



# MINUTES

## Charlotte County Board of Zoning Appeals

Wednesday, January 10, 2024, 9:00 a.m. – Room 119

Charlotte County Administration Center

18500 Murdock Circle, Port Charlotte, FL 33948-1094

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

**Board Member:**

Blair McVety, Chair  
Steve Vieira, Vice-Chair  
Nichole Beyer, Secretary  
Turner Rouse  
Andrew Filieo

**Staff:**

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

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I. **Call to Order**

Chair McVety called the January 10, 2024, meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. **Pledge of Allegiance**

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

III. **Roll Call**

Roll call was taken; a quorum was present.

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

Kimberly Sargent swore in all persons who wished to provide testimony.

V. **Approval of Minutes**

***ACTION: A motion was presented by Mr. Vieira and seconded by Mr. Rouse to approve the minutes of December 13, 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 January 10, 2024, Board of Zoning Appeals meeting none were submitted.

VII. **Introduction of Staff/Comments**

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

**VIII. New Business**

***The following petitions were advertised on December 26, 2023: VAR-23-025, VAR-23-026, VAR-23-027, VAR-23-028, VAR-23-029, VAR-23-030, and SE-23-034.***

**VAR-23-025**

Robert Berntsson, representative for Mildred Kathleen Bennett, Trustee, is requesting a variance to reduce the required 15-foot rear yard setback by 10 feet to allow a 5-foot rear yard setback, to allow an existing manufactured home to remain “as-is,” in the Manufactured Home Conventional (MHC) zoning district. The property is located at 4110 Nettle Road, in Port Charlotte, and is described as Lots 681 & 682, of the El Jobean Subdivision, Ward 1, located in Section 28, Township 40 South, Range 21 East.

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

**Mr. Vieira** would vacating the alley way, that wouldn't cure the issue either would it?

**Ms. Nocheck** I'm gonna let Rob address that, I believe that's been looked into.

**Applicant Presentation**

**Robert Berntsson, representative for applicant, said he was sworn in. Mr. Berntsson** said I accept Elizabeth as an expert for purposes of this hearing. We join in the staff report and the findings therein. Elizabeth did an excellent job in going through the history of the situation here. My client bought the property in 2019 with the intent of building their home here. This is zoned manufactured home community. So, they were putting a manufactured home on a lot that previously had a manufactured home. I believe that original home was destroyed through hurricane Charlie remained there for several years finally being removed in 2009. When my clients purchased the property, they contracted to have a double wide put on the original, mobile home was a single wide from my recollection. The permit was obtained, and the mobile home was set. Everything that we can figure out from this point because the owner contracted Covid and passed away during Covid of the mobile home installation company is that they most likely didn't realize the alley was back there. They measured from the back of the alley to put the home with the required set back. You ask about the vacation of the alley, there is a couple of issues to that. One is typically they don't vacate half an alley, so you would have to have the owner of opposite sides join in. The other thing is the alley technically provides access to the water. The county has a policy against vacating access to water ways in its comprehensive plans. So, I think there is two potential problems in trying to do an alley vacation. After the death of the original installer my client hired a new installation company to come in and close out the permit, obtain the CO for the property. It was during the inspections for the final, that it was determined that the mobile home actually was only five feet from the property line. The stairs that they had constructed coming off the rear deck actually encroached into the alley way. With this petition seeking the five-foot variance they would move the stairs to the side of the deck so they would no longer encroach into the five-foot setback nor into the alley. Looking at the five criteria, I believe Elizabeth did an excellent job. There are unique and peculiar circumstances here. Certainly, the death of the original owner during Covid, the fact that the alley in the back would lead a reasonable person to believe that the property line was further to the rear. One thing that my client was most concerned about is that the house was placed there prior to hurricane Ian. When you bring in a double wide you have to connect it, connect all the joints and her main concern is if you had to move it. You have to disassemble it, once you've done that the original integrity of the home is never reached again. While this home did very well in the hurricane with some very minor damage to the roof. The fear would be if this was disassembled and reassembled on the lot it wouldn't fare so well in a future storm event. In addition, without the CO they haven't been able to get the electricity turned on. They are very concerned about mold forming in the home as they are an elderly couple. We believe

we have met the five conditions for the granting of the variance. This is the minimum that can be done without relocating the home. We accept the three proposed conditions that staff is recommending, and I am happy to answer any questions.

***Chair McVety opened the meeting to Public Comments.***

**Ms. Nocheck** we did receive one letter from a neighbor who is unable to attend. I will distribute that now and will label this as exhibit I.

