

Clearwater, Florida, July 5, 2018

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 Burdette; and Deborah J. White.

Not Present: Cliff Gephart

Also Present: Chelsea Hardy, Assistant County Attorney; Blake Lyon, Director of Building and Development Review Services and Code Enforcement; other interested individuals; Jenny Masinovsky, Board Reporter, Deputy Clerk; and Teresa Adkins, Board Reporter.

CALL TO ORDER

Chairman Cocks 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 WEST COAST PROPERTIES LLC, THROUGH BEN FORKOS, REPRESENTATIVE, FOR A VARIANCE (BA-03-06-18) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of West Coast Properties, LLC through Ben Forkos for a variance to allow for the construction of an 8-foot-tall vinyl fence on the south and southwest property lines of a Mobile Home Park where 6 feet tall is the maximum perimeter fence height allowed on the non-addressed sides of a multiple-frontage lot, re property located at 2560 62nd Avenue North in Lealman (BA-03-06-18). The Clerk has received three letters in support of the application.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The south and southwest portion of the

mobile home park appears to have approximately a 2-foot to 4-foot lower grade than the adjacent 58th Avenue North and 27th Street North roadways. An 8-foot-tall fence would essentially appear as a 6-foot-tall fence when viewed from outside the subject property. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Must meet minimum sight triangle requirements for maintaining adequate sight distance at the southwest intersection.

Sandra Grub, St. Petersburg, appeared and indicated that she represents the applicant. 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 JENNIFER METZ THROUGH KEVIN PLANKEY, REPRESENTATIVE, FOR A VARIANCE (BA-01-07-18) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Jennifer Metz through Kevin Plankey for a variance to allow for construction of an in-ground pool with a 7-foot setback and a paver deck with a 5-foot setback from the east property line adjacent to 131st Street, where a 15-foot front setback is required, re the triple-frontage property located at 10039 Linden Place Drive in unincorporated Seminole (BA-01-07-18). No correspondence relative to the application 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 is a triple-frontage lot with drainage easements on the three sides. Consequently, there is little room to place a pool. Approval should be subject to the following conditions:

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

2. There shall be no screen enclosure.

Kevin Plankey, Seminole, appeared and indicated that he represents the applicant. 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.

#3 APPLICATION OF KELLY MULLINS THROUGH HAROLD McCASLIN, REPRESENTATIVE, FOR A VARIANCE (BA-02-07-18) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Kelly Mullins through Harold McCaslin for a variance to allow for the repair and extension of a wood deck and stairs damaged by hurricane Irma with a 1-foot side setback on the east side of the property where 7.5 feet is required, re property located at 4443 43rd Avenue North in Lealman (BA-02-07-18). No correspondence relative to the application 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 variance is to allow for the repair of an existing wood deck with no additional setback encroachment than what was already there. The proposed expansion is toward the interior of the property away from the side property line. The property is narrow at 45 feet in width and the house (built in 1925) is set at an angle, which brings its front corner from which the deck extends closer to the side property line than the rest of the structure. Approval should be subject to the following condition:

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

No one appeared in response to the Chairman's call for the applicant; whereupon, he indicated that the case would be moved to the end of the agenda.

Later in the meeting, Kelly Mullins, Lealman, appeared and indicated that she is the applicant. 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.

#4 APPLICATION OF RORY SUMMERS FOR A VARIANCE (BA-04-07-18) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Rory Summers for a variance to allow for an after-the-fact covered front porch to remain with a 22-foot front setback where 25 feet is required, re the property located at 218 Ontario Avenue in Crystal Beach (BA-04-07-18). The Clerk has received six letters in support of the application.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The covered front porch is not obtrusive to the neighborhood and was constructed as a reasonable accommodation to provide cover for wheelchair access to the home. Approval should be subject to the following condition:

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

Rory Summers, Crystal Beach, appeared and indicated that he is the applicant. 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.

#5 APPLICATION OF JEFFREY AND MARJOLAINE COMPARETTO FOR A VARIANCE (BA-03-07-18) – GRANTED WITH CONDITIONS

Public hearing was held on the application of Jeffrey and Marjolaine Comparetto for a variance to allow the construction of a pool enclosure and awning with a 3.5-foot side setback from the north side of the property where a 7-foot setback is required, re property located at 10447 Hetrick Circle West in unincorporated Largo (BA-03-07-18). No correspondence relative to the application has been received by the Clerk.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. The subject property is an oddly shaped lot that has three primary sides. The home is not centrally located on the lot and is closer to the northeast property line than the other sides. The attached awning that was damaged by Hurricane Irma was built within the required setbacks. The permitting history on the site shows that the permit for the aluminum roof dating from 1989 was abandoned and never finalized. Therefore, the awning the applicant wishes to replace was never approved. Staff is of the opinion that 3.5 feet is too close to the property line, but would support a distance of 5 feet. Considering this, approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. A side setback of 5 feet shall be maintained from the northeast property line.
3. All other required setbacks shall be met.

