

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, October 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

Edmund T. Hittson, Vice-Chairman
Bob Stout, Secretary
Bill Truex
Michael Brown

Staff Present

Derek Rooney, Assistant County Attorney
Nicole C. E. Dozier, Zoning Official
Ken Quillen, AICP, Planner III
Diane Clim, Recorder

Tom Thornberry, Chairman (absent)

I. Call to Order

Vice-Chairman Hittson called the October 13, 2010 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

Vice-Chairman Hittson 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 Ed Hittson to approve the minutes of the September 8, 2010 meeting of the Board of Zoning Appeals, with one correction. On page 3, under Action, the words "Motion was approved with a unanimous vote with the following conditions:" was missing. Minutes were approved with the one change with a unanimous vote.

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the October 13, 2010 Board of Zoning Appeals meeting were submitted.

VII. Introduction of Staff/Comments

Vice-Chairman Hittson introduced staff. Nicole Dozier, Zoning Official, Attorney Derek Rooney, and Vice-Chair Hittson 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 September 28, 2010: VAR-10-14; VAR-10-15; SE-10-19, SE-10-20; and SE-08-24(M1)

Petition #VAR-10-14

Joseph and Janet Froelich are requesting a variance to reduce the required side yard setback from 7.5' to zero feet to allow a new roof over a boat lift in a Residential Single Family 3.5 (RSF-3.5) zoning district. The property address is 1912 Mississippi Avenue, Englewood, Florida and is described as Lot 29, of Grove City Shores Subdivision, in Section 17, Township 41 South, Range 20 East. A complete legal description and additional information are on file.

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

Applicant Presentation

Jim Bennett, Bennett Marine Construction, represented the applicant. He said he has some pictures of the area. The three pictures show the applicant's boat lift and the neighbor right next door. They share a dock in between the two boat lifts. He wanted to show the steel beams are rusting and the owners would like to replace them. The roof is totally rotten. A good storm can destroy it. They would like to rebuild this, up to wind code. He discussed the 7 criteria. He said there are approximately 12 shared boat basins. The purpose of the boat basin is out of the open body of water. It is protected and survives storms better. If they move into the Lemon Bay aquatic preserve, it would cost a lot more money since they would have to apply for DEP and Army Corp permits. They need expensive surveys to apply. If that side is in sovereign lands, they would not be able to put a roof on it. He has received other permits allowing him to built right up to the property line. He said there are a lot of structures in Grove City similar to what they want to build. He said the neighbors have no problem with this request. There is no hardship there.

Mr. Hittson asked if it was possible to put a boat dock on the north side.

Mr. Bennett replied yes, they could, but that is the aquatic preserve. The permitting with DEP and Army Corp gets more involved.

Mr. Quillen asked Mr. Bennett why is it that you cannot reconstruct a new boat lift and roof similar to the one that is existing now that meets code?

Mr. Bennett said they could, but this is an old setup. In salt water conditions, with steel beams, they rust and deteriorate quicker. It is constant maintenance. The present lift hooks up to the boat, two in the back and one in the front. The newer system with straps, is much easier to lift the boat.

Mr. Hittson asked Mr. Quillen about the 4 other permits Mr. Bennett said he has with a zero setback.

Mr. Quillen said he was given 2 permits. One was a roofed boat lift. The other one was a dock. One of them was approved by the previous Zoning Official. We do not know why he approved it, but he did. That one was in a boat basin.

Vice-Chairman Hittson 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. Brown. The public hearing was closed with a unanimous vote.

Mr. Quillen numbered the 3 pictures Mr. Bennett handed in.

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

Board Member Comments and Questions

Mr. Truex said this area is unique. It was built for certain purpose and now we are trying to take that purpose away and put docks out in the estuary. I am very much in favor of this variance. The boat basins were built in Grove City for a reason and they should be utilized for that purpose.

Mr. Stout said the idea of approving this when they only meet one of the 7 criteria is difficult but I agree with Bill. We live in a water environment and we are supposed to be very conscious of those kinds of things.

Mr. Rooney said he wanted to add that he noted the discussion and presentation by the applicant and he did address the remaining 6 criteria and gave testimony on each of those points.

Mr. Brown said he would encourage the applicant to try and get the neighbor to do this too as a joint project. Rather than a singular project.

Mr. Hittson said he shares Mr. Stout's concern. We are constrained by the rules that govern us and the rules state quite specifically that all 7 criteria must be met. Staff has stated that 6 of the 7 criteria have not been met. I hesitate to approve something that is that far out of range from staff recommendations.

