

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, March 12, 2014 – 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

Katherine Ariens, Chair (Absent)
Steve Vieira, Vice-Chair
Joe Tiseo, Secretary
Blair McVety
Larry Fix

Staff Present

Shaun Cullinan, Zoning Official
Joshua Moye, Assistant Co. Attorney
Ken Quillen, AICP, Planner
Diane Clim, Recorder

I. Call to Order

Vice-Chair Vieira called the March 12, 2014 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

Vice-Chair Vieira 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. Tiseo and seconded by Mr. Fix to approve the minutes of the February 12, 2014 meeting of the Board of Zoning Appeals. Motion passed with a unanimous vote.

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the March 12, 2014 Board of Zoning Appeals meeting were submitted.

VII. Introduction of Staff/Comments

Vice-Chair Vieira introduced staff. *Shaun Cullinan, Zoning Official*, read the Zoning rules, *Attorney Josh Moye*, and *Vice-Chair Vieira* 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 25, 2014: VAR-14-002, SE-14-003, and SE-14-004

VAR-14-002

Alan McEachern, agent for Lock 'N Key Restaurant, is requesting two variances; (a) to reduce the required Perimeter Landscape Strip from ten feet to what is currently existing; and (b) to allow impervious brick paving instead of the required pervious paving for a parking lot at an existing restaurant in the Manasota Commercial General (MCG) zoning district. The property address is 2045 North Beach Road, Englewood, and is described as part of lots 10, 11, 12, and 13, of block 3, of Chadwick Beach Subdivision, located in Section 12, Township 40 South, Range 19 East.

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

Applicant Presentation

Alan and Tracy McEachern, agents for Lock 'N Key Restaurant, said they were sworn in. **Mr. McEachern** said Tracy will hand out a flyer showing the difference between pervious and impervious pavers. The reason to petition for a non-pervious paver is that the safety issues with the parking lot now, being uneven and rutted up, if we go with a pervious paver, there are inherit gaps (say a woman with high heels) walking across (or a walker or cane) that type of thing – there is a French drain that will catch the water and percolate it back into the ground. We are proposing a non-pervious paver to avoid those safety issues with someone walking on the paver and having an accident.

Tracy McEachern said on page 67 there is a permeable paver and on page 35 you will see a regular paver. Each one has a spacer bar. Regular pavers like a permeable paver have a buffer in between. They still have drain ability. You don't typically see water standing on pavers.

There was a lot of discussion about percolation rate, the French drain, the parking lot as it is now, when the building/parking lot was originally put in (1964), the catch basin, and pervious materials.

Vice-Chair Vieira 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. Tiseo moved to close the public hearing, seconded by Mr. Fix. 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

There was more discussion about pervious and impervious and the pavers.

ACTION: *A motion was presented by Blair McVety and seconded by Joe Tiseo that Petition VAR-14-002(A) regarding the landscape buffer, be APPROVED based on the Community Development Staff Report dated March 4, 2014, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance (Part A) with the 3 conditions recommended by staff.*

Motion was approved with a unanimous vote with the following 3 conditions:

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required Perimeter Landscape Strip from ten feet to what is currently existing.
2. This variance extends only to this development as it currently exists.
3. If this development is at a later date removed or replaced, all future development 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.

ACTION: *A motion was presented by Joe Tiseo to allow pervious pavers be approved, second by Steve Vieira for discussion. Motion failed with a 2 to 2 vote. (Tiseo and Vieira voted to approve the motion; McVety and Fix voted to deny)*

A second motion was presented by Joe Tiseo to deny the requested variance (b), no one seconded the motion – motion died.

A third motion was presented by Blair McVety and seconded by Larry Fix that Petition VAR-14-002(B) regarding the impervious brick paving, be Tabled (continued) based on the Community Development Staff Report dated March 4, 2014, 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 (Part B).

Motion was approved with a 3 to 1 vote. Members Vieira, Fix and McVety voted to continue/table the request and Member Tiseo voted against the continuance.

SE-14-003

Robert Berntsson, agent for Phillips of SW FL, LLC, is requesting a special exception to allow a plant nursery, with retail sales of garden supplies, in the Agriculture Estate (AE) zoning district. The property address is **7371 Winchester Boulevard, Englewood**, and is described as the southern half of lots 7 and 8, of Grove City Land Company Subdivision, located in Section 9, Township 41 South, Range 20 East.

