

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, June 8, 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 (absent)
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

Vice-Chair Tiseo called the June 8, 2016 meeting of the Board of Zoning Appeals to order at 9:00 AM.

II. Pledge of Allegiance

Vice-Chair Tiseo 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. McVety to approve the minutes of the May 11, 2016 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 June 8, 2016 Board of Zoning Appeals meeting were submitted.

VII. Introduction of Staff/Comments

Vice-Chair Tiseo introduced staff. Shaun Cullinan, Zoning Official, read the Zoning rules, Attorney Josh Moye, and Vice-Chair Tiseo 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 May 24, 2016: VAR-16-002.

VAR-16-002

Paul and Mary Scott are requesting a variance to reduce the required 20-foot side yard setback by 12.5 feet to allow a 7.5-foot side setback for an existing accessory structure in the Residential Estate-1 (RE-1) zoning district. The property address is 3423 Melissa Court, Port Charlotte, and is described as Lot 10 of Whidden Acres First Addition Subdivision, located in Section 19, Township 40 South, Range 23 East.

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

Applicant Presentation

Paul Scott, applicant, said he was sworn in. Mary Scott said she was sworn in. Mr. Scott said Mr. Quillen covered the issue. They did not try to do anything wrong. They will answer any questions.

Mr. McVety asked how did the applicants find out about this setback problem?

Mr. Scott said a neighbor is planning on building next door. They inquired about the setbacks for their house and was told the side setback is 20 feet. Then when the new neighbor was talking to me, I was told it is a 20 foot setback.

Vice-Chair Tiseo opened the meeting to Public Hearing.

Public Input

Geri Waksler, Esq., agent for Claudio Bifaretti, said she was sworn in. Ms. Waksler handed in a hand out. (The Board took a few minutes to review the hand out.) This handout was identified as Exhibit "G". **Ms. Waksler** said Mr. Bifaretti will soon be the Scott's new neighbor. They are building a house on lot #11, next to the Scott property. They were told the side yard setback is 20 feet. She discussed the area and how all the houses are further away from each other than in the normal residential single family zoning. She did not believe there was a hardship. She said economic hardship is well settled law in Florida that economic disadvantage does not constitute a hardship sufficient to warrant a granting of a variance. She provided 2 cases that state this rule. She understands the permit was erroneously issued by the County, but the applicant is responsible.

Rebuttal

Mary Scott said they cannot relocate the accessory structure somewhere else because it would cause other variances.

Paul Scott said they cannot put the building in the front of the house, because there is a septic tank/drain field in the front. In the rear of the house, they have pool pipes under the concrete, so they cannot move the structure in the back. The building was put on the side driveway. Even if the building wasn't there, they would still be looking at their boat and other items. They plan on putting up bushes near the property line, which will buffer the view. He said they came into the county for their zoning and setbacks and were told the side setback is 7.5 feet. They were not told 20 feet. **Mr. Scott** said he went to the County and asked what his setbacks were. He relied on them for the correct information.

Mr. McVety said if the building wasn't there, the new neighbors would be looking at your boat, truck and other items sitting on the driveway. They would also be looking at the side of the house.

Mary Scott said regarding the comments of how the building looks, the building was cut to match the house. The color and siding is exactly the same as the house. This company is in Port Charlotte on US 41.

Ron Norton, neighbor across the street, said he was sworn in. Mr. Norton said he does not see anything wrong with the building, he thinks it looks great.

Ms. Waksler said this is an unfortunate situation. She understands they relied on the County. As a land use attorney, she hears all the time, this should stay the way it is, this is not allowed, I didn't know it was zoned for commercial or multi-family. She said there is an element of personal responsibility.

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

Mr. Tiseo said he is sympathetic because he understands what happened here, but he has concerns about some of the case laws presented by Ms. Waksler.

Josh Moye, Asst. Co. Attorney, said our Board of County Commissioners appointed this Board to hear these cases. This Board needs to follow the criteria set for these applications. Each County could have different rules and regulations.

ACTION: A motion was presented by Larry Fix and seconded by Blair McVety that Petition VAR-16-002 be APPROVED based on the Community Development Staff Report dated June 1, 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 with the three conditions recommended by staff and adding one condition for a buffer.

Motion was approved with a vote 3 to 1 to approve with the following four conditions: (Mr. Tiseo, McVety and Fix voted for the approval: Mr. Vieira voted against)

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 20-foot side yard setback by 12.5 feet to allow a 7.5-foot side setback to allow the existing detached garage to remain "as is".
2. This variance shall only apply to the existing detached garage. If this structure is at a later date demolished, removed, replaced or relocated by the owner, 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.

3. The expiration of this variance, mentioned in condition number two above, shall not apply to any specific accidental event, beyond the control of the owner, such as high winds or fire, which may damage or destroy this detached garage. If such an accidental event occurs, then the owner may repair or replace this detached garage with the same, or smaller, footprint.
4. The owners shall install a landscape buffer between the garage and the property line.

IX. Public Comments - None

X. Staff Comments –

Mr. Cullinan said there may not be a meeting in July because they have not received any petitions.

XI. Member Comments - None

XII. Next Meeting

*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, July 13, 2016, at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 10:20 a.m.

Respectfully submitted,
Diane Clim, Recorder
/dlc

Katherine Ariens, Chair

Approval Date: _____