



MINUTES

Charlotte County Board of Zoning Appeals

Wednesday, February 08, 2023 9:00 a.m. – Room 119

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

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

Board Member:

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

Staff:

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

I. Call to Order

Chair McVety called the February 08, 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 January 11, 2023, meeting of the Board of Zoning Appeals which passed with a unanimous vote.

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the February 08, 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 January 24, 2023: SE-23-001, SE-23-002, VAR-23-001, VAR-23-002, VAR-23-003 and VAR-23-004.

SE-23-001

Hendrik Dolleman, representative for Charlotte County Utilities, is requesting a special exception to allow an essential service, consisting of a lift station, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 193 Purus Street, in Punta Gorda, and is described as Lot 8, Block 602, of the Punta Gorda Isles Subdivision, Section 20, located in Section 05, Township 40 South, Range 23 East.

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

Applicant Presentation

Kevin Higginson, agent for the applicant. Mr. Higginson said this is a needed public service that is being provided by Charlotte County Utilities. The current site is very restrained, making it very challenging to maintain in its current condition and virtually impossible to make the needed improvements to serve the growth in the area. The applicant agrees with the staff report. The applicant does respectfully request that condition #4 be changed to a term of 15 years from date of approval instead of 3 years. If possible due to the amount of planning and coordination required to complete project. They received public comments and addressed these questions to the members regarding landscaping and vegetation, timeline to complete which could take about 180 calendar days which is about 6 months. No projected start date at this time because this project is being done in concert with another lift station improvement. No guarantee for an odorless pump system since this is a wastewater pump station. The design will have included an odor-controlled system will provide a minimum of 12 air changes per hour per the Florida Department of Environmental protection requirements for this type of project. The maintenance will be regularly twice a week. Charlotte County Utilities will be the one to maintain this site twice a month visit during the dry season and four times a month during the wet season. Quarterly visits to maintain the landscaping and per the HOA requirements as well.

Chair McVety asks questions are you ok with Elizabeth as an expert witness, Mr. Higginson answers yes. The second question is are you doing chain link or opaque fence, Mr. Higginson answers coated chain-link. Chair Blair asks Shaun is this allowed.

Mr. Cullinan answers yes, the only place where it is mandatory for a solid wall or fence is an outdoor storage lot. Due to buffer widths, it may be required but since they are utilizing the rest of the entirety of the rest of the site for their landscaping area then a solid wall or fence won't be required.

Asst. Co. Attorney David asks Chair McVety to ask the witness if he has been sworn.

Chair McVety, asks the agent if he has been sworn, Mr. Higginson answers yes.

Mr. Vieira asks a couple of questions, how is the clearing of the lot going to be determined, there is nothing on the site plan that shows certain vegetation is going to be preserved. There is two lots on either side that can be developed, and I am concerned about coming in and clear cutting the property and just leaving something like you show. Talks about the property in the cul-de-sac to maintain property lines and the privacy and they discuss. The second question is there any asbestos concrete piping involved in this project at all from the existing lift station to be grouted and removed to the new site.

Mr. Higginson answers he is not aware of any asbestos cement piping. I believe it's either PVC or iron.

Mr. Vieira is concerned about the 15-year determination explain why we have to have 15 years and the delay carried out for 15 years.

Mr. Higginson states the county had previously requested a special exception for this property, but it has expired. So, they were just concerned about having to go thru the process again, in the future if they are not able to complete the project within 3 years.

Mr. Vieira asks so with bringing this project forward now is there a need for increased capacity in the area, is this what the determination is that the lift station needs to be larger now or going into the immediate future to sustain the growth that is in the area.

Mr. Higginson says for the future yes it will need to be expanded; they both discuss. Right now, it's more of a maintenance issue going forward there is additional growth projected in the area that the lift station will need to serve. They are increasing the size of the pumps in this lift station.

