



MINUTES

Charlotte County Board of Zoning Appeals

Wednesday, June 8, 2022 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 (absent)
William Abbatematteo, Vice-Chair
Steve Vieira, Secretary
Larry Fix
John Doner

Staff:

Shaun Cullinan, Planning/Zoning Official
Thomas David, Asst. Co. Attorney
Stacy Bjordahl, Asst. Co. Attorney
Elizabeth Nocheck, AICP, Sr. Planner (absent)
Diane Clim - Recorder

I. Call to Order

Vice-Chair Abbatematteo called the June 8, 2022 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

Vice-Chair Abbatematteo led the members and the audience in reciting the Pledge of Allegiance.

III. Roll Call

Roll call was taken; a quorum was present.

IV. Swearing In of Those Giving Testimony

Diane Clim swore in all persons who wished to provide testimony.

V. Approval of Minutes

ACTION: A motion was presented by Mr. Fix and seconded by Mr. Vieira to approve the minutes of May 11, 2022 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 June 8, 2022 Board of Zoning Appeals meeting were submitted.

VII. Introduction of Staff/Comments

Vice-Chair Abbatematteo introduced staff. Shaun Cullinan, Planning and Zoning Official, read the Zoning rules, Asst. County Attorney David and Vice-Chair Abbatematteo 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 May 24, 2022: SE-22-010, SE-22-012, VAR-22-004 and VAR-22-005

Shaun Cullinan, Planning and Zoning Official, said petition SE-22-010 would be heard last

SE-22-012

Veronica Martin, representative for Port Charlotte Church of the Nazarene, is requesting a special exception to modify an existing special exception (SE-96-14), to allow an expansion of an existing school as part of a place of worship, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at **19150 Helena Avenue**, Port Charlotte, and is described as the west one-half of the west one-half of the northeast quarter of the northwest quarter of Section 20, Township 40 South, Range 22 East.

Shaun Cullinan read into the record the staff report and staff findings for the petition.

Applicant Presentation

Veronica Martin, representative for the applicant, said she was sworn in. **Ms. Martin** said she has a brief presentation. They do agree with the staff report and the 6 conditions. The school is a parochial school grades K-8. The existing school allows a maximum of 155 students with 128 students enrolled. The expansion request will permit a maximum of 180 students. There are 9 classrooms in the 4 existing modular buildings. The proposed 9,293 s.f. modular building also provides 9 classrooms bring the total to 18. Although the number of classrooms is doubling, the expansion will only permit a 180 students for smaller class sizes. There is an existing fence and play ground on the property. No additional playground of ballfield are proposed with the expansion. They will be getting a new septic and drain field. She explained a few other details of permitting and traffic level of service.

Mr. Vieira asked for the perimeter, we have an 8 foot wide landscape area. Is there any type of fencing that is also included in that landscape barrier.

Mr. Cullinan said that is correct about the 8 foot wide landscape area. The fencing is not a requirement of the code. There is plenty of space and landscaping.

Vice-Chair Abbatematteo opened the meeting to Public Comments.

Mr. Cullinan said they did receive an email late last evening. He passed that out to the Board members.

Public Input

Nancy Becky, who lives on Verona Street, said she was sworn in. **Ms. Becky** said 4 months ago she bought the property across the street from the woods that is in question here. She said the roadway is very narrow and there already is an issue with the traffic from the school. There is also a massive pothole around the corner. She does not feel there is a need to build more schools.

Mr. Abbatematteo said this Board does not do rezoning's. Rezoning's take place by the Planning and Zoning Board, then the Board of County Commissioners. Currently the zoning allows a school.

Victor Vigh, who lives in the area, said he was sworn in. Mr. Vigh asked if it was a 9,000 s.f. building they are installing? He asked where this large building was going to be on the site and do they need another entrance to the site?

Mr. Cullinan said he misspoke. The structure is going in the front where there is no vegetation. They do not need any new entrances or roads.

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

Rebuttal

Ms. Martin said part of their presentation and submittal application did include a floor plan of the modular building. It does include 9 small class rooms. There is plenty of parking on the site. We are only providing additional sidewalks.

