

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, March 11, 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, *Chairman*
Audrey Seay, *Vice-Chair*
Ed Hittson, *Secretary*
Bob Stout
Bill Truex

Staff Present

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

I. Call to Order

Chairman Thornberry called the March 11, 2009 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

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.

IV. Swearing In of Those Giving Testimony

Jane Starr swore in all persons who wished to provide testimony.

V. Approval of Minutes

ACTION: A motion was presented and seconded to approve the minutes of the February 11, 2009 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 March 11, 2009 Board of Zoning Appeals meeting were submitted.

VII. Introduction of Staff/Comments

Chairman Thornberry introduced staff. *Nicole Dozier, Zoning Official, Attorney Derek Rooney and Chair 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 February 24, 2009: VAR-09-03, VAR-09-04 and SE-09-07

Petition #VAR-09-03

Ronald and Nancy Manning are requesting a variance to reduce the setback required from a water body from 20' to 9.9' to allow an accessory structure,

consisting of a wood deck, in a Mobile Home Park (MHP) zoning district. The property address is 215 Rio Villa Drive, Unit 26-B, Punta Gorda, Florida and is described as Unit 26-B, Windmill Village, in Section 18, Township 41 South, Range 23 East. The property contains +/- 5,400 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 inquired if this request was the result of an enforcement violation. *Mr. Quillen* responded that the applicant had started work before obtaining a permit and discontinued the project when the permit was rejected.

Harry Stuart, 54 Mabre De Dies, Punta Gorda, representing the applicant, appeared before the Board to further present the petition. He stated he was the contractor that originally installed the home and confirmed the park has given their permission to put the landing on their property. He further stated the deck would not cause any negative impact within the park in case of an emergency or otherwise. *Mr. Stuart* responded that although he did not have information regarding the contractor who initiated the work, he was asked by the applicant to become the general agent in obtaining a properly licensed contractor to submit plans and reapply for a Building Permit prior to any other work proceeding.

Upon further review of the file, *Ken Quillen* noted the application did indicate this action was the result of a violation. *Mr. Stuart* responded the applicant approached him regarding completion of the project and it was agreed they would move forward according to the laws and codes of Charlotte County.

Audrey Seay voiced concerns regarding the timeline. *Mr. Quillen* confirmed the applicant submitted an application for the Building Permit in September of 2007. *Mr. Stuart* stated he requested to be heard before the Board in December but was delayed when he realized he would need a certified survey.

Bill Truex inquired further about the original height of the deck and was told that a violation had been issued following work by an unlicensed contractor. The same contractor returned and lowered the structure at which time *Mr. Stuart* advised the applicant to Request a Variance before proceeding further.

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

Audrey Seay felt the applicant started this project with good intentions and was trying to comply with rules and regulations. She stated she felt it was the person who originally began the installation who created the problems.

Ed Hittson noted six (6) of the seven (7) requirements had not been satisfied and stated he would not be in support of this application. *Bob Stout* concurred. *Bill Truex* also agreed and felt a slight modification of the plan to lower the deck to the ground could accommodate both accessibility and enjoyment of the area. *Chair Thornberry* commented on issues he had when reading the packet and stated he is not in favor of granting approval. *Audrey Seay* pointed out there is no way to identify what happened between the approval from the association and

the beginning of construction, and noted there are other neighboring structures that are built closer to the water. *Bill Truex* agreed there appeared to be a building further down from the property that is within a few feet of the canal. *Attorney Rooney* verified that other violations do not represent precedence.

Bob Stout reiterated that only one (1) of the (7) requirements have been met and he is not comfortable giving approval when they do not meet the criteria. *Chair Thornberry* made known he might have reached a different decision if this had been brought to the Board in the beginning and added that he does not like the unlicensed activity.

ACTION: A motion was presented by Ed Hittson and seconded by Bob Stout that Petition VAR-09-03 be DENIED based on the Growth Management Staff Report dated March 2, 2009, the evidence and testimony presented at the hearing and finding that the applicant HAS NOT MET the required criteria (specifically criteria #s 1, 2, 4, 5, 6 and 7) for the granting of the variance.

Motion carried 4 to 1 (Audrey Seay opposed).

Petition #VAR-09-04

John and Claire McCourt are requesting a variance to reduce the required rear yard setback from 15' to 12.2' to allow an addition to the existing single-family residence in a Residential Single-family-3.5 (RSF-3.5) zoning district. The property address is 24191 Santa Inez Road, Punta Gorda, Florida and is described as Lot 10, Block 933, Punta Gorda Isles Subdivision Section 21, in Section 31, Township 42 South, Range 23 East. The property contains +/- 9,600 square feet. A complete legal description and additional information are on file.

