

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, April 14, 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*
Edmund T. Hittson, *Vice-Chairman*
Bob Stout, *Secretary*
Audrey Seay (absent and excused due to illness)
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 April 14, 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. Mrs. Seay was absent due to illness.

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 Bob Stout and seconded by Ed Hittson to approve the minutes of the March 18, 2010 meeting of the Board of Zoning Appeals, with the following corrections, with a unanimous vote.

On Page 4, the first paragraph, under Action, change Bill Hittson's name to Ed Hittson.

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the April 14, 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 March 30, 2010: APL-09-1000; VAR-10-03; VAR-10-04; VAR-10-06; SE-10-06; SE-10-09; and SE-09-18

Petition #APL-09-1000

The Board of Zoning Appeals is reconsidering their granting of an appeal by Robert Berntsson, agent for MMS, LLC, 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.

Derek Rooney, Asst. Co. Attorney, said he has heard there is a request to continue this appeal. As you know, this was a reconsideration of this Board. It is not up to the applicant to request the continuance, it is your reconsideration. However, I believe Mr. Berntsson has asked to address the Board and ask for a continuance of his special exception (SE-10-06) and that he is joined by opposing counsel.

Mr. Thornberry said before we get with that, we also have our regular cases. We are a Board member short. How does the Board feel about that?

Mr. Stout said I think we need to hear Mr. Berntsson and I think the other applicants need to make a decision, do they want to be heard today or postpone.

Mr. Hittson said it is my understanding through staff attorney that there are no legal requirements for a continuance. A continuance is not automatic nor is any applicant guaranteed a full Board.

Mr. Rooney said I think we are starting to mix issues. The issue of whether or not we have a full Board is not grounds for continuance upon asking by an applicant. It has been tradition of this Board to grant those, but however, because we are in a situation where we will be down one member for the foreseeable future, I would recommend that we do not do that unless there are valid grounds for granting a continuance. In this particular matter, this appeal, this decision was made in January, it was reconsidered at that hearing. Such time has passed that I think it is appropriate for a full rehearing of the issue, rather than simply a Board discussion on it. In that same vein though, the original applicant MMS and the neighbors who are represented by counsel, may need more time to prepare for that rehearing.

Mr. Thornberry said that is exactly why I brought it up and I wanted it on record. I am not speaking of the appeal of Mr. Berntsson and what he is talking about, I am talking about the other folks out there that have variances and they needed to hear that they have to have a very good reason, other than the fact that we do not have a full Board.

Robert Berntsson, Esq. BIG W Law said he has been sworn. We have two matters related to the MMS application here before you today. One is the appeal reconsideration and the second is the

special exception. After we had the original appeal, that was approved and then reconsidered, we had the opportunity to meet with staff. We reached somewhat of a compromise, to go forward with the special exception hearing that allows this Board to consider the special exception and place appropriate conditions that it may deem necessary in granting the special exception. If that happens, the appeal really becomes moot. It is really a scheduling and calendar thing here that puts this before that one. Just because of the petition numbers being an older number. We have now had a chance to reconsider where we want to go forward with. We have had the opportunity to talk to opposing counsel. We would like the opportunity to sit down and hammer out a special exception that not only can be acceptable to this Board upon presentation, but if we can work out the details with the neighbors so that there is a feeling of comfort that we can go forward and it is not an adversarial hearing, hopefully. We may not get there, but we would certainly like to take that opportunity so that everyone has the opportunity to work out those issues that are most important. What we would be asking for today is that the matters both the reconsideration and the special exception be continued indefinitely at this point. It will be re-advertised at such time that either we are in agreement or that it is clear that it is not going to be in agreement and we just need to move forward on the merits of the case. With that, we would respectfully request a continuance not to a date certain and we will let staff know when we will be ready. Then they can re-advertise and we can have a more congenial hearing than adversarial.

Ms. Dozier said her question is since Rob just stated their intention was to come up with some type of agreement that would go forward as a part of a special exception, what would happen to the actual appeal decision – would that just go away? Would the decision have to be changed? Because keep in mind, the decision that was made at that time, prior to the reconsideration was something that would have allowed the use to be permitted in all industrial light districts within the entire county. My concern is that was not the intention of the Board at the time the decision was made. Perhaps it may not have been completely understood or completely stated that that would have been the situation. What I would prefer is for that decision to be overturned, to be upheld, that it is not allowed and allow the use to be considered under a special exception. That way the use is not going to be outright permitted within all the light industrial zoning classifications within the county. I have no problem with the special exception process. I just want to make sure that if that is what they decide to do and that is approved and that goes through, then this decision is decided upon and done and dealt with appropriately.

Mr. Bertsson said he would like to respond to that. The nature of a re-consideration voids the decision. So there is no decision. The appeal is out there, there is no decision by this Board. If the special exception is granted, I will withdraw the appeal. It stands as to the decision of the Zoning Official.

