



MINUTES

Charlotte County Board of Zoning Appeals

Wednesday, October 11, 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, Secretary (absent)
Turner Rouse
Andrew Filieo (absent)

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 October 11, 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. Approval of Minutes

ACTION: A motion was presented by Mr. Vieira and seconded by Mr. Rouse to approve the minutes of September 13, 2023 meeting of the Board of Zoning Appeals which passed with a unanimous vote.

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the October 11, 2023 Board of Zoning Appeals meeting were submitted.

VII. 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.

VIII. New Business

The following petitions were advertised on September 26, 2023: SE-23-026, SE-23-027, SE-23-028, SE-23-029, and VAR-23-021.

Chair McVety we are going to start at the end today Petition Variance 23-021.

VAR-23-021

Mark & Sue Dybwad are requesting a variance to reduce the required 15-foot rear yard setback by 5 feet to allow a 10-foot rear yard setback, for a new swimming pool, in the Residential Multifamily-10 (RMF-10) zoning district. The property is located at 9449 Agate Street, in Port Charlotte, and is described as Lot 37, Block 4415, of the Port Charlotte Subdivision, Section 78, located in Section 20, Township 41 South, Range 21 East.

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

Applicant Presentation

Mark Dybwad & Sue Dybwad, applicant's, said they were sworn in. Mr. Dybwad said we moved here a little over a year ago as it's been noted. We bought the property a number of years ago with the intention of retiring to Florida. Of course, coming down here the desire was to have a pool and more for recreational activities and so forth. As we've gotten older and stiffer and more physical issues, the desire to have the pool have become less of a social need and more of a physical need. So that's our goal primarily.

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. 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 Steve Vieira and seconded by Turner Rouse that Petition VAR-23-021 be APPROVED based on the Community Development Staff Report dated October 4, 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 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 rear yard setback by 5 feet to allow a 10-foot rear yard setback for a swimming pool, pool deck, and pool cage.
2. The variance shall only apply to the proposed swimming pool, pool deck, and pool cage, as shown in the documents submitted with this application.
3. If the proposed swimming pool, pool deck, or pool cage is constructed and at a later date 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 swimming pool, pool deck, or pool cage.

SE-23-029

Robert Berntsson, representative for APA Park & Service, Inc., is requesting a special exception to allow the outdoor storage and repair of commercial vehicles, in the Commercial General (CG) zoning district. The property is located at 7300 Florida Street, in Punta Gorda, and is described as Parcel P-10-2, located in Section 09, Township 41 South, Range 23 East.

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

Mr. Vieira has one question, hours of operation. Has anybody discussed hours of operation?

Ms. Nocheck I think that would be a question for the applicant, that was not provided in the narrative.

Mr. Vieira thank you.

Applicant Presentation

Robert Berntsson, representative for the applicant, said he was sworn in. Mr. Berntsson said we do accept Elizabeth as an expert and thank her for her staff report. I think it's very well done and very comprehensive. Typically, when you are working on a semi-truck, the truck part you can pull the truck in. The trailer still connected you can open the engine you're working inside but the trailer is sticking outside. We are fine with all of the conditions that are proposed except the second sentence of number seven. The garage bay doors shall be closed during repair and service activities; it's just not practical. If you have a tractor trailer pulled in the trailer itself, then it's actually acting almost like a door. Even though the door is open it's still blocking the main part of opening. So, with that I'm happy to answer any questions. It's general business hours, I don't know the exact hours they would work. It will probably change a little as the need is shown by the people that use the facility.

Mr. Vieira yeah, I was more concerned about during services, generally those services are weekends for the most part. Saturday and Sunday so I was concerned about the operation.

Mr. Berntsson I can assure you having been out there yesterday, any noise from this is not going to be any louder than the constant noise that you're hearing from the highway. The building would be open away from the church. The church is located on the opposite side of where the garage bays would be open.

Mr. Vieira ok.

Mr. Berntsson with that I'm happy to answer any further questions.

Mr. Rouse sir I'm would there be some additional signage out there. Is that what they anticipate?

Mr. Berntsson they'll have typical signage that's allowed by the code.

Mr. Rouse I'm ignorant of that what are they?

