

**MINUTES**  
**BOARD OF ADJUSTMENT**

July 18, 2018

7:00 p.m.

**Commission Chambers**

22 South Beach Street  
Ormond Beach, Florida

**I. ROLL CALL**

Members Present

Jim Bowers (alternate)  
Frank Ganz (alternate)  
Brian Nave  
Tony Perricelli  
Dennis McNamara (Chairperson)  
Stan Driscoll (excused)  
Roger Strcula (excused)

Staff Present

Steven Spraker, Planning Director  
Laureen Kornel, Senior Planner  
Becky Weedo, Senior Planner  
Scott McKee, Assistant City Attorney  
Melanie Nagel, Minutes Technician

**II. APPROVAL OF THE MINUTES**

**A. There were no minutes to approve.**

**III. NEW BUSINESS**

**A. Case No. 2018-075: 695 N. Beach Street, Rear Yard and Pool Setback Variances**

Ms. Laureen Kornel, Senior Planner, City of Ormond Beach stated that this is a request for a rear yard variance and a pool variance located at 695 North Beach Street. Ms. Kornel displayed an aerial picture of the property to show the relationship between 695 North Beach Street and the properties to the north and the south. The property is zoned Residential Estate, R1, and the applicant purchased the property earlier this year with the intention to demolish the existing home and construct a new home with a pool.

Ms. Kornel stated that the first variance is for the rear yard setback, and the Land Development Code requires a calculated waterfront rear yard setback of 97.28 feet. The applicant is requesting a rear yard setback of 74.39 feet based on the angle of the mean high water line. The request for the rear yard variance is 22.89 feet. Ms. Kornel displayed a slide showing the comparison between the existing home and the proposed new home. The existing home was originally constructed in 1981 and has a footprint of 4,300 square feet. The applicant is proposing a new home with a footprint of 4,600 square feet, a difference of around 300 feet. So it's quite comparable in size. Ms. Kornel pointed out the portion of the home that would actually be within the required rear yard setback. The part of the home needing the

variance consists mainly of an open porch and a small portion of the northeast corner of the main house.

Ms. Kornel stated that the second variance is for the pool. The Land Development Code requires a calculated setback for pools located on waterfront lots. The calculated rear yard setback for the proposed pool is 43.64 feet. The applicant is requesting a rear-yard pool setback of 39.73 feet for a variance of 3.87 feet. The abutters to the north and the south have both provided their signatures in support of the variances.

Ms. Kornel noted that staff did receive one phone call from Sun Glow Construction wanting to verify that the variance was unrelated to the front yard which she did verify that it was a pool variance and a rear yard variance. In addition, the property owner of 687 North Beach Street located directly south of the applicant reached out to the city for information on the variances. So Ms. Kornel did go to that person's property and talk about the variances. Again, both the north and south property owners have provided their signatures in support of the variances. The purpose of the calculated waterfront setbacks is to protect and ensure the view corridors along the river. Staff has presented arguments both for and against the variances, as stated in their report and it's their opinion that the applicant has provided evidence that the calculated average setback on the property creates a condition which diminishes the north and south waterfront sight lines in the event of the reconstruction of a home and pool. Staff recommends approval of the two variances and the applicant is here to address any questions.

Mr. Nave asked how close the front of the house is to the front setback requirements. Ms. Kornel stated that the setback at the front of the house is 240 feet. That's what they're proposing. The city required setback is roughly 177 feet.

Mr. Bryan Shaffer, applicant and homeowner, 695 North Beach Street, stated the covered porch that is not enclosed is essentially the variance they are asking for. The footprint of the home itself is going to be sitting exactly where the current home is. The current home, on the northern corner, already extends further than would be allowed these days. Mr. Shaffer is looking to put the house in the exact same spot. The only addition that he is essentially asking for is the covered porch that extends 11'-6".

Mr. Perricelli stated that basically, the proposed house will have the same footprint as the house that is there now. Mr. Shaffer stated that was correct. Mr. Perricelli verified that the porch is an open porch. Mr. Shaffer stated that it was, and there will be four pillars that will be holding it up, and then the second floor of it is just an open deck. Mr. Perricelli re-affirmed that the neighbors on both sides have no problem with what is proposed. Mr. Shaffer stated that they do not.

Mr. Nave stated that there is about 60 feet in the front yard that could have been used. Why did the applicant decide not to use that? Mr. Shaffer stated simply because of where the homes sit, particularly the home on the north. Part of the home at 759 North Beach Street goes out closer to the river, and it creates an L and it comes back in towards the street. Because of the L that it creates, if he were to move

the house back any further than what the current house is, he would have no sight lines from inside his home. And even some of the sight lines on the porch would be taken away because of the back southern corner of the home.

