

Clearwater, Florida, June 1, 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; John Doran; Gregory R. Pierce; Stephen G. Watts; and Deborah J. White.

Also present: Glenn Bailey, Planning Department Zoning Manager; Brendan Mackesey, 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#1 APPLICATION OF FREDERICK AND STEPHANIE WHITAKER FOR A VARIANCE (BA-1-6-16) – WITHDRAWN

Mr. Bailey referred to the application of Frederick and Stephanie Whitaker for a variance to allow for the construction of a pool screen enclosure with a reduced front setback of 13 feet where 25 feet is required, re property located at 2728 Woodcote Terrace in East Lake Tarpon (BA-1-6-16), and reported that the application has been withdrawn.

#2 APPLICATION OF JAMES AND JACQUELINE MASON FOR A VARIANCE (BA-2-6-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of James and Jacqueline Mason for a variance to allow for the construction of a pool and screen enclosure with a reduced front setback of 17 feet where 25 feet is required, re property located at 4500 58th Avenue North in Lealman (BA-2-6-16). The Clerk has received three letters of no objection to the application.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The subject property is an irregularly-shaped double frontage lot along a partially unimproved public right-of-way (46th Street North) that dead ends into an active CSX railroad line adjacent to the property. The requested 17-foot setback is from the property line along the unimproved portion of 46th Street North, which will likely never be constructed. 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 proposed pool and enclosure shall maintain a minimum 17-foot setback from the property line along 46th Street North and meet all other required setbacks.
3. The existing fence within the 46th Street North public right-of-way shall be removed.

James Mason, St. Petersburg, 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. Doran and carried unanimously, that the variance be granted as recommended by staff.

Following the vote, Mr. Mason confirmed that the fence has been removed.

#3 APPLICATION OF MARIBETH AND MAX KENNEDY THROUGH ZACHARY PEASE, REPRESENTATIVE, FOR A VARIANCE (BA-3-6-16) – POOL REAR SETBACK GRANTED AS PER STAFF RECOMMENDATION; EIGHT-FOOT-HIGH WALL DENIED

Public hearing was held on the application of Maribeth and Max Kennedy through Zachary Pease for a variance to allow for the construction of a swimming pool with a rear setback of 5.2 feet where 8 feet is required and for the construction of an 8-foot-high privacy wall with a rear setback of 4.6 feet where 10 feet is required for a wall or fence

greater than 6 feet in height, re property located at 9849 East Gulf Street in the unincorporated area of Seminole (BA-3-6-16). The Clerk has received two letters of no objection to the application.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the pool rear setback request as the location of the existing home and other site improvements make it difficult to place the pool elsewhere on the property. 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 pool shall maintain a minimum 5.2-foot setback from the east (rear) property line.

Recommend Denial. Staff recommends denial of the proposed 8-foot-high privacy wall having a 4.6-foot rear setback, 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.

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Zachary Pease, Ultra Custom Pool Design LLC, Tampa, appeared and indicated that he represents the applicant. In response to queries by the members, Mr. Pease related that because the subject parcel has a lower elevation than the adjacent property, a courtyard style pool would provide visual privacy and a sound buffer from the neighboring property owners, and discussed placement of the pool and the proposed 8-foot-high wall; whereupon, he referred to aerial and street-level photographs and pointed out the location of the subject property, noting that all contiguous owners have stated in writing that they have no objection to the request, and discussion ensued.

Mr. Bailey reported that although he is unaware of a difference in elevation between the two properties, Pinellas County Code would allow for staff to approve the wall through an administrative process if a difference in elevation is present; whereupon, Mr. Pease presented further information regarding construction of the pool and wall.

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

Mr. Bomstein related that he is not a fan of 8-foot-high fences, but because the adjacent neighbors have indicated their support and the privacy wall is internal to the project and not visible from the street, he will support the request; whereupon, he moved, seconded by Mr. Watts, that the variances for the pool rear setback and the eight-foot-high wall be granted.

