

Clearwater, Florida, June 5, 2014

The Board of Adjustment 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: John Doran, Chairman; Joe C. Burdette; Michael Foley (Alternate); Ray Hoeneisen; Gregory Pierce; Stephen G. Watts; and Deborah White.

Absent: Alan C. Bomstein, Vice-Chairman

Also present: John F. Cueva, Planning Department Zoning Manager; Jason C. Ester, Senior Assistant County Attorney; Todd F. Myers, Environmental Code Enforcement Director; other interested individuals; and Michael Schmidt, Board Reporter, Deputy Clerk. Minutes by Helen Groves, Senior Board Reporter, Deputy Clerk.

#### CALL TO ORDER

Chairman Doran called the meeting to order at 9:03 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:

- # 1     APPLICATION OF AMERICAN HOME BUILDERS, INC. THROUGH STUART A. COHEN, REPRESENTATIVE, FOR A VARIANCE (BA-15-6-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of American Home Builders, Inc. through Stuart A. Cohen for a variance to allow a single family dwelling having a 20-foot front setback, a six-foot side setback, and a 10-foot rear setback where 25-foot front, 7.5-foot side, and 10-foot rear setbacks are required, re a vacant lot located on the south side of 43<sup>rd</sup> Avenue North, 150 feet west of 37<sup>th</sup> Street North, St. Petersburg (BA-15-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the reduced setbacks as they are in keeping with the development pattern established in the area. Many of the homes were built prior to the adoption of the Zoning Code, hence there is not an established 25-foot front setback in the area. Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The setbacks shall be 20-foot front, six-foot side, and 10-foot rear.

Stuart A. Cohen, Pinellas Park, appeared and being duly sworn, indicated that he represents the applicant.

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

Mr. Burdette moved, seconded by Ms. White, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 2 APPLICATION OF AMERICAN HOUSING BUILDERS, INC. THROUGH STUART A. COHEN, REPRESENTATIVE, FOR A VARIANCE (BA-16-6-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of American Housing Builders, Inc. through Stuart A. Cohen for a variance to allow a single family dwelling having a 20-foot front setback and a six-foot side setback where 25-foot front and 7.5-foot side setbacks are required, re a vacant lot located on the east side of 30th Way North, 50 feet north of 64th Avenue North, St. Petersburg (BA-16-6-14).

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John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the reduced setbacks as they are in keeping with the development pattern established in the area. Many of the homes were built prior to the adoption of the Zoning Code, hence there is not an established 25-foot front setback in the area. Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The setbacks shall be 20-foot front and six-foot side.

Stuart A. Cohen, Pinellas Park, appeared and being duly sworn, indicated that he represents the applicant.

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

Ms. White moved, seconded by Mr. Watts, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 3 APPLICATION OF GULFWIND CONTRACTING, LLC, THROUGH ROBERT PERGOLIZZI, REPRESENTATIVE, FOR A VARIANCE (BA-3-6-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Gulfwind Contracting, LLC through Robert Pergolizzi for a variance to allow an existing six-foot-high wrought iron fence to remain having a 12-foot front setback where a 20-foot front setback is required, re property located at 11700 Kaymak Lane, Seminole (BA-3-6-14).

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John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as this is a corner lot and the fence as it exists does not pose any adverse impact to the adjoining properties or the general public and does not impair motorist sight vision as the fence abuts the Ridge Road right-of-way. Approval of the request is subject to the following condition:

Review and approval of sight distance criteria by the Building and Development Review Division.

Robert Pergolizzi, Clearwater, appeared and being duly sworn, indicated that he represents the applicant.

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

Mr. Burdette moved, seconded by Mr. Foley, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 4 APPLICATION OF GULFWIND CONTRACTING, LLC, THROUGH ROBERT PERGOLIZZI, REPRESENTATIVE, FOR A VARIANCE (BA-13-6-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Gulfwind Contracting, LLC through Robert Pergolizzi for a variance to allow a building setback of 20 feet from the edge of pavement for two single family residences, as well as a pool enclosure having a five-foot setback from the edge of pavement where a 35-foot setback is required, re property located at 9200 Ridge Road, Seminole (BA-13-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the requested variances as these are tri-frontage and double-frontage lots, which reduces the buildable area of the lots. As the lots abut a private road, it is not anticipated the requested variances will pose an adverse impact to the area. Approval of the request is subject to the following conditions:

1. Final site plan approval shall be obtained.
2. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
3. The setback from the south property line for the residential homes shall be 20 feet.
4. The setback from the south property line for the pool enclosures shall be five feet.

Robert Pergolizzi, Clearwater, appeared and being duly sworn, indicated that he represents the applicant.

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

Ms. White moved, seconded by Mr. Watts, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 5 APPLICATION OF PINELLAS COUNTY COMMUNITY HOUSING PROGRAM LAND TRUST, C/O ED COURTEMANCHE, FOR A VARIANCE (BA-8-6-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of the Pinellas County Community Housing Program Land Trust, c/o Ed Courtemanche, for a variance for a house having a 5.5-foot side setback where a 7.5-foot side setback is required, re a vacant

lot located on the north side of 40<sup>th</sup> Avenue North, 300 feet west of 28<sup>th</sup> Street North, St. Petersburg (BA-8-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as the subject site is located in an older area of the county where setbacks for homes vary from lot to lot. Approval of the variance will not adversely affect development patterns in this area. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The side setback shall be 5.5 feet.

Ed Courtemanche, Clearwater, appeared and being duly sworn, indicated that he represents the Community Trust.

