

Clearwater, Florida, July 6, 2017

The Board of Adjustment 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: Joe C. Burdette, Chairman; Deborah J. White, Vice-Chairman; Alan C. Bomstein; Vince Cocks; John Doran; Stephen G. Watts; and Michael Foley (alternate).

Not present: Cliff Gephart.

Also Present: Glenn Bailey, Planning Department Zoning Manager; Chelsea D. Hardy, Assistant County Attorney; Todd F. Myers, Environmental Code Enforcement Director; other interested individuals; and Michael P. Schmidt, Board Reporter, Deputy Clerk.

CALL TO ORDER

Chairman Burdette called the meeting to order at 9:00 A.M.

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 JASON STATTON FOR A VARIANCE (BA-01-07-17) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Jason Statton for a variance to allow for the construction of a home addition having a 14-foot front setback from the 94th Avenue North (undeveloped) right-of-way where 20 feet is required, re property located at 12993 93rd Avenue North in the unincorporated area of Seminole (BA-01-07-17). No correspondence has been received by the Clerk.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The proposed home addition would meet normal rear setback standards; however, the rear property line is adjacent to a platted undeveloped public right-of-way which makes it applicable to the larger front setback requirements. There are no plans to develop the right-of-way. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. All other setback requirements shall be met.

Jason Statton, Seminole, appeared and indicated that he is seeking the aforesaid variance.

No one appeared in response to the Chairman's call for objectors to the application; whereupon, Mr. Bomstein moved, seconded by Mr. Doran and carried unanimously, that the variance be granted as recommended by staff.

#2 APPLICATION OF CRAIG AND MIKKEN KILROY THROUGH DOWN UNDER CONSTRUCTION SERVICES, REPRESENTATIVE, FOR A VARIANCE (BA-05-07-17) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Craig and Mikken Kilroy through Down Under Construction Services for a variance to allow for the conversion of an existing lanai into a Florida room having a 15-foot front setback from Oakhurst Road where 20 feet is required, re property located at 8160 Laurel Court in the unincorporated area of Seminole (BA-05-07-17). No correspondence has been received by the Clerk.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The proposal is to convert an existing roofed screened lanai with an unclear permit history into a Florida room. The subject property is a triple frontage lot with 20-foot minimum setbacks on three sides. Oakhurst Road has a wide right-of-way with about 40 feet of space between the roadway's surface and the applicant's property line. Impacts to nearby properties should be minimal. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. All other required setbacks shall be met.

Craig Kilroy, Seminole, and Joe Romano, Largo, appeared and indicated that they are seeking the aforesaid variance.

No one appeared in response to the Chairman's call for objectors to the application; whereupon, Mr. Bomstein moved, seconded by Mr. Doran and carried unanimously, that the variance be granted as recommended by staff.

#3 ITG DIET, LLC, C/O BRIAN J. AUNGST, JR., FOR A VARIANCE (BA-02-07-17) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of ITG Diet, LLC, c/o Brian J. Aungst, Jr., for a variance to allow for the construction of a new commercial building having a 10-foot front setback from the Haines Road right-of-way where 25 feet is required, re property located at 5857 Haines Road in Lealman (BA-02-07-17). The Clerk has received one letter in opposition to the application.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The proposed project is an enhancement over what previously existed on the site. Its design is pedestrian friendly and would meet the criteria envisioned for the future update to the land development code regarding increased setback flexibility as the County continues to be more redevelopment focused. As this variance request only applies to the building setback, it should be noted that the parking layout and drive aisles shown on the submitted concept plan may change based on site plan review. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Full site plan review.

No one appeared in response to the Chairman's call for objectors to the application.

Brian J. Aungst, Jr., Clearwater, appeared and indicated that he represents the applicant. In response to queries by Mr. Bomstein, he provided historical background information regarding the application, relating that a new commercial building housing the international headquarters of ITG Diet will be located on the parcel; that the property is located within the Lealman Community Redevelopment Area (CRA); and that the CRA Master Plan calls for a reduction in setbacks to bring commercially zoned parcels to the road to enhance their pedestrian value; whereupon, Mr. Bailey related that the concerns expressed by the letter opposing the application will be addressed during the site plan review.

