MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, January 13, 2016 – 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
Joe Tiseo, Vice-Chair
Steve Vieira, 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***
Chair Ariens called the January 13, 2016 meeting of the Board of Zoning Appeals to order at 9:00 AM.

II. ***Pledge of Allegiance***
Chair Ariens 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. Fix and seconded by Mr. Vieira to approve the minutes of the December 9, 2015 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 January 13, 2016 Board of Zoning Appeals meeting were submitted.

VII. ***Introduction of Staff/Comments***
Chair Ariens introduced staff. *Shaun Cullinan, Zoning Official,* read the Zoning rules, *Attorney Josh Moye, and Chair Ariens* 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 29, 2015: VAR-15-008; VAR-15-011; and SE-15-010

VAR-15-008
Charles Taylor, agent for Ryan Dunlap, is requesting two variances; one (a) to reduce the 25 foot front yard setback by 2.1 feet to allow a 22.9 foot front setback for an existing swimming pool; and a second (b) to reduce the 25 foot front yard setback by 5 feet to allow a 20 foot front setback for a proposed pool cage, in the Bridgeless Barrier

Island (BBI) zoning district. The property is located on Palm Island, addressed **16 Palm Drive, Englewood,** and is described as lot 10, of Block D-D, of Palm Island Estates Unit Two Subdivision, located in Sections 28 and 33, Township 41 South, Range 20 East.

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

Applicant Presentation

Charles Taylor, agent for Ryan Dunlap, said he was sworn in. Mr. Taylor said he has a letter from Mr. Dunlap (this was handed out to the Board). **Mr. Taylor** said Mr. Dunlap would like the pool cage. This is for security and for insurance purposes. **Mr. Taylor** said his son is the contractor who would be working on the pool cage, but he would allow Mr. Dunlap to cancel that contract for the pool cage, if this is denied.

There was discussion about the original owners and putting in the pool, and when Mr. Dunlap purchased the house and if he had a survey done.

Mr. Tiseo asked if the pool had a baby barrier around the pool?

Mr. Taylor said no, there is no baby barrier but there is a fence around the property.

The Board was disappointed the owner was not present.

Public Input

No one spoke for or against this request.

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

There was discussion about the rules and regulations regarding the pool cage and how the pool itself could have been put in the wrong place originally when the pool permit was pulled.

Mr. Tiseo explained how sometimes the stakes for the pool layout could be moved or removed when the grader or tractor is in the yard or digging for the pool hole. This could be why maybe the pool setback was off.

ACTION: A motion was presented by Joe Tiseo and seconded by Blair McVety that Petition VAR-15-008 Part (a) be approved based on the Community Development Staff Report dated January 6, 2016, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance allowing the pool setback to remain the way it is, with the two conditions recommended by staff.

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

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 25-foot front yard setback by 2.1 feet to allow a 22.9-foot front setback to allow the existing swimming pool to remain "as is".

2. This variance shall only apply to the existing swimming pool. If this swimming pool is at a later date removed or replaced, this variance shall expire and 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 and seconded by Steve Vieira that Petition VAR-15-008 Part (b) be DENIED based on the Community Development Staff Report dated January 6, 2016, 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 for Part B regarding the pool cage.

Motion was granted to Deny the request with a 3/2 vote. Ms. Ariens, Mr. Tiseo and Mr. Vieira voted Yes (to approve the motion for denial) Mr. McVety and Mr. Fix voted No (against the motion for denial)

VAR-15-011

Perry Hoff, agent for Jared Stahlman, is requesting two variances; one (a) to reduce the 20 foot rear yard setback by 10 feet to allow a 10 foot rear setback, and a second (b) to reduce the 7.5 foot side yard setback by 0.15 feet to allow a 7.35 foot side setback to allow an existing single family residence to remain "as is", in the Residential Single Family-3.5 (RSF-3.5) zoning district. The property is located at 3097 Newburgh Street, Port Charlotte, and is described as lot 12, of block 549, of Port Charlotte Subdivision, Sub-section 13, located in Sections 23, Township 40 South, Range 22 East.

