

The Board of Adjustment (BA) 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: Vince Cocks, Chairman; John Doran, Vice-Chairman; Alan C. Bomstein; Joe C. Burdette; Cliff Gephart; and Deborah J. White.

Also Present: Glenn Bailey, Zoning Manager; Brendan Mackesey, Assistant County Attorney; Todd F. Myers, Project Coordinator, Development Review Services; other interested individuals; and Chris Bartlett, Board Reporter, Deputy Clerk.

CALL TO ORDER

Chairman Cocks called the meeting to order at 8:59 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 BRIAN R. BERG AND LISA G. ZIEMBA FOR A VARIANCE (BA-02-04-18) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Brian R. Berg and Lisa G. Ziemba for a variance to allow for the construction of a stairway and landing with a 3-foot side setback from the south property line where a 7.5-foot setback is required, re property located at 317 Banana Street in Ozona (BA-02-04-18). One letter of support and one letter of no objection have 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 narrow at only 34 feet wide, which leaves little extra space for both the existing home and proposed stairs. The property directly to the south is a commercial marina; therefore, there will be no impacts to any adjacent residential properties. Approval should be subject to the following conditions:

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

Brian Berg, Palm Harbor, appeared and indicated that he is seeking the aforesaid variance; and that by moving the existing stairs to the south, he would gain full access to both garage doors on the property. No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein moved, seconded by Mr. Doran, that the variance be granted as recommended by staff. Upon call for the vote, the motion carried unanimously.

#2 APPLICATION OF STEPHEN L. DE DEA THROUGH WARREN HUGHES, REPRESENTATIVE, FOR A VARIANCE (BA-03-04-18) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Stephen L. De Dea through Warren Hughes for a variance to allow for the construction of a single family residence on a parcel that is 50 feet wide, where a minimum of 60 feet is required, re property located at 1608 Pennsylvania Avenue in Palm Harbor (BA-03-04-18). Variances were granted in 2005 and 2008 for the same request. 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. Board approvals of the same request in 2005 and 2008 have expired. There are many other 50-foot-wide lots in the general vicinity, thus approval of this case will not be obtrusive or detrimental to the neighborhood. Approval should be subject to the following conditions:

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

J. Warren Hughes, Clearwater, appeared and indicated that he represents the applicant. No one appeared in response the Chairman's call for objectors to the application.

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

#3 APPLICATION OF JAY K. AND ANN POPPLETON THROUGH KATHERINE E. COLE, ESQUIRE, HILL WARD HENDERSON, REPRESENTATIVE, FOR A VARIANCE (BA-05-04-18) – GRANTED WITH ADDITIONAL CONDITION

Public hearing was held on the application of Jay K. and Ann Poppleton through Katherine E. Cole for a variance to allow for the construction of a single family home with an 18.6-foot south side setback where 25 feet is required and a 9-foot north side setback where 25 feet is required, re property located at 639 Orange Street in Ozona (BA-05-04-18). One letter of no objection and one letter in opposition to the application have 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. At 1.27 acres, the subject property is small by A-E, Agricultural Estate Residential, standards and is narrower than most A-E properties. The existing home, built in the 1930s, encroaches into the south side setback further than what is proposed. The requested 9-foot setback on the north side for the proposed home is similar to the side setback requirement (10 feet) for the parcel to the north that is zoned R-R, Residential Rural. Rezoning the subject property to a district that has smaller setback requirements would open the possibility of subdividing the site at some point in the future, which is something that is not necessarily desirable for the community. Approval 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.

Ed Armstrong, Clearwater, appeared and indicated that he represents the applicant, noting that the subject property is currently occupied by a house built in the 1930s; and that the house will be replaced by a new home as detailed in the filed documents. He related that the Ozona Village Improvement Society has reviewed the application and found it to be reasonable.

Mr. Armstrong indicated that developing a long and narrow lot is problematic; that a 25-foot setback required in an A-E zoning district is unreasonable for the parcel, which is already less than the 2-acre minimum lot size; and that the property to the north is in an R-R zoning district and has only a 10-foot setback requirement. He related that the request

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for a 9-foot setback is from the property line to the chimney; that the chimney extends from the second floor and does not run down to grade; and that when measured from the true wall of the structure, there is approximately 13 to 14 feet to the property line, lessening the perceived impact of the variance request.

In response to query by Mr. Bomstein, Mr. Armstrong confirmed that the plan includes a two-car garage on the north side of the property and a one-car garage on the south. Jay Poppleton, Palm Harbor, appeared and related that the house must be elevated with breakaway walls, which led to his consideration of creating parking space for three vehicles. In response to query by Mr. Bailey, he noted that his entire living space will be located above the garage.

