

Clearwater, Florida, June 5, 2019

The Board of Adjustment and Appeals (BAA) met in regular session in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida on this date with the following members present: John Doran, Chairman; Deborah J. White, Vice-Chairman; Jose Bello; Alan C. Bomstein; Joe C. Burdette; Vince Cocks; and Pamela Kern, alternate member.

Not Present: Cliff Gephart.

Also Present: Michael Schoderbock, Principal Planner; Chelsea Hardy, Assistant County Attorney; Gina Berutti, Code Enforcement Operations Manager; other interested individuals; Christopher Bartlett, Board Reporter, Deputy Clerk; and David Beeler, Board Reporter.

CALL TO ORDER

Chairman Doran called the meeting to order at 9:00 A.M. and provided an overview of the hearing process. Attorney Hardy noted that if any member has had ex parte communications on a case prior to the meeting, they should disclose the matter before the application is heard. During discussion, she provided a general overview of how a quasi-judicial hearing is conducted and stated that, while not common, cross examination can be allowed as part of due process.

PUBLIC HEARING ITEMS

Due notice having been given to interested persons pursuant to Comprehensive Zoning Ordinance No. 90-1, public hearings were held on the following applications. All persons planning to give testimony were duly sworn by the Deputy Clerk.

- #1 APPLICATION OF GENERAL INDUSTRIAL CORPORATION THROUGH LORI STUART, REPRESENTATIVE, FOR A TYPE 2 USE (BA-03-06-19) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of General Industrial Corporation through Lori Stuart for a Type 2 Use to allow an indoor commercial recreation facility (dance studio) in an E-1 zone within the Lealman Community Redevelopment Area (CRA), re property located at 2901 44th Avenue North in Lealman (BA-03-06-19). No correspondence relative to the application has been received by the Clerk.

Mr. Schoderbock presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request as it appears to meet the criteria for granting Type 2 Uses found in Section 138-241 of the Pinellas County Land Development Code. The updated Land Development Code that went into effect January 1, 2019 allows commercial recreation uses in the E-1 zoning district within the Lealman CRA as a Type 2 Use. This is an after-the-fact request for a dance studio that occupies a portion of the existing building on the subject property. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees within six months of the date of Type 2 Use approval.
2. Appropriate site plan review.
3. Approval is limited to the portion of the building identified on the submitted concept plan for commercial recreation use.

Lori Stuart, Clearwater, appeared and indicated that she represents the applicant. No one appeared upon the Chairman's call for persons in opposition to the application.

In response to query by Mr. Bomstein, Mr. Schoderbock indicated that the area is zoned Employment 1 and is in the center of Joe's Creek Industrial Park; whereupon, Mr. Bomstein moved, seconded by Ms. White, that the Type 2 Use be granted as recommended by staff. Upon call for the vote, the motion carried unanimously.

#2 APPLICATION OF JAVIER AND ODISA MORENO FOR A VARIANCE (BA-02-06-19) – GRANTED WITH CONDITIONS

Public hearing was held on the application of Javier and Odisa Moreno for a variance to allow for the construction of a 1,421-square-foot detached accessory dwelling unit where 750 square feet is the maximum size allowed, re property located at 9300 102nd Avenue North in unincorporated Seminole (BA-02-06-19). No correspondence relative to the application has been received by the Clerk.

Mr. Schoderbock presented the following staff recommendation:

Recommend Denial. Staff cannot support the request as it does not meet the criteria for the granting of a variance found in Section 138-231 of the Pinellas County Land Development Code, as described in the staff report. There are no special conditions or unnecessary hardships, the request is not the minimum variance necessary, and it is inconsistent with the Land Development Code and the Comprehensive Plan.

Responding to queries by the members, Mr. Schoderbock indicated that staff does not support a rezoning of the property; that there is no option to split the property as it is below the required minimum four-acre lot size; and that an attached unit would still be limited to 750 square feet.

Javier Moreno appeared and stated that the request is to build a detached residence for his parents that is also handicap accessible; that being in an AE-10 zone, the structure will need to be elevated; and that there are other lots in the area that contain large structures. He noted that there would be no increase in traffic; and that he wishes to keep all of the old growth pine and other mature trees intact as much as possible.

