

Clearwater, Florida, July 7, 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; Chelsea Hardy, Assistant County Attorney; Todd F. Myers, Environmental Code Enforcement Director; other interested individuals; and Jenny Masinovsky, Board Reporter, Deputy Clerk.

CALL TO ORDER

Chairman Gephart called the meeting to order at 9:02 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 JOSEPH AND IVA FIALA THROUGH CRAIG A. TARASZKI, ESQUIRE, REPRESENTATIVE, FOR A VARIANCE (BA-3-7-16) – GRANTED WITH CONDITIONS

Public hearing was held on the application of Joseph and Iva Fiala through Craig A. Taraszki for a variance to allow an existing 8-foot-2-inch-high fence/wall with columns to remain with a 2-foot front setback where a variance for a 6-foot high fence was previously approved, and to allow an 8-foot-high fence to remain within the side setback along the east property line where a maximum 6-foot-high fence is allowed, re property located at 13660 74th Avenue North in the unincorporated area of Seminole. The Clerk has received a petition with 30 signatures in support of the application.

Mr. Bailey presented the following staff recommendation:

Recommend Denial. Staff cannot support the request because the after-the-fact fence does not meet the criteria for 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.

Mr. Bailey provided background information regarding the application, relating that the Board approved a variance for a 6-foot-high fence along the front property line in 2014; that while staff would deny the present request based on its wording, it has no issues with the actual fence structure or its appearance; and that the applicants requested a continuance in order to revise the request; whereupon, he indicated that the Exhibit A, a copy of which was filed and made a part of the record, provided by the applicants yesterday, offers an accurate description of the fence; and that staff would approve the application upon a condition that it conform with the Exhibit A.

Craig Taraszki, Johnson, Pope, Bokor, Ruppel, and Burns, LLP, appeared and indicated that he represents the applicants, who wish to proceed with the hearing, and following brief discussion with input provided by Attorney Hardy, the members agreed.

Mr. Taraszki referred to a PowerPoint presentation, a copy of which was filed and made a part of the record, and provided a brief history of the property, indicating that a code enforcement action was brought against the applicants earlier this year for exceeding the fence height approved in the previous variance and installing a fence along the eastern side of the property; and that the intent of the current variance request is to allow all existing fence to remain. Referring to a layout plan and aerial and ground level

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photographs, Mr. Taraszki pointed out the location of the subject property, fencing, and property lines, and described the fence, noting that it is highly transparent, made of stone and an aluminum rail system, is 6 feet 10 inches or under in height everywhere except for the main entry columns which have a maximum height of 8 feet 2 inches; and that on the eastern side of the property, the fencing line runs into a neighbor's house which encroaches upon the applicants' property.

Responding to queries by Mr. Burdette, Mr. Myers confirmed that the code enforcement action was based on a complaint; whereupon, responding to queries by the members, Mr. Taraszki indicated that the main entry columns were measured from the top of the cap; that the difference in fence height between the eastern and western sides of the property is due to a natural sloping grade; that the height of the concrete footer underneath the wooden portion is included in the overall 8-foot measurement; and that the fence is consistent with the size and scale of the applicants' approximately 3-acre estate property.

Referring to criteria for granting of a variance, Mr. Taraszki noted that the Board shall merely consider it; and that the two primary criteria for the case are "purpose and intent compliance" and "detriment to public welfare"; whereupon, he explained how those are satisfied. He noted that the fence is aesthetically pleasing and consistent with the character of the neighborhood; that 30 neighbors signed a petition in support of the application, a copy of which was filed and made a part of the record; and that some fences in the neighborhood are higher than what the applicants are requesting.

In response to queries by Messrs. Pierce and Watts, the applicant, Joseph Fiala, provided an explanation for exceeding the previously approved height of the fence, relating that there were County water lines discovered along the property line during construction; and that County Maintenance has been addressing the issue.

In response to the Chairman's call for objectors to the application, Ana Corzo, Seminole, and Doug Kuchle, Pinellas Park, appeared, presented photographs, expressed concerns regarding their property flooding along the eastern side of the applicants' fence adjacent to their property, and responded to queries and comments by the members.

In response to the concerns of the objectors and queries by the members, Mr. Taraszki indicated that the objectors' disagreement with the applicants is related to property and title issues; and that the flooding problem on the objectors' lot, which existed before the applicants upgraded their fence, is due to a natural sloping grade.

