



MINUTES

Charlotte County Board of Zoning Appeals

Wednesday, May 8, 2024, 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
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 May 8, 2024, 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. Andrew Filieo was absent for the meeting.

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 April 10, 2024, 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 May 8, 2024, Board of Zoning Appeals meeting none 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 April 23, 2024: VAR-24-005, VAR-24-006, VAR-24-007, VAR-24-008, VAR-24-009, and VAR-24-010

Mrs. Sargent said Roll Call: Andrew Filieo is now present.

Asst. Co. Atty. Thomas David said Mr. Chair we have actually held the hearing on this item, it was continued after public testimony was completed. So were at the point in the hearing where gonna start basically from there. I think it would be good if Ms. Nocheck would just summarize the application, tell us what's happening in the interim over the issue. If you remember, the issue was that there was a scientific report that had to be submitted with the application. The staff deemed it not to be submitted, subsequently a report has been submitted. So, Elizabeth can summarize where we are and what the staff's view is on all that. Then Mr. Berntsson can come up and complete the process.

SE-24-003

CONTINUED FROM MARCH 13, 2024, BZA AGENDA

Robert Berntsson, representative for Acorn Port Charlotte, LLC, is requesting a special exception to allow the outdoor storage of boats, trailers, and recreational vehicles, in the Commercial General (CG) zoning district. The property is located at 3740 El Jobean Road, in Port Charlotte, and is described as Parcel P2, located in Sections 21 & 22, Township 40 South, Range 21 East. A full legal description of subject property is available on file. The Parcel ID for subject property is 402122301001.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition, with recommending denial of the requested special exception and provides a complete summary of this matter.

Applicant Presentation

Robert Berntsson, representative for applicant, said he was sworn in. Mr. Berntsson said we do accept Ms. Nocheck as an expert for this. As indicated, we have concluded the public hearing on this. When we were at the end of the deliberations last time. I believe Mr. David actually made a suggestion that you could approve the special exception with a contingency that the report be submitted within sixty days. We instead asked for the continuance so we could submit that report. The hearing was held on March 13th we submitted our report on March 22nd, nine days after the hearing. Nine days after the hearing, we didn't hear anything back from the county at all, regarding that report. Until this report came out last week. Since that time our environmental consultant has provided additional information. What I think is important in this case is there are two parallel tracks that are going forward. One is the special exception to allow the outdoor storage, secondly is the site plan approval which their already in for, for building B, C and D as there first phase of the project. So, that's going thru site plan review even though the environmental policy 2.2.3 says developments adjacent to preserve land, the county shall require developer submitting for a special exception, plan amendment, rezoning, or site plan review for property adjacent to federal, state or county wildlife areas. No such report was required in the site plan process, so it's supposed to be there, and they have it now. But that's truly the right place for this report to be digested by the environmental consultants, by the environmental staff that reviews this thing. With all due respect to this board, this is not the board to decide it's sufficiency of an environmental report. I submit to you the report is sufficient and any insufficiencies can be and will be dealt with through the site plan review process. Again, remember the concerns that Ms. Nocheck is raising is about lighting and the like. This property is gonna be developed there is no more lighting coming in fact, this is one of the least intrusive uses you can have on the property. You could have a gas station, you could have a shopping center, you can have a bank, you can have all these other uses. But those impacts are all gonna be addressed through the site plan approval process. Which is the

appropriate place to address it. So, I respectfully request that the board approve the special exception as requested. I am happy to answer any questions, we do have the project engineer and the owner here if you have any questions of them. But we've been through the hearing, we've submitted the report, whether you deem it sufficient or not. The site plan review process is gonna have to deem it sufficient or not and that's the appropriate place for it to be deemed sufficient.

Mr. Vieira said have you filed for site plan approval?

Mr. Berntsson said yes.

Mr. Vieira said what is the status of that at this point in time?

Mr. Berntsson said it's in review, admittedly the environmental report was out of date. They've submitted an up to date one. The project environmental consultant is working very closely with Anastacia DeFilippo who is the environmental staff member. They have been providing emails back and forth. She to my knowledge has not raised any concern with the report that was submitted.

