



MINUTES

Charlotte County Board of Zoning Appeals

Wednesday, August 9, 2023 9:00 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)

Board Member:

Blair McVety, Chair
Steve Vieira, Vice-Chair
Nichole Beyer
Turner Rouse
Andrew Filieo

Staff:

Shaun Cullinan, Planning/Zoning Official
Thomas David, Asst. Co. Attorney
Elizabeth Nocheck, AICP, Sr. Planner
Kimberly Sargent - Recorder

I. Call to Order

Chair McVety called the August 9, 2023 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

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

Kimberly Sargent swore in all persons who wished to provide testimony.

V. Staff Comments

None.

VI. Approval of Minutes

ACTION: A motion was presented by Mr. Vieira and seconded by Ms. Beyer to approve the minutes of May 10, 2023, meeting of the Board of Zoning Appeals which passed with a unanimous vote.

VII. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the August 09, 2023 Board of Zoning Appeals meeting were submitted.

VIII. Introduction of Staff/Comments

Chair McVety introduced staff. Shaun Cullinan, Planning and Zoning Official, read the Zoning rules, Asst. County Attorney David, and 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.

IX. New Business

The following petitions were advertised on July 25, 2023: SE-23-016, SE-23-018, SE-23-019, SE-23-020, SE-23-021 VAR-23-012, VAR-23-015, VAR-23-016 & VAR-23-017

VAR-23-012

Seth Johnson is requesting a variance to reduce the required 20-foot east side yard setback by 15 feet to allow a 5-foot east side yard setback, for a detached garage, in the Agriculture (AG) zoning district. The property is located at 32780 Oil Well Road, in Punta Gorda, and is described as Parcel P-1-32, located in Section 21, Township 42 South, Range 24 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition.

Mr. Vieira I am looking at the property appraiser's GIS map and there is four parcels together that are all the same similar size is this a result of a sub-division previously or?

Mr. Cullinan yes, this area out here is probably would be considered an unrecorded sub-division, they were all created prior to 1990. They are legally existing non-conforming lots.

Mr. Vieira can you tell me when the 10-acre rule for AG was instituted? Is the sub-division prior to that ruling.

Mr. Cullinan yes, the lots were vested because they were created prior to 1990, we have provisions in our code that say any lot created prior to 1990 or 1991, we have two conflicting, and we always go by the more restrictive. So, prior to 1990 is considered a legally vested lot of record.

Applicant Presentation

Seth Johnson, applicant, said he is available for any questions that anyone might have.

Chair McVety opened the meeting to Public Comments.

Public Input

No one spoke for or against this request.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Mr. Vieira recommendation #3 where a variance will not expire, if we should approve this construction is already commenced hasn't it because the slab is already in place. So that's almost a moot point if we approve it.

Ms. Nocheck I guess more or less.

Mr. Vieira thank you.

ACTION: A motion was presented by Steve Vieira and seconded by Nichole Beyer that Petition VAR-23-012 be APPROVED based on the Community Development Staff Report dated July 5, 2023, 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 four conditions recommended by staff.

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

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 20-foot east side yard setback by 15 feet to allow a 5-foot east side yard setback for a detached garage.
2. The variance shall only apply to the detached garage, as shown in the documents submitted with this application.
3. This variance is granted for a term of three (3) years from the date of approval from the Board of Zoning Appeals; however, the variance shall not expire if the owner commences the proposed development on or before the variance's term expires.
4. If the detached garage is 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. This condition shall not apply to removal or replacement caused by a natural disaster or involuntary destruction of the detached garage.

VAR-23-016

Robert Berntsson, representative for Robert and Ruth Faria, is requesting a variance to reduce the required 20-foot rear yard setback by 6 feet to allow a 14-foot rear yard setback, to allow an elevator addition to an existing single-family residence, in the Manasota Single-family-3.5 (MSF-3.5) zoning district. The property is located at 4121 N Beach Road, in Englewood, and is described as portions of Lot 4 & 5, of the Lemon Bay Haven Subdivision, located in Section 02, Township 41 South, Range 19 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition.

Applicant Presentation

Robert Berntsson, representative for the applicants, said he was sworn in. Mr. Berntsson said we accept Ms. Nocheck as an expert, and I welcome the two new members to the board of zoning appeals. I am here today on behalf of Mr. and Mrs. Faria, who could not be here today. This is a very unique situation the platting of this property alone was unique, because the lots were created as kind of a trapezoid diamond shape making it very difficult to build on. Because you have to meet your side setbacks you really would decrease the amount of buildable envelope. So, they got together and each one gave a little triangle to their neighbor to square off the properties and make them rectangular in shape. The plat also contained a ten-foot private road easement along the northern boundary of the subdivision. I think that's unique given the time that this was done in the seventies. Under the zoning code there is a provision that you can split a waterfront lot of record that fronts on the water and provide a 10-foot easement to the property. I think that theory was used in creating this subdivision, because in today's world the subdivision would never have been approved with a ten-foot-wide private roadway. Which doesn't allow for the passage of two vehicles. So based on that we requested a zoning official determination that in fact the front of the property was the mailing address of the property which is Beach Road. Therefore, the front would be considered the lot line on the western side and the

side yard would be where the elevator was going. Which would require no variance. The Faria's had applied for the elevator thinking that the American with Disabilities Act would allow the construction of the elevator based on the act. But that was not the case. Mr. Faria is a disabled veteran from the United States Army and has a 100% disability rating and his wife is ill, and her condition is worsening. His clients are anxious to construct their elevator so that they can access the home. The suggestion of locating it someplace else, when you see the floorplan. The only other place you could put it would be on the sides of the property. It would basically have to come into the bedroom, that's just not feasible as you can see. Currently the stairs come up and the elevator will be just located in the same location where the stair comes up. So, it keeps with the flow of the home and doesn't require additional changes. We request your approval of the variance and would be happy to answer any questions.

