

**Board of Adjustment and Appeals
Pinellas County
February 4, 2022 Meeting Minutes**

The Board of Adjustment and Appeals met in regular session at 9:00 AM on this date in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida.

Present

Cliff Gephart, Chairman
Joe Burdette, Vice-Chairman
Jose Bello
Vincent Cocks
John Doran
Deborah J. White
Pamela Kern, Alternate Member

Not Present

Alan C. Bomstein

Others Present

Glenn Bailey, Zoning Manager
Anne Morris, Assistant County Attorney
Gina Berutti, Code Enforcement Project Coordinator (attending virtually)
Shirley Westfall, Board Reporter, Deputy Clerk
Other interested individuals

CALL TO ORDER

Chairman Gephart 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-21-30

APPLICATION OF SCOTT DEROSA FOR A VARIANCE

A public hearing was held on the application of Scott DeRosa for a variance to allow for the replacement of an aluminum roofed screen porch having a five-foot setback from the rear property line where 10 feet is normally required in an R-2 zone, for the property located at 8843 117th Street North in unincorporated Seminole. No correspondence relative to the application has been received by the clerk.

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

Recommend Conditional Approval. Staff has no objection to the conditional approval of this request as it appears to meet the criteria for granting variances found in Section 138-231 of the Pinellas County Land Development Code. The subject property is a single family detached residential, with the aluminum roofed screen porch attached to the main structure. Ample buffering to adjacent residences exists in the form of offset parcels that provide a further distance between the property structures. The aluminum screen porch was built with permits; however, the setback issue was discovered when the property owner sought to replace the deteriorating gutters to the aluminum roofed screened porch. No changes to the dimensions of the existing aluminum structure are proposed.

Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. The porch sides shall remain screened. No hard walls are allowed.

Scott DeRosa, Seminole, appeared and indicated that he is the applicant. No one appeared in response to the Chairman's call for opponents or proponents.

Mr. Burdette made a motion that the variance be granted as recommended in accordance with the findings of fact as outlined in the staff report. The motion was seconded by Ms. White and carried unanimously.

Case No. VAR-21-31

APPLICATION OF WILLIAM AND JOAN KIMPTON FOR A VARIANCE

A public hearing was held on the application of William and Joan Kimpton for a variance to allow for the construction of a 900-square-foot accessory dwelling unit, where 750 square feet is the maximum allowed per the Land Development Code, for the property located at 1645 Chaplene Court in unincorporated Dunedin. No correspondence relative to the application has been received by the Clerk.

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

Recommend Denial. Staff cannot support this request as it does not meet the criteria for granting a variance found in Section 138-231 of the Pinellas County Land Development Code. There are no special conditions or unnecessary hardships that justify the proposed accessory dwelling unit exceeding the maximum square footage allowed by the Land Development Code.

William Kimpton, Dunedin, appeared, discussed the request, and responded to queries by the members. He indicated that they would live in the accessory dwelling while a new home is being built; and that 750 square feet is too small, which is why he is asking for an additional 150 square feet.

Upon call for opponents, Penny Hajduk, Dunedin, appeared, and stated her concerns regarding drainage and zoning; whereupon, Director of Building and Development Review Services Blake Lyon related that as part of the permitting process, the site plans would be reviewed by several County departments, which would ensure that no additional drainage flows extend off the site. Later in the meeting, Betsy Cannan, Dunedin, appeared, stated her concerns, and presented photographs of the drainage issues.

Responding to queries by Mr. Burdette, Mr. Bailey stated that the request does not meet the set criteria as there is no hardship or special conditions; and that an accessory dwelling is allowed a maximum 750 square footage in all zoning districts. He noted that the subject property is currently two separate parcels; that the applicant has petitioned the Local Planning Agency (LPA) to merge them into one parcel and change the zoning; and that the accessory dwelling size requirement would not change regardless of the LPA's decision.

In rebuttal to the opponent's concerns, Mr. Kimpton discussed drainage issues, road access to the property, and other information; whereupon, he responded to queries by the members. Following discussion, Mr. Doran opined that no valid hardship has been

presented by the applicant that would pertain to the land, as required by the Code, and Attorney Morris concurred.

Mr. Cocks made a motion, which was seconded by Ms. White, that the variance be denied as recommended in accordance with the findings of fact as outlined in the staff report, and discussion ensued.

Upon call for the vote, the motion carried unanimously.

Case No. VAR-21-32

APPLICATION OF JAMES SCHULTZ FOR A VARIANCE

A public hearing was held on the application of James Schultz for a variance to allow for the construction of a home addition having a four-foot side setback from the west property line where six feet is required in an R-3 zone, for the property located at 1505 Citrus Street in unincorporated Clearwater. One letter in support of the application has been received by the Clerk.

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

Recommend Denial. Staff cannot support this request as it does not meet the criteria for granting a variance found in Section 138-231 of the Pinellas County Land Development Code. There are no special conditions or unnecessary hardships, and it is inconsistent with the Land Development Code and the Comprehensive Plan. The proposed home addition could be redesigned to be compliant with the required side yard setback.