Mr. Nave stated that it looks like there is about 10 feet or so. He asked if the applicant is trying to use the existing foundation. Mr. Shaffer stated that they moved it back about as far as they possibly could before they start to lose sight lines themselves. They wanted to have the house a little further out, but realized that they should just use what the existing house has, because where the existing house sits they have the sight lines.

Mr. Perricelli asked the applicant if he shared the plans with the people on each side to show them where the porch would be. Mr. Shaffer stated that they shared everything with them. They gave them the entire packet, showed them site plans, showed them conceptual plans for the house, and floor plans for the house. They are removing five or six palm trees. So they will actually be opening up the neighbor's sight line a little bit more.

Mr. McNamara asked where the second floor of the home is in relation to the porch. Mr. Shaffer stated the first floor and the second floor sit right on top of each other. The second floor doesn't come out any more towards the river than the first floor. The only thing that'll be up on the second floor of the porch will be a railing, probably a glass railing of some kind. Mr. McNamara stated that the existing house setback is the same as the new house setback, other than the porch. Mr. Shaffer stated that was correct. They are putting the new house exactly where the current house sits.

Mr. McNamara asked about the pool. Mr. Shaffer stated that if it wasn't for the mean high water line that curves up toward the house, he wouldn't have to apply for a variance. It's only one corner of the pool that requires him to apply for the variance. The other corner of the pool meets the code.

Mr. Nave stated that he just wants to point out that all the lots south of the applicant have more yard and all the lots north of the applicant have the smaller yards. It could be said that the subject lot actually curves out because that's the transition point between the larger yards and the smaller yards. So everybody to the north of this property has a smaller yard than everyone to the south. Mr. Shaffer stated yes, and the way that they want to build the house straight on the lot parallel with the river, it makes it seem like a curve. Mr. Nave stated that the majority of the lot is actually at the smaller yard depth than the bigger yard depth. Mr. Shaffer stated that was correct.

Mr. Nave asked if the house were to be moved back 11 feet, then the edge of the porch would be essentially where the back of the present house is presently at. Mr. Shaffer stated that was correct, and they would lose sight lines from inside the house. And unless they were at the very back of the porch, they would be looking at the neighbor to the north's solid concrete stucco wall of their home.

Mr. McNamara asked if there were any further comments. Hearing none, he closed the public hearing.

Mr. Nave stated that the only thought that he had is that if they moved the house back 10 feet to where the porch lines up to where the existing house was at, they wouldn't be losing any of the sight lines except from the side of the house. The end of the house would be pretty much flush with the end of the other house. One of his major things is if the neighbors care. And the neighbors don't care. So he has a hard time really caring that much about it too. But it does seem like it could go back 10 feet and not lose any sight lines.

Mr. McNamara stated that if the house was moved forward, then the pool would obviously fit.

Mr. Perricelli stated that he doesn't have a problem with it if the new house is not going any further and it's in the same footprint as the existing home. And the existing home's been there for so many years, and nobody has had a problem with it. And the neighbor signed off on it, so he doesn't see a problem with it.

Mr. Nave stated that he recalls a similar case a while back like this, and there were concerns about the homeowners, at some point, putting up ferns and putting up glass and putting up screens, and starting to close in the porch and close off the sight lines. Didn't we put some kind of limitations on how they could use the porch in the future? Mr. Shaffer stated that the porch is going to be completely open with the exception of four pillars that will be holding it up. One on each corner and then about 12 feet in from each corner, there's another pillar.

**Mr. Perricelli moved to approve the rear yard and pool variances.** Mr. Nave asked Mr. Perricelli to amend the motion to include the restriction of anything that would impair the site lines. Mr. Steven Spraker, Planning Director, stated basically it needs to be left as a porch only, without any other encumbrances or sight blockages. The motion would basically say they cannot enclose the porch for additional living area or otherwise obstruct the view corridors. Mr. Nave stated that obstructing the view corridors is really his main concern and that would be sufficient to add to the motion. **Mr. Bowers seconded the motion. Vote was called, and the motion carried (5-0).**

**B. Case No. 2018-074: 339 Ocean Shore Blvd., Pool Variance**

Ms. Becky Weedo, Senior Planner, stated that this is a request for a north side and a south side yard variance to rebuild a pool and sundeck at 339 Ocean Shore Boulevard. This property is along the Atlantic Ocean, and as such, per section 2-50 of the Land Development Code, patios and sundecks shall not be closer than 10 feet to either side property line. The subject property is located in the R1 zoning district which requires a 100-foot minimum lot width. The lot width of 339 Ocean Shore is about 65 feet, which limits the size and location of the new pool and deck. Also, since a portion of house and pool are seaward of the coastal construction line, the sundeck cannot extend east of the existing retaining wall. The new pool is planned to be centered on a new paver deck. The sundeck is proposed to be built with a seven-and-a-half-foot setback from the north property line and a six-foot setback from the south property line. Generally the side setbacks for decks and patios, even

in the R1 zoning district, is generally five feet. Because the property is oceanside, the required side yard setback is 10 feet on both sides.

