

**Board of Adjustment and Appeals
Pinellas County
May 31, 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
Vincent Cocks
John Doran
Deborah J. White

Not Present

Cliff Gephart

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 9:00 AM and provided an overview of the hearing process.

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.

MINUTES OF THE MAY 3, 2023 MEETING

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

Case No. NCU-23-01

APPLICATION OF EMBASSY MOBILE PARK INC. THROUGH WALTER LARSON, REPRESENTATIVE, FOR A NON-CONFORMING USE MODIFICATION

A public hearing was held the application of Embassy Mobile Park Inc. through Walter Larson, Larson Communities, for a non-conforming use modification to permit 25 additional travel trailer/RV sites in a Residential Mobile/Manufactured Home (RMH) zone, for the property located at 16416 US Highway 19 North in unincorporated Largo. No correspondence relative to the application has been received by the Clerk.

Mr. Bailey stated that the applicant submitted a letter requesting a continuance to the July 5 BAA meeting; whereupon, in response to a query by Mr. Bomstein regarding anyone wishing to speak on the application, Mr. Bailey noted that applicant's representative is in virtual attendance.

Mr. Doran made a motion, which was seconded by Ms. White and carried unanimously, that Case No. NCU-23-01 be continued to the BAA meeting on July 5, 2023.

Case No. TY2-23-06

APPLICATION OF PINELLAS COUNTY THROUGH BRUCE BUSSEY, REPRESENTATIVE, FOR A TYPE 2 USE

A public hearing was held on the application of Pinellas County through Bruce Bussey for a Type 2 Use to allow for the construction of 10 single-family detached homes in a Residential Medium (RM) zone, for the properties located at 4500 43rd Street North and 4312 46th Avenue North in 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 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. A Type 2 Use approval is required for single-family detached dwellings in the RM zoning district. The RM land use on this property allows up to 15 residential units per acre. At 1.34 acres, this would allow a maximum of 20 residential units on the subject property, subject to site plan review and permitting. The applicant is proposing only 10 residential units to be constructed, one on each of the 10 underlying original platted lots of record. Surrounding uses nearby include mostly single-family detached homes, a commercial wholesale nursery, and a public park to the north. Based upon community input at multiple public forums, a preference for the property to be developed with single-family homes instead of multifamily has been conveyed by the Lealman community. Approval should be subject to the following condition:

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

Joe Riddle, Community Development, appeared and provided information about the project. Upon the Chairman's call for proponents, David Lee, St. Petersburg, appeared and expressed his support of the application.

Mr. Bomstein noted that there is no opposition to the application and 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 Ms. White and carried unanimously.

Case No. TY2-23-07

APPLICATION OF YMCA OF THE SUNCOAST INC. THROUGH BRIAN AUNGST, JR., REPRESENTATIVE, FOR A TYPE 2 USE.

A public hearing was held on the application of the YMCA of the Suncoast Inc. through Brian Aungst, Jr. for a Type 2 Use to reinstate and modify a previously approved Type 2 Use to allow a 9,302 square-foot addition for a community service club (YMCA) in a Residential Agriculture (R-A) zone, for the property located at 1600 16th Street in Palm Harbor. 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 and modification of the previous Type 2 Use approval (Case No. BA-5-01-03) granted by the Board in 2003 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 Greater Palm Harbor YMCA has proposed renovations to its existing recreational facility. As part of the renovations associated with the club, the Greater Palm Harbor YMCA intends to build a 9,302 sq. ft. attached addition to modify their existing multi-purpose room and children's center. A Type 2 Use approval is required for a major modification to an existing community service club on a residentially zoned property.

The Board of Adjustment and Appeals formerly approved a special exception for a phased recreational facility development in 2003. The request included two phases for the recreational facility but since no activity has occurred for the second phase of this facility, the approval has expired. It is staff's opinion that the reinstatement and modification of a Type 2 Use approval with the recommended conditions will further accommodate the club's needs for future enhancements to their existing facility. 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.