Mr. Rooney said I would say that is a correct interpretation. Without trying to get too far into the permutations that could happen, special exception gets heard first, the appeal, etc., the appeal for all intensive purposes, what Mr. Bertsson is asking for, is to have the issue tabled. The rehearing on the matter just tabled and held until such time as a special exception can be worked out and brought forward to the Board. I would imagine that at that point, after the special exception has been granted or denied, we will hear whether or not to go forward on the appeal.

Mr. Thornberry said so you would like to hear a tabled motion?

Mr. Rooney said I would table the first petition, because it is your petition essentially. In January, you voided the decision, however, at that time, it was not only just a void, it was to re-hear it at the next scheduled meeting, which you asked to be re-heard.

Motion

Mr. Truex said I would make that motion to table to no time certain. **Mr. Stout** said he would second that.

Mr. Berntsson asked if he could make just one modification to that? That the table, it be brought from the table at the time that the special exception is placed back on the agenda so that we do not have to wait for your action to move it from the table.

Mr. Truex said he had a comment. I want to commend counsel and the applicant for taking a very positive step for a good reconciliation here. It is unclear in some ways how the Zoning Code reads, and it is not in some other ways. It boils down to interpretation. It doesn't specifically say you can't in some clarification and some of the outdoor uses if you try to compare one to the other, they are very very different. I am very happy they took that step.

Mr. Rooney said Mr. Miller is here representing the neighbors. Do you have any thing to add?

Roger Miller, on behalf of Oyster Creek, said he has been sworn. We do consent to the continuance. We think it would be appropriate for us to work with the petitioner to try and find common ground.

Mr. Thornberry said we have a motion and a second, any more discussion? Hearing none, the vote was **approved with a unanimous vote**.

Mr. Rooney said we may want to move on the continuance of the special exception now, just get it out of the way.

Petition # SE-10-06

Robert Berntsson, Esq., agent for MMS, LLC, is requesting a special exception to allow an outdoor stage facility 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.

Board Member Comments and Questions

ACTION: *A motion was presented by Bill Truex and seconded by Bob Stout that Petition SE-10-06 be CONTINUED WITHOUT A TIME CERTAIN based on the evidence and testimony presented at the hearing and discussion at today's hearing.*

Motion was approved with a unanimous vote.

Petition #VAR-10-03

John and Susan Ross are requesting a variance to reduce the required rear and side yard setbacks along a waterway from 20' to 10' to allow a new single-family residence in a Mobile Home Park (MHP) zoning district. The property address is 61 Rotterdam, Punta Gorda, Florida and is described as Lot 1E, of Windmill Village Mobile Home Park, in Section 19, Township 41 South, Range 23 East. The property contains +/- 5,000 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

John and Susan Ross represented themselves and said they have been sworn. **Mr. Ross** said he believes his variance request meets all 7 criteria for granting a variance and therefore would appreciate your approval of our request.

Mr. Thornberry asked if they agree with the conditions listed?

Mr. Ross said yes.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Larry Moskalik, lives on Rotterdam, said he just wanted to know if they are given the 10 foot setback, how that will effect the next person that looks for a 10 foot setback? So that the rest of us are looking out a narrow spot between the houses that have been put between us and the water.

Mr. Thornberry said we will address it one at a time if someone else comes. **Mr. Thornberry** said by looking at the maps, there are probably some already that are not in compliance. That is not our business here. We treat each and every applicant individually.

There being no further requests to speak for or against the petition, Mr. Stout moved to close the public hearing, seconded by Mr. Truex. 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

Mr. Hittson said he is not totally convinced that this property is all that unique, simply because it is small, nor am I totally convinced that this is the minimum relief that can be granted. On the other hand, I think the applicants have relied on Mr. Perez's letter that indicates what was there before can be reconstructed. I am concerned about that reliance to that detriment. Although I am not convinced, I am still prepared to support it.

ACTION: *A motion was presented by Bob Stout and seconded by Bill Truex that Petition VAR-10-03 be APPROVED based on the Growth Management Staff Report dated April 5, 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 with 2 conditions.*

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

1. This variance as approved by the Board of Zoning Appeals is to reduce the minimum side and rear setbacks required along both waterways from 20' to 10' to allow erection only of the proposed new 1,280 square foot mobile home, as shown on the drawings submitted with this application.
2. This variance extends only to the mobile home residence as proposed in this application and shall carry with this structure only. If this mobile home is not located on this lot, or if it is erected and is later removed or replaced, all future redevelopment must be constructed according to all applicable setbacks and codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.

