

Clearwater, Florida, January 7, 2016

The Board of Adjustment (BA) met in regular session in the County Commission Assembly Room, Fifth Floor, Pinellas County Courthouse, 315 Court Street, Clearwater, Florida on this date with the following members present: Cliff Gephart, Chairman; Joe C. Burdette, Vice-Chairman; Alan C. Bomstein; John Doran; Greg Pierce; Stephen G. Watts; and Deborah J. White.

Also Present: Glenn Bailey, Zoning Manager, Planning Department; Chelsea Hardy, Assistant County Attorney; Todd F. Myers, Environmental Code Enforcement Director; other interested individuals; and Lynn M. Abbott, Board Reporter, Deputy Clerk.

### CALL TO ORDER

Chairman Gephart called the meeting to order at 9:01 A.M.

### PUBLIC HEARING ITEMS

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

#### #7 APPLICATION OF JAY AND NACIMA AUSTIN FOR A VARIANCE (BA-4-1-16) – DEFERRED TO FEBURARY 4, 2016 MEETING

Deviating from the agenda, Mr. Bailey referred to the application of Jay and Nacima Austin for a variance to allow for an existing tiki-hut to remain with a 6-foot front setback where a 20-foot front setback is required, re property located at 8856 124th Way in the unincorporated area of Seminole (BA-4-1-16), and indicated that the applicant is requesting a continuance to the February meeting due to medical reasons.

Thereupon, Mr. Bomstein moved, seconded by Mr. Doran, that the case be deferred to the February 4, 2016 meeting.

Upon call for the vote, the motion carried unanimously.

#1 APPLICATION OF GULFWIND CONTRACTING, LLC, C/O GULFWIND HOMES, THROUGH ROBERT PERGOLIZZI, REPRESENTATIVE, FOR VARIANCES (BA-1-1-16) – GRANTED AS PER STAFF RECOMMENDATION WITH ADDITIONAL CONDITION

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Public hearing was held on the application of Gulfwind Contracting, LLC, c/o Gulfwind Homes, through Robert Pergolizzi for a variance to allow a single family subdivision with up to eight lots fronting a private road where frontage along a publicly accessible right-of-way is required, a variance to allow a 10-foot setback for structures from the public right-of-way of Pine Street on proposed Lots 3 and 4 where a 20-foot setback is required, and a variance to allow a 6-foot setback for structures on the east side of proposed Lot 7 and the west side of proposed Lot 8 where a 20-foot setback is required from a private road, re property located at 3449 Belcher Road in the unincorporated area of Dunedin (BA-1-1-16).

Mr. Bailey 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 the request. The requested 10-foot setback involving Lots 3 and 4 is from the terminus of Pine Street, and approval of the variance will not impact that roadway. The request involving Lots 7 and 8 pertains to the T-turnaround of the private street and is internal to the development and will not impact the street. Pinellas County Public Works has no objection to the design of the private road serving the development. 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. Lots 3 and 4 shall have a 10-foot setback from the north property line.
3. Lot 7 shall have a 6-foot setback from the east property line.
4. Lot 8 shall have a 6-foot setback from the west property line.
5. Full site plan review and platting.

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Responding to the Chairman's call for the applicant, Robert Pergolizzi, Gulfcoast Consulting, described the proposed 8-unit gated subdivision and related that he learned during the site plan review process that certain variances are needed, noting that Public Works approved a private road in August of 2014 and June of 2015.

Mr. Pergolizzi explained that Pine Street dead-ends into the northern end of the subject property, abutting Lots 3 and 4; and that Code considers that section of Lots 3 and 4 to be the front yard even though the plan shows it as a rear yard, noting that the request is for the standard rear-yard setback to be applied. He indicated that a T-turnaround is proposed between Lots 7 and 8 for emergency vehicles; and that since the T-turnaround is located at the side of the homes on Lots 7 and 8, a six-foot side setback is requested rather than the 20 feet required for a front setback.

Michael Cooper, Dunedin, indicated that he represents the interests of the nine adjacent homeowners; and that all have spoken to Mr. Pergolizzi and the developer regarding landscaping; whereupon, he related that the homeowners are in support of the proposed development subject to the installation of a buffer of ten-foot-tall trees as soon as possible to screen the project from their view. In response to query by Mr. Burdette, he described the location of the nine homes, noting that their back yards abut the subject property. Responding to query by Mr. Bomstein, Mr. Bailey related that the County does not require landscaping.

