

**Board of Adjustment and Appeals
Pinellas County
November 3, 2021 Meeting Minutes**

The Board of Adjustment and Appeals met in regular session at 9:00 AM on this date in the Magnolia Room at the Pinellas County Extension Office, 12520 Ulmerton Road, Largo, Florida.

Present

Alan C. Bomstein, Chairman
Cliff Gephart, Vice-Chairman
Joe Bello
Joe Burdette
Vincent Cocks
John Doran
Deborah J. White

Others Present

Glenn Bailey, Zoning Manager
Anne Morris, Assistant County Attorney
Gina Berutti, Code Enforcement Project Coordinator
Teresa Ribble, Board Reporter, Deputy Clerk
Other interested individuals

CALL TO ORDER

Chairman Bomstein called the meeting to order at 9:00 AM and provided an overview of the hearing process.

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 a Deputy Clerk.

Case No. VAR-21-19

APPLICATION OF WALSINGHAM COMMONS, LLC THROUGH TODD PRESSMAN,
REPRESENTATIVE, FOR A VARIANCE

Public hearing was held on the application of Walsingham Commons, LLC through Todd Pressman for a variance to allow a medical marijuana treatment center to be located within 500 feet of a property that comprises a public or private elementary school, middle school, or secondary school, for the property located at 12887 Walsingham Road in unincorporated Largo. One letter in opposition to the application has been received by the Clerk.

Mr. Bailey introduced the case and presented the following staff recommendation:

Recommend Remand the Case Back to the Development Review Committee to Consider a Material Amendment to the Application. Following the initial review of the case by the Development Review Committee (DRC) on October 11, 2021, the applicant submitted an amendment to the application that affects the potential location of where on the subject property the proposed medical marijuana treatment center can be established. This is a material change to the request that may impact the DRC's recommendation to the Board of Adjustment and Appeals. Therefore, it is recommended that the Board remand this case back to the DRC to review and consider the amended application.

Todd Pressman, St. Petersburg, appeared and indicated that he represents the applicant. Responding to a query by Chairman Bomstein, he indicated that he has been in discussion with staff and agrees with their recommendation.

No one appeared in response to the Chairman's call for opponents or proponents; whereupon, Mr. Doran made a motion to remand the case to the DRC for consideration of a material amendment to the application, which was seconded by Ms. White.

In response to queries by Chairman Bomstein, Mr. Bailey indicated that in December the DRC will consider the new information contained in the amendment and possibly adjust its recommendation; and that the amended application will be brought back to the BAA in January as a variance case.

Upon call for the vote, the motion carried unanimously.

Case No. APL-21-02

APPEAL OF OCC PROPERTY HOLDINGS, LLC, THROUGH MATTHEW OLSEN, REPRESENTATIVE, REGARDING NONCOMFORMING USE OF VERIFICATION CASE NO. NCU-21-01

Public hearing was held on the appeal of OCC Property Holdings, LLC through Matthew Olsen regarding nonconforming use verification Case No. NCU-21-01, which determined that the alleged nonconforming use of auto repair/maintenance being conducted outside of a fully enclosed building on the subject property cannot be verified. Two letters in opposition and 24 letters in support of the application have been received by the Clerk.

Mr. Bailey presented information regarding the case and the following staff recommendation:

Recommend Denial. Staff recommends that the Board deny the appeal, finding that Pinellas County staff correctly determined that the alleged nonconforming use cannot be verified per the evidence submitted.

A nonconforming use is a land use activity that exists on a property that would not be permitted under the current code but was lawful at the time it was established. If verified, a nonconforming use may continue in operation at the same intensity/scale that it was legally established until it is discontinued or abandoned. Per the Pinellas County Land Development code (LDC) a nonconforming use may be verified pursuant to a Type 1 staff-level review. To be considered a nonconforming use, the applicant must provide sufficient evidence to show that the land usage(s) was allowed when established and was consistently maintained over time.

The subject property, located on the southwest corner of the intersection of US 19 Alternate and Crystal Beach Avenue in Palm Harbor, contains an automotive repair shop. While auto repair is a permitted use within the subject property's C-2 (General Commercial & Services) zoning district, all service and repair activities must be within fully enclosed buildings per Section 138-3270(c)(1) of the LDC. This is not the case on the subject property, as there are multiple outdoor/unenclosed car lifts and repair/maintenance areas.