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During discussion about adding a condition to the variance related to drainage, Attorney Hardy advised that a condition should be related to the application; whereupon, Mr. Watts moved, seconded by Mr. Bomstein, that the application be approved with the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. The wall/fence and columns shall be constructed as described in “Exhibit A”.
3. Sight distance requirements shall be met.

Upon call for the vote, the motion carried 6 to 1, with Mr. Pierce dissenting.

#2 APPLICATION OF MOUNT OLIVE MISSIONARY BAPTIST CHURCH THROUGH GARY A. BOUCHER, P.E., REPRESENTATIVE, FOR A SPECIAL EXCEPTION (BA-2-7-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Mount Olive Missionary Baptist Church through Gary A. Boucher for modification of an existing special exception to allow for the construction of a 3,521-square-foot fellowship hall and related parking area for an existing place of worship, re property located at 13207 Pine Street in the unincorporated area of Largo (BA-2-7-16). No correspondence relative to the application has been received by the Clerk.

Ryan Brinson, Planning Department, 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 Pinellas County Land Development Code have been met. 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.

Gary A. Boucher, Ozona, 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 Ms. White that the special exception be granted as recommended by staff. Upon call for the vote, the motion carried unanimously.

#3 APPLICATION OF CLUBCORP GOLF FLORIDA, LLC THROUGH BEN HANSON, REPRESENTATIVE, FOR A VARIANCE (BA-6-7-16) – GRANTED AS REVISED

Public hearing was held on the application of Clubcorp Golf Florida, LLC through Ben Hanson for a variance to allow an existing 6-foot-high privacy fence to remain and to allow for the construction of two pool cabanas, all having 20-foot front setbacks from East Lake Woodlands Parkway where 25 feet is required, re property located at 1022 East Lake Woodlands Parkway in East Lake Tarpon. No correspondence relative to the application has been received by the Clerk.

Mr. Brinson presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The requested variance will allow the 6-foot-high privacy fence to remain in its current location and would allow for the construction of two pool cabanas at the East Lake Woodlands Parkway which has a significant right-of-way of roughly 25 feet on both sides of the two-lane divided road and will not impact any nearby residential uses. Approval of the request should be subject to the following conditions:

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

Ben Hanson, Oldsmar, appeared and indicated that he represents the applicant. In response to queries by the members, Mr. Hanson indicated that the applicant's request no longer includes construction of cabanas. Mr. Bailey stated that he was not aware of the change in the request.

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

#4 APPLICATION OF WILDS LAND COMPANY, LLC THROUGH WILLIAM J. KIMPTON, ESQUIRE, OR ANDREW IRICK II, REPRESENTATIVES, FOR A VARIANCE (BA-8-7-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Wilds Land Company, LLC through William J. Kimpton or Andrew Irick II for a variance to allow up to 17 single family residences having 15-foot front and 5-foot rear setbacks where 25-foot front and 10-foot rear setbacks are required, re property located at 3001 Hawks Landing Boulevard in East Lake Tarpon. The Clerk has received a petition with 32 signatures in objection to the application.

Mr. Brinson presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. This recommendation is consistent with Board of Adjustment action on September 4, 2014 regarding the identical request associated with Case No. BA-5-9-14, which has since expired. Staff is of the same opinion that special conditions exist on the site (notably wetlands) that warrant setback relief internal to the proposed subdivision.

Approval of the request should be subject to the same conditions the Board approved with the previous case (BA-5-9-14), as follows:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Full site plan review.
4. Lots 6 and 7 shall have a 10-foot rear setback.
5. The lots having a side entry garage shall be allowed a 15-foot front setback.

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6. The lots having a front entry garage shall be allowed a 20-foot front setback.

Joel Tew, Palm Harbor, appeared and indicated that he represents the applicant. He provided background information regarding the application, noting that the Board approved the variance in 2014 with conditions which remain acceptable to the applicant; and that the applicant is still awaiting site plan approval by the County, which has recently requested additional information regarding drainage, notwithstanding existing Southwest Florida Water Management District (SWFWMD) permits; whereupon, Mr. Tew requested that the variance be reinstated to ensure consistency with the site plan.

Responding to the Chairman's call for objectors to the application, the following individuals presented their comments and concerns:

Ron Crum, Palm Harbor
Valarie Schroder, Palm Harbor
Barbara Spath, Palm Harbor

Concerns expressed by the citizens included:

- Adherence to setbacks and units per acre akin to subdivisions within the Ridgemoor community.
- Hardship on the neighborhood.
- Wetlands; flooding; traffic.
- Reasons for requesting/granting variances in general.

