

Board of Adjustment and Appeals  
Pinellas County  
November 6, 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

Deborah J. White, Vice-Chairman  
Alan C. Bomstein  
Joe Burdette  
John Doran (appeared virtually)  
Robert Warner (alternate)

Not Present

Jose Bello, Chairman

Others Present

Michael Schoderbock, Division Manager, Zoning and Project Management  
Derrill McAteer, Senior Assistant County Attorney  
Shana Patrick, Code Enforcement Supervisor  
Katie Poviones, Senior Board Records Specialist, Deputy Clerk  
Other interested individuals

**CALL TO ORDER**

Acting Chairman White called the meeting to order at 9:00 AM and provided an overview of the hearing process.

**QUASI-JUDICIAL STATEMENT**

Attorney McAteer explained 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.

Thereupon, Mr. Burdette made a motion to allow Mr. Doran to participate virtually. The motion was seconded by Mr. Bomstein and carried unanimously.

## **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-24-21

#### **APPLICATION OF MICHAEL MARINO AND SHERRY MARINO FOR THREE VARIANCES**

A public hearing was held on the above application for the following variances to allow for the construction of a single-family home for the R-3 zoned property located approximately 190 feet south of the intersection on Bayshore Road and Rainbow Boulevard in unincorporated Largo.

1. A variance to allow for a 16-foot front setback from the northeast property line along the Rainbow Boulevard right-of-way, where 20 feet is required.
2. A variance to allow for an 8-foot front setback from the northeast property line along the Rainbow Boulevard right-of-way, where 10 feet is required for a covered front porch.
3. A variance to allow for a 0-foot side street setback from the west property line along the Wolford Drive right-of-way, where 10 feet is required.

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 variances found in Section 138-231 of the Pinellas County Land Development Code. The owner is proposing to construct a new single-family home closer to both the east (front) and west (rear) property lines than normally allowed. The subject lot is a vacant odd triangular shape and is adjacent to two public rights-of-way, which makes it difficult to site a home that meets the required setbacks. The east property line from which the variance is being sought is considered the frontage of the site. The west property line from the which the variance is being sought is adjacent to an unimproved public right-of-way (Wolford Drive) that is not anticipated for construction. This property was subject to a previously approved variance

application (Case No. BAA-20-11) requesting a reduced setback for a single-family home. That home was never built, and the variance expired.

One of the DRC members raised objection to the setback reduction for the front porch in that it was not consistent with the frontage of other homes adjacent to the site that do not encroach that close to public right-of-way.

Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. All other setback requirements shall be met.

In response to a query by Mr. Bomstein, Mr. Schoderbock clarified that the applicant did not request a rear setback reduction in the previously approved variance application.

Upon the acting Chairman's call for the applicant, Michael Marino and Sherri Marino, Plantation, appeared and provided brief comments.

No one appeared upon the acting Chairman's call for opponents; whereupon, Mr. Burdette made a motion to recommend conditional approval of the variances in accordance with the findings of fact as outlined in the staff report. The motion was seconded by Mr. Bomstein and carried unanimously.

#### Case No. TY2-24-08

#### APPLICATION OF OWEN LINDER, TRE., THROUGH MATTHEW HENDERSON, REPRESENTATIVE, FOR A TYPE 2 USE

A public hearing was held on the above application for a Type 2 Use to allow a music recording studio in an E1-zone, for the property located at 3193 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 subject property is improved with an industrial/office building located along Tech Drive. This request proposes renovations to one of the existing units in the building to a recording studio. All operations will take

place interior of the building. The operations will run seven days a week, by appointment only, with peak hours of use anticipated to be in the evenings. No new structures will be built to accommodate this use. No exterior improvements to the building are proposed. Additionally, the uses on the other portions of the site would remain unchanged.

In addition, the request does not appear to be an intensification of the overall site considering there are no outdoor impacts. Vehicular circulation and parking layout would remain the same and the applicant has approval for shared parking on the site. Approval should be subject to the following condition:

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

Responding to a query by Mr. Bomstein, Mr. Schoderbock provided clarifying information regarding the reasoning for the case's classification as a Type 2 Use.

