MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, December 12, 2012 – 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
Vacant
Katherine Ariens, *Vice-Chairperson*
Vacant
Blair McVety
Steve Vieira, *Secretary*

Staff Present
Joshua Moye, *Assistant County Attorney*
Shaun Cullinan, *Zoning Official*
Ken Quillen, *AICP, Planner III*
Diane Clim, *Recorder*

I. ***Call to Order***
Vice-Chairperson Ariens called the December 12, 2012 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. ***Pledge of Allegiance***
Vice-Chairperson 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***
Chairperson Ariens said there is a correction. The Motion for SE-12-016, Mr. Truex made the motion to approve, not Mr. McVety.

ACTION: A motion was presented by Mr.McVety and seconded by Mr. Vieira to approve the minutes of the November 14, 2012 meeting of the Board of Zoning Appeals with the correction from today. Motion passed with a unanimous vote.

VI. ***Disclosure Statements***
Ex-parte forms indicating site visits concerning the petitions being presented before the December 12, 2012 Board of Zoning Appeals meeting were submitted.

VII. ***Introduction of Staff/Comments***
Vice-Chairperson Ariens introduced staff. *Zoning Official, Shaun Cullinan, Attorney Joshua Moye, and Vice-Chairperson 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 petition was advertised on November 27, 2012: VAR-12-009, VAR-12-010, and SE-12-017

VAR-12-009

James and Beverly Krusick are requesting a variance of 26', to increase the distance a dock may project into a waterway from 12' to 38', to allow a boat dock in the Residential Single Family-3.5 (RSF-3.5) zoning district. The property address is 2263 Jacobs Street, Port Charlotte, and is described as lots 13 and 14 of block 3050 of Port Charlotte Subdivision, Sub-section 61, located in Sections 16 and 17, Township 40 South, Range 21 East.

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

Mr. Vieira asked if the actual plan (Exhibit D-2) is the one that was approved by the County?

Mr. Quillen said yes, Exhibit D-2 was the one approved by the County for construction. Plan C-1 was originally rejected. Exhibit D-2 was constructed, approved and closed out. Then he added on and expanded.

Mr. McVety asked, the lot to the southeast, how wide is the waterfront on that?

Mr. Quillen said Exhibit I shows an aerial. The rear lot line does not show the exact dimensions. He looked in the file on the subdivision plat and it shows 30 feet.

Applicant Presentation

James Krusick, applicant, said he was sworn in. Mr. Krusick handed out some papers in response to the staff report "findings" and regarding American Disability Act (ADA) and riparian rights in Florida. He said the variance he is asking for is for the existing dock, not to construct a new one like their alternate design is showing. The second item, he is a disabled vet and that is what those papers show. In his original narrative, Item 2, because of the disability, he contacted the County to see if there was any criteria for handicapped boat docks, and was told there was not any. He followed the ADA guidelines and use the existing poles for the lift to attach to, although he did have to add additional poles to support it properly. He is not sticking out any further than what the boat lift was originally. On number 4, the finding talks about the riparian rights. He read the riparian rights on line. The first one is the most common of extending the property lines into the water, but the property is narrow and barely goes into the water. The second interpretation is to determine where the canal is. We are on a canal system. Exhibit I shows the canals go from the bridge to the left over to the right of the pond. He discussed the riparian rights interpretation which he submitted in his packet. Item number 5 – the findings are the conditions can be easily corrected, he said this is not true. He said in front of the seawall is all bare ground. He said the seawall people told him the panels are not deep enough into the ground to allow dredging. Number 6 talks about a dock that could be constructed to meet the requirements of the Code.

He said the Exhibit J is to construct a new dock next to his existing dock. His request is just a 5 foot by 20 foot ramp attached on each side of the exhibits existing lift poles. This is on Exhibit G3 in his packet.

Mr. McVety said the applicant said he did not go out further but the dock is 12' and lift is 12' by the original permit and you just said you went out 29', Code says 24'.

