

Clearwater, Florida, October 2, 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 at 9:03 A.M. on this date with the following members present: John Doran, Chairman; Alan C. Bomstein, Vice-Chairman; Joe C. Burdette; Ray Hoeneisen; Gregory Pierce; Michael Foley (Alternate); and Deborah White.

Not Present: Stephen G. Watts.

Also present: John F. Cueva, Planning Department Zoning Manager; Chelsea Hardy, Assistant County Attorney; Todd F. Myers, Environmental Code Enforcement Director; other interested individuals; and Jenny Masinovsky, Board Reporter.

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:

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Deviating from the agenda, Chairman Doran indicated that Item No. 7 would be heard at this time.

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7 APPLICATION OF BA PHAM FOR A VARIANCE (BA-8-10-14) – CONTINUED TO NOVEMBER 6, 2014 MEETING

John F. Cueva, Planning Department Zoning Manager, referred to the application of Ba Pham for a variance to reduce the number of parking spaces from seven to six (BA-8-10-14), re commercial property located at 6710 46th Avenue North, St. Petersburg, and noting that staff is working with the applicant on his site plan and a variance may not be required, recommended that the item be continued.

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

Mr. Bomstein moved, seconded by Mr. Foley, that the item be continued to the November 6, 2014 meeting, as requested by staff.

Upon call for the vote, the motion carried unanimously.

1 APPLICATION OF PARK AVENUE INVESTORS, INC., THROUGH MEHRDAD MOSHTAGH, REPRESENTATIVE, FOR A VARIANCE (BA-7-10-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Park Avenue Investors, Inc. through Mehrdad Moshtagh for a variance to allow the dispensing of beer and wine in conjunction with an art studio within 150 feet of a residential zone (40 feet), re property located at 34306 U.S. Highway 19 North, Palm Harbor (BA-7-10-14).

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 due to the special condition that exists for any tenant of the commercial building at this location. The condition is that the building was constructed within 150 feet of the adjacent residential zoning district to the west, thus causing any tenant having an alcoholic beverage license to apply for a variance. The need for variances began shortly after the building was completed, and as a result, the placement of a ten-foot-high wall measured on the applicant's side was required along the western property line of this development to provide a buffer from potential tenants having alcoholic beverage licenses and the impacts they may have. Therefore, as this tenant will not have a bar and there will not be rear patron access to the site, staff recommends approval of request with the following conditions:

1. Approval is for a beer and wine license only.

2. Hours of operation shall be in accordance with local laws.
3. No rear patron access shall be allowed.
4. No amplified music shall be permitted.

Mehrdad Moshtagh, Palm Harbor, 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. Bomstein moved, seconded by Mr. Foley, that the variance be granted as recommended by staff.

In response to queries by Mr. Pierce, Mr. Moshtagh indicated that Leroy Selmon's is currently the only other business in the plaza having an alcoholic beverage license; and that the applicant, which is an art studio, will not be selling or dispensing alcohol, because any wine or beer will be brought in by the art studio students.

Upon call for the vote, the motion carried unanimously.

2 APPLICATION OF R3 HOLDINGS, LLC, THROUGH CHARLES JUNEAU, TAMPA DOCK & SEAWALL, REPRESENTATIVE, FOR A VARIANCE (BA-2-10-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of R3 Holdings, LLC through Charles Juneau for a variance to allow a covered patio deck to remain at 11.5 feet from a concrete seawall where a 15-foot setback is required, re property located at 2612 Cove Cay Drive, Clearwater (BA-2-10-14).

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 patio cover, as it was constructed, does not obstruct views to the water because it is an open pavilion type construction. As this is the marina boat storage area for the residents of Cove Cay Condominiums and the pavilion is for residents' use only, no adjacent property owners will be affected by the requested variance. Approval of this 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 covered patio deck or pavilion shall maintain an 11.5-foot setback from the seawall.
3. The covered deck or patio shall not be enclosed.

Charles Juneau, 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. Bomstein moved, seconded by Mr. Foley, that the variance be granted as recommended by staff.

In response to a query by Mr. Pierce, Mr. Cueva related that there was no complaint received; and that Building Department staff became aware of a structure being built without a permit while driving in the area.

Upon call for the vote, the motion carried unanimously.

3 APPLICATION OF ANDREA CRAWFORD LIVING TRUST FOR A VARIANCE (BA-1-10-14) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Andrew Crawford Living Trust for a variance to allow a four-foot-high fence to remain at a zero-foot front setback,

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where a 20-foot setback facing Lime Street is required, re property located at 311 Dempsey Road, Palm Harbor (BA-1-10-14).

