

**AGENDA**  
**TOWN OF INDIALANTIC BOARD OF ADJUSTMENT**  
**Council Chamber, 216 Fifth Avenue, Indialantic, FL 32903**  
**April 7, 2021 AT 5:30 P.M.**

**A. Call to Order:**

David A Justice	Chairman
Chris Campbell	Vice Chairman
Safvat Kalaghchy	Member
Jeffrey Schulte	Member
Sam Martorella	Member
Stephen Baughn	1 <sup>st</sup> Alternate
Michael Hill	2 <sup>nd</sup> Alternate

**B. Approval of Prior Meeting Minutes:**

Minutes – January 13, 2021

**C. Variance Request -- Site Address: 134 Second Avenue, Applicant: Amber Chang Armstrong (Owner), Zoning: R-2 Duplex Residence Districts. Variances requested:**

**Section 113-225 Accessory Buildings and Structures in Residential Zoning Districts:**

**(1) (c)** – A variance to the requirement that no accessory building or accessory structure shall be permitted on any lot without a pre-existing primary structure on the same building site. *Applicant intends to demolish and rebuild the primary structure (the home) and would like to keep the existing non-conforming accessory structure (detached garage).*

**(5)** – A variance to the requirement that private garages shall not exceed 600 square feet. *Applicant states the existing non-conforming detached garage is 785 sq ft and is requesting a variance of 185 sq. ft.*

**Section 113-226 Building Grade:**

**(b)** -- A variance to the requirement that the finished grade shall not be less than ten inches above the elevation of the crown of the street. *Applicant states the elevation of the existing non-confirming detached garage is 7-9 inches above the road and is requesting a variance of 1-3 inches.*

**Section 113-333 R-2 Duplex Residence Districts:**

**(2) b.** -- A variance to the requirement that all accessory buildings located in the rear yard shall be set back not less than four feet from all lot lines. *Applicant is requesting a 3' variance for the western setback and a 2.5' variance for the northern setback*

**(4)** -- A variance to the 8 foot maximum height requirement for an accessory use structure. *Applicant states the existing non-conforming detached garage height is 11.5' and is requesting as variance of 3.5 feet.*

**D. Adjournment:**

Notice: Pursuant to section 286.0105, Florida Statutes, the town hereby advises the public that if a person decides to appeal any decision made by this board with respect to any matter considered at its meeting or hearing, he will need a record of the proceedings, and may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the town for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

Americans with Disabilities Act: Persons planning to attend the meeting who need special assistance must notify the office of the town clerk at 321-723-2242 no later than 48 hours prior to the meeting.

**Minutes**  
**TOWN OF INDIALANTIC BOARD OF ADJUSTMENT**  
**Council Chamber, 216 Fifth Avenue, Indialantic, FL 32903**  
**January 13, 2021 AT 4:30 P.M.**

**A. Call to Order:**

A regular meeting of the Board of Adjustment was called to order at 4:32 p.m. by Chairman Justice with the following members present:

David A Justice	Chairman
Chris Campbell	Vice Chairman
Sam Martorella	Member
Stephen Baughn	Member, 1 <sup>st</sup> Alternate
Michael Hill	Member, 2 <sup>nd</sup> Alternate

Also present:

Michael Casey, Town Manager  
Paul Gougelman, Town Attorney  
Cliff Stokes, Building Official  
Rebekah Raddon, Town Clerk

**B. Approval of November 12, 2020 Meeting Minutes:**

Motion by Vice Chairman Campbell, seconded by Member Hill, and vote unanimous to approve the meeting minutes. Motion carried 5-0.

**C. Variance Request:**

Site Address: 300 Third Avenue  
Applicant: Joe Lewandowski (Owner)  
Zoning: R-1-B Single Family Residential

**Code Section 17-88 (3) (b) Fences; walls. Setbacks** -- A variance of 10' to the required minimum 10' setback from the lot line on the abutting street for a side yard fence located on a corner lot, to allow a fence to be installed on the property line.

Chairman Justice read the variance request and asked for input from the building official. Mr. Stokes commented that a permit has not been obtained yet and noted that landscaping is not allowed in the right-of-way.