Mr. Krusick said that was to access the back of the boat.

Ms. Ariens asked originally when you had your first permit of the dock, did you give submit any evidence of having a disability?

Mr. Krusick said no. He was in Wisconsin at the time when he hired J&E marine. He said J&E marine had nothing to do with the addition that he put on.

Mr. McVety asked on the original dock you had permitted, you were going to put the boat parallel to the seawall?

Mr. Krusick said no. He was going to drive it in. This is the only way to get it in keeping the motor in the water.

Mr. Vieira asked on the plan approved by Charlotte County, it shows the dock built parallel to the seawall and there are 4 pilings in place. Would those piling not be constructed in a manner that a boat lift could have been attached to those piling and the boat then be brought in from that point?

Mr. Krusick said the boat could be brought into the lift, but the only way I can access the boat is at the rear.

Mr. McVety said typical lift in Charlotte County is parallel to the seawall and you get off from the rear on the side of the dock.

Mr. Quillen said he would like to confirm what Mr. Vieira was referring to, was it Exhibit D2?

Mr. Vieira said yes.

There was discussion about moving the dock and the dock being in the center of the property. Access during winter and high tide.

Mr. Cullinan, Zoning Official, said to rebut some of Mr. Krusick's statements. His first statement about the dock and lift are existing, the variance request is for the existing dock not a new structure. **Mr. Cullinan** said this was a new structure. This was an illegally constructed new structure. He claims ramps but to staff it appears to be a bigger dock. #2, Staff has nothing proving he needs both sides of it. Most boats you do not access from both sides. There is no proof he does not have the depth that he claims. His arguments about riparian rights is typically for side setbacks. The water is

shallow but if you look at the pictures, it is wet. We need a bathymetric survey to verify. The alternate design typically you don't nose in, you go parallel to the wall. He would be able to access the rear of the dock. He could have a longer dock along the seawall. He could dredge out further where he needs the depth for the lift, where the actual boat would go. Regarding the ADA issues, he believes handrails are required and there are no handrails currently. Permits would be needed to verify the ADA requirements.

Ms. Ariens asked if he tried to discuss the changes he needed with staff?

Mr. Krusick said he never thought of a variance when he originally called Building Construction Services for the dock permit. He said he could not finish the handicap railings because he got a stop work order.

There was some discussion about ADA review, the variance, access to the boat, and extending the dock.

Vice-Chairperson Ariens opened the meeting to Public Hearing.

Public Input
No one spoke for or against this request.

Mr. Krusick said what he did was the most reasonable method of taking care of his needs being disabled. There may be a million different methods, but what is reasonable? The dock was there, the lift poles were there and he just attached to that.

There being no further requests to speak for or against the petition, Mr. McVety 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
Mr. Vieira asked on Exhibit J, has that been moved, that interpretation been moved further onto the property lot #14? Is it further?

Mr. Quillen said yes, staff cut and pasted the existing left side of the dock to the right side of the furthest right or northerly piers. You can see in line with the garage, compare to Exhibit F, the survey.

Mr. Vieira asked is that also to give consideration to adjoining lot #13, so they can have navigability?

Mr. Quillen said yes, that is correct.

***ACTION:** A motion was presented by Steve Vieira and seconded by Blair McVety that Petition VAR-12-009 be DENIED based on the Community Development Staff Report dated December 4, 2012, 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 passed to deny with a unanimous vote.

VAR-12-010

Roger Miller, agent for Arthur and Catherine Talsma, is requesting two variances, one to reduce the required 7.5' west side yard setback by 1.2', to allow a 6.3' side setback, and to reduce the required 20.0' rear yard setback of by 9.0', to allow an 11.0' rear setback, in the Residential Single Family-3.5 (RSF-3.5) zoning district. The property address is 3811 Barnegat Drive, Punta Gorda, and is described as lot 18 of block B of Riviera Lagoons Unit 2 Subdivision, located in Section 17, Township 41 South, Range 23 East.

