

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, January 14, 2009 - 9 a.m. – Room 119
Charlotte County Administration Center
18500 Murdock Circle
Port Charlotte, FL 33948-1094

(These minutes are not official until they have been approved by the Charlotte County Board of Zoning Appeals)

Members Present

Tom Thornberry, *Vice-Chair*
Bob Stout, *Secretary*
Ed Hittson
Audrey Seay
Bill Truex

Staff Present

Derek Rooney, *Assistant County Attorney*
Nicole C. E. Dozier, *Zoning Official*
Ken Quillen, *AICP, Planner III*
Barbara D. Watkins, *Recorder*

I. Call to Order

Vice-Chairman Thornberry called the January 14, 2009 meeting of the Board of Zoning Appeals to order at 9 a.m.

II. Pledge of Allegiance

Vice-Chairman Thornberry led the members and the audience in reciting the Pledge of Allegiance.

III. Roll Call

Roll call was taken; a quorum was present. *Vice-Chairman Thornberry* welcomed new Board member, Bill Truex.

IV. Swearing In of Those Giving Testimony

Barbara Watkins swore in all persons who wished to provide testimony.

V. Approval of Minutes

ACTION: A motion was presented by Ed Hittson and seconded by Audrey Seay to approve the minutes of the December 10, 2008 meeting of the Board of Zoning Appeals as written. Motion carried unanimously.

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the January 14, 2009 Board of Zoning Appeals meeting were submitted.

VII. Introduction of Staff/Comments

Vice-Chairman Thornberry introduced staff. *Nicole Dozier, Zoning Official, Attorney Derek Rooney and Vice-Chairman Thornberry* made introductory remarks regarding the types of requests that the Board of Zoning Appeals would be reviewing and the standards which must be met, the notification process and how the Board of Zoning Appeals makes its decision.

VIII. New Business

The following petitions were advertised on December 30, 2008: ADM-APP-09-01; ADM-APP-09-02; VAR-09-01; VAR-09-02; SE-08-39; SE-09-02; SE-09-03; SE-09-04

Petition #SE-08-39 – On Hold; Will not be Heard

Petition #ADM-APP-09-01

Roger Wax is requesting an appeal of the Zoning Official's determination regarding the definition of a sign/signage interpretation in the Commercial General (CG) zoning district. The subject property is addressed as 3854 Tamiami Trail, Port Charlotte, Florida and is described as Lot 2, Block 486, Port Charlotte Subdivision Section 9, in Section 23, Township 40 South, Range 22 East. The property contains +/- 7,500 square feet. A complete legal description and additional information are on file.

Nicole Dozier presented general information and staff findings for the petition.

Vice-Chairman Thornberry conferred with Derek Rooney prior to beginning the appellant's speaking. *Mr. Rooney* provided clarification on the three issues to be considered in an appeal of the Board. *Mr. Wax* appeared before the Code Enforcement Board and was given a certain number of days to apply for a Variance from the Board of Zoning Appeals or remove the skull (Note: It should have been a Special Exception he would have needed to apply for for signage issues per code). The option was given to *Mr. Wax* to apply for a special exception or an admin appeal.

Roger Wax, the appellant, 3854 Tamiami Trail, appeared before the Board to further present the petition. He indicated he filed an appeal rather than a special exception because if he applied for the special exception, he felt he would be admitting it is a sign and he stated it is not a sign, but art...his way of expressing art.

Prior to beginning his testimony, *Audrey Seay* asked *Mr. Wax* to clarify his definition of a sign versus art which he proceeded to do.

At this point, *Roger Wax* submitted **Exhibits A-S** to the Board, a copy of which is included as part of the permanent record.

Jason Weddell, 20037 Sandcraft Avenue provided an explanation of how this petition materialized. During his discussion, there appeared to be confusion as to which Board the appellant was appealing...the Code Enforcement Board or the Board of Zoning Appeals. He concluded by saying that the skull was not placed with the intention of drawing in business.

