

**Board of Adjustment and Appeals
Pinellas County
August 3, 2022 Meeting Minutes**

The Board of Adjustment and Appeals (BAA) met in regular session at 9:00 AM on this date in the County Commission Assembly Room at the Pinellas County Courthouse, 315 Court Street, Clearwater, Florida.

Present

Cliff Gephart, Chairman
Joe Burdette, Vice-Chairman
Alan C. Bomstein
Vincent Cocks
John Doran

Not Present

Jose Bello
Deborah J. White

Others Present

Molly Cord, Principal Planner
Anne Morris, Assistant County Attorney
Keith Vargus, Code Enforcement Operations Manager
Shirley Westfall, Board Reporter, Deputy Clerk
Other interested individuals

CALL TO ORDER

Chairman Gephart called the meeting to order at 9:00 AM and provided an overview of the hearing process; whereupon, Mr. Bomstein indicated that with five members present, a three-member majority is needed to prevail in a case.

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 a Deputy Clerk.

Case No. VAR-22-13

APPLICATION OF JOSEPH RAISSI FOR A VARIANCE

A public hearing was held on the application of Joseph Raissi for a variance to allow for the construction of four 8-foot-high decorative columns and gates within the front setback where five feet is the maximum allowed by the Land Development Code (LDC) and six feet the maximum allowed per an administrative adjustment granted by the Development Review Committee (DRC), for the R-E zoned property located at 7651 128th Street North in unincorporated Seminole. One letter in support of the application has been received by the Clerk.

Ms. Cord introduced the case and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of this request as it appears to meet the criteria for granting variances found in Section 138-231 of the Pinellas County Land Development Code. The DRC conditionally approved a previous related administrative adjustment request (Case# AAD-21-10) on the subject property that allowed 6-foot-high decorative columns and fencing within the front setback. Due to a miscommunication or misunderstanding, the four columns adjacent to the property's circular driveway were built 8 feet high. The Code does not give the DRC the authority to grant 8-foot-high columns within the front setback in this situation; therefore, a variance granted by the BAA is required. The subject property is a 2.86-acre parcel within a large-lot neighborhood that is zoned Residential Estate (32,000 sf minimum lot size). Other fence height variances have been granted within the general area in the past. There is approximately 25 feet of green space between the front property line and the paved portion of the 128th Street North right-of-way. It appears that some of the constructed columns are at least partially within the public right-of-way. These will have to be moved fully onto the subject property. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. All columns, fencing, and gates shall be located fully on the subject property outside of the 128th Street North right-of-way.
3. Line of sight requirements shall be met.

Joseph Raissi, Seminole, appeared and provided information.

No one appeared upon the Chairman's call for opponents or proponents; whereupon, Mr. Bomstein made a motion that the variance be approved as recommended in accordance with the findings of fact as outlined in the staff report. The motion was seconded by Mr. Burdette and carried unanimously.

Case No. VAR-22-14

APPLICATION OF BRIEN AND PAIGE BOURBEAU FOR A VARIANCE

A public hearing was held on the application of Brien and Paige Bourbeau for a variance to allow for the construction of an in-ground pool having a 3-foot setback from the water's edge to the rear property line where 20 feet is required from the adjacent New York Avenue right-of-way, for the property located at 749 Prior Place in Palm Harbor. No correspondence relative to the application has been received by the Clerk.

