

Board of Adjustment and Appeals
Pinellas County
October 4, 2023 Meeting Minutes

The Board of Adjustment and Appeals (BAA) met in regular session at 9:01 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
Vincent Cocks
John Doran
Cliff Gephart
Robert Warner, alternate
Deborah J. White

Not Present

Alan C. Bomstein

Others Present

Glenn Bailey, Planning Division Manager/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 9:01 AM and provided an overview of the hearing process.

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. TY2-23-08

APPLICATION OF JEWISH BURIAL SOCIETY OF PINELLAS COUNTY INC. THROUGH DOUG NEGRETTI, REPRESENTATIVE, 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 an 877.5 square-foot office building for a cemetery in an R-A zone, for the property located at 12905 Wild Acres Road in unincorporated Largo. 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 has no objection to the conditional approval of the 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 subject property was developed as a cemetery and received a special exception approval in the 1980s. The original 372.86 square-foot office trailer on site was approved and permitted, however, the applicant would like to replace the existing office trailer with a larger one (approximately 877.5 square feet) that is proposed to be placed in the same location. No additional structures are being proposed currently. Approval should be subject to the following condition:

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

Doug Negretti, Seminole, appeared and indicated that he represents the applicant.

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

Case No. VAR-23-12

APPLICATION OF MINA AND LILIAN BOUTROS FOR A VARIANCE

A public hearing was held on the above application for a variance to allow for the construction of a 1,325 square-foot attached accessory dwelling unit where 750 square feet is the maximum permitted, for the property located at 1511 Colony Court in Palm Harbor. The Clerk has received six letters of support regarding the application.

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

Recommend Denial. The Development Review Committee cannot support this request as it does not meet the criteria for granting variances found in Section 138-231 of the Pinellas County Land Development Code (LDC). In essence, there are no special conditions or unnecessary hardships, and the request is not the minimum variance necessary that warrants the proposed accessory dwelling unit to exceed the maximum square footage allowed by the LDC.

In residential districts, accessory apartments, garage apartments, and guest houses may be permitted as accessory uses to any single-family detached home. The separate living spaces are equipped with a kitchen, bathroom facilities, and sleeping area that can be attached or detached from the main residence. It is recognized that accessory dwelling units are commonly used to mitigate the shortage of affordable housing by providing small dwelling units that are ancillary to the principal residence.

The proposed one-bedroom 1,325 square-foot accessory dwelling unit exceeds the maximum size normally allowed per Code by 575 square feet, or approximately 76 percent higher. The parameters set within the LDC are in place to ensure that the development of accessory dwelling units is incidental to the primary residence.

Applicants Mina and Lilian Boutros, Palm Harbor, appeared and Ms. Boutros related that they currently live in a 1,200-square-foot home with their children and Mr. Boutros' parents; that they wish to continue to live in a multi-generational household; and that the request is to build an addition to their home to provide her parents-in-law with an autonomous living space. She related that the Zoning Department indicated that the addition of a second kitchen would place the project in the accessory dwelling unit category and thus, any development would be subject to that category's requirements.

Ms. Boutros reviewed the proposed floor plans and collaboration with staff to design the proposal as closely as possible to an accessory dwelling unit, noting that a separate entrance was added which reduced the original square footage by 300 square feet; whereupon, she related that research shows a median square-foot living space per person in the United States is 700 square feet, which contributes to overall wellbeing and quality of life; and that being limited to 750 square feet is not conducive for two people, as well as space for a future potential caregiver, and Americans with Disabilities Act-accessible hallways.

Ms. Boutros related that the variance request is related to a second kitchen with regard to the requirements of accessory dwelling units; that there has been conflicting information provided as to what constitutes a kitchen; and that the BAA approved a similar request at its May 3, 2023, meeting, Case No. VAR-23-08, noting that the Code was considered a hardship. She related that support has been received from the neighborhood and approval was given by the Homeowner's Association.

Responding to queries by members, Mr. Bailey related that a variance is only required because of the kitchen; that an oven with a 220-voltage electrical service connection constitutes a kitchen; and that a second kitchen constitutes a duplex.

Attorney McAteer interjected that the Code itself cannot be considered a hardship; and that during the May 3 meeting referenced above, he expressed concern regarding a potential precedent being set; whereupon, lengthy discussion ensued.

