

**Board of Adjustment and Appeals
Pinellas County
May 3, 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
Cliff Gephart
Deborah J. White

Not Present

John Doran

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 provided information regarding what type of evidence may be considered as competent substantial in the decisions by the Board.

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-22-23

APPLICATION OF ROBERT GRUBER THROUGH BRIAN AUNGST, JR.,
REPRESENTATIVE, FOR TWO VARIANCES

A public hearing was held on the application of Robert Gruber through Brian Aungst, Jr., to allow for the following two variances for the R-4 zoned property located at 555 Gulf Drive in Crystal Beach:

1. A variance to allow for the construction of an in-ground pool having a 10-foot front setback from the water's edge to the western property line, where 20 feet is required.
2. A variance to allow for the construction of an elevated retaining wall and associated decking having a 7-foot 5-inch front setback from the western property line, where 20 feet is required.

Two letters in support of 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 variances found in Section 138-231 of the Pinellas County Land Development Code (LDC). The subject property fronts Gulf Drive in Crystal Beach developed with a single-family home. There are some physical conditions associated with this property where it is one with a trapezoidal shape accompanied by large trees to the east of the property. The owner is proposing to construct an in-ground pool and decking closer to the west property line along Gulf Drive than normally allowed per Section 138-3505 of the LDC. Due to the irregularity of the lot's profile and existing mature trees within the side yard, it would be difficult to site a pool within this location. The proposed area for the in-ground pool and decking is in the front yard and is the only logical place for its installation. It is important to note that there are at least two other single-family homes on Gulf Drive that have in-ground pools within their front yard. Per the applicant, no pool enclosure is proposed.

Approval should be subject to the following condition:

1. Applicant must obtain all required permits and pay all applicable fees.

Brian Aungst, Jr., Clearwater, appeared and provided information regarding the request, pointing out the unique shape and frontage of the lot and the nearby roadway; whereupon, he related that the request is consistent with the development pattern in the neighborhood, noting that the pool directly next door is basically the same as the pool being proposed; that the request reflects an increase to the originally-proposed setback; and that a wave analysis has been conducted ensuring no flooding or drainage impacts.

Upon the Chairman's call for opponents, Ed Close, Crystal Beach, appeared and expressed his concerns; whereupon, he responded to a query by Mr. Bomstein.

In rebuttal and referring to an aerial view of the neighborhood, Mr. Aungst pointed out the unique position of the property as it relates to the road frontage and indicated that County staff and the applicant prefer to preserve the enhanced trees on the vacant parcel; and that two letters of support from the neighbors have been received stating that the landscaping and improvements the applicant is proposing will enhance the environmental aesthetics of the neighborhood. He related that a very detailed wave analysis from Anticus Engineering has been compiled and submitted; that the pool size has been decreased and the setbacks have been increased from the original application; and that he believes that competent substantial evidence to support the variances has been submitted.

Brian Barker, the applicant's engineer, appeared and responded to queries by Mr. Bomstein, with input by Mr. Bailey, regarding the proposed location of the pool, elevation of the deck and patio, proximity of the subject property to a park referenced by Mr. Close, and other matters. Discussion ensued regarding whether the pool setback relief is warranted.

Mr. Bomstein made a motion to approve the variances based on the findings of fact as outlined in the staff report. The motion was seconded by Ms. White and carried unanimously.

Case No. VAR-23-07

APPLICATION OF JOSEPH CARUSO FOR A VARIANCE

A public hearing was held on the application of Joseph Caruso for the following two variances for the R-4 zoned property located at 650 Georgia Avenue in Crystal Beach:

1. A variance to allow for the construction of a manufactured pool having a 6.91-foot side setback from water's edge to the western property line, where 10 feet is required.

2. A variance to allow for the extension of an existing elevated deck having a 2.95-foot side setback from the western property line, where 10 feet is required.

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. 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 (LDC).

The subject property is a corner lot where Georgia Avenue is considered the legal front and Gulf Drive is a side street. The owner is proposing to construct a manufactured pool and extend the existing elevated decking closer to the west property line along Gulf Drive than normally allowed per Section 138-3505 of the LDC. Due to the irregularity of the lot's shape and small interior yard, it would be difficult to site a pool and extend the existing decking within this location. The proposed area for the pool and extension of decking would be along the secondary front yard and is the only logical place for its installation.

