



MINUTES

Charlotte County Board of Zoning Appeals

Wednesday, July 13, 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
William Abbatematteo, Vice-Chair
Steve Vieira, Secretary (absent)
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
Diane Clim - Recorder

I. Call to Order

Chair McVety called the July 13, 2022 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

Chair McVety led the members and the audience in reciting the Pledge of Allegiance.

III. Roll Call

Roll call was taken; a quorum was present.

IV. Swearing In of Those Giving Testimony

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

V. Approval of Minutes

ACTION: A motion was presented by Mr. Abbatematteo and seconded by Mr. Doner to approve the minutes of June 8, 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 July 13, 2022 Board of Zoning Appeals meeting were submitted.

VII. Introduction of Staff/Comments

Chair McVety introduced staff. Shaun Cullinan, Planning and Zoning Official, read the Zoning rules, Asst. County Attorney David and Chair McVety made introductory remarks regarding the types of requests that the Board of Zoning Appeals would be reviewing and the standards which must be met, the notification process and how the Board of Zoning Appeals makes its decision.

VIII. New Business

The following petitions were advertised on June 28, 2022: SE-22-013, VAR-22-006, VAR-22-007 and APL-22-001

SE-22-013

Geri Waksler, representative for Thomas & Lisa Conrad, is requesting a special exception to allow the outdoor storage of vehicles, including boats, recreational vehicles, and trailers, in the Commercial General (CG) zoning district. The property is located at 25191 Olympia Avenue, Unit J, Punta Gorda, and is described as Parcel P52, located in Section 05, Township 41 South, Range 23 East.

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

There was discussion about a neighbor who has a chain link fence. Mr. Cullinan said that fence is a "test". They used new materials and they want to see if it last longer than the normal chain link. He said there was a code case on that site and they signed an affidavit, if the new fencing does not work/last longer, they will replace it with a solid fence.

Applicant Presentation

Geri Waksler, Esq., representative for the applicant, said she was sworn in. **Ms. Waksler** said the little strip immediately to the south of the large building is actually a paved drive. That is necessary for accessing and moving around the site. The area below that does not leave enough room to be able to park vehicles. That is why it is not shown on the concept plan, there is no intent to use that for storage. **Ms. Waksler** said the site is accessed from Olympia Avenue/US 17. There is no traffic impacts to the residential neighbors. This site had a Commercial Intensive code but was eliminated years ago which blended into the CG zoning. She said this site is vested for storage facilities. **Ms. Waksler** said she would like to have the ability to put up the chain link fence with the opaque covering as was given to the neighbor. They accept the conditions.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

ACTION: A motion was presented by William Abbatematteo and seconded by John Doner that Petition SE-22-013 be APPROVED based on the Community Development Staff Report dated July 6, 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 seven conditions recommended by staff, including the Zoning Official take a look at #5 regarding the fence and possible chain link fencing.

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

1. The special exception, as approved by the Board of Zoning Appeals, is to allow the outdoor storage of recreational vehicles, boats, and trailers, 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, are for illustrative purposes only. All applicable regulations of County Code shall apply to this development. The applicant shall obtain all necessary permits and approvals as applicable to this development, including but not limited to Site Plan Review, right-of-way access, vegetation removal, fencing, stormwater management, and landscape plan approval.
3. Outdoor storage of construction equipment, materials, or debris, heavy machinery, or hazardous materials is prohibited.
4. Prior to using the site for outdoor storage, a "Type D" landscape buffer with a six-foot-tall sight-obscuring fence or wall shall be constructed and planted around the perimeter of the outdoor storage area, as shown on the Concept Plan (Exhibit G) submitted by the applicant.
5. The use of chain link fencing is not permitted. However, the Planning & Zoning Official may consider alternative fence and wall technologies that conform with Section 3-9-100.1(e)(16) of the Code of Laws and Ordinances of Charlotte County, Florida (the "Code") for installation of fences or walls on the east and west property lines so that the property complies with the Code's Type D buffer standards.
6. This Special Exception is granted for a term of three 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.
7. 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-22-006

Brian & Stephanie Norden are requesting a variance to reduce the required 15-foot rear yard setback by 8 feet to allow a 7-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 15528 Aldama Circle, Port Charlotte, and is described as Lot 70, Block 4432, of the Port Charlotte Subdivision, Section 82, located in Section 27, Township 41 South, Range 21 East.