Ms. Weedo displayed photographs showing the existing pool and surrounding properties, and based on the aerial views one can see that the adjacent properties have actual setbacks closer to the property line than what the property owner of 339 is asking for. The applicant has received signatures in favor of the variance requests from both abutting property owners. Staff recommends approval of the side yard variances to reconstruct a pool with a new paver sundeck. The applicant's representative is here if you have any questions.

Mr. Perricelli asked if this is a non-conforming lot. Ms. Weedo stated that it is. Mr. Perricelli asked what the frontage of the lot was. Ms. Weedo stated that it is 64.7 feet in the front and 65 feet at the rear. The applicant is wanting to basically center the pool and then put in a paver deck and basically square it off with the back of the house.

Mr. Nave asked if they were going to move the retaining wall. Ms. Weedo stated that one retaining wall is going to stay, and the other will be moved to line them up, and they will have a beach walkover.

Mr. Perricelli asked if they were taking the existing pool out, and putting in a new pool. Ms. Weedo stated that was correct.

Mr. Nave asked if the pool would be right on the edge of the new retaining wall. Ms. Weedo stated yes, the code requires 10 feet from the seawall, and there is a coquina wall. So it meets the 10 feet requirement, because it's going to be from the retaining wall.

Mr. McNamara stated that there are no sight corridors involved in this variance, just the side yard.

Mr. Perricelli asked if the new pool requires fencing around it. He noticed this pool doesn't have a fence around it. Ms. Weedo stated that it does have the retaining wall, and that would prevent anybody from coming up off the beach and going onto the pool. Mr. Perricelli stated that when he builds homes, they have to put safety alarms and fences around pools. The Building Code requires a four-foot fence around pools for safety.

Mr. Nave asked if the new deck is going to be flush with the edges of the house. Ms. Weedo stated that was correct. Mr. Nave asked if the applicant got the signatures of the neighbors. Ms. Weedo stated yes.

Mr. McNamara asked if there were any further comments. Hearing none, he closed the public hearing.

**Mr. Perricelli moved to approve the variance for the pool, as submitted. Mr. Nave seconded the motion. Vote was called, and the motion unanimously approved (5-0).**

C. **Case No. 2018-078: 332 John Anderson, Side Yard and Waterbody Rear Yard Variance**

Ms. Becky Weedo, Senior Planner, stated that this is a request for a side yard variance and a waterbody rear yard variance to rebuild the home that was damaged by flooding and to construct a new cabana in the rear-yard. The first request is for a variance of 5 feet to the north side of the property for a side yard required setback of 12 feet. The applicant's request is based on the angle of the mean high water line, the curve of the street, and the location of the specimen tree in the front yard. The second request is for a variance for 24.86 feet for a waterbody rear yard setback of 47.15 feet to the 72.01-foot calculated waterbody rear yard setback requirement.

Ms. Weedo continued that the home at 332 John Anderson Drive was damaged during Hurricane Matthew and left uninhabitable by the flooding from Hurricane Irma. The applicant is seeking to reconstruct a new single-family home on the property due to the flood damage. The original footprint of the structure was approximately 4,050 square feet, with an attached garage of 806 square feet. The proposed footprint will be around 4,488 square feet, with two attached garages, totaling about 13,073 square feet. The property is located in the R1 zoning district, requiring a lot width of 100 feet, and a minimum lot depth of 150 feet. The property is approximately 105 feet wide and 192 feet long at the shortest depth, therefore the lot is conforming.

Ms. Weedo stated that a variance for a pool house located to the north, at 344 John Anderson Drive, was approved on March 5, 2003, allowing the placement at 40 feet from the mean high water line. The proposed cabana will be 47.15 feet from the mean high water line. The mean high water line is angled closer inland on the subject property. So the proposed cabana will actually be located further away from the water than the neighbor's.

Ms. Weedo stated that the applicant has received letters in favor of the variances requested from both abutting property owners. Staff did receive a call from the neighbor across the street who also is in support of the variance. And for the first variance request of 5 feet to the north side yard setback requirement of 12 feet, staff recommends denial of the side yard variance due to the application failing to meet the required criteria. Staff is concerned about allowing new structures to become nonconforming when the minimum lot width is conforming. And alternatives do exist as explained in the staff report. For the second request, staff recommends approval of the variance of 24.86 feet for a waterbody rear yard setback of 47.15 feet. The applicant is here should the board have any questions.

Mr. McNamara asked if the cabana needed a side yard variance. Ms. Weedo stated no, it's the same principle setbacks as the principal structure which is a combination of 20 feet on both sides with a minimum of eight feet and it's got the eight feet on the one side.