It should be noted that the previous owner of this property received a variance (BA-1-10-13) to allow the existing setbacks of 14.98 feet from the south property line for both the first floor and second floor and to include the stairway to the second floor as reflected in the submitted survey.

Approval should be subject to the following conditions:

1. Applicant must obtain all required permits and pay all applicable fees.

Joseph Caruso, Crystal Beach, appeared and indicated that he is the owner of the subject property; that he has had several meetings with the County staff and has scaled the plans down to meet staff recommendations; that there is no intention on intruding on a nearby park; and that he is aware of the environmental sensitivity of the area, noting that the pool will be ozonated (chemical free); whereupon, he responded to queries by Mr. Bomstein.

Upon the Chairman's call for opponents, Ed Close, Crystal Beach, appeared and expressed his concerns.

Following discussion, Mr. Bomstein made a motion that the variances be granted as recommended in accordance with the findings of fact as outlined in the staff report, noting that approval of the variances would not present any harm to the neighbors. The motion was seconded by Mr. Bello and carried unanimously.

Case No. VAR-23-08

APPLICATION OF VIDYA AND SHEILA SAGAR THROUGH DAN DRAYTON,
REPRESENTATIVE, FOR A VARIANCE

A public hearing was held on the application of Vidya and Sheila Sagar through Dan Drayton, Drayton Homes, for a variance to allow for the construction of a 1,124 square-foot attached accessory dwelling unit where 750 square feet is the maximum permitted for the property located at 160 Turtle Creek Circle in East Lake Tarpon. No correspondence relative to the application has been received by the Clerk.

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 of 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 2-bedroom 1,124-square-foot accessory dwelling unit exceeds the maximum size normally allowed per Code by 374 square feet, or approximately 49 percent higher. The parameters set within the LDC are in place to ensure that the development of accessory dwelling units is clearly incidental to the primary residence.

Dan Drayton, Palm Harbor, and Sheila Sagar, Oldsmar, appeared and indicated that they are the representative and the applicant, respectively. Mr. Drayton related that the

applicant would like to construct an addition to their property for their elderly parents; and that accommodations for wheelchair accessibility and a live-in caretaker require more than 750 square feet. He indicated that the applicants wish to have a full kitchen there; however, if that is not allowed, he resubmitted a new design with a wet bar for permit approval, noting that the purpose of the variance is to be allowed a full kitchen.

During discussion and responding to queries by the members, Mr. Bailey indicated that “an addition” to a property is allowed to be over 750 square feet, but not have a full kitchen, and “an accessory dwelling” is allowed to have a full kitchen, but not be over 750 feet in size.

Responding to further queries by the members, Mr. Bailey indicated that compared to other municipalities, Pinellas County is much more flexible regarding accessory dwellings; and that the Code is currently being reviewed due to the need for affordable housing.

Discussion ensued regarding the 750 square-foot limitation and the full kitchen definition, and Mr. Bailey noted that per Code, an accessory dwelling definition includes a kitchen with a cooking stove; whereupon, Attorney McAteer cautioned the members on the terminology as it relates to appliances.

Ms. Sagar stated that this is their first remodel in 23 years; and that per her HOA (homeowners association), it has to be an addition or attachment to her house and cannot be a separate dwelling.

Mr. Gephart pointed out that the nature of the proposal relates to caretaking of handicapped elders, and Mr. Bomstein indicated that the Code itself creates unnecessary hardship in this case by its definitions and by accessory dwelling size limitations.

Attorney McAteer expressed concern that the Board was legislating through a decision on a case and setting precedents, rather than allowing the Board of County Commissioners to exercise its proper legislative authority, noting that doing so is beyond the function of the Board of Adjustment. In response, Mr. Bomstein related that the purpose of the variance process is to be able to grant a variance from the Code as it is written. Chairman Burdette expressed his opinion that every case stands on its own, eliminating the precedent concerns; whereupon, Mr. Bailey confirmed that in the past, the Board has made their decisions on a case by case basis.

Following discussion, Mr. Bomstein made a motion to approve the application based on the fact that the Code has consistently been interpreted that accessory structures are separate buildings on the property, and inasmuch as the proposed addition is not a separate structure but a part of the residence, conditions exist to warrant the request.

The motion was seconded by Ms. White and carried unanimously, with the following conditions of approval:

1. Applicant must obtain all required permits and pay all applicable fees.
2. The accessory dwelling unit cannot be rented.

