

The Board of Adjustment and Appeals (BAA) 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: Deborah J. White, Chairman; Alan C. Bomstein, Vice-Chairman; Jose Bello; Joe C. Burdette; Vincent Cocks; and Pamela Kern, Alternate Member.

Not Present: John Doran and Cliff Gephart.

Also Present: Gina Berutti, Code Enforcement Manager; Chelsea Hardy, Assistant County Attorney; Michael Schoderbock, Principal Planner; other interested individuals; and Amelia Hanks, Board Reporter.

### CALL TO ORDER

Chairman White called the meeting to order at 9:00 A.M. and provided an overview of the hearing process.

### PUBLIC HEARING ITEM

Due notice having been given to interested persons pursuant to Comprehensive Zoning Ordinance No. 90-1, a public hearing was held on the following application. All persons planning to give testimony were duly sworn by a Deputy Clerk.

- #1 APPLICATION OF APHORA TO THE SUN LLC THROUGH KATHERINE COLE, HILL WARD HENDERSON, REPRESENTATIVE, FOR A TYPE 2 USE (BAA-20-1) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Aphorao to the Son LLC through Katherine Cole for a Type 2 Use to allow for Agricultural Activities, Commercial Use (equine-related therapeutic sessions) in an R-A zone, re property located at 1743 Doncaster Road in unincorporated Largo (BAA-20-1). No correspondence relative to the application has been received by the Clerk.

Mr. Schoderbock presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request as it appears to meet the criteria for granting Type 2 Uses found in Section 138-241 of the Pinellas County Land Development Code. The request is to allow for therapeutic sessions utilizing horses that reside onsite. No new construction is proposed as all needed infrastructure is currently in place. The Board has granted multiple variances in the past involving horse-related accessory structures (barn and covered arena) on the subject property. Approval should be subject to the following conditions:

1. All applicable specific use standards for Agricultural Activities (Section 138-3330 of the Pinellas County Land Development Code) and Farm Animals (Section 138-3350) shall be met.
2. All applicable standards for Temporary Uses (Section 138-3356) shall be met for any special events that are held onsite.
3. Provide advance notification to the County for large special events.

Katherine Cole, Clearwater, appeared and indicated that she represents the applicant. She provided historical background information regarding the use of the property and related that the request is a result of recent changes to the Land Development Code relating to commercial activities.

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

Responding to queries by Mr. Bomstein, Ms. Cole related that the residence will remain on the property and be used on occasion; that the purpose of the request is to allow commercial activity to take place; and that a caretaker currently resides on the adjacent property.

Mr. Bomstein moved, seconded by Mr. Burdette, that the variance be granted as recommended, based upon the written findings of fact set forth in the staff report. Upon call for the vote, the motion carried unanimously.

MINUTES FROM THE DECEMBER 5, 2019 MEETING – APPROVED

Upon presentation by the Chairman, Mr. Bomstein moved, seconded by Mr. Burdette and carried unanimously, that the minutes of the regular meeting held December 5, 2019 be approved.

BOARD OF ADJUSTMENT AND APPEALS – PROCEDURAL OVERVIEW

Referring to a PowerPoint presentation, a copy of which has been made a part of the record, Attorney Hardy provided a legal procedural overview of the Board’s decision-making process. Noting that the presentation is very general in nature, she invited the members to ask specific questions or to contact her at any time to obtain more information.

Attorney Hardy reviewed the authority of the Board to make decisions with regard to Variances, Type 2 Uses, and Administrative Appeals on cases pertaining to the unincorporated areas of Pinellas County, with the exception of cases involving a zoning or land use change, which would go before the Board of County Commissioners.

Variances

Attorney Hardy provided the definition of a variance, noting that it applies to a particular property and runs with the land, not the owner; and that the Board can apply certain conditions to lessen its effect. She reviewed mandatory conditions for the granting of a variance, as set forth in Section 138-231 of the Pinellas County Land Development Code; whereupon, she gave examples of factors that would and would not qualify as special conditions or unnecessary hardship.

Responding to query by Ms. Kern, Attorney Hardy related that variances should always be granted on a case-by-case basis, although several properties in an area with the same request could indicate a land development regulation or zoning issue.

Type 2 Uses (Special Exceptions)

Attorney Hardy explained that as opposed to a variance, which allows something prohibited by the Code, a Type 2 Use is specifically allowed but warrants additional review to ensure that it is appropriate for the particular parcel; whereupon, she reviewed the general criteria for granting a Type 2 Use, as set forth in Section 138-234 of the Pinellas County Land Development Code, noting that use-specific criteria may also apply, and Mr. Schoderbock provided input.

Responding to query by Mr. Burdette, Attorney Hardy indicated that the applicant has the burden of proving to the satisfaction of the members that the criteria have been met, which could include studies or other evidence.

### Administrative Appeals

Attorney Hardy explained that Administrative Appeals pertain to decisions that have already been made by a lower body, typically an individual staff member or the Development Review Committee, who were given certain authority by recent updates to the Land Development Code; whereupon, she provided examples of parties eligible to file an appeal, and related that the Board's decision must be based on evidence presented at the appeal hearing.

Responding to query by Mr. Burdette, Attorney Hardy related that the Board would have the option of holding a pre-hearing conference, the purpose of which would be to clarify and simplify the issues and receive information for review before the actual appeal hearing.

Attorney Hardy explained the difference between quasi-judicial and legislative decisions, stating that all Board of Adjustment actions are quasi-judicial. She reviewed various requirements and provided examples of factors that would and would not constitute substantial competent evidence, and responding to comment by Mr. Burdette, clarified that while the Board can consider lay testimony based on personal knowledge, matters involving speculation or conjecture cannot be considered. In response to query by Ms. Kern, she indicated that it is the burden of the applicant/appellant to prove their case, and the Board must be comfortable that witnesses presented as experts are in fact experts in their field.

Noting that new regulations took effect July 1, Attorney Hardy related that the Board members must articulate the findings of fact that led to their decision, and provided examples of appropriate motions.

In conclusion, Attorney Hardy provided an overview of various legal considerations and restrictions that apply to the members with regard to their service on the Board, and responding to query by Chairman White, confirmed that she will forward a copy of the PowerPoint presentation to the members.

January 2, 2020

ADJOURNMENT

The meeting was adjourned at 9:37 A.M.

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Chairman