Mr. Wax offered the Board to withdraw the Admin Appeal as he feels it's against his Constitutional rights. *Vice-Chair Thornberry* indicated this could not be done and advised *Mr. Wax* to continue with the appeal.

Mr. Wax continued to review at length each of the exhibits he presented. *Attorney Rooney* reminded *Mr. Wax* that he should be focusing his attention as to whether the skull is a sign or a piece of art because this is what the Board is going to have to make a determination on. In closing, *Mr. Wax* stated that he did this artwork to represent himself; it's not a sign.

Vice-Chairman Thornberry opened the meeting to Public Hearing.

Grace Amodeo, 17079 O'Hara Drive, spoke that as a member of the CRA, they have been trying to clean-up the CRA which this does not; she spoke in opposition of the appellant.

Jason Weddell, 20037 Sandcraft Avenue, commented that the skull is a Celebration of life and does not detract from the community; spoke in support of the appellant.

Bill McBride, 4540 Fernway Drive, spoke in support of the appellant; he feels this is truly a piece of artwork and there are several other sculptures in the County. Art is in the eye of the beholder.

There being no further requests to speak for or against the petition, the Public Hearing was closed.

Roger Wax provided rebuttal to the comments made during the public hearing.

Bob Stout commented that the skull dominates the façade. He also stated that, in his opinion, if Mr. Wax had taken the advice of the zoning official and come in with a special exception, it most likely would have been approved.

There was considerable discussion among the members regarding the reasons this petition came before the BZA and what exactly the Board is to base their decision on. Attorney Rooney stated that the Board is to base their decision on the fact that the zoning official has determined that the skull is a sign as determined by Charlotte County Code. It was noted that the appellant did have the opportunity to apply for a special exception. The Board's decision is to establish whether the skull is a sign or not.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

ACTION: A motion was presented by Bob Stout and seconded by Audrey Seay that ADM-APP-09-01 be DENIED based on the Community Development Staff Report dated January 5, 2009, the evidence and testimony presented at the hearing and finding that the appellant HAS NOT MET the required criteria for the granting of the administrative appeal.

Discussion:

Vice-Chairman Thornberry commented that the skull is not offensive to him, however, he understands that the fact that it is in front of a tattoo parlor is offensive to some. He commented that he does not have a problem with the skull.

Motion carried for DENIAL 4 to 1 (Thornberry against)

Petition #ADM-APP-09-02

C. Michael Polk is requesting an appeal of the Zoning Official's determination regarding the definition of wall in the Commercial General (CG) zoning classification of the U.S. 41 Overlay District. The subject property is addressed as 563 Tamiami Trail, Port Charlotte, Florida and is described as lot 9, 10 & 11, Block 2434, Port Charlotte Subdivision Section 29, in Section 02, Township 40 South, Range 21 East. The property contains +/- 48,336 square feet. A complete legal description and additional information are on file.

Nicole Dozier presented general information and staff findings for the petition.

Bill McBride, the engineer of record representing the appellant, appeared before the Board to further present the petition at length. He stressed that the definition of a wall is that it can be constructed of anything, as long as it is a solid buffer. He believes that the ordinance should have been more specific on the material a wall is constructed of.

Vice-Chairman Thornberry asked why the fence was put up without a permit. Had the contractor applied for a permit, it would have been rejected. The only reason that it's gotten this far is that it was done without a permit. Bill Truex commented that he would not have put up a fence without a permit.

Considerable discussion ensued that the Landscape Ordinance and US 41 Overlay District Code do not agree.

Ed Hittson asked Mr. McBride what his interpretation was from the Development Review Committee (DRC) that a wall be put up; *Mr. McBride's* response was "PVC".

Vice-Chairman Thornberry opened the meeting to Public Hearing.

There being no requests to speak for or against the petition, the Public Hearing was closed.

