

Clearwater, Florida, February 4, 2016

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: Cliff Gephart, Chairman; Joe C. Burdette, Vice-Chairman; Alan C. Bomstein; Gregory R. Pierce; Stephen G. Watts; Deborah J. White; and Michael Foley (alternate).

Not Present: John Doran.

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

CALL TO ORDER

Chairman Gephart called the meeting to order at 9:01 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 JOHN E. LOPER AND STACY R. LOPER THROUGH KENNETH WALLACE, REPRESENTATIVE, FOR A VARIANCE (BA-5-2-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of John E. Loper and Stacy R. Loper through Kenneth Wallace for a variance to allow for the construction of a single family home having a 15-foot front setback along the southeast property line (adjacent to Osceola Street) where a 25-foot setback is required, re property located at 1342 Riverside Avenue in the unincorporated area of Tarpon Springs (BA-5-2-16).

Mr. Bailey indicated that two letters in support of 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. Locating the home as proposed will help preserve some large mature trees on the site, which is beneficial toward maintaining the overall character of the area. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. A minimum 15-foot setback shall be maintained from the property line adjacent to Osceola Street.
3. All other required setbacks shall be met.

John E. Loper, Tampa, appeared and indicated that he is seeking the aforesaid variance.

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

#2 APPLICATION OF THOMAS AND MARY KAY KAUFMANN FOR A VARIANCE (BA-6-2-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Thomas and Mary Kay Kaufmann for a variance to allow for the construction of a 10-foot by 10-foot pergola having a 10.5-foot rear setback from the seawall where a 15-foot setback is required, re property located at 400 Driftwood Drive West, Palm Harbor (BA-6-2-16).

Mr. Bailey 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 conditional approval of the request. The submitted engineer's report indicates that no detrimental impacts will occur with the placement of the pergola as proposed. The location meets the standard (10-foot) rear setback for the R-3 district and should have minimal impacts on surrounding properties. Approval of the request should be subject to the following conditions:

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1. The applicant shall obtain all required permits and pay all applicable fees.
2. The pergola shall maintain a minimum 10.5-foot setback from the seawall.
3. All other required setbacks shall be met.
4. Runoff from the pergola shall be directed away from the adjacent water body.

Mary Kay Kaufmann, Palm Harbor, appeared and indicated that she is seeking the aforesaid variance.

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

In response to query by Mr. Bomstein, Mr. Bailey discussed how seawall setbacks differ from residential setbacks, and indicated that even though the pergola is an open-roof structure, it is considered an infringement on the seawall setback.

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

#3 APPLICATION OF CHERIE M. FRETTO THROUGH TIM KNAPP,
REPRESENTATIVE, FOR A VARIANCE (BA-7-2-16) – DENIED

Public hearing was held on the application of Cherie M. Fretto through Tim Knapp for a variance to allow for an after-the-fact screened enclosure with an 11-foot rear setback from the seawall where a 15-foot setback is required, re property located at 31 Freshwater Drive, Palm Harbor (BA-7-2-16).

Mr. Bailey indicated that two letters 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. The submitted engineer's report states that the screened enclosure will have no detrimental impact to the seawall. The 11-foot setback exceeds the standard (non-seawall) 10-foot rear setback requirement in an R-3 zone and should pose minimal impacts to

neighboring properties. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. The screened enclosure shall maintain a minimum 11-foot setback from the seawall.
3. The screened enclosure shall not be permanently enclosed.
4. Runoff from the screened enclosure shall be directed away from Lake Tarpon.

Tim Knapp, Hudson, appeared and indicated that he represents the applicant. During discussion and in response to comments and queries by the members, he related that Ms. Fretto has limited mobility following extensive back surgery; that the screened room is her only way of getting outside; that a building permit was never pulled for the solid roof structure; and that an engineer's report states that the enclosure will have no detrimental impact to the seawall; whereupon, Mr. Bailey provided information regarding residential and seawall setbacks, relating that the structure encroaches on the 15-foot seawall setback; and that the item relates to an after-the-fact permit, and discussion ensued.

In response to the Chairman's call for objectors to the application, Anthony Woodward, Esquire, Land O' Lakes, and Martin Mueller, Palm Harbor, appeared, expressed their concerns, and responded to queries and comments by the members.