Following brief discussion, Mr. Bomstein moved, seconded by Mr. Doran and carried unanimously, that the variance be granted as recommended by staff.

#4 APPLICATION OF JOSEPH AND EVA FUCHS FOR A VARIANCE (BA-04-07-17) – GRANTED WITH ADDITIONAL CONDITIONS

Public hearing was held on the application of Joseph and Eva Fuchs for a variance to allow construction on a parcel with 20 feet of public right-of-way frontage where 80 feet is required, re property located on the west side of 129th Street North, approximately 120 feet south of Poinsettia Avenue in the unincorporated area of Seminole (BA-04-07-17). The Clerk has received one letter of no objection and four letters in opposition to the application.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The proposed lot reconfiguration is a means to provide adequate access to Lot 38 of the Harbor View Subdivision that dates from 1910. The access issue was created via past right-of-way vacations. The request would provide access by incorporating the north 20 feet of Lot 39, which has road frontage along 129th Street North, into Lot 38. Approval of the request should be subject to the following condition:

1. All other R-1 zoning district regulations shall be met.

Attorney Hardy clarified that the request should include the following language in the case description:

...a variance to allow construction of a single family home to be built on a lot currently having zero feet of road frontage where 80 feet is required...

She related that the recommendation of staff should include the following condition:

That at least 20 feet of public road access be acquired for the parcel.

Joseph Fuchs, Redington Shores, appeared and indicated that he is seeking the aforesaid variance.

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During discussion and in response to comments and queries by Mr. Bomstein, Mr. Fuchs referred to a drawing and pointed out the subject property. He indicated that the plat was established in 1910; that it contains two vacant parcels; and that his objective is to be able to site a home on each lot; whereupon, he related that his request is to use 20 feet from Lot 39 to provide access to interior Lot 38, and Attorney Hardy and Mr. Bailey provided input.

In response to the Chairman's call for objectors to the application, Ann Smith and David Keane, Seminole, appeared, expressed their concerns regarding community uniformity, housing density, utility placement, and flooding and drainage, and responded to comments and queries by the members; whereupon, Messrs. Bailey and Bomstein and Chairman Burdette addressed concerns brought forward by the objectors.

Responding to the concerns of the objectors, Mr. Fuchs related that he is not splitting the parcel, which was established many years ago; and that the neighborhood will be enhanced by two expensive homes, and brief discussion ensued; whereupon, Mr. Bomstein moved, seconded by Mr. Cocks, that the variance be granted as recommended by staff.

Attorney Hardy indicated that granting the conditional approval would include the revised language that she provided earlier in the meeting, indicating that the variance is to allow for the construction of a single family home to be built on a lot with zero road frontage where 80 feet is required; and that at least 20 feet of public road access to 129th Street North be acquired for that parcel, and the members requested that a full site plan review take place.

Upon call for the vote, the motion carried unanimously.

#5 APPLICATION OF RICHARD J. JOUDREY, SR. AND DEBRA L. HERTER THROUGH PETER PENZA, REPRESENTATIVE, FOR A VARIANCE (BA-07-07-17) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Richard J. Joudrey, Sr. and Debra L. Herter through Peter Pensa for a variance to allow for the construction of a pool with an 8-foot front setback where 25 feet is required, re property located at 13837 76th Avenue North in the unincorporated area of Seminole (BA-07-07-17). No correspondence has been received by the Clerk.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The subject property is a double frontage lot. The proposed variance is on the *secondary* front adjacent to the 138th Street North right-of-way on the west side of the property, which is undeveloped with no plans for construction. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. The pool shall not be caged.
3. All other required setbacks shall be met.

Richard J. Joudrey, Sr., Seminole, appeared and indicated that he is seeking the aforesaid variance.

No one appeared in response to the Chairman's call for objectors to the application; whereupon, Mr. Bomstein moved, seconded by Mr. Doran and carried unanimously, that the variance be granted as recommended by staff.

