

# **SEMINOLE COUNTY, FLORIDA**

*COUNTY SERVICES BUILDING  
1101 EAST FIRST STREET  
SANFORD, FLORIDA  
32771-1468*



## **Meeting Minutes**

**Monday, June 26, 2023**

**6:00 PM**

**BCC Chambers**

**Board of Adjustment**

**CALL TO ORDER AND ROLL CALL**

**Present** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen  
**Absent** Austin Beeghly, and Heather Stark

**OPENING STATEMENT****OTHER BUSINESS**

**Board of Adjustment Appeal - Appeal of the Board of** [2023-699](#)  
Adjustment decision to uphold the Planning Manager's determination of the measurement of a setback from the first vertical plane of the structure located at 3067 Cecelia Drive; (Douglas K. Gartenlaub, Appellant) Countywide (Mary Moskowitz, Planning Manager)

Mary Moskowitz, Planning Manager, presented this item as stated in the staff report.

Douglas K. Gartenlaub, Appellant, was present and introduced each of the witnesses he has in attendance. Using his provided PowerPoint presentation, he stated that there are two (2) issues. One is an ADU issue that under Section 40.71 that specifically requires that all the zoning decision must be made prior of issuance of the permit. This was submitted back then and the Board can see in the plans that it was there, but nobody mentioned anything about it and they did not file an affidavit for the ADU and they are making him comply with the ADU requirements. If there were specific requirements for that zoning district, they should have brought it up at the beginning and not at the end.

He referenced Ordinance 40.71 compliance with zoning requirements "all work done pursuant hereto shall conform to setback and other zoning requirements and no permit shall be issued for any installation which does not, or will not, comply with said requirements". Mr. Hayne will testify that he has done a lot of permits and he will not try to avoid zoning review. Civil compliance with Section 40.71 would've prevented where we are now, which is CO, as this building is already built. That's when they raised this issue when they needed to add an additional meter because they needed additional power is when it was brought up. They have held the CO for two (2) years based on this ADU issue and setback issue, which the County has created. In October of 2021 was when Seminole County Planning & Development first brought this issue over a year after they have applied for this permit.

The ADU Ordinance came into place in 1972, and on this property, there was already a structure prior to 1972. The applicant bought this property in 1987 and they combined this structure to the main residence so this ADU is not detached. The applicant applied in August of 2020 and they did not say anything, but a couple months later they said that the foundation of the property is fine but the stem wall has deteriorated to the point that it has to be replaced and a new permit was submitted with the new drawings and they never said anything about the setbacks or the ADU issue.

After the third submittal around February of 2021, the issue was raised by a building

inspector that they had a cantilevered roof that they built to create a long overhang and the architect can testify that they don't need it, but the inspector insisted that they do and that they also have to add columns in to hold the roof, and this was permitted and resubmitted again and the new drawings are on the paper that was submitted for the Board to see. When they made the applicant submit this column, they did resubmit with all the changes and they did not mention anything about the ADU issue or the columns yet. Is fair for the applicant that they had an approval, but they changed their mind when they resubmitted and took that approval away. It's not fair because the applicant already spent \$700,000 on this. The first issue was the setbacks in the first vertical plane that they told the applicants to put the columns in and there was the setback change. The second problem is the ADU. The applicant would have to submit the affidavit attesting that the unit will be rented at an affordable rate to an extremely low income, which was never submitted because it's not an ADU.

The original design was a cantilevered roof and there wasn't a setback issue. It's not until the building inspector required the columns that the setback issue came up. Despite that, they have trusted and complied with the requests of the inspector and they put the columns in, and they did not raise the issue in that moment until they received an email on October 21, 2022. The variances are applied under two (2) circumstances typically when the Planning Department said in the beginning of the review is needed or they build something they they weren't supposed to.

If there was an issue in February of 2021 the very first time that they raised this months later when they were already in CO and saying that they did not built this according to the plans is false.