Shaun Cullinan presented the recommended conditions for the petition.

Board Member Comments and Questions

Mr. Vieira said he is concerned about safety. Most all County schools have fences and gates to enter the sites. I realize this is a private endeavor but I am uncomfortable that we are not asking the applicant to supply some type of security measure for this project. It is prudent in today's society.

Asst. County Attorney David said you can make a recommendation.

There was discussion about fencing in the site and what is allowed according to the codes.

ACTION: A motion was presented by Steve Vieira and seconded by Larry Fix that Petition SE-22-012 be APPROVED based on the Community Development Staff Report dated June 1, 2022, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with six conditions recommended by staff.

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

1. The special exception, as approved by the Board of Zoning Appeals, is to modify an existing special exception (SE-96-14) to allow the expansion of a school as part of a place of worship 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, landscape plan approval, stormwater, septic, transportation, and building permits.
3. Perimeter landscape strips shall be planted along the rights of way of Helena Avenue and Verona Street. Existing vegetation may be used to meet this requirement.
4. Any additions of outdoor recreational uses, including sports courts or ball fields, will require a modification of the special exception. Modification or renovation of the existing playground does not require a modification of the special exception.

5. This special exception is granted for a term of five 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.
6. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

VAR-22-004

Debra Hughes is requesting a variance to allow a six-foot-tall fence in the required 25-foot front yard setback, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at **1330 River Lane**, Englewood, and is described as Lot 3, of the River Edge Subdivision, located in Section 05, Township 41 South, Range 20 East.

Shaun Cullinan read into the record the staff report and staff findings for the petition.

Applicant Presentation

Debra Hughes, applicant, said she was sworn in. **Ms. Hughes** said her neighbor is a hoarder and the yard is a mess. There were many code complaints. She put in an application to add a couple of panels to her existing fence. The permit was approved. It passed inspection and was done. Then she received a notice her fence was too tall. She does not want to be out of compliance that is why she came forward to ask for this variance. She did not want to fight the county because they approved her permit for the fence. Although the property has been cleaned up, there is a new parking lot coming in for the restaurant, and she would like the fence to stay because of the noise and lights from the parking lot.

Vice-Chair Abbatematteo opened the meeting to Public Comments.

Public Input

Nancy Hendrick, said she was sworn in. **Ms. Hendrick** said listening to her story, I think it was unfair what she has gone through. She was approved for the permit, the work was done, now to make the fence lower to now be able to see a parking lot, I think she should be able to keep the fence.

Geri Waksler, Esq., said she was sworn in. **Ms. Waksler** said she is not representing anyone, but there was a permit for the 6 foot fence approved even though that was a mistake. She feels this is not the applicant's mistake. She said the situation that arose to put up the 6 foot fence is the construction and activity that is now going to be going on with the parking lot.

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

Shaun Cullinan presented the recommended conditions for the petition.

Board Member Comments and Questions

Mr. Abbatematteo asked about condition number 3. Which states if the fence is replaced, the variance will expire. They decided to remove that it will be expired from condition #3.

ACTION: A motion was presented by Larry Fix and seconded by Steve Vieira that Petition VAR-22-004 be APPROVED based on the Community Development Staff Report dated June 1, 2022, 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 allow a six-foot-tall fence within the required 25-foot front yard setback.
2. The variance shall only apply to the existing fence, as shown in the documents submitted with this application.
3. If the six-foot-tall fence needs to be replaced, 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 fence.

VAR-22-005

Michael and Dorothy Neal 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 and pool deck, in the Residential Single Family-3.5 (RSF-3.5) zoning district. The property is located at **3225 Magnolia Way**, Punta Gorda, and is described as Lot 3, Block B, of the Waterway Colony Subdivision, located in Section 18, Township 41 South, Range 23 East.

Shaun Cullinan read into the record the staff report and staff findings for the petition.

Applicant Presentation

Michael Neal, applicant, said he was sworn in. **Mr. Neal** said with the 15 foot setback, they would only be able to put in a 5 foot wide pool. They would prefer a 10 foot wide pool. That is why they are asking for the variance. They agree with the staff report and conditions.