Ms. Cord introduced the case and presented the following staff recommendation:

Recommend Conditional Approval: Staff has no objection to the conditional approval of this request as it appears to meet the criteria for granting variances found in Section 138-231 of the Pinellas County Land Development Code. The subject property is a double frontage lot on both Prior Place (front) and New York Avenue (rear). The owner is proposing to construct an in-ground pool closer to the north property line along New York Avenue than normally allowed per Section 138-3505 of the Code. Due to the placement of the home, the subject property has a relatively small backyard. It would also be advantageous to place the pool as far north as practical to reduce shade from the two-story home and front yard trees, which would help maximize sunlight exposure. Importantly, however, there is an existing 3-foot-wide stormwater easement along the north property line containing a 36-inch pipe that must be avoided. For this reason, staff cannot fully support the requested 3-foot setback to the pool's water's edge (which is how the Code determines pool setbacks) because this would place part of the pool wall structure within the easement. Staff is supportive, however, of a 5-foot rear setback for any permanent structures, which would still provide setback relief while maintaining more separation from the easement. Per the applicant, no pool enclosure is proposed. Approval should be subject to the following conditions:

1. Pursuant to Resolution 19-58 from recorded utility easement OR 2669-412, the pool's water's edge shall maintain a minimum 5-foot setback

from the north property line in adherence to the existing stormwater infrastructure along New York Avenue. This setback is to mitigate any negative impacts to the stormwater infrastructure and further provide easement access for maintenance/repair purposes.

2. The applicant shall obtain all required permits and pay all applicable fees.
3. All other setback requirements shall be met.
4. No pool enclosure is allowed.
5. The pool pump equipment shall be located interior on the lot.
6. A fence must be installed to screen the pool as required in Section R4101.17 Residential Swimming Barrier Requirement of the Florida Building Code.

Brien Bourbeau, Palm Harbor, appeared and provided information on the 2019 right-to-vacate indicating that the storm pipe in question is capped and not being utilized; and that he has correspondence from County staff stating the same.

At the request of Mr. Bomstein, Stormwater Division Director Susan Goebel-Canning approached the podium, answered questions, and related that it is her belief that the storm drain in question is being used; whereupon, Mr. Bourbeau provided documentation from Pinellas County Real Estate Specialist Cynthia Harris.

Due to conflicting information, Mr. Bomstein made a motion that the case be continued to the next meeting, to be held on August 31, 2022, to allow staff the ability to obtain a definitive response from utilities regarding the storm drain. The motion was seconded by Mr. Doran and carried unanimously.

Case No. TY2-22-10

APPLICATION OF ROBERT DELLENGER REVOCABLE TRUST THROUGH MATTANIAH S. JAHN, REPRESENTATIVE, FOR A TYPE 2 USE

A public hearing was held on the application of Robert Dellenger Revocable Trust through Mattaniah Jahn for a Type 2 Use to allow the construction of an 185-foot-tall above ground level (AGL) monopole style communication tower and related support facilities, for the E-2 zoned property located on the south side of 126th Avenue North approximately 235 feet west of Starkey Road in unincorporated Largo. No correspondence relative to the application has been received by the Clerk.

Ms. Cord introduced the case and presented the following staff recommendation:

Recommend: Conditional Approval. Staff has no objection to the conditional approval of this request as it appears to meet the criteria for granting Type 2 Uses found in Section 138-241 of the Pinellas County Land Development Code. The Code requires a Type 2 Use approval for a communications tower in the E-2 zoning district that exceeds the maximum building height requirement of 95 feet provided in the development parameters of Sec. 138-763.1 and Sec. 138-3313. The proposed tower will be a 185-foot-tall AGL monopole style. The tower and its use are consistent with the neighboring properties where the area provides support services for transportation facilities and other light fabrication. This parcel does not abut any residential properties. Approval should be subject to the following conditions:

1. Agreement creating mutual cross easements for access, ingress and egress, and drainage recorded in O.R. Book 8821, Page 2334 must remain on parcel.
2. The applicant shall obtain all required permits and pay all applicable fees.
3. Appropriate site plan review.
4. All other requirements in Code Section 138-3313 shall be met.

Mattaniah Jahn, Safety Harbor, appeared and provided a detailed PowerPoint presentation containing photographs and maps, regarding the location of the property and surrounding land uses. She related that the proposed communication tower is a single support pole with no extending iron works or wires; that it will host T-Mobile's antenna with the capacity for three additional users per the County's effort to share new towers; and that the need for additional technology to satisfy coverage in the area is eminent.

