

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, January 12, 2011 – 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*
Bill Truex, *(absent)*
Michael Brown
Katherine Ariens
Blair McVety

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 12, 2011 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.

Mr. Thornberry welcomed the new members to the Board.

V. Approval of Minutes

ACTION: A motion was presented by Mike Brown and seconded by Katherine Ariens to approve the minutes of the October 13, 2010 meeting of the Board of Zoning Appeals, with a unanimous vote.

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the January 12, 2011 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 28, 2010: APL-10-01; VAR-10-16; VAR-10-17; and SE-10-21

Petition #APL-10-01

Todd Pressman, agent for Ice House America, is requesting an appeal of the Zoning Official's determination that an ice box / vending machine has to be in compliance with section 3-5 of Article 24 and section 3-9-42 of Charlotte County Codes in a Commercial Intensive (CI) zoning district. The property address is 3596 Tamiami Trail, Port Charlotte, Florida and is described as Lots 6, 7, 8, 9, 10 and 11 of Block 1350 of Port Charlotte Subdivision, Sub-section 11, located in Section 22, Township 40 South, Range 22 East. A complete legal description and additional information are on file.

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

Applicant Presentation

Todd Pressman, agent for Ice House America, said he is down from Palm Harbor near Tampa Bay area and is with Matt Touhy, who is the executive Vice President for Ice House America. He presented a power point presentation. Mr. Pressman said Ice House America is happy to be here and looking forward to doing business in Charlotte County. They are working throughout the State of Florida. He has spoken with Ms. Dozier, Zoning Official, and they have a difference of opinion. He said Ms. Dozier said their structure is considered a vending machine and they want the Board to know their structure is a building. Ice House America operates free standing retail ice sales. There is no truck fleet. These are free standing and they have a water line. He showed front and side elevations. They meet all the codes. There are roof trusses. He said the Ice House structure is a building structure, not a vending machine.

Mr. Thornberry asked to see the floor plan on the presentation. He said he has seen many ice machine's through Florida and other states, and asked, when I park in front of your building and go inside with my cooler, I can wash my hands before going into the ice machine, then I open the other door, put my cooler in, put my money in it, where does the ice come from and how do I get the ice?

Matt Touhy, Executive VP of East Coast Ice, said this is the plan view of the actual structure, without the enclosure on front. If you visited one of our machines, picture in your mind, an enclosure covering the vending mechanism you are familiar with, but you are enclosed from the elements.

Mr. Thornberry asked if they submitted this to the Building Department with plans?

Mr. Pressman replied yes.

Mr. Thornberry asked to see a copy of that.

Mr. Thornberry was told that plan was part of their packet, but Mr. Thornberry said it is hard to read, it is small print.

Mr. Brown asked if there would be an attendant and how do you maintain this?

Mr. Pressman said no. He said it is not much different than a 24 hour ATM machine. They do need to have a service technician go there every day or every other day because they need to check the bill collector and coin collector. They can only hold so much. They then service the machine, clean up after anyone, and do inspections. There are annual requirements for deep cleaning and refurbishing the machine.

Ms. Ariens asked if they had any literature on how much these machines are liked or used.

Mr. Pressman said they are well received every place they operate and they have been very successful. It is a great alternative to how ice is delivered now.

Mr. Thornberry asked when you submitted your permit application, who is the general contractor?

Mr. Pressman said William Sharber, his address is in the Tampa area.

Mr. Thornberry asked, this is all being done by the property owner?

Mr. Pressman said applications come to the Board through the property owner. Ice House is seeking different locations for leases throughout the County, so it is officially brought by the property owner.

Mr. Thornberry said this is one of the older buildings in Charlotte County. How does the contractor intend to get through parking?

Mr. Pressman said there are other issues outstanding here. Parking has been raised, but we are looking at the first hurdle.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Grace Amodeo, citizen, asked since there will not be an attendant at this building, if someone comes in and does not know how to use the machine; also if the front has an area to wash your hands, that doesn't mean they are going to; are they touching any part of the machine? Is the ice bagged? How does the machine know how much ice you want? She feels an attendant should be there. There are also homeless people in the area. She is concerned with mischief behavior.