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

Applicant Presentation

Brian Norden, applicant, said he was sworn in. **Mr. Norden** said the staff report was thorough and they do not have much to add. He said there are challenges in this area and we understand the Board knows this. He said their contractor has a few options for the rear distance.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

ACTION: A motion was presented by Larry Fix and seconded by William Abbatematteo that Petition VAR-22-006 be APPROVED based on the Community Development Staff Report dated July 6, 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 8 feet to allow a 7-foot rear yard setback, to allow a new swimming pool, pool deck, and pool cage.
 - a. If the pool permit is issued prior to the completion of the seawall installation, the rear yard setback shall be measured from the “approximate edge of water” as identified on the Survey (Exhibit E) submitted as part of this application.
 - b. If the pool permit is issued after the completion of the seawall installation, the rear yard setback shall be measured from the outside face of the seawall. A new signed and sealed survey shall be required as part of the permit submittal.
 - c. The pool permit may be modified at any time should the seawall installation be completed after the pool permit has been issued and construction of the pool has not yet started so that the rear setback can be based off the outside face of the seawall. A new signed and sealed survey shall be required as part of the plans change to the permit.
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.

VAR-22-007

Michael Fleming, agent for Daryl Dourado, is requesting two variances: **(a)** to reduce the required 25-foot front yard setback by 3 feet to allow a 22-foot front yard setback for a new single-family residence, and **(b)** 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 24334 Pirate Harbor Boulevard, Punta Gorda, and is described as Lot 15, Block L, of the Pirate Harbor Subdivision, located in Section 19, Township 42 South, Range 23 East.

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

Applicant Presentation

Daryl Dourado, applicant, said he was sworn in. **Mr. Dourado** said the property width wise is not the problem. It is a little bit on depth. The pool is minimal in size. It is mainly for exercise. He has a knee health problem and he is now also taking care of his parents, which is why he did not want steps in the house. The 3 foot variance in the front is just for the steps to the house. The 5 foot is just to get a little bit of an exercise pool.

Michael Fleming, who was sworn in, said he is the contractor, and they spent a lot of time reducing the size of this house so everything could fit. When the architect redrew the design of the house, he went with the measurement from the property line not the seawall. When that mistake was discovered by the engineer doing the drainage plan, we had to shrink it again but it cannot be shrunk any more.

Mr. Cullinan said the uncovered stairs in front is not the issue, the entire front of the 3 car garage that is what is in front of the setback.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: A motion was presented by William Abbatematteo and seconded by Mr. Doner that Petition VAR-22-007 be DENIED based on the Community Development Staff Report dated July 6, 2022, the evidence and testimony presented at the hearing and finding that the applicant HAS NOT MET the required criteria for the granting of the Variances.

***Motion to deny went forward with a 2 to 2 vote. (2 to 2 vote is a denial)
Mr. Doner and Mr. Abbatematteo voted yes to deny
Mr. McVety and Mr. Fix voted against the denial***

APL-22-001

Robert Berntsson, agent for Eco-South Services, is appealing the Zoning Official's determination that the project proposed for 19300 Veterans Boulevard in the Industrial General (IG) zoning district is a waste transfer station. The appellant contends that the proposed project is a mini transfer station. The appellant is applying for relief from the Zoning Official's determination pursuant to the Board of Zoning Appeals authority in Section 3-9-6(f)(1) of the Code. The property is located at 19300 Veterans Boulevard, Port Charlotte, and is described as Parcel P1-24-4, located in Section 08, Township 40 South, Range 22 East.

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

Mr. McVety asked Mr. Cullinan, isn't the county transfer station right next door?

