MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, September 9, 2015 – 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 (Absent)
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 September 9, 2015 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. Tiseo and seconded by Mr. Fix to approve the minutes of the August 12, 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 September 9, 2015 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 August 25, 2015: VAR-15-005; VAR-15-006; SE-14-010, and SE-15-006

VAR-15-005

Harold Murbarger is requesting a variance to reduce the required 7.5 foot side yard setback by 4.9 feet to allow a 2.6 foot side setback for a screen enclosure and to reduce the required 25 foot front yard setback by 0.2 feet to allow a 24.8 foot front setback for an existing single family residence, in the Residential Single Family-3.5 (RSF-3.5) zoning district. The property address is 26310 Madagascar Road, Deep Creek, and is described as lot one of block 811 of Punta Gorda Isles Subdivision, Sub-section 23, all located in Section 16, township 40 South, Range 23 East.

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

Mr. Tiseo had a question about some of the documents in the staff report packet. They discussed the original permit when the house and pool was constructed.

Applicant Presentation

Harold Murbarger, applicant, said he was sworn in. Mr. Murbarger said he sold this house. During the process, there was a survey done. It showed the pool in the setback and easement. The purchasers applied for a loan. The loan company wanted this to be cleared up. He applied for the Variance before the sale of the house, but he did not know he needed to be here last month when this petition was originally on the agenda. The bank let them close knowing he applied and was attending today's meeting. He said the house was built in the 80's and he did not know there were any issues.

Chair 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. Fix 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 Joe Tiseo and seconded by Larry Fix that Petition VAR-15-005 be APPROVED based on the Community Development Staff Report dated September 2, 2015, 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 five conditions recommended by staff.

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

1. The two variances, as approved by the Board of Zoning Appeals, are **(a)** to reduce the 7.5' interior side setback by 4.9' to allow a 2.6' side setback; and **(b)** to reduce the 25' front setback by 0.2' to allow a 24.8' front setback.
2. Variance **(a)** extends only to the existing pool and pool cage only as shown on the Boundary Survey in the documents submitted with this application.
3. Variance **(b)** extends only to the existing single-family residence only as shown on the Boundary Survey in the documents submitted with this application.
4. If the existing swimming pool or pool cage is ever 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.
5. If the existing single-family residence is ever 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.

VAR-15-006

Sunia Piermont, agent for Fairhomes Pearson Properties, is requesting a variance to reduce the required 25-foot rear yard setback by five feet to allow a 20-foot rear setback along a street for a proposed new single-family residence, in the Residential Single Family-3.5 (RSF-3.5) zoning district. The property address is **2410 Pebble Creek Place, Port Charlotte**, and is described as lot 20 of Pebble Creek Subdivision, all located in Section 13, Township 40 South, Range 21 East.

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

Applicant Presentation

Harry Taylor, P.E., LT Engineering, said he was sworn in. Mr. Taylor said he will be happy to answer any questions.

Mr. McVety asked if that is a gated community backed up to the fence?

Mr. Taylor said that is correct. There is a 6 foot high concrete block wall that surrounds the area. There are deed restrictions and they are all cleared with the Homeowners Association.

Mr. Tiseo asked about the 20 foot setback in the rear. Were they known during the design stages?

Mr. Taylor said unfortunately no. It was a typically back to back lot, setback for a pool. They did not catch that because of the street.

Sunia Piermont, agent for Fairhomes Pearson Properties, said she was sworn in. Ms. Piermont said they submitted plans and the building permit is ready to be pulled. She said their septic permit is also ready. If there were any changes, they would have to redesign and get the permits reviewed again.

There was some discussion about the lot having a street in front and a street in the rear. Also many of the neighboring homes also have pools and they also do not have the 25 foot setback. Determinations were made by previous Zoning Officials.

Chair Ariens opened the meeting to Public Hearing.

Public Input

Matthew Lane, applicant's representative, said he was sworn in. Mr. Lane said he had a question. They would like to keep as many trees on the lot as they can. They realized they would like to move the pool approximately 10 feet to the right. He wanted to make sure they were not locked in with the site plan that was provided. They will stay within the setbacks requested, but the pool will be a little more to the right side.