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

Ms. Dozier said the County has not stated this is not a building. It is a building as defined in the Code. As defined in my presentation, I specifically point out that the definition is building or structure accessory. Mr. Pressman showed a definition of building, right under that is building accessory. We're talking about definitions. Definitions are not Code. There is not a written Code for this type of use. There is not a written Code

discussing this type of structure. What I have done is established a way this particular use can function within the County, because we currently do not have any standards to do so. What she allowed is that this type of building be allowed as an accessory building to a permitted principle use, as long as it complies to the commercial standards and all outstanding Codes the County has. The County has not said it is not a building. As stated by the applicant, ATM machines are machines. They have awnings on them. This ice vending machine operates in the same function. There is no person there. Someone comes to maintain it on a regular basis. Just like you put your card into an ATM machine, you put your card into this ice vending machine. We have made provisions to allow this particular use in the County. We have applied rules and regulations to allow it to be here.

Board Member Comments and Questions

Derek Rooney, Asst. Co. Attorney asked Ms. Dozier, so what you are saying is that you agree it is a building, an accessory structure and an accessory use, which can be allowed at this location. The only issues are the parking.

Ms. Dozier said yes. Right now it is not compliant with the parking. It is not compliant with a number of items under the Building Code. If you look within the report given to you, it gives you all the rejections that were given by the various divisions that reviewed this particular item. Exhibit D shows you examples why the plans reviewer rejected this structure. There are a number of items which the applicant would have to be compliant for in order for Building Department to approve it. Exhibit E shows the Zoning Departments list of corrections that need to be made in order for this structure to exist on this particular parcel as well. The Utility permit, which was also required by the Building Department, has not been done as of yet.

Mr. Rooney just wanted to make this clear so the Board can make a decision. Zoning has denied the application because it is a building, and because it is a building, it has to meet all those standards. Even if the Board approved the appeal, it would not have an effect.

Mr. Thornberry said he is confused as to why this appeal came to this board. Both the Zoning Official and the applicant are saying this is a building structure.

Ms. Dozier said she has had staff explain to the applicant this is being reviewed as a building. The main emphasis seems to be the fact that I am stating this is a machine, just like an ATM machine. However, even though I may be stating it is a machine, all the reviews treat this like a building structure. That is the only way staff has to review this.

Mr. Pressman said maybe they should sit down with Mr. Dozier, the Asst. Co. Attorney and any others to go over these issues.

Mr. Thornberry said this Board is not concerned with parking or the reviewing. That is not their business. He believes there have been some mis-communications.

Mr. Pressman asked for this petition to be continued to the next hearing, and he will sit down with staff to try and work this out. If it works, they will not come back in February.

ACTION: A motion was presented by Blair McVety and seconded by Mike Brown that Petition APL-10-01 be postponed and Continued for one month at the request of the applicant.

Motion was approved with a unanimous vote.

Petition #VAR-10-16

Rawy Shediak and Nijole Ladd are requesting variances to reduce both side yard setbacks and 13.6' to 10' for a two-family residence in a Manasota Multifamily-7.5 (MMF-7.5) zoning district. The property address is 1280 Shore View Drive, Englewood, Florida, and is described as Lot 4 and the southerly 15' of Lot 3 all in Block A of Englewood Shores Subdivision, located in Section 13, Township 41 South, Range 19 East. A complete legal description and additional information are on file.

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

Applicant Presentation

Tim Krebs, Agent for the applicant, said he is here to answer questions.

Mr. Thornberry said we have an existing 2 story building there now. One is the owner's upstairs apartment and they rent out the downstairs. You are proposing the addition of the stairs and the nice garage and renovating the upstairs and downstairs?

Mr. Krebs said no. The owner's quarters, which is the 2nd floor, is being expanded. That is it.