Board Member Comments and Questions

Bob Stout spoke in support of the petition. He stated he does not have a problem with the fence and recited the definition of a wall per the dictionary.

Ed Hittson commented that we're dealing with semantics...the fence was constructed without a permit and he agrees with the zoning official.

Audrey Seay spoke that she has no problem with the fence as a wall, but she does have a problem with it being done without a permit.

Ms. Dozier explained that this came up because this particular parcel is within the US 41 overlay which specifies that the wall should be of a masonry material.

Audrey Seay asked what can be done to make this right? *Ms. Dozier* could only state that if it had been done right, we wouldn't be here discussing it.

Bill Truex commented that some times owners sometimes do things that contractors know they shouldn't do and in so doing, somebody else has to try to clean up the mistake...this is where we are at now.

Bill McBride provided a rebuttal to the comments made. He wanted to ensure that everyone is aware that the buffer required is a Type B in the overlay district, not a Type D. What is required of a Type B buffer landscaping has been provided. *Ms. Dozier* provided the exact section numbers in the US 41 overlay district code which specify a Type D buffer is required. Considerable discussion continued regarding the type of wall.

Attorney Rooney said that the landscape code is irrelevant because this is an appeal of the zoning official's determination who only has authority over Section 3-9 of the code; the landscape ordinance is not in the zoning code.

ACTION: A motion was presented by Ed Hittson and seconded by Audrey Seay that ADM-APP-09-02 be DENIED based on the Community Development Staff Report dated January 5, 2009, the evidence and testimony presented at the hearing and finding that the appellant HAS NOT MET the required criteria for the granting of the administrative appeal.

Motion carried 4 to 1 (Stout against)

***** 5-MINUTE BREAK *****

Petition #VAR-09-01

Hans Agostini is requesting a variance to reduce the side yard setback from 10' to 6.5' and reduce the rear yard setback from 10' to 4.3' to allow an accessory

structure, consisting of a shed, in a Planned Development (PD) zoning district. The property address is 1475 Flamingo Drive, Unit 235, Englewood, Florida and is described as Lot 235, Holiday Travel Park of Englewood, a Condominium, in Section 04, Township 41 South, Range 20 East. The property contains +/- 1,600 square feet. A complete legal description and additional information are on file.

Ken Quillen presented general information and staff findings for the petition.

Hans Agostini, the applicant, appeared before the Board to further present the petition and requested approval of the variance.

Vice-Chairman Thornberry opened the meeting to Public Hearing.

There being no requests to speak for or against the petition, the Public Hearing was closed.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Ed Hittson asked where this recommendation would stand in relation to a building permit...if this Board provides approval, would a building permit still be required. The response was yes.

Vice-Chairman Thornberry commented, for the benefit of the other board members that his concern is that the work was begun without having obtained a permit. It appears that several of the surrounding mobile homes have setback issues as well.

Bill Truex commented that it appears that the shed is under the carport which was already there.

Nicole Dozier stated for the record that there are a number of mobile homes that are in violation of the code. In this particular instance, the shed was constructed without a permit; she is not aware if a permit was pulled for the carport.

Board Member Comments and Questions

ACTION: A motion was presented by Audrey Seay and seconded by Bob Stout that VAR-09-01 be APPROVED based on the Growth Management Staff Report dated January 5, 2009, the evidence presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the variance.

- 1. The variance as approved by the Board of Zoning Appeals is to reduce both the side yard setback from 10' to 8.3' and reduce the rear yard setback from 10' to 6.5' to allow a 7' by 7' (49 square foot) shed as shown on the Survey submitted and labeled Exhibit S-5.***
- 2. This variance extends only to the proposed shed, to be located on Lot 235 only, and shall carry with the structure only. If the shed is ever removed all development must be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.***

Motion carried unanimously.