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 some discussion about the design of the pool and not knowing the setback was 25 feet because of the road.

ACTION: A motion was presented by Joe Tiseo and seconded by Blair McVety that Petition VAR-15-006 be APPROVED based on the Community Development Staff Report dated September 2, 2015, 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 six conditions recommended by staff.

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

1. The variance as approved by the Board of Zoning Appeals is to reduce the 25' rear street setback by five feet to allow a 20-foot rear street setback.
2. This variance extends only to a swimming pool and pool cage.
3. If the proposed swimming pool and pool cage is constructed and at a later date removed 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.
4. If the proposed swimming pool and pool cage is not constructed within two years of this approval date then this variance shall expire and all future development must be constructed according to all applicable codes in existence at that time.

SE-14-010

Michael Haymans, agent for S&S Money Auto Repair, is requesting a special exception to allow "expansion of a lawfully existing conforming use to property which is abutting the existing use" in the Charlotte Harbor Coastal Residential 3.5 (CR-3.5) zoning district. The property address is **23371 Harborview Road, Charlotte Harbor,** and is described as lots 6, 7, 8, 9 and 10 of Block "A", all being a part of Shelton's Addition to Hickory Bluff Subdivision, located in Section 25, Township 40 South, Range 22 East.

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

Applicant Presentation

Michael Haymans, Agent for S&S Money Auto Repair, said he was sworn in. Mr. Haymans said he has the owner of S&S Money with him, along with John Swen from Charlotte Engineering, who will speak regarding the landscaping. **Mr. Haymans** explained how S&S Money was in Punta Gorda, but their original site was destroyed by Hurricane Charley. They moved to this location on Harborview Road and purchased the vacant lots behind them. Over time, since they have U-Haul rentals, many of the trucks were placed on the vacant lots in the rear. Eventually the land use was changed to Commercial but the zoning remained residential. They are asking for the Special Exception to be able to use the back lots for storage. No access will be from Homewood Street would be on to those rear lots. There currently is access from Harborview and Homewood Street for the front lot. That will remain. They plan on putting in more landscaping than required so the neighbor across the street will not be able to see the U-Haul trucks on the back lots.

John Swen, Charlotte Engineering, said he was sworn in. Mr. Swen said the property is required to have a type D buffer. The buffer they are proposing along Homewood Street is an enhanced buffer. They have doubled the number of plantings required from the type D buffer. He explained what types of plants they would be using. They handed in a picture of the new buffering to be used (Exhibit M).

Ms. Ariens asked if this back area was just going to be used to store U-Haul trailers?

Mr. Haymans said U-Haul trailers and if S&S Money has vehicles that are waiting to be repaired and has vehicles that have been repaired and are waiting to be picked up.

Chair Ariens opened the meeting to Public Hearing.

Public Input

Dan Eliassen, who lives on Homewood Street, said he was sworn in. Mr. Eliassen said he can see all the U-Hauls sitting across the street from him. He is concerned about the traffic coming down Homewood Street. He is concerned for his family when outside and his neighbors. He is also concerned about his property value. He said he is against this request.

There was discussion about the access in the rear that is currently there, which will be closed with a fence and the only access to the rear site will be through the front site Planned Development area.

There was discussion about the Future Land Use (FLU) change earlier in the year and the Charlotte Harbor CRA Committee approving the FLU change at their meeting. There was discussion regarding the current zoning and what uses could be used there currently.

Trudy Overbey, Sunrise Trl., said she was sworn in. Ms. Overbey said her brother and her inherited the property across the street. They grew up a few blocks away in Charlotte Harbor. She has witnessed many changes to the area, most preserve and enhance the area. They recently listed their property for sale. She did attend the other hearings regarding this site. She is against this commercial use. She also is concerned about the devaluation of her property. She is against this request.

Robert Sachek, Jason Street, said he was sworn in. Mr. Sachek said he lives around the corner from this site. He said the big tragedy today is the owner around the other corner is not here. The house is vacant but there are a lot of trees in the rear and you cannot view the site in question. He believes the owner will eventually try to buy more property in the area and expand more. He is 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. Fix. The public hearing was closed with a unanimous vote.