Mr. Gartenlaub introduced Paul Medley, the architect, and asked him questions. He asked if he was familiar with this project and he responded yes. He asked if he has permitted more than a few previous projects like this one, he responded yes. Mr. Gartenlaub asked Mr. Medley if there were in some in Seminole County and he responded yes. Mr. Gartenlaub asked him if there was any attempt to make this pool house an ADU and he responded no, this was supposed to be a summer kitchen as the location of the kitchen is between the house and the lake and the location of this structure was there before they even started this project and they were already using it as a summer kitchen. They ended up opening it up more and creating much more connection with the pool deck. Mr. Gartenlaub asked Mr. Medley if is realistic how the space is laid out to be able to be a rental and he responded no because this is right on the back patio between the house and the lake. Mr. Gartenlaub asked him if it was unusual to put a summer kitchen in and he responded no that they put summer kitchens in almost every single project that he does.

Mr. Gartenlaub provided plans to the Board to reference. Mr. Medley explained on the plans that they presented the columns that the building inspector instructed them to install. He received a call from the job superintendent, not from the inspector, that they needed to install the columns there, he also asked if the owner of this property was okay with them. He modified the drawings and submitted them back to the Building Department for review and he had the contractor come and get the plans for submittal. Whenever he makes a change like this, he has to cloud it and make it different colors

and there is a delta revision number on it and in the title block on the side it lists the change and that will get back in to the County for review. The initial process for this is they make the original drawing and they are submitted to the County and they come back and if they have any comments they will make the adjustments and they will put the cloud on it, a delta number, the reason, the date and then it will go back again and if they don't have any more comments they will issue the building permit. Anytime a change is made, it will be treated like he stated.

Mr. Gartenlaub asked Mr. Medley if they raised the issue at the time of the second submittal with the changes made and he responded no they did this submittal early, this type of projects need different types of inspections all the way until drywall and they never mentioned the issue with the columns until after the job was done, then the client came in doing the final inspections to get the CO and that's when the County bring the setback issue up. They further discuss the plans and explain the floor plan and layout of the structure.

Mr. Gartenlaub asked Mr. Medley if he has ever seen the vertical plane be measure from the wall to the columns and he responded that he has seem them go both ways in different counties. Mr. Gartenlaub asked him if that setback issue was supposed to be brought up during plan review and he responded yes.

Mr. Gartenlaub introduced Richard Hanes and asked him questions. He asked him what his position with this project is and he responded he is the CEO of RLH Residential and RLH Construction. Mr. Gartenlaub asked Mr. Hanes if he was the license holder and he responded yes. He asked him if he is familiar with this project and the process of permitting in Seminole County and he responded yes. He asked Mr. Hanes if the contractor should point out when zoning review should occur, and he responded no. Mr. Gartenlaub asked who will be responsible for that and Mr. Hanes answered that would be the responsibility of the county guidelines. Mr. Gartenlaub asked him how many times this project went for review and he responded at least three (3) times, maybe four (4). Mr. Gartenlaub asked Mr. Hanes in what part of the project was this setback issue raised and he responded that they had already completed the construction and waiting for power and CO. He asked him if it was his understanding that the Seminole County Building Inspector was requiring the addition of the columns and he responded that he wasn't on site, but received a called from the president of the residential division asking for clarification that the inspector required the addition of the columns and he told him it's an architect deal and he couldn't believe an inspector would put his neck on the line like that. Explanation ensued regarding the work that was completed, and Mr. Hanes stated that the columns were flown to the property via helicopter, so to dismantle it would be substantial.

Mr. Gartenlaub introduced Curtis Sheffield, the neighboring property owner, and asked him questions. Mr. Gartenlaub asked him if he's familiar with the home in question and he responded yes, he lives next door to him on the north. He asked him if he had any objections to the structure and he responded no at all. Mr. Gartenlaub asked Mr. Sheffield even if a variance had been sought, he did not have any objection and he responded no.

