

**Board of Adjustment and Appeals  
Pinellas County  
June 5, 2024 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**

Jose Bello, Chairman  
Alan C. Bomstein  
Joe Burdette  
Vincent Cocks  
John Doran  
Robert Warner (alternate)

**Not Present**

Deborah J. White, Vice-Chairman  
Cliff Gephart

**Others Present**

Michael Schoderbock, Division Manager, Zoning and Project Management  
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 Bello called the meeting to order at 9:00 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. TY2-24-01

APPLICATION OF CMNY TECH DRIVE, LLC., THROUGH BRUCE VAUGHAN, REPRESENTATIVE, FOR A TYPE-2 USE

A public hearing was held on the above application for a Type 2 Use to allow a fitness center in an E-1 zone for the property located at 3051 Tech Drive in unincorporated Pinellas Park. No correspondence relative to the application has been received by the Clerk.

Mr. Schoderbock 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 request is to allow a fitness center in the southern portion of an existing 2-story office building that will share access, parking, and stormwater retention with the existing office complex. The new tenant intends to retrofit 14,915 square feet of the southern half of the existing 85,558 square-foot office building for their business operations as a semi-private training facility for bodybuilders and professional athletes. All operations and equipment of the semi-private training facility would be interior. No new structures will be built to accommodate this use. No exterior improvements to the office building are proposed. Additionally, the uses on the other portions of the site would remain unchanged. Approval should be subject to the following conditions:

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

Jeff Clapacs, St. Petersburg, appeared and indicated that he represents business owner Derek Lunsford; and that the ownership group's representative, Bruce Vaughan, is also in attendance to answer any questions.

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. Doran and carried unanimously.

Case No. VAR-24-08

APPLICATION OF DARYL GRIMM AND JESSICA GRIMM FOR A VARIANCE

A public hearing was held on the above application for a variance to allow for the construction of a pool screen enclosure having a 10-foot setback from the midpoint of a seawall where 15 feet from the midpoint of a seawall is required in an R-3 zone for the property located at 3150 South Canal Drive in Palm Harbor. The Clerk has received two letters in support of the application.

Mr. Schoderbock 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 (LDC). The subject property fronts South Canal Drive in Palm Harbor and is developed with a single-family home and an in-ground pool currently under construction. The subject property is located on a cul-de-sac and is adjacent to Lake Tarpon. Due to the property being on a cul-de-sac, there is a significant curvature in the profile along the front of the lot causing the existing single-family home to be set back further than the other abutting single-family homes along South Canal Drive. The owner is proposing to construct a pool screen enclosure closer to the midpoint of the seawall than what is normally allowed per Section 138-3505 of the LDC. The LDC requires all residential structures, and their accessory structures, on waterfront lots to be subject to certain setback limitations. Where adequate seawalls or riprap stabilization exists, a structure shall be set back a minimum of 15 feet from the midpoint of the seawall or riprap stabilization. The Code allows pools without pool screen enclosures to be constructed no closer than 8 feet from the midpoint of the seawall, provided that, certification from an engineer reflects that the integrity of the seawall or its dead-men (underground supporting structures) would not be impacted. A pool screen enclosure on a waterfront lot does not receive this type of setback relief and is therefore required to meet a 15-foot setback from the midpoint of a seawall or riprap stabilization. The intent behind this setback requirement was to prevent a structure from obstructing the waterfront view

from neighboring property owners. It is anticipated that the proposed pool screen enclosure will have minimal impact on the abutting property owners as two letters of support have been received from the adjacent property owners stating that the placement of the pool screen enclosure would not obstruct their view of the water. Additionally, no other setback reductions are being requested by the applicant. Approval should be subject to the following condition:

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

Daryl Grimm, Palm Harbor, appeared and responded to a query by Mr. Bomstein, noting that the pool screen enclosure was included in the permit issued by the County; whereupon, Mr. Schoderbock provided brief comments, indicating that there are two separate permits for the screen enclosure and the pool.

Seeing no objections, Mr. Bomstein made a motion to approve the variance 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-24-09

#### APPLICATION OF JOHN SCHAFFER FOR A VARIANCE

A public hearing was held on the above application for a variance to allow for the conversion of approximately 353 square feet of a covered unenclosed porch into an enclosed, conditioned space for a kitchen, having a 12-foot front setback from the northern property line where 20 feet is required, for the property located at 1342 Michigan Avenue in Palm Harbor. Six letters in support of the application have been received by the Clerk.

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

Recommend Conditional Approval. The subject property is a corner lot where Michigan Avenue is considered the primary front and 14th Street is a side street. The existing single-family residence was constructed in 1947. The subject property previously received a variance for the construction of a porch addition in 2014 (#BA-2-8-14) to allow an 11-foot front setback from the property line adjacent to Michigan Avenue where a 20-foot front setback was required in the R-3 zoning district. Since that time, an update to the Land Development Code (LDC) has occurred which allows a reduced front setback of 10 feet for unenclosed covered porches, decks, or patios. The

applicant intends to enclose 353 square feet of the existing unenclosed covered porch to relocate their existing kitchen. The enclosed portion of the covered porch would be closer to the northern property line along Michigan Avenue than what is normally allowed per Section 138-370.1 of the LDC. No additional structures or exterior improvements are being proposed by the applicant that would increase the footprint of the existing single-family residence. The proposed renovation will occur under the existing roof. It is staff's opinion that the proposed renovations will make the existing single-family residence more functional and will not effectively alter the neighborhood. Additionally, the combination of environmental features exhibited on-site reflects that the enclosed addition is well-screened from nearby properties. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. The applicant shall maintain the existing landscaping along Michigan Avenue.