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 site lies directly opposite and to the west of the U.S. Post Office, which has a six-foot-high chain link fence with a zero-foot setback from Dempsey Road, making this lot unique in its relationship to the government-owned property, which other homes along Lime Street do not experience. As the existing four-foot-high fence does not visually obscure the front of the home, staff is of the opinion that the requested variance is a minimal request and should be approved, subject to the following conditions:

1. An adequate sight distance for the fence shall be continually maintained at the intersection of Lime Street and Dempsey Road.
2. The rocks that exist in the Dempsey Road right of way shall be removed.

Andrea Crawford, Palm Harbor, appeared and being duly sworn, indicated that she is seeking the aforementioned variance.

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

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

In response to query by Mr. Bomstein, Ms. Crawford related that she has removed the rocks from the Dempsey Road right of way.

Upon call for the vote, the motion carried unanimously.

4 APPLICATION OF VITTAL SETLUR AND NIMA SETLUR THROUGH JOE GARGIULO, REPRESENTATIVE, FOR A VARIANCE (BA-9-10-14) – GRANTED FOR A SIX-FOOT FENCE AT A 15-FOOT SETBACK; 13-FOOT SETBACK DENIED PER STAFF RECOMMENDATION

Public hearing was held on the application of Vittal and Nima Setlur for a variance to allow a six-foot wood fence with columns and a motorized sliding gate with reduced setbacks to 13 feet where 25 feet is required, re property located at 5909 102nd Avenue North, Pinellas Park (BA-9-10-14).

John F. Cueva, Planning Department Zoning Manager, indicated that one letter in support of and 22 letters in opposition to the application have been received, and presented the following staff recommendation:

Recommend Denial of the 13-foot front setback and Approval of the 15-foot setback. The subject site fronts 102nd Avenue North, is located on the north side of the road, and currently has a five-foot-high chain link fence set back 15 feet from the front property line. Staff could not find a basis to support reducing the historical location of the existing fence, which does not meet the required front setback of 25 feet; however, as it appears the existing fence has been in its current location for many years, staff will support the placement of an opaque fence having the same 15-foot front setback, subject to the following conditions:

1. The fence/wall shall not exceed six feet in height and may have a sliding gate, all being set back 15 feet from the front property line.
2. The fence/wall shall be landscaped with a minimum of a 3-foot-high hedge or other landscaping as deemed appropriate by the Board.

Joe Gargiulo, Clearwater, appeared and being duly sworn, indicated that he represents the applicant; that a six-foot-high wood fence is being requested due to safety and security concerns related to an existing pond; that the existing chain link fence is set back 15 feet; and that the requested 13-foot setback would meet sight requirements.

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Referring to photographs and in response to queries by Mr. Bomstein, Mr. Gargiulo further explained that the reduced setback from 15 to 13 feet is being requested to accommodate the roots of a large tree.

In response to query by Mr. Pierce, Mr. Cueva confirmed that while there are other fences in the neighborhood erected closer to the property line than allowed, staff found no basis of hardship on which to support the current variance.

Mr. Burdette referred to correspondence received from the objectors, and at his suggestion, the letters were handed to Mr. Gargiulo for review. Nima Setlur, Pinellas Park, appeared and being duly sworn, indicated that she is the property owner, and she wishes to upgrade the existing fence to complement the ongoing renovation of the property while preserving the tree roots. Discussion ensued, and Mr. Burdette noted that moving the fence two additional feet may not avoid the tree root system; and that staff recommends that the fence remain at a 15-foot setback; whereupon, Ms. Setlur indicated that she would be amenable to retaining the 15-foot setback.

In response to the Chairman's call for supporters of the application, Sharon Putman, Pinellas Park, appeared and being duly sworn, requested to see an artist's rendering of the proposed fence; whereupon, Mr. Gargiulo responded that he will provide it in a few days.

In response to the Chairman's call for objectors to the application, James Manton and Annamarie Reed, Pinellas Park, appeared and being duly sworn, related that they have gathered approximately 27 petitions in objection to the application; that they oppose the front fence being six feet high as it obstructs the view; and, displaying photographs, expressed their concerns pertaining to a side fence recently installed by the applicant.

Discussion ensued with regard to permitting and setback requirements related to the side fence, and Mr. Myers provided input. Chairman Doran reminded the members that the matter before the Board relates to the front fence and whether the existing chain link fence along the front of the property could be replaced, and if so, what should be its location and height; whereupon, he called for rebuttal by the applicant, and Mr. Gargiulo declined.