Upon the acting Chairman's call for the applicant, Todd Pressman, St. Petersburg, and George Mears, Pinellas Park, appeared; whereupon, Mr. Pressman indicated that the site is located in an industrial business area with no residential uses nearby; and that no correspondence in opposition to the proposed use has been received.

In response to a query by Mr. Bomstein, Attorney McAteer provided brief comments related to the potential for adding a lookback provision that would require Code Enforcement to report to the Board in one year regarding any complaints that have been reported, noting that he is unsure of how it could be incorporated as a condition since it is not built into the Land Development Code (LDC); whereupon, a brief discussion ensued wherein Messrs. Pressman and Mears provided information regarding soundproofing and public notice related to the hearing.

Responding to a query from Mr. Bomstein, Mr. Schoderbock indicated that since this is a Type 2 Use with a proposed conditional approval, it could be brought back to the Board for a revocation of approval if the applicant is noncompliant.

In response to a query by acting Chairman White, Mr. Pressman reiterated that there are no residential uses near the property.

No one appeared upon Mr. Bomstein's call for opponents; whereupon, he made a motion to approve staff's recommendation for conditional approval 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. APL-24-02

APPLICATION OF HUEY KENNETH MCALPIN, REV. TRUST, AND KENNETH M. MCALPIN, TRE., THROUGH HOUSH GHOVAEE AND TODD PRESSMAN, REPRESENTATIVES, FOR AN APPEAL

A public hearing was held on the above application for an Appeal of an Administrative Waiver denial for an access point to Keystone Road for a proposed 17-unit single family detached subdivision per the General Access Standards in Section 154-198 of the Pinellas County LDC for the property located at 2169 Keystone Road in Tarpon Springs. The Clerk has received one letter in opposition to the appeal.

Mr. Schoderbock introduced the case, which includes the following staff recommendation:

Recommend Denial. Pursuant to Section 138-66 (c)(2) and Table 138-77 of the Pinellas County Land Development Code (LDC), the BAA has the authority to review appeals of Administrative Waiver request decisions. Staff recommends that the BAA deny the appeal in this case, finding that the Department of Public Works has correctly determined that the requested access to Keystone Road is not necessary and is inconsistent with the general access standards found in Chapter 154-198 of the LDC and Chapter 5 of the Pinellas County Transportation Design Manual (PCTDM). Furthermore, the proposed connection to Keystone Road will create multiple traffic safety and operational concerns.

The subject property borders North Highland Avenue, a County collector facility, to the north, and Keystone Road, a County arterial facility, to the south, with the Pinellas County Fred Marquis Pinellas Trail being situated between the subject property and Keystone Road. The applicant submitted a Waiver Request for Access to Keystone Road on June 30, 2024; this request was denied on August 26, 2024.

The proposed development is a 17-unit single family detached subdivision located at 2169 Keystone Road. The site plan provided shows one access point to N Highland Boulevard and a second access point to Keystone Road. The Traffic Impact Study prepared on behalf of the applicant indicated that ***“this is a very small project; only 17 single family homes are planned”*** and estimated 160 total daily trips (10 in the morning peak period and 6 in the afternoon peak period). Section 154-198(a) of the LDC states *“Direct egress from property adjacent to arterial and collector streets is discouraged and may be denied when egress to a road of lesser designation is available. When the project generates over 555 daily trips*

*subject to the findings and recommendations from a traffic report, access from arterials/collectors as well as lesser designated roadways may be required.*” Section 154-198(b) of the LDC states that *“If a property is located such that access can be provided to either an arterial or collector facility, access to the arterial facility may be prohibited.”* Chapter 5 of the PCTDM has these same requirements.