Vice-Chair Abbatematteo opened the meeting to Public Comments.

Public Input

Nancy Hendrick said listening to what he wants to do, everyone wants a pool and he said they lost some property from erosion, she feels this request should be approved.

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

Shaun Cullinan presented the recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: A motion was presented by Larry Fix and seconded by John Doner that Petition VAR-22-005 be APPROVED based on the Community Development Staff Report dated June 1, 2022, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance with four conditions recommended by staff.

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

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 15-foot rear yard setback by 5 feet to allow a 10-foot rear yard setback, to allow a new swimming pool, pool deck, and pool cage. This setback shall be measured from the outside cap of the seawall.
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. This variance is granted for a term of five (5) years from the date of approval from the Board of Zoning Appeals; however, the variance shall not expire if the owner commences the proposed development on or before the variance's term expires.
4. If the swimming pool, pool deck, or 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 removal or replacement caused by a natural disaster or involuntary destruction of the swimming pool, pool deck, or pool cage.

Mr. Vieira left the meeting at 10:50 a.m. for a previous commitment

SE-22-010

Geri Waksler, representative for Tillman Infrastructure, LLC., is requesting a special exception to allow a 125-foot-tall communications tower, in the Residential Single Family-3.5 (RSF-3.5) zoning district. The property is located at **21090 Iliade Avenue**, Port Charlotte, and is described as Block 806, of the Port Charlotte Subdivision, Section 27, located in Section 10, Township 40 South, Range 22 East

Shaun Cullinan read into the record the staff report and staff findings for the petition.

Mr. Vieira asked if the tower close by down the road is engineered to hold the new 5G equipment?

Mr. Cullinan said that tower is the one referenced in SE-97-21, I believe there is a representative here from that SBA. That tower required a steel monopole and the height is currently limited. There are provisions in Code where they can increase the height but in order to have externally mounted antennas, they would have to come back before you for modification where you will probably have a room full of other residents for that application.

Applicant Presentation

Geri Waksler, representative for the applicant, said she was sworn in. **Ms. Waksler** said she would like to call up Patrick Keene, just to briefly get him qualified as an expert witness, then he can come up later.

Patrick Keene, who lives in Coral Springs, said he was sworn in. **Mr. Keene** said he works as a radio frequency engineer for Team Mobile. He said he is the person who prepared the Radio frequency report

for the application. He said his background includes more than 25 years of design and planning of cell phone networks since 1996. He served in the Navy for 6 years as a radar technician. Part of the responsibility as an employee of Team Mobile as an engineer, he said he identifies areas that have deficiencies or coverage problems and come up with solutions. He said that is why he is here today. We have a need and have a solution.

Ms. Waksler said she is a land use attorney with McCrory law firm today representing Tillman Infrastructure LLC. She has been practicing land use law for over 30 years. She gave her credentials.

She said Tillman Infrastructure is proposing a 125 foot monopole communications tower with an overall height of 130 feet including the lightning rod. She went over the 3 criteria for a special exception. She said this tower will not bring more traffic in the area. She said a house in the area sold recently \$345,000. The tower was in place at the time of the closing. This house is approximately 285 feet from a current tower down the road on a church site. There was another house built in 1971 sold in 2014 for \$85,000 and in 2020 for \$179,000. If cell towers were incompatible with single family residential use, you would think that would be reflected in the surrounding homes. But clearly, the surrounding homes are in line or excess of what you would expect to find in the neighborhood. The proposed tower is compatible with surrounding uses. They concur with the staff report and accept the conditions.

Patrick Keene, said he was sworn in. **Mr. Keene** said there is about a 10 square mile area that has poor or no 5G service in this part of Port Charlotte. It is about 3 miles east of Veterans and Tamiami Trail. He said the existing tower cannot be upgraded with 5G equipment due to the size and strength of the equipment. The antennas are much bigger. They don't fit inside these unipole towers. The area is behind in its level of technology. Some people have to go outside or stand by a window and some have dropped calls. He discussed a few of the requirements with the government to have a tower.