Mr. Truex said Mr. Rooney made comment that the petitioner did respond in his way to those 7 criteria. I believe the area is unique. Not every canal neighborhood, such as Gulf Cove or South Gulf Cove, has boat basins. Grove City does and very few areas in the county have boat basins, so I believe it is unique.

Mr. Hittson said he is hung up on the fact that it is not the minimum modification that is necessary. The dock can be put anywhere else. This also is a condition created by the property owner.

Mr. Truex said putting the dock in the estuary would be worse.

Mr. Stout said but he could rebuild in the same spot he is in now.

Mr. Truex said if he does a canopy system like he has now, he will have to go back to steel. I can take you out to project on Manasota Key to see projects where steel is not going to last 40 years. Steel's content was different back then than it is today.

ACTION: A motion was presented by Bill Truex and seconded by Mike Brown that Petition VAR-10-14 be APPROVED based on the Growth Management Staff Report dated October 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 variance with 2 conditions.

The Motion failed with a 2/2 vote (Mr. Truex and Mr. Brown voted yes to approved this variance – Mr. Hittson and Mr. Stout voted no – not to approve this variance.

Petition # VAR-10-15

Ramon and Toni Merino are requesting a variance to increase the maximum area allowed for detached accessory structures from 1,489 to 2,103 square feet to allow a new shelter in a Residential Single Family-3.5 (RSF-3.5) zoning district. The property address is 107 Free Court, Port Charlotte, Florida and is described as Lot 427, of Block 2091, of Port Charlotte Subdivision, Sub-section 40, in Section 27, Township 40 South, Range 22 East. A complete legal description and additional information are on file.

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

Applicant Presentation

Robert Berntsson, Esq., BIG W Law Firm, represented the applicant. He said he has been sworn in. This variance request is to allow for the addition of a pavilion that is 384 s.f. in size, therefore, the variance is for a 383 s.f. variance because they current are allowed one more square foot under the code. His clients purchased the property a few years ago. When they purchased the property, there was an accessory structure on the property that was out of setback. A new garage and cabana area was permitted and is under construction. It is about 1500 s.f. That area has a small lanai on the end. It is basically a covered area to come in from the pool. It is only about 12 feet wide. Mrs. Merino is very sick and cannot be exposed to the sun. This is why they would like to put up this structure. He went through the 7 criteria and said they are in agreement with the staff report.

Mr. Hittson asked when the new structure was planned, could the pool room have been made a little smaller and the lanai made bigger to achieve the same result?

Mr. Berntsson said none of the structures on this site are oversized. I would agree with you if we were saying they have something twice the size of their house. The lanai area is a garage. You need a certain size garage to fit the cars in. It was small enough to be not intrusive to the neighborhood but large enough to be useable to allow his father in law to have some space and be an accessory to the pool. If it was 383 s.f. smaller, it would not be useable.

Vice-Chairman Hittson 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. 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 VAR-10-15 be APPROVED based on the Growth Management Staff Report dated October 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 variance with 2 conditions.

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

1. The variance as approved by the Board of Zoning Appeals is to increase the total maximum square footage allowed for detached accessory structures from 1,559 to 1,942 square feet to allow the proposed 384 square foot (16' by 24') pavilion as shown on Exhibits '3' and '4' submitted with the application.
2. This variance extends only to the proposed pavilion and existing detached accessory structures and shall carry with these structures only. If the pavilion or other existing detached accessory structures are ever removed or replaced all future redevelopment 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.

Petition # SE-10-20

In This Together, LLC, is requesting a special exception to increase the number and total area of signage permitted to allow six secondary class "A" wall signs, totaling 215

square feet, in a Planned Development (PD) zoning district. The property address is 24467 Sandhill Boulevard, Harbor Heights, Florida and is described as Parcel 'C' of Sandhill Commons Subdivision, located in Section 06, Township 40 South, Range 23 East. A complete legal description and additional information are on file.

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

Applicant Presentation

Julie Craig, represented the applicant. She said Scott Jamison is in Utah, so she is here on his behalf. A previous special exception was approved. It expired on August 9, 2010. The owner of Applebee's thought he could submit for the permits before the 3 years was up. Permits were submitted on August 2, 2010. The reason this took so long was funding. They are just now resubmitting to get the request for what was already approved.

Vice-Chairman Hiltson 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

None

ACTION: A motion was presented by Mike Brown and seconded by Bill Truex that Petition SE-10-20 be APPROVED based on the Growth Management Staff Report dated October 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 with 4 conditions.

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

1. This special exception is to allow six secondary class "A" wall signs, not to exceed 215 square feet, and as identified in the staff report as Signs numbered 1, 2, 3, 4, 5 and 6 at the locations and the sizes specified in the drawings submitted by the applicant with this application.
2. Other signs, such as a primary class "A" sign and directional signs, may be allowed and permitted only if they comply with all other regulations of the sign code.
3. The site plan presented by the applicant as part of the application is for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of the proposed commercial use and all associated signage.

