

Clearwater, Florida, September 4, 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 9:00 A.M. on this date with the following members present: John Doran, Chairman; Alan C. Bomstein, Vice-Chairman; Joe C. Burdette; Ray Hoeneisen; Gregory Pierce; Stephen G. Watts; and Deborah White.

Also present: John F. Cueva, Planning Department Zoning Manager; Chelsea 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 Doran 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:

#1     APPLICATION OF MORGAN JOSH MOREY THROUGH RICK MYRICK, NUROOM CORPORATION, REPRESENTATIVE, FOR A VARIANCE (BA-7-9-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Morgan Josh Morey through Rick Myrick for a variance to allow a 16-foot front setback from the property line adjacent to 98th Way North where a 20-foot front setback is required, re property located at 9872 52nd Terrace North, St. Petersburg (BA-7-9-14).

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 Conditional Approval. Staff has no objection to the approval of the request as this is a double frontage lot and the proposed addition will be in line with the existing structure, which has a 16-foot front setback from 98th Way North. Staff views the request as an unnecessary hardship upon the owner, as the home was originally permitted having a 16-foot front setback. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The setback from 98th Way North shall be 16 feet.

Rick Myrick, 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.

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

Upon call for the vote, the motion carried unanimously.

#2 APPLICATION OF AMERICAN HOUSING BUILDERS, INC. THROUGH STUART A. COHEN, AMERICAN HOUSING, REPRESENTATIVE, FOR A VARIANCE (BA-4-9-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of American Housing Builders, Inc. through Stuart A. Cohen for a variance to allow a single family dwelling on a lot having a 12-foot front setback from the property line along 16th Street where a 20-foot front setback is required, re property located at the southwest corner of Pennsylvania Avenue and 16th Street, Palm Harbor (BA-4-9-14).

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 Conditional Approval. Staff has no objection to the approval of the request as this is a corner lot which requires two 20-foot front setbacks, and as such, as the home will be fronting Pennsylvania Avenue and consistent with the existing development pattern of the area, staff is of the opinion that an unnecessary hardship exists and that the minimum variance necessary has been requested. It is important to note that from the edge of pavement to the applicant's property line there is an unpaved area of 16 feet; therefore, as it is not anticipated 16th Street will be improved beyond its current condition, there will be 28 feet of grassed area between the home and 16th Street. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The front setback from 16th Street shall be 12 feet.

Stuart A. Cohen, 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.

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

Upon call for the vote, the motion carried unanimously.

#3      APPLICATION OF CAROL ANN BRIDGEWATER FOR A VARIANCE (BA-2-9-14)  
– GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Carol Ann Bridgewater for a variance to allow a five-foot rear setback where a 20-foot setback from Sapphire Lane is required, re property located at 1951 Cobblestone Way, Clearwater (BA-2-9-14).

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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 Conditional Approval. Staff has no objection to the approval of the request as the need for the variance was caused by a special condition of the lots that abut Sapphire Lane in that the subject lot was platted before the creation of the subdivision, which Sapphire Lane is a part of, and as such, as the subject lot originally had a rear setback of five feet for a pool enclosure, when Sapphire Lane was created, it then made the subject lot have two front yard setbacks from public rights of way. Approval of the request will not confer upon the applicant a special privilege not realized by other lots in the area. Therefore, as similar variances based on that fact have been approved in the area, staff has no objection to the approval of the request subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The pool enclosure shall have a five-foot setback from the property line adjacent to Sapphire Lane.

Carol Ann Bridgewater, Clearwater, appeared and being duly sworn, indicated that she is seeking the aforesaid variance.

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

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

Upon call for the vote, the motion carried unanimously.

#4      APPLICATION OF WILBURN LEDFORD FOR A VARIANCE (BA-1-9-14) –  
GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of Wilburn Ledford for a variance to allow a five-foot side setback for a detached garage on a 52-foot-wide lot where a ten-foot side setback on a 90-foot-wide lot is required, re property located at 9906 59th Avenue North, St. Petersburg (BA-1-9-14).

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 Conditional Approval. Staff has no objection to the approval of the request as the way the lot was platted presents a special condition, which is not able to be resolved, as the applicant cannot acquire the additional land necessary to meet the width requirement of the Rural Residential zoning district, which is 90 feet. As the lot is 50 feet wide, the ability to meet the side setback of ten feet is problematic as well, and as such, staff supports the request with the following conditions:

1.      The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2.      The rest of the site shall be in compliance and there shall not be any outstanding violations before the garage is completed.
3.      The garage shall have a five-foot side setback on a 52-foot-wide lot.

Wilburn Ledford, St. Petersburg, appeared and being duly sworn, indicated that he is seeking the aforesaid variance.