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

Ms. White moved, seconded by Mr. Watts, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 6 APPLICATION OF DON R. HIRSCHMAN, REVOCABLE LIVING TRUST, DON R. HIRSCHMAN, TRE, FOR A VARIANCE (BA-13-5-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Don R. Hirschman, Revocable Living Trust, Don R. Hirschman, TRE, for a variance to allow a 10-foot-high fence having a zero-foot setback where a fence in excess of six feet having a zero-foot

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setback is allowed, re property located at 2196 Salisbury Court, Palm Harbor (BA-13-5-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as the topography of the site is such that the home is a few feet higher in elevation, as the lot dimension goes eastward, thus allowing pedestrians or motor vehicles the ability to see into the subject property from the west (County Road 1). The adjacent property to the south received a similar variance in May of 2012 (BA-6-5-12) for the same reason. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The fence shall not exceed 10 feet in height measured from the natural grade of the subject lot.

Michael Albert, Palm Harbor, appeared and being duly sworn, indicated that he is representing his neighbor; and that he was the recipient of the above-mentioned variance for a 10-foot fence on the adjacent property.

In response to query by Mr. Pierce, Mr. Cueva indicated that the Board did set a precedent when it granted the variance for Mr. Albert's fence; whereupon, Mr. Burdette opined that the BA does not set precedents, as each case stands on its own merit.

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

Mr. Burdette moved, seconded by Ms. White, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 7 APPLICATION OF MICHAEL D SETZER, ESTATE (DECEASED) THROUGH WILLIAM J. SETZER AND FRONTIER ENGINEERING, INC., REPRESENTATIVES, FOR A SPECIAL EXCEPTION AND A VARIANCE (BA-24-6-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Michael D. Setzer, Estate (deceased) through William J. Setzer and Frontier Engineering, Inc. for a special exception for a worship center and a variance to allow for four-foot-tall block wrought aluminum fence columns where three feet is required with a zero-foot setback along the front property line where a 25-foot front setback is required, re property located at 7041 34<sup>th</sup> Street North, St. Petersburg (BA-24-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of this request provided the Board is satisfied the “Standards” of Section 138-238, Division 7, of the Pinellas County Land Development Code have been met and subject to the following conditions:

1. Appropriate site plan review.
2. The four-foot-high fence may have a zero-foot front setback.

With regard to the variance for the four-foot-high fence, staff has no objection as the fence will be used for security of the site and because the fence will only exceed the Code requirement by one foot.

Tim Healey, Frontier Engineering, Inc., appeared and being duly sworn, indicated that his firm represents the applicants as the project engineers.

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

Mr. Burdette moved, seconded by Ms. White, that the variance and special exception be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 8 APPLICATION OF THE CHAPEL OF PINELLAS, INC. THROUGH HOUSH GHOVAEE, REPRESENTATIVE, FOR A SPECIAL EXCEPTION (BA-22-6-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of the Chapel of Pinellas, Inc. through Housh Ghovae for a special exception for two modular buildings to be used as classrooms and for the addition and reconfiguration of the parking area at an existing church located at 2795 Keystone Road, Tarpon Springs (BA-22-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that one letter in opposition to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of this request provided the Board is satisfied the “Standards” of the Pinellas County Land Development Code have been met and subject to the following conditions:

1. Appropriate site plan review.
2. All setback requirements shall be met.

Chairman Doran announced that an email in opposition to the application was received this morning.

Housh Ghovae, Clearwater, appeared and being duly sworn, indicated that he represents the applicant; whereupon, in response to query by Mr. Pierce, he indicated that the modular buildings will be permanent structures.

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

Ms. White moved, seconded by Mr. Foley, that the special exception be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 9 APPLICATION OF BRYAN AND TERESA LILLYCROP THROUGH RONALD MORGAN, REPRESENTATIVE, FOR A VARIANCE (BA-23-6-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Bryan and Teresa Lillycrop through Ronald Morgan for a variance to allow a single family home to have a 15-foot front setback from the 9<sup>th</sup> Street property line where a 25-foot front setback is required, re a vacant lot located at the northwest corner of 9<sup>th</sup> Street and Michigan Avenue, Palm Harbor (BA-23-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request, as this is a corner lot which requires two front setbacks of 25 feet. As the distance from the edge of pavement to the east property line is 40 feet, staff does not envision any adverse impact to the surrounding property. Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The setback from the 9<sup>th</sup> Street property line shall be 15 feet.
3. No driveway access to 9<sup>th</sup> Street shall be permitted unless a right-of-way utilization permit is obtained.

Ronald Morgan, Dunedin, appeared and being duly sworn, indicated that he represents the applicant.

Ms. White moved, seconded by Mr. Foley, that the variance be approved.

In response to the Chairman's call for persons wishing to be heard, David B. Geddis, Jr., Palm Harbor, appeared and being duly sworn, indicated that he supports the application. He expressed his concerns with the reclaimed water process; whereupon, Chairman Doran explained that the Board of Adjustment only makes decisions on items that have been advertised and does not make policy.

Upon call for the vote, the motion carried unanimously.

#10 APPLICATION OF SCHIEFER ENTERPRISES, INC. THROUGH RANDALL MARKES ARCHITECT, REPRESENTATIVE, FOR A VARIANCE (BA-20-6-14) – GRANTED WITH ADDITIONAL CONDITIONS

Public hearing was held on the application of Schiefer Enterprises, Inc. through Randall Markes Architect for a variance to allow a 100-seat restaurant where a 50-seat restaurant is allowed, re an existing building located at 13800 Park Boulevard (BA-20-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that one letter in support and five letters in opposition to the application have been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as the site has adequate parking area to accommodate the additional seats for the proposed restaurant. Approval of the request is subject to the following conditions:

1. Appropriate site plan review.
2. The applicant shall obtain all required permits and pay the transportation and/or impact fee.
3. If the parking area is lit, it shall be required that low level lighting should be directed away from the residential area to the south.

Randall Marks, St. Petersburg, appeared and being duly sworn, presented a petition in support of the application. He referred to a drawing, and indicated that, due

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to the economy, the building has been underutilized for several years; that he is representing the Osaka Asian Restaurant, which is relocating from Madeira Beach; that a 50-seat restaurant would be allowed under the current zoning, but would not be economically feasible; and that his client is requesting a variance to allow a 100-seat restaurant. He discussed the parking situation, indicating that there are currently 55 spaces that are shared with other tenants in the building, which at this time are offices; and that there is a paved area that could accommodate six additional parking spaces, including a handicapped space, and another area that would accommodate 28 spaces.