Brian Aungst, Jr. and Scott Goyer, Clearwater, appeared, indicated that they are the applicant and the representative, respectively, and provided information regarding the request; whereupon, seeing no opposition, 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 Ms. White and carried unanimously.

Case No. TY2-22-11

APPLICATION OF CHRIST THE KING LUTHERAN CHURCH INC. LARGO FLORIDA THROUGH ALAN RUIZ, REPRESENTATIVE, FOR A TYPE 2 USE

A public hearing was held on the application of Christ the King Lutheran Church Inc. Largo Florida through Alan Ruiz for a Type 2 Use to allow the construction of a 120-foot-tall camouflaged communication tower and related support facilities for the R-2 zoned property located 11220 Oakhurst Road in unincorporated Largo. Twenty-nine letters in opposition to the application have 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 Type 2 Uses found in Section 138-241 of the Pinellas County Land Development Code (LDC). The LDC requires Type 2 Use approval for camouflaged communications towers in the R-2 zoning district that exceed 75 feet in height. The proposed tower is designed to resemble a cross and is 120 feet tall. Towers are also required to be set back from abutting residential property lines a distance equal to the height of the tower. That requirement is met in this case. Approval should be subject to the following conditions:

1. The applicant shall obtain all required permits and pay all applicable fees.
2. Appropriate site plan review.
3. All other requirements in LDC Section 138-3313 shall be met.

At the request of Chairman Burdette, Attorney McAteer provided information regarding the applicant's motion for summary judgement, granted by the United States District Court, Middle District of Florida, Tampa Division. He indicated that the Court stated that there was no substantial evidence in the record to justify the Board's decision to deny the original application for Type 2 Use to allow the 120-foot-high cell tower construction, heard in August of 2022; that the Court asked that the parties resolve the issue pertaining to the denial, which is the purpose of hearing the application again today; and that the Court reserves ruling on the applicant's request for a mandatory injunction pending the resolution efforts between the parties.

Attorney McAteer reiterated that only competent substantial fact-based testimony or evidence may be considered; that pure speculation or opinions, including health concerns that are not based on competent facts, cannot be legally considered by the BAA; that the BAA can only consider what is allowed by the Code; and that there are certain documents included in the agenda packet, which have not been entered into the record by the applicant. The Board members further related that the federal government does not allow considering property values and health hazards related to cell towers, as those concerns are deemed speculative. Responding to a query by Mr. Doran, Attorney McAteer clarified that today's hearing is "de novo", as it were a new case, where new evidence is allowed.

Mary Solik, Orlando, appeared and indicated that she represents Vertex Development LLC; that the application is based on the cell phone provider's (Verizon) need to expand

service in the area; that all setback requirements have been met, because they correspond to the proposed tower height; that the tower presents no danger to offsite properties as it has an engineered fall zone radius of 46 feet; that an 8-foot fence and landscaping would surround the area; and that County staff recommends approval.

Ms. Solik stated that she has been in contact with the County Attorney's Office and objects to the de novo hearing of the application because that is not consistent with the federal court's directive that the parties attempt to resolve the matter; whereupon, she indicated that the court has determined that the Board's decision should be based on the requirements of the Code and only factual information. She further related that the Board cannot deny the application based on the following: visual obtrusiveness or degree of visibility; per se incompatibility with a residential neighborhood; proximity, separation, screening, or buffering concerns, as the tower meets all those requirements; and property value impacts and health concerns, and Attorney McAtter provided input.

Ms. Solik indicated that the application being submitted is the same as last year; and that the following six criteria are to be utilized to evaluate the tower:

1. Consistent with the Pinellas County Comprehensive Plan
2. Adequate separation and screening device buffer
3. Adequate drives, walkways, and parking available for the proposed use
4. Does not create excessive vehicular traffic or traffic problems
5. No drainage issues created on subject or nearby properties
6. All provisions and requirements of the zoning district will be met

Responding to a query by Mr. Bomstein, Ms. Solik related that a 75-foot tower can be erected by Code without approval, but that her applicant needs a higher height to provide adequate service.