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

Applicant Presentation

Perry Hoff, agent for the applicant, said he was sworn in. Mr. Hoff said Mr. Stahlman hired him to get his house up to date with the Codes because the owner had done work at the house without permits. Code Enforcement came out and said the owner needed a licensed contractor to pull the permits and do the work. He said he did several repairs at the house, but every time the inspector shows up, the neighbor calls the Zoning Department. They realized the permit was never reviewed by the Zoning department, then it came out that this was a garage years ago, which is an accessory structure to the primary house on the next lot. The owners before sold the house separately and now there is a garage (accessory structure) being turned into a house with the incorrect rear setback.

There was discussion about when the house was sold, when the "garage" was sold and who was fixing up the garage into a house. Then in 2010, the Property Appraiser's office changed the use to a residence. In 2014, Mr. Hoff went to the County for permits to correct the work done without permits, and that is when it was determined, the Zoning Department never reviewed the permit application and they realized the rear setback was 10 feet for an accessory structure and the house needs a 20 foot rear setback.

Mr. Hoff brought in his permit job card to read what the description said. It says description of work "remodel existing garage to existing family residence".

Mr. McVety asked Mr. Hoff if he was putting in the bathroom, kitchen and all the downstairs work?

Mr. Hoff said it had a bathroom upstairs which was like a bedroom and the downstairs was a garage. The owner put some cabinets in downstairs. He was hired to bring this up to code.

A copy of the permit/job card was made for the record, and the original permit/job card was returned to Mr. Hoff.

There was discussion about the "garage" getting called a residence by the Property Appraisers office, what was going on with the Code cases, and if any inspections were made.

Chair Ariens opened the meeting to Public Hearing.

Public Input

Brenda Bashaw, who lives at 3089 Newburgh Street in the house next to the lot with the garage, said she was sworn in. Ms. Bashaw said she spoke with the Property Appraisers office yesterday and asked about this garage being changed to a residence. She was told when the appraiser employees come out, they are not allowed to go into the "house". They do have one picture of the inside but are not allowed to share that. The Appraiser's employee was told by the owner that it is a house. That is how it was changed on their records. She is the house owner on Lot 13 and did want to buy this garage a year and a half ago when they were looking at purchasing the house. When they went to the County to do their research, they found out then, that this "garage" was not in compliance since it was a garage without a house and that Code Enforcement had cases against it for work done without permits. That is when her and her husband decided not to purchase the "garage" on the other lot. At this time, they also found out the "garage" did not have sewer hook up and it had been going through this house on her lot. That is when the utility department shut down that garage and had the owner leave.

Mr. McVety asked if both her house and the garage had sewer hook up?

Ms. Bashaw said the garage was hooked up to her house but last year in the summer, there were 18 people in the yard. That is when they made the garage owner leave the area, and the utility people cut that line from her house.

Mr. Tiseo said now he understands the sewer from the garage was hooked up to the house, but he asked if the water was also the same?

Ms. Bashaw said she thinks they had their own electric meter. She wasn't sure about the water hook up. She said the son living in that garage, worked for the utility department.

There was discussion about the original permits pulled, and if the County has found any permits for the utility hook ups. The original owners created the problem selling the garage without the original house. Many permits can be purged after 10 years.

Chris Galluppi, neighbor who lives on Tarytown Street, the street behind the garage, said he was sworn in. Mr. Galluppi said he was going to buy the garage in question. There was a studio apartment upstairs. The wife liked to paint. No plumbing, just a garage downstairs. He said Jack Stahlman purchased it and stayed there during the winter. They knew he was making changes but thought they had permits. He said Mr. Hoff apparently is the contractor but it is his understanding Mr. Hoff was going to purchase this garage/house.

Mr. Tiseo asked what year did Mr. Galluppi purchase his home?

Mr. Galluppi said 1999. He said the garage was already there. But it was just a garage with the apartment upstairs that the wife painted in. No one lived there.