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

John McCourt, the applicant, 24191 Santa Inez Road, Punta Gorda, appeared before the Board to further present the petition.

In response to *Ed Hittson's* inquiry as to why he felt he had a hardship, *Mr. McCourt* explained the area was not large enough for his family's needs. *Bob Stout* pointed out a possible impact to a neighboring home and asked if contact had been made with this individual. *Mr. McCourt* stated signs were posted and letters sent but there had been no direct contact.

Chairman Thornberry opened the meeting to Public Hearing.

Angelo Tabano, 2721 Mincey Terrace, North Port, pointed out that they could square the deck off with the pool area without the Variance, but by granting this request, they would be able to extend the roof and enhance the appearance of the property.

There being no further 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.

Ken Quillen responded to *Bill Truex's* inquiry about the mention of a 10% Variance and stated that he believes *Mr. Tabano* was referring to an Administrative Variance.

Board Member Comments and Questions

Ed Hittson commented this is a corner lot and non-forming in size. *Nicole Dozier* confirmed a 15 foot setback is required and added she was only concerned with the shortest side fronting the road.

ACTION: A motion was presented by Bob Stout and seconded by Bill Truex that VAR-09-04 be APPROVED based on the Growth Management Staff Report dated March 2, 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 rear yard setback from 15' to 12.2' to allow an addition to the existing residence as shown on the Survey Plat submitted and labeled Exhibit 1.***
- 2. This variance extends only to the proposed addition and shall carry with the structure only. If the existing single-family residence is ever removed all future 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 4 to 1. (Ed Hittson opposed.)

******5 min. break******

Petition #SE-09-07

BDI Properties II, LLC is requesting a special exception to allow an Adult Congregate Living Facility in a Residential Multifamily-15 (RMF-15) zoning district. The property address is 210-222 Rotonda Boulevard West, Rotonda, Florida and is described as Lots 32, 33, 34, 35, 36, 37 and 38, Rotonda West Pebble Beach Subdivision, in Section 23, Township 41 South, Range 20 East. The property contains +/- 112,000 square feet. A complete legal description and additional information are on file.

Ken Quillen read into record the names and addresses of citizens who provided emails opposing this application. *Derek Rooney* provided members with a packet from the Commission Office that included additional emails as well as a letter from Commissioner Skidmore opposing the petition. *Nicole Dozier* reminded the Board they can only base their decision on the sworn testimonies that are heard today.

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

Attorney Robert Bertsson, representing the applicant, appeared before the Board to further present the petition. He made known that current zoning allows for the same size building to be constructed as a condominium with 37 dwelling units and added this would have more of an impact on surrounding property than the quiet use of an ACLF. In answer to a question by *Chair Thornberry*, *Attorney Bertsson* confirmed a Special Exception would not be needed to build a three story structure and went on to say that building height limitations in this zoning district would allow for an even higher structure.

Chair Thornberry asked *Attorney Bertsson* to define the acronym, BDI. *Attorney Bertsson* was not aware of the meaning but stated they were a company based out of St. Petersburg.

Ed Hittson led a discussion on density issues and setback requirements and asked for clarification regarding the maximum number of people that could be

accommodated on this site. *Attorney Bertsson* clarified that without a kitchen, these are not determined to be dwelling units but rather bedrooms. *Derek Rooney* added additional comments.

It was confirmed to *Audrey Seay* that a condominium could be built with the same design as shown in the site plan and it was indicated there is a mix of one, two, and three story structures already in the vicinity. *Attorney Bertsson* went on to read a letter received on behalf of Rotonda relating to architectural control. A copy of the letter was provided.

Chairman Thornberry opened the meeting to Public Hearing.

Jay Lyons, 296 Rotunda Circle, on behalf of the Rotonda West Association, spoke in opposition of the petition.

Gerry Townsend, 1029 Roland circle, Rotonda West, spoke at length in opposition of the petition.

Nick Gizzi, President of the Rotonda West Association, 174 Mark Twain Lane, spoke in opposition of the petition.

Pam Poore, 68 Mark Twain, spoke at length in objection to the petition and provided members with pictures of the area. In addition, she stated additional neighbors who were unable to attend today have signed a petition showing their objection.

Mary Pat Reyes, 74 Mark Twain Lane, spoke in opposition of the petition.