Mr. Cullinan they would be allowed in the commercial district up to 150 square feet of free-standing signage no taller than twenty feet. That's what our code currently allows for any commercial development.

Mr. Rouse would that be visible from I-75?

Mr. Berntsson I'm sure it would be.

Mr. Vieira would that be attached to the building?

Mr. Cullinan they also have allowances for building signage, so the way our sign code reads. Is you got your primary free-standing sign, which is what you typically see at entrances into developments, commercial industrial developments, and you also have wall signage. That kind of puts the business name on there as well. That square footage is a function of roadway frontage it's got various caps and things like that. It's all a detailed calculations in order to determine the number of signs and the amount of signage that they get.

Mr. Rouse are they lit?

Mr. Cullinan they are allowed to be back lit, yes. The only time you're not allowed to have a lit sign is if you're in a residentially zoned district.

Mr. Berntsson I would like to add, the reason we're here for a special exception is because of the outdoor storage. They can do the truck repair work as of right in the commercial district. It's the fact that they will allow people to park their semi-truck there. That's not there for repair, so that they can store their truck when they're not using it. That's really what the focus of this special exception is. Is the outside storage.

Mr. Nocheck I would note if you don't mind, that the repair is actually a special exception use. The semi-truck is considered heavy machinery for the purposes of our code. The repair of heavy machinery in commercial general does require a special exception.

Chair McVety I do agree that the doors need to be open, you can't trap all the exhaust fumes inside the building.

Mr. Cullinan so one concern we have, well we understand that there are ventilation systems that can be utilized. Again, this is a commercial district, projects and in industrially zoned districts where the majority of these truck repair operations are located are industrial. Industrial has different standards, obviously there are less requirements because industrial is intended to be more intense types of uses than commercial general. With respect to also the sound and while Mr. Berntsson is correct, they can be very loud. Highway noise tends to be more droning noise vs. if you've ever used a air gun and an air impact wrench on equipment. Those things can be very loud and piercing and significantly different type of tone. Then what you get with just background, I live right by the highway myself and it's just kinda like white noise vs. the zipping of air guns and equipment such as that.

Mr. Berntsson the other thing I would point out however, while vehicle repair is allowed in commercial, and you see it up and down 41. All the different tire places things of that nature, none of them are behind an 8-foot opaque wall. So, in addition for this particular use we're requiring the 8-foot opaque wall, you can't even tell hardly that the door is open sitting in your car. Looking over the 8-foot wall, you

probably see just about the top of the building. We would respectfully request that one condition be removed but with that we would respectfully request your approval.

Mr. Rouse just one more question, maybe this is to collateral thought. Any thought about whether that there would be more wear and tear on the road?

Mr. Berntsson there will be a full traffic study that is required as part of the site plan review process.

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 says Mr. Chairman I understand the discussion about item number seven and to amend that would we change, or would we eliminate garage bay doors shall be closed during repair and service activities and leave the remainder of the paragraph in place?

Mr. Berntsson that was my request yes.

ACTION: A motion was presented by Steve Vieira and seconded by Turner Rouse that Petition SE-23-029 be APPROVED based on the Community Development Staff Report dated October 4, 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 ten conditions, with modification of number seven 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 the repair and outdoor storage of commercial vehicles, including semi-trucks, box trucks, trailers, and other passenger vehicles, 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, 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 site. The use of chain link fencing as part of the required buffer is prohibited.

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. All repair and service of vehicles shall be performed inside a completely enclosed building. Noise attenuating insulation or other material shall be used in the construction of the building.
8. 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.
9. 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.
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.

Chair McVety asks Ms. Nocheck can we keep going backwards go to Petition 23-028.

Ms. Nocheck can we take a break.

Chair McVety sure.

9:46 Recess 5 minutes

9:50 Resume

SE-23-028

Robert Berntsson, representative for Robert Green, is requesting a special exception to allow outdoor storage for a building trades contractor office, in the Commercial General (CG) zoning district. The property is located at 17491 & 17493 Abbott Avenue, in Port Charlotte, and is described as Lots 21 & 22, 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 is this a result of a code violation case?

Ms. Nocheck I am not sure if there is a code, there were for the removal of trees without permits, but I am not sure if there is a current active code case or not.