Petition #VAR-09-02

Lavon and Linda Cobb are requesting variances to: (1) allow roof overhangs to project 16" into all yards; (2) allow sunshades to project 36" into all yards; (3) reduce the rear yard setback from 35' to 18.8' for the principal building; and (4) reduce the rear yard setbacks from 35' to 10' for an exterior deck for a new single-family residence in a Manasota Multifamily-7.5 (MMF-7.5) zoning district. The property address is 955 South Gulf Boulevard, Englewood, Florida and is described as Lot 8, Block F, Englewood Shores Subdivision in Section 18, Township 41 South, Range 20 East. The property contains +/- 7,980 square feet. A complete legal description and additional information are on file.

Ken Quillen presented general information and staff findings for the petition.

Ed Hittson asked if this is the new overlay district code which was put into affect last year with regard to overhangs. *Ms. Dozier* stated responded yes, there was a modification made to the Manasota Key provisions in which they put in some specific language as it relates to having objects and items within the setbacks.

Bill Truex stated that the amendment to the Manasota Key Overlay was made in February 2008.

Elaine Miller, representing the applicant, architect of record, appeared before the Board to further present the petition. She reviewed and commented upon each of the criteria and stated they agree with staff's findings and recommended conditions and respectfully requested approval of the petition.

Lavon Cobb, the applicant, 1015 Briarwood Drive, Wachula, Florida, shared his concerns with the Board and stated it's next to impossible to build a residence and be in compliance with the Manasota Key Overlay code. He stressed that they need the Board's approval to enable them to construct their residence. He distributed **Exhibit I** for the record.

Vice-Chairman Thornberry opened the meeting to Public Hearing.

Phil Eason, 32-year resident of Manasota Key and member of the South Manasota Key Association stated that some of the portions of the Manasota Overlay Code were made without consideration of the non-conforming or undersize lots on Manasota Key, of which there are many. He stated that in his opinion, the owners have done an excellent job of designing an attractive, efficient and responsible home for the lot in question. It's his fear that the overhangs and minor setback issues are not relaxed somewhat on the non-conforming lots, the key will end up with a series of unattractive and/or inefficient homes on the South end of the key. He spoke in support of the petition.

Madelyn Drayer Basham, 1100 Gulf Boulevard, spoke in support of the petition and urged the board to approve the petition to allow the key to be aesthetically beautiful.

David Basch, 1100 Gulf Boulevard, spoke in support of the petition and requested approval of the petition; it would add to the character of the key.

There being no requests to speak for or against the petition, the Public Hearing was closed.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Audrey Seay spoke that the Manasota Key Architectural Committee recommended denial; was there any other comment received from them. *Ken Quillen* stated there have not been any additional comments received from them since the staff report was written.

Ed Hittson asked that *Elaine Miller* speak as to the concerns raised by the Manasota Key Architectural Committee. *Elaine Miller* responded that a code which prohibits energy conservation and good construction is a code that needs to be re-evaluated and she stated that she will most likely be returning in the future to say the same thing.

Board Member Comments and Questions

Bill Truex commented that he is very familiar with Manasota Key and has done considerable work there. He stated that he feels the owners have done it the right way and that the architect has done it the right way. Having been partially involved in what is being attempted to get a "green building ordinance" he would certainly say that in this particular instance, it's a step in the right direction.

ACTION: A motion was presented by Bob Stout and seconded by Audrey Seay that Petition #VAR-09-02 be APPROVED based on the Growth Management Staff Report dated January 5, 2009, the evidence presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the variance with the following conditions:

- 1. The variance as approved by the Board of Zoning Appeals is to reduce the required setbacks as follows: (1) allow roof overhangs to project 16" into all yards; (2) allow sunshades to project 36" into all yards; (3) reduce the rear yard setback from 35' to 18.8' for the principal building; and (4) reduce the rear yard setbacks from 35' to 10' for an exterior deck for a proposed new single-family residence as shown on the proposed drawings submitted with the application.***
- 2. This variance extends only to the proposed single-family residence and shall carry with the structure only. If the residence is ever replaced all development must be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.***

Motion carried unanimously.