Jeffrey Comparetto, Largo, appeared in response to the Chairman's call for the applicant, and responding to query by Mr. Bomstein, indicated that he could not live with the 5-foot setback proposed by staff. Referring to photographs, he discussed the configuration of the property and the proposed enclosure, relating that due to the shape of the property, the proposed 5 feet would not allow him to walk around the pool; and that the abandoned permit on the property belonged to a previous owner.

Responding to query by Mr. Burdette, Mr. Comparetto stated that he is not in contact with his neighbor, who lives out of state, but does communicate with her son.

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

Mr. Bomstein moved, seconded by Ms. White and carried unanimously, that the application be approved with the requested 3.5-foot setback, 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.

#6 APPLICATION OF HABITAT FOR HUMANITY OF PINELLAS COUNTY THROUGH KEN RUSH, REPRESENTATIVE, FOR A VARIANCE (BA-06-07-18) – GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of Habitat for Humanity of Pinellas County through Ken Rush for a variance to allow for the construction of four single family homes on four adjoining lots of record under common ownership and having individual lot frontages of 50 feet where 60 feet is required, re four lots of record located at the southwest corner of Gooden Crossing and Palm Avenue in unincorporated Largo (BA-06-07-18). No correspondence relative to the application 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 four lots (15, 16, 17 and 18) were platted in 1952, before the zoning code was in effect. A majority of the adjacent parcels on the block have been developed on the original 50-foot platted lot width and these lots will keep with the character of the surrounding neighborhood. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. The approval for Lot 15 is subject to the approval of the Palm Avenue right-of-way vacation.

Ken Rush, Clearwater, appeared in response to the Chairman's call for the applicant. 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 in accordance with the staff recommendation. Upon call for the vote, the motion carried unanimously.

#7 APPLICATION OF HABITAT FOR HUMANITY OF PINELLAS COUNTY THROUGH KEN RUSH, REPRESENTATIVE, FOR A VARIANCE (BA-07-07-18) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Habitat for Humanity of Pinellas County through Ken Rush for a variance to allow for the construction of three single family homes on three adjoining lots under common ownership with individual lot widths and lot frontages of 52 feet, 52 feet, and 51 feet, where 60 feet is required, re properties located at 1263 and 1317 Gooden Crossing in unincorporated Largo (BA-07-07-18). No correspondence relative to the application 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. A majority of the surrounding lots in the area were platted and developed as 50-foot-width lots and the division of these two parcels into three will keep with the development character of the neighborhood. Approval should be subject to the following conditions:

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

Ken Rush, Clearwater, appeared in response to the Chairman's call for the applicant. He described the subject property and its proximity to the land discussed in the previous case, noting that Habitat for Humanity is making an effort to redevelop the area and plans to develop over 20 homes within a two-block radius.

In response to the Chairman's call for citizens wishing to be heard, Phyllis Collins Jones, Largo, expressed concerns regarding activities in the neighborhood in proximity to the subject property, noting that she is not in opposition to the proposed homes; whereupon, at the direction of Chairman Cocks, Mr. Lyon provided her with information for the appropriate authority to contact with respect to her concerns.

Responding to Ms. Jones's concerns, Mr. Rush indicated that he is familiar with the area; and that Habitat for Humanity is hoping to acquire those lots to eliminate some of the problem.

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.

#8 APPLICATION OF MICHAEL AND ERIN LUDWIG FOR A VARIANCE (BA-05-07-18) – GRANTED WITH CONDITIONS

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Public hearing was held on the application of Michael and Erin Ludwig for a variance to allow for an 8-foot-tall fence with a 0-foot setback along the east and south perimeter of the property where 6 feet is the maximum height, re property located at 13864 Whisperwood Drive in Feather Sound (BA-05-07-18). The Clerk received no correspondence relative to the application 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 the granting of a variance found 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 requested 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 discussed the reason for staff's recommendation of denial, noting that a fence height variance is generally based on a slope discrepancy or proximity to heavily traveled roads; and that neither apply in this case.

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Michael Ludwig, Clearwater, appeared and indicated that he is the applicant. He referred to photographs, relating that his hardship pertains to privacy issues due to a drainage easement; and that a neighbor was granted the same variance; whereupon, he submitted three letters indicating no objection to his request.