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

Applicant Presentation

Roger Miller, Agent for the applicant, said he was sworn in. Mr. Miller said he agrees with the staff report. This house was built by the developer and sold to Mr. Talsma. He has been the only owner since 1987 and had no idea this was not in compliance with Charlotte County Code. This came to a head because the owner is seeking to sell the property and the survey revealed this problem.

Vice-Chairperson Ariens 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. McVety 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 Blair McVety and seconded by Steve Vieira that Petition SE-12-010 be APPROVED based on the Community Development Staff Report dated December 4, 2012, 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 2 conditions.*

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

1. The variances, as approved by the Board of Zoning Appeals, are as follows:

   (a) a variance of 1.2' to reduce the required west side yard of 7.5' to allow a 6.3' west side yard setback for the existing single-family residence; and

   (b) a variance of 9.0' to reduce the required rear yard setback of 20.0' to allow an 11.0' rear yard setback for the existing single-family residence.

2. These variances extend only to the existing single-family residence as it is currently located on lot 18 and shall carry with this structure only. If the home is ever removed, destroyed 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.

SE-12-017

Robert Berntsson, agent for Placida Road Church of God, is requesting a special exception to allow uses associated with a House of Worship, consisting of Sunday School, day care, and other church related uses, in the Agriculture Estate (AE) zoning district. The property address is 9148 Short Street, Englewood, and is described as the southerly 105.24 feet, or the northerly 172.15 feet, of the westerly 145,53 feet of lot 23 of the Grove City Land Company Subdivision of Section 21, Township 41 South, Range 20 East.

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

Applicant Presentation

Robert Berntsson, Esq. BigWLaw Firm, represented the applicant and said he was sworn in. Mr. Berntsson said he agrees with the staff report. For history, Mr. Philman purchased this home for the use of the church and will lease it to the church for $1 a year type lease. His intention is to convey it to the church at some point in the future. This house is across the street from the church. This will allow for additional space for Sunday school and other church related meetings and office use.

Chairperson Ariens opened the meeting to Public Hearing.

Public Input

Pastor Bryan Walton, was sworn in. Pastor Walton said he runs the church across the street from this site. **Pastor Walton** said the reason they would like to get this passed, they are working with the children in the area. They do not have any place to have activities and they would like to keep them off the street.

There being no further requests to speak for or against the petition, Mr. Vieira 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 Steve Vieira and seconded by Blair McVety that Petition SE-12-017 be APPROVED based on the Community Development Staff Report dated December 4, 2012, 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 3 conditions.

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

1. This special exception is to bring the existing house of worship into conformity with the Zoning Code and to allow construction of a new building for a fellowship hall.
2. The site plan presented by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes, including parking and landscaping, are applicable to the construction and operation of the existing church and proposed new fellowship hall building.
3. At the time when the Placida Road Church of God become owners of subject property (9148 Short Street) the church shall combine subject property with the adjacent parcel to the east, which is also owned by Placida Road Church of God.

IX. *Public Comments* - None

X. *Staff Comments* –

Mr. Cullinan said January 23 from 9 a.m. to 4 p.m. the County Attorney's office along with the County Extension Services will be holding a Planning Officials seminar workshops. This will be at the Eastport Campus on Harborview Blvd. by I-75.

Mr. Quillen said there are no petitions for the January hearing, so there is no hearing in January.

XI. *Member Comments* –

Ms. Ariens said she feels uncomfortable walking on sites for visits or being in the site area and not having a badge or something to show who she is.

Mr. Cullinan said he would check on name tags for the members.

XII. ***Next Meeting***

The next meeting of the Board of Zoning Appeals is scheduled for ***Wednesday, February 13, 2013, at 9:00 a.m., in Room 119.***

There being no further business, the meeting ***ADJOURNED*** at 10:40 a.m.

Respectfully submitted,

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Diane Clim, Recorder
/dlc

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Katherine Ariens, Vice-Chairperson

Approval Date:_____