

Board of Adjustment and Appeals
Pinellas County
April 5, 2023 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

Joe Burdette, Chairman
Jose Bello, Vice-Chairman
Alan C. Bomstein
John Doran
Deborah J. White

Not Present

Vincent Cocks
Cliff Gephart

Others Present

Glenn Bailey, Zoning Manager
Derrill McAteer, Senior Assistant County Attorney
Kevin McAndrew, Building Development Review Services Director
Keith Vargus, Code Enforcement Operations Manager
Shirley Westfall, Board Reporter, Deputy Clerk
Other interested individuals

CALL TO ORDER

Chairman Burdette called the meeting to order at 9:00 AM and provided an overview of the hearing process; whereupon, he 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. TY2-23-04

APPLICATION OF PINELLAS BD OF INST THROUGH MANDA RAHGOZAR,
REPRESENTATIVE, FOR REINSTATEMENT OF A TYPE 2 USE

A public hearing was held on the application of Pinellas BD of Inst through Manda Rahgozar for reinstatement of a previously approved Type 2 Use to allow for overflow parking from the adjacent school to the south, for the R-3 zoned property located on the northeast corner of the intersection of 74th Street North and 40th Avenue North in West Lealman. No correspondence relative to the application has been received by the Clerk.

Mr. Bailey introduced the case and presented the following staff recommendation:

Recommend Conditional Approval. Staff has no objection to the reinstatement of the previous Type 2 Use approval (Case No. BA-2-2-17) granted by the Board in 2017, subject to the recommended conditions, as the request appears to meet the criteria for granting Type 2 Uses found in Section 138-241 of the Pinellas County Land Development Code. The Pinellas County School Board (PCSB) has proposed renovations to the existing 74th Street Elementary School campus. As part of the renovations associated with the elementary school, the PCSB intends to pave the R-3 zoned parcel to serve as a formalized parking area for the employees/teachers at the school. A Type 2 Use approval is required for a stand-alone parking lot on a residentially zoned property.

The BAA approved a special exception for this use in 2017, but since no activity has occurred, the approval has expired. It is staff's opinion that the reinstatement of a Type 2 Use approval with the recommended conditions will further accommodate the school's needs for future improvements and overall connectivity. Approval should be subject to the following conditions:

1. A Development Review Committee site plan.
2. The applicant shall obtain all required permits.

Manda Rahgozar, Clearwater, appeared and indicated that she is the representative.

No one appeared upon the Chairman's call for opponents; whereupon, Mr. Bomstein made a motion that the Type 2 Use be reinstated 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. VAR-23-04

APPLICATION OF LOT STOP, LLC THROUGH DIANE HAMILTON,
REPRESENTATIVE, FOR A VARIANCE

A public hearing was held on the application of Lot Stop, LLC through Diane Hamilton for a variance to allow a reduction of the minimum lot depth requirement from 80 feet to 70 feet in an R-4 zone, for the property located at 11900 125th Street in unincorporated Largo. No correspondence relative to the application has been received by the Clerk.

Mr. Bailey introduced the case and presented the following staff recommendation:

Recommend Conditional Approval. The Development Review Committee 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 (LDC). The owner is proposing to construct a duplex on the vacant parcel. The subject lot is a platted lot of record from a 1956 subdivision that predates the Pinellas County LDC. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.

Diane Hamilton, Indian Rocks Beach, appeared and indicated that she represents the applicant.

No one appeared upon the Chairman's call for opponents; whereupon, Mr. Bomstein made a motion that the variance be granted as recommended in accordance with the findings of fact as outlined in the staff report, recognizing that the subdivision predates the LDC. The motion was seconded by Ms. White and carried unanimously.

Case No. APL-23-01

APPLICATION OF DOVETAIL HOMES, LLC THROUGH ADAM HARDEN,
REPRESENTATIVE, FOR AN APPEAL

A public hearing was held on the appeal of Dovetail Homes, LLC through Adam Harden of a staff Land Development Code interpretation that a multifamily detached development arrangement where residential units are separate from each other on a common parcel is not allowed.