Ms. Nocheck speaks to address Mr. Vieira's question about 15 year, the O'Hara booster pump station we did a couple of months before the Hurricane. That was set with a 10-year period, but that is the longest we ever done.

Chair McVety opened the meeting to *Public Comments*.

Public Input

Margaret Candito, said she lives on the street and owns the two properties, she has been sworn, she has concerns regarding the wildlife on this residential piece of property. There are gopher turtles, it is residential at the end of a cul-de-sac also hearing it is not going to be maintained. There are children that ride their bikes, go into the woods there, what is to stop a child from jumping over the chain link fence. Climbing into everything which could be a big lawsuit on the state and the town. My other concern is if I decide to develop 187 Purus Street, I need to have a buffer or something. It sounded like there was no answer to that.

Chair McVety states there was a class B buffer, in any development in Charlotte County that has gopher turtles including your lot, they have to pay somebody to relocate the gopher turtles.

Mr. Vieira asks Elizabeth to put up the site plan attachment #1 on the screen, then he asks Ms. Candito which is her lot.

Ms. Candito said 187 right next to it.

Mr. Vieira asks the lot number.

Mr. Cullinan answers it is lot number 7.

Ms. Candito, said I live at 179, she also asks if there is going to be cameras at the lift station, for the kids because they go into the woods all the time. So, are we going to have cameras, chain link fence are we going to allow the kids to climb into them? It is not being maintained, that is a concern. Right now, it's not a commercial property it is residential. These are single family homes; we have a young crowd. You can't guarantee it's going to be odorless that is an issue, especially for people who have asthma. We can

smell it from Aysen, I know that station is a failure. But I think we need to figure out something else, you shouldn't be putting up a lift station in a residential area.

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.

Chair McVety asks Mr. Higginson if he would like to come back up.

Mr. Higginson state if any gopher turtles on site we would be mitigating for impacts that we have to these species. Talks about concerns regarding the children there will be a fenced enclosure it will be secured. Everything within the compound will be locked, so there won't be any access to any kind of electrical equipment. The underground wet wells and vaults and everything will be locked at well. So, there is no way for children to fall into something or be injured, by the equipment within the compound. As far as the buffer around the fence enclosure we are proposing the type B buffer. Not aware of cameras to monitor, there are switches that they can check as far as tampering with. As far as cameras we are not proposing anything.

Mr. Davidson asks is there has been any incidences in Charlotte County if kids or other people getting into our other stations.

Mr. Higginson states he is not aware of any.

Hendrik Dolleman, representative for Charlotte County Utilities, states he has been sworn in, we do not have any, we have had vandalism back up 15 years ago back in the Placida area where we had to rebuild everything. That was because it was not being utilized and unsupervised, it was in a really rural area. We have had no incidents of the public having accidents or injuries that at a lift station that I know of and I have been with the county for 20 years. Also, to the fence this is a no climb fence with small diamonds, so it is very difficult to climb.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Mr. McVety speaks to Shaun on changing it from 3 to 15 years, since 15 years sounds like a long time. Shaun says 15 years sounds like a long time, this has had two previous special exceptions in 2013 and 2017. I could see potentially extending it past the 3 years just do to supply chain issues potentially they discuss.

Mr. Vieira asks Shaun on the O'Hara site we went to 10 years.

Ms. Nocheck answers yes, we went to 10 years.

ACTION: A motion was presented by Mr. Fix and seconded by Mr. Vieira that Petition SE-23-001 be APPROVED based on the Community Development Staff Report dated February 1, 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. This is including changing condition #4 from 3 years to 10 years, all agreed in favor of this.