Chair McVety opened the meeting to Public Comments.

Ms. Nocheck received one email from a neighbor who is unable to attend today due to prior commitments. So, I will distribute that and label it as exhibit J.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Mr. Vieira moved to close the public comments, seconded by Ms. Beyer. The public comments was closed with a unanimous vote.

Elizabeth Nocheck presented the recommended conditions for the petition.

Rebuttal

Mr. Berntsson we accept all of the conditions as proposed. I would not that Ms. Nocheck shared the email with me, the original one came in late Monday I believe. Then there was a follow up yesterday morning. Mr. Faria has never spoken to this individual and was completely unaware. This condition is in the back of the bushes that basically create a barrier. So, the people that sent the email just purchased the property a year ago June. Mr. Faria was completely unaware of any concerns or problems he can certainly rectify that. I would notice that the way their house sits and as oriented. This is a really hard place for them to be able to see anything. You would have to go out of your way to look for this because it's next to a wall that runs down the entire property line of their property. It's only the last couple of feet of the property. The Faria's will certainly look into that and getting that corrected, they were completely unaware of and would have preferred their neighbor contact them instead of contacting the county. With that we respectfully request your approval.

Board Member Comments and Questions

None.

ACTION: A motion was presented by Steve Vieira and seconded by Nichole Beyer that Petition VAR-23-016 be APPROVED based on the Community Development Staff Report dated July 5, 2023, 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 four conditions recommended by staff.

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

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 20-foot rear yard setback by 6 feet to allow a 14-foot rear yard setback, to allow an elevator addition to an existing single-family residence.
2. The variance shall only apply to the proposed elevator addition, as shown in the documents submitted with this application.
3. This variance is granted for a term of three (3) years from the date of approval from the Board of Zoning Appeals; however, the variance shall not expire if the owner commences the proposed development on or before the variance's term expires.
4. If the elevator addition or existing single-family residence is 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. This condition shall not apply to removal or replacement caused by a natural disaster or involuntary destruction of the elevator addition or existing single-family residence.

SE-23-016

Jeremie Chastain, AICP, representative for Enterprise Holdings, is requesting a special exception to allow commercial vehicle rental, in the Commercial General (CG) zoning district. The property is located at 4509 Tamiami Trail, in Port Charlotte, and is described as Lots 3 – 6 of Block 5, and Lots 1 – 6 of Block 12, of the Sibley's Central Division of Charlotte Harbor Subdivision, located in Section 25, Township 40 South, Range 22 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition.

Mr. Vieira I do have a couple of questions, the modified type D buffer, I did go to the site and observe the site. The type D buffer on the southwest portion of the property. Does the opaque fence sit on top of any type of berm, that might be required or is it incorporated into the berm?

Ms. Nocheck they would not need a berm with the width that they're purposing. According to our buffer standards.

Mr. Vieira it's straight 8 feet off the back of the property then?

Ms. Nocheck yes the buffer is required to be a minimum of 10 feet wide. So the fence will be within that 10 feet.

Mr. Vieira second question, it is a cramped site there is no doubt about it, everything is scattered all over the site. Right now, there is a temporary structure modular building that's there to use to return vehicles. Is this canopy that's going to be installed going to be attached to that or is it going to be a free standing?

Ms. Nocheck I think that would probably be best for the applicant to answer.

Mr. Vieira I think that's all I have for now.

Applicant Presentation

Jeremie Chastain, representative for the applicant, said he was sworn in. I have with me the applicant Robert Baker who is the Southwest Florida Property Development and Facilities Manager for Enterprise Holdings. I have Tyler Bonnough of professional engineer from Hole Montes. We've reviewed the staff report and concur with Ms. Nochecks recommendation. We don't have any changes to the conditions as proposed, we agree with the conditions. She did a very thorough presentation, so we don't have any additional information. We are here to answer any questions you might have. I can bring Tyler up right away if you would like to start with the question about the temporary structure.

Tyler Bonnough, said I have been sworn in. To answer your question the new canopy for the car wash area will be a free standing.

Mr. Vieira so it will be free standing. So, the temporary structure stays in place as a return office sort of speak. The current area where the cars are maintained, vacuumed etc., moves to a different location on the lot?

Mr. Bonnough yes, roughly we'll say give or take 50-75 feet.

Mr. Vieira ok I just wanted clarification on the landscaping and the canopy structure.

Chair McVety opened the meeting to Public Comments.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Ms. Beyer moved to close the public comments, seconded by Mr. Rouse. The public comments was closed with a unanimous vote.

Elizabeth Nocheck started to present the recommended conditions for the petition.

Board Member Comments and Questions

Mr. Vieira asks Mr. Cullinan on the structure that's there now to use to return vehicles. I take it that's a fully permitted structure and it's tied into utilities. Is that considered a temporary structure or is it a permanent structure?

Mr. Cullinan that would be a temporary structure they have a permit in house on review for reconstruction due to storm damage of the existing building. They brought that out there temporarily. Both discuss this matter.