Case No. VAR-23-05

APPLICATION OF ALAN KAHANA THROUGH KATIE COLE AND JAIME MAIER, REPRESENTATIVES, FOR A VARIANCE

A public hearing was held on the application of Alan Kahana through Katie Cole and Jaime Maier for variances to the Water and Navigation Code Section 58-555(b)(1), allowing a 60-foot-long docking facility where 50 feet is the maximum normally allowed by Code and Section 58-555(b)(2), allowing a 10-foot setback for the docking facilities from the north property line where a 33.33-foot setback would normally be required by Code, for the R-2 zoned property located at 692 Columbus Drive, Tierra Verde, in unincorporated Pinellas County. One letter in opposition to the application has been received by the Clerk.

Environmental Program Manager Julee Sims introduced the case and presented the following staff recommendation:

Recommend Conditional Approval. Water and Navigation Staff (“Staff”) does not object to the conditional approval of this variance request as it appears to meet the criteria articulated in County Land Development Code Section 138-231.

Alan Kahana owns the single-family residential property at 692 Columbus Drive, Tierra Verde, in unincorporated Pinellas County (the “Subject Property”). Staff issued County Permit No. WND-21-00235 (the “Permit”) to Mr. Kahana on June 4, 2021. The Permit authorizes the construction of certain docking facilities (the “Docking Facilities”) extending from the Subject Property. The Docking Facilities were subsequently partially constructed in accordance with the Permit. Mr. Kahana seeks a variance to allow these constructed Docking Facilities to remain, as well as to construct the Docking Facilities that have not yet been constructed. The County Code Sections that require a variance here are 58-555(b)(1) and (b)(2).

(Note: Staff recently learned that Mr. Kahana completed minor alterations to the Docking Facilities to reduce the square footage of same. Such alterations were apparently required by FDEP. These minor alterations do not impact the length and setbacks of the Docking Facilities, therefore, are irrelevant to this variance request. However, even if the variance here is granted, Staff will seek an updated set of plans reflecting the Docking Facilities' reduced square footage.) Sections 58-555(b)(1) and (b)(2) set forth length and setback requirements respectively for private single-family docking facilities in unincorporated County; these requirements are based upon waterfront property width. Specifically, Section 58-555(b)(1) requires that the length of docking facilities not exceed 50% of the waterfront property width. Section 58-555(b)(2) requires that docking facilities be located within the center 1/3 of the waterfront property, or 50 feet from the adjacent property, whichever is less restrictive. Each of these requirements may be waived by Staff if signed statements of no objection from affected adjacent property owners are provided. In the case of Section 58-555(b)(1), both adjacent property owners must sign off; in the case of Section 58-555(b)(2), only the encroached upon adjacent property owner(s) must sign off. No signed statements of no objection from affected adjacent property owners have been provided.

The waterfront width of the Subject Property is 100 feet. Accordingly, Section 58-555(b)(1) requires that the length of the Docking Facilities be 50 feet. However, the length of the Docking Facilities is 60 feet. Therefore, a variance of 10 feet to Section 58-555(b)(1) is required. Further, in accordance with the Subject Property's 100 feet waterfront width, Section 58-555(b)(2) requires that the Docking Facilities be constructed within the center 33.33' of the Subject Property at the waterfront. However, the Docking Facilities are setback 10 feet from the adjacent property to the north. Therefore, a variance of 23.33 feet to Section 58-555(b)(2) is required. Code Section 58-539(a)(1) authorizes the Board of Adjustment and Appeals to approve variances to Sections 58-555(b)(1) and (b)(2). Approval should be subject to the following conditions:

1. Revised plans must be submitted to Staff (a) reflecting the aforementioned recent modifications made to the Docking Facilities required by FDEP (reducing square footage) and (b) including an engineer's seal certifying that the materials used to construct the Docking Facilities meet or exceed the requirements set forth in Code Section 58-553.

Ms. Sims pointed out that the above-referenced dock permit issued in 2021 was in error, because the dock length and setback requirements were waived by staff without the required signed statements of no objection from the affected neighbors; and that the applicant is presently seeking approval of the above variances in order to finish the dock construction, specifically, the boat lift, as the dock itself is finished.