Upon the Chairman's call for opponents, Steve Weber, Palm Harbor, appeared and expressed his concerns.

In response to queries by the members, Ms. Boutros expressed confusion with opposition from Mr. Weber, stating that she has signed approval from him and provided additional information regarding the proposed floor plan.

Chairman Burdette closed the public hearing and expressed concern regarding the lack of an apparent hardship and precedent-setting; whereupon, discussion ensued regarding the Code for accessory dwellings and specifics of what constitutes a kitchen and an oven.

Mr. Gephart made a motion to approve the variance, seconded by Mr. Cocks; whereupon, discussion continued, with input from Attorney McAteer, regarding conditions to be added if the application is approved, the actual need for a vote based on the Board's decision, and various topics. Mr. Gephart amended his motion to add the following conditions, seconded by Mr. Cocks:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. No oven is allowed within the accessory dwelling unit; however, a cooktop appliance that does not exceed 120 volts may be used.

The motion carried 6 to 1, with Mr. Doran dissenting.

Case Nos. TY2-23-12 and VAR-23-19

APPLICATION OF FL. PROFESSIONAL FUNDING, LLC. THROUGH JOEL SCHACHTER, REPRESENTATIVE, FOR THE FOLLOWING:

- (TY2-23-12) A TYPE 2 USE TO ALLOW AN INDOOR/OUTDOOR KENNEL, VETERINARY CLINIC, AND MEETING HALL/COMMUNITY ASSEMBLY FACILITY IN AN R-A ZONE

and

- (VAR-23-19) A VARIANCE TO ALLOW A DOG KENNEL HAVING 18-FOOT SIDE SETBACKS WHERE 50 FEET IS NORMALLY REQUIRED WHEN ADJACENT TO A RESIDENTIAL ZONE AND A VARIANCE TO ALLOW A MODIFICATION TO AN EXISTING BUILDING FOR USE AS A FUTURE CAT ENCLOSURE HAVING A 0.7-FOOT REAR SETBACK WHERE 20 FEET IS NORMALLY REQUIRED, AND A 0.7-FOOT AND 3.5-FOOT SIDE SETBACK WHERE 15 FEET IS REQUIRED

A public hearing was held on the above applications for the property located at 7400 62nd Terrace North in unincorporated Pinellas Park. The Clerk has received no correspondence relative to the application.

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

Recommend Conditional Approval. The Development Review Committee has no objection to the conditional approval of these requests as they appear to meet the criteria for granting Type 2 Uses and variances found in Sections 138-241 and 138-231, respectively, of the Pinellas County Land Development Code (LDC). The request is to allow for an indoor/outdoor kennel, veterinary office, and meeting hall/community assembly facility. The subject property previously received special exceptions for a place of worship with an accessory kindergarten and preschool use (#BA-21-8-98 and #BA-18-5-06). The existing structures on the property consist of two block buildings, a storage shed, a full and half-sized basketball court, a

racquetball court, and other accessory structures that would be used for the proposed redevelopment. The applicant intends to repurpose and utilize the existing buildings on site for their business operations as an animal rescue facility. No additional structures are being proposed by the applicant.

The setback variances for the proposed kennel are being requested for the existing block building located on the northwest portion of the subject property. The Code requires structures housing dogs and exercise areas to be at least 50 feet from any residential district. The building is constructed with 12-foot-tall solid concrete walls and will be soundproofed as required by Code. Additionally, setback variances are being requested for the existing racquetball court that is situated furthest south on the subject parcel. The structure was constructed pre-code and does not meet the current setback requirements of the R-A zoning district. The applicant intends to retrofit the existing racquetball structure to create a future cat enclosure. This level of improvement proposed to the building is treated as a substantial modification and therefore requires a variance.

It is staff's opinion that the Type 2 Use and variances requested for the proposed animal rescue facility with the recommended conditions are appropriate as the proposed business operations are configured in a manner that would utilize existing structures and not effectively alter the nearby Bonnie Bay neighborhood. Additionally, the combined noise mitigation strategies and environmental features exhibited on-site reflect that the uses will be well buffered and screened from nearby residential properties and would not pose additional nuisance conditions to nearby residents.