4. 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.

Petition # SE-08-24(M1)

Charlotte County Utilities (CCU) is requesting a modification to eliminate the landscaping requirements of a previously approved special exception to allow essential services in an Agriculture Estate (AE) zoning district consisting of an existing Environmental and Extension Services facility, a CCU maintenance facility, a CCU waste water treatment plant and a new CCU operations building. The property address is 25550 Harborview Road, Port Charlotte, Florida and is described as parcel P1, in Section 20, Township 40 South, Range 23 East. The property contains +/- 696 acres. A complete legal description and additional information are on file.

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

Applicant Presentation

Steve Bozman, Superintendent of the facility, said he was sworn in. CCU in no way intended to by-pass the BZA. This was his first time filing for an exemption. He was told to take this to the Board of County Commissioners (BCC), which is how he proceeded. The BCC did grant them the exemption for landscaping the facility. He did not realize this needed to come to the BZA. He handed out copies of pictures of the facility and yard. The purpose of the photographs is to show the yard and proximity to the building and parking area. There is very little area for landscaping. There are drainage swales, retention pond areas. The Homeland Security Act, requires us to do a vulnerability study for all utilities. He said he participated in the study. Part of his concern is it requires that we do not have trees where it would block the view from cameras. The structure is 792 feet from the nearest access gate. We need to keep clear visibility to the access gate. They also have cameras to view the existing treatment plant. He is also concerned with trees close to the building regarding hurricanes and winds. The whole site is close to 700 acres and the building and parking area are on approximately 3 acres. They are not against landscaping, but they do not have extra staff to maintain the landscaping. Currently, the grass is cut in a straight run.

Mr. Stout asked who would benefit if there was landscaping around the parking lot?

Mr. Bozman said I guess staff looking out the window. No one else.

Mr. Stout asked about the vulnerability study. Was that study performed by staff or given out to a private enterprise?

Mr. Bozman said that was done after 9/11/01, when the homeland security act came into being. All utilities were required to do this study. You can do it yourself, or contract it out. Charlotte County Utilities did it themselves. The person who oversees the security called in the chief operations person, and then there is a government program you fill in the criteria. How do people enter the site; can a vehicle ram the building; could something be thrown at the building from the road, questions similar to answer regarding acts of terrorism.

Vice-Chairman Hittson opened the meeting to Public Hearing.

Public Input

John Rohling, Engineer/Project Manager, with Charlotte County Facilities Maintenance, represented the applicant. He said he was sworn in. His role on this project was the project manager and he coordinated obtaining the architect and civil engineer. He was also the project manager for the construction. He said he worked on 35 projects for the county and never considered exemption for landscaping, but this project is truly different. I discussed this project with consultants and many others and we did feel this project would be better not landscaped. We were told we had to landscape. Our consultant during this process, did say the rules had been changed and there was a chance of getting an exemption. That is why CCU applied with the BCC. They are working with the security issues and the landscape requirements. They are willing to work with the County departments to have a landscape plan that works. He said this is an environmental preserve area. There are wetlands and protected wildlife in the area.

Mr. Bozman said he neglected to say earlier that this new building is actually the secondary emergency operation center should the primary operation center be damaged. If we have trees down in the parking lot, it will hinder the other divisions from accessing and working out of this site.

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.

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John Rohling said he was not sure he understands condition #3. Does that mean we do not have to landscape, or we have to submit another plan?

Mr. Quillen said staff is recommending that you do the landscaping. Condition #3 is a standard condition. If you are doing an addition to the building, that is covered by a special exception, you would need to modify the special exception.

Mr. Hittson asked Mr. Rohling, if we granted the special exception, would you be in agreement with the 3 conditions?

Mr. Rohling said no. We do not want to do any landscaping.

Mr. Hittson said, no, what I am asking is, if we approve your modification subject to the 3 conditions listed here, are you in agreement with the 3 conditions?

Mr. Rohling said, he is sorry, he does not understand. Does this mean we do not have to do any landscape?

Mr. Truex said there are conditions to that though, that is what the Chairman is trying to point out. Do we have a hard copy of this, maybe he can read it to review? Question # 3 is in the event of changes or additions.

Ms. Dozier, Zoning Official, said this is a standard conditions for future items.

Mr. Rohling said as long as they do not have to do any landscaping, then they agree.

