

Clearwater, Florida, February 6, 2014

The Board of Adjustment met in regular session in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida at 9:03 A.M. on this date with the following members present: John Doran, Chairman; Alan C. Bomstein, Vice-Chairman; Ray Hoeneisen; Joe C. Burdette; Deborah White; Stephen G. Watts; and Gregory R. Pierce.

Also present: John F. Cueva, Planning Department Zoning Manager; Jason C. Ester, Assistant County Attorney; Todd F. Myers, Director, Environmental Code Enforcement; other interested individuals; and Trudy Futch, Board Reporter, Deputy Clerk.

### CALL TO ORDER

Chairman Doran called the meeting to order at 9:03 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:

Chairman Doran indicated that requests have been received to continue Item 1, BA-6-2-14 and Item 8, BA-5-2-14, to the March meeting, and that those cases would be addressed first. He confirmed that people are in attendance who wish to be heard on the cases; and following discussion, Attorney Ester advised that it would be the Board's prerogative whether they would be heard today or asked to come back in March; whereupon, Chairman Doran indicated that each case would be heard separately, and that Item 8 would be heard first, as one of the representatives involved is present.

#### # 8     APPLICATION OF GREY OAKS LAND COMPANY, LLC, THROUGH WILLIAM J. KIMPTON, ESQUIRE, REPRESENTATIVE, FOR A VARIANCE (BA-5-2-14) – CONTINUED TO MARCH 6, 2014 MEETING

Public hearing was held on the application of Grey Oaks Land Company, LLC, through William J. Kimpton, Esquire, for a variance to allow a 14-lot single-family subdivision having the following setbacks: a 20-foot front setback from an internal private road, a ten-foot front setback from Grey Oaks Boulevard, and a ten-foot rear setback from the East Lake Road right-of-way where a 25-foot front setback is required

February 6, 2014

from an internal private road, a 35-foot front setback is required from the Grey Oaks Boulevard pavement edge, and a 25-foot setback from the East Lake Road right-of-way is required, re property located at the northwest corner of East Lake Road and Grey Oaks Boulevard, Tarpon Springs (BA-5-2-14).

Nathan Peters, Attorney for the Grey Oaks Homeowner's Association, Inc., stated that his client is asking for the continuance in order to obtain more information about the case.

Thereupon, Mr. Bomstein moved, seconded by Mr. Burdette and carried, that case BA-5-2-14 be continued to the March meeting.

# 1     APPLICATION OF BARBARA HENSON THROUGH WILLIAM BUTTMI, REPRESENTATIVE, FOR A VARIANCE (BA-6-2-14) – CONTINUED TO MARCH 6, 2014 MEETING

Public hearing was held on the application of Barbara Henson through William Buttmi for a variance to allow a single-family dwelling fronting on a private road where a single-family dwelling on a 90-foot-wide lot fronting on a public right-of-way is required, re property located 290 feet south of Curlew Road and 135 feet west of DeLeon Court, Palm Harbor (BA-6-2-14).

Hearing no objection to the continuance, Mr. Bomstein moved, seconded by Ms. White and carried, that case BA-6-2-14 be continued to the March 2014 meeting.

# 2     APPLICATION OF ROBERT AND KIMBERLY WINDSCHAUER FOR A VARIANCE (BA-8-2-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Robert and Kimberly Windschauer for a variance to allow existing playground equipment to remain at its current location having a zero-foot front setback where a 20-foot front setback is required, re property located at 8846 Merrimoor Boulevard East, Largo (BA-8-2-14).

John F. Cueva, Planning Department Zoning Manager, indicated that a petition with 181 signatures in support of the application has been received, and presented the following staff recommendation:

February 6, 2014

Recommend Approval. Staff has no objection to the approval of this request even though the playground equipment is substantial, as it is apparent it is temporary in that upon maturation of the applicant's children, it is anticipated the use of the playground equipment will no longer be needed, and it may at that time be removed.