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

1. The special exception, as approved by the Board of Zoning Appeals, is to allow an essential service, consisting of a lift station, and extends only to the lands included in the Site Plans and legal description submitted with this application.
2. The Concept 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, vegetation removal, fencing, stormwater management, and landscape plan approval.
3. A minimum of a "Type B" landscape buffer with a six-foot-tall fence or wall shall be constructed and planted around the perimeter of the development area. The type of fencing required shall be determined based on the width of the proposed buffer during the Site Plan Review or permitting process. All buffers and landscaping shall be installed prior to the Certificate of Occupancy being granted.
4. This Special Exception is granted for a term of ten (10) 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.
5. 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-23-002

Benjamin Johnson, representative for Home Depot USA, Inc., is requesting a special exception to allow the accessory outdoor storage and display of retail items and equipment, in the Commercial General (CG) zoning district. The property is located at 12621 S McCall Road, in Port Charlotte, and is described as Parcel 1, of the Crown Plaza Subdivision, located in Section 05, Township 41 South, Range 21 East.

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

Applicant Presentation

Benjamin Johnson, representative for the applicant, said he was sworn in. Mr. Johnson said he agrees with Elizabeth. Home Depot is doing a program the tool rental centers, which they are rolling out across the country at many of the stores. This is a pre-cursor to that; this is to serve as a direct benefit to the community and the local contractors who may not have the funds to readily have this equipment to them and purchased. So, this does provide them to rent it for a certain amount of hours or days and then return it. For ease of access its all provided on a trailer which fits a in standard stall. Contractor's can come in and hook up to the trailer and drive off and return it as such. Home Depot has 10 of the spaces will be for this equipment, 9 of the 19 spaces will be for the load and go trucks. It is just like the standard pick up truck that an employee or local contractor can come in and rent that truck for a day or a couple of hours. They can use that truck also to haul this equipment or to carry equipment from within the tool rental expansion or even just use the truck to haul away some yard waste.

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 John Davidson that Petition SE-23-002 be APPROVED based on the Community Development Staff Report dated February 1, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with ten conditions recommended by staff.

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

1. The Special Exception, as approved by the Board of Zoning Appeals, is to allow the accessory outdoor storage and display of retail items and compact power equipment and extends only to the lands included in the Site Plans and legal description submitted with this application. If the current use of subject property converts to another use, including a change in type of retail store, this Special Exception shall expire, and a new Special Exception may be required for any new proposed accessory outdoor storage or display of retail items.
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. A maximum of 25,000-square feet of accessory outdoor storage and display areas shall be permitted.
4. The storage of debris, heavy machinery, or hazardous materials is prohibited.
5. A "Type D" landscape buffer shall be installed around the area designated for outdoor display and storage of compact power equipment.
6. A "Type D" landscape buffer shall be installed along the eastern property line adjacent to the existing garden center. Existing vegetation may be used towards this requirement.
7. Any proposed outdoor lighting shall be directed towards the interior of the property.
8. The outdoor storage use may not be used until all required improvements are completed, including the required buffers, and a Certificate of Occupancy has been issued.

9. This Special Exception is granted for a term of three years from the date of approval from the Board of Zoning Appeals; however, the Special Exception shall not expire if the owner commences the proposed development on or before the Special Exception's term expires.
10. Any major changes or additions to this special exception shall require a modification of the special exception. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

VAR-23-001

James Benson, representative for Matthew & Susan Thomas, is requesting a variance to reduce the required 15-foot rear yard setback by 4 feet to allow an 11-foot rear yard setback for a new swimming pool, pool deck, and pool cage, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 9273 Santa Lucia Drive, in Port Charlotte, and is described as Lot 4, Block 4272, of the Port Charlotte Subdivision, Section 58, located in Section 20, Township 41 South, Range 21 East.

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

Applicant Presentation

James Benson, representative for the applicants said he was sworn in. Mr. Benson said he agrees with Elizabeth and her presentation, no way he could improve on the presentation very thorough and accurate. He is a 17-year resident of South Gulf Cove heavenly involved in all aspects of real estate and construction. This house is really a normal size home for the area, 3 bedroom, 3 bath, 3 car garage with a lanai and a pool. Nothing is oversized in regards to the footprint of the home or the pool.