Petition #SE-08-39 – On Hold; Will not be Heard

Petition #SE-09-02

James and Sandra Rodweller are requesting a special exception to allow a mobile home in an Agriculture Estate (AE) zoning district. The property address is 7457 Austrian Boulevard, Punta Gorda, Florida and is described as Tract 60, in Section 12, Township 41 South, Range 23 East. The property contains +/- 1.25 acres. A complete legal description and additional information are on file.

Ken Quillen presented general information and staff findings for the petition.

Sandy Rodweller, the applicant, appeared before the Board to further present the petition.

Vice-Chairman Thornberry opened the meeting to Public Hearing.

Richard Sukovich, 7441 Austrian Boulevard, spoke in opposition to the petition.

Michael Szuba, 6308 Gewant Boulevard, spoke in opposition to the petition. Ed Hittson commented that he notice there are other mobile homes in the area. Mr. Szuba said there are, but they are modulars, not mobile homes.

Mark Rivers, 7324 Grove Boulevard, spoke in opposition to the petition

Judith Mosley, 7062 Austrian Boulevard, spoke in opposition to the petition.

There being no further requests to speak for or against the petition, the Public Hearing was closed.

Sandra Rodweller spoke that she was not informed that mobile homes were not allowed in the area, and commented she's very offended by the comments which were made. She mentioned the many run down properties in the area which are detrimental to the community. In conclusion, Ms. Rodweller, stated she has met the six criteria.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition. Mr. Quillen stated that callers to the office have noted that there are deed restrictions in this development that restrict mobile homes, however, the County does not enforce deed restrictions. Ms. Dozier commented that the zoning code specifically allows manufactured homes within the Agriculture General and Agriculture Estate zoning districts. It does exclude mobile homes, however, the code does allow mobile homes via special exception which is the route the applicant has taken.

Board Member Comments and Questions

ACTION: A motion was presented by Audrey Seay and seconded by Bob Stout that Petition #SE-09-02 be APPROVED based on the Growth Management Staff Report dated January 5, 2009, the evidence presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception, with the following conditions:

- 1. The special exception as approved by the Board of Zoning Appeals is for a single mobile home to be used as a residence. All yards and setbacks for the Agriculture Estate (AE) zoning district shall be observed in the placement of the mobile home.***
- 2. This special exception extends only to the land included in the Site Plan and legal description submitted with this application. Any modification, alteration or revision of this use may require a modification of the special exception.***
- 3. The site plan submitted by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes are applicable to the erection and operation of the proposed mobile home.***
- 4. The mobile home erected on this property must be rated for Zone III wind loads by HUD as evidenced by the Data Plate supplied by the manufacturer.***

Motion carried unanimously.

Petition #SE-09-03

John Piccirillo is requesting a special exception to allow a home occupation, consisting of a realtor's office, in a Residential Single-family-3.5 (RSF-3.5) zoning district. The property address is 1141 Davenport Drive, Port Charlotte, Florida and is described as Lots 59 and 60, Block 3006, Port Charlotte Subdivision Section 55, in Section 07, Township 40 South, Range 21 East. The property contains +/- 21,500 square feet. A complete legal description and additional information are on file.

Ken Quillen presented general information and staff findings for the petition.

John Piccirillo, the applicant, appeared before the Board to further present the petition. He stated there will be no non-resident employees. He agrees with staff's findings and recommended conditions.

Bob Stout asked about signage; *Mr. Piccirillo* responded that in accordance with requirements of the Board of Real Estate Commission, a 5" x 6" sign with 2" letters will be posted by the front door.

Vice-Chairman Thornberry opened the meeting to Public Hearing.