Misty Lecuyer, who lives on Tarytown Street, the street behind the garage, said she was sworn in. Ms. Lecuyer said there is no public wastewater hook up. You need this hook up to be able to live in the house. She called Charlotte County Utilities (CCU) yesterday and was told the hook up/lien has not been paid and it is $45,000. She said the notes on the permit that she saw said the inspectors could not inspect the prior work because they cannot see the work behind the wall. She said the hardship was not created by the original owner, it was created by the current owners changing it from a garage to a non-permitted residence. She said Mr. Hoff knocked on her door, told her he was buying the garage and turning it into a house, his daughter would be living there and there was nothing they could do.

Staff said this variance is one process for this site. Other processes will occur if the owner continues on with the permitting process.

Terrance Young, who lives at 3098 Newburgh Street, across the street from the garage/house, said he was sworn in. Mr. Young said he has lived at this address for 23 years and he was there before the garage was built. The original house owner (Tony) built the garage for the purpose of keeping his air conditioning trucks in the garage. This is a big garage. He never saw the upstairs, but when Mr. Stahlman purchased the lot, it was all garage. Reasonably quickly, things changed. The downstairs developed a dining area and makeshift kitchen. He said he saw that. He said his wife and him knew the woman who was living there with Mr. Stahlman. After a while, he didn't get along with Mr. Stahlman so they stopped getting together. He did notice after a while, the big garage door disappeared and a wall with a window appeared. He guessed it was around 2010-2011. He said even though he never saw any permits, he never got involved or called the County.

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

Mr. McVety asked if there was a permit pulled for the garage door?

Mr. Cullinan said not that they know of.

Rebuttal

Mr. Hoff said regarding the sewer and water, there was a permit to install the sewer and water. The sewer was hooked to the house that owned the garage, when the original

owner owned the house. What made it an illegal tap, happened when the lot with the garage was sold. There was no sewer impact fee paid. He said there was a bathroom there when the original owner owned it. He said the $45,000 lien one of the neighbors mentioned is really $4,500. This is the hook up fee for the sewer. He did not pay it yet because this Variance came up and he did not want to continue to pay fees if this Variance does not get approved. He said he did enter into an agreement with Jared Stahlman because Jared did not want to pay the hook up fee and spend more money, so a deal was made, if he gets a c/o, then he (Mr. Hoff) would purchase the house/lot.

Mr. Tiseo asked Mr. Hoff if when he was pulling the permit, did he look at any of the setbacks, look at a survey or do any of that?

Mr. Hoff said no, he does not recall if there was a site plan and what the setback was.

Mr. Tiseo asked him if before you took on all this work, did you know this was a garage?

Mr. Hoff said absolutely, it was permitted originally as a garage. Later down the line, it was permitted for electric. He never thought of the setback.

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

Board Member Comments and Questions

Mr. Tiseo said you are stating this is a single family residence? The County is acknowledging this is a residence?

Mr. Quillen said the Property Appraiser's office has it as a residence for the use.

Josh Moye, Asst. County Attorney, said they can refer to this as an existing structure.

ACTION: A motion was presented by Larry Fix and seconded by Joe Tiseo that Petition VAR-15-011 (a & b) be DENIED based on the Community Development Staff Report dated January 6, 2016, 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.

Motion was approved with a unanimous vote (to Deny the request)

SE-15-010

Phil Erdman, agent for Erdman LLC, is requesting a special exception to allow an outdoor storage yard for box trucks and trailers for carnival rides in the Commercial General (CG) zoning district. The property address is 13380 Marathon Boulevard, Port Charlotte, and is described as Lot 2 of Block 5153, of Port Charlotte Subdivision Sub-Section 95, located in Section 08, Township 41 South, Range 21 East.

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

Mr. McVety asked what would be allowed in the IG zoning.

Mr. Quillen replied what was allowed in IG zoning regarding storage.

There was discussion about what is allowed in that area, what can be done on CG and IG and paving and using gravel for paving.

Applicant Presentation

Phil Erdman, agent for the applicant Erdman LLC, said he was sworn in. Mr. Erdman said he bought this property in 2003 because he was told to move his trucks from his home on Wilmington Blvd. He purchased this property and was told he could store the trucks on this CG zoning. He put a fence up and is slowly improving the site. He said he has had his trucks on this site for 13 years. He wants to come into compliance. He said he has never had a complaint or Code Enforcement violation on this site.