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.

Mr. Vieira asks how does the seawall not get constructed according to specification.

Chair McVety says the real question is how do you approve a seawall at a water line and speaks with Mr. Cullinan they have a discussion on this.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Mr. Vieira asks about condition # 3 and the house is not complete, this applies only to the pool.

ACTION: A motion was presented by Larry Fix and seconded by Steve Vieira that Petition VAR-23-001 be APPROVED based on the Community Development Staff Report dated February 1, 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 variance, as approved by the Board of Zoning Appeals, is to reduce the required 15-foot rear yard setback by 4 feet to allow an 11-foot rear yard setback, for a new swimming pool, pool deck, and pool cage.
2. The variance shall only apply to the proposed swimming pool, pool deck, and pool cage, as shown in the documents submitted with this application.
3. 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.
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-23-002

David & Valerie Doremus are requesting a variance to reduce the required 15-foot rear yard setback by 10 feet to allow a 5-foot rear yard setback for a new swimming pool, pool deck, and pool cage, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 17326 Bayharbor Circle, in Port Charlotte, and is described as Lot 49, Block 3291, of the Port Charlotte Subdivision, Section 44, located in Section 25, Township 40 South, Range 21 East.

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

Chair McVety speaks to Ms. Nocheck about the rip rap wall and that no permit on wall. Mr. Cullinan states we will look into that.

Applicant Presentation

Mr. David and Mrs. Valerie Doremus, applicants, said he was sworn in. Mr. Doremus thanks the board for giving us the time and for Ms. Nocheck. We own three contiguous lots now on Bayharbor circle. We have lots on either side that we are planning on building our new houses on. Subsequent to the purchase of those lots we intervened the house became available and purchased that. His daughter Victoria will be on VAR-23-002, gives history of family physical issues at hand. Talks of confusion on seawall and has a discussion with Chair McVety, the seawall was there when property was purchased. They discuss the photographs brought in by Mr. Doremus. Shaun joins in with the conversation. All parties discuss the water line, talks of cap at 3 feet and the neighbor's pool.

Asst. Co. Attorney David speaks to the Chair that he is trying to follow what the request is. Ms. Nocheck speaks to inform them about the request. Asst. Co. Attorney David states he wants the applicant to state what he is asking for.

Mr. Doremus says that we end the confusion as to sea walls. He talks about the mean high-water line which is 8 feet from the rear property line. According to code we have to be 15 feet from the water

line, which would put us at 23 feet from the rear property line. I would like us to be at 8 feet plus 10 feet which would be 18 feet from the rear property line, from the outside of the cage.

Asst. Co. Attorney David asks Ms. Nocheck to explain how that what he is asking for if that's any different from what the request is.

Ms. Nocheck answers yes, so when we had the pre-application meeting, they were requesting to change the set back to be taken from the property line rather than the outside face of the seawall, rip wrap or whatever you want to call it. What is required by code is that the rear setback measurement is taken from either the mean high-water line or the outside face of the seawall whichever is more restricted. We cannot change the measurement for purposes of permitting to be measured from the mean high-water line of property line. So, after much confusion it is figured out that is what they need is a 5-foot setback from the outside face of the seawall, retaining wall, rip wrap or whatever you want to call it. That will allow them as proposed exactly as submitted on this application to construct this pool. So, I don't know if there has been additional changes now, I haven't heard the 3-foot thing before this is new.

Asst. Co. Attorney David to ask as a request to the applicant that Ms. Nocheck is explaining to you that the code provision is what it is, we can't change the code provision here. So, in order to process this going forward we need to know if the requested variance in item #1 of the recommendation is what you are asking the board to do or are you asking for a different set of numbers in that item #1.

Mr. Doremus he is attempting to identify where the measurements are taken from code section.