Responding to queries by Chairman Doran, Mr. Moreno indicated that the variance is needed in order to provide a comfortable living space; and that even if the property could be separated into two lots, the additional development cost would be substantial. Mr. Bomstein noted that the 750-square-foot maximum applies equally to half-acre lots or lots of multiple acres; and that the Code does not address whether a larger accessory building could be accommodated on larger lots.

Mr. Moreno related that he inquired about purchasing the adjacent lot directly to the south of the property, which if combined would create a lot size over four acres; and that the owner of the property has no interest in negotiating a possible sale, and discussion ensued.

Upon the Chairman's call for objectors to the application, Mark Callahan, Seminole, appeared and expressed concerns regarding splitting lots in the area into smaller-sized lots and seeing more renters move into the neighborhood; whereupon, he responded to queries by the members.

Mr. Moreno stated that he does not wish to pursue splitting his lot; and that he would prefer to keep the lot intact.

Following brief discussion, Mr. Bomstein stated that he would not support the request for a 1,400-square-foot accessory building; and that he would be more inclined to accept a smaller size of 1,000 square feet; whereupon, Mr. Moreno indicated that 1,000 square feet would be acceptable.

Mr. Bomstein moved, seconded by Ms. White, that a variance for a 1,000-square-foot detached accessory dwelling unit be granted with the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Approval is limited to a 1,000-square-foot maximum detached accessory dwelling unit.
3. All other standards, except for the size noted in condition two, of Section 138-3210 shall be met.

Upon call for the vote, the motion carried unanimously.

#3 APPLICATION OF JAYNE SIDWELL TRUST THROUGH CYNTHIA TARAPANI, REPRESENTATIVE, FOR A TYPE 2 USE AND TWO VARIANCES (BA-01-06-19) – DENIED

Public hearing was held on the application of Jayne Sidwell Trust through Cynthia Tarapani for the following Type 2 Use (Special Exception) and variances, re property located at located at 2825 Pine Hill Road in Palm Harbor (BA-01-06-19). The Clerk has received 108 letters in support of and 55 letters in opposition to the application.

- 1) An after-the-fact Type 2 Use for an existing kennel facility;
- 2) A variance to allow the kennel remain on a Residential Agricultural (RA) zoned property that is less than two acres in size; and
- 3) A variance for a setback reduction from 50 feet to 46 feet from the north property line for the structure housing the dogs.

Director of Building and Development Review Services Blake Lyon briefly introduced the item and addressed certain concerns received by the County prior to the hearing through

media correspondence and social media services. He stated that the County is supportive of Canine Estates and its relationship with the County Animal Services Department; that the quality of the organization and its mission are not in question; and that the Board must instead decide whether the subject property and its location are appropriate for a Type 2 Use, and whether the requested variances should be granted. He noted that should the Board agree with the staff recommendation to deny the application, the County will work with Canine Estates to help find a more appropriate location for its operations.

Mr. Schoderbock reviewed staff's findings with regard to the six criteria for granting Type 2 Uses and the eight criteria for granting variances; whereupon, he presented the following staff recommendation:

Recommend Denial. Staff cannot support the requests as they do not meet the criteria for the granting of Type 2 Uses and variances found in Sections 138-241 and 138-231 of the Pinellas Land Development Code, respectively, as described in the Staff Report. It is staff's opinion that the kennel is too impactful and obtrusive to the surrounding residential community.

Responding to query by Mr. Bomstein, Attorney Hardy clarified that the County maintains both the Pinellas County Code and the Land Development Code; that the definition of a kennel differs slightly between them; and that it is the Land Development Code definition that applies in this instance.

Cynthia Tarapani, Clearwater, appeared and indicated that she represents the applicant. She presented her resume, a copy of which has been filed and made a part of the record, and asked that the Board qualify her as an expert witness in planning, noting that she has been a planner for 37 years and holds degrees from Clemson and Florida State Universities; whereupon, Mr. Burdette moved, seconded by Ms. White and carried unanimously, that the Board accept Ms. Tarapani as an expert witness in planning.

Ms. Tarapani referred to documents and photographs and provided background information on the property. She noted that Canine Estates, a not-for-profit organization, is operated by Jayne Sidwell and Sybil Freeman, two of three sisters who created the dog rescue sanctuary; that Ms. Freeman lives on the property with the rescued dogs; and that volunteers and veterinarians are on the property throughout the day to help care for the animals.