Petition #VAR-10-04

Joseph and Charlotte Palka are requesting a variance to reduce the required rear yard setback along a waterway from 20' to 14' to allow a new 1,056 square foot mobile home with a six-foot porch in a Mobile Home Park (MHP) zoning district. The property address is 10101 Burnt Store Road, Unit 90, Punta Gorda, Florida and is described as Lot 90, of Park Hill Mobile Home Park, located in Section 29, Township 41 South, Range 23 East. The property contains +/- 4,350 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

Joseph and Charlotte Palka represented themselves. Mr. Palka said he has never done this before and would appreciate if the Board would bare with him. He explained a time line from the beginning when he bought this particular lot. He briefly explained his wife has ovarian cancer and her operation/therapy. They purchased this mobile home in January 2010 but was to be relocated by the widening of Burnt Store Road. He was given a site plan of the lot by the Board of Directors at the mobile home park. It shows a 38' 9" usable area. A 24' home and 12' patio/carport fits with plenty of clearance. He believed he had no problems. The Board of Directors reviewed the home making sure it would fit on the lot, and they said it did. He then came to the site on January 12 and found there was a porch added next to him. Right against the lot line. All of a sudden, basically 6 to 7 feet of property disappeared. What should have been a no brainer with a car port and wheel chair ramp, now disappeared. It states in the Zoning Code that I need 10 feet on each side of me from each structure. He met with the Board of Directors and they would not approve what he wanted to do. That is when he got involved with the Zoning department. He was under the impression he could slide the home back and be within 10 feet from the water. Homes during the time of Hurricane Charley were placed within 10 feet of the water. He was told to file for a variance, no charge and they would put this on the April agenda.

He discussed some of the mobile home park rules. He has a permit for the car port.

Ms. Dozier said she had a few statements just to be clear. We have a large number of older mobile home parks that are currently residing within the County. There are certain situations. There are different instances and different regulations and rules that apply to different parks as a number of them have come in as PD's. A number of them have a number of ordinances that passed that give specific criteria requirements for that particular park. Few things to point out is that the County does have a map we use for historical reference purposes. Typically when it comes to the granting of variances and setbacks we look for petitions, applications or even permits that somewhat indicate that the decision was made, either by the Board or the acting official at the time. In this instance, it relates to the document that is labeled as Exhibit B in your paperwork. The signature on the document was a zoning technician. We have no record of anyone else stating what the setbacks are to be in terms of this park. Existing setback regulations as they have been is 20 feet from the waterway. Essentially, that has not changed. The applicant has pointed out that the issue has come about as a result of the neighbor placing a structure on their property which, in fact, does not allow them to meet their 10' side yard setback, which is in fact, what the problem is. We did try to give a couple of suggestions such as moving the structure back, so that they did have the 10' in between the structures which is required by Code. However, even in doing that, they would not be meeting their rear 20' setback requirement because of the addition of the porch or the lanai room to the back of this particular unit. Either way, this property was going to require a variance of some sort in order to be in compliant with the Code. Mr. Quillen has pointed out there were some other alternatives that could have also met or given the applicant the opportunity to have the structure there and be in compliant with the Code. We did try to work with the applicant at the time that I talked with the applicant. I was under the impression there was no structure on site and it was a vacant property. The other statement was with regards to another permit that was issued in this particular park. We did research that permit, and that permit was the replacement of an existing home that was already there. We do allow people to replace as it was. If it was there at 10', we allow them to replace it back at 10'. That was a replacement for an existing mobile home permit. It was not a permit for a new structure.

Mr. Hittson asked if the neighbor is encroaching on the side setback?

Ms. Dozier said the issue is on mobile home parks, there are no lots. There are no lot lines. There is no segments of property that are owned by individuals, so to speak. The only Code that we have for mobile home parks right now is just a distance between structures. What happens is, if someone in the mobile home park changes their structure or makes it larger, it pushes everybody out of the line. Which is the reason why typically we recommend that we use the structures to the exact size that is there, that basically says you have 10' between structures. When they start adding things on, it causes problems for other people and it is usually the person who comes to the vacant lot because by then, everything has shifted over to make sure that the setbacks are met. That is what happened in this particular instance.

Mr. Hittson asked if the applicant has a valid permit?

Ms. Dozier said the permit he is referring to, I have not seen. I believe he stated it was a permit for a porch, not the actual mobile home itself.

Mr. Rooney said what I get from the testimony from staff is that there is a hardship from the side yard setback. The rear yard is the issue that is here today.

Mr. Truex asked if there is access to the porch off the back? It shows a door off the side and a porch off the back and windows. Is there actually a door?

Mr. Palka said no there is not. Because it was a mobile home, I planned on replacing that window with sliding doors.

Mr. Thornberry asked the porch you propose to build, will it be at finished floor?

Mr. Palka said yes, same floor elevation.

Mr. Palka said there are many reasons why we pushed the home back the way we did. Ms. Dozier explained many of them. The other one was my wife. We're probably going to need a wheelchair ramp. Centering the home on the lot, we eliminated the side to side problems and it gives us the ability to put a wheelchair ramp on their side.

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. Truex moved to close the public hearing, seconded by Mr. Stout. 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

Mr. Thornberry said he was not having a problem with 6 feet in the rear.