In response to query by the members, Mr. Markes indicated that the hours of operation will be from 4:00 P.M. until 10:00 or 11:00; and that there are currently no plans to serve lunch, but his client would like to reserve that option. He stated that there are three points of entry and exit to the building: two on Park Boulevard and one on 128<sup>th</sup> Street; and that there has not been a restaurant in the building before.

In response to query by the Chairman, Mr. Cueva explained why staff considered the parking to be adequate, relating that there is a grassy spot that could be used for parking, which is allowed; and stated that the Code is being revised, and the 50-seat restaurant limitation in a C-1 zoning area is going to be removed. In response to query by Mr. Pierce, Mr. Cueva related that the applicant did not request a zoning change because a C-2 zoning designation would allow undesirable uses in the C-1 neighborhood.

In response to the Chairman's call for citizens wishing to be heard, the following individuals appeared and being duly sworn, expressed their concerns:

Mohammed Mostajabian, Seminole  
Stefan Hoppe, Seminole  
Anabella Hoppe, Seminole  
Gaetano Critelli, Seminole

Concerns expressed by the citizens included:

- Parking not adequate.
- The request is for too many seats in relation to what is allowed.
- Applicant does not own the property.
- No barrier/buffer to separate the commercial and residential property.
- Would lower property values.
- The neighbors affected were not asked to sign the petition.
- Increased noise level due to added number of restaurant seats.

- Previous owner did not follow through on commitments.
- Access in relation to fruit stand.
- Increased traffic.
- Safety of children in the neighborhood.
- If granted, a tall fence is needed to filter sound.

In response to comments by the objectors, Mr. Cueva indicated that Schiefer Enterprises, Inc. owned the property at the time of the request; and if the application is approved, the decision will transfer to the new owner. He discussed the public right-of-way, and indicated that the Board could require a fence, subject to distance and setback requirements.

In rebuttal, Mr. Markes indicated that a buffer already exists between the commercial and residential area; that his client is not applying for a liquor license; and that there will be no loud music. In response to query by Mr. Pierce, Mr. Markes acknowledged that the signers of the petition he submitted do not live in the immediate neighborhood and just wanted a restaurant in the area, noting that the real estate agent was responsible for garnering the signatures; whereupon, Mr. Pierce stated that he would not give the petition much weight in his deliberation, as the petitioners' neighborhoods would not be affected by the change; and Mr. Hoeneisen noted that contrary to Mr. Markes' statement, there are plenty of restaurants in the area.

Mr. Pierce pointed out that the proposed changes to the Pinellas County Code cited by Mr. Cueva might be denied, and Mr. Cueva agreed that denial is a possibility, noting that there were other reasons for staff's recommendation of approval.

In response to queries by the Chairman and Mr. Pierce, Mr. Markes stated that he is authorized to accept or refuse any conditions the Board might add; whereupon, the Chairman closed the public hearing.

Discussion ensued regarding which lots were included in the advertisement for today's meeting, what conditions the Board might add to alleviate the concerns of the neighbors, and apparent contradictions between the graphics and the pictures displayed; whereupon, Mr. Burdette moved, seconded by Mr. Watts, that the application be approved as recommended by staff with additional conditions prohibiting outdoor music and requiring a six-foot maintenance-free fence on the east side and along 77<sup>th</sup> Avenue, and discussion ensued with Attorney Ester and Mr. Cueva providing input regarding the fence.

Thereupon, Mr. Burdette announced his intention to amend his motion, and moved, seconded by Mr. Watts, to approve the variance as recommended by staff, with the following added conditions:

1. A six-foot-high, maintenance-free fence (block or vinyl) shall be erected on the East side and along 77<sup>th</sup> Avenue and set back seven feet from the property line along 77<sup>th</sup> Avenue, with the purpose of preventing access from 77th Avenue to the southern end of the parking lot. Petitioner shall be responsible for maintaining the fence.
2. No outdoor music shall be allowed.

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

#11 APPLICATION OF MARSHALL STARR FOR A VARIANCE (BA-19-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Marshall Starr for a variance to allow an eight-foot-high fence having a zero-foot rear setback where a 20-foot rear setback is required, re property located at 2012 Bellhurst Drive, Dunedin (BA-19-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that one letter in support and five letters in opposition to the application have been received, and presented the following staff recommendation:

Recommend Conditional Approval Staff has no objection to this request as the lot abuts State Road 580, a major arterial road and, as such, is subject to noise associated with heavy vehicular use on this roadway. The eight-foot-high fence as it exists does not pose an adverse impact to other properties in the area. Approval of the request is subject to the following conditions:

1. The applicant shall obtain a permit for the eight-foot-high fence.

2. The fence shall have a zero-foot setback from State Road 580.

Marshall Starr, Dunedin, appeared and being duly sworn, referred to drawings, aerial photographs, and graphics, and indicated that he is the homeowner; that a six-foot-high fence was there when he bought the property; that he added a two-foot extension to the top of the fence; that he did not have a permit, as he misunderstood the rules; that when the original fence was built, Main Street was a two-lane street and is now a seven-lane street; that the distance between the fence and the street has diminished from 12 feet to zero feet, and the sidewalk is much closer to the wall; and that the roadway has been raised, and the six-foot-high wall basically has become about a five-foot-high wall, reducing privacy and affecting the property value.