Rebuttal

Mr. McVety asked why are some of the U-Haul trucks being left on the street.

Mr. Haymans said he did not know why. He thought maybe when someone returns the truck, the business is not open yet or has closed, so the person returning the truck just leaves it in the right of way/street area. He said that practice should change.

Mr. Haymans said the business in the front has been thriving and the owner started some self help by using the back lots for storage. There is a code violation for that and they are trying to fix that by having this Special Exception approved. Right now the land use is commercial and the zoning is residential. If the zoning gets rezoned to commercial, then you can have any type of use such as a restaurant and there will be more traffic in that area with no restrictions. The owner just wants to use the lot for storage. He is willing to landscape more than needed by code to help the neighbors view with buffering.

Abdool Sattar, owner of S&S Money, said he was sworn in. Mr. Sattar answered some questions why he used the rear lot for storage and that he would not use it for anything else. No boats or other items would be stored there.

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

Board Member Comments and Questions

There was discussion about the access and a left turn out only onto Homewood Street, and including the enhanced landscape graphic shown at today's hearing.

***ACTION:* A motion was presented by Joe Tiseo and seconded by Blair McVety that Petition SE-14-010 be APPROVED based on the Community Development Staff Report dated September 2, 2015, 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.**

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

1. The special exception, as approved by the Board of Zoning Appeals, is to allow an accessory use consisting of an outdoor storage yard to be developed only on lots 6, 7, 8, 9 and 10 of block "A" according to all applicable County Codes, Land Development Regulations and any additional conditions required by the Board of Zoning Appeals.
2. This outdoor storage yard shall only be used as an accessory use to the owner and operator of S&S Money Auto Repair or their successors or assigns. If subject property is ever sold separately from the business or the use discontinued for more than 365 days then this Special Exception shall expire.
3. An independent outdoor storage yard may not be operated on subject property unless a commercial building is constructed on subject property, in compliance with all County Codes, and the appropriate zoning is obtained.
4. The site plan presented by the applicant as part of the petition is for illustrative purposes only. However, the required landscape buffer along Homewood Street shall meet or exceed the Enhanced Landscape Plan, labeled Exhibit J-2 in the staff report. All other permitting procedures and codes are applicable to the construction and operation of the proposed storage yard including Site Plan Review. Site Plan Review approval must be obtained within six months of approval of the Special Exception, and construction or installation of all required improvements must be completed within one year or prior to establishment of the use on subject property, whichever occurs first.
5. There shall be no access to the outdoor storage yard from Homewood Street.
6. A commercial fence permit must be obtained for the proposed six-foot fence from the Building Department. If the existing fence is to be used it must be modified or reconstructed, if necessary, to comply with any commercial fence design requirements.
7. Signs shall not be permitted on subject property (lots 6, 7, 8, 9 and 10).

8. Only licensed and operable rental trucks and trailers and customer's licensed passenger vehicles awaiting repair or pick-up may be stored or parked on subject property. Storage or parking of unlicensed vehicles, boats, recreational vehicles, any parts of vehicles, or any other materials or dumpsters is prohibited.
9. A "No Left Turn" sign shall be posted at the existing approved access drive onto Homewood Street, provided the County Transportation Engineer approves this restriction.
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.

SE-15-006

Deborah Martohue, attorney for American Towers, is requesting a special exception to allow a 245-foot communications tower in the Commercial General (CG) zoning district. The property address is **12587 Tamiami Trail, Punta Gorda,** and is described as lot 01, of block 155, of Unit 9 of Tropical Gulf Acres Subdivision, located in Section 11, Township 42 South, Range 23 East.

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

Applicant Presentation

Deborah Martohue, attorney for American Towers, said she was sworn in. Ms. Martohue said she wanted to thank staff for working with them. This is a vacant lot. They will be putting a tower on it. This tower replaces the existing tower at 12701 Tamiami Trail. That tower will be coming down. The site is located on US 41/Tamiami Trail and it is an evacuation route. They want to make sure their clients have continuous service.

