

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, January 13, 2010 – 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*
Diane Clim, *Recorder*

I. Call to Order

Chairman Thornberry called the January 13, 2010 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

Diane Clim swore in all persons who wished to provide testimony.

V. Approval of Minutes

ACTION: *A motion was presented by Bill Truex and seconded by Bob Stout to approve the minutes of the December 9, 2009 meeting of the Board of Zoning Appeals, as written, with a unanimous vote.*

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the January 13, 2010 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 December 29, 2009: APL-09-1000 and SE-10-01

Petition #APL-09-1000

Robert Berntsson, agent for MMS, LLC, is requesting an appeal of the Zoning Official's determination that an outdoor concert stage is not a permitted use in a Light Industrial (IL) zoning district. The property address is 3101 South McCall Road, Englewood, Florida and is described as Parcel P4, located in Section 04, Township 41 South, Range 20 East. The property contains +/- 4.7 acres. A complete legal description and additional information are on file.

Nicole Dozier, Zoning Official, read the requirements and zoning code for Light Industrial zoning.

Derek Rooney, Asst. County Attorney said this is an appeal, they can go for a special exception.

Mr. Berntsson said the code allows it by right.

Applicant Presentation

Robert Berntsson, P.A., Agent for the Applicant, said he was sworn in. **Mr. Berntsson** said he will be presenting a power point presentation and handed in a booklet to each member and staff. He discussed what is allowed in the County Code and definitions. He said under Agriculture, (e)(5) for special exceptions allows public and private recreation facilities; under Commercial intensive (CI) (9) drive-in theaters, golf driving ranges, par-3 golf courses and outdoor commercial recreational facilities; in Commercial Tourist (CT) under Special Exceptions (1) Recreational and entertainment uses; and under Industrial light (IL), it says under permitted uses – (1) All uses and structures permitted in the CI district.

Mr. Berntsson said he disagrees with Ms. Dozier's denial of allowing this as a principal use. It would also be allowed as a special exception under other zoning codes, but Ms. Dozier said she would not allow this to go as a special exception in her letter. He discussed how this property was used as Pelican Pete's in the past and many children played there and made a lot of noise. He does not see how a concert would be any louder than what was there before. He also referred to case law for Rinker Materials Corp. v. City of North Miami. He said what you are allowed to do in IL zoning over here, is the same for that other IL property over there. In any doubts, the broadest meaning to the language is in favor of the applicant.

Mrs. Seay asked how long has this property been zoned IL?

Mr. Berntsson said that whole strip was IL since I came to town in 1989.

Ms Seay said me too. The intent was for industrial light, for business.

Mr. Hittson asked is it your intention that if something is not prohibited, then it is allowed?

Mr. Berntsson said no. We fall within the pyramidal zoning.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Richard Conley, resident of Oyster Creek, said over 220 people signed a petition from Oyster Creek. He said all the residents are opposed to this request to have concerts. Looking at the zoning code, he looked at the reasons why do zoning codes exists. The purpose is to promote the health, safety, morals and general welfare of the people, to conserve and enhance the value of lands, and to protect the residential uses. To allow this will violate all of the principals of zoning.

Dennis Lord, owns the property next door (furniture store) said he is not in favor of this. He was there when Pelican Pete's was in operation and there was vandalism.

James Pegrilla, a resident of Oyster Creek, said the zoning code says uses and structures which are customarily accessory and clearly incidental to permitted uses. Is this usable or customary to the area?

Joann Verna, Englewood Community Funeral Home, owner and director, said she was there when Pelican Pete's was open. She does not want to have to listen to other people's music. She is concerned about the noise and the privacy of the funeral services across the street from this site.

There being no further requests to speak for or against the petition, Mr. Hittson moved to close the public hearing, seconded by Mr. Truex. The public hearing was closed with a unanimous vote.

Ms. Dozier said the zoning official makes the determination when the determinations in the code are not clear. She concluded this is not customary and usual based on what is in the county and what recreational uses are out there.

Ms. Seay asked are there any outdoor concert facilities in Charlotte County?