Kevin McCraw, Clearwater, appeared and indicated that he is the neighbor who had obtained the previous variance. He provided background information regarding his property, noting that his goal was to have a 6-foot fence at the house level along the property line, with the top elevation remaining flat across the perimeter of the property.

Responding to query by Mr. Bomstein, Mr. Bailey related that a field inspection was not conducted; and that there is no way to verify the slope discrepancy in the records provided. The members inspected a site survey, and discussion ensued, with input Mr. McCraw; whereupon, Mr. Bomstein moved, seconded by Mr. Doran and carried unanimously, that the Board approve an 8-foot fence across the rear lot line and a fence variance on the east lot line graduating from 8 feet to 6 feet where it meets the 6-foot fence returning to the house; including the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. An 8-foot-high fence across the rear (south) lot line is approved subject to condition No. 1.
3. A 6-foot to 8-foot-high fence across a portion of the east lot line, graduating down from 8 feet at the rear property line to 6 feet where it meets the perpendicular fence that connects to the house, is approved, subject to condition No. 1.

#9 APPLICATION OF STEVEN F. SCOFIELD FOR A VARIANCE (BA-10-07-18) – CONTINUED

Public hearing was held on the application of Steven F. Scofield for a variance to allow for the construction of a covered carport having a 3-foot front setback from the east property line along 60th Street North where a 25-foot front setback is required, re the double-frontage property located at 6011 136th Terrace North in unincorporated Largo (BA-10-07-18). No correspondence relative to the application has been received by the Clerk.

Mr. Bailey 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 138-113 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 requested 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.

Steven F. Scofield, Clearwater, appeared and indicated that he is the applicant. No one appeared in response to the Chairman's call for objectors to the application.

Mr. Bomstein noted that the Board often considers a variance on a double-frontage lot, and responding to his query, Mr. Bailey indicated that the requested 22-foot setback relief is excessive and would not even meet a side setback requirement.

Mr. Scofield referred to a survey, indicated the location to the proposed carport, and responded to queries by the members.

Mr. Burdette suggested that the applicant be given more time to modify his request and gather appropriate support documents, including photographs of the neighborhood and letters of support from the neighbors. Following brief discussion, Mr. Scofield indicated that he would like a continuance.

Thereupon, Mr. Burdette moved, seconded by Mr. Doran, that the case be continued for 60 days. Upon the call for the vote, the motion carried unanimously.

#10 APPLICATION OF CRYSTAL COVE COMMUNITY CHURCH, INC. THROUGH KENNETH S. NAUMANN, REPRESENTATIVE, FOR A SPECIAL EXCEPTION (BA-08-07-18) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Crystal Cove Community Church, Inc. through Kenneth S. Naumann, for a special exception to allow for the development of a private school on a parcel containing a church, re property located at 6900 County Road 95 in Palm Harbor (BA-08-07-18). No correspondence relative to the application 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 the “Standards” of Section 138-238, Division 7 of the Pinellas County Land Development Code have been met. 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. The school shall have a maximum enrollment of 100 students.
4. The classroom buildings may be constructed in phases based on enrollment needs.

Kenneth S. Naumann, Crystal Beach, appeared in response to the Chairman’s call for the applicant. No one appeared in response to the Chairman’s call for objectors to the application.

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

#11 APPLICATION OF NORTHSTAR CEMETERY SERVICES OF FL, LLC THROUGH STACY ADAMS, REPRESENTATIVE, FOR MODIFICATION OF AN EXISTING SPECIAL EXCEPTION AND VARIANCES (BA-09-07-18) – GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the Application of Northstar Cemetery Services of FL, LLC through Stacy Adams for modification of an existing special exception for a cemetery to allow for the construction of a crematorium with variances to allow for the crematorium to be placed within 98 feet of a neighboring parcel where 200 feet is required and having a 43.9-foot front setback from 58th Avenue North where 50 feet is required, re property located at 5750 49th Street North in Lealman (BA-09-07-18). The Clerk has received three 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, provided the Board is satisfied the “Standards” of Section 138-238, Division 7 of the Pinellas County Land Development Code have been met. The subject property is part of a larger group of parcels that make up the Memorial Park cemetery and funeral home.

Staff also has no objection to the conditional approval of the requested variances, which will provide the needed flexibility for the placement of the crematorium adjacent to the funeral home building. The requested setback relief is located on a portion of the property that is adjacent to Northside Hospital. The nearest residentially zoned property will be over 600 feet away. 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.

Dustin Rood, A & L Engineering, St. Petersburg, appeared on behalf of the applicant. Responding to queries by the members, he referred to a plot plan and aerial photograph, relating that based on staff’s recommendation, the location of the crematory has been moved to the area indicated; that it puts the building further from the residential properties, exceeding requirements; that there is commercial property to the east; and that the concern

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is with the proximity to the hospital to the north; whereupon, he stated that no objection has been received from the hospital.