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. Brown moved to close the public hearing, seconded by Ms. Ariens. 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 that VAR-10-16 be APPROVED based on the Growth Management Staff Report dated January 4, 2011, the evidence presented at the hearing, and finding the applicant HAS MET the required criteria for the granting of the variance subject to the 2 conditions set forth by staff.

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 both side yard setbacks from 13.6' to 10.0' for a permitted two-family residence on this property located in the MMF-7.5 zoning district.
2. This variance extends only to the development as proposed and as indicated on the plans submitted with this application. If different plans for a single-family or two-family residence is proposed to be developed on this property then this variance does not apply. All future redevelopment of this property must be constructed according to all applicable codes in existence at that time, unless a variance is granted specific to the development proposed at that time.

Petition #VAR-10-17

Shirley Bauer is requesting variances to reduce both side yard setbacks from 10' to zero feet for a dock in a Manasota Multifamily-10 (MMF-10) zoning district. The property address is 5067 North Beach Road, Englewood, Florida and is described as Parcel P16, located in Section 02, Township 41 South, Range 19 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., BIGW Law Firm, agent for the applicant, said Shirley is requesting the variance to allow a dock. Manasota Key, and all the barrier islands, are unique. Many of these lots are long, narrow, and 50 foot in width. Part of the allure, is access to the gulf and bay. Many lots have easements rights to access the bay or gulf or both. Some are conveyed to the owner by deed. That is the unique case here. Mrs. Bauer is the owner of this 3 foot strip. Aerial photos dated back to 1981, show my clients home across the street, along with this 3 foot strip of land improved with a dock. (he handed out copies of that aerial). The dock had fallen into disrepair. Her husband passed away. They had intended to repair the dock, but with his illness, they had failed to do so. When Mrs. Bauer went to repair the dock, she was told it was non-conforming and the 50% rule prohibited its reconstruction. All the required permits have been obtained from the Florida Dept. of Environmental Protection and the US Army Corps of Engineers. Docks on the Key and virtually all waterfront areas are unique. Riparian Rights are the rights of an upland owner to access the water. He discussed the criteria for the variance. To deny the dock construction, creates an undo hardship. He handed in a notarized statement from the property owners from the north, consenting to the construction of the dock.

Mr. Berntsson said he objected to condition #2. Docks are located off the property and in the water of the state. His client has DEP and Army Corps permits to construct the dock. His clients do not need an easement over the neighbors upland property, because they won't be constructing on the neighbors property.

Mr. Rooney asked do you have a submerged land lease, is that what they have?

Mr. Berntsson said they have a dock construction permit.

Mr. McVety asked what size the dock construction permit is?

Mr. Berntsson said 3 feet.

Mr. McVety asked if it was a fishing pier or a boat dock?

Mr. Berntsson said they have it listed as a kayak launch. No pilings or anything as a boat dock. Mr. Berntsson said they can accept conditions #1 and #3, however, condition #3, we would like to request that repairs to the dock be specifically allowed. He has specific language when you get there.

Mr. Thornberry asked regarding the notarized signature to the owners to the north, there are 4 signatures but the aerial shows 5 homes.

Mr. Berntsson said it is not the waterfront one, it is the adjacent ones, but they have the right to walk on that area as well.

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. Brown moved to close the public hearing, seconded by Ms. Ariens. The public hearing was closed with a unanimous vote.

Mr. Quillen asked if there was a statement about condition #2?

Mr. Rooney said he believed the applicant asked to have condition #2 removed. Mr. Rooney said he did not think that condition was necessary. He does not see it is required to give an easement. Mr. Rooney said he recommends it be deleted.

There was discussion about the dock, the 3 foot access to the water, the shed sticking into the access area 1.5 feet, and other people using that access to the water.

Mr. Berntsson said the plans show existing wood boardwalk, which has to be removed and replaced. They originally came in to repair that structure, were denied because of the 50% rule, non-conforming structure, and then came in to the variance process. A dock was there. You can see in the 2001 aerial, the dock was there.