Mr. Vieira said I did take the time and did read the materials; I had a couple of concerns if you will. I was concerned about there's reference to oil separators and water treatment and that sort of thing. My concern was thinking down the road on this, and I guess this is part of site plan review. Is that how are those separators to be maintained. I saw that the applicant had raised the curbing as a mitigation factor to six inches to keep those types of materials from overflowing into the wetlands. But how is that maintained afterwards, what's the regulation on that and who oversees that.

Mr. Berntsson said there are industry standards for the use of those materials and if you're using them out of the standard obviously, they won't work. But they've been in business twenty plus years, they've never had a spill incident anywhere. But they will maintain it as part of the routine operations of the operations.

Tom Radcliff said I am the project engineer, as far as the recent oil separator for the overflow structures. That's regulated by SWFWMD, phase A has already been permitted by SWFWMD. They require yearly certifications and inspections, and they actually go out and physically look at those things once a year to make sure there in place and functioning.

Mr. Vieira said that's another thing I was confused about because I did see an approval by SWFWMD in the documentation. I don't where that approval carries here with the county since we haven't had site plan review yet. So, can somebody explain to me where we are in that process.

Mr. Radcliff said we also have county stormwater approval for phase A, that was granted early on. They've reviewed all of the same things, that SWFWMD reviewed, and they've also approved it.

Mr. Cullinan said so the issue we're dealing with here and with all due respect Mr. Berntsson's statements. Site plan review is not necessarily the proper time for this in this situation because you folks are looking at granting a specific type of use onto this property. There in for site plan review right now, they don't even have the rights to do the outdoor storage aspect of the use. That's why we're here, this is step one to be able to get them the use.

Chair McVety said so if they did all inside storage they wouldn't have to be here.

Mr. Cullinan said they would not have to be here if everything was inside and then site plan review would have been the proper.

Chair McVety said doing the phases, indoor storage now and they're only here for the outside storage, so if they didn't do any outdoor storage we wouldn't be here.

Mr. Cullinan said that is correct, and that's why this situation is that this is the proper time not site plan review, it is necessary site plan review as well. But you folks are looking at possibly granting them a use by virtue that being the special exception. That is a special use on the property, therefore we need to address that. Some of these uses, so if they were doing a car wash, they would go through site plan review all of that is inside and contained. The washes and things that they're doing here is all exterior based on their site plan. So again, that's why we need this study at this stage not necessarily we will need it at site plan review as well. But that's why it's necessary at this time.

Asst. Co. Atty. Thomas David said Mr. Chair I would just like to frame where you are procedurally and make sure everyone understands what's going on right at this point. The only remaining box check that needed to be done from staff's perspective. Forget about the sufficiency of the report itself, from the perspective at least of a sufficient application at this stage for special exception. The staff's view is that the party had to submit pursuant to ENV policy 2.2.3 a science-based analysis of possible impacts to the environmental resources of these lands in the manner of which these impacts can be eliminated. The applicant submitted that study, so the question for you legally in my view is whether that study checks that box. I don't believe, I think Mr. Berntsson makes a good point that were not in the position of doing an evidentiary test of whether that report needs some qualification. Other than the fact that it's required to be submitted. So, I just want to make sure that everybody understands that we're not gonna try to, I don't believe that staff is in the position, I don't believe that Mr. Berntsson is in a position to try to weigh whether that science-based analysis is sufficient from a technical perspective. Others are gonna have to look at that. So, the real question for you in my view is whether this report that has been submitted is sufficient to meet the request, the requirement in that policy. So that's how I would like to frame it, because I don't want to get us off the track of where we are today. The special exception is Mr. Cullinan is correct, this is a use question. But there is also going to be a technical analysis has to be done on how that site is developed and that is a DRC issue.

Chair McVety said we've all been through Public Comment, so we're ready for a vote.

Asst. Co. Atty. Thomas David said you're ready for a motion.

ACTION: A motion was presented by Steve Vieira and seconded by Andrew Filieo that Petition SE-24-003 be APPROVED based on the Community Development Staff Report dated March 6, 2024, 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 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 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, environmental review, vegetation removal, fencing, stormwater management, and landscape plan approval.