ACTION: A motion was presented by Nichole Beyer and seconded by Steve Vieira that Petition SE-23-016 be APPROVED based on the Community Development Staff Report dated May 3, 2023, 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 nine conditions recommended by staff.

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

1. The Special Exception, as approved by the Board of Zoning Appeals, is to allow commercial vehicle rental as an accessory to the existing noncommercial (passenger) vehicle rental and extends only to the lands included in the Site Plans and legal description submitted with this application.
2. The Concept Plan submitted by the applicant, as part of the petition, is for illustrative purposes only. All applicable regulations of County Code shall apply to this development. The applicant shall obtain all necessary permits and approvals as applicable to this development, including but not limited to Site Plan Review, right-of-way access, vegetation removal, fencing, stormwater management, and landscape plan approval.
3. The storage of construction materials, debris, heavy machinery, semi-trucks, or hazardous materials is prohibited. Only commercial vehicles for hire (rental) owned by the vehicle rental company may be stored on site. Rental of storage spaces to other commercial vehicles is prohibited.
4. A modified "Type D" Landscape Buffer with an eight-foot-tall sight-obscuring (opaque) fence or wall, shall be constructed and planted around the perimeter of the area to be used for outdoor storage, as shown on the **Concept Plan** (Exhibit F), provided by the applicant. The use of chain link fencing as part of the required buffer is prohibited. Final design of the buffers shall be determined during the Site Plan Review process.
5. Any perimeter outdoor lighting shall be directed towards the interior of the property.
6. Any future building(s) shall meet or exceed all applicable Commercial Design Standards set forth in Chapter 3-5, Article XXIV, as may be amended.
7. The commercial vehicle rental use may not be used until all required improvements are completed, including the required buffers, and a Certificate of Occupancy has been issued.
8. This Special Exception is granted for a term of three (3) years from the date of approval from the Board of Zoning Appeals; however, the Special Exception shall not expire if the owner commences the proposed development on or before the Special Exception's term expires.
9. Any major changes or additions to this special exception shall require a modification of the special exception, including the conversion of the remainder of the property for commercial vehicle rental use. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

SE-23-018

Craig Gabbard is requesting a special exception to allow outdoor retail display and storage for a retail landscaping and plant nursery business, in the Commercial General (CG) zoning district. The property is located at 481 Tamiami Trail, in Port Charlotte, and is described as Lots 1, 2, 49 – 54, Block 2395, of the Port Charlotte Subdivision, Section 32, located in Section 03, Township 40 South, Range 21 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition.

Chair McVety asks is that a house or duplex on lot 10 on Bowman and Longley?

Ms. Nocheck says I think that's just a single-family house. Both discuss.

Mr. Vieira your correct it is a single-family house; I did walk the property. So, I went out and took a look at the site. I have two questions, the chain link fence that is on the northern border on US 41, that's to be removed and replaced by landscaping, correct?

Ms. Nocheck they can still have the chain link fence, but the landscaping will have to be on the outside on the fence closer to the roadway. Since the fence is not part of a required buffer, it can be chain link in that area.

Mr. Vieira I guess my real concern is that is a single-family house and on the opposite corner on Bowman. There is another single-family house there. That's my only concern is that a six-foot-high opaque fence may not be enough to conceal the bins.

Chair McVety they want a driveway out on that side too.

Mr. Vieira a couple of concerns about it, it is a heavily wooded site. Rather than clear cut it, you know it's a good option to clear cutting. But I am concerned about the residents across the street and leading down Longley Drive. Is the opaque fence around the entire perimeter west, east and south?

Ms. Nocheck so on the concept plan that they provided I did highlight where the different buffers would be required. Anything in green would require the type D buffer with the opaque fence.

Mr. Cullinan says please also note that this will still have to go thru site plan review so their proposed access point onto Longley may not be allowed. There is a lot of different requirements relating to separations away from intersections and things like that. So, this will still have to go through site plan review.

Applicant Presentation

Craig Gabbard, applicant, said he has been sworn in. The only thing I want to add is all of my trucks they are smaller than dump trucks. No semis would be parked there, anything like that just residential landscaping sized trucks. If you have any questions, I would be happy to answer.

Chair McVety opened the meeting to Public Comments.

Public Input

No one spoke for or against this request.

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

Elizabeth Nocheck started to present the recommended conditions for the petition.

Board Member Comments and Questions

Chair McVety speaks to Mr. Cullinan about the driveways, there is two existing they have been there for years.

Mr. Cullinan I apologize, I miss spoke I meant the ones along Bowman. It still has to go thru site plan review and their separation requirements for driveway access as well as access to residential roadways. Both discuss this matter.

Mr. Vieira understanding the residential component of it, on Longley Drive with the existing driveway is. Is there a possibility for the modification of that existing driveway into the plan and not having the access on Bowman Terrace.

Mr. Cullinan possibly again that's why it has to go through site plan review process, they're not gonna go through that process until they know that they have the approval from this board to be able to do the use that they're looking to do. That requires engineered plans so, again it's all based on how it plays out with separations. It may need it for the second one, it may not. They may need to modify the existing, this was built in the early 80's.

ACTION: A motion was presented by Steve Vieira and seconded by Turner Rouse that Petition SE-23-018 be APPROVED based on the Community Development Staff Report dated July 5, 2023, 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 thirteen conditions recommended by staff.