At the request of Mr. Burdette, Attorney Morris related that Federal Code prohibits the Board from considering environmental and health concerns based on radio frequency emissions.

Upon the Chairman's call for opponents, Adrienne Smith, Largo, appeared and stated that although she was not present regarding this particular tower, she expressed her concern regarding 5G health dangers.

Following a brief discussion, Mr. Bomstein made a motion that the Type 2 Use be granted as recommended in accordance with the findings of fact as outlined in the staff report. The motion was seconded by Mr. Doran and carried unanimously.

Case No. TY2-22-11

APPLICATION OF CHRIST THE KING LUTHERAN CHURCH INC. LARGO FLORIDA THROUGH ALAN RUIZ, REPRESENTATIVE, FOR A TYPE 2 USE

A public hearing was held on the application of Christ the King Lutheran Church Inc. Largo Florida through Alan Ruiz for a Type 2 Use to allow the construction of a 120-foot-tall camouflaged communication tower and related support facilities for the R-2 zoned property located at 11220 Oakhurst Road in unincorporated Largo. Twelve letters in opposition to the application have been received by the Clerk.

Ms. Cord introduced the case and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the conditional approval of this request as it appears to meet the criteria for granting Type 2 Uses found in Section 138-241 of the Pinellas County Land Development Code. The Code requires Type 2 Use approval for camouflaged communications towers in an R-2 zoning district that exceed 75 feet in height. The proposed tower is designed to resemble a cross and is 120 feet tall. Towers are also required to be set back from abutting residential property lines a distance equal to the height of the tower. That requirement is met in this case. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Appropriate site plan review.
3. All other requirements in Code Section 138-3313 shall be met.

Mary Solik, Orlando, appeared and indicated that she represents Vertex Development LLC; that an internal driveway on the 6.7 acre church campus will be utilized; that all setback requirements have been met; that a vinyl fence and required landscape buffer will surround the tower; that approval has been granted by the Federal Aviation Administration; and that no lighting will be required on the site.

Ms. Solik stated that the tower will be able to accommodate up to four users; that a 75-foot tower is a permitted use for this property; and that the only issue presented today is approval in height from 75 feet to 120 feet.

Principal of Vertex Development LLC Alan Ruiz appeared and responded to queries by the members.

Upon the Chairman's call for opponents, the following individuals expressed their concerns:

Lori Miller, Largo
Barbara Mears, Largo
Allan Sychowski, Largo
Matthew Kallenbach, Largo
Crystal Sherrill, Largo
Catherine Kadlec, Largo
Janet Dillon, Largo
Mike Kuzbyt, Largo
Blake Barreiro, Largo
Rick Clark, Largo
Joseph Campbell, Largo
Christie Barreiro, Largo
Lisa Donovan, Largo
Jack Mears, Largo
David Stefanczuk, Largo
Larry Kreuger, Largo

During public comment, Attorney Morris related that the tower is a lawful use of the property and that the only reason it is before the Board today is to request an increase in height.

Ms. Solik confirmed that there is a federal law allowing an increase of 20 additional feet to the tower, to which she related her client would agree to cap the tower at 120 feet, which could be included as a condition of approval.

For the record, Ms. Cord related that public hearing notice was provided to residents 250-feet beyond the standard noticing requirement.

In rebuttal, Mr. Ruiz related that construction of the tower would be between 30-45 days depending on weather conditions; that the tower runs quietly and cannot be heard from 20-30 feet away; that the generator would only be utilized during a power outage; that the tower is constructed according to Florida building codes and can sustain 146 mph winds; and that it is designed to bend at a certain point for safety.

Ms. Solik stated that towers do not make noise, do not generate traffic, do not require new schools, sewer, or water. She reviewed each criterion required by the Pinellas County Comprehensive Plan, indicating that the project meets all criteria.