Mr. Bailey introduced the case and presented the following staff recommendation:

Recommend Denial of the Appeal: Pursuant to Section 138-66(c)(2), Section 138-81(e), and Table 138-77 of the Pinellas County Land Development Code (LDC), the BAA has the authority to review appeals from department-level decisions, including LDC interpretations. Staff recommends that the Board deny the appeal in this case, finding that Pinellas County staff has correctly interpreted that a multifamily detached redevelopment arrangement where residential units are separate from each other on a common parcel is not allowed because *Dwelling, multiple family and their customary accessory uses*, per Code Section 138-356 – Uses Defined, is defined as meaning "four or more dwelling units, attached to each other by a stacking arrangement and with common vertical and horizontal walls". The C-2 zoning district, per Table 138-355 – Table of Uses for Zoning Districts, allows multifamily residential development as a Type 1 Use but that development must conform with the Code's definition of multifamily to qualify.

The Code permits detached residential development as a single-family format when allowed by the respective zoning district. Section 138-356 defines *Dwelling, single-family detached and their customary accessory uses* as meaning "a dwelling unit in a single structure, on a single lot, not attached to any other dwelling by any means." Detached residential development on the subject properties could be achieved via a zoning change to an appropriate residential zoning district followed by the platting process to establish individual lots of record where one detached residential unit could be built on each lot.

Attorney McAteer related that the hearing process for an appeal will proceed in the same manner as a quasi-judicial hearing; that the members are allowed to ask questions and accept new evidence; and that the hearing will conclude with a decision regarding the staff's interpretation of the Code.

Mr. McAndrew provided background information on the subject property, noting that it consists of five parcels for a total of 0.76 acres; that the interpretation of the Code is the issue; that the proposed land use for individual dwelling units on a common parcel is not listed or defined in the Code, and therefore not permitted, unless it is similar to a use that *is* permitted, and the staff's interpretation is that detached individual units on a common parcel is not a similar use to the permitted multifamily use, defined as minimum of four attached units. He added that a Code amendment would need to be approved by the Board of County Commissioners in order to change the definition; and that staff interpretation of the Code does not determine whether they like or support the request; whereupon, he responded to queries by the members.

Adam Harden, Tampa, appeared and indicated that he represents the applicant. He submitted into evidence documentation regarding ten properties located within unincorporated Pinellas County that have more than one single family home on one parcel and reiterated that the appeal is for the interpretation of the term *multifamily development*, noting that it is mistake to say that a multifamily development needs to be an attached structure; and that U.S. Department of Housing and Urban Development includes *multifamily detached* as acceptable multifamily type for financing. He pointed out inconsistencies in the Code and related how other area municipalities define multifamily.

Responding to a query by Mr. Bomstein, Mr. Harden related that the proposed project would be 12 to 18 cottages in a multifamily arrangement with shared parking and infrastructure.

During discussion, several members concurred that regardless of whether the walls of the units are attached or detached, it is the same outcome and product, the same impact, and there is no harm to anyone and the community would benefit from the development; that the definition of multifamily can be much broader and should leave out the reference to attached walls; and that the Code is restricted by historical definitions.

Attorney McAteer noted a concern about setting a precedent for similar requests, as allowing the proposed use would fundamentally change the way in which the Code is applied in the future, and Messrs. Bomstein and Burdette countered that the Board's decisions are made based on the specific circumstances of each case.

In rebuttal, Mr. McAndrew indicated that the Code does distinguish between use and development, which are contained within its separate sections; and that standards regulate multifamily development, such as a required amount of open space.

Mr. Doran opined that the staff's interpretation of the Code, as it is written, is accurate; and that if there is an issue with the Code, it should be changed; whereupon, responding to queries by Chair Burdette, Mr. Bailey provided information regarding the Code changing process.

Chairman Burdette closed the public hearing, and discussion ensued. Mr. Doran made a motion recommending denial of the appeal, and the motion died for lack of a second. Mr. Bomstein made a motion to approve the appeal based on the evidence presented and the Board's interpretation of the project as multifamily, despite the restrictions of the 'multifamily' definition outlined in the Code. The motion was seconded by Ms. White and approved 4 to 1, with Mr. Doran dissenting.

MINUTES OF THE MARCH 1, 2023 MEETING

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

OTHER BUSINESS

Attorney McAteer related that following the BAA decision on Case No. TY2-22-11 denying the request for the construction of a 120-foot-tall camouflaged communication tower on the church property located at 112200 Oakhurst Road in unincorporated Largo, the applicant filed a federal lawsuit; whereupon, the judge determined that the testimony was speculative and not enough to meet the threshold of competent substantial evidence; and that it did not merit the denial of the application. He indicated that he will work with staff to determine the necessary steps to proceed.

ADJOURNMENT

The meeting was adjourned at 10:15 AM.