Ms. Tarapani indicated that Canine Estates' business office is located at 292 Alternate U.S. Highway 19 North in Palm Harbor; and that adoption activities are conducted at the office and not on the subject property. She stated that the applicant was notified by the County in December 2018 that Canine Estates is considered a kennel and would require approval for a Type 2 Use; and that two variances would need to be requested and granted; whereupon, she submitted a book of evidence containing various documents, including additional letters of support.

Referring to Exhibit Two in the submission, Ms. Tarapani showed a concept plan and discussed the layout of the property, pointing out three play areas for the dogs and the locations of the home, garage, and fencing. She referred to photographs and discussed the driveway entrance, the view of the play areas, and the level of vegetation, noting that inside the home, each dog is kept in their own crate overnight or when napping during the day.

Ms. Tarapani referred to a boundary survey and stated that Pinellas County Engineering acquired a portion of the property in 1993 as a right-of-way and as part of an eminent domain process to widen Alderman Road; that the lot became non-conforming as a result; and that the subsequent need for a variance should not be considered a self-made hardship. In response to query by Mr. Bomstein, she related that the applicant purchased the property and home in 2012.

Ms. Tarapani indicated that the applicant believes a variance for the lot size is not required; that a provision in the County Code states that a non-conforming lot created as a result of eminent domain is deemed conforming; and that the request for the variance was submitted under protest so as to continue the application process.

In response to comments by Chairman Doran, Ms. Tarapani stated that the application is consistent with the Comprehensive Plan and is in compliance with the density requirement; and that as a result, there is no request to rezone the property. She noted that current zoning allows rural and agricultural uses such as domestic animals and livestock, and indicated that the Alderman Residential Rural Community Overlay only discourages an increase in density; and that the project maintains the current density without an increase.

Ms. Tarapani referred to a map of the adjacent properties and related that the closest neighbor is 189 feet from the property's play areas, with some neighbors 400 feet away or more. She stated that a denial of the application would cause a hardship for the applicant; that the issues presented are not self-imposed, nor does the project circumvent any conditions; and that the dog rescue operation is not a detriment to the public welfare;

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whereupon, she stated that applications for Type 2 Uses are heard on a case-by-case basis; and that approval of her client's application would not set a precedent or attract other commercial uses to the area.

Responding to queries by the members, Ms. Tarapani stated that all the dogs are housed inside and do not live outside; that six dogs at a time are taken to each play area; and that no more than 25 dogs are kept at the house at any one time. She indicated that Canine Estates is not a business because it is a not-for-profit corporation; and that business-type activities are conducted off site at the Sidwell office on U.S. Alternate Highway 19, and discussion ensued regarding the timeline of events leading up to the application.

Greg Sidwell, Palm Harbor, appeared and stated that he is the husband of Jayne Sidwell; and that he is speaking on behalf of several others in attendance. He discussed the good work of Canine Estates, noting that when a dog is rescued, a human's life is also saved and changed for the better.

Mr. Sidwell stated that RA zoning allows non-residential uses, such as dog parks, daycare centers, and community gardens; that accessory uses are allowed for horticultural activity, managing livestock, and caring for honey bees; and that constructing wireless communication towers for profit is also allowed in RA zoning. He indicated that caring for rescue dogs on the property should be allowed; whereupon, he provided background information on the creation and operation of Canine Estates.

Mr. Sidwell related that he has met with some of the Pine Hill residents who object to the application in order to address their concerns; that at one point, he was invited to reimburse a resident \$30,000 for new windows used to reduce noise from his property, which he subsequently declined; and that noises from the property were measured and did not exceed County standards.

Responding to queries by Mr. Bomstein, Mr. Sidwell indicated that Canine Estates was created after purchasing the subject property; and that a sign at his personal residence that reads "Canine Estates" is named after a book, which later led to the name of the dog rescue operation.

Chairman Doran noted that the applicant is the Jayne Sidwell Trust and not Canine Estates; and that the Board members agree that Canine Estates is doing good work. He stated that the Board must consider facts and circumstances specific to the County Code and

ordinances; and that the issue is whether the Jayne Sidwell Trust meets the criteria for a Type 2 Use and the requested variances.

Upon the Chairman's call to continue the hearing, William West, Palm Harbor, appeared and discussed his support for the application and pointed out the location of his property.

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The meeting recessed at 10:38 A.M. and reconvened at 10:50 A.M.