During discussion, Chairman Gephart expressed concern that even though the immediate neighbors have indicated no objection to the pool setback in their letters of no contest, there is a chance they are unaware of the wall variance; whereupon, Mr. Pease indicated that he has thoroughly reviewed the plans with the neighbors; and that they are aware of the entire project.

Mr. Doran pointed out that a rendering shows a wall height of 9.33 feet; whereupon, Mr. Bomstein withdrew his motion, and expressed his concerns relating to the height discrepancy and to the neighbors' letters not specifically referring to the wall.

During discussion and in response to queries by the members, Mr. Bailey confirmed that County Code would allow for staff to approve the wall through an administrative process if a difference in elevation is present; whereupon, Mr. Bomstein moved, seconded by Mr. Doran, that the variance regarding the pool rear setback be granted as recommended by staff; and that the 8-foot-high wall request be denied, and brief discussion ensued regarding the administrative approval process.

Upon call for the vote, the motion carried unanimously.

#4 APPLICATION OF ERIK WILLIAMS FOR A VARIANCE (BA-4-6-16) – GRANTED
AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Erik Williams for a variance on a double frontage lot to allow for the construction of a front porch with a front setback of 14.9 feet from 72nd Street North and a garage addition having a front setback of 14.8 feet from 49th Avenue North where 25 feet is required, re property located at 4900 72nd Street North in Lealman (BA-4-6-16). 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 proposed garage addition will not encroach further into the setback than the existing structure, and the proposed front porch setback appears to be in keeping with other lots in the area, many of which were developed prior to the establishment of the zoning code. 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 garage addition shall maintain a minimum 14.8-foot setback from the south property line.
3. The front porch shall maintain a minimum 14.9-foot setback from the east property line.
4. The front porch shall not be enclosed.

Erik Williams, St. Petersburg, 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. Doran and carried unanimously, that the variance be granted as recommended by staff.

#5 APPLICATION OF ODETTE ARAKELIAN REVOCABLE TRUST THROUGH BRIAN O'CONNELL, REPRESENTATIVE, FOR A VARIANCE (BA-6-6-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Odette Arakelian Revocable Trust through Brian O'Connell for a variance to allow for the construction of a home addition having reduced side setbacks of 6.55 feet along the west property line and 6.97 feet along the east property line where 7.5 feet is required, re property located at 515 Pennsylvania Avenue in Palm Harbor (BA-6-6-16). The Clerk has received one letter 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. The proposed home addition will maintain the same distance from the side property lines as the existing home, which predates the establishment of the zoning code. 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 existing tiki hut depicted on the survey must be moved out of the required side setback. Any required permits regarding the structure must be obtained and any applicable fees must be paid.

Chris Wolchok and Rame Baetens, Palm Harbor, appeared and indicated that they represent the applicant. In response to queries by the members, Mr. Wolchok related that he wishes to extend the front of the home, but that due to the way the home is sited on the lot, the addition would minimally encroach into the side setbacks.

In response to the Chairman's call for objectors to the application, Elizabeth Flaspohler, Palm Harbor, appeared and expressed her concerns regarding stormwater runoff; whereupon, Mr. Burdette assured her that if the application is approved, it will then go through a permitting process; and that the drainage will likely be improved.

In response to queries by the members, Development Review Services Senior Engineer Randolph Ayers related that he and Ms. Flaspohler had met last Friday and reviewed the applicant's site plan; and that due to the drainage problems taking place on her property,

he will request that the applicant grade his front yard and redirect the downspouts to channel stormwater away from Ms. Flaspohler's home; whereupon, he indicated that due to the age of the subdivision, general grading issues, and the absence of a swale, not all drainage problems will be improved.

In response to queries by Mr. Bomstein, Mr. Wolchok related that he understands the staff evaluation of the drainage issue; and that he will direct the stormwater away from Ms. Flaspohler's property through a combination of drains and downspouts; whereupon, discussion ensued regarding a timeframe for Mr. Wolchok to move the tiki hut from its present location in the side setback or appear before the Board of Adjustment at a later date for an additional variance.

