

**Board of Adjustment and Appeals
Pinellas County
September 6, 2023 Meeting Minutes**

The Board of Adjustment and Appeals (BAA) met in regular session at 9:02 AM on this date in the County Commission Assembly Room at the Pinellas County Courthouse, 315 Court Street, Clearwater, Florida.

Present

Joe Burdette, Chairman
Alan C. Bomstein
Vincent Cocks
John Doran (appeared virtually)
Cliff Gephart
Deborah J. White

Not Present

Jose Bello, Vice-Chairman

Others Present

Glenn Bailey, Zoning Manager
Derrill McAteer, Senior Assistant County Attorney
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 9:02 AM and provided an overview of the hearing process. Later in the meeting and before voting on the first item, Ms. White made a motion, which was seconded by Mr. Bomstein and carried unanimously, that Mr. Doran be allowed to participate virtually.

QUASI-JUDICIAL STATEMENT

Attorney McAteer noted that the following hearings are quasi-judicial; and that only competent substantial fact-based testimony or evidence may be considered in the decisions by the Board; whereupon, he provided information regarding the types of evidence that are considered as such.

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-23-10

APPLICATION OF MICHAEL BARTOLETTI THROUGH JORDAN NICHOLS,
REPRESENTATIVE, FOR A VARIANCE

A public hearing was held on the above application for a variance to allow for the construction of a 6-foot-high masonry wall with columns along the south property line where four feet is the maximum height allowed within the required front setback and a 5-foot-2-inch-high chain link rolling gate where three feet is the maximum allowed within the required front setback, for the property located at 2219 Tampa Road in Palm Harbor. The Clerk has received no correspondence relative to the application.

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.

The subject property is a .37-acre parcel that is zoned Residential Rural (16,000 sf minimum lot size) and has direct frontage along Tampa Road. Tampa Road is a four-lane divided County arterial road that receives over 20,000 average daily trips. Over the past decade, other wall and fence height variances have been granted on similarly situated parcels within the general area. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Line of sight requirements shall be met.

Michael Bartoletti, Palm Harbor, appeared and indicated that he is 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. The motion was seconded by Ms. White and carried unanimously.

Case No. TY2-23-11

APPLICATION OF GREEN ACRES CHILD CARE THROUGH ALCIA FOLEY, OWNER,
FOR A MODIFICATION OF A PREVIOUSLY APPROVED TYPE 2 USE

A public hearing was held on the above application for a modification of a previously approved Type 2 Use to allow a daycare in an R-R zone, for the property located at 9110 102nd Avenue North in unincorporated Seminole. The Clerk has received no correspondence relative to the application.

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

Recommend Conditional Approval. Staff has no objection to the modification of the previous Type 2 Use approval (Case No. TY2-23-03) granted by the BAA on July 5, 2023, 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 original request included the proposed construction of a new 3,500 sq. ft. detached addition for a daycare. The proposed modification to the daycare would make the addition, parking lot, and playground areas more internal to the site. A Type 2 Use approval is required for a major modification to an existing daycare on a residentially zoned property.

It is staff's opinion that the modification of a Type 2 Use approval with the recommended conditions will make the site more functional and enhance vehicular circulation. It should be noted that there are no changes to the number of children attending the daycare nor an increase in the building footprint of the proposed addition. Approval should be subject to the following conditions:

1. A DRC site plan.
2. The applicant shall obtain all required permits and pay all applicable fees.

Alycia Foley, Largo, appeared virtually and indicated that she is the applicant.

No one appeared upon the Chairman's call for opponents; whereupon, 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. Cocks and carried unanimously.

Case No. VAR-23-14

APPLICATION OF SPECKLED TROUT BOATYARD INC. THROUGH JAIME MAIER
AND KATIE COLE, REPRESENTATIVES, FOR A VARIANCE

A public hearing was held on the above application for a variance to allow for the construction of a bed and breakfast having a 6.9-foot front setback from the eastern property line, where 10 feet is required, and a 10.7-foot side setback from the northern property line, where 20 feet is required for the Commercial Residential (CR) zoned property located at 370 Bayshore Drive in Ozona. The Clerk has received two letters of concern regarding the application.

Mr. Bailey 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 contains the Speckled Trout Marina and is bisected by Bayshore Drive. The portion of the property on the west side of Bayshore Drive contains a small upland area where the location of the bed and breakfast is proposed. The west side currently contains docks with wet slips, a boat ramp, decking, a small bait house, and several pillars that were put in place years ago to support a planned duplex that was never completed. The planned duplex received a variance in 2005 (Case No. BA-02-05-05) under the property's former R-4 residential zoning designation that allowed a 5-foot front setback. Since that time, however, the zoning was changed to CR, and the previous variance approval expired. The CR zoning does not allow residential uses or short-term vacation rentals, but it does allow bed and breakfasts as a Type 1 permitted use.