Robert Windschauer, Largo, appeared and being duly sworn, indicated that he is seeking the aforementioned variance.

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

Mr. Burdette moved, seconded by Mr. Bomstein, that the variance be granted as recommended by staff.

In response to query by Ms. White, Mr. Myers indicated that the case came to the attention of staff when an anonymous complaint was received regarding a chicken coop in the setback, and, upon investigation, Code Enforcement observed the playground structure.

Upon call for the vote, the motion carried unanimously.

# 3     APPLICATION OF MEGAN BUI THROUGH JOYCE FLOYD, REPRESENTATIVE,  
FOR A VARIANCE (BA-2-2-14) – DENIED

Public hearing was held on the application of Megan Bui through Joyce Floyd for a variance to allow a 24-foot long and 16-foot wide dock and boat lift where the County Code limits the length of the dock to 9.9 feet and the width of the dock to 6.6 feet, re property located at 5694 Bayview Drive, Seminole (BA-2-2-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received. He indicated that the Pinellas County Water and Navigation Code limits the length of single-family docks to 50 percent of the applicant's waterfront property width; that the applicant has 19.8 feet of shoreline and, therefore, the allowable length of the dock would be 9.9 feet; and that the proposed dock will be a total of 24 feet in length and, therefore, a 14.1-foot variance is being requested.

Mr. Cueva stated that the Pinellas County Water and Navigation Code requires single-family docks to be located in the center one-third of the applicant's waterfront property; and that the applicant has 19.8 feet of shoreline at the seawall and, therefore, the minimum setback required for the dock would be 6.6 feet. He indicated that the proposed dock will be located 1.8 feet from both the east and west property lines at the seawall and, therefore, a 4.8-foot variance is being requested on both sides; that due to the pie-shaped nature of the lot, the distance between the extended property lines at the end of the dock is 11.3 feet, and, as a result, the end of the dock should be set back 3.8 feet from each property line; and that the proposed dock will be located just inside the extended property lines and, therefore, no setback is proposed at the end of the dock; whereupon, he presented the following staff recommendation:

Recommend Approval. Staff has no objection to the approval of the request. There is an existing, permitted dock at this site, and the applicant proposes to replace it with a boat lift and two small access platforms to accommodate a boat. The new dock will be three feet shorter than the previously permitted structure and terminate approximately within the same footprint as the existing structure. Closer to the seawall, the structure will be wider to accommodate the lift and platforms. Staff has reviewed the proposed plan and believes that the structure cannot be further minimized if it is to accommodate a boat. The length of the proposed dock will only allow for a relatively small boat and depths are already marginal at the proposed length. The width of the lift has already been reduced to 20 feet (typically these are 12 to 13 feet in width) and the only decking (and access to the boat) will be near the seawall at the bow of the boat. Any further significant reductions would not allow for safe mooring and access to the vessel. The proposed dock is smaller than other docks in the immediate area and does not project beyond either adjacent structure. As a result, there will be no new navigational impacts to either neighbor.

An administrative hearing was held on January 6, 2014, to hear from affected neighbors. Both adjacent neighbors

objected to the proposal. They were concerned that the dock would cross over their extended property lines; however, the dock has been specifically designed to remain completely within the applicant's extended property lines, so that will not occur. Concerns were raised about impacts to the neighbors' views and property values. In addition, they raised concerns about water depth, which will be approximately .9 feet at mean low tide (and is also a concern for both adjacent properties). It is not uncommon for "corner" docks throughout the county to be located in shallow water due to natural sedimentation (exhibit included in backup showing the proposed dock overlaid on an aerial, which delineates the proposed dock length and setback as well as the relationship between the proposed and existing structure).

Joyce Floyd, Brad's Custom Docks, St. Petersburg, appeared and being duly sworn, indicated that she represents the applicant; that the applicant has owned the property for five years and would like to be able to use her boat on her waterfront property; and that the applicant is aware there will be low tides when she could not use the boat.