Michael Willenbacher, Gulfwind Homes, indicated that 122 trees will be replaced; that the landscaping plan includes a buffer of 88 eight-foot red cedars; that the plan has gone through site plan review with no comments by County staff; and that he plans to comply with the request to provide 10-foot trees to create a larger buffer. Responding to query by Chairman Gephart, Messrs. Bailey and Willenbacher indicated that the plan does not include a drainage easement.

Following brief discussion wherein Mr. Willenbacher responded to queries by the members, Mr. Bomstein moved, seconded by Mr. Doran, that the variances be granted as recommended by staff with the addition of the following condition:

6. Appropriate buffer on the south side of the property with 10-foot high trees planted.

Upon call for the vote, the motion carried unanimously.

#2 APPLICATION OF DIRK AND VEENA HORNAUER THROUGH NICK LALLOTIS, BRAVO FENCE, REPRESENTATIVE, FOR A VARIANCE (BA-6-1-16) – GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of Dirk and Veena Hornauer through Nick Lalotis for a variance to allow a 6-foot-high wrought iron fence with up to 8-foot-high and 2-foot-wide brick columns having a 5-foot front setback where a 50-foot front setback is required, re property located at 796 Appaloosa Road in East Lake Tarpon (BA-6-1-16).

Mr. Bailey 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 the request. The Board granted a fence height variance within the front setback on the property in June 2015 (Case No. BA-14-6-15). That request, however, neglected to include the associated columns. There are other properties along Appaloosa Road that have been granted variances for column height in the past. Approval of the current 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. Sight distance requirements shall be met.
3. Written permission from Pinellas County Public Works must be obtained in order to place the proposed columns in the dedicated easement.

Responding to the Chairman's call for the applicant, Nick Lalotis, Bravo Fence, related that he was hired after the Board's approval of the previous variance, which allowed for a six-foot-high fence with columns; that the approval did not specify the height of the columns; and that today's request is to raise the columns to an eight-foot height.

No one appeared in response to the Chairman's call for objectors to the application; whereupon, Mr. Bomstein moved, seconded by Ms. White, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#3 APPLICATION OF WILLIAM H. HOOD, III, THROUGH STEVEN WILLIAMSON, ESQUIRE, JOHNSON, POPE, BOKOR, RUPPEL & BURNS, LLP, REPRESENTATIVE, FOR A VARIANCE (BA-5-1-16) – GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of William H. Hood, III, through Steven Williamson for a variance to allow for the reconstruction of a pool deck and screen enclosure with a retaining wall higher than 1 foot above grade having a minimum 17-foot setback from the mean high water mark of Lake Tarpon where a 25-foot setback is required, re property located at 3962 Tarian Court, Palm Harbor (BA-5-1-16).

Mr. Bailey indicated that two letters in support of the application have been received and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the request. The proposed reconstruction of the pool deck and screen enclosure would have no impact on adjacent properties and would not encroach any further toward the rear property line and Lake Tarpon than the existing deck that was built pursuant to permitted building plans in 1992. 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 reconstructed screen enclosure and pool deck shall maintain a 17-foot setback from the rear property line.

Responding to the Chairman's call for the applicant, Steven Williamson, Esquire, appeared and offered to respond to queries by the Board.

No one appeared in response to the Chairman's call for objectors to the application; whereupon, Mr. Bomstein moved, seconded by Ms. White, that the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#4 APPLICATION OF HCP PROPERTIES, LP, ANGELA PLAYLE, SENIOR VICE PRESIDENT, THROUGH NATHAN LEE, P.E. KIMLEY-HORN ENGINEERING, REPRESENTATIVE, FOR A MODIFICATION TO AN EXISTING SPECIAL EXCEPTION AND A VARIANCE (BA-2-1-16) – GRANTED AS PER STAFF RECOMMENDATION

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Public hearing was held on the application of HCP Properties, LP through Nathan Lee, P.E., for a modification to an existing Special Exception to allow a 2,591-square-foot expansion of a congregate care facility and to increase the number of beds from 56 to 64, and a variance for a 13-foot setback from the northeast corner of the structure to the north property line where a minimum setback of 25 feet is required from all structures to the perimeter of an RM zone, re property located at 2895 Tampa Road, Palm Harbor (BA-2-1-16).