The applicant, through their site plan submittal, has determined and shown that access to N Highland Avenue is available and viable. Likewise, the applicant, through their Traffic Impact Study, determined that the number of trips for this development is very low, and is not close to the threshold requirements where a secondary access would be required or considered.

Section 154-198(g) of the LDC General Access Standards states that *“all criteria are to be applied, together with sound engineering judgement, to promote safety.”* The proposed connection to Keystone Road will create multiple traffic safety and operational issues, including:

- Turns onto and off of a high speed/high volume arterial roadway. The latest traffic and speed data along this segment of Keystone Road show 25,000 daily vehicle trips and an average speed of 51mph. The posted speed limit is 45mph.
- These movements will be occurring near the Pinellas Trail that runs along the north side of Keystone Road, creating conflicts with vulnerable Trail users (pedestrians and bicyclists). Counts provided by Forward Pinellas indicate that approximately 4,500 people use this segment of the Trail each month, and between 150 to 220 users per day.
- The location of the proposed location connection is within the functional area of the intersection of Keystone Road and Richard Ervin Parkway. This area is defined as the distance in advance of an intersection where extra attention is required for decision making and maneuvering and includes the length of turn lanes. Driveways close to intersections create additional conflicts for drivers in an area already designed to manage large volumes of traffic coming from various directions. The proposed connection is just 200 feet east of Richard Ervine Parkway, and clearly within the area of the intersection where additional conflicts should be avoided.

Additional information to consider:

- The Friends of the Pinellas Trail opposes a connection across the Trail on Keystone Road. Their letter of opposition is included.
- The City of Tarpon Springs has authority over the site plan and indicated that they would support a connection to N Highland Avenue. Tarpon Springs' LDC does look to minimize driveways across the Pinellas Trail by requiring joint access agreements. Section 25.21 (F) of the Tarpon Springs Code – Pinellas Trail Corridor District, states:

*Joint and Cross Access*

- (1) Adjacent commercial properties along the PTC zoning district shall provide joint access driveways. The joint access driveway shall provide a single access to the thoroughfare for adjacent properties. The joint access driveway shall be constructed in accordance with the requirements of § 129.00, Driveways and Access Management.*
- (2) In conjunction with a joint access driveway, a cross access easement to allow for the free flow of traffic between properties shall be required.*
- (3) If no other access to the thoroughfare is available, the primary developing property shall be permitted a temporary driveway accessing the thoroughfare. The temporary driveway shall be constructed in accordance with the requirements of § 129.00, Driveways and Access Management. All access rights to the thoroughfares shall be dedicated to the City of Tarpon Springs and the temporary driveway will be removed after construction of the joint access driveway.*
- (4) During development, the primary developing parcel shall construct a driveway access to the property line to make it visually obvious that the abutting properties will be tied-in to provide cross-access via a joint access driveway.*
- (5) Where access to the right-of-way is available through cross-access easements with adjacent properties, developing properties shall dedicate all ingress/egress rights to the City of Tarpon Springs.*

The criteria for granting a waiver are found in Table 138-231.a of the LDC. These criteria are that the granting of the waiver request: (1) is the minimum code deviation that will make possible the reasonable use of the land, and

(2) will be consistent and in harmony with the general purpose, intent, and spirit of the County Code. These waiver criteria have not been met as the request for access to Keystone Road, an arterial facility, is inconsistent with the provisions in Section 154-198 of the LDC and Chapter 5 of the PCTDM that require access onto the lesser facility, North Highland Avenue, a collector road, when available. Additionally, the waiver request is not the minimum code deviation to make reasonable use of the subject property when access to the collector road of North Highland Avenue is a viable option. The waiver request is also inconsistent with Section 154-198(g) of the LDC that focuses on safety, as the proposed connection to Keystone Road will create multiple traffic safety and operational issues. Therefore, the applicant has not met the County Code waiver criteria, and the County Staff's denial of the waiver request of the general access standards found in County Code Section 154-198 for access to the arterial road of Keystone Road should be upheld.