Approval should be subject to the following conditions:

1. The applicant shall pay all applicable fees and obtain all required permits.
2. Must meet hours of operation as stated in the submitted application.
3. All the specific use standards pertaining to kennels, veterinary clinics, and meeting halls/community assembly facilities as described in LDC Sections 138-3249, 138-3252 (2), and 138-3294 shall be met.

In response to the Chairman's call for the applicant, Joel Schachter, Lutz, and Kimmy Chandler, Seminole, appeared; whereupon, Ms. Chandler indicated that she is the founder of Fluff Animal Rescue, Inc.

Mr. Schachter indicated that the subject property has been vacant for approximately four years; that the proposed use is a safe place to rehabilitate pets and place them in loving homes; that the agency has rescued 2,500 animals to date; and that the agency is a 501(c)(3) organization funded by donors, not taxpayer dollars.

Ms. Chandler provided information regarding the history of Fluff Animal Rescue, reiterated that it is a rescue facility and not a shelter, and highlighted the organization's efforts, challenges, and future vision.

Responding to queries by the members, Mr. Schachter, with input from Ms. Chandler, related that the rescue facility would meet all criteria listed in the staff report; that the organization was created in 2013 and became a non-profit in 2016; and that as the property owner, he has put much time, effort, and money into improving the subject property and is elated to turn it into something positive.

Chairman Burdette requested that those in support of the application raise their hand; and that if anyone had additional information to please come forward. Laurie Elmer, Seminole, appeared and noted that constant animal supervision would likely minimize noise concerns; whereupon, she responded to queries by Mr. Gephart and Chairman Burdette regarding hours of supervision and individualized care.

Upon the Chairman's call for opponents, Deborah Teems, Pinellas Park, appeared and expressed her concerns; whereupon, Mr. Bailey reviewed the layout of the proposed project, and Chairman Burdette provided information on the permitting process.

In rebuttal, Mr. Schachter related that significant time and effort has been spent considering the placement of various components in the proposal; and that Ms. Chandler strives to be accessible to neighbors.

Chairman Burdette closed the public hearing and following discussion, Mr. Bello made a motion that Case No. TY2-23-12 be granted as recommended in accordance with the findings of fact outlined in the staff report. Mr. Doran requested that the hours be included in the motion as follows:

- Public operational hours: 9:00 AM – 6:00 PM
- Outdoor activities: 8:00 AM – 7:00 PM
- Controlled outdoor access: 7:00 AM – 8:00 AM and 7:00 PM – 9:00 PM

The motion was seconded by Mr. Cocks and carried unanimously.

Mr. Bello made a motion that Case No. VAR-23-19 be granted as recommended in accordance with the findings of fact outlined in the staff report with the same hours of operation as listed above. The motion was seconded by Mr. Doran and carried unanimously.

COUNTY ATTORNEY OVERVIEW - SUNSHINE LAW AND PROCEDURES

Referring to a document titled *Florida's Government in the Sunshine*, Attorney McAteer provided an overview of the following topics and responded to queries by the members:

- Public access to meetings
- Open meeting requirements such as public participation and communication between Board members
- Penalties
- Curing a violation
- Votes and absenteeism
- Voting conflicts

Utilizing a PowerPoint presentation titled *Board of Adjustment and Appeals Procedural Overview*, Attorney McAteer provided summaries of the following topics:

- Authority of the Board
- Variances and variance criteria
- Special conditions and unnecessary hardship
- Type 2 Uses (special exceptions)
- Administrative appeal process
- Approval criteria for modification and expansions (of a non-conforming use)
- Quasi-Judicial decision-making
- Substantial competent evidence
- Findings of fact

MINUTES OF THE SEPTEMBER 6, 2023, MEETING

Responding to a query by Mr. Doran, Attorney McAteer clarified that Board members may appear virtually as long as applicants can respond to the commentary of the Board; and that virtual attendance by any Board member must be voted on at each meeting; whereupon, Mr. Gephart made a motion that applicants and witnesses must physically attend Board meetings, and that Board members may attend and vote virtually. The motion was seconded by Ms. White and carried unanimously.

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

ADJOURNMENT

The meeting was adjourned at 10:48 AM.