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

In response to queries by Mr. Bomstein, Mr. Cueva briefly discussed four lots proximate to the subject parcel that are nonconforming with respect to width, relating that variances were granted and structures built on those parcels.

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

Upon call for the vote, the motion carried unanimously.

#5      APPLICATION OF STEVEN GAGG THROUGH TODD PRESSMAN,  
REPRESENTATIVE, FOR A VARIANCE (BA-3-9-14) – GRANTED WITH  
ADDITIONAL CONDITIONS

Public hearing was held on the application of Steven Gagg through Todd Pressman for a variance to allow a single family residence having an eight-foot rear setback, a five-foot front setback, a five-foot side (south) setback, and a lot size of 6,142 square feet, where a 15-foot rear setback, 25-foot front setback, 7.5-foot side setback, and a lot area of 7,500 square feet are required, respectively, re property located on the west side of Bayshore Drive, 20 feet south of Bay Street, Ozona (BA-3-9-14).

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

Recommend Conditional Approval. Staff has no objection to the approval of the request as there are special conditions that exist on the site that staff is of the opinion warrant the requested variances.

First, the lot size cannot be enlarged to meet the required 7,500 square-foot lot area requirement as there is an existing marina to the south zoned Commercial Recreation District and there is no available land to the north that can be acquired. Second, due to the irregular shape of the lot, which has a lot depth ranging from 53 feet to 103 feet from north to south, it is apparent the requested front and rear setbacks are warranted.

With regard to the rear setback, it is important to note that staff supports the requested eight-foot setback from the seawall only with a certified letter from an engineer stating the deadmen in the seawall will not be compromised if the residence is built with an eight-foot rear setback.

With regard to the requested five-foot front setback, again, due to the nature of the lot and due to previous Board of Adjustment approval on the adjacent lot to the south allowing a proposed duplex to have a five-foot front setback, staff has no objection as it is apparent the vehicles parking on the lot will do so under the structure, and as such, will back onto Bayshore Drive, which is not a heavily-traveled road. The requested five-foot side setback is supported, as this will provide a more “open” vista toward the Gulf of Mexico for those properties looking west.

Staff is of the opinion that the requested variances do not grant the applicant any special privilege not realized by the adjacent property to the south. Staff also believes the applicant has requested the minimum variance necessary to be compatible within the community. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The rear setback shall be eight feet if a letter from a certified engineer is provided stating the deadmen in the seawall will not be adversely compromised; otherwise, a 15-foot rear setback will be required.
3. The front setback shall be five feet.
4. The south side setback shall be five feet.
5. Development shall be allowed on the 6,142 square-foot lot.

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Todd Pressman, Palm Harbor, appeared and being duly sworn, indicated that he represents the applicant, and referring to an aerial photograph and a drawing, pointed out the subject property, described surrounding land uses, and provided background information regarding the application. Mr. Pressman stated that the applicant is requesting the variances in order to build a small, single family home on a small, triangular-shaped lot; that neighboring property owners, including the owners of the Speckled Trout Marina, have written letters in support of the request, which he is submitting for the record; and that two additional property owners, who sold the land to the applicant, have neither expressed support, nor opposition, by way of a formal letter.

In response to comments and queries by the members, Mr. Pressman discussed the three requested setbacks, the favored location for siting the proposed structure, and efforts by the applicant to preserve a neighborhood view of the Gulf of Mexico. He related that although a formal site plan has yet to be completed, a concept plan has been provided to staff; that the location of the driveway has, thus far, not been decided; and that while the idea is to place a one-story structure on stilts at the south end of the parcel, issues relating to drainage, access, and mature trees will need to be taken into account; whereupon, he related that even though the final square footage of the residence is still unknown, the applicant will adhere to all code requirements and open space regulations.

During discussion and in response to queries by the members, Mr. Pressman presented information regarding buffers, setbacks, surveys, plats, views, traffic, the seawall and deadmen anchors, the neighboring marina, and the height, size, and location of the proposed structure; whereupon, Attorney Hardy briefly discussed the topic of views, indicating that they are not a protected legal right.

Responding to the Chairman's call for persons wishing to be heard, the following individuals presented their comments and concerns:

Tom R. Bennett, Palm Harbor – Support  
Brian Smith, President, Ozona Village Improvement Society – Oppose  
Dennis Green, Ozona – Oppose  
Carol Hewitt, Palm Harbor – Oppose  
Alec Liem, Ozona – Oppose



Concerns expressed by the citizens included:

- Community Character and Public Views.
- Excessive Traffic and Rights-of-Way.
- Lot Size, Home Size, and Density.
- Coastal Construction Code.
- Buffering and Setbacks.
- Property Rights.