Mr. Gartenlaub introduced Dr. Ronald Shaw, the property owner, and asked him questions. Mr. Gartenlaub asked Dr. Shaw if he has been involved in the whole permitting process and he responded yes. He asked if he was present the day that the inspector told them about the changes and what was his reaction and he responded yes, the project was about ninety (90) percent done, they were putting the decking down and the inspector said that he did not like the cantilevered roof and they will need to add the posts, and the project manager on site said that the architect said they don't need it and that the inspector told them he didn't care, that they want those columns installed. He stated that they called Mr. Medley about revising the plans and adding the columns and those plans were sent to the County. He further explained that after that was submitted and done is when the setback and ADU issue appeared. Mr. Gartenlaub asked Dr. Shaw in what point of the project was when he learned of the ADU and setback issue and he responded that they informed him about the issue at the end when they tried to apply for the CO.

Chairman Bernard Johns stated that assuming that the County make an error in the permitting review and understanding the doctrine of invested rights and how the courts have ruled that just because the government made an error, it's a greater injustice to compound the error and have made people tear down structures because of these types of things and asked Mr. Gartenlaub how he responds to that. Mr. Gartenlaub responded that he responds by the cases that he cited, equitable estoppel is argued over for this reason. He stated that yes maybe there was a mistake but at the same time they will have to weigh the equity and the County could've prevented this, but the applicant or the architect could've prevented this from happening. This permit went through three (3) review cycles and in the very last one after the columns were installed, is where they mentioned something about setbacks. He stated this was not a mistake and is all based on interpretation.

Jim Hattaway asked Mr. Gartenlaub if there's anything in Florida statutes that they are preempting the County by that definition of an accessory dwelling unit and he responded no. Mr. Hattaway asked so that means that the County is free to define an ADU any way they want to, right? Mr. Gartenlaub replied no that it's not supposed to let the county define it any way they want too if it conflicts with the statute and said yes, they are preempted. Mr. Hattaway asked Mr. Gartenlaub what Seminole County's definition of an ADU is and he responded that an auxiliary dwelling unit that is intended for rental to lower and middle income housing. Mr. Hattaway added that if is true that in the Seminole County Land Development Code uses the word "rental" in the definition of the ADU and he responded that it uses the word rental in that they require an affidavit where it does.

Mr. Hattaway asked Mr. Gartenlaub when the inspector said that he wanted to add the beams and the columns was he acting beyond of the scope of his authority and he responded no he was the Building inspector and he was allowed to make that change. Mr. Hattaway asked if he appealed that decision and he responded no.

Mr. Hattaway added that the meaning of the permit being issued is that the applicant only have the ability to start the project not to be free of subsequent government review and approval, correct and he responded that it means that once the permit is issued

and the plans are provided now, they are vested in the right of those plans. Mr. Hattaway asked if it still has to be consistent with the Seminole County Land Development Code and he responded yes, but that the reason of the Seminole County's Ordinance 40.71 that makes that determination at the beginning of the process.

Mr. Hattaway also asked if they uphold Ms. Moskowitz's determination, they will still have the right to seek a variance and he responded yes. He asked if they are all in agreement that it's not uncommon in Florida law for the courts to demand even multi-story structures to be demolished because they did not comply with the local land development code. He responded if there was a violation of the code, yes.

Mr. Hattaway asked if Mr. Gartenlaub is suggesting that because this project was really expensive that this applicant deserves any rights above and beyond any other citizens of Seminole County. Mr. Gartenlaub responded that the amount is only relevant in the sense that under the equitable estoppel doctrine the amount of damage to the party is weighed in considering the equities. Mr. Hattaway asked that if the applicant was in the wrong, no amount of money puts them in the right, and he responded correct, because if his client is in the wrong, you would have unclean hands and wouldn't be entitled to it in your favor.

Tom Kunzen asked Mr. Gartenlaub on what basis did the building inspector override the design choice of the architect asking for the addition of the columns, if he cited a particular part of the Land Development Code or engineering judgement? Mr. Medley responded and said that the field inspector just said I want it installed and even if they ask for something that isn't required by the Code, they do it without argument, so he had the drawings updated and to the County the next morning. Mr. Hattaway asked Mr. Medley that if part of the thought process was acceding to the columns was to avoid politics on a future project and he responded that it is primarily to move the job forward, but it's not about bucking heads with the guys doing their job.