Mr. Perricelli asked if the tree impacts the variance. Ms. Weedo stated that is one of the arguments for pushing the house back a little bit, pushing the garage back, and then expanding it to the side. Because the house was flood damaged and it is

in the flood zone, they're required to add fill to bring it up to compliance. They're going to bring it up a foot and a half above the floodplain base flood elevation. And to do that, when they bring in the fill, they are going to be grading. And they were worried that, basically, they would kill this tree. And so they did push the garage back a little bit.

Rachel Pringle with Cobb-Cole, 149 South Ridgewood Avenue, Daytona Beach, stated that she is representing the applicants, Mr. and Mrs. Nisbett. Ms. Pringle had a copy of a survey which shows the requested setback variance, which she handed out to the board members. Ms. Pringle stated that Mr. Nisbett would like to address the board and give an overview about the house replacement and design.

Mr. Richard Nisbett, 332 John Anderson Drive, stated that he has lived in Ormond Beach since '71, and has lived in this particular house with his wife since '97 and really had no intention of even building a new house. They got struck by Hurricane Matthew in 2016. As a result of suffering wind damage, they were going to do a major renovation and then were struck by Hurricane Irma. The proximity of their house on a lower portion of John Anderson, and bordered on both sides by houses that were built after their house which put them at a higher floor elevation. So what it created was a trough where the water goes from the river through the house. Long story short, after suffering the water damage and the house being uninhabitable, rather than pour a lot of money back in the house, they had no choice but to build new to raise the floor elevation.

Mr. Nisbett stated that they have looked at multiple scenarios to do anything they can to save the tree. It does require the variance on the garage. In talking with an arborist about the tree, he feels like the tree will survive, but if they build any closer to the tree, it's pretty much a foregone conclusion that the tree's going to be gone. The garage, in terms of the depth, is 22 feet deep, which for a normal size car that just gives you about enough room to pull a car in, and with the garage door down, walk behind the car. So they really can't shorten the garage up anymore. Mr. Nisbett continued that they intentionally kept the rest of the house at a 16 foot setback to the west of the garage. It is just the garage portion that they are asking for the variance. The only reason they did that, was to save the tree.

Ms. Pringle wanted to address the hardships on the property. Obviously, there's the river with the varied waterline. The waterline sits a little further back on their property, making it a little bit shorter than the properties neighboring it and takes away some buildable area of the lot. Additionally, the way that John Anderson abuts the property at an angle, makes the property a bit of a parallelogram. Both the eastern boundary and the western boundary pinch the northern boundary of the property a little bit, which provides some issues when you're trying to fit in an otherwise generally rectangular-shaped item on the property and meet all of the property setback requirements. Additionally, there is the tree. It is a specimen tree and we would like to maintain the tree on the property. It's a nice feature, but it's one that is naturally occurring and exists. The five-foot setback will allow them to place the additional garage in a location that provides enough depth to actually pull in a car and have the garage function as it's supposed to. If they tried to pull the garage into the courtyard 5 feet, meeting the required 12-foot setback on the north

side of the property, they wouldn't have enough room within the courtyard to maneuver cars and actually make use of the garage. It just becomes impossible to pull the car in and back the car out and use the garage as it's meant to be used.

Ms. Pringle stated that having the garage where it's at doesn't interfere with any sight lines. Given the location of the house on the neighboring property to the north, that house is set back a little farther towards the river. So providing for the 5-foot setback only along the portion of the garage, which is a little over 30 feet, will allow Mr. Nisbett to have the garage and still maintain a separation between the neighbors and their homes. It's only for the garage, and the property owner to the north is in full support of the requested variances. This provides separation between the properties and provides space between the property boundary and the home if they need it. Again, there are the unique aspects of the shape of the property, given the adjacent river and the angle that John Anderson sits at. And there is the tree that they would like to preserve.

Mr. Perricelli stated that the house itself meets all of the setbacks. This variance is just for the garage. Ms. Pringle stated that it is just the 30' of the garage.

Mr. Bowers asked if the garage was cheated south so it became conforming, and you cheated the driveway entrance the same distance, there would be access in and out of that garage to the courtyard. Ms. Pringle stated that part of the reason why this design was chosen is because a lot of the houses that have been built along John Anderson Drive in the last couple of years have used this two-car garage configuration. Now that's not a hardship in and of itself, but if you're looking at making a property valuable in a current market, those are considerations that are taken. And that's part of the reason why shifting any of the properties to the south hasn't been chosen.

Mr. Bowers stated that what he is saying is if you shift the driveway to the south the same distance you would have to shift the garage to meet the code and get the same depth. You would be able to pull in there, and put two cars in that garage. If you leave the driveway where it is and you shift the building to the south you're correct. But if you move the driveway itself to the south you will have access for two cars into that garage.

Mr. Rob Merrell, Cobb Cole Law Firm, stated that if the driveway is moved to the south, then the garage to the south is going to have a hard time getting in and out. So that's why the driveway is centered. If you look at that, you see that's why it's centered. If you moved it to the south and cheated, you'd certainly be cheating worse the garage to the south.