In response to queries by the members, Mr. Smith presented information regarding the Speckled Trout Marina, indicating that a marina has been at that location for many years; whereupon, Mr. Cueva discussed safety considerations, the permitting process, and subdivision and sidewalk requirements, and Mr. Bomstein remarked that because a single family home would only generate four vehicle trips a day, it would present a very minimal impact to the community.

During discussion and in response to queries by Chairman Doran, Mr. Cueva briefly discussed Florida Statutes, the Coastal Construction Control Line Program, and the Pinellas County Code, indicating that the members may only address matters associated with local code requirements; whereupon, he pointed out that if the applicant is denied the requested variance, he could request a rezoning of the property in order to reduce the minimum land area requirement; and that the present request is to reduce the lot size from 7,500 square feet to 6,142 square feet.

In rebuttal and responding to the concerns of the objectors, Mr. Pressman reported that the application is a classic variance; that the property is unique; and that it has a topographical hardship, and discussed issues relating to density and the footprint of the structure, reiterating that open space and lot coverage requirements will be adhered to and are part of the Code; whereupon, he pointed out that homeowners in proximity to the subject property are in favor of the application; and that the applicant having prior knowledge of the challenges associated with the lot is not within the members' purview, and discussed the minimal number of daily vehicle trips generated by the parcel.

Mr. Bomstein discussed the three setbacks requested by the applicant, and stated that he has aesthetic concerns regarding the five-foot front setback; and moved that the variance be approved with a five-foot south side setback, an eight-foot rear setback, and a ten-foot front setback; whereupon, discussion ensued with respect to the footprint and height of the structure, and Mr. Bomstein clarified that his motion is merely to revise Condition No. 3 and increase the five-foot front setback to a ten-foot front setback.

During discussion and in response to queries by the members, Mr. Cueva indicated that an ultimate building height of 61 feet would be allowed; and Mr. Pressman indicated that he would be willing to work with the members regarding the inclusion of a condition relating to height; whereupon, Attorney Hardy related that the members must be mindful of why they are imposing the condition; and that even if agreed to by the applicant, it must be clearly stated in the record why it is being imposed, and Mr. Burdette related that the height issue relates to conformity with other structures in the community, and Mr. Bomstein agreed.

Mr. Bomstein amended his motion, and moved, seconded by Ms. White, to approve the variance with revised Condition No. 3 and an added condition that the height of the residence shall not exceed 20 feet above base flood elevation; whereupon, Mr. Hoeneisen opined that conditioning the height of the structure to maintain conformity is not appropriate since others in the community would still be able to build a residence four stories tall and would not require a variance to do so.

Following further discussion and upon call for the vote, the motion carried 6 to 1, with Mr. Hoeneisen casting the dissenting vote.

#6      APPLICATION OF ROBERT VAN WORP AND JUDSON VAN WORP  
THROUGH WILLIAM J. KIMPTON, ESQUIRE, AND ANDREW IRICK, II,  
REPRESENTATIVES, FOR A VARIANCE (BA-5-9-14) – GRANTED WITH  
ADDITIONAL CONDITIONS

Public hearing was held on the application of Robert Van Worp and Judson Van Worp through William J. Kimpton and Andrew Irick, II, for a variance to allow 17 single family residences having 15-foot front setbacks and five-foot rear setbacks where 25-foot front setbacks and 10-foot rear setbacks are required, re property located at 3001 Hawks Landing Boulevard, Palm Harbor (BA-5-9-14).

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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 Conditional Approval. Staff has no objection to the approval of the request as staff is of the opinion that special conditions exist on the site that warrant setback relief. The existing special conditions include the presence of wetlands, which impact the proposed home sites. Staff believes the requested variances are the minimum variances necessary to allow for the reasonable use of the land. Staff also has no objection with regard to the 15-foot front setback; however, it recommends the proposed garages have a side entry, thus allowing for a longer driveway approach, enough to accommodate a parked vehicle. Approval of the request should be subject to the following condition:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. Full site plan review.

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At this time, 10:12 A.M., Mr. Bomstein left the meeting.

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Andrew Irick, II, appeared and being duly sworn, indicated that he represents the applicant, and in response to query by Chairman Doran, agreed to proceed before a six-member Board.

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Referring to a sketch and a drawing, Mr. Irick pointed out the subject property and provided background information regarding the application, indicating that the request relates to the development of a 17-lot subdivision. Mr. Irick stated that although the applicant is comfortable with the conditions imposed by staff, he would like to make a modest revision to the application, and requested that the lots having a front entry garage be allowed to have a 20-foot front setback versus a 15-foot front setback; whereupon, he related that no variance is being requested for the two lots that abut an existing residential community; and stipulated that Lots 6 and 7 would have ten-foot rear setbacks.

In response to queries by the members, Mr. Irick presented information regarding environmental requirements and design considerations, discussed issues with respect to front and rear setbacks, hardship relief, and the adjacent wetlands, and clarified that the neighborhood would have a mix of homes with side- and front-entry garages; and that the variance would shift depending upon which style of home is built on a lot.