In responding to queries and concerns by the members and the public, Mr. Ruiz indicated that the antennas and the horizontal member of the cross will be located within the top 46- feet of the tower, and if the tower were to fail, it does not break, it bends, relieving the pressure off of the structure.

Following discussion, Mr. Bomstein made a motion to deny the request for the increase in height for the communication tower as it creates a negative aesthetic impact on the surrounding properties and does not meet the criteria in accordance with Section 138-241(b) of the Code. The motion was seconded by Mr. Doran and carried 4 to 1, with Mr. Cocks dissenting.

The meeting recessed at 10:47 AM and reconvened at 10:57 AM.

Case No. VAR-22-02

APPLICATION OF SPECKLED TROUT BOATYARD, INC. THROUGH KATIE COLE, REPRESENTATIVE, FOR A VARIANCE

A public hearing was held on the application of Speckled Trout Boatyard, Inc. through Katie Cole for a variance to the Water & Navigation Code Section 58-556(b)(1) to allow for the construction of a commercial dock addition with 10 boat lifts having a 1-foot setback from the north property line and a 9-foot setback from the west property line, where the Code requires a setback minimum of approximately 90 feet, or one-third of the applicant's waterfront property width from an adjacent waterfront residential property, for the property located at 370 Bayshore Drive in unincorporated Ozona. Fifty-six (56) letters in opposition and 136 letters in support of the application have been received by the Clerk.

Ms. Cord related that this case was continued from the May 4, 2022, meeting at the applicant's request; and that Water and Navigation staff will be presenting the case.

Responding to a query by Attorney Morris, Senior Assistant County Attorney Brendan Mackesey and representative for the applicant, Jaime Maier, related that 30 minutes will be allotted for the presentation, with the remaining 10 minutes for rebuttal.

Referring to a PowerPoint presentation containing maps and photographs, Public Works Ecological Service Unit and Water and Navigation Program Manager David Brian Brown provided information regarding the location and configuration of the property, the previous Water and Navigation Application No. WND-H48916-18, the code requirements relating to commercial docks abutting waterfront residential properties, and the criteria for setbacks and granting variances, noting that the requirement could be waived with a signed statement of no objection from the affected property owners, which is not the case.

Mr. Brown related that staff acknowledges that the applicant's shoreline is irregularly shaped, which creates some developmental challenges; and that staff feels there are other options the applicant could explore. Mr. Brown presented the following staff recommendation:

Recommend Denial. County Water and Navigation staff objects to the requested variance as it does not appear to satisfy all of the criteria under Section 138-231 of the Pinellas County Land Development Code. Staff recommends denial of the dock and lift additions at this property primarily due to the fact that the variance requested is not the minimum code deviation necessary.

Responding to queries by the members regarding an easement, Attorney Mackesey indicated that the State of Florida sold the same submerged track of land to three different parties; and that those parties have entered into an agreement providing mutual right of access, which impedes their ability to develop further out; and that the agreement has created a self-imposed hardship.

Responding to queries by Mr. Bomstein, Ms. Maier, appeared and related that the easement was a result of litigation, noting that when the three parties realized that the State had sold them the same parcel, legal action was taken against each other, which resulted in a settlement agreement making the easement a burden to the applicant.

At the request of Ms. Maier, Mr. Burdette made a motion, which was seconded by Mr. Cocks and carried unanimously, to accept the following witnesses as experts:

- Terri Skapik, Marina Consultant
- Rick Bennett, Maritime, and Owner and Operator of Speckled Trout Boatyard, Inc.

Ms. Maier addressed information in the staff report, noting that approval from the adjacent neighbors is not required, otherwise this request could have been handled administratively; that the property is already zoned as a marina; that development potential is driven by commercial economic need; that staff is unable to provide a policy in which this application is inconsistent with the Comprehensive Plan; and that staff fails to acknowledge the wealth of policies and sections that expressly support this request.