#6 APPLICATION OF 3055 TANGLEWOOD LLC THROUGH ROBERT GREGG, REPRESENTATIVE, FOR A VARIANCE (BA-08-07-17) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of 3055 Tanglewood LLC through Robert Gregg for a variance to allow for the construction of a building addition having an 8-foot side setback where 25 feet is required, re property located at 3055 Tanglewood Trail in East Lake Tarpon (BA-08-07-17). The Clerk has received one letter in opposition to the application.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The former bank building on the subject property is a proposed district location for the Pinellas County Sheriff. Impacts on residential properties in the area relative to the variance should be minimal as the building addition is planned closest to the north property line adjacent to a conservation area. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Full site plan review.

Robert Gregg, Robert E. Gregg Architects, Clearwater, appeared and indicated that he represents the applicant. In response to queries by the members, he provided background information regarding the application, relating that the Pinellas County Sheriff's Office plans to use the location as a substation; that his firm has been developing a floor plan over the last four months; and that an additional 16,000 square feet is required next to the current building to accommodate the needs of the department, and brief discussion ensued.

In response to the Chairman's call for objectors to the application, Al Robinson and James Scott, Palm Harbor, appeared, expressed their concerns regarding impacts to wetlands, real estate values, quality of life, substation hours, and criminal activities, and responded to comments and queries by the members; whereupon, Messrs. Bailey and Bomstein and Chairman Burdette addressed concerns brought forward by the objectors.

Responding to the concerns of the objectors and queries by the members, Mr. Gregg related that the substation will be closed at night and will have no holding cells; that the Sheriff's Office has specific space requirements to accommodate the various activities that will take place at the substation; and that his firm will enter into a contract with Pinellas County if allowed to construct the facility, and discussion ensued regarding permissible uses on the subject parcel; whereupon, Mr. Bomstein related that the substation is a good use of the property, and moved, seconded by Mr. Doran and carried unanimously, that the variance be granted as recommended by staff.

#7 APPLICATION OF JOHN ALAN OWENS FOR A VARIANCE (BA-03-07-17) – GRANTED WITH CONDITION

Public hearing was held on the application of John Alan Owens for a variance to allow the construction of a second story front yard covered deck with a 9-foot front setback and a 6.5-foot side setback and a second story rear yard covered deck with a 4-foot rear setback where 25-foot front, 7.5-foot side, and 10-foot rear setbacks are required, re property located at 387 Pennsylvania Avenue in Crystal Beach (BA-03-07-17). No correspondence has been received by the Clerk.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval of the Rear Setback Request. Staff has no objection to the conditional approval of the rear setback request as the subject property is adjacent to a 15-foot-wide unimproved alley that would help mitigate any impacts to surrounding neighbors. The proposed rear covered deck would be 19 feet from the residential property to the rear. Approval of the request should be subject to the following condition:

1. The applicant shall obtain all required permits and pay all applicable fees.

Recommend Denial of the Front Setback Request. Staff cannot support the reduced front setback request because the proposed front covered deck would be in a location out of character with the adjacent neighbors and significantly closer to the Pennsylvania Avenue right-of-way than the existing homes on those abutting properties. Therefore, staff is of the opinion that it does not meet the criteria for granting a variance as outlined in Section 138-113 of the Pinellas County Land Development Code, specifically in regard to:

- (1) *Special conditions.* That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, including the nature of and to what extent these special conditions and circumstances may exist as direct results from actions by the applicant.
- (2) *No special privilege.* That granting the variance request will not confer on the applicant any special privilege that is denied by this chapter to other similar lands, buildings, or structures in the same zoning district.
- (3) *Unnecessary hardship.* That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.

No one appeared in response to the Chairman's call for objectors to the application.

John Alan Owens, Dunedin, appeared and indicated that he is seeking the aforesaid variance. During discussion and in response to comments and queries by the members, he referred to a drawing, pointed out the subject property, and provided background

information regarding the application; whereupon, he offered an alternative plan for the proposed front covered deck, and Mr. Bailey provided input.