Mr. Cullinan replied yes and that is one of the things they brought up in their request for determination. I looked at all of this as well as what the use is, that accepts no commercial waste, they take household waste only. They do not require or allow for any deliveries via large vehicles and that does not require any FDEP permitting due to the fact that it is not allowing commercial waste. Commercial waste is that generated by commercial entities. We looked into all this and discussed it with the Solid Waste folks – Lorenzo Daetz is the supervisor. He is also here today. This determination was based on all the factors including the types of debris that would be coming in, the volume of debris and other evaluations.

Asst. Co. Attorney David asked what was the established procedure to get this type of facility approved on this type of property?

Mr. Cullinan said if my determination stands, this would be a special exception use. It would fall under the Section 3-9-70 debris and solid waste that lays out the standards that would need to be followed and put into the special exception application, such as various narratives, various site plans, landscaping and other requirements and it would come before this Board.

Applicant Presentation

Robert Berntsson, Esq. representative for the applicant, said he was sworn in. **Mr. Berntsson** asked Mr. Cullinan a follow up question to what Mr. David asked. **Mr. Berntsson** asked - if this is a mini-transfer station, what is the requirements for approval?

Mr. Cullinan said the requirements for a mini-transfer station would go through the site plan review process, which is a staff review process reviewing for the technical application of the code. A special exception would not be needed.

Mr. Berntsson said he was not involved until the zoning determination letter was issued on March 31, 2022. The initial request was made by Trenton Beam, the project engineer who is here today. After reviewing the submittal, the zoning determination letter, the Code, looking at the two county transfer stations and the comprehensive plan, my initial report back to my client was they simply made a mistake. I requested a meeting to discuss this. We met on April 7th but Mr. Cullinan was not present at that meeting. Staff assured me they would take all the information I provided to Mr. Cullinan, but the next day Mr. Cullinan contacted me and indicated his decision would stand. After being notified, I emailed him the comp plan policy showing the proposed, use would be in contravention to the low intensity industrial FLUM and the associated uses and policies language directly from his letter. (He provided a copy of his email to the BZA board) He further requested Mr. Cullinan to clarify which equipment and operations he observed at my clients Sarasota facility. According to his letter, exceed that of a mini-transfer station. Since the zoning letter put so much emphasis on the letter and site plan initially submitted, we revised the letter and site plan as a result of our initial meeting to clarify the operations and requested a follow up meeting to discuss, which we had. At that meeting, staff seemed appreciative of the additional information and clarifications, but given the timing, it was agreed we would file the appeal which could be withdrawn if staff reviewed the information favorably. We were notified on June 1st that the decision would stand. He feels this is simple logic. The County adopts the zoning regulations and is free to established those regulations as it sees fit. He went over some of the regulations in the Code and what he followed. He said there are 6 requirements for a mini-transfer

station. He read those into the record. He said one of the requirements is it cannot be more than 10 acres. This site is less than 5 acres. He showed pictures of what the site would look like. He said there is no definition of a transfer station or a mini-transfer station in the Charlotte County code. There are no conditional use conditions addressing a DEP permit requirement. He feels this site would clearly qualify as a mini-transfer station under our code as it is written and exists today.

Mr. McVety asked what types of materials would be allowed to be brought to this new facility?

Mr. Berntsson said he will have his client testify to that.

Jebber Kell said he was sworn in. **Mr. Kell** said the materials are construction materials, demolition material, yard waste, all non-protrudational waste. It does not include what we think of as garbage or municipal solid waste.

Mr. Cullinan said what is logic? Logic to one person may not be logic to another. I contemplate every use and thing that may be asked of us. That is why this is a checks and balances. I discuss with our attorney's, I discuss with solid waste and people who would know that. I'm not an expert in waste transfer. I talk to the people who are. I looked at the totality of this determination. My determination was made to the Code and what is allowed. I looked at the health, welfare and safety and the surrounding uses. I looked at the impacts in the neighborhood.

Asst. Co. Attorney David asked in Section 3-9-70, there is a section titled Debris and waste facilities, under sub-section A) it says "type of debris and waste facilities" – Debris and waste facilities shall be divided into low impact and high impact waste facilities. Later in the code, it says "Under low impact waste facilities, mini-transfer station". By my reading of that, it is saying a mini-transfer station is a low impact waste facility. Would I be correct in that?

Mr. Cullinan said yes, that is how I would interpret it.