Joe Lewandowski, 300 Third Avenue, spoke regarding his request to install a fence on the lot line. He explained that installing a fence in accordance with the setback requirements would substantially reduce the size of his yard, making it approximately 15' wide. He added that neighbors have fences on their lot lines. He is willing to remove the trees he planted in the right-of-way if the Town wishes; he was not aware that it was prohibited.

Mr. Casey commented that a fence on the lot line would not obstruct drivers' line of sight.

The board questioned whether or not an unnecessary hardship or practical difficulty existed; the applicant felt it qualified as a hardship.

Mr. Gougelman read the definitions for unnecessary hardship and practical difficulty.

A board member noted that these types of requests have been denied before and that fences encroaching on the streets looks undesirable.

Mr. Lewandowski commented he is willing to compromise if the board wishes.

**Motion by Vice Chairman Campbell, seconded by Member Hill to deny the variance application. Motion carried 4-1; nay vote by Member Baughn.**

Variance denied.

**D. Adjournment:**

Chairman Justice excused absent board members Jeffrey Schulte and Safvat Kalaghchy, both of whom gave notice they would be unable to attend due to illness/caring for family.

There being no further discussion, the meeting was adjourned at 4:59 p.m.

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David A. Justice, Chairman

Attested by:

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Rebekah Raddon, CMC, Town Clerk



# Application for Zoning Variance

Sec. 17-141. Authority.

RECEIVED  
MAR 12 2021  
BY VICTORIA  
RECEIPT # 675198

(a) The board of adjustment may grant variances in specific cases to vary or alter the strict application of any of the requirements of this chapter, whereby such application of a particular requirement would result in a practical difficulty or an unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved.

**(b) To obtain a variance the applicant must demonstrate to the board of adjustment that:**

- (1) A practical difficulty or an unnecessary hardship is caused by the literal application and enforcement of the zoning code provision from which a variance is sought;
- (2) The granting of the variance will not authorize a use prohibited, or result in a use variance, in the district in which the property is located;
- (3) The preponderance of evidence presented at the variance hearing does not demonstrate that the granting of the variance will seriously impair the use of adjacent property, or significantly reduce the value of adjacent property, regardless of the zoning district in which the adjacent property is located;
- (4) The need for the variance is made necessary by the unique character of the property;
- (5) The need for the variance is not caused in any way by the owner or occupant of the property upon which the variance is sought;
- (6) That the request for a variance is not solely based on an economic disadvantage to the owner or occupant of the property upon which the variance is sought, because an economic disadvantage to an applicant does not constitute a hardship or practical difficulty sufficient to warrant the granting of a variance; and
- (7) That the request for a variance is not solely based on a need or desire of the owner or occupant of the property upon which the variance is sought to be obtained to gain an economic benefit, because an economic advantage to an applicant does not constitute a hardship or practical difficulty sufficient to warrant the granting of a variance.

(c) In determining whether to grant a variance the board of adjustment may consider the goals, objectives and policies of the comprehensive plan.

(d) In granting a variance, the board of adjustment may prescribe any conditions that it deems necessary or desirable in the furtherance of the purpose of this chapter.

(e) If a variance is granted with the effect being that a building permit is required, the building permit must be obtained within twenty-four (24) months of the approval date, after that time, the variance is void. If a permit is issued and that permit expires then the variance is also terminated, or expires, with the permit. (Ord. No. 11-13, 3, 7-27-11; Ord. No. 17-08, 2, 4/12/17) ACA applicant initial.

1. Applicant states that the property is located at:

Lot(s) 3 and 4 Block 64

Street Address 134 2nd Avenue, Indialantic, FL 32903

2. Applicant's contact information:

Name: Amber Chang Armstrong Phone: 321-795-2445

Address: 134 2nd Ave Email: ARCA448@GMAIL.COM

3. Property Owner (If other than applicant): N/A

Property Owner Address: N/A

4. The relationship of the applicant to the property is:

OWNER:  ATTORNEY/AGENT\*: \_\_\_\_\_ TENANT\*: \_\_\_\_\_

\*Owner authorization required.