During discussion and in response to concerns of the objectors, Messrs. Burdette and Bomstein explained that as a condition to approval of the application, the applicant will be required by the County Engineering staff to accommodate drainage on the subject property without negatively impacting the surrounding properties; that as a result, the condition of the property will be improved; that the reduction in setbacks will not make a difference in terms of existing flooding issues; and that the only people affected by the front setbacks would be the homeowners in the future development.

Responding to query by Mr. Doran, Mr. Bailey clarified that the property is zoned for 2.5 units per acre, which could accommodate a multifamily development, and Mr. Tew provided input. He noted further that a variance is not requested for lots 6 and 7 abutting the objectors' lots 20 and 30; whereupon, he discussed the County's rigorous engineering

review process and the applicant's efforts in stormwater remodeling, including a SWFWMD permit that was obtained, appealed, and upheld.

Thereupon, Mr. Bomstein moved, seconded by Mr. Doran that the variance be granted as recommended by staff. Upon call for the vote, the motion carried unanimously.

#5 APPLICATION OF KAY D. COSTANGO FOR A VARIANCE (BA-4-7-16) – GRANTED WITH CONDITIONS

Public hearing was held on the application of Kay Costango for a variance to allow for the construction of a garage addition with a 0-foot front setback from the property line adjacent to Club Drive where 20 feet is required, re property located at 2366 Rajel Avenue in the unincorporated area of Safety Harbor (BA-4-7-16). No correspondence relative to the application has been received by the Clerk.

Mr. Brinson presented the following staff recommendation:

Recommend Denial. Staff cannot support the request because the proposed garage addition at a 0-foot front setback would be built too close to the Club Drive right-of-way, which may impede any necessary future maintenance of utilities located within the right-of-way. Staff could, however, support setback relief of a lesser extent. The property is oddly shaped, heavily wooded, and is a double frontage lot with its second frontage along Club Drive, which is a "paper" road that will likely never be fully constructed.

The requested 0-foot front setback does not meet the criteria for granting of variances in Section 138-113 of the Pinellas County Land Development Code, specifically in regard to:

- (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.

Mr. Brinson referred to the location of the subject property on a map, and responding to queries by the members, Messrs. Brinson and Bailey indicated that Club Drive, located to the south, is not an improved right-of-way; that County Public Works objected to the variance request due to possible impediment to future maintenance of water lines and denied a request to vacate the right-of-way; and that the variance could be accommodated at a 6-foot setback.

In response to queries by the members, Kay Costango, Safety Harbor, referred to a survey of the property and provided information regarding the garage, indicating that it cannot be positioned differently. She noted that a water line comes from patio homes located to the south of her property and does not run parallel to Club Drive; and that she requested vacation of the right-of-way because of the unknown location of the water line.

Following discussion, Mr. Bomstein indicated that there should be a record of the water line location; and that it is difficult to make a decision without hearing from the objecting party; whereupon, he moved, seconded by Mr. Burdette that the variance be granted upon condition that the applicant obtain any required permits and pay any applicable fees; and that Public Works be engaged in the permitting process.

Upon call for the vote, the motion carried unanimously.

#6 APPLICATION OF R. CHRISTOPHER HICKMAN FOR A VARIANCE (BA-5-7-16)
GRANTED FOR A 20-FOOT SETBACK WITH CONDITIONS

Public hearing was held on the application of R. Christopher Hickman for a variance to allow for the construction of a carport with an 18-foot front setback where 25 feet is required, re property located at 606 Betmor Lane in Palm Harbor (BA-5-7-16). No correspondence relative to the application has been received by the Clerk.

Mr. Brinson presented the following staff recommendation:

Recommend Denial. Staff cannot support the request because the location of the proposed carport would appear to be out of character and inconsistent with other homes in the neighborhood. In addition, the request does not meet the criteria for 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.

Referring to a photograph of the property, R. Christopher Hickman, Palm Harbor, indicated that an 18-foot setback would bring his carport in line with other carports on the street; that it will not impede anyone's view; and that all of his neighbors are supportive of the request; whereupon, Suzanne Hickman, indicating that she is the applicant's spouse, discussed the layout of the street on which the property is situated, noting that their front yard is larger than neighbors'; and that the carport would be the only storage on the property accommodating the applicant's needs.