Referring to an aerial photograph and in response to queries by the members, Ms. Floyd related that the proposed dock is 18 inches shorter than the existing dock, which is 24 feet long; that the proposed dock would encompass a boat lift; and that the new dock would be a few feet closer, but not traverse the property lines; and discussion ensued.

Responding to queries by Messrs. Bomstein and Burdette, Department of Environment and Infrastructure Program Manager David Walker indicated that the Water and Navigation Code requires the dock to be in the center one-third of the property and it cannot be wider than one-third of the lot; that, as the lot contains a 19-foot seawall and is pie-shaped, the Code requires the dock to be 6.5 feet wide at the seawall and taper as it extends into the water; that three years ago, the Board of County Commissioners (BCC) changed the Code to have these types of variances heard by the Board of Adjustment rather than the BCC acting as the Water and Navigation Authority; and that staff recommends approval of the application, as without the variance there is only the existing

February 6, 2014

platform dock, which would not support a boat; whereupon, Mr. Watts noted that the hardship seems to be due to the narrowing of the property in the water.

In response to the Chairman's call for objectors to the application, the following individuals appeared and being duly sworn, expressed their concerns regarding the lack of a setback from the adjacent property lines, setting a precedent, the congested area, water too shallow to accommodate a large boat, the six-foot fence encroaching on the neighbors' lots and preventing navigation around the seawall, and the impediment to other boats:

Scott Lucas, Seminole  
Roland J. Wett, Seminole  
Ray Burkhardt, Seminole  
Mariellen Burkhardt, Seminole

Following discussion regarding the difference in the ways docks and boat lifts are permitted and in response to queries by Messrs. Pierce and Hoeneisen, Mr. Walker related that the variance is to add a boat lift, which is not currently permitted on the existing dock; and that the impact to the neighbors and footprint of the existing dock would be generally the same, except that the dock poles would not be set back and would meet the adjacent property lines.

In rebuttal, Ms. Floyd indicated that the bottom cradle has been reduced to accommodate a smaller area; that the dock and lift would not exceed the property lines and would be constructed to Code; and that many people in Pinellas County must work with the tides when they own boats; whereupon, Chairman Doran closed the public hearing and discussion ensued wherein Mr. Bomstein noted that the lot is too small to have a dock of this nature, and the members concurred.

Thereupon, Mr. Pierce moved, seconded by Mr. Hoeneisen and carried unanimously, that the variance be denied.

# 4      APPLICATION OF JOSEPH AND IVA FIALA FOR A VARIANCE (BA-3-2-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Joseph and Iva Fiala for a variance to allow a six-foot-high fence having a zero-foot front setback where a 20-foot

February 6, 2014

setback is required, re property located at 13660 74<sup>th</sup> Avenue North, Seminole (BA-3-2-14).

John F. Cueva, Planning Department Zoning Manager, indicated that two letters in support of and one email in opposition to the application have been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request, as the applicant's front property line is located approximately 30 feet south of the paved roadway for 74<sup>th</sup> Avenue North, and, as such, no adverse impact will occur. It should be noted that many of the properties that front 74<sup>th</sup> Avenue North also have fences in excess of three feet in height along their front property lines and have received variances over the years. Approval of the request should be subject to the following conditions:

1. The six-foot-high fence shall have a zero-foot front setback.
2. The fence shall be subject to sight distance review by the Building and Development Review Services Division.

Joseph and Iva Fiala, Seminole, appeared and being duly sworn, indicated that they are seeking the aforesaid variance.

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

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

# 5     APPLICATION OF ISADORE BROWN, TRE/THE BROWN FAMILY TRUST IN CARE OF HPM, INC. THROUGH A.D.S. SIGNS, INC., REPRESENTATIVE, FOR A VARIANCE (BA-4-2-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Isadore Brown, Tre/The Brown Family Trust in care of HPM, Inc. through A.D.S. Signs, Inc. for a variance to allow wall signage in excess of the 17.5 square feet allowed (36.75 square feet), re a shopping center located at 3398 Tampa Road, Palm Harbor (BA-4-2-14).