Mr. Woodward related that he represents Mr. Mueller, the adjacent homeowner; and that he submitted a handwritten objection to the application this morning, a copy of which has been filed and made a part of the record. Referring to aerial and street-level photographs, he pointed out the location of the subject parcel and discussed issues relating to setbacks, views, permits, notice, hardship, special privilege, and property values, and discussion ensued regarding the shape of the lot in relation to the home and screened room.

Responding to the concerns of the objectors, Mr. Knapp indicated that the neighboring homeowners have lost some of their view due to the way the houses are sited; that the screened room is attached to the original structure which was built several years ago; and that the applicant is obtaining a permit. He reiterated that an engineer's report states that the enclosure will have no detrimental impact to the seawall, and discussion ensued.

Mr. Bomstein commented that although he can make a case regarding the uniqueness of the lot, the enclosure was constructed without a permit, which has ramifications; that even though views are not a protected legal right, they are protected when a setback violation takes place; and that the structure can likely be modified to be in compliance; whereupon, he moved, seconded by Ms. White, that the variance be denied.

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

#4 APPLICATION OF ED CORYN THROUGH PAUL McDONAGH,
REPRESENTATIVE, FOR A VARIANCE (BA-2-2-16) – GRANTED AS PER
STAFF RECOMMENDATION

Public hearing was held on the application of Ed Coryn through Paul McDonagh for a variance to allow an existing chemical pretreatment system to remain having a 0.12-foot side setback where a 10-foot side setback is required, re property located at 3020 46th Avenue North in Lealman (BA-2-2-16).

Mr. Bailey 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 conditional approval of the request. The chemical pretreatment system is located on a nonconforming, substandard lot with no favorable relocation options. The new system provides onsite wastewater treatment that is beneficial for the area. Approval of the request should be subject to the following conditions:

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

Paul McDonagh, Riverview, appeared and indicated that he represents the applicant.

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

#5 APPLICATION OF HUNG CAO THROUGH JOE NGUYEN, REPRESENTATIVE,
FOR A VARIANCE (BA-4-2-16) – GRANTED AS PER STAFF
RECOMMENDATION

Public hearing was held on the application of Hung Cao through Joe Nguyen for a variance to allow the construction of a building addition with a 5-foot front setback from 64th Avenue North along the southern property line where a 25-foot front setback is required, re property located at 6400 Haines Road in the unincorporated area of St. Petersburg (BA-4-2-16).

Mr. Bailey indicated that an email stating no objection has been received from the City of Pinellas Park, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The proposed addition will be in line with the existing building, which was constructed prior to 1963 (adoption year of the Zoning Code). The Board approved an identical request for the subject property (Case No. BA-3-8-12) that has since expired. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Full site plan review.
3. Tires shall be removed from the Haines Road right-of-way.
4. No back out parking shall be permitted onto Haines Road.

Joe Nguyen, St. Petersburg, appeared and indicated that he represents the applicant.

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

In response to comments and queries by Messrs. Watts and Bomstein, Mr. Nguyen stated that the applicant sells tires and rims; and that the building addition will provide needed storage space for those items; whereupon, Mr. Bailey clarified that the above conditions are identical to a similar request approved by the members, and Mr. Nguyen confirmed that the applicant understands and will abide by Conditions Nos. 3 and 4.

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

#6 APPLICATION OF LIMITLESS HOME INVESTORS, LLC THROUGH STEPHEN C. MCGINLEY, REPRESENTATIVE, FOR A VARIANCE (BA-3-2-16) – DEFERRED TO THE APRIL 7, 2016 MEETING

Mr. Bailey requested that the application of Limitless Home Investors, LLC for a variance to allow two after-the-fact wooden patio decks to remain (along the west side property line), both having a 4-foot side setback where a 7.5-foot side setback is required, re property located at 1139 Spruce Street in the unincorporated area of Tarpon Springs (BA-3-2-16), be continued to the meeting of April 7, 2016 due to an advertising error.

Mr. Foley moved, seconded by Mr. Watts and carried, that the item be continued as requested by staff.

During discussion and in response to query by Mr. Pierce, Mr. Bailey indicated that staff recommended denial of the variance to be consistent with a recently-heard, similar case; and that the application relates to the structure impinging upon the setback, not to its height.