Asst. Co. Attorney David said I'm going to go back to 3-9-70 sub (a) – says "low impact waste facilities shall be conditional uses and subject to the conditions established and the appropriate conditional use provisions of this code." If a mini-transfer station is a low impact waste facility, and it's considered a conditional use, wouldn't that mean that a conditional use would have to come before the Board of Zoning Appeals for approval?

Mr. Cullinan said no, a conditional use would be a use by right as long as it meets the enumerated conditions, one of which was the 10 acre maximum.

Public Input

Geri Waksler said she has been a land use attorney for 31 years practicing here in Charlotte County, she gave more credentials and said she is representing the property immediately adjacent to the east. She is in support of staff's position. A conditional use are applied after something is defined. If you are a mini-transfer station, these are the conditions you must meet, not if you meet these conditions, you are a mini-transfer station. A mini-transfer station requires only a type C buffer for the impacts it is expected to generate. An outdoor storage facility in all zoning districts requires a type D buffer for its impact, yet a mini-transfer station only requires a type C. You need to think about what the impacts will be to a transfer station. If they are greater than an outdoor storage facility, it would seem it should require a type D buffer. The County transfer stations citizens dump their items into a trailer. This request would have items dumped into piles. The County transfer stations do not use any equipment to

move the materials. Those items go into a bin and those bins/trailers get driven away. They accept no commercial materials. It does not allow for any dump trucks at their facilities. This facility has scales. It will weigh items when they come in. These things are different from the way the County mini-transfer stations are controlled. She feels this request is a waste transfer station and feels Mr. Cullinan's letter was correct. She asked that the Board uphold his determination.

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

Mr. Berntsson said the reason why we are here today is because the code the County adopted. This code does not contain the definition of a mini-transfer station, nor, of a transfer station. Based on the discussions we heard today, I don't think anything would qualify as a mini-transfer station except for the two County ones, and that is not what the code contemplated. The conditional use conditions talk about volume reduction machinery in a mini-transfer station. Clearly the code contemplated more than you just drive up and put something in the bin. We have to look at the conditional use conditions because there is nothing else in the code to look at. Otherwise, just flip a coin. You have to look at the information in the code in order to make a determination. I submit the code has ample information that shows that a mini-transfer station is not just residents driving up and dropping off their own things. A mini-transfer station with the conditions you have to meet, volume reduction machinery, it's contemplated that that will be there. I ask you to overturn and reverse Mr. Cullinan's determination.

Closing Remark

Mr. Cullinan said I would like to ask Mr. Lorenzo Daetz to come up and explain what the County's does. As Mr. Berntsson said, there is no definition of mini-transfer station, no definition of transfer station, that is why again, I looked at the totality of the circumstances. There is no definition of volume reduction. The argument could be made and I made that, the tractor trailer trucks (those bins) are volume reduction vehicles because when they are filled up, they move them off of the site and put another empty bin there for the residents. That could be a form of volume reduction. A code cannot contemplate every type of use. It cannot define every single word or use that may come up.

Lorenzo Daetz, Supervisor at the County's Solid Waste division, said he was sworn in. Mr. Daetz said he is familiar with the request. He said the mini-transfer facilities were developed just to give an outlet to the residents. Many have more yard debris or they have excess stuff in their garages. We wanted to mainly keep household hazardous waste and household hazardous waste is just that. We do not do any industrial waste or anything like that. Bug sprays and household waste, we don't want that going into the ditches. Charlotte County has a lot of empty roads and we had a lot of stuff being dumped illegally, so this was one of the solutions to help stop that. Everything is brought in by the residents. We do not assist them unloading or anything else. We provide the containers. There is a limit on the size of the equipment. No trailers bigger than 8' x 12'. We do not accept any commercial waste with the exception of cardboard and paper because that is a recyclable item and that is collected and it is a source of revenue. We do not charge at our facility. I was there when Mr. Allan called DEP and we inquired with them, what this facility was going to be. Once you start bringing in a loader, you are changing the whole dynamics of the place. We don't have big trucks and dump trucks. Once you start doing that, they consider it a full blown facility. This company would have to go to FDEP to get a permit for what they want to do.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

ACTION: A motion was presented by William Abbatematteo that Petition APL-22-001 be DENIED based on the Community Development Staff Report dated July 6, 2022, the evidence and testimony presented at the hearing and finding that the applicant HAS NOT MET the required criteria to overturn the decision of the Zoning Official. There was no second to this motion.