Mr. Kunzen asked Paul Chipok, Acting County Attorney, if in Chapter 15 of the Land Development Code goes into determination for vested rights and the appeal process when the property owner would apply for this and he responded that will go towards the application of the Comprehensive Plan situation, it's not applicable to this situation.

Mr. Gartenlaub provided the Board an affidavit from the superintendent and documents regarding the County's definition of an ADU. He explained that they had no intent of filing the affidavit for an ADU to have the low cost living.

Mr. Hattaway stated that on the paper that he just provided the definition says an accessory dwelling unit is a dwelling unit attached to or included within a principal dwelling unit, or located on the same lot and having an independent means of access, such units may include a full kitchen. He asked if the structure meets this definition and Mr. Gartenlaub replied that he will need to read the entire definition as any statute needs to be read in its entirety and although this fits the definition meets as an ADU, you would need to apply for an ADU, so in order to apply for an ADU, you would need to file the affidavit. Mr. Hattaway stated that is not correct and went through the

handout he provided asking for clarification of how it defines it.

Chairman Bernard Johns asked Ms. Moskowitz what make this structure an ADU and she responded that the zoning review at the time believed that it could be an ADU and zoning does not approved this permit but the person who review it asked for additional information like providing the gross floor area of the primary residence because ADU has a limit of thirty-five (35) percent of the gross floor area or 1,000 square feet, whichever is less. She further stated that they also needed to identify the off-site parking space and needed to meet the impervious surface coverage. At that time she did not have enough information to determine if it was an ADU but as Mr. Hattaway indicated, the definition of the ADU is a subordinate structure that is either attached to a principal building or located on the same lot and has an external entrance. She stated that the requirements for the rental and affordability applies to the waiver of the impact fees to be considered an affordable housing unit.

Chairman Johns asked Ms. Moskowitz if in the past they had people that wanted to build structures on their property, like a shed, and they wanted to put a kitchen in it and they are told no as it is not an ADU. Ms. Moskowitz responded that in the past there was a use called a guest cottage, which did not allow for a kitchen. Chairman Johns asked if the ADU requires that they submit a paper saying that they are going to use it only for rental purposes and she responded no that only applies for the impact fee waiver.

In rebuttal Ms. Moskowitz stated that this permit was reviewed by our zoning department and they made the comment about meeting the setbacks and whether or not it was an ADU, they tried to fix the situation and come up with a solution that would help all the parties. Her primary goal was for them to be in compliance with the Code and they offered the ability to apply for the variances and for the terms of the accessory dwelling units, they did do research and they found that there was another structure on site that was treated as a ADU.

A motion was made by Jim Hattaway, seconded by Tom Kunzen, to uphold the Planning Manager decision.

Mr. Hattaway added that Seminole County has the right to define an accessory dwelling unit however it sees fit as the state of Florida has not preempted that and he also thinks that the estoppel is inapplicable in this situation. He stated that there's nothing here that the appellant showed that he met his burden to overturn the decision of Mrs. Moskowitz.

Larry Wright stated that his concern is that the appellant went through the process three (3) or four (4) times and they did not give a reason why they had to erect the columns and result of that, now they have a violation. In his opinion, they were given the direction of installing them and they did and then found out they were not in compliance with the setback.

Mr. Kunzen added that the intervention of the building inspector at that point to mandate the addition of those columns, which was not in the original design of the

architect, this would not have become an issue and the inspector was duly empowered as an employee of Seminole County and the applicants and the appellant seem to be acting in good faith.

Chairman Johns stated that he has a lot of sympathy for the owner, but they do have another option for them to fix this, but the issue is that if its considered an ADU, they way that they measured it is different and if they overturn this decision, they will have to go back and fix every single one that they did before on the permits and that is unreasonable. He stated that although this property owner doesn't intend to make it an ADU, that doesn't mean the next property owner wouldn't. He further stated that he would be more willing to go for a variance given the circumstances, but that is not what is before them, so he is not willing to override the County's decision.