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

Thereupon, Mr. Burdette moved, seconded by Mr. Watts, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#12 APPLICATION OF LANE D. LANCE THROUGH RON JOHNSON, REPRESENTATIVE, FOR A VARIANCE (BA-18-6-14) – APPROVED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of Lane D. Lance through Ron Johnson for a variance to allow a single family residence on a lot having 60 feet of frontage and 6,000 square feet of land area where 75 feet of frontage and 7,500 square feet of land area are required, re two vacant lots located at the southwest corner of Crestmont Street and Avalon Avenue, Clearwater (BA-18-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the proposed variance because two units can be built on the two 50-foot-wide lots as they currently exist. However, staff is of the opinion that the community is better served

by the proposed lot layout having two lots developed at a 60-foot width rather than the 50-foot width currently allowed by Code because of the way the subdivision was platted (i.e., 50-foot widths). Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. Each lot shall have a minimum of 6,000 square feet of lot area and a minimum of 60-foot lot widths.

Ron Johnson, Largo, appeared and being duly sworn, indicated that he represents the applicant.

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

Thereupon, Ms. White moved, seconded by Mr. Hoeneisen, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#13 APPLICATION OF MARY G. ORME AND DAVID ELLIS FOR A VARIANCE (BA-14-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Mary G. Orme and David Ellis for a variance to allow the replacement of a two-car garage with a two-story accessory dwelling unit on a lot having 73 feet of frontage where 75 feet of frontage is required, re property located at 333 Marie Street, Ozona (BA-14-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that one letter in opposition to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as the applicant cannot acquire the additional land necessary to meet the frontage

requirement as the adjoining properties are owned by the Pinellas County School Board. Approval of the request will not adversely affect adjacent School Board property. Approval of the request shall be subject to the following condition:

The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.

Mary Ellis, Palm Harbor, appeared and being duly sworn, indicated that she is the property owner.

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

In response to query by Mr. Watts, Mr. Cueva confirmed that the two-story height is not relative; whereupon, Ms. White moved, seconded by Mr. Watts, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 14 APPLICATION OF MICHAEL S. AND HEATHER S. YACOVIELLO FOR A VARIANCE (BA-12-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Michael S. and Heather S. Yacoviello for a variance to allow a pool enclosure having a 10-foot front setback where a 25-foot front setback is required, re a vacant lot located on the southwest corner of Island Court and Omaha Street, Palm Harbor (BA-12-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as this is a corner lot which has a six-foot-high wall adjacent to the proposed pool enclosure location. Approval of the pool enclosure will not adversely affect an adjacent property owner, as the site is

adjacent to the Omaha Street right-of-way. Approval is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The pool enclosure shall be set back 10 feet from the east property line.

Michael S. Yacoviello, Palm Harbor, appeared and being duly sworn, indicated that he is the applicant.

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

Ms. White moved, seconded by Mr. Foley, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 15 APPLICATION OF SANG VAN VO THROUGH NOELLA BURGESSON, REPRESENTATIVE, FOR A VARIANCE (BA-6-6-14) – APPROVED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of Sang Van Vo through Noella Burgesson for a variance to allow a single family home to be built on a lot which has 22 feet of frontage where 60 feet of road frontage is required, re property located at 10531 94<sup>th</sup> Place, Seminole (BA-6-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as the applicant cannot acquire additional land to meet the frontage requirements as there are homes abutting this uniquely located lot.

Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. All setback requirements shall be met.

Noella Burgeson, Allstate Homes, appeared and being duly sworn, indicated that she represents the applicant.

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

Ms. White moved, seconded by Mr. Hoeneisen, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

# 16 APPLICATION OF JEANNE MARKOWICZ-HUFFMAN THROUGH STEPHEN MARKOWICZ, REPRESENTATIVE, FOR A VARIANCE (BA-4-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Jeanne Markowicz-Huffman through Stephen Markowicz for a variance to allow a shed to remain at a five-foot setback from the south property line where 7.5 feet is required and at a seven-foot rear setback where 10 feet is required, re property located at 3883 Nighthawk Drive, Palm Harbor (BA-4-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as it appears the applicant was given erroneous information from the shed company advising the applicant a permit was not required, thus leading to the placement of the shed in a state of setback

violation. With that being said, the location of the shed as it exists does not appear to pose an adverse impact to adjacent properties as neighboring properties also have sheds in their rear yards that appear to be as close to their property lines. Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The 12 x 24 shed shall have setbacks of five feet from the side (south) property line and seven feet from the rear (east) property line.
3. In the event the shed is destroyed beyond 50 percent of its market value, any replacement shed will be required to meet the setback requirements.

Stephen Markowicz, Palm Harbor, appeared and being duly sworn, displayed photographs and drawings, and indicated that he received incorrect information from Florida Shed Company, which he hired to build the shed. In response to query by Mr. Watts, he acknowledged that he had initialed a disclosure indicating that the shed would, knowingly and willingly, be built non-Code compliant; and related that he could not afford the cost involved in leveling the property to bring it to conformity. In response to query by Ms. White, Mr. Myers indicated that he received an anonymous complaint that the shed was non-compliant. During discussion about a fence, Mr. Markowicz indicated that the measurement for the variance is five feet from the property line, not the fence line; and that the shed cannot be seen from the front or the back and creates no adverse impact; whereupon, Mr. Cueva indicated that he is not concerned with the height of the shed, only the setback. Mr. Markowicz acknowledged that he had made an unwise decision and agreed to meet all the conditions being imposed; and in response to comment by Mr. Burdette, indicated that he plans to file a complaint with the Construction Licensing Board.

In response to the Chairman's call for objectors to the application, Katherine Chapman Brady and Juan Brady, Palm Harbor, appeared and being duly sworn, stated that the shed is very large and intrusive and can be seen from the road and from their backyard; that it is detrimental to the value of their property; that approval

would not be fair to other people who honor the Code; and that it would set a bad precedent in the neighborhood.

In rebuttal, Mr. Markowicz indicated that the size of the shed is not in contention; that it is almost impossible to see the shed; that the shed will not be used for business purposes; and that it was the decision of the contractor to build the shed on the weekend.