Mr. Stout said there are 7 criteria and out of the 7, they do not meet 6 of them.

Ms. Dozier said if the applicant came in and asked for the variance for the 6 feet, that is something to keep in mind. The applicant needs a variance for setback issues.

Mr. Rooney said what is this variance for? Is it for 6 feet or is it for a multitude of issues relating to the placement of the mobile home?

Ms. Dozier said it is for meeting the requirements for the structure itself.

Mr. Quillen said the mobile home meets the setback. It is for the proposed deck they want to put on that would not meet the setback.

Mr. Truex said we dealt with this same issue a few months back except they had started the structure, the deck but it was elevated. This Board said it needed to be on the ground.

Mr. Hittson asked Mr. Palka his reaction to putting the deck on the ground?

Mr. Palka said his reaction is it will create a hardship.

ACTION: A motion was presented by Ed Hittson and seconded by Bob Stout that Petition VAR-10-04 be Denied based on the Growth Management Staff Report dated April 5, 2010 the evidence and testimony presented at the hearing and finding that the applicant HAS NOT MET the required criteria for the granting of the variance.

Mr. Thornberry said he thinks the applicants have shown there is hardship there. I could live with a 6 foot porch sticking out if I was 5 or 6 lots down, looking down the waterway.

Mr. Truex said he believes there are some extenuating circumstances to this. I do remember the other case very well. I do not think they tried to go about anything the right way. This situation appears different. I agree with the Chairman. I hate to see them not have an opportunity here.

Mr. Stout said nothing here would preclude the applicant from coming back and sitting down and compromising.

Ms. Dozier said there are options to address the porch, if that is your issue.

The motion to deny failed with a vote of 2 to 2 (Hittson and Stout voted yes for the motion to deny – Thornberry and Truex opposed the motion to deny)

NOTE: Please See IX – Public Comments – this item was brought up again and the motion changed to Approval (with conditions)

Petition #VAR-10-06

Florence Bradley is requesting variances to reduce the required front yard setback from 25' to 22.8' and reduce the side yard setback from 7.5' to 2.3' to allow an existing single-family residence to remain "as is" in a Residential Single-family 3.5 (RSF-3.5) zoning district. The property address is 14448 Edna Circle, Port Charlotte, Florida and is described as Lot 17 Block 4349, of Port Charlotte Subdivision, Sub-section 71, located in Section 21, Township 41 South, Range 21 East. The property contains +/- 11,400 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

Florence Bradley, represented herself. She said Mr. Quillen covered this very well. She does not have any thing else to say, but thanked staff for all their help.

Mr. Hittson asked if she got title insurance when she purchased the house?

Ms. Bradley replied yes she did.

Mr. Hittson asked what the title insurance people had to say.

Ms. Bradley said they only cover title. We discussed that and this is not covered.

Mr. Stout said title companies can exclude survey exception and they often do.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Rob Eckerfled, new owner, said he would like this to pass, so he can move on.

Christine Garrison, Rob's realtor, said we extended the closing and we just want this to move on. It is unfortunately for both parties.

There being no further requests to speak for or against the petition, Mr. Stout moved to close the public hearing, seconded by Mr. Truex. 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 Bill Truex and seconded by Ed Hittson that Petition VAR-10-06 be APPROVED based on the Growth Management Staff Report dated April 5, 2010 the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the variance modification with 2 conditions.*

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

1. This variance as approved by the Board of Zoning Appeals is to reduce the front yard setback from 25' to 22.8' and reduce the side yard setback from 7.5' to 2.3' to allow the existing single-family residence to remain "as is", as shown on the survey submitted with this application.
2. This variance extends only to the existing single-family residence as indicated in this application and shall carry with this structure only. If this home is later removed or replaced, all future redevelopment must be constructed according to all applicable setbacks and codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.

Petition #SE-10-09

Gerri Waksler, agent for San Casa Holdings, LLC, is requesting a special exception to allow an Adult Congregate Living Facility (ACLF) in a Residential Multi-family 5 (RMF-5) zoning district. The property address is 7374 San Casa Drive, Englewood, Florida and is described as Parcels P1 and P2, in Section 17, Township 41 South, Range 20 East. The property contains +/- 18 acres. A complete legal description and additional information are on file.

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

Applicant Presentation

Gerri Waksler, Esq, BIG W Law Firm said she has been sworn. San Casa is requesting a special exception to allow construction of an adult congregat living facility. The proposed ACLF will occupy only a portion of the site. The remainder will be used for stormwater attenuation, planned recreational facilities, and an area toward the south that we are not sure what we will use that for at this point. We show that as proposed future development. The area will be developed consistent with the uses permitted in the RMF zoning district. Staff has proposed 5 conditions and we agree with all of them, plus the modification that was handed out this morning. One clarification, there is the condition that requires that any major changes or addition to the special exception would require modification to the special exception. When we did the site plan, we did not yet have an architectural design. The building footprint – we showed what would be the

most impactful, moving it right up against that 10th Street where it would be adjacent to the mobile homes. We do want to clarify that the actual footprint may move it a little further from 10th Street – it may not be an exact configuration – it may be purely rectangular. As long as we do something that is less impactful than what we show on the plan, that that would not be a modification coming back to a special exception.