Mr. Bowers stated that if the driveway were widened seven feet to the south, wouldn't that take care of the argument. Mr. Merrell stated that unfortunately they didn't bring the architect with them, but what he will say is when you look at the spacing, it's about the spacing between those two garages. It's not about the driveway location.

Mr. McNamara asked if there was a rendering of the front of the house. Ms. Pringle stated that there is not. They just have the layout of the house. Mr. McNamara

asked if there was a window in the front elevation, and that is why the garage couldn't be moved. Ms. Pringle stated that if the northern garage were shifted five feet to the south, then the other garage becomes unusable. If they narrowed the driveway to allow for the shift in the garage, then the southern garage becomes nonfunctioning.

Mr. McNamara asked what the distance was between the two garages. Ms. Pringle stated that she didn't have the calculation on the map for the width of the driveway. Mr. McNamara stated that he didn't want the width of the driveway, but asked about the distance between the two garages. Ms. Pringle stated that she does not have that number with her.

Mr. Nave stated if the tree wasn't there, they would still have the same problem. Ms. Pringle stated that they shortened the garage for the tree. If the tree wasn't there, then there would be other configuration options for the home. Mr. Nave asked what the other configurations were. Ms. Pringle stated that she didn't have those in front of her.

Mr. Merrell stated that the simple geometry of it is the spacing between the garages, which are as tight as they can be to get a car in and out, walk in and out on both of the garages, as well as the ability to turn a vehicle in and out, is the constraint. Mr. Nave stated that it really isn't about the tree. They are not buying that because they know that the driveway could be widened and have the same turning angle.

Mr. Ganz stated that the issue is the closeness of the two garages. Mr. Merrell stated this is the best design they've come up with. So it could be a lot worse in terms of the encroachment. This is the best they could do and still have it be a functional two-car garage.

Following discussion back and forth about the garage depths, the distance between the garages, windows in the courtyard, etc. Mr. Merrell stated that it might be relevant for the board to hear from the neighbor who's here tonight.

Mr. Nave stated that they might get to that point, but they are still interested in why the garage can't just slide over five feet. Mr. Bowers stated that an elevation of the front of the house would have been so helpful at this point.

Mr. Merrell stated that they will have to envision it, but the movement inward, as what is being asked for, the cheating of it, keeps them from being able to use it, one side or the other. Mr. Nave stated they are not believing that. There are 32 feet there if you move it and you can get a car out of there easily with 32 feet.

Mr. Merrell stated that unfortunately, they don't have the engineer or the architect to testify as to that right here. But as a layperson, he can tell the board that he could pave the entire width of the area, and it won't make any difference. When someone comes in, they won't be able to get in either way.

Mr. McNamara stated that it is a public hearing, and asked the neighbor if he would like to give his comments.

Mr. Scott Tepper, 344 John Anderson Drive, stated that he is the neighbor to the north, and he and his wife have been in their house since 2000. Mr. Nisbett has been kind enough to show them several different plans about what is being done. They are the most affected by the variance because the five feet is closer to their side yard. But he is all about saving that specimen tree. The Nisbett's have shown them a couple of different designs for their home. They like this one the best.

Mr. Nave asked Mr. Tepper how close his house is to the property line. Mr. Tepper stated that he didn't know. Ms. Pringle stated that if you look at the house on page three of the staff report, you can see that it is a pretty decent distance away from the property boundary.

Mr. Nave wanted it noted that this particular Staff Report was not available on the internet. So, he wasn't able to zoom in and look at any of this beforehand.

Mr. Bowers stated that it appears that the homes on each side of this property meet the setback requirements. Ms. Pringle stated that is not in question or part of the argument at this point. It looks like his setback is a good distance away from the property boundary. And if you'll notice, the request for the variance is only as applied to the garage. The portion that's immediately adjacent to Mr. Tepper's home is at 16.55 feet.

Mr. Tepper stated that as the neighbor, he likes this design more than if they go back to the drawing room and they bring the house closer to his property. All he has close to him is just the garage. So they would prefer, obviously, for this design to be built, and of course, hopefully they get to keep that specimen tree, which is important for he and his wife and for the neighborhood.

Mr. McNamara asked if there were any more questions for Mr. Tepper. Mr. Nave asked if it is appropriate to ask him questions about the rear setback now. Mr. McNamara stated that those questions can also be addressed.

Mr. Nave stated that it seems like the Tepper's are going to lose a lot of their sight lines because of the proposed cabana. Mr. Tepper stated that from what he saw, looking to the south is what their concern would be. From a window perspective--if he had a position that he was concerned about it, he would have raised a question about it. He doesn't have an objections with it from where it stands. They measured it out, and he and his wife don't seem to think that it is going to be an issue.

Ms. Pringle stated that where the sight line hits the property is actually at the eastern edge of the proposed cabana and there is eight feet between where the sight line hits the property boundary and where the cabana will be built. So there should be plenty of room and none of the sight lines should be impacted.