Mr. Rooney said he wanted to add something just to clarify. We have had this issue come up with the special exceptions and CCU lift stations previously, and I was involved to a small degree when we created the exception language. There is nothing in the Homeland Security Act that requires an exemption from landscaping. There is discussion of it further on in implementing regulations. Most of it is voluntary. If never requires no landscaping is done. There are issues as far as identifying utilities that could be used as weapons of mass destruction, etc., and for creating protection. Sometimes that involves landscaping if it means protecting a facility from approaching vehicle traffic, or preventing someone shooting at a facility, if it prevents a line of site. Sometimes it means placing no landscaping around facilities. From a legal perspective, there are no requirements that there not be any landscaping.

Ms. Dozier said staff works closely with all departments to make sure that since that provision has come out, that we have made modification and reductions in the landscaping code so that they actually put in less landscaping, but put in some landscaping.

Mr. Truex said he has a problem with opening a floodgate of people coming in with numerous reasons of why from a safety standpoint, they should be able to eliminate or reduce landscaping. He understands this is a facility that needs to be protected and maintained, however, comments of trees falling on buildings, and things like that, I discount that. That does not come into play for me. I think there is enough room on this site to provide some landscaping, some low growth type vegetation and keeping trees spaced somewhat.

Jeff Ruggieri, Building and Growth Management Director, said I would like to respond, but if it is out of line, please let me know, it is not indirect to Mr. Truex's comment. This discussion has gone on for a long time. Mr. Rooney articulated what the homeland security documents says. The language of the exemption and what the Board of County Commissioners actually passed, I don't know, has that been read into the record? Would you mind if I read this – In Section 3-5-402(e) (this came about when the County was building the new jail) that was the issue that drove this language – it says "Public buildings and structures, such as those operated by law enforcement, fire and EMS, including but not limited to jails and fire stations and police stations as determined by the BCC at their discretion." From that language, there was an agenda item that was created at some point and time later on, initiated by CCU, that was a blanket exemption of every project they had. It was on the consent agenda by the BCC without comment. No one was made aware of it in my department. That is what started this "we are exempt" talk. No where has it ever been considered that CCU

facilities has a blanket exemption. The discussion at the Board level was – we don't want to, even with these facilities, (jails and fire stations) not landscape, but we want an opportunity to provide smaller landscaping. I just wanted to provide some clarity.

Board Member Comments and Questions

None

ACTION: A motion was presented by Bill Truex and seconded by Ed Hittson for discussion that Petition SE-08-24(M1) be DENIED based on the Growth Management Staff Report dated October 4, 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 special exception.

Ms. Dozier said they are welcome to sit down with staff and we can figure out a new landscape plan, with less landscaping.

Motion passed to Deny the modification of the special exception request with a unanimous vote.

IX. Public Comments -

Robert Bertsson, Esq. said he is still sworn in. He had the opportunity to speak with Mr. Bennett (the first applicant) who was denied. I am here on his behalf to ask you to reconsider and approve the variance or at the very least, continue this to next month where there may be a full board.

Mr. Hittson said the only people who can request a reconsideration are the Board members who voted to deny.

Mr. Rooney said he is speaking in public.

Mr. Bertsson said he is asking the Board if they would make a motion to reconsider?

Mr. Hittson said okay, continue.

Mr. Bertsson said given the specific facts, you have a boat basin that was designed to put boats in. I think there was some confusion to the fact that this variance required a variance even to put the pilings in. Whether you put a roof in or not, you needed a variance just to put the pilings in. I can go through the 7 criteria right now if you want. There was testimony given to that. If you want Mr. Bennett to come back, a motion to reconsider this at the next hearing where you have a full board.

Mr. Stout said he was making a motion to reconsider the earlier decision on VAR-10-14. **Mr. Truex** seconded the motion.

Mr. Rooney asked are we reconsidering the vote or are you looking to have Mr. Bertsson present new evidence to be heard at the next meeting?

Mr. Stout said his intent was to be reheard.

Mr. Hittson asked for a vote – Mr. Stout, Mr. Truex and Mr. Brown voted yes to bring this petition back next month. Mr. Hittson voted no – not to bring it back. Motion passed with a 3 to 1 vote to rehear this petition.

X. Staff Comments –

Mr. Quillen said we did not have any petitions for the November 10, 2010 hearing, but now we have this one that is continued.

XI. Member Comments –

Mr. Hittson said we should give condolences to Mr. Bill Coy's family. He was a member of this Board for many years. Mr. Hittson thanked Mr. Coy for his work to the community.

Mr. Truex said the BCC did a proclamation to Mr. Coy a few weeks ago.

XII. Next Meeting

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

There being no further business, the meeting **ADJOURNED** at 11:18 a.m.

Respectfully submitted,

Diane Clím, Recorder



Vice-Chairman Ed Hittson/Board of Zoning Appeals

Approval Date: 11/4/10