5. The property is zoned (Circle one): R-1-A; R-1-B; R-2; R-3; R-P; C; C-1; C-2; SC; CH; T

6. The requested variance(s) is for the following non-conformities of the Indialantic Code:

Code Section	Explain Non-conformity (variance requested)
a. _____	_____
	_____
	_____
	_____
	_____
	_____
	_____
	_____
	_____
b. _____	_____
	_____
	_____

please see attached

Attach additional pages as necessary

7. Current Property Survey and Site Plan for proposed variance are attached to this application  
ARCA applicant initial

8. Site plans are the same as submitted to the Zoning Board, if applicable:  
YES \_\_\_ NO \_\_\_ N/A

9. Describe the **Practical Difficulty** or **Unnecessary Hardship** which will be imposed if the variance is not granted (see definitions, pg. 3). Attach additional pages as necessary:

please see attached

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Definitions

**(50.3) Practical difficulty.**

In the case of a variance, a practical difficulty is a standard which is similar to but less rigorous than the unnecessary hardship standard. It is a non-self created characteristic of the property. The standard asks whether a literal enforcement of a zoning regulation will create a practical difficulty in the use of the parcel of land for the purpose or in the manner for which it is zoned. Some of the factors that may be considered in determining whether a practical difficulty exists include: (i) how substantial the variance is in relation to the requirement sought to be varied; (ii) whether a substantial change will be produced in the character of the neighborhood; (iii) whether the difficulty can be obviated by some method feasible for the applicant to pursue other than by a variance; and (iv) whether, in view of the manner in which the difficulty arose, the interest of justice will be served by allowing the variance. Finding that factors (i) (that the variance requested is not substantial); (ii) (that a substantial change in the character of the neighborhood will not occur if the variance is granted); (iii) (that the difficulty occurring can only be obviated by grant of the variance); and (iv) (that the interest of justice will be served by granting of the variance), are all factors in support of the variance.

**(69.1) Unnecessary hardship.**

In the case of a variance, an unnecessary hardship is a standard which is similar to but much more rigorous than the practical difficulty standard. The unnecessary hardship standard is a very restrictive standard. It is a non-self created characteristic of the property in question which renders it virtually impossible to use the land for the purpose or in the manner for which it is zoned. The standard asks whether a literal enforcement of a zoning regulation will create an unnecessary hardship which makes it virtually impossible to use the land for the purpose for which it is zoned.

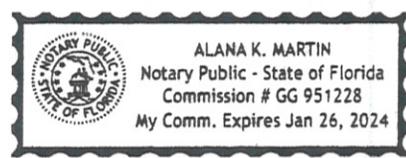
A nonrefundable fee of \$500.00 is required at the time the application is filed. Application does not guarantee variance will be granted.

I hereby agree to the payment of the fee as prescribed by the Indialantic Code of Ordinances. I hereby depose and say that all the above statements are true and correct to the best of my knowledge.

Signature of applicant Alana Armstrong Date 10 MAR 21

The foregoing instrument was sworn to (or affirmed), subscribed, and acknowledged before me by means of  physical presence or  online notarization, this 10<sup>th</sup> day of MARCH, 2021, by AMBER CHANG ARMSTRONG, who is personally known to me or has produced FLORIDA DRIVERS LICENSE as identification.

NOTARY: Alana Martin Commission expires: JAN 26, 2024





not required

OWNER AUTHORIZATION

Date: \_\_\_\_\_

I, \_\_\_\_\_, owner of the following property:

Lot(s) \_\_\_\_\_ Block \_\_\_\_\_

\_\_\_\_\_, Indialantic, Florida, 32903

do hereby authorize \_\_\_\_\_ to apply for a variance to Indialantic

Code Section \_\_\_\_\_ as my:

Agent \_\_\_\_\_ Attorney \_\_\_\_\_ Tenant \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

State of Florida

\_\_\_\_\_ County

The foregoing Owner Authorization was acknowledged before me by means of [ ] physical presence or [ ] online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, by \_\_\_\_\_, who is personally known to me and/or who has produced \_\_\_\_\_, as identification.