Ms. Dozier said that would be addressed at site plan review.

Mr. Thornberry said it is zoned multi-family. How many people could you put on there if it was not an ACLF?

Ms. Waksler said it would be able to have 90 density units. The Code defines density as a dwelling unit that has to have a kitchen. An ACLF, you are dealing with beds, not necessarily units. We are talking about 150 bed ACLF which is different from 90 dwelling units.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Audrey Shinski, Chairs the Grove City Planning Advisory Board, said the Advisory Board and other residents are happy to have this in their community. It is very much needed. There are no assisted living facilities in the area.

Jeff Smith, lives at 2249 Olida Court, adjacent to the site, said apparently this can be allowed, but we are concerned about the 60 foot height. She says it has to look like a residential building, which is a plus, but the 60 foot is a concern. He was also concerned about the variance being approved, then someone else buying the property. He wanted to know the procedure after the variance being approved.

Mr. Thornberry said this is a special exception, not a variance.

Mr. Rooney said they have 3 years to use the special exception. If they do not use it by then, it forfeits.

There being no further requests to speak for or against the petition, Mr. Stout moved to close the public hearing, seconded by Mr. Truex. 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 Bob Stout and seconded by Bill Truex that Petition SE-10-09 be APPROVED based on the Growth Management Staff Report dated April 5, 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 with 5 conditions, provided condition #3 is amended by including in the first sentence the words “expansion of the ACLF into the”*

Motion was approved with a unanimous vote with the following 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 150 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 comply with those sections of the Commercial Design Standards (Article XXIV) that are applicable to, and compatible with, residential buildings.
3. Any major changes or additions to this special exception, including any expansion of the ACLF into the proposed "future development" located on this parcel, 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 Adult Congregate Living Facility (or 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.

Petition #SE-09-18

Brian Roberts, agent for James Williams, is requesting a special exception to allow a recreational facility, consisting of a mobile home, U-Pick farm, ATV riding area, Paint-ball gaming area and campgrounds, in an Agriculture General (AG) zoning district. The property address is 44500-44800 Bermont Road, Port Charlotte, Florida and is described as Parcel P1-3 and P1-4, in Section 28, Township 40 South, Range 26 East. The property contains +/- 120 acres. A complete legal description and additional information are on file.

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

Mr. Hittson asked if there are any toilet facilities in the campgrounds?

Mr. Quillen said no, they are not proposed that I am aware of.

Applicant Presentation

Robert Berntsson, Esq., BIG W Law said he has been sworn. **Mr. Berntsson** said he is here on behalf of Mr. Williams. He gave his credentials and is an expert witness. His client has a 120 acre parcel in eastern Charlotte County zoned agricultural. Two-thirds of the property have previously been used as agricultural fields and one-third has yet to be developed. His client desires to establish a recreational facility to allow atv, motor cycle riding, paint-ball, camping and other outdoor recreational activities. While surrounded by the much larger Red-Neck Yacht Club on 2 and one-half sides, this is a much smaller family and children oriented facility. It is

approximately one-tenth the size of our neighbors operation. His client visions this facility hosting scouting groups, church groups and youth groups. In light of that, we do not want to be limited to just Friday through Sunday, but want to be open for all the school breaks and holidays that might fall on a Monday or Wednesday. If a scout group comes out to work on their badges, we do not want to tell them they cannot ride or play paint ball during the week. Safety and security is a key aspect of this facility. Upon application, staff required a preliminary DRC meeting to address potential concerns. Out of that meeting, it was agreed that we would provide 2 access points on the site plan to the roadway easement that the property has. In addition, we agreed to provide a helipad to provide alternative emergency access. The East Charlotte Drainage District has agreed to allow us emergency access on to Graham Road immediately east of the property. Also during the meeting, staff proposed a 7.2 acre preservation area to protect less than 2 acres of wetlands, and an additional 4.3 acre area to protect a nest. The American Bald Eagle does not get this protection. Rather than specifically requiring these areas through this process, we wish to work with the permitting agencies that have jurisdiction over these issues. My client owns thousands of acres, some of which may provide much better mitigation area, if agreed to by the agencies. We ask that you not put a condition that specific areas of mitigation be required, but allow us to work through the jurisdictional process as we move forward. This application does meet the criteria for the granting of the special exception. He discussed the 60 foot access roadway for all of the property owners and in addition, there is specific access that was granted to my client's property, prior to my client purchasing it as shown in the Exhibit A (which he handed a copy in, attached to the deed). There has always been access. He said the neighbor's attorney will tell you they have filed a lawsuit against this and we have filed a motion to dismiss. We do not know the outcome of that yet. It is scheduled for June of this year. He discussed the staff report and made some changes and discussed those changes.