There being no requests to speak for or against the petition, the Public Hearing was closed.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

ACTION: A motion was presented by AS and seconded by BT that Petition #SE-09-03 be APPROVED based on the Growth Management Staff Report dated January 5, 2009, the evidence presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception, with the following conditions:

- 1. This special exception shall allow a home occupation, consisting of a realtor's office, as an accessory use to the existing single-family residence.***
- 2. This special exception, allowing a home occupation, shall be conducted according to all of the standards and conditions of Section 3-9-79 of the Zoning Ordinance.***
- 3. Any major modification or change in the type of home occupation conducted shall require a modification to the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.***

Motion carried unanimously.

Petition #SE-09-04

Charlotte Honda-Volkswagen is requesting a special exception to allow three wall signs totaling 65 square feet in an Industrial Light (IL) zoning district. The property address is 665 Woodbury Drive, Port Charlotte, Florida and is described as part of Lots 7 and 8, Block 5, Port Charlotte Industrial Subdivision, in Section 07, Township 40 South, Range 22 East. The property contains +/- 2.2 acres. A complete legal description and additional information are on file.

Ken Quillen presented general information and staff findings for the petition.

Ed Hittson questioned where the location of the sign is that was to be removed. *Mr. Quillen* responded the free-standing sign is noted on Exhibit S-2 as SG-4.

John Hamill, 1252 Tamiami Trail, representing the applicant, appeared before the Board to further present the petition. They concur with staff's findings and recommended conditions, however, they request that recommendation #2 be revised to state they be allowed to seek encroachment permission or move the sign back 2.6' if necessary, to enable them to begin the permitting process. Discussion ensued.

Vice-Chairman Thornberry opened the meeting to Public Hearing.

There being no requests to speak for or against the petition, the Public Hearing was closed.

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

Board Member Comments and Questions

ACTION: A motion was presented by Ed Hittson and seconded by Bob Stout that Petition #SE-09-04 be APPROVED based on the Growth Management Staff Report dated January 5, 2009, the evidence presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception, with the following conditions:

- 1. This special exception is to allow three secondary class "A" wall signs on the Volkswagen dealership building, not to exceed 65 square feet in area, as indicated on the sign drawings submitted with this application. Any proposed additional future secondary class "A" wall signs for this building will require a modification of this special exception.***
- 2. The primary class "A" sign that reads: "USED CAR BARGAIN LOT", and extends into the public right-of-way, shall be either removed, relocated or modified so that no part of the sign projects into the public right-of-way unless the applicant otherwise obtains permission to encroach into the public right-of-way.***
- 3. The site plan presented by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of the proposed commercial business and all associated signage.***

Motion carried unanimously.

IX. Public Comments - None

X. Staff Comments

Nicole Dozier announced that this is Barbara Watkins last BZA meeting as she is retiring. She expressed appreciation to Barbara for being a wonderful administrative assistant and for the efforts she put forth in her work for the Board of Zoning Appeals... she'll be sadly missed.

Ken Quillen stated there will be two petitions for February. Further, *Ken* commented he needs to set up a time with *Bill Truex*, new BZA Member, for his Board orientation and asked him to provide a time that is convenient.

XI. Member Comments - None

XII. Election of Officers

Chairman

***A motion was presented by Bob Stout and seconded by Audrey Seay that Tom Thornberry be elected as Chairman for 2009. Motion carried unanimously.
Tom Thornberry accepted.***

Vice Chairman

***A motion was presented by Ed Hittson and seconded by Bob Stout that Audrey Seay be elected as Vice-Chairman for 2009. Motion carried unanimously.
Audrey Seay accepted.***

Secretary

***A motion was presented by Audrey Seay and seconded by Tom Thornberry that Ed Hittson be elected as Secretary for 2009. Motion carried unanimously.
Ed Hittson accepted.***

XIII. Next Meeting

The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, February 11, 2009, 9 a.m., in Room 119.**

There being no further business, the meeting **ADJOURNED** at 12:38 p.m.

Respectfully submitted,

Barbara D. Watkins, Recorder

/bdw

Tom Thornberry, Vice- Chairman/Board of Zoning Appeals

Approved: _____