Barbara Bartlett, 71 Mark Twain Lane, spoke in length in opposition of the petition.

Sandra Courtney, 65 Mark Twain Lane, spoke in opposition of the petition.

George Krabbe, 439 Rotunda Circle, spoke in opposition of the petition.

Attorney Robert Polzak, 63 Mark Twain Lane, provided additional information and spoke in length in opposition of the petition. *Chair Thornberry* clarified the site plan shows 47 parking places instead of 46 as *Mr. Polzak* indicated.

George Berger, 46 Sportsman Circle, Rontonda West, spoke against the petition and commented on the notification process and his concerns that property owners who live out of state may have been unable to respond to the petition in the time allotted.

Larry McManaman, 91 Mark Twain Lane, spoke in opposition of the petition. Responding to a question about the site plans, *Nicole Dozier* provided information on the purpose of today's hearing and stated *Mr. McManaman's* concerns will be reviewed at a later date.

Dennis Betschart, 120 Sportsman Road, spoke in opposition of the petition and voiced concerns regarding the effect this would have on property values.

Pat Kelly, 118 Sportsman Road, Rotonda West, spoke in opposition of the petition.

Peter Deitrich, Rotonda West, stated he is in favor of an assisted Living facility in the county, but feels this will have a negative impact to property values in this area. He also feels the size is out of conformity with the rest of the neighborhood.

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

Attorney Bertsson spoke in rebuttal of the public comments.

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

Attorney Bertsson respectfully requested condition #2 be removed as a recommended condition for the petition. *Nicole Dozier* did not feel it needed to be removed but rather modified. *Chair Thornberry* agreed and confirmed the new wording.

Board Member Comments and Questions

Ed Hittson reminded members they are bound by the Quasi-judicial process and the constraints of the special exception requirements. In his opinion, he feels all six (6) conditions have been satisfied.

Bill Truex provided information regarding his residency in Rotonda West and spoke of current developments in the area. He did not feel the information provided against the petition was evidentiary but rather opinion.

Bob Stout offered additional comments and stated it is his belief the applicant has met all six (6) conditions.

Audrey Seay advised although she did not feel the facility fit in with the design of the neighborhood, she did not feel there was enough justification to vote against the petition. *Bill Truex* added there is a required buffer that would go behind the structure and reiterated he did not have evidence to deny the petition.

Chair Thornberry stated although he empathized with the concerns of the community, the applicant has satisfied all requirements. He also felt an apartment complex would be more of an intrusion to the neighborhood than an ACLF.

ACTION: A motion was presented by Bob Stout, seconded by Bill Truex, that Petition #SE-09-07 be APPROVED based on the Growth Management Staff Report dated March 2, 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 modified conditions:

- 1. The special exception, as approved by the Board of Zoning Appeals, is for an Adult Congregate Living Facility (or Assisted Living Facility) for a maximum of 80 units consisting of 120 beds that is in substantial conformance with the site plans submitted by the applicant for this request.***
- 2. The exterior architectural appearance of the building shall be applicable to and compatible with residential buildings.***
- 3. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.***
- 4. 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 Assisted Living Facility, including section 3-9-63.1.***
- 5. Site Plan Review is required prior to issuance of any building permits for the proposed new Adult Congregate Living Facility (or Assisted Living Facility) and all off-street***

parking and landscaping requirements of code must be met for the proposed development.

Motion carried unanimously,

IX. Public Comments - None

X. Staff Comments

Ken Quillen inquired about preferences when producing packets and advised there are 4 applications on the next agenda.

XI. Member Comments

Ed Hittson led a discussion regarding the letter received from Commissioner Skidmore in opposition of SE-09-07. It was agreed he had a right to state his views as a private citizen but should not have used County letterhead. *Chair Thornberry* suggested members' contact either Commissioner Skidmore or their Commissioner as the issue has already been ruled on by the County Attorney. *Chair Thornberry* commended members for the hard decisions that are made in respect to helping the community.

Audrey Seay made known she was contacted by the Arts and Humanities Counsel regarding a recent case concerning a skull sign. She said a complaint was made against her citing she had influenced the Board with their decision and advised the individual has stated he would be filing suit against both Charlotte County and her personally on this issue.

XII. Next Meeting

*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, April 8, 2009, at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 11:39 a.m.

Respectfully submitted,

Jane Starr, Recorder

/jms



Tom Thornberry, Chairman/Board of Zoning Appeals

Approved: *Jane Starr*