James and Deb Schultz, Clearwater, appeared and indicated that they are the applicants, discussed their request, and responded to queries by the members. Mr. Schultz indicated that the house is built crooked on the lot.

No one appeared in response to the Chairman's call for opponents or proponents.

Mr. Doran expressed his frustration with designers creating projects that require a homeowner to request a variance. Following discussion, he made a motion to approve a one-foot setback on the west property line based on the findings of fact in support of the application, noting there is a special condition in that the home is built crooked on the lot; whereupon, he indicated that approval is subject to the following conditions:

1. A one-foot variance is approved on the rear (southwest) corner of the proposed home addition. The front (northwest) corner must meet the required six-foot setback.

2. The applicant shall obtain all required permits and pay all applicable fees.

The motion was seconded by Mr. Burdette and carried unanimously.

Case No. APL-21-03

APPEAL OF HUEY KENNETH MCALPIN REV TRUST THROUGH REED HAYDON AND BRIAN AUNGST, JR., REPRESENTATIVES, OF THE DENIAL OF THE REQUESTS FOR A WAIVER OF GENERAL ACCESS STANDARDS AND FOR AN ACCESS POINT TO KEYSTONE ROAD

A public hearing was held on the appeal of the denial of a request for a waiver of the General Access Standards in Section 154-198 of the Pinellas County Land Development Code and a request for an access point to Keystone Road for a proposed 50-unit single-family detached subdivision, for the property located on North Highland Avenue and Keystone Road in Tarpon Springs. One letter in opposition to the case has been received by the Clerk.

Mr. Bailey introduced the case, referencing the following staff recommendation:

Recommend Denial. Deny the appeal, and thereby uphold County Staff's decision not to grant the waiver. The request for vehicular access to Keystone Road does not meet the criteria for granting a waiver found in Table 138-231.a of the Pinellas County Land Development Code. More specifically, the request is inconsistent with the general access standards found in Section 154-198 of the Code and the Pinellas County Transportation Design Manual. Furthermore, the proposed connection to Keystone Road, an arterial facility, will create multiple traffic safety and operational concerns and should not be supported because a code-compliant connection to North Highland Avenue, a collector facility, is feasible.

Director of Building and Development Review Services Blake Lyon provided background information and context, stating that the County's focus is on the proper access to the subject property.

Public Works Director Kelli Hammer Levy referred to a PowerPoint presentation titled *Appeal of Keystone Village Waiver Denial* and reviewed the following governing Code Sections:

- Section 154-198(a) Direct egress from property adjacent to arterial and collector streets is discouraged and may be denied when egress to a road of lesser designation is available.

- Section 154-198(b) If a property is located such that access can be provided to either an arterial or collector facility, access to the arterial facility may be prohibited.
- Section 158-198(f) Driveway and median opening spacing on county arterial and collector roadways must be in accordance with the Pinellas County Transportation Design Manual; Chapter 5.1(2) If access can be provided to an arterial or collector facility, access to an arterial may be prohibited.
- Section 154-198(g) All criteria are to be applied together, with sound engineering judgement, to promote safety.

Ms. Levy provided background information and responded to queries by the members, indicating that the County's position is that access to North Highland Avenue, a collector road, has historically been the access to the subject property and is available and feasible; and that, thereupon, denial of the access to Keystone is appropriate.

Referring to the PowerPoint presentation and photographs, Transportation Division Director Thomas Washburn reviewed the County and State's transportation codes and policies regarding criteria utilized for access management as it relates to Keystone Road safety and operational concerns. He indicated that driveways should not be placed near intersections; and that minimizing conflict points near multi-use trail facilities should be considered when creating access to facilities. He further explained the difference between collector and arterial road functions, noting the dangers of the proposed Keystone Road access' proximity to the Pinellas Trail and the County and State efforts to minimize access locations on arterial roads.

Mr. Lyon reiterated that staff's recommendation is that North Highland Avenue is a safer and viable alternative; whereupon, he responded to queries by Mr. Doran.

Brian Aungst, Jr., Clearwater, appeared, indicated that he represents the applicant, Reed Haydon, and the developer, Pulte Homes, and submitted the following documents:

- An appeal of the waiver denial request dated November 19, 2021 and corresponding exhibits
- A traffic assessment report by Steven Henry, PE
- An ecological report by Donald Richardson
- A civil engineering report by Trent Stephenson, PE

At the recommendation of Attorney Morris, Mr. Burdette made a motion, which was seconded by Mr. Doran and carried unanimously, to accept the documents as evidence.

Mr. Aungst related that the law on the matter is clear; that Section 154-198 states that access to an arterial facility “may be” prohibited where there is a lesser road available; and that the Transportation Design Manual states that if property is located such that access can be provided to either an arterial or collector facility, access to the arterial facility “may be” prohibited. He related that with the expert testimony and competent substantial evidence presented today, the Board has the discretion to agree with the applicant and overturn the denial of the waiver request.

Mr. Aungst indicated that North Highland Avenue access is not a viable option, as the driveway is not part of the subject property and is not connected to the development; and that access is blocked by a wet pond. He explained that for it to work, a significant portion of wetland would need to be decimated to create a new road; that approval would be required from the Southwest Florida Water Management District (SWFWMD); and that additional waivers would be required from the City of Tarpon Springs, which may or may not be approved.