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

Applicant Presentation

Robert Berntsson, Esq., agent for the applicant, said he was sworn in. **Mr. Berntsson** said he updated the conditions and worked with staff. Making this property residential would be inappropriate. The nursery type use is allowed in agriculture zoning. Outside of the retail sale of the plants, they are allowed the use they want under the principle uses under the current Agriculture zoning. The only issue is the retail sale of the plant materials. Winchester Blvd. is under construction and will become a major corridor. This project will go to Site Plan Review in the future. Access will be provided along Winchester Blvd. This site would not be operating for a few years. He discussed the criteria and buffering.

There was discussion about the retail sales, the buffering from Oyster Creek residents north of the easement between them and this site, and access onto this easement.

Vice-Chair Vieira opened the meeting to Public Hearing.

Public Input

Roger Miller, Esq. Farr Law Firm, representing the Oyster Creek Homeowner Assoc., said he has been sworn in. **Mr. Miller** said their primary concern is the access to the site and buffering. They agree access should be from Winchester Blvd. when it is complete. They would like to see that be a condition to the approval. For the buffering, a lot of the foliage along the dirt road/easement has been removed. They would like to see buffering along that entire easement/roadway.

Robert Guilmette, 8345 Palmetto Court, said he was sworn in. Mr. Guilmette said he lives 50 feet from the easement/dirt road. His main concern is the traffic that will use that road going from Winchester Blvd. to San Casa Blvd. He suggests the traffic enter the site from Winchester Blvd. onto the very south side of the property to stay away from the dirt road.

Shaun Cullinan, Zoning Official, said this easement is a private ingress/egress easement. It cannot legally be closed off without the consent of the owners of the easement.

Margaret Stettinius, 6747 Greenview Lane, said she was sworn in. Ms. Stettinius said she is VP of the Oyster Creek homeowners association. She said on the narrative, it clearly says the site will have access to both San Casa Blvd. and Winchester Blvd. over a 50' wide access easement. She knows the lawyers said Winchester will be the only access, but it does not say that in the narrative.

Katherine Guilmette, 8345 Palmetto Court, said she was sworn in. Ms. Guilmette said her house is the closest to the dirt road. There have been dump trucks and sand trucks going by. The previous owner removed a lot of trees on that easement which was their buffer. Kids go on that road on motorcycles at night. They can't even use their lanai with all the noise and dust. She would like to see the access to this site from an easement on the south side of the site off Winchester Blvd.

Greg Brezicki, 8346 Palmetto Court, said he was sworn in. Mr. Brazicki said this easement dirt road will be a short cut to the pool on San Casa Blvd. He is concerned about the chemicals used on this site for the nursery and it will destroy the area.

Tom Moody, 8303 Sago Ct., said he was sworn in. Mr. Moody said Mr. Weaver put the dirt road in about 2 years ago. When traffic goes on that road, there is dust everywhere. He would like to see the access to the site south of this dirt road.

Rae Gamble, 8340 Palmetto Court, said she was sworn in. Ms. Gamble said most of the issues in the past have been from Mr. Weaver's actions, not this new owner, but they want a buffer between their property and the dirt road.

Bruce Atwell, 7120 South Lake Drive, said he was sworn in. Mr. Atwell said he is also concerned about the traffic on the dirt road. He would also like to see the site access from Winchester Blvd. from the south side of the site.

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

Mr. Bertsson said his client purchased this site in December 2013, so most all the complaints are from the previous owner. Mr. Weaver reserved to himself the easement to cross over to the side my client purchased and also granted my client an easement across Mr. Weaver's property. This is typical when there is two access points. My client is not interested to develop that easement and have traffic going back and forth.

There was discussion about the access/egress, the dirt road/easement and the possibility of it getting paved.

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

Board Member Comments and Questions

There was discussion about the 200' buffer off the dirt road/easement.

ACTION: A motion was presented by Blair McVety and seconded by Larry Fix that Petition SE-14-003 be APPROVED based on the Community Development Staff Report dated March 4, 2014, 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 the 8 conditions recommended by staff plus condition #9.

Motion was approved with a 3 to 1 vote. Members Vieira, Fix and McVety voted to approve the request and Member Tiseo voted against the request.