Mr. Nave asked if Ms. Pringle was saying that the minimum required by law sight line or the actual real sight line that you'd see in real life? Because if he looks from the corner of that house he can look nearly perpendicular across that property and get a sight line. Ms. Pringle stated that she is talking about the sight lines that we're required to meet by code.

Mr. Merrell stated he is a neighbor, he is also associated with the applicant and with the law firm here that's making the request. The intent and purpose of this code, as it relates to setbacks, has to do with whether it affects other people. Mr. Nisbett is barely adding to the square footage of the house. He's conceded considerably for the rest of the house on the north side, other than the garage, to the tune of 16 feet, which is way more than what's required of him. To his credit, he's got his neighbor not only writing a letter but being here tonight. How often does that happen? They're not here asking for something because they want more. They're here trying to make their house work right. They're upgrading a house that was built a long time ago, and what he's asking for here is reasonable. That's a big part of what should be your inquiry and how it affects other people. So the intent and purpose for the code is part of your variance application. How does this meet or not meet the code?

Mr. Merrell continued that the applicant is just trying to rebuild a house that the storm took from him. This is the perfect variance case. There is a hardship, the parallelogram, the tree, the river lines are different. To him, front and side yard setbacks or rear and side yard setbacks on the river are the perfect variance case when there is a wavering riverfront. That's what we have here. It doesn't really get any better than this when it comes to a setback variance on the river.

Mr. Ganz asked what the hardship is for the property other than the tree. The hardship of the waterline has to do with the rear setback and I think the staff is saying there's nothing non-conforming about the lot that affects the side yards.

Mr. Merrell stated that the applicant could probably get the architect to show all the different ways that they looked at this. They've designed it with this newer, more modern version of double-loading it from the sides, and it makes it harder to get the cars in now. So the tree part is you'd have to redo it so it wasn't a side-loaded garage. It doesn't look as good, and you lose the tree. So they do it from the inside out, which makes it have to be spread out further. And I'm not an engineer but I'm telling you the intuitive part of that. That's what the board is looking at.

Mr. Nave stated that they still could slide the garage over. He is an engineer and he knows it can happen. The board would like a reason why they don't want to slide it over. Mr. Nave thinks it's obvious that they don't want to slide it over, because they don't want to cover the front of the house where there are windows. We all know the cars can get in and out from there if you widen the driveway, so we know that they're not doing it because they can't get the cars in.

Mr. Nisbett stated that he is in the car business, so he drives varying different sizes of cars, and anybody who has gone to a newer development knows that it seems like parking spots are getting smaller. You almost have to do a three-point turn to get in a parking spot. You can have a two-car garage, but if it's tight, you end up bringing your car in at an angle.

Mr. Nave state that what the board has to decide is does the applicant not want to do it because it doesn't look good? The board wants to give everybody who comes in here all the variances they can. But the board is restricted by all the points that

you have to hit to get a variance, and one of them is that there's no other option. So we're trying to explore these other options just to make sure they really don't make any sense.

Mr. Nisbett stated that he could build the house and have just the two-car garage. Again, it's what's dictated by the value of the lot and what's expected on that lot. Garage space is viewed as being valuable in the market. That's what the trend is; to have the garages. And they worked through a lot of different scenarios. They mirror-imaged it. They did a three-car garage, and the length of the garage, and it just didn't work as well.

Mr. Bowers asked Ms. Weedo, since they have to raise the elevation a foot and a half, where does that foot and a half begin in relationship to the lot, or the house? Ms. Weedo stated that the finished floor elevation has to be a foot above the base flood elevation. Mr. Bowers asked what they are going to do to protect the specimen oak once they start hauling all that dirt in. Ms. Weedo stated it's part of the grading process when they raise up for the finished floor.

Mr. Merrell explained that the whole house is on a stem wall. There isn't a monolithic slab, and it has fill going out to the tree and they will leave the existing driveway for construction, so the tree doesn't get damaged.

Mr. Ganz asked if they weren't to shift the garage and just cut it down five feet, you could still fit cars in there. Or it would just be smaller, like 18 feet deep.

Mr. Nisbett stated that they are now renting in Chelsea Place which are beautiful homes, but they're smaller homes and they have 22-foot garages. So, if you pull the car in, if you don't pull it all the way up to the wall you don't have a lot of room. As far as the depth, he wouldn't want it any less.

Mr. McNamara stated that the board still needs to address the cabana.

Mr. Nave stated that much has been stated about the asymmetric of the line of the lot. Why doesn't the applicant put the cabana on the other side of the lot, where there is more space? Mr. Nisbett stated that it is basically a roof on posts so you can look through it. They staked it all out on their property to make sure the neighbor was okay with it.