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

1. The Special Exception, as approved by the Board of Zoning Appeals, is to allow outdoor retail display and storage as an accessory use to a retail landscaping and plant nursery business and extends only to the lands included in the Site Plans and legal description submitted with this application.
2. The Concept Plan submitted by the applicant, as part of the petition, is for illustrative purposes only. All applicable regulations of County Code shall apply to this development. The applicant shall obtain all necessary permits and approvals as applicable to this development, including but not limited to Site Plan Review, right-of-way access, vegetation removal, fencing, stormwater management, and landscape plan approval.
3. The storage of construction materials, debris, heavy machinery, semi-trucks, hazardous materials is prohibited.
4. A maximum of 20 commercial landscaping vehicles may be stored on subject property. Only commercial vehicles owned by the property owner may be stored on site. Rental of storage spaces to other commercial vehicles is prohibited. Small machinery, such as bobcats, may be stored on site.
5. Items permitted for outdoor display include plants, trees, pottery, statuary, and customary garden accessories.
6. Items permitted for outdoor storage include landscaping materials such as stone, gravel, mulch, and similar materials. Materials stored in bins shall not exceed 5 feet in height.
7. A "Type D" Landscape Buffer with a 6-foot-tall sight-obscuring (opaque) fence or wall, shall be constructed and planted around the perimeter of the area to be used for outdoor storage, as shown on the **Concept Plan** (Exhibit F), provided by the applicant. The use of chain link fencing as part of the required buffer is prohibited. Final design of the required buffers shall be determined during the Site Plan Review process.
8. An 8-foot-wide perimeter landscape strip with decorative perimeter landscaping shall be planted along the northern property line. Any proposed fencing shall be located behind the required trees and shrubs.
9. Any perimeter outdoor lighting shall be directed towards the interior of the property.

10. Any future building(s) shall meet or exceed all applicable Commercial Design Standards set forth in Chapter 3-5, Article XXIV, as may be amended.
11. The outdoor storage and display uses may not be used until all required improvements are completed, including the required buffers, and a Certificate of Occupancy has been issued.
12. This Special Exception is granted for a term of three (3) years from the date of approval from the Board of Zoning Appeals; however, the Special Exception shall not expire if the owner commences the proposed development on or before the Special Exception's term expires.
13. Any major changes or additions to this special exception shall require a modification of the special exception, including a change in type of business located on site. A change in ownership shall not require the modification of the special exception, provided the business operations as a retail landscaping and plant nursery business remain. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

10:22 Five Minute Break

10:29 Resume

SE-23-019

Craig Mahoney is requesting a special exception to allow outdoor storage for a building trades contractor and light manufacturing and assembly in a completely enclosed building, in the Commercial General (CG) zoning district. The property is located at 17515 & 17525 Abbott Avenue, in Port Charlotte, and is described as Lots 17 & 18, Block 1091, of the Port Charlotte Subdivision, Section 16, located in Section 01, Township 40 South, Range 21 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition.

Mr. Vieira we're being asked to approve a storage yard for lack of a better term. Where does the construction happen now in the manufacturing?

Ms. Nocheck says the applicant could address their current business operations better.

Applicant Presentation

Craig Mahoney, applicant, has been sworn in, to answer that question we build on site right now. Pretty much we get our materials, we go to the house, we start building right there.

Chair McVety opened the meeting to Public Comments.

Public Input

No one spoke for or against this request.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Chair McVety we have approved a lot of stuff around the school board there, dumpsters, dump trucks and plumbers and all kinds of this becoming an industrial park.

Mr. Cullinan yes, this was a really weird experiment that the county did about 20 years ago. They've originally rezoned. There was a lot of residential multi-family 10, which can't fit more than a duplex on a ¼ acre lot. We then undertook a rezoning to commercial intensive, which still required special exceptions for outdoor storage, contractors and yeah, your absolutely correct. It seems like the majority of this probably due to its location is building out with a lot of contractor trades and storage.

Mr. Vieira asks Shaun we're granting the exception for three years and we're giving them the opportunity to have an outdoor storage area. These manufacturing facilities is there a time limit when that gets constructed and how do we handle that to ensure that it does get constructed?

Mr. Cullinan I don't believe there is a time frame for when they choose to do the actual building.

All three parties have a discussion on this.

ACTION: A motion was presented by Steve Vieira and seconded by Andrew Filieo that Petition SE-23-019 be APPROVED based on the Community Development Staff Report dated July 5, 2023, 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 thirteen conditions recommended by staff.

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

1. The Special Exceptions, as approved by the Board of Zoning Appeals, are to allow outdoor storage for a building trades contractor; and light manufacturing and assembly in a completely enclosed building, consisting of fabrication and repair of metal screen enclosures, and extends only to the lands included in the Site Plans and legal description submitted with this application.
2. The Concept Plan submitted by the applicant, as part of the petition, is for illustrative purposes only. All applicable regulations of County Code shall apply to this development. The applicant shall obtain all necessary permits and approvals as applicable to this development, including but not limited to Site Plan Review, right-of-way access, vegetation removal, fencing, stormwater management, and landscape plan approval.
3. The storage of debris, heavy machinery, semi-trucks, or hazardous materials is prohibited.
4. A "Type D" Landscape Buffer with an eight-foot-tall sight-obscuring (opaque) fence or wall, shall be constructed and planted around the perimeter of the area to be used for outdoor storage, as shown on the **Concept Plan** (Exhibit G), provided by the applicant. The use of chain link fencing as part of the required buffer is prohibited.
5. Materials stored on outdoor storage racks shall not exceed 8 feet in height.
6. Any perimeter outdoor lighting shall be directed towards the interior of the property.
7. Any future building(s) shall meet or exceed all applicable Commercial Design Standards set forth in Chapter 3-5, Article XXIV, as may be amended.