The setback variances for the proposed bed and breakfast are being requested due to the small size, irregular shape, and shallowness of the upland area on this portion of the subject property. The proposed location is very similar to that of the formerly approved duplex. The existing pillars would be removed, and new ones constructed to support the proposed two-unit, two-story bed and breakfast. Importantly, the rezoning of the subject property to CR in 2014 also included a development agreement that set various development restrictions on the overall property, which is why the bed and breakfast cannot be located on the east side of Bayshore Drive. Also of note, the residential property adjacent to the north received similar

setback variance relief in 2014. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. DRC site plan, as appropriate.
3. The proposed structure shall be used as a bed and breakfast only.

Responding to queries by the members, Mr. Bailey provided clarifying comments and related that the variance request is for the location of the bed and breakfast, not the use itself; that the existing pillars will be removed; that a bed and breakfast is a permitted use; and that the applicant's request is for two setbacks, noting the restrictions placed on the overall property due to a development agreement.

Referring to a PowerPoint presentation containing photographs and maps, Jaime Maier, Clearwater, presented background information regarding zoning, permitting, deed restrictions, and the development agreement, noting that Speckled Trout Boatyard, Inc., is the only properly zoned marina in Ozona; that special conditions include an irregular, narrow, and restrictive buildable area; and that the hardship is that the parcel is located between the water and the right-of-way, which is not self-imposed by the applicant.

Ms. Maier related that the Pinellas County Comprehensive Plan recognizes and encourages the preservation of existing marinas due to the increased operating costs and rising pressure to convert them into private waterfront homes. She expressed her surprise at opposition to the project by the neighbors as the proposed structure was discussed at the time of rezoning, noting that the applicant gave up a significant number of rights; and that the one right the owner did not give up was the construction of a duplex structure on this portion of the site.

In review, Ms. Maier reiterated the restrictions that are placed on the parcel, the special conditions, and the variance criteria, noting that the marina with transient accommodations is precisely what the zoning category envisions; and that it will not be injurious to the area. She related that the applicant is requesting the variance because the previously approved variance expired, thus preventing him from making the proposed changes to his property; and that the proposed duplex is appropriate, compatible, and consistent with the Comprehensive Plan.

Responding to queries by the members, Ms. Maier addressed the pillars and bait house to be removed, parking, the obstacles associated with the delayed construction of the duplex, and the expiration of the previously approved variance; whereupon, Rick Bennett,

Owner and Operator of Speckled Trout Boatyard, Inc., appeared, provided additional information, and responded to queries by the members regarding a potential relocation of the bait house and the height of the proposed duplex, with input from Ms. Maier.

Thereupon, the following individuals appeared and expressed their concerns upon the Chairman's call for opponents.

Robert Bell, Palm Harbor
Steven Gagg, Palm Harbor
Cary Hunt, Palm Harbor
Todd Guarino, Palm Harbor
Chris Fragale, Palm Harbor

Responding to citizen concerns, Chairman Burdette related that the request is subject to obtaining all permits, including those related to water and sewer, and Mr. Bailey noted that the Land Development Code limits food to overnight guests only, noting that a restaurant would not be allowed; whereupon, discussion ensued, and Attorney McAteer indicated that the Code requires an owner or manager to reside on the premises of a bed and breakfast.

In rebuttal, Ms. Maier indicated that notice was provided to the opponents; that the applicant's rights are not being expanded; that a duplex structure is permitted; that the applicant lives on the property and is vested in having a quiet, peaceful community; that the bed and breakfast would be regulated by the Department of Business and Professional Regulation; and that no competent substantial evidence has been presented in opposition to the request.

Following discussion, Mr. Bomstein made a motion to approve the variance as recommended under the findings of fact outlined in the staff report, given that the entitlements were pre-existing; and that the zoning is appropriate for the proposed use. The motion was seconded by Mr. Gephart and carried unanimously.

MINUTES OF THE AUGUST 2, 2023 MEETING

Mr. Gephart made a motion, which was seconded by Mr. Cocks and carried unanimously, that the minutes be approved.

OTHER BUSINESS

Deviating from the agenda, Attorney McAteer noted that a question was raised at a previous meeting regarding whether the Board must continue to allow virtual participation;

that the option of virtual participation was created through an initiative taken by the Board via a motion to vote; and that the option can be rescinded by the Board in the same manner; whereupon, discussion ensued regarding removing the option for virtual participation for both the public and the members. Mr. Gephart made a motion that all meeting participants be required to attend in person. The motion was seconded by Ms. White and carried 4 to 2, with Messrs. Cocks and Doran dissenting.

Chairman Burdette invited newly appointed alternate BAA member Robert Warner to the podium for an introduction to the members.

Responding to a query by Mr. Cocks, Attorney McAteer cautioned the members regarding 'reply all' responses to emails, noting that it is individuals, not the County, that would be charged with criminal penalties for any Sunshine Law violations.

ADJOURNMENT

The meeting was adjourned at 10:12 AM.