3. The storage of construction materials, debris, heavy machinery, semi-trucks, commercial vehicles, or hazardous materials is prohibited.
4. A "Type D" Landscape Buffer with an 8-foot-tall sight-obscuring (opaque) fence or wall, shall be constructed and planted around the perimeter of the site, as shown on the **Concept Plan** (Exhibit F), except where wetlands exist adjacent to the property boundary. The Type D buffer required along the east property line shall not require the 8-foot-tall fence or wall. 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.
5. Any perimeter outdoor lighting shall be directed towards the interior of the property. Lighting used along the north, east, and west property lines shall be shielded or a designated wildlife-friendly lighting product.
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. Outdoor storage is prohibited within 200 feet of any wetland.
9. Dump stations and wash stations may not be located within 200 feet of any wetland or any property boundary.
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, including a change in type of outdoor storage located on site. A change in ownership shall not require the modification of the special exception, provided the business continues to operate as a self-storage facility for boats, trailers, and recreational vehicles and complies with the conditions of this special exception. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

VAR-24-005

James Dodge, Jr., is requesting a variance to reduce the required 17.5-foot west side yard setback by 10 feet to allow a 7.5-foot west side yard setback, to allow a 14-foot-tall replacement carport, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 18885 Lake Worth Boulevard, in Port Charlotte, and is described as Lots 2 & 3, Block 2144, of the Port Charlotte Subdivision, Section 92, located in Section 29, Township 40 South, Range 22 East. The Parcel ID for subject property is 402229403006.

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

Mr. Vieira said I have just one the proposed structure is the same size as the previous structure correct in height?

Ms. Nocheck said yes, it is, exactly the same it's just built at a better wind speed resistance.

Applicant Presentation

James Dodge, Jr., applicant, said he was not sworn in.

Mrs. Sargent swears in the applicant.

Mr. Dodge said Ms. Nocheck has explained it pretty good gone well.

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 presented the recommended conditions for the petition.

Board Member Comments and Questions

Chair McVety said he had a carport; it was permit and was legal and lost it from the Hurricane. He just wants to put up what he had and now we changed the rules on him.

ACTION: A motion was presented by Andrew Filieo and seconded by Turner Rouse that Petition VAR-24-005 be APPROVED based on the Community Development Staff Report dated May 1, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance with the 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 17.5-foot west side yard setback by 10 feet to allow a 7.5-foot west side yard setback, to allow a replacement 14-foot-tall carport.
2. The variance shall only apply to the proposed replacement carport, as shown in the documents submitted with this application.
3. If the carport is removed or replaced, the 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 carport.

VAR-24-006

Sharon Schauble is requesting a variance to reduce the required 10-foot rear yard setback by 5 feet to allow a 5-foot rear yard setback, for a new swimming pool, pool deck, and pool cage, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 25498 Doredo Drive, in Punta Gorda, and is described as Lot 25, Block 343, of the Punta Gorda Isles Subdivision, Section 16, located in Section 29, Township 42 South, Range 23 East. The Parcel ID for subject property is 422329477011.

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

Mr. Vieira said yes, I have a couple of questions. Am I to understand that the lot was a non-conforming lot before construction started?

Ms. Nocheck said that is correct, it's a legally non-conforming lot of record. Because it was created in 1970, but it is below the minimum 10,000 square feet.

Mr. Vieira said does Maronda Home have to get a variance to build on that lot?

Ms. Nocheck said no, since it is a legal lot of record it is allowed to be constructed on.

Mr. Vieira said I guess my second question is, if this is granted, this doesn't hinder the property owner from selling in the future. We're making corrective measures today to ensure that there is no title issues in the future, if the owner wanted to sell am I correct.

Ms. Nocheck said correct.

Asst. Co. Atty. Thomas David said Mr. Vieira just to be clear, where not giving a title opinion here ok.

Applicant Presentation

Sharon Schauble, applicant, said she was sworn in. **Ms. Schauble** said I think Elizabeth summarized everything that I had in my narrative and also my request.

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 it's nice that she's got that green belt behind her, and her lot's not squared up with the lot behind her.

