



REVISED - MINUTES

Charlotte County Board of Zoning Appeals

Wednesday, January 11, 2023 9:00 a.m. – Room 119

Charlotte County Administration Center
18500 Murdock Circle, Port Charlotte, FL 33948-1094

(These minutes are not official until they have been approved by the Charlotte County Board of Zoning Appeals)

Board Member:

Blair McVety, Chair
John Davidson (Absent)
Steve Vieira, Secretary
Larry Fix
John Doner (Absent)

Staff:

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

I. **Call to Order**

Chair McVety called the January 11, 2023 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. **Pledge of Allegiance**

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

III. **Roll Call**

Roll call was taken; a quorum was present.

IV. **Swearing In of Those Giving Testimony**

Heather Bennett 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 November 9, 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 January 11, 2023 Board of Zoning Appeals meeting were submitted.

VII. **Introduction of Staff/Comments**

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

VIII. **New Business**

The following petitions were advertised on December 27, 2022: SE-22-031, SE-22-032, VAR-22-014, VAR-22-015

VAR-22-015

Tyler Truett is requesting two variances: (a) to reduce the required 17.6-foot side yard setback by 12 feet to allow a 5.6-foot side yard setback, and (b) to reduce the required 20-foot rear yard setback by 10 feet to allow a 10-foot rear yard setback, for a new 14-foot-tall, detached garage, in the Residential Single-family-5 (RSF-5) zoning district. The property is located at 30216 Red Pine Road, in Punta Gorda, and is described as Lots 646 & 647, of the Ridge Harbor Subdivision, 5th Addition, located in Section 19, Township 40 South, Range 24 East.

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

Applicant Presentation

Tyler Truett, applicant, said he was sworn in. Mr. Truett said the reason for a taller building he would need a door of 14 feet to accommodate his items that need to be kept inside. After speaking with the garage people he was informed that he would need a 14 foot tall. At the time the building was on sale so he purchased the larger building 30x50 which would house everything his camper, boat and buggy plus have extra room. He was not aware of the every foot over a twelve foot is an additional setback and know he would apply for a variance for a couple of feet. He was incorrect and now here he is asking for this variance for the back and side yard setbacks and would like to keep the garage door centered nor take away any yard space. He mentions his neighbors and he knows it is encroaching the property line and his neighbors are for this.

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. Vieira. 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 Steve Vieira that Petition VAR-22-015 be APPROVED based on the Community Development Staff Report dated January 4, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with four conditions recommended by staff.

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

1. The two variances, as approved by the Board of Zoning Appeals, are to (a) reduce the required 17.5-foot side yard setback by 12 feet to allow a 5.5-foot side yard setback, and (b) to reduce the required 20-foot rear yard setback by 10 feet to allow a 10-foot rear yard setback, to allow a new 14-foot-tall, detached garage.
2. The variances shall only apply to the proposed 14-foot-tall, detached garage, as shown in the documents submitted with this application.

3. These variances are granted for a term of three (3) years from the date of approval from the Board of Zoning Appeals; however, the variances shall not expire if the owner commences the proposed development on or before the variance's term expires.
4. If the detached garage is removed or replaced, these variances shall expire and all future development must be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time. This condition shall not apply to removal or replacement caused by a natural disaster or involuntary destruction of the detached garage.

SE-22-031

Jeffrey Raykos, P.E., representative for Shawn Winkelmann, is requesting a special exception to modify an existing special exception (SE-22-002), to allow the expansion of a previously approved light manufacturing and assembly business in a completely enclosed building, in the Commercial General (CG) zoning district. The property is located at 10106 – 10116 Winborough Drive, in Port Charlotte, and is described as Lots 34 – 36, Block 4616, of the Port Charlotte Subdivision, Section 85, located in Section 29, Township 41 South, Range 21 East.

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

Applicant Presentation

Jeffrey Raykos, representative for the applicant, said he was sworn in. Mr. Raykos said was here a year ago for the original special exception. Were close with permits being approved. The site ended up being pretty tight, required parking, building layout, storm water pond, and because of the requirements to the site and were not able to regrade the property back down to adjacent property so had to put retaining walls around the storm water. Talks of another property next to his and then he could purchase that property spread it out to design a little bit and eliminate the walls and could add his overhang to the building. Did not change much with the design layout but are spreading it out and making it a little nicer and less maintenance.

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. Vieira. 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 Steve Vieira that Petition SE-22-031 be APPROVED based on the Community Development Staff Report dated January 4, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with twelve conditions recommended by staff.