Applicant Presentation

Robert Berntsson, representative for the applicant, said he was sworn in. **Mr. Berntsson** said we accept Elizabeth as an expert and to answer your question first. There wasn't an actual code enforcement case. Being from New York he hired a fence company to obtain a fence to be put around the lot for storage. He never saw the permit; he paid the fence company they went and got it. Everything that Elizabeth said is absolutely correct, it says you cannot store vehicles. The fence company never actually finished the job so that's why that permit is in an expired condition. We got the site plan together, we applied for this, and here we are today. This is commercial, it was commercial intensive before we combined those two zoning categories together. Commercial intensive recognizing the more intense commercial uses where most of these got established early on. There is an industrial

area right next door to this property is a big building with storage. We join in the staff report and the finding contained therein. The only request I'm making this time it's paragraph eight the second sentence says, "any existing vehicles stored on site must be removed until the certificate of occupancy has been issued". That's gonna create a tremendous hardship to the operating businesses. They are going to go thru swif-mud as soon as they have swif-mud they will be before the site plan review committee to get their approvals. That sentence doesn't change anything, the county can still pursue a code enforcement case if it wants to. But I don't think we need the extra bullet in there, that the board of zoning appeals said that you can't store them.

Mr. Cullinan we have a number of projects where they have gotten that. The approvals and basically thumb their nose at the county. Nothing on this site currently is legal, none of the businesses properly came in that are on there. While we understand it maybe a hardship to them, they should never have been there in the first place. That is a hardship to the county and the more we let these businesses start up without any county review following our regulations. The more it shows people, that oh we are just going to Charlotte County and just go do what you want. That is something that the board is very keen on changing that aspect of people view us.

Mr. Berntsson I don't believe there is anything illegal about the two businesses in the building.

Mr. Cullinan the discussion is on the site that is completely vacant.

Mr. Berntsson right but you said those, the businesses are not legally there. The businesses are there whether their vehicles are being stored is the issue.

Mr. Cullinan correct and the vehicles.

Mr. Berntsson you said they were not legally there; I just wanted that clear.

Mr. Cullinan they are not legal on the lot that is not currently consolidated and that has no approvals yet.

Mr. Berntsson I understand. With that I am happy to answer any further questions.

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.

Mr. Berntsson I would propose that the second sentence of paragraph eight or condition number eight read any existing vehicles stored on site must be removed within six months of the date of this approval unless site plan review application is submitted and diligently pursued through the issuance of a certificate of occupancy. They have to go to swif-mud, that's a three-to-four-month process just to get thru swif-mud before they can apply to the county for their site plan review. That would give them time

to continue pursuing that and diligently pursuing it through the issuance of a certificate of occupancy while not causing the businesses to have to relocate.

Asst. Co. Atty. David Thomas what does diligently pursuing it mean?

Mr. Bertsson we can take diligent out and we can just pursue through issuance of the certificate of occupancy.

Mr. Cullinan if that's the case I would like time frames that they must submit for site plan review.

Mr. Bertsson that's what I'm saying within six months.

Mr. Cullinan submit for site plan review within one month, if they can keep, if you're requesting that they can keep the vehicles there for six months I want them to start the site plan review process, the preliminary within one month because that will still take with preliminary. It's basically 40% plans then after that, it's typically as there dealing with swif-mud so they would still be within that six-month period. So, I would like because based on a lot of legislation with executive orders and stuff. Permits and applications can be extending as Mr. Bertsson is well aware of almost indefinitely. So, if we're going to go down that route I understand and that's up to you folks. But I would like to put some tight timeframes again. This was all done with no permits, and we need to make sure that we start addressing these thank you.

Mr. Bertsson I just know that swif-mud permitting takes a while if you want to say within two months they can apply for a preliminary and then they can follow thru once they have the swif-mud permits.

Mr. Cullinan swif-mud is not required for preliminary site plan review.

Mr. Bertsson understand they have to put that together that's why I am asking if we get two months.

Mr. Cullinan it appears that there is already some this was drawn up by Southwest Engineering and Design. So, they already have some preliminary plans already drawn up and if you see the date of that from April 2023. They probably relatively far along, that was six months ago now. Again, it's completely up to this board but again if you're going to let a business and uses stay on the site undeveloped. I would like some tight time frames.