8. Noise attenuating insulation or other material shall be used in the construction of the building.
9. All fabrication, manufacturing, and assembly activity shall occur inside the building. Garage doors shall be closed while machines are in use.
10. The outdoor storage use may not be used until all required improvements are completed, including the required buffers, and a Certificate of Occupancy has been issued.
11. The outdoor storage use shall be limited to materials and vehicles owned by the business operating on subject property. Storage spaces may not be leased or sold to other individuals or businesses.
12. This Special Exception is granted for a term of three (3) years from the date of approval from the Board of Zoning Appeals; however, the Special Exception shall not expire if the owner commences the proposed development on or before the Special Exception's term expires.
13. Any major changes or additions to this special exception shall require a modification of the special exception. A change in type of fabrication or outdoor storage 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-23-020

James Porter, Esq., representative for SBA Communications Corporation, is requesting a special exception to modify an existing special exception (SE-97-21M), to allow the replacement of an existing communications tower, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 1365 Viscaya Drive, in Port Charlotte, and is described as the southern half of Block 791, of the Port Charlotte Subdivision, Section 27, located in Section 10, Township 40 South, Range 22 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition.

Asst. County Attorney Thomas David speaks to Chair McVety, that he would like to add a little bit of as I do with all of our tower applications. Talk a little bit about the Florida law on that relates to these types of applications. Then begins to explain all the necessary information regarding this.

Applicant Presentation

Thu Pham, co-worker with James Porter, representative for the applicant, said she was sworn in. I agree with everything that Ms. Nocheck said. She did a very thorough presentation. I don't really have much to add other than state that this is a pre-existing facility. Previously based on the location the prior board had found that you know the placement of the cell tower at that location is consistent with counties comprehensive plan land development code and the requirements of the special exception. Criteria located in the land development code. So, based on that I would request that you approve our special exception modification request. I am available for any questions if you have any.

Chair McVety opened the meeting to Public Comments.

Mrs. Sargent swears in additional parties who wish to speak.

Public Input

Nicole Corin Christian, number three I am here to address for the record, I am here to address point number three the staff being unaware of any health, safety, or general welfare impact of the public with this exception. I am in opposition just to make that clear. On sciencedirect.com website there is an

article entitled adverse health effects of 5G mobile networking technology under real life conditions. Just for the record there are countries that are burning down their 5G towers at this moment because it's causing so many adverse health reactions. That started exactly when the towers were turned on, and the people were very aware of that. The adverse health effects just to summarize from wireless radiation on humans and explains all the information she has discovered to inform the people of what is happening. Wants to add documents to the record.

Mr. Cullinan collects the documents and passes to Mr. Filieo for the members to look at.

Ms. Nocheck says we will label this exhibit P.

Speaker name unknown, has been sworn in, I like you not to answer this but keep it in mind. If you thought, you could get away with multiple murder would you do it? Just keep that til the end. I have a question to is to why you're holding this meeting now while there is so many people away. All the snowbirds are probably still up north. It seems to me that this is an issue that's very important as my notes and my studies have shown. There should be many, many more people here able to express their wishes and find out more about this. The facts scientists have found that 5G have caused mysterious symptoms headaches, sleep disturbances, heart and lung diseases, cancer, infertility, and can harm your DNA. It's true and there is much out there. They get away with it so they can make profit. Studies that electromagnetic and environmental effects can be traced back to the 1930's in the United States. In agriculture the growth or crops in an electromagnetic environment can be hindered. Talks about the bodies and suffer from radiation, therefore more and more attention has been paid to the study of this. I will turn in the paperwork explaining all of this and continues to explain all of her findings, studies and much more that needs to be studied.

Ms. Nocheck asks the speaker for her name for the record.

Speaker name unknown answers Lin Christian. She states there are safe ways of doing this radiation and I live in the area. Talks about adequate levels of service, safety and detrimental to health, safety, and general welfare.

Chair McVety asks Asst. Co. Atty. Thomas David to go back over when a non-expert witness reads something and we are supposed to access it, the new board members.

Asst. Co. Atty. Thomas David goes over all of this and explains this information to the new members, along with the statute.

Lin Christian speaks about more information and Asst. Co. Atty. Thomas David informs her that her testimony is completed.

Asst. Co. Atty. Thomas David addresses a gentleman from the audience who is trying to speak on this and is informing him that we don't take testimony from the audience.

Lin Christian states I would like to submit this.

Ms. Nocheck says we will label that as exhibit Q for the record.

Scotty O'Connell I want to welcome Andy, Turner and Nichole. I was here in May when we talked about the other tower. You had to leave early and we only had a three vote and we lost by one. So, I want