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

1. The special exception, as approved by the Board of Zoning Appeals, is to modify an existing special exception (SE-22-002), to allow the expansion onto an adjacent lot (Lot 36), of a light manufacturing and assembly business in a completely enclosed building, consisting of fabrication of boat-related products, and extends only to the lands included in the Site Plans and legal description submitted with this application.
2. The Site Plans 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, ADA accessibility, environmental, stormwater, vegetation removal, screening, paving, and landscape plan approval.
3. The building shall meet or exceed the architectural standards set forth in Article XXIV: Commercial Design Standards.
4. Noise attenuating insulation or other material shall be used in the construction of the building.
5. All fabrication, manufacturing, and assembly activity shall occur inside the building. Garage doors shall be closed while machines are in use.
6. Outdoor storage of materials or equipment is prohibited.
7. The use or storage of hazardous chemicals or materials is prohibited.
8. Temporary accessory outdoor storage of boats and trailers undergoing the fabrication process shall be permitted.
9. Leasing or renting outdoor storage spaces for vehicles, boats, or trailers is prohibited.
10. Prior to receiving a Certificate of Occupancy, a "Type D" landscape buffer with a six-foot-tall opaque fence or wall shall be installed and planted along the west and north property lines around the area proposed for temporary outdoor storage of boats and trailers. Chain link fencing is not permitted.
11. Prior to receiving a Certificate of Occupancy, a "Type C" landscape buffer shall be planted along the east property line.
12. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

SE-22-032

Stephen Cole-Hatchard, representative for Cove Storage, Inc., is requesting a special exception to modify an existing special exception (SE-22-021), to include an additional lot for the outdoor storage of vehicles including boats, trailers, and tractors, in the Commercial General (CG) zoning district. The property is located at 10136 – 10146 Winborough Drive, in Port Charlotte, and is described as Lots 40 – 43, Block 4616, of the Port Charlotte Subdivision, Section 85, located in Section 29, Township 41 South, Range 21 East.

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

Steve Vieira has questions for clarification regarding the fence and asks Elizabeth are you suggesting eliminating the fence in lieu of the hedge. Elizabeth states no it is just the opposite, the applicant requested it in the narrative – Chair speaks to Shaun on this and both discuss.

Applicant Presentation

Stephen Cole-Hatchard, applicant, said he was sworn in. **Mr. Cole-Hatchard** said he will address the fence issue and talks about the code which states 4 feet and in their proposal they will do a 6 foot hedge and will be planted at 4 feet. They grow very quickly and are very opaque, you can't see thru them any more than a fence. They have replaced the fence twice now, once for Ian and back in January with the big thunderstorm that came thru. The hedges that we have withstood both storms and believe they are a better idea. We will defer to the board of course and won't challenge Ms. Nocheck's background and will take what the board thinks is the proper thing to do. Asks the board for a condition to do the hedges in lieu of the fence.

Chair McVety speaks to the applicant on this. David Thomas speaks to Chair McVety that the code provision is pretty clear and addresses the requirements and discusses the matter with the applicant and they discuss this.

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. Vieira. The public comments was closed with a unanimous vote.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: A motion was presented by Larry Fix and seconded by Mr. Vieira that Petition SE-22-032 be APPROVED based on the Community Development Staff Report dated January 4, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with nine conditions recommended by staff. Mr. Fix also requests that the commissioners look at the requirement for the opaque fencing

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

1. The Special Exception, as approved by the Board of Zoning Appeals, is to modify an existing special exception (SE-22-021), to add an additional lot for the outdoor storage of boats, tractors, 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, is for illustrative purposes only. All applicable regulations of County Code shall apply to this development. The applicant shall obtain all necessary permits and approvals as applicable to this development, including but not limited to Site Plan Review, right-of-way access, vegetation removal, fencing, stormwater management, and landscape plan approval.
3. The storage of construction materials, debris, heavy machinery, or hazardous materials is prohibited.
4. Outdoor storage of vehicles is limited to Lots 40 and 41, as shown on the Concept Plans (Exhibit H), provided by the applicant.
5. A "Type D" Landscape Buffer with a six-foot-tall sight-obscuring (opaque) fence or wall, shall be constructed and planted along the east and west property lines of Lots 40 and 41, as shown on the Concept Plans (Exhibit H), provided by the applicant. The use of chain link fencing as part of the required buffer is prohibited. The previous condition of approval for SE-22-021 requiring a Type D buffer along the north property line of Lot 41 shall no longer apply.
6. The proposed carport structure on Lot 40 shall meet or exceed the architectural standards set forth in Article XXIV: Commercial Design Standards.
7. The outdoor storage use may not be used until all required improvements are completed and a Certificate of Occupancy has been issued.
8. 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.
9. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

Asst. County Attorney David Thomas advised to reconsider the last motion to open up the file for public comment. He stated that Ms. Nocheck has public comment that she needs to be inserted into the public record for the last record.

Mr. Vieira motioned to reopen public comment; seconded by Mr. Fix.

Ms. Nocheck said she received one written public comment from an adjacent property owner who lives out of state. This is labeled as exhibit K for the record.

Chair McVety asks if this is the only one received. Ms. Nocheck replied yes this is the only one received for this petition.

Asst. Cty. Atty. David Thomas speaks to Chair McVety it is in order to go ahead and make the motion again. Chair McVety speaks to Shaun and they discuss the steps to do areas of commercial to residential, high end uses, multi-family to single family.