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In response to query by Chairman Doran and referring to Ms. Tarapani's claim that eminent domain was used by the County in relation to the subject property, Attorney Hardy stated that she was unable to verify the claim; that there is a deed showing that a portion of the property was sold to the County; and that eminent domain proceedings, if any, are not a part of the official record, and Mr. Lyon provided clarification regarding the two-acre minimum size requirement for kennel use in an RA zoning district.

Upon the Chairman's invitation to address the matter, Ms. Tarapani indicated that the Code specifies that any parcel made non-conforming after January 1, 2019 and as a result of eminent domain shall be deemed to be a conforming parcel for all purposes; that the deed indicated the property was acquired by Pinellas County Engineering, which clearly suggests an eminent domain proceeding; and that a sale does not negate eminent domain, as it is unlikely that a property owner would sell a portion of their property for other reasons.

Responding to a comment by Chairman Doran that the County purchased the property many years ago, Clay Matthews, Tampa, appeared and stated that he is the attorney for the Jayne Sidwell Trust; and that the new requirement for a two-acre lot size came into effect on January 1, 2019. He related that the eminent domain statute requires the County to first negotiate a sale of a property outright; that eminent domain proceedings would only be initiated if a sale agreement could not be reached; and that the quit claim deed conveyed property to Pinellas County to the attention of its Engineering Right-of-Way Division, clearly indicating that the County acquired right-of-way as a result of the sale.

During subsequent discussion, Mr. Schoderbock indicated that prior to the new Code, the subject property was zoned Agricultural Estates (AE), which allowed kennel facilities as a conditional use; and that AE zoning required a minimum of two-acre lot sizes; whereupon,

he stated that had the applicant applied prior to January 1, 2019, a request for a variance to allow a lot size under two acres would have still been required.

Upon Chairman Doran's call for proponents of the application, the following individuals appeared and stated their support:

Thomas Crowe, Palm Harbor (speaking on behalf of others)
Bob Pictor, Palm Harbor
Joseph Diaz, Clearwater (speaking on behalf of others)
Cyndi Nason, Dunedin (speaking on behalf of others)
Suzie Freeman, Oldsmar (speaking on behalf of others)
Amy Hand, Odessa
Alicia Lawler, Palm Harbor (submitted documents)
Desia Ritson, Clearwater
Laurie Fredericks, Safety Harbor
Janet Schmidt, Clearwater
Bill Voeller, Palm Harbor
Monica Levy, St. Petersburg
Douglas Zelman, Clearwater
Cecilia Muller, Clearwater
Mary Rogero, Clearwater
Susan Park, Palm Harbor
Kenneth Schumann, Dunedin

Responding to the Chairman's call for persons in opposition to the application, the following individuals appeared and stated their concerns:

Brian Aungst, Palm Harbor (submitted documents; speaking on behalf of others)
Robert Pergolizzi, Clearwater (speaking on behalf of others)
Mason Hubsher, Palm Harbor
Michael Winskowski, Palm Harbor
Andi Brown, Palm Harbor
Bob Carroll, Palm Harbor
Richard Angelillis, Palm Harbor
David Yesser, Palm Harbor
Judith Gellady, Palm Harbor
Suzanne Kroupa, Palm Harbor
Brian Falls, Palm Harbor
Russ Fernandez, Palm Harbor
Lydia Moody, Palm Harbor
Edward Castagna, Clearwater

During testimony, Mr. Aungst asked the Board to accept Mr. Pergolizzi as an expert witness in the area of land use and transportation planning, and the members concurred; whereupon, following Mr. Pergolizzi's testimony, Chairman Doran allowed Mr. Matthews to cross examine Mr. Pergolizzi directly.

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In response to query by Chairman Doran, Ms. Brown indicated that she is the neighbor who installed new windows at a cost of \$30,000; and that she did not specifically ask for reimbursement from Mr. Sidwell.

In rebuttal, Ms. Tarapani submitted an updated evidence book and copies of the initial and supplemental noise studies to be included in the record. She stated that there are no negative impacts to traffic at Pine Hill Road and Alderman Road; that the noise studies were conducted at the north and northwest parts of the property; and that the studies concluded that the noise levels remained under 72 decibels throughout the day.

Ms. Tarapani indicated that AstroTurf is used on the site; and that volunteers immediately remove any animal waste in the yard and dispose of it properly; whereupon, she reiterated her client's position regarding the Alderman Residential Rural Community Overlay, kennel requirements, and the criteria for variances and Type 2 Uses.