Asst. Co. Atty. David Thomas the uses are on the site are in violation of the code. So, we can't have a condition on Board of Zoning Appeals application that contravenes the code. So, I think respectfully to Mr. Bertsson whatever proposal you would make here, would have to be consistent with the code.

Mr. Bertsson then I would just request that we delete the sentence and let code deal with that issue.

Asst. Co. Atty. David Thomas the issue there is that, then why don't we wait until the code issue is resolved and just defer this. The problem is that you have illegal storage going on there, and you're asking for the Board of Zoning Appeals to grant you a special exception to legalize it. But you're not willing to follow the procedure to get the permits to become legal.

Mr. Bertsson we are absolutely willing we've asked that you give us time to do it. Just like if there was a code enforcement case that was brought, and the person came in and said I've applied for my special exception. There gonna hold you in a bay and it's during that period.

Asst. Co. Atty. David Thomas when was this special exception requested?

Mr. Berntsson this was requested in August.

Asst. Co. Atty. David Thomas so have they filed any applications since August?

Mr. Berntsson we don't have the special exception we can't apply for it. You're not allowed outdoor storage.

Asst. Co. Atty. David Thomas Mr. Chair I don't think, I'm ambivalent about the removal of the, that provision. But I will tell you that, our process here for this board has been to require that the applicants become into compliance. When the special exception is granted. Meaning that they need to be in compliance while they're going through the permit process. The reason for that is that we have a lot of cases that come here. Where people are in violation, and are earning revenue, they are, we have storage cases. There is one out in Rotonda, guy I think he's still renting spaces out there, and refuses to come into compliance. The code process takes months and months. So, maybe the response here Mr. Cullinan is we need to begin a code case on this property immediately. So, any event that's my comments Mr. Chair.

Mr. Berntsson I think that cleanest thing would be to leave that last sentence and let the county deal with that issue as it would normally.

Board Member Comments and Questions

Chair McVety has a small discussion with Asst. Co. Atty. David Thomas regarding the numbers on voting.

Mr. Vieira in summary what are we actually to try to agree to. Would we try to agree to that the applicant has to remove all of his vehicles until he gets an approval from our jurisdiction.

Asst. Co. Atty. David Thomas this property it appears to me as kind of flown under the radar because of its location. So, it does not have a code case. The property owner and we appreciate this is coming in to come into compliance. I think this special exception application will move them towards compliance and that is something that the county is in favor of. I think they've met the conditions; they met the requirements for the special exception and the question really is just one sentence. Mr. Berntsson objects to the requirement that the existing vehicles that we believe are stored in contravention to the code should be removed during the process of getting the permits that they are required to complete this procedure to come into compliance. So, it's really a question for the board, a policy question on that one sentence whether you want to delete it or not. If it's deleted the likelihood is that the county is going to have to start a code case to make sure that this process is completed. So, like I say I think generally we've proposed this entire process here with all these conditions. We think they're valid, we don't think there impairing the operation of the property. Mr. Berntsson disagrees so that's the question. We would like to see this special exception proceed so that we bring this property into compliance. However, the only question is whether they're going to agree voluntarily to come into compliance during the process while they're applying. They've said they can't do it, so that's a policy determination for the board.

Mr. Vieira as a result of this discussion on today's meeting, we hypothetically eliminate that sentence from paragraph number eight. Does that immediately trigger a code compliance investigation and if so

what's the process in code compliance. How long does that take up and where does that leave the applicant primarily in this whole process.

Asst. Co. Atty. David Thomas it's not automatic, it's discretionary by the code compliance officers and the team that are involved in that. That would have to be something that would have to be taken up after this meeting. The issue is this Mr. Vieira, we would like to get compliance at the earliest possible date. The earliest possible date for the county's perspective is to have voluntary compliance by the applicant. The applicant is saying that voluntary compliance will make their business not function properly. Essentially, they're saying they wish to be granted the opportunity to maintain the condition of the property as it is. If that sentence is removed than all that is going to happen is, they're going to proceed to getting their permits. Now what we cannot control as the county is whether they complete that process. Mr. Berntsson is a man of impeccable reputation, and we grant him that. But he does not control his clients. From the perspective of the county is we want compliance. So, at the end of the day this is not a major issue, it's just a question of how the county is going to respond to it. Based on if that sentence is deleted. I'm ambivalent about it, as a legal matter, but it really is a policy question for you.