Ms. Waksler said as of today, there is no tower in the area that can accommodate the updates to 5G. She discussed some of the criteria of special exceptions. They are available to answer questions.

Mr. Doner asked 5G is generally a lower powered system than 4G and 3G, correct? He said that what he is getting at is if you locate a tower, you are doing it to optimize the coverage for some small area. If you had to move that tower say 1000 feet, it would probably considerably effect that outcome, correct?

Mr. Keene said depending on the area. Downtown Miami, absolutely. Here moving 1000 feet would effect the footprint because you are shifting the coverage (kind of like moving a spot light). With the increase in elevation and new technologies, we expect to have a better coverage footprint than existing.

Mr. Doner said when you picked this location for a tower, it is because in terms of land available, this is the best place you can site it?

Mr. Keene said yes. We draw a circle on a map where the coverage needs to be, then the land specialist goes out and looks for land in that area.

Vice-Chair Abbatematteo opened the meeting to Public Comments.

Mr. Cullinan reminded the board 3 minutes each for speakers and he handed out emails that came in the past week for this petition, he labeled them V & W, correspondence and a petition from the neighboring residents.

Public Input

Melissa Murrin, Esq., representing SBA Towers II LLC. Ms. Murrin said she was sworn in. Ms. Murrin said she was hired for the tower that is near this request/site. Their tower is located 0.4187 miles from the proposed tower. She said that her office sent in last week to the Zoning department, the packet she is handing in now. (BZA member have copies) The new tower is being sought from Team Mobile to apply 5G equipment. Team Mobile is currently a tenant on SBA's tower that is nearby. The SBA tower at this time cannot at this time employ 5G equipment because when the tower was approved, it was approved on the condition that all antennas have to be internal inside the tower. To accommodate 5G equipment, antenna has to be placed externally outside the tower, however, as stated in the sworn affidavit testimony of Brook Erbe, with SBA, which is attached to the opposition as Exhibit B, SBA's existing tower can be modified to accommodate 5G equipment. SBA is currently in the works to get all the necessary documentation to submit an application to modify its tower and will be applying to modify the tower by the end of this month. Therefore, at this time, the applicant cannot meet the requirements under the Code which provides that "the applicant must demonstrate that no existing telecommunication facility or alternative support structure within the applicants geographic search area is reasonably available to support the applicant's facility". It does not say that the applicant must demonstrate that there is no tower available. It has to demonstrate that there is no tower that is reasonably available. As the SBA tower is again only 0.4187 miles from the proposed tower is reasonably available, the applicant has not met its burden. Further, the cover requires all applicants to send letters to all nearby tower owners to acquire whether there is room on the tower for co-location. SBA did respond to that letter and informed the applicant that there was room. It was not until May 13th, 2022 that SBA learned of Team Mobile's equipment configuration requirements. Since that time, SBA has set the plan in motion to have the tower modified to allow co-location of 5G equipment. The requirements to inquire about space on near by towers for co-location is simply not to check a box. It is to work in good faith with nearby tower owners to achieve co-location without having to construct additional towers. Further, attached to the opposition are several RF charts which show that there is no gap in coverage between the proposed tower and the existing tower. Accordingly, SBA submits that the application be denied or deferred to prevent the construction of a new tower right next to an existing tower without any additional coverage or benefit of the citizens of Charlotte County.

Ms. Waksler asked if she could question the witness who just spoke.

Ms. Murrin came back up.

Ms. Waksler asked, you indicated in your testimony that you have an affidavit from Ms. Brook Erbe that 5G equipment can be located on the property. Ms. Erbe is the site marketing manager for SBA corporation, correct?

Ms. Murrin replied correct.

Ms. Waksler said, she is not a structural engineer, is that correct?

Ms. Murrin said no, but they did communicate with their internal engineering and did confirm that the tower can be modified to accommodate 5G equipment, Team Mobile's 5G equipment and additional carriers 5G equipment.