Mr. Hittson asked what they planned to do for public facilities?

Mr. Berntsson said just like their neighbor, they would use portable facilities.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Michael P. Haymans, Esq., represented **Danny Kelly, the company that has the Red Neck Yacht Club,** said Mr. Berntsson is correct. I am going to talk to you about compatibility. His client has a legally existing use. He believes what Mr. Williams proposes is incompatible. He read the intent for a special exception and discussed some of the criteria. Access needs to minimize congestion on the roads. He believes his testimony will show they do not meet criteria #2, #3 and #6. He gave his credentials and believes he is an expert witness. Mr. Kelly's property has the entrance (she showed a picture) on C.R. 74. Mr. Kelly had to put in turn lanes as part of the site plan approval. **Mr. Haymans** said when people come to the Yacht Club events they are checked and searched for weapons, drugs, alcohol. How would they be able to distinguish who is there for Mr. Williams' events and would they be searched? The logistics and administration for the safety of the existing legal operation, is not there. Their proposal is to over burden an easement. They do not have access except over our easement. We have to communicate with the Sheriff's department when we have a big weekend. We have to hire Highway Patrol and Charlotte Deputies to maintain traffic. How would they be able to maintain

their traffic from that coming in for the Yacht Club participants/traffic? Our concerts have a site built restrooms. Not portable. We can only use the portables during the camping portion. We had to put a berm up. We needed buffers. If they are having a concert next to us, where is their berm to protect us? Our concerts are up front, their concerts are in the back by our camping. The conflict with their uses with our legal existing uses is not compatible. The access does not minimize hazards and congestion. He called Heather to explain the operations and how the security check works.

Heather Haglung, said she represents Danny Kelly and works for Kelly Brothers, and for the past 3.5 years that she has worked for him, she has been involved with the development of the park and the rules and operations. As Mr. Haymans said, we are allowed to do 9 special events a year, but in addition to that, we are allowed to be open every weekend. At this point, we are not doing that. The 9 special events can last into midnight. As far as riding, we can be open every weekend. It averages between 1,500 to 7,000-8,000 on the bigger weekends. Averages to about 3,000 per weekend. We have had traffic issues. The turn lane has helped somewhat, but we have had traffic backed up all the way down to Hwy. 31 as well. Florida Highway Patrol and the Charlotte Co. Sheriff's office have been there. We have hired a deputy to come out during the events. We have 3 incoming lanes, as well as one outgoing. We have tried to see if we can make that 4 incoming lanes, but it is just not possible. Some of these vehicles are very wide. She said she thinks they can stack 150 trucks with trailers in the half mile coming into the entrance. All of the vehicles are searched by security, which is hired through Suncoast Security. The coolers are searched. We do not allow weapons, fireworks, chainsaws, knives and glass. Everyone has to sign a waiver. We were fortunate enough to get the property insurance for our spectators and participants. Our biggest concern is once people come through the gate, how do you get them ¾ of the way down the road and into Mr. William's area? The easement is the main access. Our people will be intermingled with Mr. William's customers. We know from being open a year, all the risks. Mr. Kelly has made it a priority to protect the people who come to our park.

Mr. Thornberry asked, the northern end of the Red Neck Yacht Club, is just all fields? Not being part of the park?

Ms. Haglung said that is correct. Not at this point. There are plans for future expansion, but we do not have anything in the works yet.

Mr. Stout asked if she could show where customers from both parks could co-mingle.

Ms. Haglung showed on a map where people enter now, and where Mr. William's site would be.

Lawrence Toward, citizen, said he has been sworn in. He said North Port is overcrowded with 4 wheelers and dirt bikes and it is out of control. We definitely need a place to ride, which Mr. William's is trying to provide. I have been to the Red Neck Yacht Club. The security thing they talked about at the gate, pretty much non-existent. I have a concealed weapons permit, and I was out driving one day. I had forgotten I had the gun with me and went to the Yacht Club. They asked me if I had anything in the car. I had forgotten the gun was there and said no. They let me go through. There was a lot of drinking. There are drugs in there. Mr. William's is trying to

make his park a family oriented park. There are other tracks for 4 wheeling in Okeechobee and Waldo and most of those folks seem to come from Charlotte County, Lee County and other surrounding counties.

Robert Peden, said he has been sworn in. I am a resident of DeSoto County. I was in partnership with Danny Kelly starting the park before Heather started working there. Some things happened and we parted from there, but this has gotten to be a big issue with the easement. When I was building the park with Mr. Kelly, we gave that easement going in 100' right-of-way and he knew of the 60'. I suggested to put a cable down the center to divide it. This way it would always give the neighbors access to their property. He said he was not going to do that.