Thereupon, Ms. White moved, seconded by Mr. Watts, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#17 APPLICATION OF FRANK C. BONSAK FOR A VARIANCE (BA-9-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Frank C. Bonsack for a variance to allow a fireplace having a rear setback of three feet where a 10-foot rear setback is required, re property located at 9050 Sugar Loaf Way, Seminole (BA-9-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as the subject property abuts County-owned land which will not be developed, and, as such, the requested setback will not pose an adverse impact to an adjacent residential property. Approval is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The rear setback shall be three feet.

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Frank C. Bonsack, Seminole, appeared and being duly sworn, indicated that he is the applicant; and in response to query by Mr. Watts, indicated that it will be an outside fireplace.

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

Thereupon, Ms. White moved, seconded by Mr. Foley, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#18 APPLICATION OF JOEL SCHACHTER THROUGH ROBERT NIED, REPRESENTATIVE, FOR A VARIANCE (BA-10-6-14) – APPROVED WITH ADDITIONAL CONDITIONS

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Public hearing was held on the application of Joel Schachter through Robert Nied for a variance to allow an existing carport to remain having an eight-foot rear setback where a 10-foot rear setback is required, re property located at 1948 Belleair Road, Clearwater (BA-10-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as the carport as constructed has been at its current location with no apparent adverse impact to the adjacent property to the north. In staff's opinion, the two-foot variance in this instance is not an issue. Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The carport shall maintain an eight-foot rear setback.

Robert Nied, Oldsmar, appeared and being duly sworn, indicated that he represents the applicant; and in response to queries by Mr. Burdette, indicated that the carport has been there since at least 1980; that a recent property survey shows the carport is actually 6.5 feet from the property line; and that the owner has no intention of moving the carport.

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

Following a brief discussion, Mr. Burdette moved, seconded by Ms. White, that the application be approved with the additional conditions that the carport be neither moved nor the size increased.

Upon call for the vote, the motion carried unanimously.

#19 APPLICATION OF H B Z LTD PARTNERSHIP THROUGH GLOBAL PROJECT PALM HARBOR SW, LLC, C/O ROBERT BEAUCHAMP, JR., REPRESENTATIVE, FOR A VARIANCE (BA-26-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of H B Z Ltd Partnership through Global Project Palm Harbor SW, LLC, c/o Robert Beauchamp, Jr., for a variance to allow for a commercial building having a side setback of 10 feet on a parcel having 122.16 feet of frontage where a 25-foot side setback and a lot having 150 feet of frontage is required, respectively, re property located on the west side of U.S. Highway 19, 330 feet north of Highlands Boulevard, Palm Harbor (BA-26-6-14).

Chairman Doran referenced an email that has just been received; whereupon, John F. Cueva, Planning Department Zoning Manager, presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as the applicant cannot acquire the additional land necessary to meet the frontage requirement of 150 feet, and because of this reduced frontage, staff has no objection to the reduced northerly side setback to 10 feet. As this portion of the site will abut a parking lot for the commercial plaza to the north, staff

does not anticipate any adverse impact to that area. Approval is subject to the following conditions:

1. Full site plan review.
2. The setback from the north property line shall be 10 feet.
3. The lot frontage shall not be less than 122.16 feet.

Steve Williamson, Attorney, Johnson, Pope, Bokor, Ruppel & Burns, PA, appeared and being duly sworn, indicated that he represents the applicant.

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

Ms. White moved, seconded by Mr. Foley, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#20 APPLICATION OF DONNA LAPCEVIC AND JESSICA NOEL QUINONES FOR A VARIANCE (BA-17-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Donna Lapcevic and Jessica Noel Quinones for a variance to allow an open staircase having a 12-foot front setback where a 25-foot front setback is required, re property located at 601 Kentucky Avenue, Crystal Beach (BA-17-6-14).

John F. Cueva, Planning Department Zoning Manager, and Chairman Doran indicated that one letter and one email in opposition to the application have been received; whereupon, Mr. Cueva presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as this is a corner lot which requires two 25-foot front setbacks and, as such, restricts development in those areas. The proposed open staircase having a 12-foot setback is consistent with the

neighborhood development and previous similar variances approved in the area, i.e., BA-1-4-01 to the north and BA-9-3-05 to the east on Kentucky Avenue, which both had setbacks reduced from the property lines along Kentucky Avenue. Approval is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The open staircase shall have a 12-foot setback from the property line along Kentucky Avenue.

Donna Lapcevic, Crystal Beach, appeared and being duly sworn, indicated that she is the home owner and is requesting the variance.

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

Ms. White moved, seconded by Mr. Watts, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#21 APPLICATION OF WILLIAM D. SCHARF THROUGH JAMES BRYDON, REPRESENTATIVE, FOR A VARIANCE (BA-21-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of William D. Scharf through James Brydon for a variance to allow an elevated deck having a 10-foot rear setback from a seawall where a 15-foot rear setback from a seawall is required, re property located at 374 Westwinds Drive, Palm Harbor (BA-21-6-14).

Ms. White commented that an email has been received about the appearance of the property; whereupon, John F. Cueva, Planning Department Zoning Manager, presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as there are other properties

in the area with similar setbacks, and, as such, no apparent adverse impacts should occur if approved. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The pool enclosure shall have a 10-foot setback from the east property line.

William D. Scharf, Palm Harbor, appeared and being duly sworn, indicated that he is the applicant, and in response to query by Ms. White, indicated that the raised deck will serve as a grill area and a storage area for kayaks and other things currently stored in the backyard, as well as allow his mother-in-law, who is in a wheelchair, to enjoy the water. In response to query by Mr. Pierce, Mr. Myers viewed photographs and related that he saw no Code violations, as it seemed to be only a very lived-in backyard.

