MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, August 14, 2013 – 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	**Staff Present**
Katherine Ariens, Chair (Absent)	Ty Harris, *Assistant County Attorney*
Steve Vieira, Secretary	Shaun Cullinan, *Zoning Official*
Blair McVety, Vice-Chair	Joshua Moye, *Assistant County Attorney*
Joe Tiseo	Ken Quillen, *AICP, Planner III*
Larry Fix	Diane Clim, *Recorder*

I. ***Call to Order***
Vice-Chair McVety called the August 14, 2013 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. ***Pledge of Allegiance***
Vice-Chair McVety 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. Vieira to approve the minutes of the July 10, 2013 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 August 14, 2013 Board of Zoning Appeals meeting were submitted.

VII. ***Introduction of Staff/Comments***
Vice-Chair McVety introduced staff. *Shaun Cullinan, Zoning Official,* read the Zoning rules, *Attorney Ty Harris and Vice-Chair McVety* 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 July 30, 2013: SE-13-006, SE-13-009 and SE-13-010

SE-13-006

Devswarupdas Devprasad, agent for Florida Land & Properties, LLC, is requesting a special exception to allow a mobile home, to be used as a residence, in the Agriculture Estate (AE) zoning district. The property address is 16951 Tamiami Trail, Punta Gorda, and is described as Parcel P4-1, located in Section 32, Township 42 South, Range 24 East.

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

Applicant Presentation

Devswarupdas Devprasad, agent for Florida Land & Properties, LLC said he was sworn in. **Mr. Devprasad** agrees with the staff report and would answer any questions.

Vice-Chair McVety opened the meeting to Public Hearing.

Public Input

No one spoke for or against the request.

There being no further requests to speak for or against the petition, Mr. Tiseo moved to close the public hearing, seconded by Mr. Vieira. 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 Steve Vieira that Petition SE-13-006 be APPROVED based on the Community Development Staff Report dated August 6, 2013, 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 following 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 a single Mobile (manufactured) home to be used as a residence.
2. 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.

3. 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 erection and occupation of the proposed manufactured home.
4. An access easement must be obtained from the Lee County property owner if access is to be provided from the existing access drive located in Lee County. If this is not possible then an access permit must be obtained and a new access drive constructed according to all Charlotte County codes for access to subject property from Tamiami Trail (U.S. Highway 41).
5. The manufactured home erected on this property must be rated for the appropriate wind loads by HUD (or DCA) as evidenced by the Data Plate supplied by the manufacturer.

SE-13-009

William Frazer, agent for Beecher Brewing Company, is requesting a special exception to allow a micro-brewery in the Commercial Intensive (CI) zoning district. The property address is 611 Charlotte Street, Punta Gorda, and is described as lots 3 and 4, of Pineapple Commons Subdivision, located in Section 05, Township 41 South, Range 23 East.

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

Applicant Presentation

William Frazer, agent for Beecher Brewing Company, said he was sworn in. **Mr. Frazer** said he agrees with the staff report and would answer any questions.

There was discussion about odors emitted during the brewing process. There are no odors unless it is from the wheat, which could smell like a bakery. They plan a tasting room (like wine tasting) but there is no bar.

Vice-Chair McVety opened the meeting to Public Hearing.

Public Input

Ron Struther, 189 Albert Lane, with Coldwell Banker, said he was sworn in. **Mr. Struther** said this is a win-win situation. It takes 12,000 s.f. of real estate off the market place. There has not been much income from that site. It will also provide jobs.

Bob Cheney, 7845 Manasota Key Rd., said he has been sworn in. **Mr. Cheney** said he is the property owner and leased this site. Previously, there was a cabinet manufacturing business on this site. That ended in 2009.

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
None

ACTION: A motion was presented by Joe Tiseo and seconded by Larry Fix that Petition SE-13-009 be APPROVED based on the Community Development Staff Report dated August 6, 2013, 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 following 4 conditions recommended by staff.

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

1. The special exception as approved by the Board of Zoning Appeals is to allow a micro-brewery for the production of craft beer.
2. This special exception extends only to the land included in the Site Plan and legal description submitted with this application.
3. Outdoor storage of materials or equipment shall not be permitted.
4. 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.

SE-13-010
James Herston, agent for Nichelas Panko, is requesting a special exception to allow an Adult Congregate Living Facility (ACLF) in the Residential Multifamily-15 (RMF-15) zoning district. The property address is 232-236 Rotonda Boulevard West, Rotonda West, and is described as lots 43, 44 and 45 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
James W. Herston, P.E., Herston Engineering, agent for Nichelas Panko, said he was sworn in. **Mr. Herston** said they would need to discuss 3 items. The first one would be the stormwater management area. They can modify the stormwater management area to meet the requirements. The buffering requirements when RMF-15 property abuts residential, is required, unless a greenbelt is in place, which is in this case.

Shaun Cullinan, Zoning Official, said that is something they can look at during site plan review. Right now we are dealing with the use not the design standards.

Mr. Herston said they did not submit any architectural plans yet. They wanted to make sure they were granted the Special Exception before spending more money on plans which would not be needed if this was denied.