Chair McVety if you don't take that sentence out, and they leave the vehicles there does that mean you won't give them the permit.

Mr. Cullinan we would go through as Mr. David said through the code enforcement process.

Mr. Berntsson they would also be in violation.

Chair McVety in violation, I'm with that but the vehicles are there. They applied for all their permits; the sentence is still in there. Then you come out and inspect it to give them the permit and then you just turn them into code enforcement, then they deal with that.

Mr. Cullinan correct we would.

Chair McVety but the permit process would still go on right?

Mr. Cullinan the permit process yes would go on, but we would also be concurrently going through the code enforcement process. Nothing should be on the site until the site is developed.

Chair McVety I understand that, but I am just trying to figure it out.

Asst. Co. Atty. David Thomas in addition Mr. Chair they could come back here because they would be in violation of the special exception. But all of that takes a lot of time.

Mr. Berntsson that's why I think if we could remove the sentence number one. I think the county then has a policy decision to make amongst staff. Yes, you're now aware of a violation because we came in and tried to fix it. I think reason and common sense would say let's watch and see how this proceeds. If a few months go by and they see no applications coming in, then say yeah, they are thumbing our nose at us, let's start a code enforcement case. But to leave this meeting and go and start a code enforcement case. I think sends a chilling message to people that are trying to come into compliance.

Mr. Cullinan well I understand what he is saying, I worked shopped code enforcement processes with the Board of County Commissioners about two months ago. Our primary focus was um people operating illegally mostly with residential people camping, squatting, whatever on vacant residential

lots. But the board made it clear that and things that are being done illegally that the board wants to take a hard lined stance on. While we understand what Mr. Berntsson is saying and they are taking the steps bringing it into compliance. My job is to implement those policies as pushed by the Board of County Commissioners.

Mr. Berntsson and our code enforcement system is primarily a complaint-based system. So, if nobody complained about this, there wouldn't have been a code case. Other than us bringing it voluntarily before you.

Mr. Cullinan that's not necessarily true, this is a commercial zoned district, and we have commercial code officers are proactive as well as code complaint driven.

Mr. Vieira what about the hypothetical request to put in a time limit at Mr. Berntsson's request of a thirty day, what does that do for us? If they're going to come in and request a thirty-day delay until they can make their applications. Is that a good faith effort, do we consider that how do we handle.

Mr. Cullinan so again some of the other ones we've done we put in time frames. There was one on Solstone but, again it's all going to be based on people can just ignore that. Just like any of these conditions, people will do what people will do. It gives us a little bit more evidence of bad faith by virtue of it was in the special exception. They were aware of the time frames so therefore if they don't move forward that's more evidence that we have to present at the magistrate. We're actually taking a case to the magistrate on Solstone within the next month or two. For just that situation, I believe we just took the Rotonda one or are about to take the Rotonda one. Where they basically, put it politely thumbed their noses at us.

Mr. Vieira what about a modification to paragraph number ten, where it says the special exception is granted for a term of three years from the date of approval. Can we reduce that number down to six months?

Asst. Co. Atty. David Thomas yes you may.

Mr. Berntsson then I'm concerned what the word commences proposed development, if applying for permits is, would qualify for commencing. We know we've got a four-month swif-mud in the middle of all of this. So, I wouldn't want to shorten the special exception. I think the easiest thing is to just delete that sentence don't give us additional time. The county can decide what it wants to do with regard to the code enforcement issue. But if we just delete the second sentence of paragraph eight, it doesn't change the legal position for either side, it's just something that the county can deal with separately.

Asst. Co. Atty. David Thomas just to be clear we would like to see this move ahead.

ACTION: A motion was presented by Steve Vieira and seconded by Blair McVety that Petition SE-23-028 be APPROVED based on the Community Development Staff Report dated October 04, 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 the modification of paragraph number eight or condition number eight, that the last sentence of that paragraph be stricken and all eleven conditions recommended by staff.