Asst. Co. Attorney David says I understand that the issue is we have a request that has been advertised in front of this board. You have to either amend what is on this request to meet what you're asking for or you have to go back and pull this application and go back and try and figure out another way of stating it. Unless you can figure out another way Shaun were going to violate the advertising issues here advertising rules.

Mr. Cullinan says as what was stated by Ms. Nocheck and was relayed to the applicant. This board the only people that have the ability to change the code is the board of county commissioners. The calculation points are set in the code, accessory structures do not require a survey. I don't believe any formal survey was submitted; site plans are only required showing where the mean high water is. So, this is showing the safe upland line that could be possibly looked at, but again our code specifically calls out the average high-water line for calculation purposes.

Asst. Co. Attorney David the question to you sir is do you want to make or suggest this board modify number 1? I will read it to you, so you understand what it says, he proceeds and reads it. Then asks do want to propose a change to that or do you want to accept that as the variance that you are requesting.

Mr. Doremus says as I read the code it says section 3986a minimum set back for the pool should be 15 feet from the water way. I have not been able to find any location where it talks about it being it measured from the lesser of the top of the seawall or the mean high-water line. That concrete cap could have been 5 feet further inland, or it could have been 5 feet further towards the sea.

Chair McVety says the waterline is mean high-water line.

Mr. Doremus says the water line is but the concrete cap on the seawall which is basically a walkway on top of the rip rap. I don't see it as a retaining function.

Asst. Co. Attorney David ask so what you're asking for is the measurement being taken from the mean high-water line? Is that allowed Shaun?

Mr. Cullinan the code requires that, this situation we do not know where the mean high-water line is.

Asst. Co. Attorney David says the question I have for you towards Mr. Doremus. Otherwise, we are going to have to postpone the deliberation over this because we have to have a precise set of words in this provision.

Mr. Doremus this has been the confusion from day one. I can identify we have now taken surveys on both sides of this property and I have the surveys here. Including in that survey is the mean high-water line which is the 8 foot back from the property line.

Chair McVety I don't see any confusion it's mean high water line and it's got to be 15 foot and he is asking to make it 5 foot.

Mr. Doremus says no I am asking to make it 10 feet from the mean high-water line.

Mr. Cullinan understands what he is saying and his interpretation is incorrect. As you can see by his photo's and all discuss the mean high-water line, cap, rip rap, measurements, a survey with the mean high-water line (which is not required) and the other petitions.

Asst. Co. Attorney David discusses the numbers and language with Chair McVety regarding the approval and explain if this is possible or not. They have a small discussion on this.

Asst. Co. Attorney David spoke to Elizabeth on him reading condition #1 and she can read the remaining.

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

Asst. Co. Attorney David reads condition #1 and Ms. Nocheck will follow with the remaining.

Elizabeth Nocheck presented the recommended conditions starting from condition #2 for the petition. She asks if she can offer an amendment to the first condition. Chair McVety gives permission. She would like to change the portion about the survey must be submitted with the pool permit application not before it can be issued.

Board Member Comments and Questions

None

ACTION: A motion was presented by Mr. Fix and seconded by Mr. Davidson that Petition VAR-23-002 be APPROVED based on the Community Development Staff Report dated February 1, 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 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. The setback shall be measured from the mean high-water line as shown on a survey provided to the County by a Florida licensed surveyor. The survey shall be submitted to the County with the pool 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. his 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.
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-23-003

Victoria DeRosier is requesting two variances: (a) to reduce the required 25-foot front yard setback by 5 feet to allow a 20-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, pool deck, and pool cage, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 17334 Bayharbor Circle, in Port Charlotte, and is described as Lot 48, Block 3291, of the Port Charlotte Subdivision, Section 44, located in Section 25, Township 40 South, Range 21 East.

VAR-23-004

David Doremus is requesting two variances: (a) to reduce the required 25-foot front yard setback by 5 feet to allow a 20-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, pool deck, and pool cage, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 17318 Bayharbor Circle, in Port Charlotte, and is described as Lot 50, Block 3291, of the Port Charlotte Subdivision, Section 44, located in Section 25, Township 40 South, Range 21 East.