In response to the Chairman's call for proponents of the application, John Neff, Palm Harbor appeared, expressed his support, and provided historical background information regarding setbacks within the community; whereupon, following brief discussion, Mr. Watts moved, seconded by Mr. Bomstein and carried unanimously, that the front and rear setback requests be granted.

#8 APPLICATION OF JOHN R. AND SUSAN C. JUDGE THROUGH TOM SCERBO, REPRESENTATIVE, FOR A VARIANCE (BA-06-07-17) – GRANTED WITH CONDITIONS AND MODIFICATION TO FRONT SETBACK

Public hearing was held on the application of John R. and Susan C. Judge through Tom Scerbo for variances to allow for the construction of the following: (1) a pool with an 8-foot front setback from Driftwood Drive West where 20 feet is required; (2) a pool enclosure with a 3.6-foot front setback from Driftwood Drive West and an 18.8-foot front setback from Klosterman Road where 20 feet is required; (3) a covered grill and half-bath structure with a 10-foot front setback from Driftwood Drive West where 20 feet is required; and (4) a 6-foot-tall fence with a 15.8-foot front setback from Klosterman Road where 20 feet is required, re property located at 101 Driftwood Drive West in Palm Harbor (BA-06-07-17). The Clerk has received three letters in opposition to the application.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval of the Pool, Pool Cage, and Covered Grill/Half-Bath Requests. Staff has no objection to the conditional approval of the pool, pool cage, and covered grill/half-bath requests. The subject property is a double frontage lot and these requests pertain to the *secondary* front adjacent to the Driftwood Drive right-of-way. Even though the property is addressed off of Driftwood Drive, the home clearly fronts Klosterman Road. The proposed improvements cannot be placed elsewhere on the property due to lack of space and the desire to preserve mature trees. The proposed pool cage would not be closer to Klosterman Road than the existing home. Approval of these requests should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Sight distance requirements shall be met.

Recommend Denial of the Fence Request. Staff cannot support the reduced front setback request for the fence because it pertains to the primary frontage and would extend beyond the existing home. Staff would support the fence being placed up to the extent of the existing home, which is 18.8 feet from the Klosterman Road right-of-way. There appears to be no reason this cannot be done. Therefore, staff is of the opinion that the fence request does not meet the criteria for granting a variance as outlined in Section 138-113 of the Pinellas County Land Development Code, specifically in regard to:

- (1) *Special conditions.* That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, including the nature of and to what extent these special conditions and circumstances may exist as direct results from actions by the applicant.
- (2) *No special privilege.* That granting the variance request will not confer on the applicant any special privilege that is denied by this chapter to other similar lands, buildings, or structures in the same zoning district.
- (3) *Unnecessary hardship.* That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.

Mr. Bailey briefly discussed the application, relating that the recommendation of staff is for conditional approval of the pool, pool cage, and covered grill/half bath requests and denial of the fence request. He indicated that the applicant has agreed to locate the fence flush with his home; that the front setback request is now 18.8 feet rather than the initially proposed 15.8 feet; and that a variance is still required because the fence will be within the 20-foot setback.

Tom Scerbo, Palm Harbor, appeared and indicated that he represents the applicant.

No one appeared in response to the Chairman call for objectors to the application.

Upon confirming that the request is to place the fence 18.8 feet from Klosterman Road and align it with the front of the home, Mr. Bomstein moved, seconded by Mr. Doran and carried unanimously, that the entire request be granted with the modification.

#9 APPLICATION OF JAMES AND LINDA PARISH THROUGH HERBERT ELLIOTT, REPRESENTATIVE, FOR A VARIANCE (BA-02-05-17) – GRANTED WITH THE STIPULATION THAT A WETLANDS BOUNDARY SURVEY BE PROVIDED

Public hearing was held on the application of James and Linda Parish through Herbert Elliott for a variance to allow existing cage structures to remain with a minimum 20-foot front setback from the Highland Avenue right-of-way where 50 feet is required, re property located at 1012 East Lake Drive in East Lake Tarpon (BA-02-05-17). The Clerk received six letters in opposition to the initial application at the May 3, 2017 meeting.