Responding to query by Mr. Bomstein regarding a zoning change as an alternative to the variance request, Mr. Armstrong stated that a zoning change would allow the lot to be subdivided; that there has been reluctance to increase density in the area; that preserving the current density is of higher priority than changing the zoning; and that it was preferred by staff and the applicant to ask for a variance, and discussion ensued with staff concerning the requirements of R-R zoning and the zoning of surrounding properties in the area.

In response to queries by Mr. Gephart, Mr. Armstrong indicated that the proposed location of the house was chosen to be more in line with neighborhood zoning and due to elevation factors of the property.

Upon the Chairman's call for persons in opposition to the application, the following individuals appeared, stated their concerns, and responded to queries by the members:

Pamela Kelsch, Palm Harbor

Doug Pollei, Ozona

Anne Pizzicara, Ozona

Responding to the concerns of the objectors and referring to aerial photographs, Mr. Armstrong indicated that the proposed home will be farther away than the existing home is currently from the adjacent southern property; that the applicant must comply with all local and federal regulations related to a possible eagle's nest sighted on the property; and that the variance, if approved, should have no impact on the adjacent northern property, as the proposed home is much smaller than the home to the north.

Following discussion, Mr. Bomstein moved, seconded by Mr. Doran, that the variance be granted as recommended by staff and with an additional condition that a review be

conducted concerning the eagle or osprey habitat. Upon call for the vote, the motion carried unanimously.

#4 APPLICATION OF TARPON COMMUNITY CHURCH INC. THROUGH GARY BRUNDAGE, REPRESENTATIVE, FOR A SPECIAL EXCEPTION (BA-04-04-18) – GRANTED WITH ADDITIONAL CONDITION

Public hearing was held on the application of Tarpon Community Church Inc. through Gary Brundage for a special exception to allow for the construction of a 195-foot-tall communication camouflage cellphone tower and associated supporting equipment, re property located at 475 East Lake Road North in East Lake Tarpon (BA-04-04-18). One letter of no objection 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 provided the Board is satisfied that the ‘standards’ of Section 138-238 of the Pinellas County Land Development Code have been met. The applicant has provided a letter of no objection from the Council of North County Neighborhoods. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Appropriate site plan review.
3. All required setbacks shall be met.

Mary Solik, Orlando, appeared and stated that she is legal counsel for North American Towers; that the proposed tower is a 195-foot-tall camouflage tower designed as a mono-cross; that it would be placed on a 70-foot by 70-foot compound with a 10-foot landscape buffer and a 30-foot-radius fall zone; and that the proposal meets all of the setback requirements of the Code. She indicated that the Council of North County Neighborhoods (CNCN) supports the proposal.

In response to queries by the members, Ms. Solik stated that the tower is engineered to have a break point at the 30-foot level from the top of the tower; that in the event of a tower failure, it is designed to break over similar to a flexible straw and not freefall; and that

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should it fall, it would fall within the compound. She noted that the tower is over 1,000 feet from a residential property, and 280 to 930 feet from the church's property lines.

Chairman Cocks noted that there were objectors present; whereupon, Mr. Burdette announced that the Board is not allowed to consider potential health issues related to cell towers as an objection to the application.

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

Steven Hutchinson, Tampa
Jeanne Rutter, Tarpon Springs
Nicole Harrison, Tarpon Springs

Ms. Solik responded to the concerns of the objectors, indicating that the CNCN letter of support specifically included support from Foxwood Estates; and that photographs in the application package demonstrate that the tower would not be visible from Foxwood. Mr. Bomstein noted that the photographs are from one specific vantage point and may or may not represent the entire neighborhood. In response, she stated that representative locations are chosen that help provide an overall idea of the expected view.

Ms. Solik related that aesthetic concerns would be mitigated by camouflaging the tower; and that the County has the ability to take code enforcement action should any resident file a complaint regarding the condition of the tower. She indicated that while the church facility is a tax-exempt operation, the tower compound will be designated as a commercial use and will be taxed; and that one of the objectors does not live in the subject area and is with a separate tower company, Tech Towers; whereupon, she stated that her client would accept a condition of approval that a building permit not be issued until a carrier lease is in place for the site.

Responding to query by Mr. Burdette regarding the CNCN letter, Gary Brundage, North American Towers, Clearwater, indicated that he provided a letter and the previously mentioned photographs to CNCN Director John Miolla; and that Mr. Miolla added the last sentence stating that the communities of Crescent Oaks and Foxwood Estates had no objection to the tower.

