

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, March 9, 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*
Michael Brown, *Vice-Chairman*
Bill Truex, *Secretary*
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 March 9, 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.

V. Approval of Minutes

ACTION: A motion was presented by Mr. Brown and seconded by Mr. McVety to approve the minutes of the January 12, 2011 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 March 9, 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 February 22, 2011: SE-11-01; SE-01-22(M1); and SE-90-62(M1)

Petition #SE-11-01

Ken and Patricia Young are requesting a special exception to allow on-premises consumption of alcoholic beverages in a Commercial Intensive (CI) zoning district and within 1,000 feet of a church. The property address is 5229 Duncan Road, Punta Gorda, Florida and is described as that part of Lot 2 of Block 55 lying north and west of U.S. Highway 17, in Cleveland Subdivision, located in Section 35, Township 40 South, Range 23 East.

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

Applicant Presentation

Ken Young, applicant, said he lives at 5170 Dalewood Street and has been sworn in. He requested that condition number 3 be deleted, as far as the hours of closure is concerned.

Mr. Thornberry asked how long he owned the property?

Mr. Young replied he purchased it in September and owns the residential/CI property which is behind it. That is the only residential property abutting the site. That is where he lives.

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. Brown. The public hearing was closed with a unanimous vote.

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

Mr. Quillen said condition #3 was put in as a placeholder so the Board can have a discussion about hours if you thought it was necessary. Staff is not strongly in favor of condition #3.

Board Member Comments and Questions

Mr. Truex asked Mr. Young if he had any plans for having exterior tables/seats?

Mr. Young said they have no plans at all for that.

Mr. Thornberry asked where the church was.

Mr. Young said he did speak with the Pastor of that church and he did not have any problem with this request.

ACTION: A motion was presented by **Bill Truex** and seconded by **Mike Brown** that **Petition SE-11-01** be **APPROVED** based on the **Growth Management Staff Report** dated **March 1, 2011**, the evidence presented at the hearing, and finding the applicant **HAS MET** the required criteria for the granting of the special exception subject to the 4 conditions set forth by staff, excluding the original condition #3.

Motion was approved with a unanimous vote.

1. The special exception, as approved by the Board of Zoning Appeals, is to allow a 1,800 square foot restaurant and bar, including the sale of alcoholic beverages for on-premises consumption, inside the existing building only.
2. The site plan presented by the applicant as part of this petition is for illustrative purposes only. All permitting procedures and codes, including off-street parking, landscaping and buffers, are applicable to the existing development and expansion of the parking lot.
3. Subject property shall be brought into compliance with the off-street parking and landscaping requirements of code. A Site Plan showing the minimum off-street parking and landscaping requirements of code shall be submitted for approval by the Zoning Division prior to issuance of a liquor license. The required off-street parking shall be constructed prior issuance of a Certificate of Occupancy. The required landscaping must be planted within six months of issuance of a liquor license and maintained according to code.
4. Any major changes or additions to this special exception, including any future expansions of the restaurant or bar, shall require a modification of the special exception. Minor changes or additions such as parking and accessory uses or structures may be approved by the Zoning Official.

Petition #SE-01-22(M1)

Richard Manders is requesting a modification of a previously approved special exception to allow a bird hatchery, in addition to the existing mobile home, in an Agriculture Estate (AE) zoning district. The property address is 2270 Aspen Road, Punta Gorda, Florida and is described as the south half of Tract 20, located in the Northwest quarter of Section 13, Township 40 South, Range 23 East.

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

Applicant Presentation

Richard Manders, Applicant, said he purchased this property last year because he needs to relocate. He has a letter from the Department of Agriculture that says raising birds is agriculture use and allowed on agriculture property. His site would not be opened to the public.

Mr. Thornberry asked Mr. Manders if he has a copy of the statement he wrote when filling out his application. He asked Mr. Manders to read that statement into the record.

Mr. Manders did. (it explains the purpose of aviary and breeding of birds.) Most of the birds are either shipped away or he brings them to the pet stores. There might be one delivery truck arriving every other week to bring food. The birds produce almost no waste. He also has a license to breed birds.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Dennis Jordan, 2390 Aspen Road, said he has been sworn in and lives directly south of the site. His land is 10 acres with cattle. He is concerned about the birds waste being hazardous to their health. He discussed disease (parasites) that affect humans. They have wells out there for drinking water. The watershed runs south, southwest. He said the road is private and the neighbors all maintain it. He is concerned about this operation ruining his property, wells, and animals.

Donald Dees, 2331 Aspen Road, said he has lived on this road 40 years. This road is not in a commercial area. This area is not zoned for a business. He is concerned about the traffic and feeding the birds. Years ago, someone had a nursery, but the plants do not make noise.