Ms. Dozier said you can do this at the ball field, also at the fair grounds, and the Event Center in Punta Gorda.

Mr. Hittson asked about the redneck yacht club out off US 17?

Ms. Dozier said that is agricultural property.

Mr. Thornberry said in your letter to Mr. Berntsson, it sounds like we are getting down to definitions. It is industrial light and you use the word an under-improved concert/event. He wants to build a stage outside. In the definitions according to Mr. Berntsson, that falls under outdoor commercial recreation facility. Is this board getting hung up on definitions? Maybe I should be asking Mr. Rooney but everyone here is laying their hat on definitions.

Mr. Rooney said you have to look at the definitions. Mr. Berntsson was right, it doesn't matter where the site is.

Ms. Dozier said also keep in mind the Future Land Use Map. She said our Director, Jeff Ruggieri would like to make a statement.

Jeff Ruggieri, Growth Management Director, was sworn in. Mr. Ruggieri said Mr. Berntsson repeatedly said you cannot look at things one way and not another, but yet he brought up Pelican Petes. It used to be a children's playground. This is not a proposed playground, it is a concert facility. We are talking about interpretations and how the zoning official interpretation and how the applicant interprets. He said it will be bluegrass, but we do not have a bluegrass code, it doesn't matter what the music is. Finally it is our opinion this would be a poor precedent.

Rebuttal

Mr. Berntsson said first as Ms. Dozier indicated, you can have a special event on this property. People are not going to pull a permit to have 2 events a year. What people love about the City of Punta Gorda is their gatherings and concerts in the park - we want to have that allowed here too. The staff report says recreational facilities is #1 and #2 leisure time activity.

Board Member Comments and Questions

Mr. Hittson said reading from the code, we are fortunate to have a code that shows intent. The purpose and intent is to permit the designation of suitable locations for and to facilitate the proper development and use of areas devoted to various light industrial and quasi-industrial commercial uses in an environment less restrictive than that required in the industrial, office park district.

It is not intended that the industrial light zoning be used for residential uses.

We have the confident and substantial expert testimony from the head of zoning, and I agree with her interpretation. They may be trying to create a loop hole since they cannot go through the front door. I am prepared to support the zoning official.

Mrs. Seay said the music in the park is not commercial. The county has to set standards but we have to set them. IL, to me, is industry. I know the other lower codes fall in there, but I feel this is not Industrial Light use.

Mr. Truex said this is a lot to think about. We are dealing with the definitions here. Evidence has been presented somewhat in both directions. The property being there and located near residential is not what we are talking about. When it comes to the definition I'm still sitting on the fence because I am not clear where the definition falls.

Mr. Stout said he has been in commercial real estate and understands the rights of ownership. This property is IL and I, like Mr. Truex, am a little complex, but I am leaning toward the owner's appeal. Our existing zoning code is pyramidal. The first permitted use under IL zoning is "all uses permitted in CI". At page 1877, under Sec. 3-9-43 CI, the 9th item under permitted uses reads "Drive-in theaters, golf driving ranges, par-3 golf courses and outdoor commercial recreational facilities". I believe the owner's intended use is covered under "outdoor commercial recreational facilities." It is a matter or right, he does not need our approval.

Mr. Thornberry asked Mr. Berntsson what exactly the owner would use this property for?

Mr. Berntsson said outdoor concerts and car shows.

Mr. Hittson said I think going through the special exception process gives more protection to the people in the county than the compatible uses. If we uphold the zoning official's determination, the option still exhibits for a special exception.

Mr. Berntsson said Ms. Dozier's letter said they are not allowed to do a special exception in IL.

Mr. Stout said he cannot get beyond the outdoor recreation.

Ms. Dozier said #6 under IL is other uses determined by the zoning director for a special exception.

Motion

Mr. Stout said he moves to grant approval based on the Growth Management staff report dated January 4, 2010, the evidence presented at the hearing and finding the applicant has met the required criteria of the administrative appeal.