Responding to queries by the members, Ms. Sims explained that the matter came to staff's attention upon the applicant's neighbor informing of the initiated boat lift construction and subsequent staff review of the permit; and that if the County did not make the aforementioned error and thus did not issue the permit, the applicant would have had to obtain the Board's approval of the variances in order to have an extended dock and a smaller setback to the north of his property.

Senior Assistant County Attorney Brendan Mackesey addressed a letter received from a neighbor residing a few houses to the south of the subject property, indicating that her decision to forego seeking a similar variance for her own property cannot be used against the applicant. He further noted that concerns about setting a precedent for disregarding the Code and dock safety related to boat traffic are factually inaccurate and irrelevant to the case; and that the applicant halted construction upon being informed of a permit error and applied for variances.

Attorney Mackesey, with input by Attorney McAteer, also addressed concerns of the adjacent neighbor to the north, Michael Richardson, noting that considerations of property values are not a proper criteria in the variance review; that the northern neighbors' access to navigable waters would not be impacted by the variances; and that potential view impact may not be substantial enough to be considered. He underscored that the matter arose from an error; and that any accusations of collusion, fraud, or bribery are unfounded, noting professionalism and integrity of the department staff; whereupon, responding to a query by Mr. Bomstein, he provided information regarding hardships to consider in the case review.

Jaime Maier, Clearwater, indicated that she represents the applicant, and referring to a PowerPoint presentation, provided information regarding the request. She highlighted that the dock was constructed in accordance with the issued permit; that the additional 10 feet in dock length is needed to access navigable waters; and that the dock addition and setback reduction variances are common for the area. She related that the request can be approved either through neighbors' signatures in support of the permit or by the BAA.

Responding to queries by the members, Ms. Maier indicated that the applicant requested the neighbors' signatures, but they objected; and that staff found that the proposed dock

met all Code-based criteria for a permit, as it was deemed not detrimental to the use of navigable waters, recreation, surrounding uplands, health, safety, environment, and more. She noted that variance criteria evaluated by staff is different, indicating that hardship, which is not self-imposed, and special conditions exist that are unique to the subject property, such as depth of the channel and placement of surrounding docks. She related that no navigability or property rights are impaired by the variances; that neighbor sign-off is not a criteria; and that the request is in harmony with the Code and is not harmful to health, safety, or welfare.

No one appeared upon the Chairman's call for proponents to the application; whereupon, Robert Cotter, Tierra Verde, appeared virtually to inquire about the request.

Upon the Chairman's call for opponents to the application, the following persons expressed their concerns, including view impacts, legality of the proposal, staff permit error, and the dock not being built in accordance with the issued permit:

Michael Richardson, Tierra Verde
Francis Morgan Scarritt, Tierra Verde (submitted a document)
Joseph Cadigan, Tierra Verde

During a brief discussion and responding to queries by the members, Ms. Sims provided information regarding the location of the previous dock, for which the current one is a replacement, and requirements for a boat lift size and placement. Attorney McAteer noted that images on cell phones shown by the opponents cannot be considered in the case, unless provided to the Clerk for the record.

In rebuttal, Ms. Maier emphasized her previously discussed points and addressed the concerns by the neighbors and queries by the members, including providing information about a consent order from the Florida Department of Environmental Protection pertaining to the dock size.

Responding to a query by the Chairman, Attorney Mackesey provided information regarding the administrative hearing process for Water and Navigation variances, noting that the Development Review Committee does not handle those; and that surrounding property owners for this case were noticed and participated in the administrative hearing held on this case.

Following discussion regarding the staff error, variance criteria, impact of the variances on the neighboring properties in absence of the error, and related matters, Mr. Bomstein made a motion that the variances be granted in accordance with the findings of fact as outlined in the staff report. Chairman Burdette clarified that the motion is also based on

the expert testimony that was presented for one side only. The motion was seconded by Mr. Cocks and carried 4 to 1, with Mr. Gephart dissenting.

MINUTES OF THE APRIL 5, 2023 MEETING

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

OTHER BUSINESS

Attorney McAteer indicated that the quasi-judicial statement regarding competent substantial evidence is now included in the mailed notices, appears on the agenda, and will be read at the beginning of each meeting to inform the public of the federal and state standards required to make a decision.

Attorney McAteer recommended that when an applicant appears and states their name and address, they should also state that they have been sworn in.

ADJOURNMENT

The meeting was adjourned at 11:28 AM.