In response to queries by Messrs. Bomstein and Pierce, Mr. Gargiulo described the appearance of the proposed front fence and stated that the columns

incorporated into the fence will be the same height as the fence; whereupon, Mr. Cueva related that any lights placed on top of the columns cannot exceed 18 inches.

Mr. Bomstein moved, seconded by Mr. Foley, that the variance for a six-foot-high fence having a 15-foot setback from the front property line be approved, as recommended by staff.

Upon call for the vote, the motion carried unanimously.

5 APPLICATION OF JAMES AND CLOVINE HOLLENBACH THROUGH A.T. (TIM) DOYLE, REPRESENTATIVE, FOR A VARIANCE (BA-6-10-14) – GRANTED WITH CONDITIONS

Public hearing was held on the application of James and Clovine Hollenbach through Tim Doyle for a variance to allow a garage having a four-foot side setback where a six-foot side setback is required, re property located at 5123 Jasmine Circle North, St. Petersburg (BA-6-10-14).

John F. Cueva, Planning Department Zoning Manager, indicated that no correspondence has been received relative to the application, 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 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 the chapter.

Tim Doyle, Clearwater, appeared and being duly sworn, indicated that he represents the applicants; that the Hollenbachs' neighbors do not have any objections to the garage; that the garage will be of masonry construction with no windows, built in accordance with County code; and that it will improve the value of the neighborhood.

In response to Chairman Doran's query regarding the special conditions for granting of the variance, Mr. Doyle related that the lot is not wide enough to add a standard one-car garage; that it cannot be placed in the front of the property as it would extend into the right of way; and that it would also not be feasible in the back yard; whereupon, Mr. Cueva maintained staff's opinion that lack of space is not considered a special condition.

During discussion and upon query by Mr. Foley, James Hollenbach, St. Petersburg, appeared and being duly sworn, indicated that he is the property owner; that he spoke with the adjacent neighbor and she has no objection to the garage; and that other neighbors are in support of the construction as well; whereupon, he submitted letters of no objection from eight surrounding property owners.

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

Responding to queries by the members, Mr. Hollenbach confirmed that the southern side of the house is the only place the garage can be built; and that the driveway is partially paved.

Following further discussion, Mr. Bomstein moved, seconded by Mr. Burdette, that the variance for a four-foot side setback be granted, with the condition that the applicants obtain all necessary permits.

Upon call for the vote, the motion carried unanimously.

6 APPLICATION OF ASAPH AND MARLAINE GRAHAM FOR A VARIANCE (BA-3-10-14) – GRANTED FOR FOUR-FOOT SIDE SETBACK AND DENIED FOR FIVE-FOOT REAR SETBACK

Public hearing was held on the application of Asaph and Marlaine Graham for a variance to reduce the rear setback to five feet where ten feet is required and a side setback to 2.5 feet where six feet is required for a storage shed being 260 square feet in size, re property located at 12120 81st Avenue North, Seminole (BA-3-10-14).

John F. Cueva, Planning Department Zoning Manager, indicated that one letter in support and one letter in opposition were received relative to the application, 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:

4. *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.
5. *No special privilege.* That granting the variance requested 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.
6. *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 the chapter.

Asaph and Marlaine Graham, Seminole, appeared and being duly sworn, indicated that they are seeking the aforementioned variance; whereupon, referring to photographs, Ms. Graham expressed the need for a shed to be used for additional storage space due to the consolidation of households with her elderly parents.

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Responding to queries by the members, Mr. and Mrs. Graham indicated that they have communicated with the neighbors who share their property lines and obtained one letter in support of the application; that the proposed shed would be 260 square feet in size because it will be used partially for storage and partially as a workshop; and that it would likely be eight to nine feet high and air-conditioned, without electric or plumbing connections.

Responding to the Chairman's query regarding the special conditions and unnecessary hardship, Mr. and Mrs. Graham indicated that the shed cannot be placed closer to the house because they are planning to plant a garden in that area; and that it is not feasible to locate the workshop in the garage due to its size and configuration. Discussion ensued, and the applicant responded to various queries by the members; whereupon, Chairman Doran remarked that the applicants must make choices among their several requests, as there do not appear to be special conditions or unnecessary hardship that would qualify for granting the variance, and Mr. Graham indicated that he would be willing to amend the request to provide for a side variance only.

Mr. Bomstein moved, seconded by Ms. White, that a variance be granted for a four-foot setback on the east lot line of the property for the purpose of erecting a shed, with the condition that all normal permitting requirements be met; and that the variance for a five-foot rear setback be denied.

Upon call for the vote, the motion carried unanimously.

ADJOURNMENT

At the direction of Chairman Doran, there being no further business, the meeting was adjourned at 10:09 A.M.

Chairman