Mr. McNamara asked if the neighbor to the south was in attendance. Mr. Nisbett stated no, but he sent a letter in favor of both variances. Mr. McNamara asked if anyone had a problem with the cabana. We will have two separate votes, with the cabana being first. Mr. McNamara closed the public meeting.

Mr. Ganz asked Ms. Weedo why staff made the recommendation for denial of the side yard variance. They rarely get a recommendation for denial. Ms. Weedo stated that the lot is 105 feet wide. The minimum is 100 feet so technically, there is 85 feet for the building width in order to meet the 20-foot setback requirement. Staff felt this was enough space to rebuild a home with garages and that there were alternatives precluding the need for a variance. Mr. Ganz stated that the reasoning

is that there wasn't anything about the lot itself that requires the need for the side yard variance. Ms. Weedon stated that was correct.

Mr. McNamara called for a motion on the cabana.

**Mr. Perricelli moved to approve the Waterbody Rear Yard Variance, as submitted. Mr. Ganz seconded the motion. Vote was called, and the motion unanimously approved (5-0).**

Mr. McNamara stated that they would now vote on the side yard setback. He understands the reasoning that the value of the lots and times are changing and they all like more garages than two to balance out the symmetry of the house. He understands all that.

Mr. Nave stated that his concern is looking at the front elevation of the house, and there is no symmetry to the front of the house. The only thing that's on that side are three small windows, and we'd probably end up covering one of them moving the garage over. Probably a bathroom in that corner because of the small windows - I don't know. But they're not big bay windows. They're not big view windows; they're very small square windows set high. So he is just having a hard time with this. He knows they want a big entryway. He's just having a hard time accepting why they can't just slide it over five feet and be done with it. He knows you can get a car into the garage.

Mr. Perricelli stated that he doesn't have a problem with it. The neighbor's here; the neighbor doesn't have a problem with it. And it looks kind of tight to him. Even if they moved it and there were no windows there, you still have to be able to get in and out of the garage and turn around. The main house is set back 16 feet. They have more than the 12 feet that are required and it's only the garage requiring the variance. He doesn't see a problem with it.

Mr. Merrell stated that he has been able to handle several cases very similar to this in Ormond, Port Orange, Daytona, in the counties, and this is the perfect case for a side yard and rear yard variance. What the board is trying to do here is make sure that somebody is trying their best to abide by the code and not do things that block people's view, or interrupt people's use of their home. You've got one guy affected by the variance and he is in favor of it. I think when you take into account the people in the room that are affected by this - both the people that are affected directly and the people that are asking for this - it's just not a hard decision.

Mr. Nave stated that he thinks it's important to note that the board is not just affecting this neighbor. The board members are establishing precedence for the city. They are establishing an excuse for other people to ask for the same thing when this lot really doesn't need it. Every time the board reduces a setback in the front or the backyard they change the average of the setback. Every time they approve somebody to reduce their setback they give somebody else the chance to state, "Well, down at this address there's one that you've already approved." So it's not just this resident that it's affecting. It's affecting every decision down the line. Mr. Nave thinks that is important to note.

Mr. Merrell stated that for the legal part of this, he can speak and by definition a variance is not precedent. Otherwise, he would be up here with a list of cases the board has approved like this and saying, "Why didn't you do this, this and this?" That's not how it works. This is a unique situation. The board has to look at it that way and he thinks they are. Mr. Merrell thinks the board is doing a good job as judge and jury of looking at this particular piece, this situation. It is a parallelogram; it's not a triangle. It's got an odd-shaped line on both sides. It's got the uniqueness. You can hang on that. That's what you can do legally. And as far as precedent, he will tell you this, what you do tonight, either way, sets a zero precedent. It's a variance case. It can't, by law, set precedence.

Mr. Nisbett stated that there is a diagram that shows the original house floor plan, with this new house overlaid. The garage wall will only be about a foot and a half further than the previous garage. We've placed it virtually in the same spot with the prior house that we tore down. He just wanted to make that point. This isn't a new position.

Mr. Tepper stated that the garage is basically where it's always been from the prior house before. And if you gentlemen deny this, they're going to go back to the designer. Who knows what they are going to come up with? So they've got a five-foot setback. The house itself is 16 feet, which is further away from their house and gives them even more of a buffer. So if it's denied, they don't know what they're going to get next. But they like this design for that specific reason. And it's basically where the old garage was anyway, for all those years.

**Mr. Perricelli moved to approve the Side Yard Variance, as submitted. Mr. Ganz seconded the motion. Vote was called, with Mr. Ganz, Mr. Nave, Mr. Perricelli and Mr. McNamara voting for the variance, and Mr. Bowers voting against the variance. The variance was approved with a vote of (4-1).**

## **V. OTHER BUSINESS**

Mr. Nave stated that he has a couple of questions that he would like to ask the legal counsel. There were a couple of things in the last meeting that concerned him. The fact that in a prior meeting the board was forced to look at something over again because of some breach of etiquette and rules. So his question is, he was asking a question of the applicant. During his questioning of the applicant, the city attorney jumped up and interrupted his question and the applicant's answer. Wouldn't that be considered a breach of etiquette for the city attorney too? Here's what he's thinking. They made the board revisit a case because they felt like the applicant wasn't able to present their case properly, because theoretically it was closed too early. And to him, when he was interrupted, it kept the applicant from presenting her case to her satisfaction. So what is the etiquette or Robert's Rules of Order for having someone interrupted like that?