ACTION: A motion was presented by Nichole Beyer and seconded by Steve Vieira that Petition VAR-24-006 be APPROVED based on the Community Development Staff Report dated May 1, 2024, 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 10-foot rear yard setback by 5 feet to allow a 5-foot rear yard setback, for a new swimming pool, pool deck, and pool cage.

2. The variances 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 swimming pool, pool deck, or pool cage are removed or replaced, the 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.

VAR-24-007

Henry & Tamara Bryner are requesting a variance to reduce the required 7.5-foot east side yard setback by 2.5 feet to allow a 5-foot east side yard setback, for a pool cage, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 198 Norfolk Avenue NW, in Port Charlotte, and is described as Lot 11, Block 63, of the Port Charlotte Subdivision, Section 5, located in Section 21, Township 40 South, Range 22 East. The Parcel ID for subject property is 402221279010.

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

Mr. Vieira said could you put exhibit C7 back up please.

Ms. Nocheck said could you tell me what that is,

Mr. Vieira said it's the, it shows the neighboring fence, all that's left of the neighboring fence. Looking at the survey is that part of the reason for the necessity of the, we've got encroachment going back and forth between both lots. So, is the easiest method to rectify what's going on there?

Ms. Nocheck said there not really connected, the proposed pool cage will encroach into the required setback, whether or not that fence exists. Just to note that the neighbor's fence is already several feet into their property.

Chair McVety said did you say that the pool cage is already up?

Ms. Nocheck said that's what the applicant stated in their narrative, and they are available. I would recommend asking them.

Applicant Presentation

Henry & Tamara Bryner, applicants, said they have been sworn in.

Chair McVety said so the pool cage is already done?

Mr. Bryner said yes, it is sir, we had put up temporary fencing, multiple times after the Hurricane. Trying to keep the pool, which was not, the pool was wrecked also so basically the pool was a big eight-foot hole on this end that we're dealing with. We put up multiple times, we put up temporary fencing to try to keep, we have young children and grandchildren run around our neighborhood. We were trying to keep all those out, because we didn't want to have some tragedy occur. Because of what you see there.

Mrs. Bryner said as well as homeless people, as well as wild animals coming into our lanai. Our cat also getting out, and we didn't want him to obviously get out and get hit by a car.

Mr. Bryner said I have from two of our adjacent neighbors, I have some letters, they could not be here today to testify. So, they wanted to have their opinion noted.

Ms. Nocheck said we will go ahead and label those as exhibit H for the record.

Mr. Bryner said the layout of the pool as it was, it really short sided us on the side we're asking for relief from. Because it was difficult for us to get in there clean it was the deep end of the pool also. So, if we needed to get somebody out quickly, ya know it made it very difficult. We're not spring chickens anymore, so it's just giving us that relief to move the pool cage out makes accessibility to the pool for safety reasons much easier.

Mr. Vieira said can I ask you, is the pool constructed on the footer as you're proposing?

Mr. Bryner said it's on that extension of the footer that was shown on that.

Mr. Vieira said outside of the brick and they both discuss.

Mr. Bryner said if we'd have to meet the seven and half foot setback the whole way around, then we would have to end up cutting off the edge of the cage. Then we would have to, since the footers already encroaching too, I don't know if that would have to be removed also so that would become an issue also.

Mrs. Bryner said I'd like to say that because of the medical issues I have, I use that space as a yoga and exercise area. It's easier for me to get into the pool at the deep end, whether its diving or jumping in. Rather than walking down the steps, I know that sounds strange. But it's easier to climb out of the pool then to walk in. So, it's more beneficial health wise for me to get into the deep end, whereas I couldn't the way the pool way laid out before. It was horrendous honestly.

Chair McVety said you want to mark that exhibit Ms. Nocheck.

Ms. Nocheck said yes Mr. Chair, it's exhibit H for the record.

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. Filieo 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 said I understand exactly what they did and, but they could have just put a little forty five in that one corner and still kept most of the cage on the footer.