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

Thereupon, Ms. White moved, seconded by Mr. Foley, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#22 APPLICATION OF RONALD R. McLAUGHLIN FOR A VARIANCE (BA-11-6-14) – DENIED

Public hearing was held on the application of Ronald R. McLaughlin for a variance to allow an eight-foot-high fence having a zero-foot rear setback where a 15-foot rear setback is required, re property located at 11150 131<sup>st</sup> Street North, Largo (BA-11-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that two letters in opposition to the application have been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of the eight-foot-high fence along the west property line of the subject site as the proposed fence will not be a detriment to the public welfare, but rather an improvement to the public welfare as stated on the application, which indicates that the abutting neighbor has dog(s) that are able to scale a six-foot-high fence. If this is not the case, then staff would not support this request, so it is important that the Board is satisfied these claims are accurate. If approved, the following conditions are required:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The eight-foot-high fence shall be placed along the applicant's west property line only.

Ronald R. and Celia McLaughlin, Largo, appeared and being duly sworn, indicated that they intend to build a retirement home on the property; that they have several grandchildren, one of which is two years old; and that the neighbor to the west has three dogs, including a Boxer that is aggressive; whereupon, Mr. McLaughlin played a video that he said showed the dog attacking the four-foot-high fence that is currently on the property; and related that he once had an aggressive dog that jumped a six-foot-high fence and attacked another dog. In response to query by the members, Mr. McLaughlin indicated that the reason he is requesting a zero-foot setback is so he would have room to clean out behind the fence; and that he plans to build a chain link fence that would be so well landscaped it would be almost invisible.

In response to the Chairman's call for supporters of the application, Scott Benjamin, St. Petersburg, appeared and being duly sworn, indicated that he has been clearing the property and has witnessed the dog attacking the fence; and that he considers working around the fence hazardous because of the dog.

In response to query by the Chairman, Mr. Cueva indicated that the testimony would support approving an eight-foot-high fence.

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In response to the Chairman's call for opponents of the application, the following persons appeared and being duly sworn, related why they oppose the proposed eight-foot-high fence at a zero-setback and answered questions by the members:

James P. Roth, Largo  
Ed Shearer, Largo (presented a petition with 20 signatures opposing the application)  
Shannon Shearer, Largo  
Joe Bryan, Largo

Mr. Roth indicated that the dog in question behaves like any puppy, protecting his property when he is outside, but very friendly in his home environment; that the video does not show what caused the dog to become agitated; that it has taken a long time to clear the property, which has caused constant irritation to the dog; and that he personally met the dog and it was very friendly with him and his grandson.

Mr. Shearer indicated that his Boxer does protect his territory, but he has never been aggressive towards people, and the video shows his tail wagging even though he is barking; that the dog has never tried to jump over the existing four-foot-high fence; that the fence belongs to him and sits about one foot back from the property line; and that the 20 persons who signed the petition object to both the eight-foot-high fence and the zero-foot setback.

Mr. Bryan stated that to allow the fence on the utility easement would cut off egress in case of an electrical outage; whereupon, Mr. Cueva indicated that a utility company has the right to rip out a fence at the owner's expense.

In rebuttal, Mr. and Ms. McLaughlin indicated that they had been in no hurry to clear the property, as they do not plan to build until August or September and were unaware of a timeline; that they have not been aggressive with the dog; and that the aggressive action of the dog has been ongoing, and the owner has done nothing to correct its behavior. In response to query by Mr. Hoeneisen, Mr. McLaughlin acknowledged that the dog has never come over the four-foot-high fence; that he would prefer to put up a chain link fence for air flow purposes, even though it would not keep the dog from becoming agitated; and that there is a street behind the property that the utility company could use as ingress and egress.

In response to query by the Chairman, Mr. Cueva stated that if the applicant meets the setback requirements, an eight-foot-high fence would be allowed without a variance; that hedges of any height would be allowable unless they are near a right-of-way; and that a six-foot-high fence would be allowable at a zero-foot setback;

whereupon, in response to query by Mr. McLaughlin, the Chairman clarified that the owner is responsible for maintaining a fence.

Following a brief discussion, Mr. Hoeneisen moved, seconded by Ms. White, that the application be denied.

Upon call for the vote, the motion for denial carried unanimously.

#23 APPLICATION OF SCOTT SNOUFFER FOR A VARIANCE (BA-7-6-14) – DENIED

Public hearing was held on the application of Scott Snouffer for a variance to allow a garage having a three-foot side setback where a six-foot side setback is required, re property located at 3146 Mildred Drive, Palm Harbor (BA-7-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that five letters in opposition to the application have been received, and presented the following staff recommendation:

Recommend Denial. Staff cannot support the requested variance as it is of the opinion that the application does not meet the criteria established in Section 138-113 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 requested will not confer on the applicant any special privilege that is denied by the chapter to other similar lands, buildings, or structures in the same zoning district.
3. Unnecessary hardship. The literal interpretation of the provisions of the chapter would deprive the applicant of

rights commonly enjoyed by other properties in the same zoning district under the terms of the chapter.

Chairman Doran noted that there is correspondence in the folders from objectors to the request; and in response to his queries, Mr. Snouffer indicated that his truck is a Nissan; that anything less than a 4-foot, five-inch variance would not solve his problem; that he does not run a business out of the garage; that it is a one-story garage and he does not plan to add a second or third story; and that the objectors referred to by the Chairman would not be directly affected by the garage.

In response to the Chairman's call for supporters of the application, Ray Smith, Palm Harbor, indicated that he lives two houses away and supports the request.

In response to the Chairman's call for opponents of the application, Timothy Debord, Palm Harbor, indicated that his home is directly beside the applicant's, although on the opposite side from the garage; and that he objects to the variance for the following reasons:

- He signed the letter of no-objection after Mr. Snouffer agreed to amend the request; however, the applicant failed to ask for the amendment, so he wrote a letter and submitted a packet to the County withdrawing his letter of no-objection. In response to query by Mr. Burdette, Mr. Debord indicated that his decision to withdraw the letter of no-objection stands, even though the applicant did make the request today.
- A business is being run out of the house.
- The letter of no-objection Mr. Snouffer asked the neighbors to sign contains inaccurate information.
- Mr. Snouffer bought the house in the mid eighties, not in 2001.
- The hardship is self-imposed, as Mr. Snouffer himself rebuilt the house following a fire.