Mary Jo Gomez, 2241 Aspen Road, said she has lived on this road 42 years. Her husband was in land construction and they took care of that road for many, many years. She feels this might be a little noisy. She is retired and likes to rest and feels they may be disruptive to the area.

Agnes Jordan, 2390 Aspen Road, said the 5 acres that adjoin their property, they plan on building on. They have a lot of family that comes over and she is concerned for them. She said there is no drainage in the area. She said this would be bad for the area.

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

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

Rebuttal

Mr. Manders said there will not be any traffic, just the one truck for food delivery every other week. If this is the only issue, I can meet him on the highway and pick it up in my own car. The birds are raised/hatched in the United States, there are no diseases. He can close in the backyard so the noise does not go that way. The floor is concrete and he cleans that up, so there is no waste to be worried about.

Ms. Ariens asked how many birds he has at the facility he is presently at?

Mr. Manders said close to 400. He never had a complaint about noise.

Mr. Brown asked you have 200 pairs of birds, what about the babies?

Mr. Manders said at about 3 weeks old, they go to the pet stores to be hand fed.

Board Member Comments and Questions

Mr. Truex said he can appreciate both sides. He has issues with the waste. He is also concerned that someone else can come in and have chickens or turkeys and does not need to have a special exception. He does not know about or understand the right to farm law. This would be his first question.

Derek Rooney, Asst. Co. Attorney, said he reviewed the applicant's letter from the Dept. of Agriculture. The right to farm provision is not as applicable – that has to do as he indicated with Building Dept., the right to build facilities, and the County's ability to down zone existing agriculture operations. What is more important about the letter is the determination that it was an agricultural use. Why that is important is what you mentioned earlier - that someone can go in there with chickens, etc. The way our Code has been interpreted, we treat animals for the pet trade, such as dog kennels as conditional uses, but we would allow the neighbor who has cattle or other agricultural uses. There is an argument to be made that this particular applicant could qualify as agriculture and that our Code is not reading it correctly. In that case, he would be allowed as a permitted use. He has agreed to come here today through the Zoning Official as a conditional use. In the event this is denied, there is a possibility that on future review, it could come in as a permitted use.

Mr. Thornberry asked, tell me again how that happens?

Mr. Rooney said it might come back to you as a challenge to determination of the Zoning Official. It may also come back as simply a decision, reconsideration by the Zoning Official as to the definitions on our Code. I gave you the example this has been brought under the dog kennel provision. It is similar to that.

Mr. Thornberry said he understands.

Mr. Truex said staff, correct me if I am wrong, but if we go through this manner, as opposed to a permitted use, we are still able to apply some restrictions to this?

Ms. Dozier said not if it is a permitted use. If you go forward with this as a permitted use, there are no regulations or restrictions.

Mr. Truex said let me re-phrase the question – if we pursue this as a special exception, we can put limitations and restrictions on this to help protect the neighbors. If it is deemed a permitted use, there will be no restrictions or limitations.

Ms. Dozier said that is correct.

Mr. McVety said he did not think the road was an issue, just the noise.

Mr. Thornberry said he is having a problem with conditions #2; 3 and 6. It certainly is not compatible with existing uses surrounding the immediately, adjacent and continuous lands. It is a private road, we have people living there all their lives, the road does bother me. They have to maintain it all by themselves. They get no help from the County. The general welfare and the public health, I tend to cling to our criteria when I lean toward not allowing.

ACTION: A motion was presented by Thomas Thornberry and seconded by Mike Brown that Petition SE-01-22(M1) be DENIED, based on the Growth Management Staff Report dated March 1, 2011, the evidence presented at the hearing, and finding the applicant HAS NOT MET the required criteria for the granting of the special exception.

***Motion passed to deny the request with a 4 to 1 vote to deny.
Messrs. Thornberry, Brown, McVety and Ariens voted to deny the request
Mr. Truex voted against the denial***

Petition #SE-90-62(M1)

Site Concepts is requesting a modification of a previously approved special exception to allow an 88' high communications tower to be constructed at the existing house of worship, in a Residential Single-family 3.5 (RSF-3.5) zoning district. The property address is 18350 Edgewater Drive, Port Charlotte, Florida and is described as the southerly 363 feet of Block 253 in Port Charlotte Subdivision, Sub-section 8, in Section 19, Township 40 South, Range 22 East.