Elizabeth Nocheck read into the record the staff report and staff findings for the petition. One presentation will be for both Petition **VAR-23-003** and **VAR-23-004**, but there will be two separate rulings.

Chair McVety speaks to Ms. Nocheck regarding the setbacks if the seawall was on the property line.

Asst. Co. Attorney David speaks to Chair McVety to clarify that the applicant may come up and make a presentation on both properties, if that is what he wishes. You will have to open up a public comment period for each application and close it then do the vote and open up one and close it then do the vote.

Mr. Vieira asks that the wild card here is the swimming pool correct we don't know what the configuration of the pool and this has a small discussion.

Mr. Doremus talks on this petition about the swimming pool and talks about the size would be 45 x 22, and he has been sworn in.

Asst. Co. Attorney David speaks to Mr. Doremus regarding his testimony and asks questions is the ADA access is also required on this house? Are these owners or occupants of this house also?

Mr. Doremus states his kids are not ADA accessible, we have to crane them. Both discuss the request with ADA for the variance, where the kids will be living.

Chair McVety speaks about the pool on the site plan with Shaun regarding the size of the house and houses in the neighborhood.

Mr. Doremus speaks about the house, being on the water and the need for the pool. Talks about the front and rear variances, the layout of the house and how this affects everything. He states it's not the width it's the depth.

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.

Asst. Co. Attorney David speaks to Chair McVety that he speaks on behalf of Mr. Davidson regarding he is new here and may not of heard all the speeches you get from a legal department. Two important issues, 1. is that variances are not create precedent with variances. So, the variance is granted on the unique circumstances to that particular property. 2. Is issue is what is an undue hardship and what is a mere inconvenience has been litigated multiple times around the State of Florida. Money is not considered an undue hardship.

Chair McVety asks for the daughter to come up for VAR-23-004.

Applicant Presentation

Victoria DeRosier, applicant, said she has been sworn in. She accepts Ms. Nocheck as the expert. I just want to address 3 concerns about what my father was addressing earlier. 1. Is my parents do claim my brothers and they are occupants of their home. My older brother Waylen has lived with me for many years in the past. I do hope that he may live with me again and this is why I am trying to have the same guidelines with my property. There was another comment made in regards to these being larger homes on the street than most. Actually, there are two other homes on our street that are actually quite a bit larger than with under air square footage and was close to 3,200 square feet, so total under air would have been closer to 4,500 to 5,000 square feet. So, these homes are in the middle of what is being built in the neighborhood on the water in particular. Talks about not having the hand drawings for the pools. Tells about what the pool guy came out he said, as it sits with the variances our pool could

only be 9 feet wide. If we are granted the rear variance that would allow the pool to be just under 14 feet wide.

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

Asst. Co. Attorney David recommends that you take out the first of the series here and let Elizabeth close out, give you the staff's suggested conditions then you can debate it and vote.

Ms. Nocheck speaks on the exhibit that was submitted by Mr. Doremus and we will label that Exhibit K for the record on VAR-23-003.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Chair McVety states the county is recommending against this, so if you want to make a motion for it you need to state why you disagree with the county.