Ms. Waksler said so Team Mobile has not provided to SBA specifications so you are assuming the specifications that Team Mobile would acquire for this tower for modification, correct?

Ms. Murrin said it is my knowledge that on May 13, 2022 Team Mobile provided equipment configuration requirements.

Ms. Waksler said and finally, Ms. Erbe is not here for me to cross-examine and there is no one from SBA here to be able to cross examine, is that correct?

Ms. Murrin said correct, but her affidavit is sworn testimony, it is not hearsay.

Meko Arroyo, who lives in the area, was sworn in. **Mr. Arroyo** said he urged the board to take into consideration some of the questions that have been raised just by questions to the applicant. Will there be other applicants who might want a tower? Or will this handle everyone's 5G? He also feels cell towers do affect property values. Today it is different out there with real estate, but normally it would affect property values.

Pierrette Breede, who lives in the area, said she was sworn in. **Ms. Breede** said she is against this tower. She feels it will be a detriment in the area. It is just a financial gain to one site. She feels it needs to be on commercial property.

Wayne Beaulieu, who lives in the area, said he was sworn in. **Mr. Beaulieu** said there was a study done last year by the national association of realtors in conjunction to tower placement and residential values. He said within 1500 feet, it is 7.6%. Outside of that, it drops to 2.6% for just visual. This was done in 2020. We already have one tower, just add to it. Will this come up again when there's 6G and 7G?

Collene Hunter, who lives in the area, said she was sworn in. **Ms. Hunter** said her husband had a serious cardiac event 2 days ago, but she had to attend this meeting to state her concerns. She feels this will have long term consequences to our health. We left an urban environment for our health. A tower like this does not belong in a charming neighborhood. It belongs in an industrial wasteland. There is plenty of commercial around that can house one of these towers. The vision will be huge. It is 125 feet. She feels this height tower will have a blinking light. They will have to deal with that.

Samar Jarrah, who lives in the area, said she was sworn in. **Ms. Jarrah** said she lives close to the tower site and many times people who go to the church, park in her yard or driveway. She does not mind and never says anything. She is disappointed that the church did not knock on her door and tell her this request was coming. Her husband is a Doctor and it is very important for them to have phones. They have 2 land lines and they do have cell phones. She did say the cell phones are not that great. They use the land lines a lot. He has to be available for calls. He has been surviving for 33 years using the phones the way they are. She does not understand why this tower is needed. She also said Team Mobile is a for profit company. 60% is owned by Germany.

Nancy Hendrick said she was sworn in. **Ms. Hendrick** said she lives on Dorchester Street. She was not sure about radiation and health risks with towers. She said by US 41 and Harbor Blvd., you can see a tall tower. The FCC has to answer for towers and she feels they are targeting churches. She feels they target churches because they need money and feels this is unfair.

Maryann Buzard, who lives in the area, was sworn in. **Ms. Buzard** said the tower will be in a direct line to her house. There are children on bicycles and people who walk on the streets in this area, and she also feels the church is only allowing this because of money. She does not want to see a tower every

day and when she looks at the stars and moon, she does not want to see the lights on the tower. She is against this request.

Joe Tiseo, who was sworn in, said he is here as an individual capacity as a long time Charlotte County resident. He said looking at the staff report, on part 3 of the findings, he went over each element. Regarding this being consistent with the comprehensive plan, staff's report said the proposed use "could" be considered consistent with the general range of uses for the property of a FLUM designation of low density residential. Key word is "could". #2 refers to this being compatible with existing and surrounding land uses. Staff's opinion was "the proposed special exception "could" be compatible with the existing and surrounding uses" and finally the third part, "the establishment, maintenance and operation of the proposed use shall not be detrimental or endanger the public health and safety or general welfare". And the staff finding is - "as conditioned, it is staff's opinion that the proposed communications tower and equipment compounder unlikely to be detrimental to or endanger the public health and safety or welfare". Again, subjective. There is a reason these matters come before the BZA. What matters today is your opinion. You should respect staff's opinion but what matters is your opinion. Today you have public input. Staff did not have that. This gives you enough leeway to use your opinion. I would like to know, when they build these towers, it appears it is for a single use but the towers are opened up to other vendors. They sign a long term lease with the landowner, construct a tower, put their fixture on it and open it up to other vendors. They pay rent to be on the tower. He is against this request and request you deny.