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

#6 APPLICATION OF JOHN STEVENS THROUGH RICHARD BADDERS,
REPRESENTATIVE, FOR A VARIANCE (BA-8-6-16) – DENIED

Public hearing was held on the application of John Stevens through Richard Badders for a variance to allow for the construction of a carport having a front setback of 10 feet where 20 feet is required, re property located at 207 Shore Drive in Ozona (BA-8-6-16). 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 because the proposed carport appears to be obtrusive and inconsistent with the neighborhood development. The request 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.

Richard Badders, Dunedin, appeared and indicated that he represents the applicant, John Stevens, and in response to queries by the members, indicated that Mr. Stevens wishes to construct a covered carport on his property, but that due to the unique shape of the lot and other factors, he is requesting the flexibility to encroach 10 feet into the front setback; whereupon, he related that because the home was built in the 1950s, it has a small garage that does not fit a modern vehicle.

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

During discussion, Mr. Badders confirmed that no other structures in the neighborhood intrude as much into the setback as would the requested carport, and Mr. Bomstein discussed issues relating to precedent. Following discussion regarding other placement options and construction methods, Mr. Bomstein moved, seconded by Mr. Watts and carried unanimously, that the variance be denied.

#7 APPLICATION OF LEALMAN FAMILY CENTER INC. THROUGH CAROLYN CHANCE, REPRESENTATIVE, FOR A SPECIAL EXCEPTION AND A VARIANCE (BA-5-6-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Lealman Family Center Inc. through Carolyn Chance, Executive Director, for a modification to an existing special exception for the Lealman and Asian Neighborhood Family Center to incorporate a newly acquired parcel and allow for the renovation of an existing building, construction of a play area and drainage improvements, and a variance to allow for the construction of a six-foot-tall perimeter fence with a front setback of zero feet from 56th Avenue North where 25 feet is required, re properties located at 4255 and 4271 56th Avenue North in Lealman (BA-5-6-16). 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 special exception request, provided the Board is satisfied that the “General Standards” of Section 138-238, Division 7 of the Pinellas County Land Development Code have been met. Additionally, staff has no objection to the conditional approval of the variance request for the installation of a 6-foot-high fence within the front setback, as its purpose is to enclose the new children’s play area for safety purposes. 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.
3. The proposed special exception modification shall maintain substantial conformance with the associated concept plan.
4. The fence shall meet sight distance requirements.

Carolyn Chance, St. Petersburg, appeared and indicated that she represents the applicant, and responding to queries by Mr. Bomstein, confirmed that the Lealman Family Center recently purchased the adjacent lot; and that the request would allow for the renovation of an existing building and the construction of a play area.

No one appeared in response to the Chairman’s call for objectors to the application; whereupon, Mr. Bomstein moved, seconded by Mr. Doran and carried unanimously, that the variance be granted as recommended by staff.

#8 APPLICATION OF PHD PRODUCTS LLC THROUGH VAN TRAN, REPRESENTATIVE, FOR TWO VARIANCES (BA-3-5-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of PHD Products LLC through Van Tran for a variance to allow for the construction of a building addition with a 15-foot front setback along 58th Avenue North where 25 feet is required and a variance to allow the existing 8-foot-high fence to remain along a portion of the west property line where a maximum

height of 6 feet is allowed, re property located at 5800 34th Street North in Lealman (BA-3-5-16). The Clerk has received one letter of no objection from the City of Pinellas Park.

Mr. Bailey presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The property is a double frontage lot that is subject to two 25-foot front setbacks. The addition is proposed along the secondary frontage. The 8-foot-high fence along a portion of the west property line provides screening from an adjacent use that can be noisy. 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.
3. The project shall comply with all parking requirements.

Van Tran, 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; whereupon, Mr. Bomstein moved, seconded by Mr. Doran and carried unanimously, that the variances be granted as recommended by staff.