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

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

Ms. Dozier asked Mr. Rooney a question. She said typically there are regulations put in place by the Federal Government and the State as it relates to particular uses. They have a set of guidelines/regulations that need to be followed. My question is if they have something in place and the County has something in place that is more restrictive, typically how would that work?

Mr. Rooney said if the County is more restrictive, the County is more restrict.

Ms. Dozier said the request was that certain types of plans be submitted as part of the site plan review, however, in the revisions of the conditions that were submitted by Mr. Berntsson, it states that it would only follow State and Federal requirements. If the County has provisions and request things more restrictive, so to speak, this is essentially no longer required, so long as it meets State and Federal. Does the County have the ability to ask for more.

Mr. Rooney said there is a difference in requested by the County and required by County Code. Is there some way we can modify that issue?

Mr. Berntsson said the problem I have is the County put 2 giant rectangles without any science or regulation and said these areas are going to be protected. We don't even know when we go through the agency permitting, if those are actually going to be protected. We have 1.9 acres of wetlands that we indicated and there is a 7.something acre preserve. We want to use the area around the wetlands as nature trails and things. There are buffer requirements in the Federal regulations. There are buffer requirements in Charlotte County regulations. This is kind of just throwing a dart at the site plan and saying this giant square landed here and even if we find out later there are no squirrels nest in this tree, you will still have 4 acre preserve.

Mr. Thornberry said this type of discussion is unusual. These issues, I know you address them because the County brought them up, but it is unusual for us to be involved with any of this. Let's just move on. That issue will be handled by the applicant and County eventually.

Mr. Haymans said conditions can be added to a special exception that are not supported by a particular ordinance if you find there is a requirement in order to mitigate for the impacts that are going to occur as a matter of the special exception.

Mr. Rooney said we can change the language to comply with the County's open space requirement, we know that there is an ordinance on that. The remainder should be in consultation with the County and State and Federal agencies to be determined by site plan.

Mr. Berntsson said we have not submitted a wildlife report or full wetland report. There is just a preliminary assessment that has been submitted, and we have 11 acres of buffer. If the agencies require a 4 acre buffer around a squirrel's nest, we will have to do it. There is nothing said here saying we saw the squirrel running around and we think it is necessary to have 4 acres for it. It is overkill at this point. My client has many more acres throughout the area that might be more appropriate for a 25 acre preserve that addresses all of these issues.

Mr. Berntsson said it would seem to me what would be appropriate is to just delete #8 and add to #7 – as all applicable requirements of the Code must be met for each recreational use and you've required a soil erosion plan, a stormwater management plan, a traffic management plan, and public safety management plan. You have added to what the DRC already requires – all those various plans. We're going to have to have all those State and Federal permitting and there has been nothing that the staff has indicated at this point that says these wetlands or this nest needs extra protection over and above because of this use.

Mr. Berntsson said the neighbor's have basically come here and said we've run this place so full, that we have traffic all the way back to Hwy. 31. Anyone who wants to come in here, you have to watch us because we're already here and put our stake down. Mr. William's has a U-pick farm that exist today, that people come to and visit while his operations are on-going. We have a right to access our property, not to sit 3 hours in a line waiting to get through. My understanding from the pre-application meeting was Tom Burns was satisfied with the access provided. We had the helipad and 2 access points. We have to go through the DRC process. We can cooperate and be existing with our neighbors. This can and will be compatible.

Mr. Rooney said he thinks he may have found a way to solve criteria #8. What I am suggesting is eliminating condition #8, bring #9 up to 8 and then in #7, with the list of soil erosion, stormwater management, traffic management, public safety management, if they decide to go with the revised paper Rob submitted, I would just add in "and a preservation plan" after public safety. What does that mean, it means if there is Code provisions that require preservations, they will have to come into compliance with DRC. There are provisions in the Comprehensive Plan that require consultation with State and Federal agencies, that our approvals are consistent with theirs. We can deal with that issue going forward once we have more detail.

Mr. Berntsson said that would be acceptable.

Board Member Comments and Questions

Mr. Hittson said we seem to have dueling experts again. Go back maybe to the basics here. Our own staff experts are saying we fail #2, it is incompatible. We fail #3, that there is adequate

access. We fail #6 that is detrimental to the health, safety and welfare. That must be taken into consideration.

Mr. Thornberry said I have not been out to the property, I have driven by. I can tell you a lot of my friends have been to the Red Neck Yacht Club and have had a wonderful experiences. I have heard of some of the things other public folks spoke about, the negative, but that always comes with everything. You can go to the ball park and get stabbed. I think it is vital for the citizens of Charlotte County to have such a venue. They should not have to go to Lake Okeechobee or Waldo or do it illegally. The special exception we granted the Red Neck folks was a huge monumental step on our part. We did it – it is functionable. It is huge. It is only being used on 2/3 of their property. Now we have the little guy in the middle. Some how, some way, they are not playing well together. That is not our concern. This is a tough one, but I am in favor to approve.