ACTION: A motion was presented by Andrew Filieo and seconded by Nichole Beyer that Petition VAR-24-007 be APPROVED based on the Community Development Staff Report dated May 1, 2024, the

evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance conditions 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 7.5-foot east side yard setback by 2.5 feet to allow a 5-foot east side yard setback, for a replacement pool cage.
2. The variance shall only apply to the pool cage, as shown in the documents submitted with this application.
3. If the pool cage 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 the removal or replacement caused by a natural disaster or involuntary destruction of the pool cage.

10:06 Recess

10:11 Resume

VAR-24-008

Larry Gilley is requesting a variance to reduce the required 25-foot rear yard (park boundary) setback by 10 feet to allow a 15-foot rear yard (park boundary) setback, for a replacement manufactured home, in the Manufactured Home Park (MHP) zoning district. The property is located at 4300 Riverside Drive, Lot 168, in Punta Gorda, and is described as Lot 168, of the River Forest Mobile Home Park, located in Section 34, Township 40 South, Range 23 East.

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

Applicant Presentation

Larry Gilley, applicant, said I really have no further information. Mr. Gilley said to Ms. Nocheck thank you for your kind words, I'll relay it to the neighbors.

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. Filieo. 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 asks a question, it seems that the center line or the right of way can't be established on Riverside Drive, is that the main thrust of this issue?

Ms. Nocheck said more or less, yes, it is basically the same, the park boundary and the right of way line are basically the same line. So, there was some questions about that and that is the email that was provided in the staff report. It has information from the county surveyor explaining the situation.

Mr. Vieira said I did read that, so I guess my question is, if that right of way was established, we'd still need a variance to put this home on that lot.

Ms. Nocheck said yes, this is still going to encroach ten feet into that required area.

ACTION: A motion was presented by Andrew Filieo and seconded by Turner Rouse that Petition VAR-24-008 be APPROVED based on the Community Development Staff Report dated May 1, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance conditions 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 rear yard (park boundary) setback by 10 feet to allow a 15-foot rear yard (park boundary) setback, for a replacement manufactured home.
2. The variance shall only apply to the manufactured home, as shown in the documents submitted with this application.
3. If the manufactured home 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 manufactured home.

Chair McVety asked Ms. Nocheck we are skipping number six VAR-24-009

Ms. Nocheck said yes Mr. Chair Petition VAR-24-009 is being continued to the June meeting due to an error in the Public Notice Ad in the newspaper.

VAR-24-010

Jamie Galimidi is requesting a variance to reduce the required 7.5-foot west side yard setback by 2 feet to allow a 5.5-foot west side yard setback, for an addition to an existing single-family residence, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 21496 Holdern Avenue, in Port Charlotte, and is described as Lot 10, Block 1334, of the Port Charlotte Subdivision, Section 11, located in Section 22, Township 40 South, Range 22 East. The Parcel ID for subject property is 402222229025.

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

Chair McVety asks who?

Ms. Nocheck said the adjacent property owner and continues.

Chair McVety said no matter what we do today, he still has to get permits for it.

Ms. Nocheck said yes, and they have a discussion.

Mr. Vieira asked the stop work order was issued on August 1, 2023?

Ms. Nocheck said that is correct based on the picture provided by our code officer Mr. Mansfield.

Mr. Vieira asked how current are the photographs from code that are in our file?

Ms. Nocheck said the ones in the power point are from August of last year, but in the packet, there are pictures from April 22nd of this year.

Chair McVety said so nine months later work is still proceeding.

Ms. Nocheck said yes, correct.

Applicant Presentation

Jamie Galimidi, applicant, said he was sworn in. **Mr. Galimidi** said I bought the property after the Hurricane Ian had damaged it. I am a licensed roofing contractor; I am not a licensed contractor for the record. I had to get in there and immediately stop the roof from creating additional damage to the property. Once I did that, I had gone through three separate contractors in order to try and do everything properly with two separate engineers. Which I did try numerous times to apply for the correct permitting process and I'm going through that. I have a permit pulled for the plumbing; I have a permit pulled with Aztec plumbing. I have a permit pulled for the AC unit for the mini split unit with Roman AC. That is the only additional work that took place when they gave me the stop work order I stopped everything, and I left it the way it is. I'm just here because to ask for the variance because I wanted to have the house for my mother. In the separate living quarters for a servant or like a house to take care of her. Whether it's my sister or somebody else that I can put in there. Where they have their own separate kitchen.