Mr. Kunzen asked the Board that the variance applications that come before them and them making a decision on those the precedent and establishing the aye or nay, and what are they creating on them in this particular circumstances and asked what precedence they would be creating by voting yes or no on this. Chairman Johns responded that if they override the Planning Manager's decision on how its measured, that will change every other one that they have ever done.

Ms. Moskowitz stated that the decision on whether this is an ADU has not been made, they asked for the additional information, so they can still make that determination. Chairman Johns asked if it is determined that it is not an ADU, would the columns be good and she responded that it is the measurement of the setback, they haven't made the determination whether or not it's an ADU. Chairman Johns asked even if it was a regular house, it will be measured from the columns not the wall and she responded yes.

Mr. Hattaway asked Mr. Chipok on appeals like this what difference or standard of review is applicable in this case and he responded that the standard of review in this situation is to uphold the zoning managers decision on her interpretation of the code based on the evidence that was presented before you as to whether it is supportable or not in her determination. Mr. Hattaway asked if staff presumed correct and he responded that there is a presumption that they acted in good faith, but they will need more evidence that her determination was correct than incorrect.

Chairman Johns advised the appellant of their right to appeal.

A motion was made by Jim Hattaway, seconded by Tom Kunzen, to uphold the Planning Manager decision.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

## **VARIANCES**

**2540 Bullion Loop** - Request for a side street (south) setback variance from fifteen (15) feet to seven and one-half (7½) feet for a fence in the PD (Planned Development) district; BV2023-037 (Marcia Brown, Applicant)

**[2023-639](#)**

District 2 - Zembower (Angi Gates, Project Manager)

Angi Gates, Planner, presented this item as stated in the Staff Report.

Marcia Brown, applicant, was present and stated that she will like this fence because she is the first house coming in the left side and she just want protection with the fence because they have a pool in the backyard.

Chairmen Bernard Johns asked the applicant why she wants the fence to extend to the side of the house and not stopped it where the pool ends, Mrs. Brown responded that her home is the first on the left in a main street and she needs protection.

No one from the audience spoke in favor or opposition to this request.

A motion was made by Larry Wright, seconded by Jim Hattaway, to approve this variance request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**1661 Carlton Street** - Request for: (1) a side street (west) setback variance from twenty-five (25) feet to ten (10) feet for a shed, wall and garage addition; and (2) a wall height variance from six and one-half (6½) feet to eight (8) feet in the R-1AA (Single Family Dwelling) district; BV2023-041 (Lawrence Ziebarth, Applicant) District 3 - Constantine (Angi Gates, Project Manager)

[2023-640](#)

Angi Gates, Planner, presented this item as stated in the Staff Report.

Chairman Bernard Johns asked the applicant why 8 1/2 feet for the wall, the applicant responded that area would be a lanai for garden space between the garage and the shed that he is going to put a roof, Mr. Johns added if its just the back of the structure and the applicant responded yes.

Tom Kunzen asked the applicant that there's a substantial hedge row on the west side of the property adjacent to Pressview Ave is that going to remain, the applicant responded that yes it will remain.

No one from the audience spoke in favor or opposition to this request.

A motion was made by Tom Kunzen, seconded by Larry Wright, to approve this variance request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**114 Willow Tree Lane** - Request for a rear yard setback variance from thirty (30) feet to twenty (20) feet for an addition in the R-1 (Single Family Dwelling) district; BV2023-043 (Andrea J Hamlin, Applicant) District 3 - Constantine (Angi Gates, Project Manager)

[2023-642](#)

Angi Gates, Planner, presented this item as stated in the Staff Report.

Chairman Bernard Johns, asked staff there was a building there and its being reconstructed and that's why it triggered the variance, Angela Gates responded yes, and they would have to build it to code.

No one from the audience spoke in favor or opposition to this request.