Referring to a PowerPoint presentation containing maps and photographs, Ms. Maier reviewed the lack of straight shoreline creating a special condition and hardship, and noted that building a deck straight out would impede on the right-of-way easement and the neighbor's waterfront property; whereupon, she reviewed the shoreline history, existing conditions, the proposed design, and navigational paths.

Referring to excerpts from the Comprehensive Plan, she stated that Ozona has a unique character of development with a diverse mix of residential and commercial activities, noting that the Plan states, “marinas provide an ambiance that is consistent with the waterfront heritage of Ozona;” whereupon, she stated that expansion of marinas, in particular to Ozona, is compatible.

Terri Skapik, Dunedin, appeared and provided information regarding her credentials, and related that Speckled Trout Marina is the only marina in the county that is properly zoned commercial recreation. In response to queries by the members, she related that water depths, seagrass beds, environmental impacts, and navigation paths were considered in the design of the proposed project. She reiterated the special conditions that exist including the irregular shaped lot and the reduction in the footprint due to the easement litigation.

Richard Bennett, Palm Harbor, appeared and indicated that he is the applicant and expressed the reasons why this request should be approved noting the lack of available access to the water, the significance of the boating industry to the economy, and the substantial improvements and amenities to the property.

Responding to queries by Attorney Mackesey, Mr. Bennett related that he purchased the property in 2001; that the property has 160 dry slips; and that all the slips are full with over 165 individuals on a waitlist.

Upon the member’s call for proponents, the following individuals appeared and expressed their support of the application:

Richard Scott, Palm Harbor
Doug Bebell, Tarpon Springs
Colleen Bebell, Tarpon Springs
Robert Wallend, Clearwater
Edward Collins, Dunedin
John Delutrie, Tampa

Upon the Chairman’s call for opponents, Craig Taraszki, St. Petersburg, appeared and confirmed that he represents one of joint easement owners, and related concerns regarding the proposed expansion; whereupon, he responded to queries by the members.

The following individuals appeared and expressed their concerns:

Bill Hood, Ozona
Scott Deferrari, Palm Harbor
Cary Hunt, Palm Harbor
James Deitch, Palm Harbor

Steve Sauter, Palm Harbor
Steven Gagg, Palm Harbor
John Thurmond, Palm Harbor

In rebuttal, Katie Cole, Clearwater, appeared and responded that riparian rights are only for adjacent property owners; that property owners do not have a right to a view across someone else's riparian rights; and that riparian views are not a criteria in the Code. She related that the goals, polices, and objectives in the Comprehensive Plan include the expansion of existing marinas, so-much-so that the County prepared a boating plan to determine appropriate ways to expand marinas.

Discussion ensued regarding potential alternative designs; whereupon, Ms. Cole related that the best possible design has been presented, noting the inability to construct within the center third and without blocking the boat ramp that is utilized by the marina, the community, and emergency management. Responding to queries by the members, Ms. Cole related that the design presented today has the least impact to navigation, seagrass, and the community.

Attorney Mackesey, with input from Mr. Brown, responded to queries by the members.

Referring to a document, Attorney Mackesey pointed out the dock location and the lack of minimum code requirements; whereupon, Ms. Cole stated that she had not seen that exhibit prior to today and that the dock location is incorrect. She pointed out the correct location being proposed due to shallow land and the navigation channel that had been dredged by the applicant for the marina and community to use.

Following lengthy discussion, Mr. Doran made a motion to approve the construction of a dock and eight boat lifts, eliminating two slips to the north, based on the findings of fact and evidence presented during the hearing, finding special conditions and undue hardship. Discussion ensued; whereupon, it was determined the dock shall be constructed in the same location. The motion was seconded by Mr. Cocks, and carried 4 to 1, with Chairman Gephart dissenting.

MINUTES OF THE JULY 6, 2022 MEETING

Mr. Bomstein made a motion, which was seconded by Ms. Doran and carried unanimously, that the minutes be approved.

ADJOURNMENT

The meeting was adjourned at 1:28 PM.