Chair McVety said so this is not your house it's your mom's house?

Mr. Galimidi said I bought it from my mom. This is my house I did purchase it I bought it so my mom can have a place to live. You know I wanted to buy my mom a house, but she won't come and live there until it's finished. The idea was to have a separate living space for someone there that can take care of her. So, she had her privacy, if you go back to the one picture where she said the clothes, it's actually, that's the way it was. The addition, we are actually opening that up so if you look behind that wall there, there's bricks there that's the original brick existing in the house. I told her that the plans are inconsistent because we had to change architects. We had to be compliant with what the city code was. When I had my meeting with Ms. Elizabeth, I read the county of Port Charlotte's future plans on development and planning. How 5, 262 additional structures are gonna be needed to take care of the city's growth and in order for everybody to continue like in the thriving community. When these houses were built back in the 60's it was only a one bedroom, one bathroom unit. It's not considered enough for a single-family home if you want to raise a family there. What bedrooms do you expect people to live in. If you only have a 1/1 or 2/1 so we wanted to put in the additional bathroom, we wanted to create the additional space so it can be considered a real home. To do an addition you have to go off of the existing plumbing and the electricity. To add something in the back to her case is not possible, because we couldn't actually connect to the existing plumbing or the electricity. In the back, the power company took 15 feet, or I forget if it was 10 or 15 feet from the rear. So, they could create an access point to gain to the power cables above. So, we have no ability to do anything in the back section there,

because imminently domain they took that from us. That puts me at a bind here ya know, I'll do whatever you guys want. Tearing that structure down is impossible because that existing roof from the other house connects to that roof. So, you would be creating a whole where the existing structure was now. Then how would we seal and close that up. I've had everything permitted and approved for the plumbing by the county to do the additional bathroom. That's been approved it's already been passed all the rough in has been passed and approved. I've pulled the permits to do the additional electrical work for the AC units and that was passed and approved. I finally got the right contractor because after the Hurricane trying to find a contractor is like forget about it. Then finding a contractor that's licensed and insured and that could actually do a quality job was not easy either. We had to stop and changing contractors three different times. So, I do apologize for that, but you know I tried to build this and do it out of a good intention. I apologize for the neighbor, when I spoke to the city, we talked about a water management plan to make sure that all the water was running and not draining on the additional, the adjacent property line. So, we tried to put something into effect into that place. We are not building, not changing any of the driveway, or changing anything else. We're meeting all the current code, with smoke and carbon monoxide detectors. I'll do everything else to pass all the inspections and bring everything to code and into compliance.

Asst. Co. Atty. Thomas David said Mr. Chair I have a question for the witness when it's appropriate. Is it your testimony today that you are not doing work on that site today?

Mr. Galimidi said we're not doing site on that work today correct. As far as like, so they did schedule the AC guys to go out there and they did have some plumbing guys, but right now we are not doing any of the addition part of that job.

Asst. Co. Atty Thomas David said if I told you that there were county staff that had witnessed work being done on that property today, what would you say to that?

Mr. Galimidi said I would say that my guys are, there is people there that are cleaning, painting, and doing yard work and landscaping. They called me and I spoke to Mr. Kenneth Garcia, and I explained to him that after I was done with this meeting that I would go there, and I would walk the job with him. I would show him exactly what those guys are doing. Because it's strictly painting and landscaping for not the addition side, but for the side that is existing.

Asst. Co. Atty. Thomas David said what's your understanding of the term stop work order?

Mr. Galimidi said you need to have a permit to do any inspected work. I didn't know you couldn't.

Asst. Co. Atty. Thomas David said if I told you that it means you need to stop work. Is that unclear?

Mr. Galimidi said yes sir, and I'm sorry for not understanding that I thought a stop work order meant to stop any unlicensed work if you wanted to do like landscaping or any type of clean up or painting, that does not require a license. But I apologize and I will stop everything.