Notary Public: \_\_\_\_\_

Notary Stamp:

March 11, 2021

The Town of Indialantic Board of Adjustment  
216 5<sup>th</sup> Avenue  
Indialantic, FL 32903

Dear Members of the Board of Adjustment,

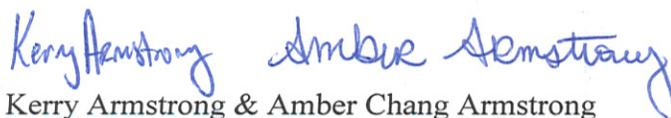
We are seeking variances associated with maintaining an accessory building on our property. In addition to our application, please see the attached recent property survey conveying the location of the current accessory structure along with an approximate footprint of the proposed new primary structure.

We joined the Indialantic community in 2004 as recent Florida Tech graduates. Kerry is a teacher at Indialantic Elementary where our three children attend school. Amber is an engineer at Patrick Space Force Base. We enjoy the beachside vibe and participating in local town events from the Witch Way 5k to the visits by Mr. and Mrs. Clause. We are hopeful that following our 3+ year displacement we'll be able to rejoin our community and neighbors on 2<sup>nd</sup> Avenue.

Our property, located at 134 2<sup>nd</sup> Avenue, is unique. The primary and accessory structures date back to 1924. We use the detached garage to store hobby tools, kayaks and fishing gear. There is even a bathroom allowing easy access for active children who may be too dirty or wet to easily traverse the home. The location of the existing accessory structure allows for a beautiful and large yard that is perfect for playing and entertaining. Unfortunately our home was one of the many struck and damaged by the tornadoes associated with Hurricane Irma in September 2017.

While the damage to the accessory structure was relatively minor, the damage to the primary structure was significant! Following over three years of frustrating back and forth with our insurance company we settled the matter in December 2020. We are in the process of working with a builder to submit an application and associated plans for a new forever home that will replace the current primary structure. We would like to maintain the accessory structure in its current state and location with updates to aesthetically conform with the new primary structure (e.g. house color and theme).

Thank you for your consideration in this matter,

  
Kerry Armstrong & Amber Chang Armstrong

Application for Zoning Variance – Item 6.

We respectfully request the below variances for the following non-conformities:

Code of Ordinances of Indianalantic, FL

Part II – Code of Ordinances

Subpart B – Land Development Code

Chapter 113 – Zoning

Article IV – General Zoning Restrictions

Section 113-225, Accessory Buildings and Structures in Residential Zoning Districts

(1) c. A primary structure currently exists on the site however storm damage resulted in the need to demolish and rebuild the primary structure. We'd like to keep the accessory structure as we rebuild our home.

(5) The existing accessory building is 785 sqft, which is greater than the allowed 600 square feet for a private garage. The existing accessory building was constructed in 1924, prior to existing requirements.

Section 113-226, Building Grade

(b) The elevation of the accessory building is less than the required 10 inches above the crown of the street, it is 7-9 inches above the road.

Article VI – District Regulations

Section 113-333, R-2 Duplex Residence Districts

(2) b. The existing accessory building is within four feet of the lot line, it is approximately 1 foot off the west property line and 1.5 feet off the north property line.

(4) The existing accessory building exceeds the maximum allowable height of 8 feet, it is approximately 11.5 feet tall

Application for Zoning Variance – Item 9.

Please find below our points addressing the practical difficulty if the variances are not granted:

(i) We believe the variances requested are not substantial since granting the variances to Section 113-225, Section 113-226, and Section 113-333 would not change how the utilities access their equipment or the way our neighbors use their property. The existence of the accessory structure predates our neighbors' homes and the current town ordinances.

(ii) We do not believe granting the variances will substantially change the neighborhood since the accessory building already exists and has for quite some time.

(iii) We believe allowing the variance is the only reasonable path to maintain this aspect of our property. The existing accessory building is a solid concrete block structure that is well built and cannot be moved. Demolishing the current accessory structure and reconstructing a new accessory structure would be a significant cost.

(iv) We strongly believe that granting the variance will serve the interest of justice. The insurance claim process was frustrating and much lengthier than expected. It would be an injustice to impose these ordinances and force us to demolish the detached garage because our home, which accounts for greater than 50% of the property structure, cannot reasonably be repaired. We are not developers looking to cash in on an opportunity and we are not asking for variances associated with new construction. We are looking to make the best of an unfortunate situation by maintaining a solid and valuable asset. The accessory building is the portion of our home that was not destroyed by the storm.