Mr. Bailey indicated that no correspondence relative to the application has been received. Noting a scrivener's error in the case description on the agenda, he related that the property is located in a Residential, Multiple Family (RM) zone; and that it abuts single family zoning to the north; whereupon, he presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of the requested Special Exception provided the Board is satisfied the "Standards" of Section 138-238, Division 7, of the Pinellas County Land Development Code have been met. Additionally, staff has no objection to the conditional approval of the setback variance request. The requested 13-foot setback is for the corner of the proposed building addition only and is further than most rear setback requirements. The applicant cannot add the additional square footage to the other building wings due to existing site constraints related to conservation easements and wetlands. 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. Full site plan review.
3. The setback from the northeast corner of the facility to the rear property line shall be 13 feet. All other required setbacks shall be met.

4. The proposed modifications to the existing Special Exception shall be constructed in substantial conformance with the submitted concept plan.

In response to query by Mr. Bomstein, Attorney Hardy related that the public hearing advertisement is not affected by the error as the correct address and setbacks were given.

Nathan Lee, Kimley-Horn and Associates, appeared on behalf of the applicant. In response to queries by Mr. Pierce, he stated that the parking area will not increase, and Mr. Bailey related that the Code has changed to one parking space per three beds, noting that the existing parking exceeds the current requirement for the proposed number of beds.

Responding to query by Mr. Burdette regarding the recommendation, Mr. Bailey indicated that the language pertaining to Section 138.238 of the Code is standard; and that any issues would have been brought to the attention of the Board; whereupon; Mr. Lee noted that he agrees with all of the conditions of approval.

Thereupon, Mr. Bomstein moved, seconded by Mr. Doran, that the Special Exception modification and the variance be granted as recommended by staff.

Upon call for the vote, the motion carried unanimously.

#5 APPLICATION OF MACKENALLY INVESTMENTS, LLC FOR A VARIANCE (BA-7-1-16) – GRANTED AS PER STAFF RECOMMENDATION

Public hearing was held on the application of Mackenally Investments, LLC for a variance to allow for the construction of a covered porch for outside dining with a 1-foot setback to the north and east property lines along Georgia Avenue and 11th Street, respectively, where a 10-foot front setback to 11th Street and a 5-foot corner setback to Georgia Avenue are required in the Old Palm Harbor Downtown East sub-district not abutting Florida Avenue, re property located at 917 11th Street, Palm Harbor (BA-7-1-16).

Mr. Bailey 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 the request. The proposed setback reductions involve a covered porch only and not an enclosed structure. The use of the area as patron space for outdoor dining fits within the character and ambiance of Downtown Palm Harbor. Approval of the request should be subject to the following conditions:

1. The applicant shall obtain all required permits, including a certificate of appropriateness, and pay all required fees.
2. Appropriate site plan review.
3. The setbacks from the north and east property lines shall be one foot. All other required setbacks shall be met.
4. No trees shall be removed in association with the request.

Louise Goetz, Palm Harbor, appeared and indicated that she is the applicant. In response to queries by Mr. Bomstein, she described the location of the property and indicated that she wishes to construct a covered porch on two sides of the restaurant formerly known as Lulu's Beach House; that the porch will cover an existing dining area; that seating will be expanded from 52 to 150; that she is counting on the outdoor seating to qualify for an SRX liquor license; and that the property is surrounded by commercial uses. Mr. Bomstein indicated that if approved, the variance would be for a covered porch only; and that enclosing the structure at a future date would require approval by the Board of Adjustment, and Ms. Goetz confirmed her understanding of the requirement.

Responding to queries by Mr. Pierce, Ms. Goetz replied that the subject porch would have electric with lights and fans; that the business fits in with the neighborhood; and that there will be an outside bar on the north side of the property, noting that she already has a 2COP liquor license. Mr. Bomstein reiterated his concern regarding enclosing the structure, and Ms. Goetz stated that there is no intention to do so.

Mr. Pierce expressed concern regarding music, and Ms. Goetz related that live music would be provided on a stage on the back corner of the property, noting that she has experience with regard to shut-down times and decibel limits; whereupon, Mr. Bailey indicated that two nearby businesses, Two Lions and Peggy O'Neill's, also have music.