During discussion concerning the need for a new tower, the general distance between towers, and the excessive height of the proposed tower when compared with others in the area, Ms. Solik, with input by Mr. Brundage, indicated the following:

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- The County has notified all carriers to discontinue using a County-owned 250-foot support tower located 1.5 miles to the east, requiring carriers to secure other arrangements.
- North American Towers does not secure a carrier's lease until the zoning is approved.
- Earthcom Service Inc. is pursuing an agreement that would place its communication equipment at the top of the proposed tower.
- Nearby towers, located at a Methodist Church and a 7-Eleven convenience store, are roughly 150 feet high.
- The tower would be camouflaged as a church cross and all antennas and other equipment would be hidden from view.

Mr. Myers indicated that he contacted the County Radio Division during the meeting; and that the County has chosen not to renew the lease of one carrier on its tower. Mr. Brundage stated that he has termination letters for more than just one carrier, and Mr. Bailey related that the Planning Department has received multiple inquiries about cell tower locations in East Lake resulting from the County's decision.

Mr. Burdette indicated that he would support the proposed tower; and that he would include a condition that a building permit will not be issued until a tenant lease is secured, and Mr. Gephart concurred. Mr. Bomstein stated that he objects to the specific height of the proposed tower and would only support a tower up to 150 feet tall.

Following discussion, Mr. Burdette moved, seconded by Mr. Doran, that the variance be granted as recommended by staff and with an additional condition requiring an end-user agreement before any construction would begin. Upon call for the vote, the motion carried by a vote of four to two, with Mr. Bomstein and Ms. White casting the dissenting votes.

#5 APPLICATION OF MARY ELLEN AND VLADIMIR SOKOL FOR A VARIANCE (BA-01-04-18) – GRANTED WITH CONDITIONS

Public hearing was held on the application of Mary Ellen and Vladimir Sokol for a variance to allow for the conversion of an existing 596-square-foot detached garage as an addition

to an existing 550-square-foot accessory dwelling unit, totaling 1,146 square feet where a maximum of 750 square feet is allowed, re property located at 11446 77th Court North in unincorporated Seminole (BA-01-04-18). No correspondence was received by the Clerk prior to the meeting.

Mr. Bailey presented the following staff recommendation:

Recommend Denial. Staff cannot support the request as it does not meet the criteria for granting a variance in accordance with 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.

Vladimir Sokol, Seminole, appeared and indicated that the converted living space would be used by an extended family member who requires assistance; and that he has collected 55 signatures from his neighbors who support granting the variance; whereupon, he submitted the petition for the record.

In response to queries by Mr. Bomstein, Mr. Bailey stated that staff did not find a demonstrated hardship or special condition related to the land that would allow a recommendation of approval; and that the purpose of limiting the square footage for an accessory dwelling is to prevent having two full units on one property, or double density.

Responding to queries by Ms. White, Mr. Sokol indicated that his mother-in-law lives in the space above the garage; and that the proposed conversion does not include a kitchen but will have a bathroom in the unit.

Mr. Bomstein moved, seconded by Ms. White and carried unanimously, that the LPA recommend approval of the application with the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. The property owner must occupy either the primary residence or accessory unit.
3. The accessory unit shall not have a separate metered utility.

#6 APPLICATION OF JHONNY AND JACQUELINE HERRERA FOR A VARIANCE (BA-06-04-18) – GRANTED WITH CONDITIONS

Public hearing was held on the application of Jhonny and Jacqueline Herrera for a variance to allow an after-the-fact 8-foot-tall decorative fence to remain where 6 feet is the maximum height allowed within the required setbacks, re property located at 124 Maplewood Avenue and the adjacent vacant parcel to its west in unincorporated Clearwater (BA-06-04-18).

The following setbacks for the fence are requested:

1. A 3.1-foot front setback from the north property line along the Drew Street right-of-way.
2. A two-foot front setback from the west property line along the Maywood Avenue right-of-way.
3. A zero-foot side setback from the south property line.

The Board denied a requested variance for the same fence in October 2017 (Case No. BA-14-10-17). No correspondence was received by the Clerk prior to the meeting.

Mr. Bailey presented the following staff recommendation:

Recommend Denial. On October 5, 2017, the applicant came before the Board with the same request to allow an after-the-fact 8-foot-high fence that was installed without permits to remain in place. The Board denied that case by a 6 to 1 vote. Nothing has changed within the past six months that would lead staff to change the recommendation of denial, as the request still does

not meet the criteria for granting a variance in accordance with 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 provision 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.

Jhonny and Jacqueline Herrera, Clearwater, appeared and indicated that they have a petition signed by their neighbors in support of the requested variance; whereupon, they submitted the petition for the record (19 signatures).

Responding to queries by the members, Ms. Herrera indicated that a Code Enforcement Officer suggested that the two lots be combined, but because taxes on the vacant property have tripled and her home was damaged during Hurricane Irma, she does not currently have sufficient funds to pay the increased taxes and combine the lots; whereupon, she noted that a fence height of 8 feet is required to minimize the noise and garbage coming off of Drew Street; and that it helps to keep her children from harm when they play in the yard.

