MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, November 14, 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
Thomas Thornberry, *Chairman (Absent)*
Katherine Ariens, *Vice-Chairperson*
Bill Truex
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 November 14, 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*
ACTION: A motion was presented by Mr. Truex and seconded by Mr. McVety to approve the minutes of the October 10, 2012 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 November 14, 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 petitions were advertised on October 30, 2012: SE-12-015 and SE-12-016

SE-12-015

James Ehrenfeld is requesting a special exception to allow a Guest House in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property address is **2376 Staver Street, Port Charlotte**, and is described as lots 1 and 2 of block 2274 of Port Charlotte Subdivision, Sub-section 20, located in Section 13, Township 40 South, Range 22 East.

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

Applicant Presentation

James Ehrenfeld, applicant, said he was sworn in. Mr. Ehrenfeld said he built this house before Hurricane Charley. He planned to live here the rest of his life. He is in the real estate appraisal business. Because of the economy, he had to cut back and work out of his home. His son suggested he move into the house to help with the payments and the applicant would like to build a small house so he can be close to the family.

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. Truex 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 Bill Truex and seconded by Steve Vieira that Petition SE-12-015 be APPROVED based on the Community Development Staff Report dated November 6, 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 2 conditions.

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

1. This special exception as approved by the Board of Zoning Appeals is to allow a guest house as that term is defined in the Zoning Code.
2. The Site Plans submitted with this application are for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of the guest house as an accessory use to the existing single-family residence.

SE-12-016

Connie Volpe is requesting a special exception to allow a Home Occupation, consisting of clinical massage therapy, in the Residential Single-family-5 (RSF-5) zoning district. The property address is **1141 Rotonda Circle, Rotonda West**, and is described as lot 901 of Rotonda West Pine Valley Subdivision, located in Section 36, Township 41 South, Range 20 East.

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

Applicant Presentation

Connie Volpe, applicant, said she was sworn in. Ms. Volpe said she had a small business consisting of clinical massage therapy, but has recently been diagnosed with health issues and needed to sell the business. A few patients would like her to keep them and she is requesting using one room in her house for this reason. She said she may only see a few patients each week and some weeks no patients at all. There is no impact on the community. She did call the homeowners association before applying for this Special Exception and was told by the receptionist who answered the phone, there would not be a problem. It is not a big business.

Mr. Quillen said he had papers to pass out from the Rotonda Homeowners Association.

Vice-Chairperson Ariens opened the meeting to Public Hearing.

Public Input

Glynn Perkins, President Rotonda West Assoc., said he was sworn in. Mr. Perkins said the Association requests this application be denied. This is a deed restricted community and they enforce the restrictions. Home businesses are prohibited in this community. Even if she is granted this special exception, they will file papers she is in violation of the association rules.

Mr. Vieira asked if any other businesses are currently located in the community.

Mr. Perkins said none that they are aware of, except for one they were just made aware of and they have sent a letter to the home to notify the occupant of the rules.

Ms. Ariens said deed restrictions are a private agreement and are not enforced by the County. This Board cannot modify or rescind those rules.

Mr. Cullinan said all deed restrictions have to be filed with the Clerk of the Courts to be recorded.

Michael Whitt, P.A., Becker & Poliakoff, Esqs. said he was sworn in. Mr. Whitt said they just recently were notified about this request. The Association prohibits businesses run out of the homes. He said the receptionist who answered the phone, does not bind her reply to allow this request.

Mr. Cullinan said the criteria are set forth in the Zoning Code. Home Occupations are allowed in the RSF district if they meet the Special Exception requirements. Those requirements are set forward. Deed Restrictions are private agreements between parties.

Mr. Whitt said page 3 of Mr. Norsoph's compatibility analysis which was handed out, says the Comprehensive Plan talks about deed restrictions. He read into the record information from the Comp Plan. He thinks it is appropriate and comes under the compatibility under Paragraph 2 of Section 3-7-9, and it goes to criteria #5 about consistency with the Comp Plan and other regulations within Charlotte County. He said Special Exceptions are great but not in deed restricted area, where the homeowners agree to be bound by them.

Mr. Truex asked if anyone did any research to see how many businesses are operating in Rotonda out of their homes with occupational licenses and no Special Exceptions?

Mr. Whitt said there are no home occupations/commercial locations in Rotonda according to the Board, as far as they know. No Special Exceptions.

Mr. Truex said that is his point. No Special Exceptions. He suggested they look into this.

Jan Norsoph, AICP, Planning Consultant, said he was sworn in. Mr. Norsoph said his report has been handed out. There is a deed restriction and because of that, the residents of Rotonda West have basically identified home occupations as being an incompatible use with their neighborhood. He spoke some about property rights, deed restrictions, and the Comprehensive Plan.

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

Mr. Cullinan addressed a few of the items brought out in Mr. Norsoph's report. (Section 3-7-154, conflict with other legal documents; Section 3-7-151, Subdivision Regulations; Section 2-5-8, Sub-sections of Prohibited Acts in Rotonda West Subdivision.)

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

Board Member Comments and Questions

Mr. Truex said he moved into Rotonda 21 years ago, because it had deed restrictions and he didn't want to move into an area without deed restrictions. This is a difficult situation for him.

ACTION: A motion was presented by Blair McVety and seconded by Steve Vieira that Petition SE-12-016 be APPROVED based on the Community Development Staff Report dated November 6, 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 shall allow a home occupation, consisting of clinical massage therapy, only as an accessory use to the existing single-family residence.
2. This special exception, allowing a home occupation, shall be conducted according to all of the standards and conditions of Section 3-9-79, as amended, of the Zoning Ordinance.
3. Any major modifications, or change in the type of home occupation conducted, shall require a modification to 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 there are 3 petitions for December.

Mr. Cullinan said because of redistricting of the districts, Mr. Thornberry is no longer in District 5. Mr. Vieira's term is up in November, and Mr. Truex is leaving and will have to appoint someone for District 3. We should be able to have a meeting in December, but there is a chance it will be postponed.

XI. *Member Comments* –

Mr. Truex said he wanted to say thanks. This has been a fantastic experience and he has enjoyed being on this Board.

XII. *Next Meeting*

The next meeting of the Board of Zoning Appeals is scheduled for ***Wednesday, December 12, 2012, at 9:00 a.m., in Room 119.***

There being no further business, the meeting ***ADJOURNED*** at 10:25 a.m.

Respectfully submitted,

_____

Diane Clim, Recorder
/dlc

_____

Katherine Ariens, Vice-Chairperson

Approval Date: _____