Vice-Chair McVety opened the meeting to Public Hearing.

Public Input

Jay Lyons, Community Association Manager for Rotonda West Association, resides at 272 Boundary Blvd., said he was sworn in. **Mr. Lyons** said he is objecting to this special exception. They are starting to see a trend with residential multi-family properties. This started back in March 11, 2009 when the Board approved a special exception for an ACLF on Rotonda Blvd. West. These facilities are not in the best interest for the neighborhood. These 36 foot buildings will be 60 feet from the lanai's on the property next to them. This will affect the property values in the area. Today's special exception request would be within 1500 feet from the previously approved ALF special exception which was approved back in 2009.

Mr. Cullinan said the special exception approval back in 2009 has an extension which is good until around March of 2014. For the past 3 or 4 years, the Legislature has been putting in extension language throughout various bills which have extended development permits 4 to 6 years out. This one took advantage of one of them, so they were extended two years out. The Code says you cannot have an ACLF within 1500 feet of an existing and established ACLF, then both of them have the right to get the special exception and build there because neither of them are in contravention of our Code. An ACLF by nature is a multi-family development. It is a use not out of place here. We understand the concerns but this is one of the places in Charlotte County where the zoning is relatively decent in where you have RMF immediately abutting a higher single family RSF-5, which gives you 5 units per acre instead of the RSF-3.5 units per acre.

Mr. Lyons said they are looking at a 36 foot building that will be 200 feet long. He feels other considerations should be given to these neighborhoods.

Mr. Cullinan said on the RMF-5 zoning, any of those lots by right could be 36 feet in height.

Mr. Tiseo asked what is the maximum height on the RMF zoning?

Mr. Cullinan said RMF allows a maximum building height of 60 feet. The applicant is proposing a maximum of 36 feet. RSF-5 behind them on the greenbelt, has allowance of 38 feet. Permitted uses and structure by right in the RMF district, could have an apartment building up to 60 feet. This is a less intensive use than some of the items acquired by right because the ACLF would require less parking spaces required. If it was an apartment, more parking would be required, there is higher density involved.

There was discussion about what is in the area now, what is allowed by the zoning and the heights.

Elaine Chapman, 80 Mark Twain Lane, said she was sworn in. **Ms. Chapman** said her husband and her have been building on Rotonda Blvd. since 2004. They built eight condominium buildings and own the property adjacent to this site. The proposed

building does not belong on Rotonda Blvd. West. She feels this should be down the road closer to the 3 story buildings in that area.

Nelson Chapman, 80 Mark Twain Lane, said he was sworn in. **Mr. Chapman** said he does not understand how this can be approved if the 6 criteria are not met. They should look at the financial impact and quality of life this will change in the area.

David Bailey, 2504 Gardner Court, Tampa, said he was sworn in. **Mr. Bailey** said he is one of the owners of the 2009 project which has the continuance down the street. They are concerned about having another facility close to where theirs will be. Due to the economy, their project was delayed. Their project is going forward. They are updating their market study for their lender. They are checking on a tax exempt bond and low income tax credits.

Mr. Tiseo asked what was the height of your building?

Mr. Bailey said his is also 3 stories, but it is on 7 lots, not 3 lots.

Mr. Fix asked when do you propose to start construction?

Mr. Bailey said they are aware of the special exception expiring next year but they hope to start digging the first of the year.

Ty Harris, Asst. County Attorney, said as guidance for the Board, you heard some request to go beyond the 6 criteria that are in the Code. Special Exception uses are presumed to be compatible if it meets the 6 criteria. It is the lightest uses allowed. If you look toward denying a Special Exception, you need to point to one of the 6 criteria and say I don't believe it fits this criteria and give a reason why. Regarding the testimony from citizens, when you hear questions about traffic impacts or property values, these are 2 areas where you need to have expert testimony. There are plenty of things we can hear from non-experts that can be a basic for denying a Special Exception, but when it is about traffic or property values, you need to have expert testimony. The issues of the other assisted living facility, we looked into that and the words of our Code are pretty clear. It says 'existing use'. Because the other building is not up and running, that does not mean another applicant cannot come in and apply.

There being no further requests to speak for or against the petition, Mr. Vieira moved to close the public hearing, seconded by Mr. Tiseo. 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 Steve Vieira and seconded by Larry Fix that Petition SE-13-010 be APPROVED based on the Community Development Staff Report dated August 6, 2013, 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 following 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 72 beds.
2. The exterior architectural appearance of the building shall comply with those sections of the Commercial Design Standards (Article XXIV) that are applicable to, and compatible with, residential buildings.
3. 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 (Assisted Living Facility), including section 3-9-63.1.
4. Final 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.
5. 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*** **– None**

XI. ***Member Comments*** **– None**

XII. ***Next Meeting***
The next meeting of the Board of Zoning Appeals is scheduled for ***Wednesday, September 11, 2013, at 9:00 a.m., in Room 119.***

There being no further business, the meeting ***ADJOURNED*** at 10:50 a.m.

Respectfully submitted,

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Diane Clim, Recorder
/dlc

_____
Blair McVety, Vice- Chair

Approval Date:_____