Mr. Aungst further discussed the historical access to Keystone Road and uses of the property, noting that one of the conditions in a 2005 City of Tarpon Springs resolution was that all trucks must exit directly to Keystone Road; and that as it relates to safety, Pulte Homes is a nationwide competent expert community developer and would not put residents at unnecessary risk.

Mr. Aungst introduced Steven Henry, PE, Lincks and Associates, to provide expert testimony in rebuttal to Mr. Washburn’s comments regarding transportation planning and engineering. Mr. Henry appeared, provided information as to his credentials, and referred to aerial photographs and maps, noting the advantages of Keystone Road access relating to traffic gaps and patterns, sight distance, conflict points, and safety, based on the Transportation Design Manual; whereupon, he answered queries from the members, and discussion ensued.

Responding to a query by Mr. Doran, Mr. Aungst requested that the Board accept the following individuals as expert witnesses:

- Steven Henry, transportation planning and engineering
- Donald Richardson, PhD, ecology and environmental
- Trent Stephenson, civil engineering
- Reed Haydon, civil engineering

Mr. Doran made a motion, which was seconded by Mr. Cocks and carried unanimously, that the Board accept the individuals as expert witnesses in their respective field.

Mr. Richardson, Tampa, Ecological Consultants Inc., appeared, provided information as to his credentials, discussed the environmental merits of the Keystone Road connection versus North Highland Avenue, and responded to a query by Mr. Aungst. He noted that Keystone Road has no wetland impacts, whereas North Highland Avenue access would impact almost two acres of wetlands; and that SWFWMD has already permitted the Keystone Road ingress and egress as part of approval for the site plan as designed.

Mr. Stephenson, Level Up Consulting, Tampa, appeared and referred to documents, noting that the applicant worked to mitigate any Keystone Road minor wetland and floodplain impacts; that the North Highland Avenue is in the 100-year floodplain; and that the County approved Keystone Road as an evacuation route; whereupon, he opined that the Keystone Road access is the safest route for the residents.

Mr. Aungst indicated that the applicant plans to meet the Transportation Design Manual standards on ingress and egress, and responding to queries by the members, reiterated that utilizing Keystone Road for access is not prohibited based on the Code; and that North Highland Avenue is not available for several environmental and property owner rights issues.

Mr. Haydon, Clearwater, appeared, referred to several documents and photographs, and discussed the compatibility of the proposed development with the surrounding area, noting that the North Highland Avenue residents are opposed to additional traffic on the road as they feel it would compromise the character of the area. He also discussed the historical uses of the property and the previous requirement that all trucks must use Keystone Road for ingress and egress.

Discussion ensued, and Mr. Aungst summarized the project approval process, indicating that the site plan application will be submitted to the City of Tarpon Springs; that there will be a pre-application meeting and a technical review committee meeting; and that a right-of-way use permit is required from Pinellas County as a condition for the City's approval of the Keystone Road access design. He noted that the County's right-of-way permit denial is being appealed today.

Upon call for proponents of the appeal, Craig Taraszki, St. Petersburg, and Charles Smith, Tarpon Springs, appeared and discussed the reasons for their support of the appeal and for allowing access to Keystone Road, and discussion ensued.

In response to query by Mr. Burdette, Attorney Morris reiterated that the Board's guide for consideration of the matter is Section 154-198 of the Code and the Transportation Design Manual.

In rebuttal, Messrs. Lyon and Washburn, Senior Assistant County Attorney David Sadowsky, and Ms. Levy addressed various topics, including traffic, sight distance, safety concerns, crash data, wetland impacts, and access options, discussing how various concerns raised by the applicants would be addressed by developing the North Highland Avenue access. Responding to queries by Mr. Burdette, Attorney Sadowsky emphasized that Code Section 154-198 discourages arterial road access when a collector road is available.

Mr. Burdette made a motion, which was seconded by Mr. Doran and carried unanimously, to accept new evidence relating to the crash data and aerial photos of Melon Street, which were submitted by the County.

Responding to queries by the members, Messrs. Aungst and Haydon reiterated their position that the Keystone Road access would be safer and have less environmental and wetland impacts; and that the subject property does not have permitted access to North Highland Avenue.

Following discussion, Ms. White made a motion to accept the waiver request based on the presented testimony and findings of fact. At the direction of Attorney Morris, she revised her motion to include granting the waiver of the General Access Standards in Section 154-198 of the Pinellas County Land Development Code and the request for an access point to Keystone Road. The motion was seconded by Mr. Bello, and carried 5 to 2, with Mr. Cocks and Ms. Kern dissenting.

MINUTES OF THE JANUARY 5, 2022 MEETING

Mr. Doran made a motion, which was seconded by Ms. White and carried unanimously, that the minutes of the January 5, 2022 meeting be approved.

Mr. Burdette informed the members that Mr. Lyon will be relocating to Washington State and expressed appreciation for his service.

ADJOURNMENT

The meeting was adjourned at 11:59 AM.