Mr. Stout said I am in favor to approval as well. I think the issues and objections are outside of our scope.

Mr. Truex asked is there the possibility at all of getting duel access off of Graham Road?

Mr. Berntsson said they have agreed for public safety and welfare to the East Charlotte Drainage District, they are a public body, they have agreed to that access, but not full access.

ACTION: *A motion was presented by Bob Stout and seconded by Bill Truex that Petition SE-09-18 be APPROVED based on the Growth Management Staff Report dated April 7, 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 with 8 conditions and modified by adding Preservation Plan to the conditions.*

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

1. The special exception, as approved by the Board of Zoning Appeals, is for a Recreational Facility, consisting of a mobile home to be used as a residence for an on-site manager, a U-Pick farm only on the northerly 40-acres; an ATV riding area only on the middle 40-acres; a Paint-ball gaming area and campgrounds on the southerly 40-acres according to a revised location and layout to be determined through ***Site Plan Review***.
2. The sale of alcoholic beverages is prohibited on this property.
3. A helicopter landing pad must be located on subject property and appropriately designed, marked and maintained to provide emergency access by a helicopter.
4. Hours of operation for the ATV and paint-ball activities shall be limited to Friday, Saturday and Sunday from dawn to dusk.
5. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as permitted accessory uses or structures may be approved by the Zoning Official.
6. The ***Conceptual Plan*** presented by the applicant as part of the petition is for illustrative purposes only. The applicant must submit a detailed site plan and associated information for Site Plan Review by County staff. The applicant must also obtain Final Site Plan Approval from County staff prior to establishment of the use.

7. All applicable requirements of code must be met for each recreational use held on subject property, including compliance with an approved Soil Erosion Plan, Storm-water management Plan, Traffic Management Plan and Public Safety Management Plan, which must be submitted and approved along with the Site Plan Review application prior to establishment of the use.
8. Final Site Plan approval shall include a "Wetland Preservation Area" for the southerly 350' of the westerly 900' of subject property and a "Wildlife Preservation Area" for the easterly 300' of the southerly 600' of subject property. These areas must be fenced and posted with signs reading "No Admittance" every 100'. These areas may be revised or modified during Site Plan Review if new updated information indicates these areas should be enlarged or reshaped. An alternative layout and location for the campgrounds must be submitted to provide for these preservation areas.

IX. Public Comments -

Robert Berntsson, Esq., Big W Law Firm, said I sat in the audience and I heard your case today about the people with the deck (referring to Petition Var-10-04) and I really felt if they had someone like Mr. Haymans, Ms. Waksler or myself, standing here, they would have met those 7 criteria. If you are willing to reconsider it, I will present those 7 criteria to you right now for the purpose of you granting them their variance for their deck.

Mr. Truex asked if we can do this?

Mr. Rooney said he can go through the 7 criteria right now and you can decide if you wish to reconsider it. It voids the decision. That would leave, in my mind, I think what the Board would try to re-do then, that would leave the existing variance request, which, they did not have to pay for, floating and allow staff to work out an alternative.

Mr. Berntsson said or alternatively, it's still out there and you can vote to approve it right here today and be done. Let those people move forward.

Mr. Thornberry said we voted 2-2 which denied the petition. That means they cannot have the porch elevated. (denied the motion)

Mr. Rooney said I would suggest you let Mr. Berntsson go through his thinking on the 7 criteria before you move, and then it has to be someone who was on the moving party.

Mr. Berntsson said this is outside the box, but I feel sorry for those people. It just seems like if they had somebody to help them, they would have gotten where they needed to be. I don't think this Board felt compelled to say no, it just struggled with an ability to say yes.

Mr. Berntsson said I would indicate on behalf of the public, I am not representing them, in what I heard presented by both staff and the applicant, there are unique and peculiar situations, conditions and circumstances, which relate to location, size and characteristics

of the land. Because of what their neighbors did, it did not allow them to do what they intended to do with their property. That is very unique. He went on to discuss the 7 criteria and undo hardship. I submit the granting of the criteria for the variance has been met.

Mr. Hittson made a motion to reconsider. **Mr. Stout** seconded. The members voted and it was unanimous to reconsider.

Mr. Truex made a motion to approve the 6 foot variance for the raised deck, seconded by **Mr. Stout**, with a unanimous vote.

Mr. Thornberry said he believes they did the right thing. Instead of being denied, they are granted their petition.

X. Staff Comments -

XI. Member Comments -

XII. Next Meeting

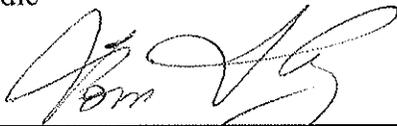
*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, May 12, 2010, at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 12:37 p.m.

Respectfully submitted,

Diane Clim, Recorder

/dlc



Tom Thornberry, Chairman/Board of Zoning Appeals

Approval Date: 5-12-10