Mr. Bailey presented the following staff recommendation:

Recommend Denial. On May 3, 2017, the Board continued the request to give the applicant time to properly delineate any wetland areas in the vicinity of the cage structures. The applicant arranged for the flagging of the wetland area closest to the cage structures, which was verified via a site visit from County environmental staff. It is apparent that the cage structures could be moved outside of the required setbacks without encroaching into the wetlands. Therefore, staff cannot support the request as it does not meet the criteria for granting a variance as outlined in Section 138-113 of the Pinellas County Land Development Code, specifically in regard to:

- (1) *Special conditions.* That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, including the nature of and to what extent these special conditions and circumstances may exist as direct results from actions by the applicant.
- (2) *No special privilege.* That granting the variance request will not confer on the applicant any special privilege that is denied by this chapter to other similar lands, buildings, or structures in the same zoning district.

- (3) *Unnecessary hardship.* That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.

Mr. Bailey provided background information regarding the application, relating that the portion of the request regarding solar panels was approved at the May 3 meeting; and that the balance of the request regarding the cage structures was deferred for the reasons stated in the recommendation of denial.

Herbert Elliott, Tarpon Springs, appeared and indicated that he represents the applicant; whereupon, James and Linda Parish, Tarpon Springs, appeared and indicated that they are seeking the aforesaid variance.

No one appeared in response to the Chairman's call for objectors to the application.

Mr. Elliott provided background information regarding the application. He related that the two chicken coops are 5 feet wide by 8 feet long and 5 feet wide by 10 feet long, have been in the current location for 20 years with no complaints from the neighbors, and are set 20 feet from a minimally traveled right-of-way in a rural section of Tarpon Springs.

During discussion and in response to comments and queries by Chairman Burdette, Mr. Elliott clarified that the County had responded to a noise complaint regarding other animals on the subject property; and that during the inspection, Code Enforcement noticed that the chicken coops were in the setback area; whereupon, he discussed the Florida Greenbelt Law and the Florida Right to Farm Act, and Chairman Burdette pointed out that the issue before the members is not whether the applicant is allowed to have chickens but rather the location of the chicken coops.

During discussion and in response to comments and queries by the members, Mr. Parish discussed the difficulties associated with moving the coops, relating that they are heavily weighted to mitigate for high winds and severe storms, and provided further information regarding the length of time the structures have been in place and their distance from the wetlands.

In response to queries by Mr. Bomstein, Mr. Bailey reported that even though the structures have been in place for 20 years, they are located within the 50-foot front setback without permission from the County; and that they can be moved out of the setback area without encroaching into the wetlands; whereupon, Program Planner Ryan Brinson related that the

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applicant needs a zoning clearance; that staff cannot provide the clearance because the structures are in the setback; and that for staff to ultimately provide the clearance, a Global Positioning System (GPS) survey is needed.

Mr. Burdette expressed disappointment that the applicant has not provided the GPS survey as previously requested; whereupon, during discussion and in response to queries by the members, Mr. Elliott, with input by Mr. and Mrs. Parish, indicated that a GPS survey costs between \$3,000 and \$5,000; that a considerable sum of money has already been spent to survey and flag the lot; and that various state and local agencies have reviewed and verified that the coops are not in the wetland area, and discussion ensued.

Mr. Bomstein moved, seconded by Mr. Doran, that the variance be granted with the following condition:

1. Applicant shall submit a jurisdictional wetlands boundary survey to the County showing the relationship of the wetlands to the chicken coops to meet the requirement that the structures not be located in the wetlands.

Upon call for the vote, the motion carried unanimously.

MINUTES OF MAY 3 AND MAY 31, 2017 MEETINGS – APPROVED

Upon motion by Mr. Bomstein, seconded by Mr. Doran and carried unanimously, the minutes of the meetings held May 3 and May 31, 2017 were approved.

ADJOURNMENT

The meeting was adjourned at 10:21 A.M.

Chairman