A motion was presented by Larry Fix and seconded by John Doner that Petition APL-22-001 be APPROVED based on the Community Development Staff Report dated July 6, 2022, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Appeal.

*Motion was approved with a 3 to 1 vote
(Mr. Doner, Mr. Fix and Mr. McVety voted for approval to overturn the decision.
Mr. Abbatematteo voted against the overturn)*

IX. Public Comments –

Debrah Ruiz, with Jimerson Burr, on behalf of SBA Towers II, LLC., she said last month this Board had a decision on Tillman’s application SE-22-010. We are requesting that this Board reconsider their decision from last months meeting. SBA has a tower that is 0.4 miles away from their proposed new site. The SBA tower can be modified to accommodate the TEAM Mobiles equipment. The applicant failed to meet the requirements of the code since there is an actual tower nearby. We’ve asked the Board to reconsider its decision to approving the application.

Elias Mahshie on behalf of concerned property owner Dr. Mamood. He is there to join in the request for this consideration.

Debrah Fewell asked this Board to reconsider their vote of approval of the cell tower from last month. There is no reason to build a new tower when the existing tower wants to expand.

Liz O’Connell said she was here last month. They would like to see SBA Towers be able to upgrade their existing tower.

Nancy Hendrick said their whole neighborhood does not want another tower. They would like to see the existing tower expanded.

Geri Waksler, Esq., representing Tillman infrastructure, said last months hearing lasted approximately 2 hours. SBA was present and gave testimony. Many residents were in attendance and gave testimony. SBA’s tower limits the height and requires that all equipment must be fully enclosed and is therefore, cannot accommodate 5G equipment. The proposed 5G equipment would require a taller tower and a complete redesign of the top portion of the tower in order to allow the 5G equipment on the exterior of the pole. Mr. Cullinan determined in response to that letter, co-location must be evaluated based on the circumstances of the existence at the time of the application. He also determined that it is not reasonably available

because the existing tower cannot accommodate the 5G equipment and that it could not be preserved that they would 1) submit an application for special exception; and 2) or that even a new special exception for that existing tower would be approved. SBA could have appealed that determination, it did not. It also did not submit a special exception application in June as it testified that it would under oath at the hearing last month. But it now wants you to rehear because trust us, we are going to submit an application come August. This Board heard all testimony and made their decision.

A woman who did not say her name said she is a resident and taxpayer. She was at the last meeting about this and she is asking for this Board to reconsider last months decision.

Michael Greedy said he would like this Board to reconsider last months decision. He said the federal government said all 4G towers should be considered first for 5G. He said 5G will not work if 4G is within a mile.

Paul Haber said the TEAM mobile expert came up here and said something about 911 calls might not get through. He said we need this 5G. He wondered why we have codes if you don't follow them. He didn't understand the exceptions on these codes.

Close Public Input

Mr. Fix moved to close the public hearing, seconded by **Mr. Abbatematteo**.

Asst. County Attorney David said under the Rules of the Board of Zoning Appeals, there is an opportunity for what is called reconsideration. He read the rule to the Board. He said a member who voted for the request or was not at the hearing, could bring this item back for reconsideration. Mr. Fix, Mr. Doner and Mr. McVety, none of them motioned to bring this petition back for reconsideration.

X. Staff Comments –

Mr. Cullinan said the August BZA meeting will be held in Room B106 because room 119 is going to be remodeled. There are 5 petitions for the August BZA meeting.

XI. Member Comments –

None

XII. Next Meeting

*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, August 10, 2022 at 9:00 a.m., in Room B-106.***

There being no further business, the meeting **ADJOURNED** at 12:13 p.m.

Respectfully submitted,
Diane Clim, Recorder
/dlc



Blair McVety, Chair

Approval Date: 8/10/22