Upon call for the vote, the motion carried unanimously.

#7 APPLICATION OF MATTHEW S. LANTZ AND MEI-JUK JENNIFER LANTZ FOR A VARIANCE (BA-1-2-16) – GRANTED

Public hearing was held on the application of Matthew S. Lantz and Mei-Juk Jennifer Lantz for a variance to allow for an existing 1,093-square-foot accessory dwelling unit to remain where a maximum 750-square-foot accessory dwelling unit is allowed, re property located at 1461 Nursery Road in the unincorporated area of Clearwater (BA-1-2-16).

Mr. Bailey indicated that one letter in support of the application has been received, and presented the following staff recommendation:

Recommend Denial. Staff cannot support the request as it does not meet the criteria for the granting of variances established in Section 138-113 of the Pinellas County Land Development Code, specifically as follows:

- (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.

Matthew S. Lantz, Clearwater, appeared and indicated that he is seeking the aforesaid variance.

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

In response to queries by Mr. Bomstein, Mr. Bailey reported that although a recent Code revision allows homeowners to occupy accessory units up to 750 square feet, the applicant is presently living in a structure exceeding the maximum allowable square footage.

During discussion and in response to queries the members, Mr. Lantz indicated that no increase in traffic will occur; that he has letters from neighboring property owners stating that they have no problem with the variance; and that the main home and accessory unit were constructed decades ago and thus will not affect neighboring property owners; whereupon, he related that he and his wife reside in the accessory unit; that friends occupy the main home; that the two units are approximately five feet apart; and that he has removed the stove from the accessory unit, and Messrs. Bomstein and Watts related that they had no objection to the request.

Mr. Bomstein moved, seconded by Mr. Foley, that the variance be granted, and upon call for the vote, the motion carried unanimously.

#8 APPLICATION OF JAY AND NACIMA AUSTIN FOR A VARIANCE (BA-4-1-16) –
DEFERRED TO THE APRIL 7, 2016 MEETING

Public hearing was held on the application of Jay and Nacima Austin for a variance to allow for an existing tiki-hut to remain with a 6-foot front setback where a 20-foot front setback is required for a double frontage lot, re property located at 8856 124th Way in the unincorporated area of Seminole (BA-4-1-16).

Mr. Bailey indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Denial. Staff cannot support the request as it does not meet the criteria for the granting of variances established in Section 138-113 of the Pinellas County Land Development Code, specifically as follows:

- (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.

Nacima Austin, Seminole, appeared and indicated that she is seeking the aforesaid variance. No one appeared in objection to the application.

Mr. Bomstein indicated that setback relief is often provided to corner lot owners because of the challenges associated with meeting double frontage setbacks, and in response to his queries, Mr. Bailey briefly discussed the recommendation for denial, relating that no permits were pulled; that the application was submitted after the fact; and that the structure is very large.

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In response to comments and queries by the members, Ms. Austin provided background information regarding the application, relating that she and her husband purchased their home about four or five months ago; that a building permit was not pulled prior to construction of the tiki-hut; that her husband and some friends built the wooden structure; and that a backyard swimming pool limited where it could be placed; whereupon, Mr. Bailey provided information with regard to side yard and double frontage setbacks in a residential zoning district, and Mr. Myers reported that the item is before the members due to a complaint called into the Building Department last October, and discussion ensued.

Mr. Bomstein indicated that the builder must have been aware a permit was required since the structure is very substantial, and Mr. Gephart agreed; whereupon, following lengthy discussion, Attorney Sadowsky suggested that the case be continued so the applicant can return with an alternative proposal regarding placement of the structure.

Mr. Foley moved, seconded by Ms. White, that the item be continued to the April 7, 2016 meeting, and upon call for the vote, the item carried unanimously.

MINUTES OF DECEMBER 3, 2015 AND JANUARY 7, 2016 MEETINGS – APPROVED

Upon motion by Mr. Foley, seconded by Mr. Watts and carried unanimously, the minutes of the meetings of December 3, 2015 and January 7, 2016 were approved.

ADJOURNMENT

At the direction of Chairman Gephart, there being no further business, the meeting was adjourned at 10:02 A.M.

Chairman