Mr. Truex seconded for discussion. He asked if they could go back through the definitions.

Ms. Dozier read the recreational facilities listed in the code.

Motion was approved with a vote of 3 to 2 (Mr. Thornberry, Mr. Truex and Mr. Stout voted yes, Mrs. Seay and Mr. Hittson voted no)

Petition #SE-10-01

Kimberly Campanella, agent for Bicycle Center of Port Charlotte, is requesting a special exception to allow three secondary class "A" wall signs for a total of 90 square feet in a Commercial General (CG) zoning district. The property address is 3795 Tamiami Trail, Port Charlotte, Florida and is described as Lots 27 and 28 of Block 37 of Port Charlotte Subdivision, Sub-section 03, located in Section 23, Township 40 South, Range 22 East. The property contains +/- 15,000 square feet. A complete legal description and additional information are on file.

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

Applicant Presentation

Kimberly Campanella, agent for Bicycle Center of Port Charlotte, said everything *Ken Quillen* said summed it up. Basically, we are asking for a 6% more than what the county is allowing. They would be happy to do a traditional sign without the exception but this property won't allow that. Bicycle Center is requesting to install 3 wall signs as well as make our signs slightly larger – one on each side of the building, and one on the front – for a total of just under 90 s.f. in total area. Which is almost 5 s.f. of total area more than our allowed 85 s.f. The business is located at 3795 Tamiami Trail, on the southbound side of the U.S. 41 access road, which is part of the U.S. 41 Overlay District. The reason is to meet the parking requirements set forth for new construction. We had no other choice but to do the zero lot line, after hurricane Charley. She read her narrative into the record.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Mr. Stout moved to close the public hearing, seconded by Mr. Hittson. The public hearing was closed with a unanimous vote.

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

Board Member Comments and Questions

None

ACTION: *A motion was presented by Audrey Seay and seconded by Bill Hittson that Petition SE-10-01 be APPROVED based on the Growth Management Staff Report dated January 4, 2010, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception modification with 3 conditions.*

Motion was approved with a unanimous vote with the following conditions:

1. This special exception is to allow no more than three secondary class "A" wall signs. Only one sign may be located on the front wall of the building and one sign on each of the two side walls of the building. Each sign shall be limited to a maximum of 30 square feet in area.
2. The site plan presented by the applicant as part of the petition is for illustrative purposes only. The proposed signs must comply with all other applicable codes, including the requirements for Sign Permits and Commercial Design Standards if applicable.
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. .

IX. Public Comments - None

X. Staff Comments

Ken Quillen said the next meeting is Wednesday, February 10, 2010. We have three applications.

Mr. Rooney said we need to hold our annual election of officers.

Mr. Stout nominated himself to Secretary

Mr. Stout nominated Mr. Hittson to Vice Chair

Mr. Stout nominated Mr. Thornberry to Chair

Mr. Rooney asked for a vote – a unanimous vote - all in favor of the new Officers.

Mr. Thornberry left the meeting because he was not feeling well.

Ms. Seay took over as Chair of the meeting.

Mr. Hittson asked if he could bring back next week the appeal they heard today. Mr. Rooney said no, because you voted against it.

Mr. Truex said he had a few questions and they discussed bringing this appeal back next month.

Mr. Truex made a motion to reconsider the decision on APL-09-1000.

Mr. Hittson seconded the motion.

The motion passed with a 3 - 1 vote to reconsider APL-09-1000 at the next meeting. Mr. Stout was the lone vote for not bringing this back to re-consider.

XI. Member Comments – None

XII. Next Meeting

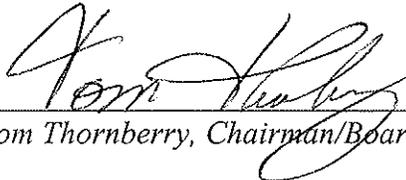
*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, February 10, 2010, at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 11:05 a.m.

Respectfully submitted,

Diane Clim, Recorder

/dlc



Tom Thornberry, Chairman/Board of Zoning Appeals

Approval Date: 3/22/10