Motion was approved with a 2 to 1 vote with the following eleven conditions:
(Mr. Rouse voted against this approval)

1. The Special Exception, as approved by the Board of Zoning Appeals, is to allow outdoor storage for a building trades contractor's office 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, semi-trucks, or hazardous materials is prohibited.
4. Outdoor storage of vehicles shall be limited to Lot 21.
5. 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. A perimeter landscape strip shall be planted along the north property line of Lot 22, as shown on the **Concept Plan**.
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. 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.
9. The outdoor storage use shall be limited to vehicles owned by the business(es) operating on subject property. Storage spaces may not be leased or sold to other individuals or businesses.
10. 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.
11. 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.

Chair McVety asks Ms. Nocheck I'll leave this up to you, are we doing one or two.

Ms. Nocheck let's start where we should have at the very beginning, we'll go bac and get East Coast Marble up next.

SE-23-026

Nick & Melanie Gagnon, representatives for East Coast Marble, Inc., are requesting a special exception to allow outdoor storage for a building trades contractor office, in the Commercial General (CG) zoning district. The property is located at 2493 Broadpoint Drive, in Punta Gorda, and is described as Lots 1 – 6,

35, 36, and a Portion of Vacated 15Ft Alley Adjacent to Lot 36, Block 38, 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.

Mr. Vieira is there an alley way to be vacated on this site?

Ms. Nocheck it already was and discusses with the photos.

Mr. Cullinan so it was vacated in April of 2022. These folks have done everything correctly, they're doing a by right use on the portion, they then went and did the street vacation, the alley way vacation and now they are coming in for the ability to have the outdoor portion of their use.

Applicant Presentation

Nick & Melanie Gagnon, applicant's, said they were sworn in. **Mrs. Gagnon** we would like to have exterior storage, that's why we're here. **Mr. Berntsson** said during our business we receive a lot of material and we're able to not jam the inside of the buildings so this way it will help up to move stuff outside so we can actually function. After that then the materials delivered to the jobsites. It's more for helping us to move around the building so.

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 says I would like to make some comments if I could please. I'm concerned about the item #4 type D landscape buffer. I'm trying to help preserve the integrity of the residential homes across the street from this property. Broadpoint Drive is 25 feet wide, so that puts a residential structure 2506 Broadpoint Drive as a matter of fact within 60 feet or less of this site. So, I object to us having a 6-foot-tall opaque fence and would suggest that we replace that with an 8-foot-tall opaque fence on the entire property and also, I wanna make sure that the lighting is definitely directed towards the interior. We have a dog training facility that is adjacent to this property, and after they've taken possession. They've had lighting erected on the exterior of that building and it bathes the houses across the street with lighting. There is no deflective devices on it, and when you drive down that property either at night or early morning. It's like being out in the middle of the day, the lights extensive. So, I want to make sure that we ensure that the residential integrity of the neighborhood is kept in place. So those are my objections to the type D landscape buffer and the lighting.

Mrs. Gagnon said the dog business already has a six-foot tall opaque fence along the whole side, so do you want us to put an eight-foot fence on top of that? So, along the side here, I guess east and west. You would like, there's already a six-foot fence. So, do you want an eight-foot fence in the front, or you want, there is already a six-foot fence and now I have to put an eight-foot fence on top of it.

A discussion took place for the size and location of the fence or wall.

ACTION: A motion was presented by Asst. Co. Atty. David Thomas and seconded by Turner Rouse that Petition SE-23-026 be APPROVED with an amendment to condition #4 for an 8-foot tall sight-obscuring fence or wall for the storage area only based on the Community Development Staff Report dated October 4, 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 eleven conditions recommended by staff.

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

1. The Special Exception, as approved by the Board of Zoning Appeals, is to allow outdoor storage for a building trades contractor's office and extends only to the lands included in the Site Plans and legal description submitted with this application.
2. The Site 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 **Site Plan** (Exhibit G), provided by the applicant. The use of chain link fencing as part of the required buffer is prohibited.
5. Materials stored outdoors shall not exceed 6 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. 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.
9. 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.
10. 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.
11. Any major changes or additions to this special exception shall require a modification of the special exception. A change in type of building trades contractor or a change in type of 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-23-027

Luis Torrado-Hernandez is requesting a special exception to allow the outdoor storage of vehicles, including boats, trailers, and recreational vehicles, in the Commercial General (CG) zoning district. The

property is located at 27076 Del Prado Parkway, in Punta Gorda, and is described as Lots 13 – 18, Block 40, of the Harbour Heights Subdivision, Section 5, located in Section 22, Township 40 South, Range 23 East.