In rebuttal and in response to queries by the members, Mr. Snouffer stated that he did attempt to change the size of the variance, but was informed he would need to make the request at today's meeting; that he does not operate a business from the house; that he lost the property and purchased it again in 2001 when it came back on the market; that his property measures 60 x 100, or 6,000 square feet; that his house sits crookedly on the property due to the irregular property line, and, with the variance, it could possibly be straightened; that the bottom floor of the house is original, as the house was not completely destroyed by the fire; that if the application is granted, he plans to add a rain

gutter and pipe the water to the canal, which would improve his and his neighbor's drainage and help control erosion; and that the new garage would be connected to the house and would be an esthetic improvement to the neighborhood; whereupon, he reiterated that the neighbor most directly affected is in favor of the application.

In response to query by the Chairman, Mr. Cueva confirmed that the testimony has not convinced him that there is a hardship; whereupon, Chairman Doran stated that it is the duty and the responsibility of the applicant to provide evidence that Chapter 138-113 has been met, and Mr. Snouffer has not met the requirements.

Thereupon, Mr. Watts moved, seconded by Mr. Hoeneisen, that the staff recommendation of denial be upheld.

Upon call for the vote, the motion carried 5-2, with Messrs. Foley and Burdette dissenting.

#24 APPLICATION OF WALTER R. SIEG, JR., FOR A VARIANCE (BA-25-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Walter R. Sieg, Jr., for a variance to allow a single family dwelling to have a zero-foot rear setback where a 10-foot rear setback is required and a 12-foot setback from the south side property line on Lot 65, where a 15-foot side setback is required, re property located at 828 Grenoble Drive, Palm Harbor (BA-25-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence relative to the application has been received, and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the approval of this request as the applicant owns the adjacent property to the west, which received a Board of Adjustment approval for a pool with a zero-setback and, as such, will not affect a separate property owner. With regard to the side setback of 12 feet, this reflects previous Board approval for a kitchen area specifically described as shown on the attached concept plan. Staff does not envision an adverse impact to the adjoining property

owner. Approval of the request is subject to the following conditions:

1. The applicant shall obtain all required permits and pay the appropriate impact and/or other fees.
2. The rear setback shall be zero feet.
3. The side setback (south property line) shall be 12 feet for a distance not to exceed 16 feet from the rear property line eastward.

Walter R. Sieg, Jr, Seminole, appeared and being duly sworn, indicated that he is requesting the variance

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

Thereupon, Ms. White moved, seconded by Mr. Foley, that the application be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#25 APPLICATION OF GEORGE P. FATOLITIS FOR A VARIANCE (BA-5-6-14) – DENIED

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Public hearing was held on the application of George P. Fatolitis for a variance to allow a six-foot-high fence having a 10-foot front setback where a 20-foot front setback is required, re property located at 2264 Hill Road, Palm Harbor (BA-5-6-14).

John F. Cueva, Planning Department Zoning Manager, indicated that four letters in opposition to the application have been received, and presented the following staff recommendation:

Recommend Denial. Staff cannot support the requested variance as it is of the opinion the application does not meet the criteria established in Section 138-113 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 requested will not confer on the applicant any special privilege that is denied by the chapter to other similar lands, buildings, or structures in the same zoning district.
3. Unnecessary hardship. The literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the chapter.

It should be noted that the applicant has stated a reason for the fence to be at its current location; however, staff has concerns regarding sidewalk visibility as well as setting a precedent for fences in the front yards of this subdivision, which preclude staff's ability to support this request.

George Fatolitis, Palm Harbor, appeared and being duly sworn, indicated that the matter is a neighbor-versus-neighbor issue; that the lifestyle of his family and the family next door differ greatly; that he has suffered the situation silently for the last few years, but the problem has recently escalated to the point that he fears for the safety of his young children; that the neighbors are coming into his yard and causing mischief, including urinating in the grass, and vandalizing his property, including his car; and that his neighbor has cameras pointed at his property and into his children's bedrooms. He indicated that he would like to have the fence moved back so he can see when someone comes onto his property; and that there would be no safety issues involved, as the neighbor would continue to have an uninterrupted view of the street.

In response to queries by Messrs. Burdette and Pierce, Mr. Cueva indicated that he does not object to the height of the fence, only that it was placed within

the front setback, which is a Code violation; and Mr. Fatolitis stated that the placement of the fence prevents him from seeing people coming onto his property, and a higher fence would not alleviate the problem; and that there are fences situated similarly already in the neighborhood; whereupon, Mr. Cueva indicated that a three-foot-high fence would be allowed in the setback.

In response to the Chairman's call for opponents of the application, the following persons appeared and being duly sworn, expressed their concerns and answered queries by the members:

Charles D. Hinton, Esquire, St. Petersburg (representing a neighbor) (presented photographs and affidavits).  
Bobbi Buss, Palm Harbor

- Height of fence is closer to seven feet, as it was improperly installed.
- Request is after-the-fact, and the applicant is asking for forgiveness, not permission.
- Fence encroaches approximately 13 feet into the setback, rather than 10.
- No hardship exists.
- Fence creates safety hazard, as it obstructs view of the street.
- Camera points toward road, not the applicant's property.
- Light shining on the property comes from the streetlight.

In rebuttal, Mr. Fatolitis indicated that the reason the fence is seven feet high is because the property slopes for drainage purposes; and that his fence matches his neighbor's, but the two do not connect. He stated that the light he referenced comes from his neighbor's property; whereupon, he denied that the fence created a safety issue.

Chairman Doran stated that the County Commission decided there was a need for setbacks; and that the fence was not permitted, nor should it be, as Mr. Fatolitis has not demonstrated that conditions have been met to justify allowing it to remain. In response to Mr. Burdette, Mr. Myers indicated that the lighting and camera issues are civil matters, as the Code does not address them.