Joe Torres, who lives in the area, was sworn in. Mr. Torres said he's been in this area for 23 years. We have never had a problem with this church. It is shameful that now we are in an era where churches have become a commercial thing to make money. It's sad. This church should be asking for more funds if they need it. He feels a non-profit should not change to make a profit. He feels they should attach on to the tower down the road. If the church needs money, they should get more members.

Paul Habor, who lives in the area, was sworn in. Mr. Habor said the facility is a 125 foot tower and would be on a residentially zoned property in a residentially zoned area. This area is not commercial. We have residential codes to protect the welfare of the property owners. Making exceptions to a zoning code, causes measurable impacts to the values of the surrounding properties. He said he objects to this petition.

Donna Gildelamadrid, who lives in the area, was sworn in. Ms. Gildelamadrid said she has been in this neighborhood for 30 years. He said he doesn't have an issue with my cell phone. They had no problems with the church and they wonder why this is going on. The pastor does not live in this neighborhood. She said her house is her greatest investment. The church does not pay taxes, we do. We are all opposing this. We should be heard. She has 5G and has Team Mobile and does not have a problem with her 5G.

Walter Sharp, who lives in the area, was sworn in. Mr. Sharp said he lives across the street from this site. He has cancer. He said it does put out radiation. He said the church is selling us out. The church and tower will both make money. He is against this request.

Scotty O'Connell, who lives in the area and was sworn in. Mr. O'Connell said he has 4 pieces of property in this area. He says he can see the tower down the road. Now he'll have 2 towers he can see. He said they all love the church. They have meetings there, but they are upset the church is making money and we all have to deal with it. Modify the other tower. He said the church does not have

enough parking, we don't complain when members park all over the area. He said the church was upset when he put up signs a tower was coming. Let's be fair here.

Jane Merzwski, who lives in the area, was sworn in. Ms. Merzwski said she did research on property values and the possible effects of a tower. In general proximity to a cell tower seems to have a negative effect on property values. She referred to research she did. She read the cell phone Act into the record which was from 26 years ago. She said in 1996, the data said there were 30,000 cell towers, about 388,000 less than today. They power up radiation.

A man who signed in (did not print, cannot read his name) did not state his name, but he said the FCC put out an article on safety. They say for electromagnetic radiation to start with, these towers do not need to be within 22 miles of each other. They also talk about the distance they consider safe. They said 300 metric yards. Which means $\frac{1}{4}$ of a mile is not a good zone to be in. He said the church's 501C3 is in jeopardy. They are not following what they are supposed to do to maintain that.

Mike Dann, who lives in the area, said he went out to get signatures opposing this tower. A 94 year old neighbor told him to give them hell. He said everyone so far did a good job. You need to sort out the truth and do what is right for the people in the area.

Joseph Jerbin, who is a member of the church, said Pastor Rich could not be here today because of health issue. He was not planning on speaking, he only wanted to listen to the needs and concerns of the community. That is what a church does. Many people who have already spoken said we have not caused any problems. We are here to help and serve the community. Our motto is Love God, Love People. We had no malicious intent, we did not search out Team Mobile. We did not search out we needed more money. He said that what prompts him to speak is the mis-image of the local church is a money grabbing business. We operate under free will offerings. That goes right back into the community, which we pay for many events that are given free to the community. Never have we charged once for any of the events we have for the children or other things that go on. We get the youth off the streets at night so they are not running around. He wants to make sure the record shows we are not money hungry corporation or sort. Our Board met and agreed upon the tower and many of the members are local people.

Liz O'Connell who lives in the area 40 years, said that takes me back to where the Publix is in Charlotte Harbor, it was a movie theater. She said there are a few things in Charlotte County she can say she truly opposed. One was Murdock Village. Two - Sunseeker Three - backyard chickens Fourth this tower - this is really bad. Modify the other tower.