Upon the chairman's call for opponents, the following individuals appeared and expressed their concerns, including visual impacts, inadequate buffering, suitability with neighborhood character, potential health and safety hazard, electromagnetic pollution, property values, and more:

Adam Moravick, Largo (presented a video)
Margo Moravick, Largo (spoke on behalf of others in attendance)
Christine Barreiro, Largo (spoke on behalf of others in attendance)
Crystal Sherrill, Largo (spoke on behalf of others in attendance) (submitted documents)
Richard Tobey, Largo (submitted documents)
Baya Barreiro, Largo
Eileen Kwapien, Largo
Kirk Diehl, Largo
Matt Kallenbach, Largo

John McQueeney, Largo
Karl Kolf, Largo
Jason Conner, Largo
Lisa Donovanick, Largo

During citizen comments, Attorney McAteer indicated that the application was submitted under the previous Comprehensive Plan; therefore, it should be governed by that plan; and that any evidence presented needs to be provided to the Clerk for the record. Mr. Bailey related that some of the strategies referred to by the citizens were adopted under the new comprehensive plan earlier in 2023; whereupon, discussion ensued.

For clarification purposes, Attorney McAteer read an excerpt from the Land Development Code, Section 138-3313 regarding visual impacts of towers on the landscape.

In rebuttal, Ms. Solik expressed that her client is professional; that zoning drawings have been submitted and no guide wires are included; that the Code has a provision for removal of decommissioned towers; that the camouflaged pole is mitigating the aesthetic impact; that the Code provides for setbacks to address safety; and that in 2022 in Orange County, 91% of 911 calls were from cell phones, noting the benefit of robust service to the community.

Principal of Vertex Development LLC Alan Ruiz appeared and related that the tower would be designed to accommodate the following four licensed carriers in the market: AT&T, Verizon, T-Mobile, and Dish Wireless.

Ms. Solik concluded her summation, noting that a 75-foot tower is permitted in the neighborhood; that the future land use designation of the property is consistent with R-2 zoning; that tall structures already exist on the church property; and that the application has met all Type 2 Use criteria for approval.

Responding to a query by Ms. White, Ms. Solik related that the applicant offered a compromise of a 100-foot tower, in response to which the County Attorney's Office presented it to the Board of County Commissioners (BCC), and it was denied; hence, resulting in filing of a motion for summary judgement.

Responding to queries by Mr. Bomstein, Assistant County Attorney Andrew Keefe indicated that the reason the settlement proposal went to the BCC is that the BCC has not delegated authority to settle active litigation; and that the BCC did not have the court order at the time the settlement proposal was denied; whereupon, Ms. Solik clarified that the 100-foot height compromise is not being extended by her client at this point.

Responding to queries by the members, Mr. Ruiz related that the towers are needed for capacity as the carriers are limited by the Federal Communications Commission as to how much bandwidth they are allowed to use; and that monopole towers, such as the proposed one, are built to the strictest Florida building codes and can stand wind speeds up to 146 miles per hour.

Attorney McAteer stated that, as a point of clarification, Section 138-3313(c)(1)(b), camouflage may include towers to be designed to resemble trees, palms, flag poles, and other similar features; whereupon, Chairman Burdette closed the public hearing.

Discussion ensued regarding the court order, today's hearing, jurisdiction, competent and substantial evidence, and related matters. Responding to queries by the members, Attorney Keefe indicated that the federal court judge has the authority to overturn today's decision by the Board by issuing an injunction requiring approval of the application, and Mr. Bailey confirmed that staff's recommendation of approval has not changed; whereupon, Mr. Doran made a motion that the application be approved as recommended in accordance with the findings of fact as outlined in the staff report, noting that all six aforementioned criteria required to approve the application have been met. The motion was seconded by Mr. Cocks and carried 4-2, with Mr. Bomstein and Ms. White dissenting.

ADJOURNMENT

The meeting was adjourned at 11:45 AM.