In June 2021, the appellant applied for a nonconforming use verification (Case No. NCU-21-01) for the unenclosed repair/maintenance areas, and the materials for that case are included as background information for this appeal. The application contained affidavits from area residents and a copy of a 2005 Board of Adjustment case (BA-04-05-05) for an after-the-fact variance that involved a carport within the front setback. Though staff recommended denial of that case, the Board granted conditional approval with the condition that the applicant obtain all required permits and pay appropriate fees. The subsequent permit that was obtained specifically

noted that there was to be 'no heavy auto repair outside, detailing only', which was consistent with the LDC at that time. The provision that automobile repairs be conducted within fully enclosed buildings within the C-2 district have been in place since 1978. Prior to that, the LDC did not mention fully enclosed buildings, but did not allow automobile repairs involving 'body, upholstery, painting, motor, transmission and differential work, unless incidental to dealer use' within C-2. It appears that the subject property has been zoned C-2 since at least 1963.

In addition, as mentioned in the NCU verification denial letter to the appellant, it appears that an open, roofed structure on the southwest portion of the subject property was installed without permits or site plan review and approval. The approved site plan does not show this structure nor the outdoor auto lift on the east side of the property facing U.S. Alternate Highway 19. Staff is of the opinion that there is insufficient evidence to substantiate the outdoor repair/auto lifts and it does not appear that such a use was ever properly permitted.

Mr. Bailey indicated that it his understanding that the appellant would like to seek a continuance of a month due to the fact that he is now also requesting a variance; that the appellant would like both the appeal and the variance request heard at the same time; that the DRC will review the variance request during the upcoming week; and that the variance and the appeal are related; whereupon, Matthew Olsen appeared and confirmed that he does have a variance request in process.

Responding to a query by Chairman Bomstein, Attorney Morris clarified that should the Board approve the continuance, it will still need to technically hear the appeal in December even though the nonconforming issues with the property may be remedied through the variance request, depending on the recommendation of the DRC and the decision of the Board.

Chairman Bomstein addressed those wishing to speak and explained that since it is likely the Board will grant the continuance, anyone who is unable to attend the December meeting may speak today; and that all comments will be entered into the record and considered at that meeting; whereupon, Joseph Doll, Palm Harbor, appeared and expressed his concerns.

Responding to a query by Chairman Bomstein, Mr. Doll indicated that the alleyway referenced in his comments is a public right-of-way; whereupon, Chairman Bomstein related that the BAA does not have authorization to grant private use of a public right-of-

way and, therefore, such an authorization will not occur as part of the BAA's decision on this case in December.

No one else appeared in response to the Chairman's call for opponents or proponents; whereupon, Mr. Burdette moved that a continuance of Case No. APL-21-02 to the December BAA meeting be approved. The motion was seconded by Ms. White and carried unanimously.

In response to a request by Mr. Doll, Chairman Bomstein indicated that keeping the right-of-way open until the variance is heard is a code enforcement issue; and that he will request that staff look into the matter with the County's Code Enforcement division.

Responding to Mr. Olsen's request for persons in attendance wishing to speak, Chairman Bomstein related that none indicated their desire to do so when he offered the opportunity earlier in the meeting.

MINUTES OF THE OCTOBER 6, 2021 MEETING

Upon presentation by the Chairman, Ms. White moved that the minutes of the regular meeting held on September 1, 2021 be approved. The motion was seconded by Mr. Cocks and carried unanimously.

Attorney Morris clarified that the October 6 meeting minutes need approval; whereupon, Ms. White moved that the minutes of the regular meeting held on October 6, 2021 be approved. The motion was seconded by Mr. Cocks and carried unanimously.

OTHER BUSINESS

Mr. Bailey reported that four cases are currently on the agenda for the December meeting; and that the BAA will be able to appoint its new Chair following the Board of County Commission's election of a 2022 Chair.

ADJOURNMENT

The meeting was adjourned at 9:20 AM.