A motion was made by Larry Wright, seconded by Jim Hattaway, to approve this variance request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**114 Camphor Tree Lane** - Request for a side yard (east) setback variance from ten (10) feet to two and one-half (2½) feet for a boat dock addition in the R-1AAA (Single Family Dwelling) district; BV2023-46 (Peter Devoney, Applicant) District 3 - Constantine (Angi Gates, Project Manager) [2023-646](#)

Angi Gates, Planner, presented this item as stated in the Staff Report.

Tom Kunzen, asked staff, the application mention that there was a structure of the county water system where is that in the relation of the dock, Mrs. Gates responded that the applicant would have to respond that question.

Peter Devoney, applicant, was present, but did not have any additional comments for the Board.

Tom Kunzen asked the applicant about the structure of the county water system where is that in the relation of the dock, the applicant responded that the pipe would be next to the dock and that it deposits debris to the water body.

No one from the audience spoke in favor or opposition to this request.

A motion was made by Jim Hattaway, seconded by Tom kunzen, to approve this variance request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**546 Chula Woods Court** - Request for a rear yard setback variance from thirty (30) feet to twenty-six (26) feet for a covered patio in the R-1 (Single Family Dwelling) district; BV2023-047 (Gregory Raymond, Applicant) District 1 - Dallari (Angi Gates, Project Manager) [2023-678](#)

Angi Gates, Planner, presented this item as stated in the Staff Report.

Gregory Raymond, applicant, was present and state that he is only looking for a patio extension it would be a slopping roof that would be coming out thirteen (13) feet from the roof line.

No one from the audience spoke in favor or opposition to this request.

A motion was made by Tom Kunzen, seconded by Larry Wright, to approve this variance request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**5001 Palmetto Avenue** - Request for a side street (south) setback variance from twenty-five (25) feet to thirteen and one-half (13½) feet for a detached garage in the R-1A (Single Family Dwelling) district; BV2023-028 (Jacob Kuzman, Applicant) District 1 - Dallari (Angi Gates, Project Manager) [2023-488](#)

Angi Gates, Planner, presented this item as stated in the Staff Report.

Tom Kunzen, asked staff about the expanded narrative of the home owner experience and the county office, what did they think it happened, Angi Gates responded that she got the permit for review and that she spoke with the applicant about this situation and told the applicant that they have to seek traffic engineering approval for this zoning district, she further explained that traffic engineering doesn't have the authority to approved nothing less than the fifteen (15) feet so it was never approved that and the review was completed and stamp at fifteen (15) feet when they went to do the final inspection it was denied because it was done at 13.5 feet.

Jacob Kunzen, applicant was present and stated that the story that she say was correct but she forgot to mention that he submitted a variance application in case traffic engineering did not approved of the request to go down to fifteen (15) feet. He received a call from the planning office that they have being approved by traffic engineering to go down to 15 feet.

Carol Swanson, spoke in opposition of this request and stated that she is really opposed because nobody in their neighborhood has a two story, she is also concerned about the property values in the house. Jim Hattaway asked what property rights will be damaged and she responded that the value of the home .

A motion was made by Larry Wright, seconded by Tom Kunzen, to approve this variance request.

**Aye:** James Hattaway, Larry Wright, and Thomas Kunzen

**Nay:** Bernard Johns

**Absent:** Austin Beeghly, and Heather Stark

**209 Collins Drive** - Request for a rear yard setback variance from thirty (30) feet to six (6) inches for a guest house in the R-1A (Single Family Dwelling) district; BV2021-56 (Ninive Castillo, Applicant) District 2 - Zembower (Angi Gates, Project Manager) [2023-641](#)

Angi Gates, Planner, presented this item as stated in the Staff Report.

Ninive Castillo & Victor Castillo, was present and stated that the previous owner of the house did not pull the permit for the structure in the back so when they pull a permit to put a fence the inspector went to the site and told them that they need to get a permit for that house in the back.

Chairman Bernard John added that when they bought that house the structures was already there.