Asst. Co. Atty. Thomas David said I think that stop work order was issued in August of last year. So, Mr. Chair I am done with my questions.

Mr. Cullinan said I have one.

Mr. Galimidi said I'm very sorry I apologize your board like, I'm new at this and I'll do everything to be in compliancy and I'm sorry that I misunderstood what that meant.

Asst. Co. Atty. Thomas David said I believe you said you were a roofing contractor right so your licensed in Florida?

Mr. Galimidi said yes, licensed roofing contractor.

Asst. Co. Atty. Thomas David said during your licensing examination did they ever discuss stop work orders?

Mr. Galimidi said I don't recall, I don't remember.

Asst. Co. Atty. Thomas David said permitting?

Chair McVety said believe that's not on the license.

Mr. Cullinan said Mr. Chair if I may, we have some significant concerns about the truthfulness of his statements. I have Mr. David Freed who was out there today. We have also had our licensing folks who have been messaging me throughout this meeting that they have people out there doing tile work within the addition area as well as drywall has been hung and a number of other items have been done within the addition area. The stop work order was removed from the site, we've also had some issues where the noticing sign has been removed and thrown into the yard. We don't know if that was by the applicant or by a neighbor. We have some serious concerns about this because as you can see the stop work order, we have stopped work then numerous times and they have just continued. We have been by there, let me pull in Accela here, we have been by there for code enforcement actions on 09/07, 10/30, 12/20, 2/21/24, 4/22 and 05/02 and still found contracting work being done out there in violation of the stop work order. As well as today, staff being out there and seeing workers, we have photos that I can pull up if you would like to see them. But we have very serious concerns about this and if there is ever a situation to deny a petition this would be it. This is solely been untruthful none of the documents are correct, we have serious concerns on this one sir. This is a life safety issue.

Asst. Co. Atty. Thomas David said Mr. Chair just to explain to anybody that's watching outside or for purposes of the record. One of the criteria for a variance is that the need for the variance is not created by the applicant's behavior. In this case it's this evidence that we're placing before you is to be weighed by you as to whether that criteria was caused by the applicant or whether it was caused by some other party.

Chair McVety said you look like you want to speak.

David Freed certified code compliance officer, I have not been sworn in yet.

Chair McVety asks who are you?

Mr. Freed said David Freed, code compliance, I am not the officer on the case, he's out today but I was out there this morning.

Mrs. Sargent swears in David Freed.

Mr. Freed said I went out there this morning, Shaun asked me to go out there and there was a whole crew doing work. I could hear power tools inside, there were power tools on the lawn it looked like they were doing drywall work today. That I could confirm, but there was definitely work being done in the addition that is currently has the stop work order on it.

Mr. Galimidi said not in the addition just on the one side, there doing painting, and lawn work. We can go out there.

Ms. Nocheck said Mr. Cullinan when a stop work order is placed on a property it applies to the entire property, is that correct not just the addition?

Mr. Cullinan said that is correct, because it's all tied in together, you stated that you tied in the roofing for this new structure into the roofing of the existing house. There was never any structure in that location. So, you made that choice to tie it into the primary structure. Looking at other photos within the code case there seems to be some other work that was done inside the main house as well. I don't believe there was a roof permit pulled either, I saw photo of Altaic panels put on.

Mr. Galimidi said yes sir.

Mr. Cullinan said but I do not see.

Chair McVety said what permits do we have Shaun?

Mr. Cullinan said so we have a residential mechanical for a heat pump, and residential plumbing to replace existing drains. To me existing means in the existing house, but again we don't know because those were pulled after the fact. May of last year and August of last year for those. Again, he's stated he's done the roof as well, we have no roof permit, we have no fence permit for that new fence, that is there now.

Mr. Galimidi said the fence was existing, the roof was damaged, we tried to fix the damage and repair the roof. Then we started making the addition afterwards.

Chair McVety said how wide is the addition going towards the property line.

Mr. Galimidi said it's only eleven feet, if you have a standard bedroom 10 x 10 with a closet and they both discuss.