Mr. Tiseo asked about the access to the new tower.

Ms. Martohue said the access is from the back street, Siesta Drive. Maybe once or twice a month, an employee would go there to check maintenance.

Josh Moye, Asst. County Attorney, asked if the new tower was going on the same site as the existing tower.

Ms. Martohue replied no. This site is 1600 feet north of the existing tower.

David Hockie, American Tower, said he was sworn in. Mr. Hockie said on the current site there are generators. For the new site, they would be happy to supply generators. They do want to make sure there is service in case power goes out, they would have backup power.

Chair Ariens opened the meeting to Public Hearing.

Public Input

Katie Cole, attorney for Crown Castle said she was sworn in. Ms. Cole said they were the original applicants for the Special Exception at 12701 Tamiami Trail. Crown Castle has an easement underneath the ground for the existing tower. In 1996, this Board approved the Special Exception for the existing tower. Her client plans to either purchase the existing tower or rebuild a cell tower on that site. She said the staff report says the new tower will be replacing the old tower, but that is not 100% correct. She wanted to make sure the Board of Zoning Appeals Board knew that even though American Tower will be putting up a new tower down the road, this current site will continue to have a tower whether it is the one there now, purchased from American Tower or Crown Castle will put up their own tower. The right/use is already approved.

There was discussion why the staff report says the current tower would be removed and replaced. **Mr. Quillen** said this is how it was presented by the applicant. Staff believed the current tower would be removed and a new one would be up the road. A few days before the meeting, he received a call from Ms. Cole explaining what was going on. By removing the current tower, the site is still allowed to have a tower on it.

Ms. Martahue said she had called Mr. Quillen to see if any neighbors were against this request and Mr. Quillen told her Ms. Cole had called him the day before, explaining how Crown Castle has the easement and original Special Exception for the tower but her company, American Tower has a lease with Crown Castle for the tower to be on that original site. American Tower has the lease for the tenants that are on the tower. Those leases will be honored at the new site up the road. If Crown Castle puts a tower on the original site after American Tower removed their tower, that is their choice.

Rebuttal

Debrah Martahue said they are not putting a tower on the same parcel. The lease they have with Crown Castle is coming up in the near future, and American Tower wants to put their own tower up. They have clients with long term leases and they need to know they have a more stable long term tower. They are not going to sell the old tower to Crown Castle. They will be removing that tower.

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

No further questions

ACTION: A motion was presented by Joe Tiseo and seconded by Blair McVety that Petition SE-15-006 be APPROVED based on the Community Development Staff Report dated September 2, 2015, 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 conditions recommended by staff, which are condition numbers 1, 2, 4 and 5 – striking condition #3 as listed on the staff report and renumbering.

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

1. This special exception is to allow a single 245-foot high communications tower on subject property and extends only to the land included in the site plan and legal description submitted with this application.
2. The site plan presented by the applicant as part of the petition is for illustrative purposes only. The proposed communications tower and ground facilities shall be developed and constructed according to all applicable County Codes and Land Development Regulations, including "*breakpoint design technology*".
3. All necessary permits and approvals must be obtained, as applicable to this development, including but not limited to, right-of-way access, paving, electrical, plumbing, fencing, tree removal, landscaping, and invasive plant species removal.
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.

IX. *Public Comments* - None

X. *Staff Comments* –
Mr. Quillen said there is one petition for the October 14, 2015 hearing.

XI. *Member Comments* -
Ms. Ariens said in November, Veterans Day falls on a Wednesday, so we will not be here. We need to reschedule. The Board decided to meet on Wednesday, November 18, 2015 in this room at 9:00 a.m.

Ms. Ariens also said regarding security in this room, we have to call staff independently. The Board can call Tom Scott in Facilities.

XII. *Next Meeting*
The next meeting of the Board of Zoning Appeals is scheduled for ***Wednesday, October 14, 2015, at 9:00 a.m., in Room 119.***

There being no further business, the meeting ***ADJOURNED*** at 2:25 PM.

Respectfully submitted,
Diane Clim, Recorder
/dlc

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Katherine Ariens, Chair

*Approval Date:*_____