Responding to queries by the members, Mr. Myers related that a complaint was received by the County in February 2017 and citations have been issued to the applicants; that a 6-foot-high fence is standard and does not require permits; and that a fence is not allowed on a vacant lot, which likely led the Code Enforcement Officer to suggest combining the two lots into one property, and Mr. Bailey indicated that staff would recommend adding a condition requiring that the lots be combined if the variance were to be approved.

Ms. Herrera referred to photographs and described the surrounding properties, and in response to query by Mr. Burdette regarding reducing the fence to 6 feet with the exception of the Drew Street frontage, she indicated that it would look peculiar; that a roll gate is already 8 feet high; and that it would create a security issue.

Mr. Bomstein moved, seconded by Mr. Burdette, that the Board approve an 8-foot-high fence on the property along Drew Street and fencing no higher than 6 feet along the remaining side streets, including the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. The two parcels enclosed by the fence shall be combined.
3. The fence shall meet sight triangle requirements.
4. Approval is for the portion of the fence along Drew Street only.

Following discussion and upon call for the vote, the motion carried unanimously.

#7 APPLICATION OF ANGELA E. AND GARY A. HUNT FOR A VARIANCE (BA-07-04-18) – WITHDRAWN

Chairman Cocks referred to the application of Angela E. and Gary A. Hunt for a variance to allow for the construction of a 192-square-foot accessory storage building on a parcel where two accessory storage structures already exist, re property located at 2352 Alligator Creek Road in unincorporated Clearwater (BA-07-04-18), and indicated that the application has been withdrawn by the applicant.

LAND DEVELOPMENT CODE UPDATE STATUS

Long-Range Planning Division Manager Scott Swearingen conducted a PowerPoint presentation and provided up-to-date information on the upcoming revisions to the Land Development Code. He noted that the same information regarding the proposed changes has been presented to the Board of County Commissioners and the Local Planning Agency; that review of the final draft documents by all departments and stakeholders will continue through April and May; and that the goal is to begin using the updated Code by September or October of this year.

Mr. Swearingen discussed the following changes specific to the Board of Adjustment:

- A new Development Review Committee (DRC) will be established to hear Type 1 reviews involving type 1 uses, waivers, site plan reviews, and smaller administrative adjustments.

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- The Board of Adjustment will be renamed to the Community Development Board and will hear Type 2 reviews involving type 2 uses (f/k/a Special Exceptions), variances, and non-conforming use modifications and/or expansions. The Board will also review and/or approve DRC recommendations and act as the Appeal Board for DRC decisions.
- The Community Development Board will retain final approval on all cases that it hears.

Mr. Swearngen discussed the proposed review process, the various usage types, and the specific responsibilities of the Community Development Board. He noted that the review criteria for Special Exceptions have been updated and clarified; that the Board should hear fewer variance cases; and that decisions regarding variances will be based on “Positive Findings of Fact.”

During the presentation and regarding the basis of establishing a hardship when reviewing variance requests, Mr. Bomstein related that hardship can be subjective and is not easily defined; and that the Board should retain the ability to act on situations even when an applicant may fail to meet a specific definition of hardship found in the Code, and several members concurred. In response, Mr. Swearngen stated that the criteria for reviewing variances is intended to be through findings of fact, and discussion ensued concerning what Board actions would be allowed regarding the determination of hardship.

Mr. Bomstein stated that those who serve on the Board are community citizens who are authorized to grant a variance separate from the rigidity of the literal code, and Mr. Swearngen, with input by Mr. Bailey, provided examples of criteria in the Code that would be considered more subjective; whereupon, Attorney Mackesey indicated that the concerns of the members regarding the hardship elements of the Code will be conveyed to the County Attorney’s Office for consideration.

Referring to the presentation, Mr. Swearngen related that non-conforming use modifications and expansions are rare, and Mr. Bailey indicated that although staff have reviewed the requests in the past, they are uncomfortable doing so on a continuing basis. Responding to queries by the members, Mr. Swearngen noted that the DRC process is noticed as a public meeting and allows for public input; and that the County Attorney’s Office has identified certain items to be quasi-judicial, and there should be an appealable process to preserve due process rights, and Mr. Bailey stated that any person with standing will have the right to appeal, including dissenters.

Mr. Swearngen provided more information on the purpose of the DRC, and discussion ensued regarding the review process used by the City of Clearwater.

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MINUTES OF THE FEBRUARY 28, 2018 MEETING – APPROVED

Mr. Doran moved, seconded by Ms. White and carried unanimously, that the minutes of the February 28, 2018 meeting be approved.

ADJOURNMENT

The meeting was adjourned at 11:13 A.M.

Chairman