In response to the Chairman's call for objectors to the application, Norman Atherton, Palm Harbor, stated his concerns, noting that he lives nearby and is a member of the Palm Harbor Merchants Association; and that he has spoken to the surrounding property owners, who have no objection to the request, with the exception that there be no amplified music, noting that the business is close to a residential neighborhood.

In response to queries by Mr. Watts, Ms. Goetz indicated that the music will not exceed what is currently allowed; that she has had acoustic and amplified concerts with no complaints from the community; and that it is a family restaurant that closes at 10:00 P.M. Mr. Bailey confirmed that outdoor music is currently allowed; and that the noise ordinance is a safeguard.

Mr. Bomstein stated that he is not inclined to impose stricter levels than the Code allows; and that he does not oppose the request; whereupon, he moved, seconded by Mr. Burdette, that the variance be granted as recommended by staff.

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

#6 APPLICATION OF LEONA CARRO FOR VARIANCES (BA-3-1-16) – GRANTED FOR FENCE SETBACK; POOL SETBACK DENIED

Public hearing was held on the application of Leona Carro for a variance to allow an existing 6-foot-high vinyl fence with a 0-foot front setback to remain and a variance to allow an above-ground pool having a 14-foot front setback to remain where a 20-foot front setback is required for both, re property located at 3406 Camelia Place in the unincorporated area of Largo (BA-3-1-16).

Mr. Bailey indicated that no correspondence relative to the application has been received and presented the following staff recommendation:

Recommend Denial. Staff cannot support the request as it does not meet the criteria for the granting of variances established in Section 138-113 of the Pinellas County Land Development Code, specifically with regard to:

1. Special conditions. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, including the nature of and to what extent these special conditions

and circumstances may exist as direct results from actions by the applicant.

2. No special privilege. That granting the variance request will not confer on the applicant any special privilege that is denied by this chapter to other similar lands, buildings, or structures in the same zoning district.
3. Unnecessary hardship. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.

Responding to the Chairman's call for the applicant, Leona Carro, Largo, indicated that she wishes to forego the pool variance because she is going to replace it with a more accommodating, smaller pool. She related that the fence has been in place for approximately 12 years and expressed concerns regarding the safety of the neighborhood children if it were to be removed.

Responding to queries by the members, Ms. Carro referred to a survey and pointed out the location of the fence, pool, and 15-foot easement, and discussed the layout of her back yard and its access gates. She explained that the pool sits right at the 15-foot easement, noting that there are very few options for pool placement.

Mr. Myers clarified that a complaint was made to Code enforcement because the property was overgrown; and that fence and structure were observed at that time, and discussion ensued.

In response to queries by the members, Ms. Carro stated that she has spoken to her neighbors and they have no problems with the fence; and that the replacement pool will be smaller in order to meet the required 20-foot setback.

Mr. Bailey indicated that he still recommends denial of the fence, noting that it appears to be out of place and no hardship exists.

Referring to Ms. Carro's concerns regarding safety, Mr. Bomstein noted that a three-foot-high fence is required around an in-ground pool. Responding to his query, Mr. Bailey indicated that he is unsure of any requirements for fencing around above-ground pools,

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and discussion ensued wherein Attorney Hardy clarified that the issue is not the height of the fence, but its placement in the setback area.

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

Mr. Bomstein stated that the fence is at the end of a cul-de-sac, which is a mitigating factor; and that it is not disruptive and has been in place for a long time without complaints; whereupon, he moved, seconded by Mr. Watts, that the fence variance be approved and the variance for the pool be denied.

Upon call for the vote, the motion carried unanimously.

Following the vote and responding to query by Ms. Carro, Mr. Myers indicated that the existing pool must be removed from the setback area within 30 days.

#### MINUTES OF NOVEMBER 5, 2015 MEETING – APPROVED

Upon motion by Mr. Bomstein, seconded by Mr. Doran and carried, the minutes of the meeting of November 5, 2015 were approved.

#### OTHER BUSINESS

Mr. Pierce indicated that he brings up good questions and comments during discussion; and that while he believes that the members can work together, he will not continue to put up with certain remarks which he considers to be offensive.

#### ADJOURNMENT

At the direction of Chairman Gephart, there being no further business, the meeting was adjourned at 9:42 A.M.

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Chairman