you to really understand where I am coming from. We packed this room, on Iliade, we had over a 170 people. I am not worried about what it does to the people or not. We're within two towers, my house is if a tower in the front of my house and a tower in the back on my house. I am in that zone so what I am getting at here, is this tower had SBA we had SBA here. To tell you that we could modify this existing tower. You guys approved a brand-new tower because you wouldn't let SBA put in their application and prove it. I know they were late getting in; they didn't know they were putting in another tower in Iliade to here. We had almost 200 people here telling you let's let us modify the station we have. Which that's exactly what there asking for now. The one on Iliade is in litigation, it is in litigation, he said it might pass. So are we gonna let this one go and then we're gonna have two. So, you guys made up your mind for the one at Iliade, it's going thru the court system. You need to deny this one, you walk, I heard you all day today Mr. Vieira talk about driving around and looking at all the places that we talked about today. Come by let's show you, one church here the other church is within what did you say Elizabeth, how far out is it between them 1.4 miles, it's really close. If Mr. Vieira didn't have to leave that day, we probably would have not had this tower at Iliade, but we only had three people. You were against it, so we had a 2 to 1 vote. You see where we are at now, now we are here doing what we asked let these people upgrade the existing tower they have the generators, site they have everything there. You guys approved the other one and now we are at this situation. I don't get it so all I am asking is this. Deny theirs until the litigation is proved over there, we can't have two within 4.4 tens of a mile please think about what you're doing. Because the guys that made the vote last time told 175 people, 200 signatures nope it doesn't matter we need 5G. 5G I don't care have it do we need two within four tenths of a mile thank you and please consider it. Come out to my house and I will show you the two towers.

There being no further requests to speak for or against the petition, Mr. Vieira moved to close the public comments, seconded by Ms. Beyer. The public comments was closed with a unanimous vote.

Rebuttal

Thu Pham I just have a couple of comments to make, first of all this is a replacement of an existing tower. So, under federal law you can't deny a project so if the basis the public is asking for you to deny the project is to retain the 4G service. In essence you can't deny the cell tower based on preference over 4G vs. 5G, that's against federal law. The other thing is just to address the timing we submit the application under federal law, once the application is being submitted, I mean completed. The local government has to approve it like take action on the project within 90 days. Otherwise, it would be the county's burden to show how the delay was not unreasonable. So, there was nothing nefarious on the timing. As soon as we got all of the information that's when we submitted it. And the staff processed it according to due course. Regarding the evidence that was submitted, I just want to say that first of all we don't know the studies, who performed these studies, what were the studies size, what control did they use. So, we don't know how it could be based on a study with two people, we don't know. So, it's really not competent substantial evidence. Regarding like things environmental facts like honeybees and things like that. How do we know that it's from the cell tower of 5G service vs. just environmental changes generally. Because most of the time when I hear about honeybees you know being in decline is because of global warming. It's the more common basis as to why we don't have honeybees. On top of being an Attorney I am also an eye doctor, and I can tell you that regarding ADD and ADHAD. When I started practicing optometry back in 2002, that was not really common. But within five years from when I started practicing, I noticed that that became more common. I think because it was just more acceptable but for the most part you know kids jumping around, running around and kids are kids. So, in a way I think that those conditions are over diagnosed. Someone had mentioned cell towers

producing microwaves, you know we all have microwaves in our homes. So, I am just not sure how relevant that is. Based on that I would respectfully request that you approve our application thank you.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Mr. Vieira just a couple comments if I could, I did in fact go to the site yesterday. I was at the site yesterday; I'm not addressing you personally, but I am just addressing the crowd. I went to the site; I actually met a person at the site who is a landscaper, I think. He asked me what I was doing on the property, I told him why I was there and for what reason and we parted company, so I did go to the site. Regarding the Iliade property I don't want to comment on that, but I did make a comment at a previous board of zoning appeals meeting that I was required to make or asked to make by the county attorney's office regarding the reconsideration of that motion. I had stated it's of public record that I would not have voted for reconsideration on the Iliade property. So, I just wanted to make those two statements clear that one I had been there, and I would not have reconsidered the Iliade property in the affirmative. So that's my comment on that and that's all I have to say.

ACTION: A motion was presented by Steve Vieira and seconded by Turner Rouse that Petition SE-23-020 be APPROVED based on the Community Development Staff Report dated July 5, 2023, 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 six conditions recommended by staff.

Asst. Co. Atty. Thomas David asked Mr. Filieo did you say I?

Mr. Filieo I did not respond.

Asst. Co. Atty. Thomas David ok you have to vote one way or another yes or no.

Mr. Filieo present.

Asst. Co. Atty. Thomas David present is not permitted, you can vote yes or no.

Mr. Filieo then I'm voting no. I did not have enough time to research.

Asst. Co. Atty. Thomas David that's no problem, sir. So, we please show that as a 4 - 1 with Mr. Filieo as no thank you. Just for the new members state law requires that you vote if your present or unless you have a conflict or some other reason where you cannot vote thank you.

***Motion was approved with a 4 to 1 vote with the following six conditions:
(Mr. Rouse, Mr. McVety, Ms. Beyer and Mr. Vieira voted for the approval – Mr. Filieo voted against the approval)***

1. This special exception, as approved by the Board of Zoning Appeals, is to modify an existing special exception (SE-97-21M), to allow the replacement of an existing communications tower, located in the Residential Single-family-3.5 (RSF-3.5) zoning district, generally as proposed in the application and as shown on the Site Plan labeled Exhibit L, and extends only to the land included in the site plan and legal description as submitted with this application. The Site Plans submitted as part of this application are for illustrative purposes only.