Mr. Cullinan wants to add a couple of comments for reference especially with Mr. Davidson being new. Charlotte County has about 180,000 thousand 1/4-acre platted lots. Probably about half to two thirds of those are located on canals with probably a 1/3 of those being over-dredged or eroded away. This area south of Edgewater is very well known, a lot of these canals, some of the comments regarding the size. I stated this is large for the area, the next 3 houses average about 3,000 square feet to 3,300 square feet give or take. A couple hundred square feet less than with about roughly 2,000 give or take square feet under air. This is very large and the architect should know what the county standards are if they do work in the county. That is on them, that will be something that they need to take up with them. Again Mr. David said that this does not create precedence and we agree. Again, it does not appear that all steps have been taken to address the issues and try to minimize what variances are needed. Esthetics is not a criteria for this, many of the houses immediately adjacent to these properties have numerous bump outs, strenuations and they all meet the standards. The house just to the south of them on the bend, that is the one that was granted an administrative variance for the less than 2 ½ feet. That was due to the fact it's on the curve and it is hard to keep a straight line. When you're doing that and I believe that one also had a surveying error when that was being built in 2018. So, I just want to make you aware and there is also a couple of inconsistencies that I noticed amongst these three petitions. The granting of the first variance for the middle, it was stated that this was the main family household. Hence the reason for the pool, now we are hearing things that the main family household maybe lot 50. So, it is very confusing as to who is going to be living where and doing what and the rational for each. You can do a pool and you can do a house and it can all be built to our current standards.

Chair McVety said what Mr. Doremus said is that the center house was going to be head quarters until they get the other two built.

Mr. Cullinan asks then they will be vacating that?

Mr. Doremus says I can't tell you what the future would be on that. At some point in time, it's going to take us probably at least a year. With lack of subcontractors and with what's going on down here. Then talks about timing and if I have to start over from scratch.

Chair McVety that wasn't my question.

Mr. Doremus the answer is we're living in the house presently, right now my wife can not move with the children here. She is in Vegas and have the swimming pool there, so they have to stay in Vegas. He discusses the timing and plans with Chair McVety. He tells Chair McVety we will be either renting or selling the house in the middle in a year and a half to two years from now.

ACTION: A motion was presented by Larry Fix that Petition VAR-23-003 be APPROVED based on the Community Development Staff Report dated February 1, 2023, 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. (Mr. Fix would like to add condition # 1 that the pool be 14 feet wide.) There was No Second. Motion died.

A second motion was presented by Steve Vieira and seconded by John Davidson that Petition VAR-23-003 be DENIED based on the Community Development Staff Report dated February 1, 2023, the evidence presented at the hearing and finding that the applicant HAS NOT MET the required criteria for the granting of the Variance.

Motion was denied with a tie vote (Mr. Vieira and Mr. Davidson voted to deny the petition, Mr. Fix and Mr. McVety voted against the denial). Motion failed with a 2 to 2 vote.

Asst. Co. Attorney David states this is for the record on the motion to deny Mr. Davidson voted yea, Mr. Vieira voted yea, Mr. McVety voted nea and Mr. Fix voted nea on the motion to deny. Under our rules this constitutes a denial of the application.

Chair McVety needs one more motion for VAR-23-004.

ACTION: A motion was presented by John Davidson and seconded by Steve Vieira that that Petition VAR-23-004 be DENIED based on the Community Development Staff Report dated February 1, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS NOT MET the required criteria for the granting of the Variance with four conditions recommended by staff.

Motion was denied with a tie vote (Mr. Vieira and Mr. Davidson voted to deny the petition, Mr. Fix and Mr. McVety voted against the denial). Motion failed with a 2 to 2 vote.

Asst. Co. Attorney David states to please record the vote the same as the prior, Mr. Davidson voted yes, Mr. Vieira voted yes, Mr. Fix voted no and Mr. McVety voted no. Under our rules the application is Denied.

Chair McVety says sorry to the applicant that you didn't get your variance.

IX. Public Comments –

None

X. Staff Comments –

Mr. Cullinan welcomes Mr. Davidson to the board and Mr. Doner has tendered his resignation.

Ms. Nocheck said she has five petitions next month, 1 variance and 4 special exceptions.

Asst. Co. Attorney David welcomes Mr. Davidson and speaks of training on the Sunshine Law, Public Records and Roberts Laws at next month's meeting.

XI. Member Comments –

None

XII. Next Meeting

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

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

Respectfully submitted,
Kimberly Sargent, Recorder
/kas



Blair McVety, Chair

Approval Date: _____

3-8-23