Richard Porrino, who lives in the area, said he is against this tower. He said a little further north into North Port, there are no houses at all. We know our house values will go down. He also feels the tower down the road should be modified.

Teresita Haber, who lives in the area, said she was sworn in. Ms. Habor said she is not a public speaker and this hurts her very much. She does a lot of gardening and loves her neighborhood. They watch their health and they don't buy 5G phones, and now she is afraid of the radiation and long term effect. She is worried it will come through her roof. If she sits on her lanai, she will see the tower and worry about getting cancer. She feels like she has to move because she does not have peace. She is angry at the church. How can you say you love God and the people and then do this. People walk around to get healthy and you are putting up this tower.

Roger Beam, who lives in the area, said the tower location is about 60 feet away from him. He is a retired electronic engineer and the radiation levels have not been fully studied by the FDA. Cell phones took off so quick and everybody wanted them, they did not have time for adequate studies information to be determined. He went into ways the tower can be turned into controlling people and be used against up. It can control a car that can go out of control and run into a house. It is at a much higher frequency and can travel less distance but is more dangerous. This is at a level of the military. It will turn the neighborhood into a microwave oven with the door open. It should not be allowed in a residential neighborhood. It will negatively affect our safety and quiet simple neighborhood we have. He feels upgrade the tower down the road. He asked the Board to reject this request.

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

Rebuttal

Ms. Waksler said she lodged a rejection to any testimony received with regard to health effects of this tower. Section 332 (C)(7) of the Federal Communications Acts preempts and prohibits consideration of environmental effects of radio frequency admissions including health impacts of those emissions. If a tower is going to operate and emit radio frequency within the limits established by the FCC. You heard the testimony of Mr. Keene, his testimony stated that this tower will operate and will emit radio frequency within the limits established by the FCC, therefore, testimony about health impacts are not allowed and not allowed to be taken into consideration by you in this hearing.

Ms. Waksler said you heard much testimony today. It is very clear the neighbors all object to a tower in this neighborhood. In this situation, their objection is that it is a residential neighborhood and a tower is in appropriate. Put it on US 41, put it up in North Port. The reality is that they look within an area that can be served. The signal only carries over a certain distance. If you put it in commercial areas, the residential areas would not have cell service. Contrary to some of the testimony from the people, you actually heard testimony from some of the neighbors who said their cell service is not fine. Ms. Jarrah said they rely on their landline for emergency calls for her husband because they cannot rely on the cell phone service in the area. What is for your consideration today is 3-criteria for approval. The comp plan lists the zoning code and uses that are allowed. Public services does not mean it is owned by a public company. It is poles that FPL puts up to provide street lighting. That is a private company, FPL, but it is providing a public service. The cell towers are providing a public service. Many people rely on their cell phones, lpads and other items. This is consistent with the comprehensive plan. Also, is it compatible. It omits no noise. There are no impacts that would render this not compatible in the neighborhood. The third criteria is, will it have an impact on the health, safety and welfare of the community? We talked about the impacts. There are no impacts from light, noise, traffic and most importantly we talked about the analysis from the structural engineer who looked at what would happen in the unlikely event of a tower failure, it is designed that it will buckle at a particular point and fall within a manner that it would be within the footprint of the 60 x 60 foot print. The final consideration is whether or not there are other towers where 5G equipment could be reasonably co-located. You have testimony from the attorney for SBA the other tower, she provided a letter from her firm that said Brook Erbe confirmed (who is the site manager) if this person is a structural engineer, the answer was no, but she had consulted with engineers. Her affidavit that it is capable of co-location is not based on her personal knowledge, or her personal information, it is based on the knowledge of others who did not provide an affidavit and are not here and available to be cross examined. Most importantly, you heard the

information from Team Mobile's radio frequency engineer, that the current tower as it exist today, cannot accommodate 5G equipment. It cannot even accommodate upgrades to 4G equipment because of its size and design. It may be able to be modified but we do not know that today. Therefore, you cannot take that as evidence that there is a reasonable ability to co-locate as I stand before you today. We do not know if they have an ability to restructure the tower. They have not done that structural analysis at this point. We do not know if their Special Exception can be approved if they can meet the criteria for a special exception. It is not reasonable to assume if all of these things happen, then we can say that co-location is possible. There are too many unknowns and variables in effect right now.