2. The total overall height for all elements of the communications tower, including the lightning rod, shall not exceed 125 feet. Exterior antennae shall be permitted.
3. The applicant shall obtain all necessary permits and approvals as applicable to this development, including but not limited to building code review, environmental review, stormwater management, vegetation removal, fencing, and landscape plan approval.
4. A minimum of a Type D landscape buffer with an eight-foot-tall opaque fence or wall is required around the perimeter of the equipment compound. Existing vegetation may be used towards this requirement.
5. This Special Exception is granted for a term of three (3) years from the date it receives approval from the Board of Zoning Appeals; however, the Special Exception shall not expire if the owner commences the proposed development on or before the Special Exception's term expires.
6. 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-23-021

Linda Stewart, AICP, representative for Evergreen Erosion Services, LLC, is requesting a special exception to allow outdoor storage for a building trades contractor, in the Commercial General (CG) zoning district. The property is located at 2441 & 2449 Broadpoint Drive, in Punta Gorda, and is described as Lots 7 – 16 & 37 – 39, Block 31, of the Harbour Heights Subdivision, Section 5, located in Section 15, Township 40 South, Range 23 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition.

Chair McVety asks shipping containers are allowed in CI Commercial Industrial?

Mr. Cullinan no sir, first off there is no more CI when we did our code changes. They both discuss this matter.

Applicant Presentation

Linda Stewart, representative for the applicant, said she was sworn in. Asking for a special exception to allow the outdoor storage for the building trades contractor in the commercial general zoning district. We have the property owner as well as developer for the erosion control services available if you have any questions. We do believe that this project meets the three criteria noted in the zoning code for the special exception approval. We are in agreement with the conditions in the staff report, but we do want to clarify that the shipping container does not have to meet the commercial building standards for Charlotte County's Land Development Code. We are all available if you have any questions.

Mr. Cullinan I think it was just stated that it will not unless it is made with, we allow it to be hardy boarded, sided, and meet the architectural standards. Being used as a building if that's the intent of it, then no it would not be allowed.

Linda Stewart thank you.

Mr. McVety I think they want to use it as a shed.

Mr. Cullinan correct serving the purposes of a building, which means it's a building or a structure needing to meet commercial design standards.

Chair McVety opened the meeting to Public Comments.

Ms. Nocheck I did receive two emails from neighbors who are unable to attend, we will label these as exhibit J for the email from Alex Meador, and exhibit K for the email from Mark Andrews and I will pass these out to you all.

Mr. McVety now there is four against?

Ms. Nocheck they are both against.

Mr. McVety asks are you here for the public comment.

Public Input

Speaker name unknown says yes, I am actually one of the emails, I was able to make it.

Mr. McVety ok go for it.

Speaker name unknown, good morning, I was sworn in. I am a resident of Harbour Heights and I know your aware of the area and just how small Broadpoint is. The fact that you made the comment that their open Monday thru Saturday 6 to 6 and 60 times a day coming back and forth on that Broadpoint. I just don't see how these vehicles are going to make one trip, much less 60 trips. That road leads to, not just a small residential area there is also a school on the way, it's a huge habitat for gopher tortoises, there is bobcats in the area. You also referred to it's a Florida scrub jay habitat. The last thing we really need is any of this kind of traffic going by there. Just please consider what's happening to our small little communities and to its residents that's all.

Asst. Co. Atty. Thomas David could you state your name for the record please.

Speaker name unknown says Alex Meador.

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

Rebuttal

Linda Stewart as noted in the staff report, the trip generation is averaged at 65 trips. There the employees will come to the site in their vehicles in order to pick up the construction vehicles. They will leave and do business offsite; the business isn't conducted at this parcel. At the end of the day, they will bring the vehicles back which is why we need the outdoor storage, also for the storage for these vehicles as well as the trailers with the equipment. If you are familiar with the area down Broadpoint on this side of the road is mostly commercial businesses. You have a roofing business that is to the west of us, that has a similar situation. But they have been there for a while, they have outdoor storage, they're not screened in any way. You have a fire EMS station to the west, you have a bar and grill just down the road. Broadpoint is a two-lane divided at the section where the school is located and as you go down further down toward this site. It does go down to a two-lane section of roadway. The Century21 building is the existing building that they're right now that were not proposing to utilize unless we extend into phase 2. But the traffic is going to be people coming to and from work like you do at any

business. As well as either twice a week or once every other week for the delivery of supplies for the business. If you have any other questions thank you.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Mr. Vieira would like to have a discussion if we could. First and foremost, I can't support this application. I think that the use is too intense for the neighborhood, it is located on a primary residential road. Which is a number of 65 road trips per day, is anybody's guess, I don't know if that's actually gonna occur, whether it's gonna be more or less. There is no traffic study attached to our documentation.

Mr. McVety so Broadpoint is a residential road?

Mr. Vieira Broadpoint is the main residential road going thru the neighborhood, yes, it is. Across the street within 25 feet of this site are ten residential building lots, either multi-family or single family. Within 390 feet of this property there are 10 residential homes, right now they're existing. The hours of 6am to 6pm are intrusive, to the residents in the area, they don't have quiet enjoyment of their property. There is nothing in the recommendation that there is no access to the property from a business perspective on Sundays, which is something I would like to see included if were approved. The businesses that are in the area, the business to the north directly to the north was once the gas station. That was in Harbour Heights many years ago. The reference to Robert Mallory Roofing and by the way, the gas station property has been in that current use for decades. So, it's not something that has just come along recently. The same with Robert Mallory Roofing, which is an established roofing company that's been in Harbour Heights for decades. So, to use them as an example that for this application, I think is wrong on it's face value. Overall, it's the wrong use for the neighborhood. I've looked at the website for the company I see the type of the equipment you want to bring in there. We have had, the neighborhood is a highly developing residential neighborhood. I contacted the Charlotte Harbor Water Association yesterday and there have been 44 new water installs in 2022. In 2023 there were 16 new ones, and they have 26 applications pending. So, nearly 90 properties have been built in this property or are going to be built in this neighborhood in this approximate area. I think it's an intrusion on the neighborhood, there is no quiet enjoyment when you put an operation in this type on the road. It's a two-lane road going in, we have enough problems right now in the neighborhood. I will make this statement right now; I live in Harbour Heights just so everybody is aware of what my position it. The road is whatever the standard width a road is, 50 feet, we have a continuous procession of ten-wheel trucks, dump trucks that going in and out of there caused by the development. So, there is a lot of traffic on the road and if were talking 65 additional trips maybe. That just increases the volatility of the traffic in the neighborhood. So, I can't support this, I just think it's too intense for the use for the neighborhood. I will wait for everybody else's comment.