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

Applicant Presentation

Lee Chapman, a principal and partner of Dave Harrin, said Mr. Harrin could not attend today's meeting and he was sworn in. He thanked staff for their report and helping them. He gave an overview of the history of telecommunications, their history, coverage, growth, and how location is important. He said this site is a good location for this tower for this area. He described where the tower would be and said it would be shielded by the trees already there. He is happy to answer any questions.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

Sue LaPlante, 18406 Holly Avenue, who lives on the corner near this site, said when she moved into this area 24 years ago, the site was vacant. In 1990, the zoning was changed to allow a church. They were good neighbors. The building has changed hands over the years and it is again a church. She personally knows the pastor and his wife since around 1997. She is concerned about the tower because she feels it is not compatible with the surrounding uses. She is concerned about the dangers with cell phone towers.

Jack LaPlante, 18406 Holly Avenue, said if a commercial entity was allowed into this large residential area, would that open a door to more commercial? There is another

cell tower near Quesada and Viscaya Roads. He said it is an ugly tower. On the outside of the fence, there is a warning saying "RF radiation". Inside that fence is not compatible to human well being. I do not know the exact term. He said the tower can go in an area off Flamingo Road where there are many empty lots. The tower people are paying \$1,300 a month to the church. If they put this on a County lot, the County would get the money. This would help off-set taxes. He was against this tower in the residential area.

Kelly Badrow, said she and her husband are the pastors at the church, where the site is. They have done extensive research. For many years, many cell companies have contacted them. They do a lot of help for people in the area through their church. This income will help them help the people of the community.

Grace Amodeo said she had a few questions. She doesn't live in this area, but said it is a neighborhood problem if there is a problem with this. How can this benefit the neighborhood, especially if they do not have cell phones, ipads, etc. Are we going to see a siege of requests for towers?

There being no further requests to speak for or against the petition, Mr. Brown 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.

Rebuttal

Mr. Chapman said he wanted to address some of the comments he heard. The tower we are proposing is limited in height. It has no lighting. It does not make noise and does not generate traffic. It will not increase other commercial endeavors on the property. He addressed property values. He does not know of any instance where a tower diminished property value. He believes they do meet the six criteria for the special exception.

Mr. Thornberry asked do you have a division within Site Concepts that solicits, goes out and looks for sites? Besides the church, did you solicit anyone else in that area?

Mr. Chapman said for this particular site, when we looked at the RF driven propagation, this site hit dead center. They are the first people we approached. They had some background with this type of information, so we went no further.

Mr. Thornberry asked have you ever solicited the County to put a site on?

Mr. Chapman said he never solicited Charlotte County.

Mr. Thornberry said he has to mention that because the County is the largest land owners in Charlotte Co.

Board Member Comments and Questions

Mr. Brown said after Hurricane Charley went through, the only means of communication he had was his cell phone. The towers near him ran out of service shortly, only because they did not have battery backup. Will this tower have a backup generator?

Mr. Chapman said after these events had occurred, there was a mandate by the Federal Government for maintaining service by the providers. I provide the location for the towers, not the backup information. The providers do not want me to be responsible for their livelihood. Nor do I want the responsibility and liability to be their backup power. They come in for applications for backup power.

Mr. McVety asked what is the wind load?

Mr. Chapman asked staff if they knew?

Mr. Quillen said he believes it is 150 mph.

ACTION: A motion was presented by Bill Truex and seconded by Mike Brown that Petition SE-90-62(M1) be APPROVED based on the Growth Management Staff Report dated March 1, 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 modification subject to the 3 conditions set forth by staff, with a modification to condition # 1 to read – (per the request of the applicant) being: There will not be mounted on the exterior of the monopole tower without concealment.

Motion was approved with a 3 to 2 vote with the following conditions:

(Mrsrs. Truex, Brown and McVety voted for approval;

Mr. Thornberry and Ms. Ariens voted against the request)

1. This modification of special exception SE-90-62(M1) is for the addition of an 88' high stealth monopole communication tower only. Antennas shall not be mounted on the exterior of the monopole tower without concealment.
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 permitting and construction of a stealth monopole communication tower.
3. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.

IX. Public Comments - None

X. Staff Comments -

Ms. Dozier said she was sorry for the delay with the computers this morning. The IT department had made a change and did not notify staff.

Mr. Quillen said there are no petitions for the next meeting, so there will not be a meeting for April 13th.

Mr. Rooney said based on some of today's votes, I think it is probably time, given we have a few new members, that we go through the training on competent substantial evidence. We may meet on April 13, not sure yet.

XI. Member Comments – None

XII. Next Meeting

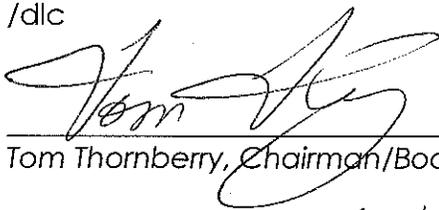
The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, April 13, 2011, at 9:00 a.m., in Room 119.**

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: 5-11-11