Mr. Cullinan said correct, but if you notice in his statement about wanting to add extra bedrooms because a one bed, one bath or one bed, two bath is not good for a family. He is adding a full kitchen there by making it a full separate suite. So, it's still not necessarily good for a family, it's good for two single people potentially. But not for a family, so again based on everything that is occurred and with the fact that he is a state licensed roofing contractor. I've stated before my opinion, licensed contractors should know or should know to ask whether permits are required. This is extensively aggregates and.

Mr. Galimidi said I did ask, I did try, I won't put in the kitchen. I just want to put in a bathroom ya know in the little area that you could wash your hands in. I apologize, I did not know what a stop work order is I'm fully understood there. I will not touch, I will leave, my mom's been waiting for a place to live. I apologize, you know we had a serious Hurricane. It caused a lot of damage it's been very difficult to get

things permitted and approved in a normal day to day, everyday normal environment. I have been making every attempt with permitting, for as far as plumbing, mechanical, engineer and contracting. To say that I haven't taken the steps and spent money and time and energy. I have done that sir.

Mr. Cullinan said did you replace the roof of the existing structure?

Mr. Galimidi said no sir.

Asst. Co. Atty. Thomas David said let him finish please.

Mr. Galimidi said we did not replace the existing roof for the existing structure there was solar panels on there, which you see sir. We had to repair it, and we did that we made the necessary repairs to stop any further water intrusion. I'll do whatever you want, please don't make me tear it down. I can't afford to tear it down, to create that kind of tear down after we spent engineer, architect it's gonna make such, I don't even know what I would do. I don't know what I would do, the property is a small seventy-five hundred square it's irregular. It says that you're allowed to have residential zoning 3.5 supposed to be ten thousand. It says in the code that you're allowed to have an exception for a living quarters for a servant or a somewhat as a caretaker. If my sister wanted to have a private space with her two kids because they're allowed for my mom. She can cook at night, I'm sorry I didn't now that you could have a kitchen. I'll take the kitchen out. I just wanted to build a house for my mom. Is there anything I can do?

Asst. Co. Atty. Thomas David said will be continuing with the hearing at this point.

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. Filieo moved to close the public comments, seconded by Mr. Vieira. The public comments was closed with a unanimous vote.

Mr. Cullinan said if I may sir, just to add one or two more things. We are still within a state of emergency for both Hurricanes Ian and Idalia and unlicensed contracting is considered a Felony in the State of Florida during a state of emergency. We have our licensing folks as we speak, they are from what I'm getting from my staff the workers are paying directly by being paid cash by the owner not working from any company. So again, I understand wanting to do things and make a living area for your family again every story we've been told, and this may seem cruel and heartless but, I honestly I have trouble anything believing anything that's been stated as we have, he stated statements under oath that we have direct evidence of falsities. With that I'd have concern about people seeing something like this and saying oh I'll just do construction I'll get a variance. We don't know how any of the construction was done, if it's already drywalled we don't know how anything that's framed up, we don't know how.

Chair McVety said that has nothing to do with us. The construction, that has to do with the building department.

Mr. Cullinan said correct.

Chair McVety said if we pass or don't pass, he still has to be to code and has to get permits to bring it to code.

Mr. Cullinan said yes sir.

Chair McVety said no matter what we do here right.

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 Andrew Filieo that Petition VAR-24-010 be DENIED based on the Community Development Staff Report dated May 1, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS NOT the required criteria for the granting of the Variance.

Chair McVety said my personal opinion it would be a whole different story if it was all permitted. Before you came here and instead of asking for the variance after it was built, this is just my opinion.

Motion was denied with a unanimous vote.

IX. Public Comments –
None

X. Staff Comments –
Ms. Nocheck said for June we have three petitions, we have one that is continued so the variance supposed to be today will be heard and we have a cell tower and a special exception for a large garage, so pretty exciting agenda. Happy Mother's Day to everyone as well.

XII. Next Meeting
The next meeting of the Board of Zoning Appeals is scheduled for Wednesday, June 12, 2024, at 9:00 a.m., in Room 119.

There being no further business, the meeting **ADJOURNED** at 11:03 a.m.

Respectfully submitted,
Kimberly Sargent, Recorder
/kas



Blair McVety, Chair

Approval Date: _____