John F. Cueva, Planning Department Zoning Manager, indicated that one letter in objection to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request due to the unusual shape of the frontage of the unit requesting the variance. Approval of the variance will not confer any special privilege that the other tenants do not currently realize. Approval of the request should be subject to the following conditions:

1.     The maximum area of the wall sign shall not exceed 36.75 square feet.
2.     The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.

Nanci Cernak, Clearwater, appeared and being duly sworn, indicated that she represents the applicant.

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

In response to queries by the members, Ms. Cernak, with input by Mr. Cueva, indicated that the two adjacent stores have large signs that were previously permitted; and that the requested sign is symmetrical in appearance to other signs located within the shopping plaza.



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

# 6      APPLICATION OF LEVEL 6, LLC THROUGH MICHAEL HYER, REPRESENTATIVE, FOR A VARIANCE (BA-1-2-14) – READER BOARD VARIANCE DENIED; 80-SQUARE-FOOT UPPER SIGN APPROVED TO REMAIN

Public hearing was held on the application of Level 6, LLC through Michael Hyer for a special exception to allow an existing 112-square-foot identification sign to remain where a 75-square-foot identification sign is allowed, re property located at 5850 Ulmerton Road, Clearwater (BA-1-2-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Denial. Staff recommends denial of the request as the application does not meet the intent of Section 138-113 criteria for the granting of a variance as follows:

1. *Special conditions.* That special conditions and circumstances exist which are peculiar to the 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

February 6, 2014

properties in the same zoning district under the terms of this chapter.

Michael Hyer, Clearwater, appeared and being duly sworn, indicated that he represents the applicant.

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

In response to queries by Messrs. Bomstein and Watts, Mr. Hyer indicated that the request is to update the reader board portion of the sign; that the subject property consists of 450 feet fronting on Ulmerton Road; and that he was under the impression that the zoning district allowed 150 square-feet of signage; whereupon, Mr. Cueva clarified that the applicant is referring to a C-2, General Retail Commercial and Limited Services district; and that the subject property is zoned M-1, Light Manufacturing and Industry district, which limits the signage to 75 square feet, and discussion ensued.

Noting that the County passed the sign ordinance in 1990, Mr. Myers provided historical background information and related that enforcement began in 1999 to bring the signs in Pinellas County into compliance with the ordinance; and that the task remained incomplete, as sign compliance at that time was considered a low priority and Code Enforcement Officers were needed in the residential areas; whereupon, Mr. Bomstein pointed out that the applicant's sign should have been reduced to 75 square feet 15 years ago. Mr. Burdette, with input by Mr. Watts, noted that the applicant's top sign is also out of compliance, and discussion ensued.

Following discussion regarding the different sign criteria in each zoning district and in response to query by Ms. White, Mr. Cueva, with input by Mr. Bomstein, indicated that, even though the lot is very large, it is one lot which is entitled to one sign; and that the lot would need to be divided into two lots to receive two signs, which would create setback issues. Discussion ensued wherein Mr. Watts noted that the requested variances are relatively small.

In response to queries by Mr. Hoeneisen, Mr. Hyer indicated that the subject property is the applicant's biggest retail store, selling paint to contractors, painters, builders, and homeowner walk-ins; whereupon, Chairman Doran pointed out that the County Commission allowed the seven-year amortization period in which the businesses were to comply with the new ordinance; that this seven-year period expired in

1999; and that the applicant's sign has been non-conforming for over 15 years, and the members concurred.

Responding to queries by Mr. Bomstein, Mr. Cueva stated that a temporary use permit must be obtained to use a temporary or "snipe" sign; that these signs are very restrictive; and that sandwich board signs and flags are prohibited in the County; whereupon, Mr. Burdette pointed out that many others have complied with the sign ordinance.