No one from the audience spoke in favor or opposition to this request.

A motion was made by Tom Kunzen, seconded by Jim Hattaway, to approve this variance request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**9709 Bear Lake Road** - Request for: (1) a rear yard setback variance from thirty (30) feet to 6.8 feet; and (2) a side yard (south) setback variance from ten (10) feet to 2.19 feet for an accessory structure in the R-1AA (Single Family Dwelling) district; BV2023-28 (Maria Bonilla, Applicant) District 3 - Constantine (Hilary Padin, Project Manager) [2023-624](#)

Hilary Padin, Planner, presented this item as stated in the Staff Report.

Chairman Bernard Johns, asked that they have approved already 9 variances including some for this structures and they were put wrong anyways, she responded yes.

Tom Kunzen asked staff was it already build when they request the variance, she say no.

Kathy Hammel, Principal Planner, added the site plan that they provide for this variance process with incorrect information on the setbacks, even when the inspector went out and its wrong that will fall back on the applicant.

Hilary Padin, added that her assumption would be that the structure was already there because the numbers provided were precise even in the previous variance.

Maria Bonilla, applicant was present and stated that she bought the house 2 years ago and she didn't know about the code violations and when she put the house for sell again that when she noticed the code violations.

No one from the audience spoke in favor or opposition to this request.

A motion was made by Larry Wright, seconded by Tom Kunzen, to approve this variance request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**4572 Old Carriage Trail** - Request for a rear yard setback variance from thirty (30) feet to seven (7) feet for an accessory structure in the R-1AA (Single Family Dwelling) district; BV2023-38 (Michael Stapp, Applicant) District 1 - Dallari (Hilary Padin, Project Manager)

[2023-628](#)

Hilary Padin, Planner, presented this item as stated in the Staff Report.

Jim Hattaway asked staff that the letter about the HOA did they know if it was from the association or a member because in that email he only say he was a member of, Hilary Padin responded that she only can go by what they send her.

Michael Stapp, applicant was present and stated that he apply for the HOA and he got denied and then he ask the board what would be the plan he explain that he had columns and concrete so they will add like a temporary sun sails.

Tom Kunzen added that the approval from the HOA was by email on Monday February 20, 2023 which was after the new president started so that means that the RBA approved it but then the president doesn't approved it so what your saying is that he doesn't have the power to disapproved this, he responded yes that would be correct.

Tom Kunzen also asked if he still want to go with the proposal because this matter is being in dispute, the applicant responded yes because he is using the same structure.

Larry wright asked how tall the structure and the applicant responded no more than 12 feet. Mr. Wright asked at what point did they make him stop the structure the applicant responded that he hired a GC to build it for him put he never pull the permit for it.

Larry Wright also asked prior to taking down the roof if he spoke with the county prior to that to get a variance the applicant responded no.

No one from the audience spoke in favor to this request.

Steve Olson, hes spoke in opposition, their backyard face them directly and they can see the structures from their living room and kitchen, he also show some pictures about the structure being really visible and close to their property line, this structure was not approved and the HOA president sited the section 8.0.1 which requires a 30 feet setback, also the section 8.0.9 that no structure would exceed 12 feet or 240 sgft around.

Jim Hattaway asked Mr. Olson is there anyway that the neighbor could modify the request that would be acceptable, he responded that when in the beginning came up he asked how he can make this situation better but the construction continued when he was out of town but he will say no.

No one from the audience spoke in favor or opposition to this request.

A motion was made by Jim Hattaway, seconded by Tom Kunzen, to denied request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**127 Varsity Circle** - Request for a rear yard setback variance from thirty (30) feet to twenty-three and one-half (23.5) feet for an addition in the R-1A (Single Family Dwelling) district; BV2023-040 (Joseph & Kristen Harmon, Applicants) District 3 - Constantine Herr (Hilary Padin, Project Manager) [2023-629](#)

Hilary Padin, Planner, presented this item as stated in the Staff Report.

