, Sec. 2, (D) Table 2B requires a 20 ft. setback.
2. Variance of off-street parking standards to allow existing parking spaces backing into the right-of-way.
App. D, Ch. 9, Art. V, Sec. 9.74 (f) does not allow backing into the right-of-way.

David Bogenrief, 621 S. Magnolia Avenue, remaining under oath from the previous item, stated that a cell tower was built at this location and has become a haven for birds. He said his client would like to install an open canopy. He said there are tanks on the north side of the building and loading docks on the other side. Parking for the business is on the south side of the building. He said the canopy does not need to be enclosed.

Mr. Higgins said the applicant is asking for a front setback variance to place a carport over an existing parking area. Additionally, the existing parking spaces back out into the right-of-way of Main Street and require a variance. The 5,800 square foot office building was built in 1958. The employee and customer parking is located in front of the office building along the west side of the office building fronting Main Street. The back-out parking consists of 26.9± feet of pavement from the edge of the property line to the office building. The commercial back-out parking into the right-of-way is a non-conforming condition. The construction of a carport triggers the need to remedy the non-conforming back-out parking. The applicant wishes to cover the back-out parking area for the protection of the vehicles. A cell phone tower is also located on the property that attracts birds. The applicant states that bird droppings are covering the vehicles parked below the tower area.

Mr. Higgins said the site has alternative parking considerations for the construction of a carport. The entire business is located on four (4) developed parcels totaling 2.35± acres. There are interior parking spaces located along the north side of the office building. There is 50± linear feet of area between the office building and the adjacent northern building, which would accommodate a 30-foot wide drive aisle and 20-foot deep parking. There is a gate already located at this drive aisle/parking area (see aerial), so a carport along the north side of the office building would not interfere with the 30-foot wide drive aisle for trucks.

The applicant does not wish to use the interior areas of the site for covered parking and feels there are operational difficulties preventing other areas of the site from being used for covered parking. They identified the north side of the office building and other interior areas of the site are used for delivery of fuel, loading dock operations, and fueling of the tanker vehicles and the applicant indicated that the primary vehicular movement of large tanker trucks interior to this site requires more drive aisle space to

maneuver. The applicant does not wish to have the covered parking interior to the site, potentially obstructing the tanker truck accessibility.

Mr. Higgins stated that visibility can be a concern when a structure is placed within 6-feet of the front property line and the applicant is requesting a large covered parking area (20' x 60'). The request is not the minimum amount necessary to support the request for covered parking within the front setback.

Since the back-out parking is existing, vehicles will be allowed to continue parking along the property frontage, with or without the variance for the carport, so long as the non-conforming paved parking is not expanded. He said that staff feels there are other alternatives for parking and did not find enough evidence to support the variance. Staff recommends Denial of V-11-029 due to lack of hardship, since there are alternative parking areas located onsite that could meet Code.

There were no disclosures.

Mr. Jackson said that parking has been in that location and backing into the street has happened as far back as he can remember. He said variances of this type have been granted in the past.

Mr. Bogenrief said this is an industrial type operation on the north side of the building with large trucks coming and going and that is why no one parks there. He said it would not take long before the canopy would be clipped by a truck. It is not a very busy street. There would be a safety concern if the general public were to park in that area. He said the canopy was minimal in size.

Ms. Burgener said the owner has been compensated from the installation of the tower. She said she can understand birds being an issue, but she cannot buy the argument for the variance because of the alternative parking that is available.

Mr. Kasold asked if the "green box" represented the size of the carport.

Mr. Bogenrief said it looks wider. He said it can be reduced a couple of feet.

Mr. Herbert said he felt this hardship was self-imposed. He said the birds are a problem with all cell towers and they agreed to have the tower installed.

Mr. Mannion stated he believed they could move the parking to a different area because there is not much truck traffic.

After further discussion, Mr. Bogenrief asked if the item could be tabled to the next meeting.

Moved (Jackson/Herbert) to continue V-11-029 until the next regularly scheduled meeting.

A roll call vote was taken.

Motion carried unanimously.

11. ADDITIONAL BUSINESS/GENERAL DISCUSSION

Mr. Jackson asked Mr. Higgins why variances were not requested for the V-11-026 (Taylor) that would have corrected the non-conformities on the north side of the property where the fence is not in compliance. He said would have been an ideal time to bring the property into compliance.

Mr. Higgins noted that without a variance for the carport, the applicant cannot rebuild the carport in its existing location if it is damaged or destroyed.

Attorney Dawley said the applicant could be notified of the additional variances needed on the property and if the Board chose to reconsider, another hearing could be held. She said it would be the applicant's choice.

Ms. Burgener said this was done in the past, but it went away. She said that with additional code enforcement scrutiny this should have been corrected.

Ms. Dean said that staff is very aware of the Board's concern when too many variances are requested on one property. She said if there was a request for eight or nine variances on one property, it would cause concern for the Board.

Mr. Kasold said the process of cleaning all the non-conformities up on a property ended with the change of staff.

Attorney Dawley stated that it could get overwhelming to address every issue on a specific property.

Ms. Burgener said this could expose the whole property to scrutiny if anything that was non-conforming was addressed.

Ms. Dean said in some cases, it may not be conducive for the applicant to move forward with all instances of non-conformity. Staff has always looked at what is the least amount of variances to make this addition possible.

Chairman Kostrzewa said that elections for officers will be held in January.

Mr. Kasold suggested that the election be held in January and the self-evaluation of the Board be completed at the end of the February meeting.

12. ADJOURNMENT

The meeting was adjourned at 8:21p.m.

Respectfully submitted,

Debra Cote, Recording Secretary