Assistant City Attorney Scott McKee stated that he is not familiar with what happened at the meeting, per se, but he thinks that she would have definitely had a right to speak. Mr. Nave stated that he knows the City Attorney has a right to speak.

The applicant was already upset, and when she got interrupted by Attorney Emery, she became even more upset. Attorney McKee stated that he can't get into the specifics of this, because he wasn't there. But, normally Mr. Nave should have been given a chance to speak at the public hearing.

Mr. Nave stated that his question is, does the City Attorney have the right to interrupt his question. Attorney McKee stated that he wasn't there so he can't comment to the specifics.

Mr. McNamara stated that he thinks that would be his call, and he thought everybody had a chance to speak. There could have been an interruption.

Mr. Spraker stated that we could take a closer look at this, and asked Mr. Nave if he recalled which part of the meeting this happened. Mr. Nave stated that the applicant was stating, "What if I talk to my attorney and we come back with..." And that is when the attorney jumped up and interrupted the applicant and told her, "No, we've already been through enough of this."

Mr. Spraker stated that he doesn't think anyone is prepared to answer that tonight but they can certainly look into it and get back with Mr. Nave with a response. Mr. Nave just wants to know if that's proper. Seems improper to him and it felt a little disrespectful to the applicant.

Mr. Nave stated that Attorney Emery also did a summation at the end of the case presentation. Is that normal, because he doesn't recall that happening before. Mr. Spraker stated that it is part of the appeal. We haven't had an appeal of a building official's determination since at least 2000. Mr. Nave asked if that is different than our normal appeal process.

Mr. Spraker stated that it is much different. That's why the board had its own attorney and then the city staff had an attorney. It was a much different environment than just a typical Board of Adjustment variance case. It was a legal proceeding because the city was denying their building permit. There aren't very many building permits that are denied. Usually, they're modified or withdrawn. So to outright deny it with the ramifications of the billboard, that is why the board had their own attorney, and the city staff had an attorney. Staff can get with Attorney Emery and City Attorney Hayes and get an answer for your question.

Mr. Nave stated that he hadn't run into that before so he just wanted to make sure he knew how it was supposed to go, because if the city is going to give people an opportunity to retry a case or go for another appeal and have it reversed based on a perceived interruption or the perception that they didn't get to produce their case, then the city may have opened the door for that one too. He hopes not.

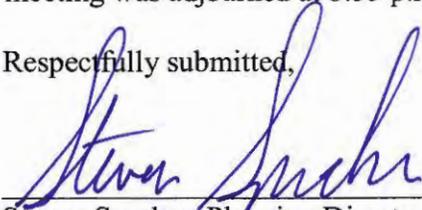
Mr. Spraker stated that it was a different case, in a different format. So it's different than the variance that the board had at 664 John Anderson Drive. It was an appeal by the chief building official of a permit.

Mr. Nave stated that he would still like an answer on whether interrupting a question of an applicant is ethical or not.

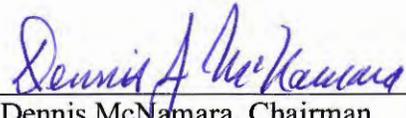
## VI. ADJOURNMENT

As there was no other business, the meeting was adjourned at 8:35 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
Steven Spraker, Planning Director

ATTEST:

  
\_\_\_\_\_  
Dennis McNamara, Chairman

*Minutes prepared by Melanie Nagel.*

Pursuant to section 286-0105, Florida Statutes, if any person decides to appeal any decision made by the board of adjustment with respect to any matter considered at this public meeting, such person will need a record of the proceedings and for such purpose, such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

All persons appealing to the board of adjustment must be present, or represented at the public hearing scheduled for the consideration of his request. Failure to be present or to be represented, results in the automatic refusal by this board to grant permission for any variance. In order to allow the meeting to proceed in an orderly fashion, the board, by motion, may limit the time allowed for remarks concerning a specific agenda item to a maximum of thirty (30) minutes for city staff, the designated representative of the applicant and the designated representative of any organized group and to five (5) minutes for members of organizations and other individual speakers. Additional time shall be allowed to respond to questions from the board.

Persons with a disability, such as a vision, hearing or speech impairment, or persons needing other types of assistance and who wish to attend city commission meetings or any other board of committee meeting may contact the city clerk in writing, or may call 677-0311 for information regarding available aids and services.