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

Mr. Vieira the twenty-five-foot alley way behind there, there's no ownership of that is there. Isn't it county is the steward of that property correct?

Mr. Cullinan that is correct, basically rights of way the county holds in trust for the general public.

Mr. Vieira and that can be obtained by a vacation, an application for vacation correct.

Applicant Presentation

Luis Torrado-Hernandez, applicant, said he was sworn in. **Mr. Torrado-Hernandez** said thank you for the opportunity today, special thanks to Ms. Nocheck. It has been such a pleasure in a process that could of otherwise intimidating, she made it easy for me. The reason I'm standing today is because just like Ms. Nocheck mentioned I requested modification to one of the conditions. Which is the 10-foot buffer only on the north and the east sides of the property and only on a temporary basis. Until eventually there is petitions to develop there or if the current owner, or new owner, or county requires me to just move the fence back to where it needs to go. That is what I am doing here today is requesting the modification and humbly requesting to get it approved, if the exception to the special exception gets approved.

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

Chair McVety asks to put up the picture of the satellite view of the property. He asked not to put up the fence on the side where the easement is that correct?

Mr. Cullinan that is correct as well as adjacent to lot 12, the code requires it. I understand his comment regarding the provision. Where you can do a shrub row in lieu of the solid wall or fence. There are numerous uses which may require fence. Outdoor storage specifically called out that it requires regardless a minimum six-foot-tall opaque solid wall or fence. Other provisions of the code specifically state as well as statutory construction that the more stringent of the regulations apply.

Chair McVety states it is a code not an option. We the board do not have the ability to do what you ask.

Asst. Co. Atty. David Thomas says you are correct Mr. Chair, the code governs.

Mr. Torrado-Hernandez thank you sir, I understand. There are two different modifications that I submitted within the application. The second one is really the one that I am trying to fight here for. He is requesting the fence to be established on a temporary basis within my property line, on the north and east sides. In the future when required then establish the landscape buffer, bringing the fence back to where it needs to go. Allowing me to do that would also allow me to use almost 3,000 square feet of space on my land that I could use until anything is required. This is what I am trying to do here.

Mr. Cullinan we do not allow neighbors to dictate what uses can go on land, we also cannot. The code is the code and the code requires a landscape buffering. Deferring that would become a logistical nightmare. The requirements are that site must be fully developed and meet the code.

Asst. Co. Atty. David Thomas just for clarity the next step is they have to get site plan approval, site plan approval can require the fence. We do not favor removing it from this, staff would not agree to it. It doesn't make any difference whether it's there or not. The code has to be complied with, you will not be able to differ that.

Mr. Torrado-Hernandez that's understood, I thought it was important for me to mention it.

Chair McVety I just want you to understand it is the code.

Mr. Torrado-Hernandez I absolutely understand that.

Asst. Co. Atty. David Thomas there is no harm in asking.

ACTION: *A motion was presented by Turner Rouse and seconded by Steve Vieira that Petition SE-23-027 be APPROVED based on the Community Development Staff Report dated October 4, 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 the outdoor storage of boats, trailers, and recreational vehicles, 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, or commercial vehicles including landscaping trucks and dump trucks, is prohibited.
4. 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 G), provided by the applicant. The use of chain link fencing as part of the required buffer is prohibited.

5. Any 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 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.
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. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

IX. Public Comments –
None

X. Staff Comments –
Ms. Nocheck said we have 4 petitions for next month and I do not believe that any of them are storage. I little lighter agenda and no storage.

XI. Member Comments –
None

XII. Next Meeting
*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, November 8, 2023 at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 11:23 a.m.

Respectfully submitted,
Kimberly Sargent, Recorder
/kas



Blair McVety, Chair

Approval Date: 11-8-23