Joseph Harmon, applicant was present and stated that the are that they want to put that structure is being there since the late 90s one of the previous home owner erected that, their HOA had a 25 feet setback requirement and its different from the county Mr Johns responded that the HOA can be more restricted but they don't have no say over the county.

No one from the audience spoke in favor or opposition to this request.

A motion was made by Tom Kunzen, seconded by Larry wright, to approve this variance request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**2205 Winnebago Trail** - Request for a side street (south) setback variance from twenty-five (25) feet to seven (7) feet for a privacy fence in the R-1A (Single Family Dwelling) district; BV2023-042 (Bruce Smith, Applicant) District 4 - Lockhart (Hilary Padin, Project Manager) [2023-630](#)

Hilary Padin, Planner, presented this item as stated in the Staff Report.

Bruce smith, applicant was present and stated that he close on this house on April 20th and there was a permitted issue and the previous owner never took care of the issue along Osage that fence being there since 2004.

Chairman Bernard Johns asked the applicant so he was only trying to replace it on the same place the applicant explained that the fence is being there since he has purchased the property there was an issue and based on what the research has shown is that the fence was moved at some point.

Michael Herr, spoke in favor and explained that at the beginning pof the process they did was in opposition but they spoke to the home owner and they got everything resolved.

No one spoke in opposition or in favor of this item.

A motion was made by Larry Wright, seconded by Jim Hattaway, to approve this variance request.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

**5648 Autumn Chase Circle** - Request for a side street (south) setback variance from twenty-five (25) feet to ten (10) feet for a privacy fence in the R-1A (Single Family Dwelling) district; BV2023-44 (Ryan Shifman & Alyssa McComb, Applicants) District 2 - Zembower (Hilary Padin, Project Manager)

[2023-631](#)

Hilary Padin, Planner, presented this item as stated in the Staff Report.

Alyssa McComb, applicant was present and stated that they like the vegetation that the house brought and there was a oak tree there but it make it difficult to place the fence. The being having a back and forth with the HOA about the setbacks.

Tom Kunzen asked the applicant most of the time this applications come for approval with an HOA already in place usually cost the homeowner nothing to approved this by the HOA why did they come before the board without approval of the HOA the applicant explained that they have gone to the HOA several times and they got denied and they figure that they will come before the board and get that corrected through the variance. Mr. Kunzen also added that even thought the variance is granted the HOA can still denied it.

No one from the audience spoke in favor to this request.

Colleen Crigger, was speaking in opposition of this request and stated that the by laws say that the fence is connected in the rear point and this fence is 17 feet from the sidewalk they have meet with the applicant and they say they will allow to come out four feet to give them a little room. They say that they will allowed it to go 12 feet and they understand this situation and they sent email multiple times and all the times they say no that's why they decided to come to the county and they will are okay to go down to 15 feet.

Bill Campbell, all they asked is to go down to 15 feet and that they will be compliance with the other fences in the neighborhood. He also agree that is fine to go down to 15 feet.

A motion was made by Tom Kunzen, seconded by Larry wright, to approve this variance request, but with the modification to go to the 15 feet.

**Aye:** Bernard Johns, James Hattaway, Larry Wright, and Thomas Kunzen

**Absent:** Austin Beeghly, and Heather Stark

### **CLOSING BUSINESS**

none

### **APPROVAL OF THE MINUTES**

none

**ADJOURN**

Having no further business, the meeting was adjourned at 9:03 p.m.

NOTE: PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE HUMAN RESOURCES DEPARTMENT ADA COORDINATOR 48 HOURS IN ADVANCE OF THE MEETING AT 407-665-7940.

PERSONS ARE ADVISED THAT IF THEY DECIDE TO APPEAL ANY DECISIONS MADE AT THIS HEARING, THEY WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE THEY MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS ARE MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED, PER SECTION 286.0105, FLORIDA STATUTES.

FOR ADDITIONAL INFORMATION REGARDING THIS AGENDA, PLEASE CONTACT THE BOARD OF ADJUSTMENT CLERK AT (407) 665-7387.