Attorney McAteer noted that, due to an LDC amendment, an adjustment was made to the administrative determination after this appeal was submitted; that while the original determination contained incorrect criteria, the correct criteria is now before the Board; and that, if the appellant requests a continuance, he would urge the Board to strongly consider it for procedural due process and substantive due process reasons.

Mr. Bomstein requested that the applicant indicate whether they would like to request a continuance or move forward with the case; whereupon, Mr. Pressman appeared and indicated that the applicant is prepared to move forward.

Public Works Transportation Section Manager Tom Washburn referred to a PowerPoint presentation and provided information regarding the location of the property, the site plan, applicable governing codes, access management standards, required modifications if the waiver is approved, and safety and operational concerns related to the site's proposed access to Keystone Road; whereupon, he responded to queries by the members, noting staff's safety concerns with the proposed access to Keystone Road.

Responding to a query by Mr. Burdette, Mr. Schoderbock confirmed that a previous application related to this property appeared before the Board several years ago; that the project was never developed; and that this is a new application by a new developer.

Upon the acting Chairman's call for the applicant, Mr. Pressman appeared. He referred to a PowerPoint presentation and indicated that the Board approved an application in 2022 that proposed 55 lots with access to Keystone Road; and that the applicant is only



proposing 13 lots with access to Keystone Road; whereupon, he responded to a query by Mr. Burdette.

Following an introduction by Mr. Pressman, Elizabeth Rodriguez, Tampa, provided information regarding traffic impacts and addressed comments made by Mr. Washburn, indicating that the applicable governing language stated that access to Keystone Road *may* be prohibited, which provides some discretion to the Board.

Thereupon, Housh Ghovae, Clearwater, referred to the aforementioned PowerPoint presentation, provided additional information related to challenges and justifications associated with on-site access points, and responded to queries by Messrs. Bomstein and Burdette, with input by Mr. Pressman.

Upon the acting Chairman's call for citizens in support or opposition of the project, Charlie Smith, Tarpon Springs, expressed his support of the proposed access point to Keystone Road.

In response to queries by the members, Ms. Rodriguez and Messrs. Ghovae and Pressman provided information regarding the proposed access point to Keystone Road and potential solutions to alleviate concerns related to traffic and safety.

Attorney McAteer indicated that the Board's discussion has strayed toward redrawing the plan, which is not before the Board today; and that he would request that the Board confine itself to the appeal at hand or continue the item to allow it to be redrawn and resubmitted; whereupon, a brief discussion ensued regarding potential actions that the Board could take, with input provided by Attorney McAteer and Messrs. Ghovae and Pressman.

Responding to a query by Mr. Burdette, Attorney McAteer, with input by Mr. Schoderbock, clarified that the applicant would need to wait six months to resubmit an appeal if the Board makes a final motion of denial today; and that while the applicant may bring new testimony and evidence in support of their case, they are not allowed to modify their request today; and that the applicant would not need to wait six months if a separate administrative waiver, with a different design, was submitted; whereupon, discussion ensued with input by Attorney McAteer, Ms. Rodriguez, and Messrs. Ghovae and Pressman.

During discussion, Attorney McAteer indicated that no new application for an identical request on the same parcel shall be accepted for consideration within a period of six months following a final decision on an administrative appeal; that an applicant may

request a waiver to this provision; and that the responsible hearing body, which refers to the BAA, may waive the provision for good cause.

Following discussion, Mr. Burdette made a motion to deny the appeal and accept the applicants' request for a waiver, based on staff's review and the facts presented today. Responding to a query by Mr. Bomstein, Mr. Burdette confirmed that his motion would waive the requirement that the applicant wait six months to reapply; whereupon, the motion was seconded by Mr. Doran and passed unanimously.

### **MINUTES OF THE SEPTEMBER 4, 2024 MEETING**

Mr. Burdette made a motion to approve the minutes, which was seconded by Mr. Bomstein and carried unanimously.

### **ADJOURNMENT**

The meeting was adjourned at 10:18 AM.