Thereupon, Mr. Burdette moved, seconded by Mr. Watts and carried unanimously, that the variance request be denied; and the Chairman clarified that the applicant must eliminate the reader board, but the upper sign, being 80 square feet, would be allowed to remain.

# 8     APPLICATION OF E & A ACQUISITION LTD. PARTNERSHIP THROUGH ROBERT H. WICKNER, REPRESENTATIVE, FOR A VARIANCE (BA-7-2-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of E & A Acquisition Ltd. Partnership through Robert H. Wickner for a variance to allow for the dispensing of alcoholic beverages within 150 feet of a residential zone (25 feet), re a retail shopping center located at 3251 Tampa Road, Palm Harbor (BA-7-2-14).

John F. Cueva, Planning Department Zoning Manager, indicated that one email in opposition to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request as the proposed use is for consumption on premises with no live entertainment. Staff has also based its recommendation on the narrative submitted with the application, which indicates a co-working relationship with restaurants in the plaza and incorporating the hours of operation. It should be noted that this plaza attempted a similar variance which was denied; however, that request incorporated live entertainment as part of the business plan, which this

application does not. Approval of the request should be subject to the following conditions:

1. Hours of operation shall be 3:00 P.M. to 11:00 P.M. daily.
2. No rear access by patrons shall be allowed, i.e. cooking, food trucks for employees of the plaza.
3. Congregating by employees outside at the rear of the building shall not be allowed.
4. No live entertainment or amplified music shall be allowed.
5. In the event the above conditions are not met, the Board may rescind the variance.

In response to query by Mr. Bomstein, Mr. Cueva related that there was a similar case several years ago that was denied due to noise associated with the anticipated “bar” use; and that Suzanne Johnson was instrumental in representing the neighborhood against the proposed “light” music requested by the applicant.

Robert H. Wickner, Palm Harbor, appeared and being duly sworn, indicated that he represents the applicant; that there would be fewer than 50 customers, as the building is small; that it should draw an affluent crowd, as the owners are charging \$6.00 to \$8.00 per pint of beer; and that the establishment would work with the surrounding restaurants to offer food to the lounge patrons.

In response to queries by the members, Mr. Wickner related that he has no ownership interest in E & A Acquisition Ltd. Partnership; that no beer would be brewed on site; that there would be no activity in the rear of the building, other than the deliveries during the day; that the establishment would promote the local restaurants, as there is no kitchen on the premises; and that menus would be located on the tables that featured appetizers available to be delivered by the surrounding restaurants; whereupon, Chairman Doran directed staff to emphasize that no rear access to the establishment by patrons be allowed; and Mr. Wickner confirmed his understanding and agreed.

February 6, 2014

Responding to a request by Mr. Wickner, Mr. Watts agreed that the hours of operation could be extended to allow the business to open on Saturdays and Sundays at noon, and no objections were noted.

In response to the Chairman's call for citizens wishing to be heard, Suzanne Orgera, Palm Harbor, appeared and being duly sworn, distributed photographs of the subject site and expressed her concerns regarding noise, sanitation, and the importance of restrictions, including no cooking in the rear of the establishment; whereupon, Chairman Doran clarified that Ms. Orgera supports the application with the conditions set forth in this public hearing.

Thereupon, Mr. Burdette moved, seconded by Mr. Watts and carried unanimously, that the variance be granted as recommended by staff with the amendment to condition No. 1 allowing operation from 12:00 Noon to 11:00 P.M. on Saturday and Sunday.

#### MINUTES OF DECEMBER 5, 2013 MEETING – APPROVED

Upon presentation of the minutes of the meeting of December 5, 2013, Mr. Bomstein moved, seconded by Mr. Watts and carried unanimously, that the minutes be approved.

#### ADJOURNMENT

At the direction of Chairman Doran, there being no further business, the meeting was adjourned at 10:17 A.M.

---

Chairman