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

Mr. Berntsson said he reiterates they have met with 7 criteria for a variance. #7 is the same wording as the previous request which staff approved, stating the same words for approval. In this case, as to the conditions, the sentence where it says "if the boat dock is ever removed or replaced" - replacement would be a repair. I don't want it to be once you build it, you have to let it fall into disrepair, and when it's useful life is over, it's over. When they came in to do a repair, they were told the 50% rule. "If the boat dock were removed" is better language.

Mr. Quillen said he thinks the Code should operate the way they are intended to operate, and interpretation be made by the individuals who support those Codes.

Mr. Berntsson said if that is the case, then the first sentence would suffice and the other 2 can be removed, because the Code is the Code.

There was more discussion about repair, replacing, and 50% rule.

Mr. Rooney said this is a 3 foot piece of property. He can see removing condition #2 and #3.

Ms. Ariens asked why is it being called a boat dock, when it is just a dock?

Mr. Berntsson said he does not have a problem deleting the word boat.

Mr. Thornberry said now I understand the issues with Condition #3. If anything happens to the dock, a hurricane, a boat hits it, it would have to be replaced.

Mr. Quillen said staff's idea with Condition #3, is that if an adjacent property owner acquired this parcel and made it part of theirs, and they tried to use that variance to benefit themselves, when in fact, they can build and develop something that could meet Code, it could have different standards.

Mr. Thornberry said and that is why we have staff, to figure it out when the new property owner comes along.

There was discussion and they decided to just have Condition #1 stand valid.

Board Member Comments and Questions

None

ACTION: A motion was presented by Mike Brown and seconded by Blair McVety that Petition VAR-10-17 be APPROVED based on the Growth Management Staff Report dated January 4, 2011, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the variance subject to the 1 condition set forth by staff.

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

1. The variance as approved by the Board of Zoning Appeals is to reduce both side yard setbacks to allow the construction of a three-foot wide dock as shown on the proposed Site Plan (~~Exhibit C~~) submitted with the application.

Petition #SE-10-21

Pastor Bryan Walton, agent for Placida Road Church of God, is requesting a special exception to allow a house of worship and associated uses, including a fellowship hall and classrooms in a Mobile Home Conventional (MHC) zoning district. The property address is 5225 Placida Road, Placida, Florida and is described as part of Lot 7 of Grove City Land Company Subdivision, located in the Southwest Quarter of the Northeast Quarter of Section 21, 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

Pastor Bryan Walton said he is glad to answer any questions.

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. Brown moved to close the public hearing, seconded by Mr. McVety. 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

ACTION: A motion was presented by Mike Brown and seconded by Katherine Ariens that Petition SE-10-21 be APPROVED based on the Growth Management Staff Report dated January 4, 2011, 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 subject to the 3 conditions set forth by staff.

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

1. This special exception is to bring the existing house of worship into conformity with the Zoning Code and to allow the construction of a new building for a fellowship hall and classrooms.
2. 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 new building.
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 -

Robert Bernisson, Esq. said at the beginning of the meeting, you talked about the 4 members being present and if you can waive that. I would like to urge the Board to maintain their relatively liberal posture on that. When we apply, my clients are paying money to be here before a Board. They know they need to get 60% of the Board approval if you have a full Board. When one is absent, now I have to get 75% of the Board to approve. Having a full Board really does make a different.

There was some discussion about the process and calling out/absent.

X. Staff Comments - None

XI. Member Comments - None

XII. Election of Officers

Mr. Brown elected Mr. Thornberry for Chairman, second by Mr. McVety with a unanimous vote.

Mr. Thornberry elected Mr. Brown Vice-Chairman, second by Mr. McVety with a unanimous vote.

Mr. Thornberry elected Mr. Truex Secretary, second by Mr. McVety with a unanimous vote.

XII. Next Meeting

*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, February 9, 2011, at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 11:20 a.m.

Respectfully submitted,

Diane Clim, Recorder

/dlc



Tom Thornberry, Chairman/Board of Zoning Appeals

Approval Date: _____

3/9/11