Chair Ariens opened the meeting to Public Hearing.

Public Input

Jill Boylan, who lives in Port Charlotte, said she was sworn in. Ms. Boylan said she works for Tarpon Bay Contracting and just wanted for the record to say Mr. Erdman works for them.

There was discussion with the Board and staff regarding the area if there have been any complaints in that area on other sites. Marathon Blvd is a major road into that area and the lots around that road are CG, going back a block, the lots are IG.

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

Rebuttal

Mr. Erdman said he thought this site was zoned for what he needed. He didn't park here knowing it was not allowed. He wants to make it look nice and has been parking here 13 years.

There was discussion about the rights he has and the recent zoning changes with the new Code recently changed. His property was CI before being changed to CG but he still has the rights of the CI zoning.

Mr. Erdman said his engineer is here if the Board has any questions.

Don Drumm, P.E., Engineer, said he was sworn in. Mr. Drumm said he did prepare the drawings you are looking at today. He is working on the rest of the project for the stormwater design, but they realized they need to get this Special Exception before he continues working and making a bigger bill for the applicant.

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

Board Member Comments and Questions

After the motion to approve for discussion, there was discussion about the process for site plan review for the applicant to store boats in the future for a retirement investment.

ACTION: A motion was presented by Joe Tiseo and seconded by Larry Fix that Petition SE-15-010 be APPROVED based on the Community Development Staff Report dated January 6, 2016, 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 ten conditions recommended by staff, with changes to Conditions # 1, #5, and #8.

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

1. This special exception is to allow an outdoor storage yard and extends only to the land included in the site plan and legal description submitted with this application.
2. The area allowed to be used for outdoor storage shall be only that area indicated on the ***Site Plan*** (Exhibit C-2). Storage or parking of vehicles or equipment shall not be allowed on the storm-water management area or landscape buffer areas.
3. The storage or parking area shall be paved with an approved hard surface such as asphalt.
4. The applicant shall obtain proper permitting, which may include Site Plan Review, for subject property to facilitate compliance with the Land Development Regulations and these conditions of approval of the special exception.
5. Within two months of approval of this special exception, the owner shall submit architectural plans for the screen wall to the Zoning Official for approval. These plans must be modified, if need be, as required by the Zoning Official so as to obtain approval for the wall permit within four months of approval of this special exception. Within six months of approval of this special exception, the owner shall construct the required opaque architectural wall eight feet in height with a minimum setback of 15 feet from the front lot line. This wall may have one 25-foot wide opening with an opaque gate for ingress and egress to the site.
6. The landscaping required for a type "D" buffer shall be planted between the required screen wall and the front lot line.
7. The north, east and west sides of the storage yard shall be screened with a type "D" landscape buffer and a minimum six-foot high opaque fence.
8. Only vehicles and equipment shall be stored on trailers or inside box trucks, which must be parked or stored only on the paved area identified on the ***Site Plan*** (Exhibit C-2) or a plan approved through the Site Plan Review process.
9. The applicant shall obtain all necessary permits and approvals, as applicable to this development, including but not limited to, paving, commercial wall permit, storm water management, landscaping, and invasive plant species removal.
10. 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*** **–**
Mr. Quillen said right now they have no petitions for the February meeting.

XI. ***Member Comments*** **-**
Ms. Ariens said the agenda shows Mr. Tiseo as Secretary and Mr. Vieira as Vice-Chair, she said that is reversed. Mr. Tiseo is Vice-Chair and Mr. Vieira is Secretary.

XII. ***Election of Officers***
Mr. Vieira moved to leave the Board in tact as it is today, second by Mr. Fix with a unanimous vote.
Katherine Ariens, Chairperson
Joe Tiseo, Vice-Chairperson
Steve Vieira, Secretary

XIII. ***Next Meeting***

The next meeting of the Board of Zoning Appeals is scheduled for ***Wednesday, February 10, 2016, at 9:00 a.m., in Room 119.***

There being no further business, the meeting ***ADJOURNED*** at 1:10 p.m.

Respectfully submitted,
Diane Clim, Recorder
/dlc

_____
Katherine Ariens, Chair

Approval Date:_____