In response to the Chairman's call for persons wishing to speak in opposition to the application, the following individuals appeared, expressed their concerns, and responded to queries by the members:

Chris Skeie, St. Petersburg  
Kelley Kowal, St. Petersburg  
Rebecca Harriman, St. Petersburg

Concerns expressed by the objectors included:

- Unpleasant odor
- Quality of life
- Decrease in property value
- Increased noise

In response to concerns of the objectors, Mr. Rood reiterated that the proposed location exceeds the required setbacks from the surrounding residential area; whereupon, Steve Talley, Matthews Environmental Solutions, Apopka, addressed concerns relating to the crematory.

Mr. Talley provided background information regarding his company, noting that all of its systems in the state are permitted and approved by the Florida Department of Environmental Protection. Referring to a brochure, he described the cremation device and process, indicating that the emission consists of heat from the gas burnoff, and the noise decibel level is comparable to that of a residential air conditioning unit. During continued discussion, Mr. Talley addressed concerns pertaining to mercury, odor, pollution monitoring and control, and regulatory agencies and enforcement.

In response to query by Chairman Cocks and Mr. Burdette, Mr. Lyon related that the County has received no actionable complaints pertaining to odor; that a facility in north county recently installed a similar system; and that concerns have been reduced significantly due to technological improvements in the cremation units.

Thereupon, Mr. Bomstein moved, seconded by Ms. White, that the special exception and variances be granted as recommended by staff. Upon call for the vote, the motion carried unanimously.

MINUTES OF THE JUNE 7, 2018 MEETINGS – APPROVED

Mr. Doran moved, seconded by Ms. White, that the minutes of the June 7, 2018 meeting be approved. Upon call for the vote, the motion carried unanimously.

OTHER BUSINESS

Mr. Lyon indicated that Todd Myers has accepted a position with the new Contractor Licensing Department; that Jude Reazin will be the new Code Enforcement Manager; and that he or Mr. Reazin will be available to answer any questions.

Land Development Code Update

Mr. Bomstein expressed concern that the proposed language does not allow governing bodies the flexibility to grant variances for applications not meeting a strict interpretation of *undue hardship*, and Messrs. Burdette and Doran concurred. Referring to a matrix compiled by Attorney Hardy, a copy of which has been made a part of the record, he related that several jurisdictions, including Hillsborough County and the Cities of Tampa and Oldsmar grant flexibility by including the words *practical difficulties*; and that the City of St. Petersburg language states that the Board *shall be guided by the following factors*, as opposed to the proposed language, *shall determine the following criteria have been satisfied*; whereupon, he opined that the proposed language would create a hardship amongst the members.

Attorney Hardy clarified that *practical difficulties*, *undue hardship* and *unnecessary hardship* all refer to the same criteria pursuant to state law; and that the proposed change is just to clarify what the state law is today and not to change the requirements before the Board. Referring to her memorandum dated, July 5, 2018 she related that the variance procedure is governed by case law; and that the Board of Adjustment is an administrative board making quasi-judicial decisions that must be based on specific criteria which are applied uniformly. Lengthy discussion ensued, and Attorney Hardy noted that the goal is to add more flexibility by allowing staff and committee members to make certain decisions and leaving the more egregious issues and larger requests to come before the Board.

In response to query by Mr. Bomstein, Attorney Hardy confirmed that *practical difficulties* is the same as *undue hardship*, and he requested that the wording be reflected in the Code. Attorney Hardy clarified that the criteria must still be met; that the definitions of the two are very similar;

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and that her responsibility as Counsel to the Board is to convey the standing of the law and explain the guidelines and reasoning behind them, avoiding the likelihood of confusion and appeals.

Mr. Burdette requested that Attorney Hardy convey his and Mr. Bomstein's concerns to staff responsible for the Code update; whereupon, responding to query by Mr. Doran, she noted a difference of opinion regarding interpretation of the word *consider*, and provided the definition of a variance in accordance with state law.

Mr. Lyon related that the goal of the Code update is to provide efficiency for the benefit of the applicants; that flexibility could be achieved through modification of the standard criteria, rather than the variance process; and that applicants will have the ability to appeal staff and committee decisions to the Board; whereupon, Ms. Hardy clarified that, at the staff level, certain adjustments will be allowed within the Code and a variance will not be required, and Mr. Bomstein suggested that the Board be provided a similar alternative in dealing with its cases.

#### ADJOURNMENT

The meeting was adjourned at 10:45 A.M.

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Chairman