Staff supports the conditional approval of this request as it appears to meet the criteria for granting variances found in Section 138-231 of the LDC. During the Development Review Committee meeting discussion, the following staff concerns were raised: Pinellas County Development Review Services Engineering Division expressed that the subject property could support a new addition to accommodate the expansion that meets all building setbacks. Pinellas County Public Works noted that the prior BAA decision included a condition that the porch remain open. In addition, they recommended that the setback request be adjusted back to match the current building's enclosed frontage, keeping in line with the house.

Marioli Schaffer, Palm Harbor, appeared, provided brief comments, and indicated that her husband, John Schaefer, could not attend the hearing.

Responding to a query by Mr. Bomstein, Mr. Schoderbock confirmed that Development Review Committee members raised concerns, but ultimately recommended approval of the application.

No one appeared upon the call for opponents; whereupon, Mr. Bomstein made a motion to approve the variance 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-24-11

APPLICATION OF JOEL KASSEWITZ FOR A VARIANCE

A public hearing was held on the above application for an after-the-fact variance to allow for a completed 50-foot dock and 14' by 14', 13,000-pound boatlift to remain at 780 Columbus Drive in Tierra Verde. The Clerk has received two letters in opposition to the application.

Environmental Program Manager David Brown referred to a PowerPoint presentation containing photographs and provided information regarding Water and Navigation Code requirements relative to this case, noting that Section 58-555(b)(1) of the Code states that private docks to be constructed in waters of the county shall be constructed so that the length of the dock, excluding tie poles, shall not extend from the mean high water line or seawall of the property further than one-half the width of the property at the waterfront; and that this requirement may be waived by the County if signed statements of no objection from both adjacent property owners encroached upon have been submitted.

Mr. Brown provided background information regarding the timeline of events for this case, indicating that an application to construct a 416-square-foot single-family dock and four-post, 13,000-pound boatlift was reviewed and a permit was issued by staff; that after construction of the dock was completed, staff received a complaint from a neighboring property owner regarding concerns related to the location of the boatlift; and that staff responded by conducting a final inspection, at which point it was discovered that the boatlift conflicted with the criteria outlined in the Code. He related that, to rectify the issue, staff encouraged the applicant to obtain letters of no objection from adjacent property owners; and that he was unable to obtain a letter from the neighbor to the south.

Referring to photographs included in the presentation, Mr. Brown reviewed the location of the subject property and surrounding areas and noted the criteria for granting variances; whereupon, he related that staff recommends that the BAA approve the variance to Section 58-555(b)(1) of the Code. He informed the members that Water and Navigation staff made an error when reviewing the application; and that, subsequently, additional training has been provided to newer staff to prevent such errors from reoccurring.

Thereupon, Mr. Brown responded to comments and queries by Mr. Bomstein regarding the criteria for granting a variance and concerns notated by the applicant's neighbor to the south.

Upon the Chairman's call for the applicant, Anthony Cuva, Tampa, appeared and indicated that he represents the contractor, Bay Docks, and the applicant. He related that

construction took place pursuant to an issued permit; that the boatlift was placed at the end of the dock as a safety precaution in a heavily traveled area; that no navigational issues have arisen; and that the cost to relocate the boatlift is estimated at \$27,000; whereupon, he noted that he believes the variance is appropriate based on case law.

Responding to queries by the members, Attorney McAteer provided brief comments and confirmed that Mr. Cuva's representation of the aforementioned case law is correct.

In response to the Chairman's call for opponents, Jon Logan, St. Petersburg, appeared, expressed his concerns, and responded to queries by the members; whereupon, discussion ensued.

In response to a query by Mr. Logan and at the request of Mr. Doran, Mr. Brown indicated that extenuating circumstances such as shallow water, the presence of seagrass, or navigational hazards, and potential improvements to the overall quality of the environment would constitute reasons to allow docks to be built further out than what Code allows. Attorney McAteer informed the members that the special conditions are listed in the staff report; whereupon, Mr. Doran read aloud the special conditions.

Mr. Bomstein questioned whether approval was being recommended to mitigate staff's error, noting that he does not see a hardship that would require the boatlift to remain at the end of the dock. Thereupon, Attorney McAteer requested that when the motion is made, that criteria are set forth as to what the basis for the motion is, and a brief discussion ensued.

Referencing the staff report, Mr. Doran made a motion to approve the variance based on staff's recommendation and analysis of the criteria for granting variances, highlighting staff's response to each criterion. The motion was seconded by Mr. Burdette and failed by a vote of 2 to 4, with Chairman Bello and Messrs. Bomstein, Cocks, and Warner dissenting.

Mr. Bomstein indicated that he is moving to deny staff's recommendation on Case No. VAR-24-11 based on the lack of hardship, as defined in the criteria provided in the staff report, noting that he does not believe that this application meets the criteria for a hardship that is unique to the property; whereupon, he clarified that his motion is to deny the application. The motion was seconded by Mr. Cocks and carried unanimously.

## **MINUTES OF THE MAY 1, 2024 MEETING**

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

**ADJOURNMENT**

The meeting was adjourned at 9:58 AM.