Mr. Doner asked if he could ask the engineer a few more questions. He asked are you familiar with this modification process that is done to towers?

Mr. Keene said he is familiar with tower modifications, it is not his area of expertise. He has been party to site locations where they did do modifications to a tower to accommodate new equipment.

Mr. Doner asked is there any compromise placed on your coverage, by operating from that tower as opposed to the one you want to put up?

Mr. Keene said the unipole tower, the flag poles with the canisters does imposes constraints on our technology deployments. It does effect the power levels, the coverage footprints. For us to deploy advanced 5G services, we can't enclose them in a tower like the one in question.

Mr. Abbatematteo asked do you know the height of the tower down the road that they want to modify?

Mr. Keene said he thinks it is 100 feet.

Shaun Cullinan presented the recommended conditions for the petition.

Board Member Comments and Questions

After the vote, Mr. Fix said he feels the other tower is not sufficient. Mr. Abbatematteo asked Shaun about Special Exceptions points us to Section 3-9-68(b)(2) co-locating on an existing tower or alternate support structure which must be modified or reconstructed to accommodate the co-location shall be considered a permitted use and may be modified or rebuilt to a taller height not to exceed 40 feet over the existing tower. That is why I asked the question how tall the tower is. That means they can be rebuilt to 130 feet without coming before us, isn't that what a permitted use is?

Mr. Cullinan said that is correct but they would not be able to have the external antennas do to the fact that it was a specific requirement of the special exception that there be no external antennas.

There was more discussion about what could go on the other tower.

ACTION: A motion was presented by Larry Fix and seconded by John Doner that Petition SE-22-010 be APPROVED based on the Community Development Staff Report dated June 1, 2022, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with six conditions recommended by staff.

***Motion was approved with a 2 to 1 vote with the following six conditions:
(Mr. Doner and Mr. Fix voted for approval; Mr. Abbatematteo voted against)***

1. This special exception, as approved by the Board of Zoning Appeals, is to allow a 125-foot tall camouflage monopole communications tower, with a 5-foot lightning rod, and 3,600-square foot equipment compound, located in the Residential Single-family-3.5 (RSF-3.5) zoning district, generally as proposed in the application and as shown on the Concept Site Plan labeled Exhibit L, and Compound Plan, labeled Exhibit N, and extends only to the land included in the site plan and legal description as submitted with this application. The Concept Plans submitted as part of this application are for illustrative purposes only.
2. The total overall height for all elements of the communications tower, including the lightning rod, shall not exceed 130 feet.
3. The applicant shall obtain all necessary permits and approvals as applicable to this development, including but not limited to building code review, environmental review, stormwater management, vegetation removal, fencing, and landscape plan approval.
4. As shown on the Concept Landscape Plan (Exhibit Q), a minimum of a Type D landscape buffer with an eight-foot-tall opaque fence or wall is required around the perimeter of the equipment compound.
5. This Special Exception is granted for a term of three (3) years from the date it receives approval from the Board of Zoning Appeals; however, the Special Exception shall not expire if the owner commences the proposed development on or before the Special Exception's term expires.
6. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.

IX. Public Comments –
None

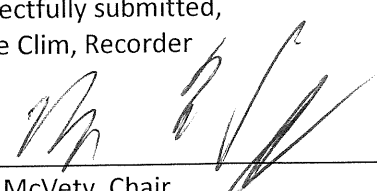
X. Staff Comments –
Mr. Cullinan said he was not sure how many petitions we have for next month but there will be a meeting in July.

XI. Member Comments –
None

XII. Next Meeting
*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, July 13, 2022 at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 12:25 p.m.

Respectfully submitted,
Diane Clim, Recorder
/dlc



Blair McVety, Chair

Approval Date: 7-13-22