Thereupon, Ms. White moved, seconded by Mr. Foley, that the staff recommendation of denial be upheld.

Upon call for the vote, the motion carried unanimously.

#26 APPLICATION OF SOUTHERN COMFORT PARK, INC. THROUGH MICHAEL FRIDELLA, REPRESENTATIVE, FOR A SPECIAL EXCEPTION (BA-27-6-14) – APPROVED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Southern Comfort Park, Inc. through Michael Fridella for a special exception to allow filling of property with asphalt millings in excess of 1,000 cubic yards, re property located at 24323 U.S. Highway 19, Clearwater (BA-27-6-14).

John F. Cueva, Planning Department Zoning Manager, presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of this request provided the Board is satisfied that the “Standards” of Section 138-238, Division 7, of the Pinellas County Land Development Code have been met and subject to the following condition:

Full site plan review.

Engineer Tom Radcliffe, Lloveras, Baur, and Stevens, Clearwater, appeared and being duly sworn, indicated that he is representing the applicant. Referring to a drawing, he provided an overview of the issue, and indicated that a Department of Transportation (DOT) contractor persuaded his client to allow millings from the construction on Highway U.S. 19 to be stored overnight on his property until it could be taken to an asphalt plant the next day; and that the contractor claimed that storing the millings overnight would speed up the construction, thus causing less harm to area businesses. Mr. Radcliffe related that the contractor assured his client that when the construction was complete, his land would be leveled and the surface left in an improved condition; and that, as he had excess property that was underutilized and thinking that the contractor was representing the government, his client agreed that the millings could be stored on his property.

Mr. Radcliffe related that the millings were stored on the property for a period of time before the owner was cited for illegally stockpiling asphalt millings on a property without a permit; that the property owner then discovered the contractor was not from the government; and that the contractor would not assume responsibility and left the property owner in a lurch.

In response to queries by Mr. Burdette, Mr. Radcliffe stated that several complex issues are involved, including that the millings were pushed into the wetlands; that more than a 1,000 yards of millings were stored on the property, which is not allowed; and that the character of the land was changed to facilitate the storage of the millings. He stated that the property owner has been cited by the Southwest Florida Water Management District (SWFWMD), but not by the Department of Environmental Protection; that the owner is working with SWFWMD to solve the problems; that a permit and an Environmental Resource Permit are pending with SWFWMD, and a site plan has been filed with the County; that a stormwater treatment pond will be added to address any water quality concerns; and that the property will be cleaned up, leveled, and graded correctly; whereupon, he confirmed that he is asking the Board to allow the millings to remain.

In response to query by Mr. Pierce, Mr. Cueva indicated that the site plan review would reflect the number of yards of millings on the property; that several requirements will come out of the review, and he would be comfortable with the special exception once the owner meets those requirements; and that this engineering firm is diligent about following through with its site plans; whereupon, in response to comments by Mr. Burdette, Mr. Myers, with input by Mr. Cueva, related that the property is in violation, the improvements would have to be made within a specified time period, and any lack of activity would result in a Notice of Hearing to appear before the Magistrate, and daily fines of up to \$1,000 a day would be instituted.

In response to the Chairman's call for objectors to the application, Sharon and Tom Chapman, owners of Master Key Storage which neighbors the property, appeared and being duly sworn, displayed photographs relating to water drainage and indicated that they object to the special exception for the following reasons:

- Millings were not just stored on the property; the intent was for them to remain on the property.
- The applicant is asking for a special exception to allow 1,000 cubic yards when, conservatively, over 7,200 cubic yards are on the property at this time.
- The owner was probably paid to allow the millings to be dumped on his property.
- Water is wicking up into the Master Key Storage units, causing a hardship.
- Poisoned water from a ditch beyond the east property line runs into Tampa Bay.

Mr. Burdette commented that a wrong has been done, and a problem exists; that the applicant is asking for an opportunity to fix the problem; and that he plans

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to vote to approve the special exception in the hope that with the involvement of SWFWMD and the County environmentalists, the problem will be fixed permanently. He stated that if the water is being poisoned, the County and the State agencies will see that the problem is resolved; and that the special exception is basically temporary until the site plan is approved. Mr. Cueva concurred, and suggested that the objectors call Blake Lyon, Building and Development Review Services, and request to be part of the site review process; whereupon, Ms. Chapman stated that the issue is of the utmost importance and time is of the essence.

Mr. Pierce referred to the application and the Substantial and Competent Evidence for Granting the Special Exception Request attachment, and pointed out that No. 4 on the attachment states that granting the special exception is not objectionable to adjacent property owners; and yet the adjacent property owners have just testified that they strongly object; whereupon, Mr. Radcliffe stated that he was shocked at the testimony. In rebuttal, he agreed that the water drains to the rear and the millings were graded horribly; and stated that, as an engineer, he will see that the property is not left in that condition; whereupon, he noted that Master Key Storage is vulnerable to Alligator Creek rising.

In response to query by Chairman Doran as to what would happen if the Board denies the special exception, Mr. Cueva indicated that the millings would be removed from the property and the stormwater that runs off the property would not get treated; and that this is the best option for the community and for everyone involved.

Thereupon, Mr. Burdette moved, seconded by Mr. Foley, that the special exception be approved as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#### MINUTES OF MAY 2, 2014 MEETING – APPROVED

Upon motion by Ms. White, seconded by Mr. Foley and carried, the minutes of the meeting of May 2, 2014 were approved.

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INTRODUCTION OF NEW BOARD ATTORNEY

Mr. Ester introduced Assistant County Attorney Chelsea Hardy, and indicated that she would be representing the Board going forward.

ADJOURNMENT

At the direction of Chairman Doran, there being no further business, the meeting was adjourned at 12:39 P.M.

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Chairman