Mr. Vieira asks about the special exception, Shaun explains and they discuss.

Mr. Fix motioned previous motion be accepted, seconded by Mr. Vieira.

VAR-22-014

Gerald Kiehne is requesting a variance to reduce the required 10-foot rear yard setback by 6 feet to allow a 4-foot rear yard setback, for a screened lanai expansion, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 25405 Narwhal Lane, in Punta Gorda, and is described as Lot 6, Block 672, of the Punta Gorda Isles Subdivision, Section 23, located in Section 08, Township 40 South, Range 23 East.

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

Applicant Presentation

Gerald Kiehne, applicant, said he was sworn in. **Mr. Kiehne** explains this could have been alleviated had the property been designed a little bit differently when the house was built. It is a spec home and was under construction when we looked at and the roof was already installed, had the house been flopped as Ms. Nocheck said it would have put the egress from the house on the deepest part of the lot. That would have allowed to put the lanai with the hot tub to allow physical access to and from in the hot tub without eliminating egress. Spoke to the adjoining neighbors and no negativity expressed toward this are friendly with all of them and no problems.

Chair McVety opened the meeting to Public Comments.

Ms. Nocheck says she did receive two written comments from people unable to attend the meeting. One is from Mr. Butts and one from Ms. Murphy. These will be labeled as exhibit I.

Public Input

Rev. Michael Muller, said he was sworn in. He is here to express opposition to this from several neighbors who have contacted him and his wife. With all due respect to the medical conditions of the applicant this type of variance comes up all the time in section 23 to the board. Up until October of last year the section 23 variance was a 15-foot setback and reduced to 10 feet to comply with the county regulations. There are multiple traffic circles like this throughout the section. This lot is a very large lot and the applicant took this property and you take it as is. This would set a bad precedent it still requires a deed restriction.

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

Mr. Kiehne speaks again regarding the speech from Rev. Muller on his comments and he was the previous president of the board, he was president at the time of the construction of the house. It should be incumbent upon the deed restriction committee, specifically the architectural committee as they review these things prior to construction, to at least make any comments there experienced personal therefore they are the builders and could make the recommendation regarding the situation they were making a small wedge in the backyard. They have been residents of section 23 for over 20 years. The prior president, current president and vice president have been by the home many times without comment. The adjacent neighbors and the neighbors directly behind us have not expressed any concerns.

Mr. Vieira says a couple good points get raised here. Mentions someone quoting an architectural committee but no response from the architectural review committee while the house was under construction. I am trying to find out where the county stands in that position. Are we required to the yea's if you will? A private organization/homeowners association to make sure the house is being built as correct. David Thomas answers Mr. Vieira on this matter and restrictions, the board should be aware and its incumbent upon the legal department to place into the record that the Americans with disabilities act has been interpreted very broadly to supersede certain zoning regulations where a reasonable accommodation is being requested. It would apply to the homeowner's association as much as Charlotte County. Just add that in there this particular application contains a fact pattern that may implicate that the Americans with Disabilities Act. Asks the board to give that some consideration when deliberating. They discuss that now there is an issue with the property and discuss the green belt area. They also talk about the deed restrictions, which is a civil matter.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

None

ACTION: A motion was presented by Larry Fix and seconded by Steve Vieira that Petition VAR-22-014 be APPROVED based on the Community Development Staff Report dated January 4, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with five conditions recommended by staff.

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

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 10-foot rear yard setback by 6 feet to allow a 4-foot rear yard setback, to allow for a screened lanai expansion.
2. The variance shall only apply to the proposed lanai expansion, as shown in the documents submitted with this application.
3. The lanai expansion shall be screened and shall not have a hard roof.
4. This variance is granted for a term of three (3) years from the date of approval from the Board of Zoning Appeals; however, the variance shall not expire if the owner commences the proposed development on or before the variance's term expires.
5. If the screened lanai expansion 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 screened lanai expansion.

IX. Public Comments – None

X. Staff Comments –

Mr. Cullinan said the new phase over for the recording secretary Kimberly Sargent and that Diane Clim has retired after 32 years they discuss.

Ms. Nocheck said we have 6 items for February, 2 special exceptions and 4 variances.

XI. Member Comments – None

XII. Election of Officers -

- Mr. Fix moved to nominated Mr. McVety for Chair, seconded by Mr. Vieira with a unanimous vote.
- Mr. Fix moved to nominated Mr. Vieira for Vice-Chair, seconded by Mr. McVety with a unanimous vote
- Mr. Vieira moved to nominated Mr. Fix for Secretary, seconded by Mr. McVety with a unanimous vote.

XIII. Next Meeting

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

There being no further business, the meeting **ADJOURNED** at 10:35 a.m.

Respectfully submitted,
Kim Sargent, Recorder
/ks



Blair McVety, Chair

Approval Date: _____

4-12-23