Responding to the Chairman's call for persons wishing to be heard, the following individuals presented their comments and concerns:

Kenneth Mondvori, Palm Harbor (submitted petition) – Oppose  
Darlene Fett, Palm Harbor – Oppose  
Ron Crum, Palm Harbor – Oppose  
Timothy Flight, Palm Harbor – Oppose  
Debbie Schaefer, Palm Harbor – Oppose  
John Edward Arnold, Palm Harbor – Oppose  
Barbara Spath, Palm Harbor – Oppose  
Valerie Schroder, Palm Harbor – Oppose  
Celinda Wright, Palm Harbor – Oppose

Concerns expressed by the citizens included:

- Subdivision should abide by setbacks akin to the two neighboring communities.
- Safety with respect to cars extending past driveway and obstructing sidewalks.
- Hardship of applicant is that he merely wants to build larger homes.
- Ownership and acquisition date of subject property.
- Wetlands; flooding; traffic.
- Character of community.
- Views and aesthetics.

Following public comment, Mr. Irick responded to the concerns of the objectors and queries by the members. He stated that the community will be comprised of 17 upscale homes ranging in size from 3,000 to 6,000 square feet, and discussed topics relating to easements, buffers, setbacks, and water retention; whereupon, John C. Landon, P.E., Palm Harbor, appeared and being duly sworn, indicated that he represents the developer in his capacity as an engineer.

During discussion and in response to queries by the members, Mr. Landon provided further information regarding the project, relating that the parcel is not in a flood plain according to the Federal Emergency Management Agency; that mitigation measures will have to be taken if there is any localized flooding at the site; that the project will require review and approval by the Southwest Florida Water Management District and Pinellas County; and that it is difficult developing a subdivision in proximity to significant wetlands; whereupon, Chairman Doran related that although the applicant indicated that the requested variance is to allow the footprint of the houses to be “moved around” the lots, the variance essentially speaks to minimum setbacks; and that it does not address the type and size of home to be constructed, nor considerations pertaining to lot area coverage and open space.

In response to queries by Mr. Burdette, Mr. Irick indicated that the 25-acre Van Worp parcel is approximately 50 percent wetlands; and that the applicant intends to develop the remaining upland portion. In response to a previous question regarding traffic and density, Mr. Irick related that the present plan reduces density; and that while it is not his intent, 30 homes could be developed on the site; whereupon, during discussion, Mr. Burdette opined that the request is a reasonable use of the property, and Mr. Cueva provided input.

In response to queries by Mr. Hoeneisen regarding Lots 6 and 7, Mr. Cueva indicated that ten feet is a normal rear setback in a single family home community with Residential Planned Development zoning; whereupon, at the request of Chairman Doran, he read the conditions as revised by the members:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. Full site plan review.
3. Lots 6 and 7 shall have a ten-foot rear setback.

4. The lots having a side entry garage shall be allowed a 15-foot front setback.
5. The lots having a front entry garage shall be allowed a 20-foot front setback.

During discussion, Mr. Hoeneisen expressed concern that the side-entry garage may become the dominant property configuration within the neighborhood, and Mr. Cueva provided input.

Chairman Doran briefly discussed the role of the Board of Adjustment. He related that the members are not engineers and do not make engineering decisions; that the matter before the Board is whether to allow reduced setbacks regarding a hardship as presented by the applicant; and that the case differs from others heard by the members, in that the community is self-contained; whereupon, he discussed the concerns brought forward by the objectors with regard to flooding, wetlands, and traffic.

Ms. White related that because the greater area will be reviewed during the site plan process, the flooding situation may be improved throughout the general vicinity, and moved, seconded by Mr. Watts, that the application be approved, inclusive of the revised conditions as stated by Mr. Cueva; whereupon, in response to query by Chairman Doran, Mr. Irick indicated that he is comfortable with the conditions as stated.

Following brief discussion, and upon call for the vote, the motion carried 6 to 0.

#### MINUTES OF JULY 3 AND AUGUST 6, 2014 MEETINGS – APPROVED

Upon motion by Mr. Watts, seconded by Ms. White and carried unanimously, the minutes of the meeting of July 3, 2014 were approved.

Upon motion by Mr. Pierce, seconded by Mr. Burdette and carried unanimously, the minutes of the meeting of August 6, 2014 were approved.

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DRESS CODE MODERATED DURING THE MONTHS OF OCTOBER AND NOVEMBER

Following brief discussion, Chairman Doran indicated that jackets and ties will not be required for staff or members during the months of October and November.

ADJOURNMENT

At the direction of Chairman Doran, there being no further business, the meeting was adjourned at 11:10 A.M.

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Chairman