In response to queries by Mr. Bomstein, Ms. Tarapani stated that Canine Estates willingly accepts a proposed condition to care for no more than 25 dogs on the property at any one time; that diseased trees were removed from the site, but many healthy trees remain as shown earlier in photographs; and that there is a paved driveway, which was included in the survey at the time the property was purchased by the applicant.

Ms. Tarapani related that some lighting is installed on the house; and that the applicant would consider any further conditions the Board may feel are warranted. Sybil Freeman noted that the lights were recently changed to lower density lighting with a timer; and that there are outdoor lights near the front door that are motion sensitive, and discussion ensued regarding County inspections, lighting, and the locations and use of play areas for the dogs.

Responding to queries by Mr. Bello, Ms. Tarapani related that noise testing was not conducted after 11:00 P.M. as all of the dogs are kept indoors overnight and there would be no outside noise at that time. Mr. Bomstein noted that constant noise throughout the day, even when below the maximum decibel level allowed, can be annoying; and that noise violations can only be cited when they occur while an inspector is on site.

In response to queries by the members, Ms. Freeman stated that she has lived on the property since December 1, 2018; that prior to that time, it was occupied by another tenant; and that pet adoptions have never been conducted at the site. Mr. Schoderbock noted that if the applicant made the request in 2012, they would have had to petition for a conditional

use from the Board of County Commissioners through the Local Planning Agency, not through the Board of Adjustment and Appeals.

Mr. Matthews stated that the factual testimony from Mr. Aungst should not be accepted by the Board, noting that Mr. Aungst is an attorney and cannot testify as evidence in the hearing. He indicated that the report from Mr. Pergolizzi did not contain sufficient facts and data for him to render an expert opinion on the case, and cited a previous court case, which stated that comments and speculation from lay witnesses are not considered competent, substantial evidence; whereupon, he asked the Board to consider granting the application.

Upon the Chairman's invitation to respond, Mr. Aungst stated that the Code includes a provision to allow any proponent or opponent to make an inquiry of fact; and that the applicant's rebuttal included two new fact areas he wished to address. He indicated that the County Attorney's Office was represented as having worked with the applicant's attorney in December and agreed to postpone the processing of the application; and that the site plan provided by the applicant does not show a significant area of pavement; whereupon, he referred to aerial photographs and pointed out the area of improved pavement, noting that he has seen pictures of cars parked there, indicating a commercial use.

Senior Assistant County Attorney David Sadowsky related that in earlier conversations, the applicant's attorney at that time reported that Canine Estates would move to a different location; that the County's response was to allow up to 90 days to move the operations from the site; and that after the 90 days had expired, the applicant made the decision not to relocate, which subsequently triggered the application process for the hearing, and Attorney Hardy and Messrs. Lyon and Matthews concurred; whereupon, Chairman Doran closed the public hearing.

Mr. Bomstein thanked everyone in attendance, stating that the members appreciated their collective good behavior and proper conduct throughout the hearing. He indicated that the requested variances are not as significant as the request for a Type 2 Use; that granting the application would stand on its own and not set precedent for future development of the area; and that he would likely not grant the request if it was a newly proposed project, as opposed to it being a pre-existing condition.

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Mr. Cocks stated that non-profit organizations can be considered businesses; that tax filings show significant revenue being generated by Canine Estates; and that he doesn't think the Type 2 Use fits the residential area and cannot support the application.

Ms. Kern suggested that a good compromise would be for Canine Estates to relocate, allowing it to combine its business offices and kennel services at one location, and Mr. Bello and Ms. White concurred. Mr. Burdette related that the Board must do what is best for the neighborhood; and that he believes granting the application would not be in its best interest.

Chairman Doran stated that the variances are not at issue if the Type 2 Use is not granted; and that staff has addressed each criteria for a Type 2 Use and has recommended denial of the application.

Mr. Cocks moved, seconded by Mr. Bomstein and carried unanimously, that the application be denied.

MINUTES OF THE APRIL 4, 2019 MEETING – APPROVED

Mr. Bomstein moved, seconded by Ms. White and carried unanimously, that the minutes of the April 4, 2019 meeting be approved.

ADJOURNMENT

The meeting was adjourned at 1:56 P.M.

Chairman