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

Responding to queries by the members, Mr. Hickman indicated that he plans to install a garage door to close the carport; and that he has been provided with different answers by the County regarding the optimal location for the carport, and discussion ensued.

Mr. Bailey indicated that staff recommendation is consistent with other cases regarding carports located in front of a property; that the Board has not approved any carports on

the same street; that if the applicant is requesting a garage, the case would have to be re-advertised as such; and that staff would approve a 20-foot setback for a carport, if that is consistent with the neighborhood.

Following brief discussion, Mr. Bomstein moved, seconded by Mr. Watts, that a variance allowing a 20-foot front setback for construction of a carport be granted upon a condition that the applicant obtain all required permits and pay all applicable fees. Upon call for the vote, the motion carried unanimously.

#7 APPLICATION OF LARGO LAKES PROPERTY OWNERS ASSOCIATION, INC. THROUGH CHRIS WEDDLE, P.E., REPRESENTATIVE, FOR A VARIANCE (BA-7-7-16) – CONTINUED

Public hearing was held on the application of Largo Lakes Property Owners Association, Inc., through Chris Weddle for a variance to allow for the construction of a second freestanding sign on a parcel of land with 282 feet of road frontage where 500 feet of frontage is required for a second sign, and at a distance of 50 feet from the existing freestanding sign where 300 feet of separation is required, re property located at the northeast intersection of Starkey Road and Largo Lakes Drive in the unincorporated area of Pinellas Park (BA-7-7-16). No correspondence relative to the application has been received by the Clerk.

Mr. Bailey presented the following staff recommendation:

Recommend Denial. Staff recommends denial of the proposed construction of a second freestanding sign, as it does not meet the criteria for granting a variance in Section 138-113 of the Pinellas County Land Development Code, specifically in regard to:

- (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.

Chris Weddle, Brandon, appeared and indicated that he represents the applicant and the YMCA Board of Directors, and Jim Patton, Seminole, appeared and indicated that he represents the YMCA Board of Directors; whereupon, they referred to an aerial photograph of the YMCA and renderings of the proposed sign identifying the YMCA and other Largo Lakes Property Owners Association tenants, and discussed the importance of the sign for the public, noting that visitors have difficulty finding the location.

Responding to queries by the members, Mr. Bailey indicated that while the size of the proposed sign is acceptable, the distance separation between two signs for Largo Lakes Corporate Center should be 150 feet, and Attorney Hardy indicated that there is no distinction in the Code based on the type or content of a sign.

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

Following a lengthy discussion about how the applicant's request could be accommodated, the members indicated that it likely would not be approved as is; whereupon, the applicant indicated that he would return to the Board with a revised request.

Thereupon, Mr. Bomstein moved, seconded by Mr. Doran, that the variance be continued for up to 60 days, allowing the applicant to revise the application. Upon call for the vote, the motion carried unanimously.

MINUTES OF MAY 4, 2016 MEETING – APPROVED

Mr. Doran moved, seconded by Mr. Bomstein, that the minutes of the meeting of May 4, 2016, be approved. Upon call for the vote, the motion carried unanimously.

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MISCELLANEOUS DISCUSSION

Code Enforcement Substitute Representative

Mr. Myers introduced Code Enforcement Supervisor Jeffrey Gibbud, relating that Mr. Gibbud will fill in for him at the next meeting and as needed in the future.

Seminole Christian Fellowship - F&L Towers, Representative (BA-6-10-13)

Mr. Bomstein referred to discussion at the June 1, 2016 meeting pertaining to the rehearing of Case No. BA-6-10-13, and noted the passing of the applicant's representative, Stacy Frank of F&L Towers; whereupon, Attorney Hardy indicated that the case is on hold until the applicant's intentions are known.

Code Interpretation

In response to query by Mr. Bomstein, Attorney Hardy indicated that in granting variances, the Board, as a quasi-judicial body, has to base its decisions on concrete criteria, which, by law, must be met and not merely considered; and that the Board has the discretion to determine whether they have been met; whereupon, she offered to provide copies of case law by which the Board is bound.

During discussion and responding to members' concerns regarding the Board's practice of granting variances upon consideration of criteria, she indicated that the Code is being updated to make it clear that the criteria must be met; whereupon, Messrs. Bomstein and Burdette expressed interest in having input during the Code updating process.

ADJOURNMENT

At the direction of Chairman Gephart, there being no further business, the meeting was adjourned at 10:52 A.M.

Chairman