#9 APPLICATION OF TRACY J. HARRIS, JR. THROUGH KATIE E. COLE, ESQUIRE, REPRESENTATIVE, FOR SEVEN VARIANCES (BA-7-6-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Tracy J. Harris, Jr. through Katie E. Cole to allow for the construction of an 11-unit single family subdivision split between R-2 and RM-5 zones, re properties located at 701 Indiana Avenue and 700 Pennsylvania Avenue in Palm Harbor (BA-7-6-16), with the following variances:

1. Private road access to the public right-of-way of 8th Street.

2. Front setbacks of 10 feet where 25 feet is required in an RM-5 zone, for proposed lots 1 through 5 along the south property line adjacent to the unimproved Indiana Avenue right-of-way.
3. Side setbacks of 7 feet where 7.5 feet is required in an RM-5 zone, for proposed lots 1 through 6.
4. Front setbacks of 20 feet where 25 feet is required in an RM-5 zone, for proposed lots 1 through 6 along the proposed private road.
5. Lot widths of 70 feet where 75 feet is required in an RM-5 zone, for proposed lots 1 through 6.
6. Road frontage reductions along the proposed private road of up to 45 percent for proposed lot 5.
7. Up to a 10-foot encroachment into the front setbacks along the proposed private road for elevated front porches on proposed lots 1 through 11.

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. All of the requested variances are internal to the development with the exception of reduced front setbacks for proposed lots 1 through 5 along the south property line (Variance Request No. 2). Those would be double frontage lots backing up onto the Indiana Avenue right-of-way, an unimproved road that will likely never be constructed. 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 and platting.

Following introduction of the case and discussion among the members regarding road frontage reductions, Katie Cole, Esquire, Hill Ward Henderson, appeared and indicated that she represents the applicant. Ms. Cole referred to aerial and street-level photographs,

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pointed out the location of the proposed subdivision, and discussed previous proposals, relating that because local residents expressed the desire that consistent development be maintained throughout the community, the applicant is proposing an 11-unit subdivision consisting of single family homes.

In response to the Chairman's call for objectors to the application, Brien Bourbeao, Palm Harbor, appeared, expressed his concerns regarding parking issues, housing density, community uniformity, and lack of notice, and responded to queries and comments by the members.

In response to the concerns of the objector, Ms. Cole related that all of the variances are internal to the site; and that even though the applicant could build a total of 16 houses, the project will be comprised of 11 single family homes.

Mr. Bomstein related that the project is in keeping with the surrounding neighborhoods, and in response to his queries, Mr. Bailey confirmed that Pennsylvania Avenue has already been vacated; and that Indiana Avenue is not anticipated to be improved; whereupon, Mr. Bomstein moved, seconded by Mr. Doran and carried unanimously, that the variances be granted as recommended by staff.

MINUTES OF APRIL 7, 2016 MEETING – APPROVED

Upon motion by Mr. Bomstein, seconded by Mr. Doran and carried unanimously, the minutes of the meeting of April 7, 2016, were approved.

MISCELLANEOUS DISCUSSION

Senior Assistant County Attorney David Sadowsky provided historical background information regarding a case originally brought forward by Seminole Christian Fellowship, LLC in 2013 requesting a special exception to allow a unipole communication tower and a setback variance.

Attorney Sadowsky reported that subsequent to the members granting the special exception and the variance, the case was appealed to the Circuit Court which upheld the validity of the special exception determination, quashed the decision regarding the variance request, and remanded the matter to the Board of Adjustment for additional proceedings; whereupon, he related that after rehearing the case in 2015, the members approved the variance, the case was appealed a second

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time, and the Circuit Court once again quashed the decision of the Board; that a motion for rehearing has been filed; and that the case will appear before the members in the near future.

During discussion and in response to queries and comments by the members, Attorney Sadowsky presented further information regarding the rationale of the Court for quashing the decision of the members and provided a timeframe with regard to a rehearing date.

**DRESS CODE MODERATED DURING THE MONTHS OF JUNE THROUGH OCTOBER –
JACKETS AND TIES NOT REQUIRED FOR STAFF OR MEMBERS**

Messrs. Burdette and Pierce requested that jackets and ties not be required during the months of June through October, and no objections were noted.

ADJOURNMENT

At the direction of Chairman Gephart, there being no further business, the meeting was adjourned at 10:16 A.M.

Chairman