Motion was approved with a 3 to 1 vote with the following nine conditions:

1. The special exception, as approved by the Board of Zoning Appeals, is for a plant nursery and tree farm, with retail sales of garden supplies and equipment,

- business office and related equipment maintenance, in the Agriculture Estate zoning district.
2. The site plan submitted by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes are applicable to the development and occupation of the proposed plant nursery and tree farm.
 3. Primary access shall be from Winchester Boulevard once construction of that project is completed. The applicant will work with the Public Works Department to design and modify the existing roadway design to provide for access to the property at their own expense.
 4. The off-street parking requirements shall be as follows:
 - One off-street parking space per 250 square feet of office retail building area;
 - One off-street parking space per 2,000 square feet of outdoor retail sales area;
 - One off-street parking space per 2,000 square feet of shop maintenance building area;
 5. Final Site Plan Review approval shall be obtained prior to construction of any buildings or parking lots.
 6. A minimum ten-foot wide type "A" landscape buffer shall be required along the Winchester Boulevard frontage. Ten shrubs shall be substituted for each canopy tree required because this buffer is underneath overhead power lines.
 7. The office building shall be connected to public water and sanitary sewer service lines.
 8. This special exception extends only to the land included in the Site Plan and legal description submitted with this application. Any modification, alteration or revision of this use may require a modification of the special exception.
 9. There shall be a type "A" landscape buffer planted along the northerly boundary of the westerly 200 feet of subject property, either at the northern property line, or along the southern boundary of the 50-foot ingress, egress, drainage and utility easement that runs along the northern boundary of the property.

SE-14-004:

Robert Berttsson, agent for BDI Properties II, LLC, is requesting a time extension for a previously approved special exception to allow an ACLF facility in the Residential Multifamily-15 (RMF-15) zoning district. The property address is **210-222 Rotonda Boulevard West, Rotonda**, and is described as Lots 32, 33, 34, 35, 36, 37 and 38, of Rotonda Pebble Beach Subdivision, located in Section 23, Township 41 South, Range 20 East.

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

Applicant Presentation

Robert Berttsson, Esq., agent for the applicant, said he was sworn in. **Mr. Berttsson** said a special exception is approved for 3 years. They obtained extensions through the State legislative grant of extensions. They are now asking for an extension through the County Code. The applicants are working with banks trying to get financing.

Vice-Chair Vieira opened the meeting to Public Hearing.

Public Input

Jay Lyons, Community Association Manager for the Rotonda West Assoc., said he has been sworn in. **Mr. Lyons** said they were against this request 5 years ago and still are. With the height of this building, they will be able to look down into the backyards of the 4 lots behind them. They feel property values will go down.

Hank Killion, 1184 Boundary Blvd., said he was sworn in. **Mr. Killion** said he represents the Board of Directors, he is the Vice-President in Rotonda and they have concerns about this construction. There are no buildings over 2 stories. They also have a concern about flooding.

Shaun Cullinan said by right, RMF zoning district allows a 60 foot building height. State Statute says adult living facilities are deemed residential, that is why they are allowed in the residential zoning district. This approved project will only be 38 feet high. Under the permitted uses, a building can be put in that can be 60 feet high.

David Frank, 79 Mark Twain Lane, said he was sworn in. **Mr. Frank** said he and his wife are against this request. He said they do not want a building this big in their neighborhood.

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

None

ACTION: A motion was presented by Joe Tiseo and seconded by Larry Fix that Petition SE-14-004 be APPROVED based on the Community Development Staff Report dated March 5, 2014, 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 Extension with the 5 conditions recommended by staff.

Motion was approved with a unanimous vote with the following five 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 80 units consisting of 120 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 be compatible with residential buildings.

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.
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, including section 3-9-63.1.
5. Site Plan Review approval is required prior to issuance of any building permits for the proposed new Adult Congregate Living Facility (Assisted Living Facility) and all off-street parking and landscaping requirements of code must be met for the proposed development.

IX. Public Comments - None

X. Staff Comments - None

XI. Member Comments - None

XII. Next Meeting

*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, April 9, 2014, at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 12:55 p.m.

Respectfully submitted,
Diane Clim, Recorder
/dlc



Steve Vieira, Vice- Chair/Board of Zoning Appeals

Approval Date: 4-9-14