Elizabeth Nocheck presented the recommended conditions for the petition.

ACTION: A motion was presented by Steve Vieira and seconded by Nichole Beyer that Petition SE-23-021 be DENIED based on the Community Development Staff Report dated August 2, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS NOT MET the required criteria for the granting of the Special Exception with twelve conditions recommended by staff.

Motion was denied with a 4-1 vote:

(Mr. Vieira, Ms. Beyer, Mr. Rouse and Mr. Filieo voted for denial of this request; Chair McVey for approval of this request)

12:07 Five Minute Break

12:13 Resume

VAR-23-015

Rigdel De Lardilles is requesting a variance to reduce the required 15-foot north side yard setback by 4.5 feet to allow a 10.5-foot north side yard setback, to allow an existing single-family residence to remain “as-is,” in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 3107 Key Lane, in Port Charlotte, and is described as Lot 17, Block 745, of the Port Charlotte Subdivision, Section 11 Revised, located in Section 22, Township 40 South, Range 22 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition.

Applicant Presentation

Rigdel De Lardilles, applicant, said he was sworn in. He said Ms. Nocheck has summarized it perfectly.

Chair McVety opened the meeting to Public Comments.

Public Input

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

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

None.

ACTION: A motion was presented by Turner Rouse and seconded by Steve Vieira that Petition VAR-23-015 be APPROVED based on the Community Development Staff Report dated July 5, 2023, 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 three conditions recommended by staff.

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

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 15-foot north side yard setback by 4.5 feet to allow a 10.5-foot north side yard setback, to allow an existing single-family residence to remain “as-is”.
2. The variance shall only apply to the existing single-family residence, as shown in the documents submitted with this application.
3. If the single-family residence is 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. This condition shall

not apply to removal or replacement caused by a natural disaster or involuntary destruction of the single-family residence.

VAR-23-017

Natallia Sammons is requesting a variance to reduce the required 25-foot front yard setback by 5 feet to allow a 20-foot front yard setback, to allow an existing single-family residence to remain “as-is,” in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 12038 Chancellor Boulevard, in Port Charlotte, and is described as Lot 4, Block 2842, of the Port Charlotte Subdivision, Section 47, located in Section 06, Township 40 South, Range 21 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition.

Applicant Presentation

Natallia Sammons, applicant, said she was sworn in. Thank you for considering this case and thank you for presenting it well. I don’t have anything else to add unless you have questions for me.

Chair McVety opened the meeting to Public Comments.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Mr. Vieira moved to close the public comments, seconded by Ms. Beyer. The public comments was closed with a unanimous vote.

Board Member Comments and Questions

Chair McVety I recommend when you buy a home you get title insurance, you get a survey and then you don’t get this problem. This problem usually comes cause you pay cash for a house, you go thru a title company and get a survey right, just saying it.

Elizabeth Nocheck presented the recommended conditions for the petition.

ACTION: A motion was presented by Andrew Filieo and seconded by Nichole Beyer that Petition VAR-23-017 be APPROVED based on the Community Development Staff Report dated August 2, 2023, 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 three conditions recommended by staff.

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

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 25-foot front yard setback by 5 feet to allow a 20-foot front yard setback, to allow an existing single-family residence to remain “as-is”.
2. The variance shall only apply to the existing single-family residence, as shown in the documents submitted with this application.
3. If the single-family residence is 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. This condition shall

not apply to removal or replacement caused by a natural disaster or involuntary destruction of the single-family residence.

Election of Secretary

- A motion was made by Turner Rouse that Nichole Beyer for Secretary, seconded by Andrew Filieo with a unanimous vote.

Asst. Co. Atty. Thomas David I want you all to have the phone number for the County Attorney's Office which is 941-743-1330. Our county attorney's job at these hearing is to be your parliamentarian and to advise you on the rules and procedure. We have a very strict process we follow here because that's the Florida Case Law drives that. So, people in the audience often times don't understand all that. If you ever feel like you have a conflict of interest that you need to discuss, or if you got a question about our rules, or if you have a question about the Sunshine Law which you are all subject to feel free to call me and I'll walk you thru that at your convenience.

X. **Public Comments** –
None

XI. **Staff Comments** –
Mr. Cullinan welcome to the new members. Ms. Nocheck yes, welcome new members it was lovely meeting both of you and having a full board today. I am very appreciative of you all being here. Next month for September we have 7 petitions, 4 special exceptions and 3 variances.

XII. **Member Comments** –
Welcome aboard gentlemen, thank you everybody and have a good day!

XII. **Next Meeting**
*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, September 13, 2023 at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 12:42 p.m.

Respectfully submitted,
Kimberly Sargent, Recorder
/kas


Blair McVety, Chair

Approval Date: 9/13/2023