**Public Input**

**Karen White, I have been sworn in, I live on Nettle Road.** **Mrs. White** said I have a couple questions. One is because there is no CO does this mobile home need to be at the ten-foot water level? The second one is we built a house on Nettle Road had all of engineering plans and all that and we were told we couldn't build to what was there previously. We had to re-do everything, cost money, cost time and we feel that this clearly looks weird cause it's way in the back. I feel bad for the people that are on the other side because they are right in their back yard. I feel that this is going to set precedence for the whole neighborhood. There is already a lot of issues in our neighborhood with building without codes, not following setbacks, etc. and I think this is going to change that. I am just curious why the permitting process why there wasn't somebody coming out to check when they laid the foundation part and made sure it was in the right spot. We had to do that when I built my house so I'm just curious as to what that was. So those are my three questions.

**Chair McVety** speaks to Asst. Co. Atty. David Thomas regarding one of her questions.

**Asst. Co. Atty. David Thomas** there is no precedence, we specifically in the conditions state that this does not create a precedent, and these are all site specific. I think that Mr. Cullinan can address the other issues about the ten-foot and Chair McVety has a discussion with Mr. Cullinan.

**Deane Kaizik I live on Newcomb Road across the canal, I have been sworn in.** **Ms. Kaizik** said my question is it's kinda off what Karen had said. I wasn't quite hearing what this gentleman was saying. As far as the elevation of the home and whether or not it has to be brought up either to the height of ten feet.

**Chair McVety** it has to be brought up to the flood standard at the time of application.

**Ms. Kaizik** so my home got destroyed and we just now finally got a permit to get started.

**Chair McVety** if you just got a permit now, you have a new elevation.

**Ms. Kaizik** when we were trying to get the permit, they found that I guess whenever they started plans, they built the home, the home never got I guess looked at again. Because they said they did not have the final certification on file from the previous one. I had to pay extra money and time to get that done.

**Asst. Co. Atty. David Thomas** Mr. Chair with due respect, the staff can answer questions about your property. This property is the subject of this hearing, and we really need to focus on that. That is the only testimony that is appropriate at this point.

**Ms. Kaizik** also, in this it's just, I guess the upset that we have. I feel sorry for these people, I don't know if this is their permanent residence. I think that should have something to do with it vs. if it's a rental.

We tried to just put our house back together and we've gone thru all kind of hoops to do that. We have had to reconstruct everything because everything's on the setbacks were not right. I feel bad that these people have gotten this mobile home put in the wrong place but again. We have hazard things going on in that area and it's not being addressed in the appropriate way we feel. We don't want to make another exception so that later on somebody else can come up and say she was granted it.

**Chair McVety** says just because they can do it does not mean the next person can do it.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

### **Board Member Comments and Questions**

**None**

### **Rebuttal**

**Mr. Berntsson** just briefly there was a concern raised that this would place this very close to the house to the rear. I note that there is a fifteen-foot alley to the rear if that alley wasn't there the house would be twenty feet from the rear property line. So, this is the same as it would be if the alley didn't exist. I think you've covered everything else; we respectfully request that you approve the variance as requested.

***ACTION: A motion was presented by Steve Vieira and seconded by Nichole Beyer that Petition VAR-23-025 be APPROVED based on the Community Development Staff Report dated January 3, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance with three conditions recommended by staff.***

***Motion was approved with a 4-1 vote with the following three conditions:  
(Mr. Rouse voted against the approval)***

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 15-foot rear yard setback by 10 feet to allow a 5-foot rear yard setback, to allow an existing manufactured home to remain "as-is" in its current location on subject property.
2. The variance shall only apply to the existing manufactured home, as shown in the documents submitted with this application. The variance shall not apply to any accessory structures.
3. If the manufactured home is removed or replaced, this variance shall expire and all future development must be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time.

### **VAR-23-026**

Robert & Patricia Saucier are requesting a variance to reduce the required 20-foot west side yard setback by 7 feet to allow a 13-foot west side yard setback, for a new carport, in the Manufactured Home Park (MHP) zoning district. The property is located at 1000 Kings Highway, Unit 465, in Port Charlotte, and is described as Unit 465, of the Port Charlotte Village Subdivision, located in Section 07, Township 40 South, Range 23 East.

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

**Chair McVety** how wide is the driveway do you know.

**Ms. Nocheck** I believe it's fifteen feet wide, so it would go directly over

**Chair McVety** so it would cover the driveway no extra.

#### **Applicant Presentation**

**Patricia Saucier, applicant, said I am one of the owners with my husband of this place. Mrs. Saucier** said we tried very hard with your preponderance of rules and regulations. We have our own environmental committee in the park and a head maintenance man came over and told we had to remove the concrete for demolition which cost us \$9,000.00. So, we removed the carport that existed at that time which is bigger than the one we put in now. At that time on exhibit 14 it showed, you'll see the blue mark that's our water shut off. We moved our carport thirty-two inches further from the water. So, we thought we had done everything that was possible because of the water which we have always been aware of. Then we found out after multiple other things that even though we got a certificate of occupancy and we have now been in that place that we now have this to contend with. I would very much appreciate, understanding that we thought that by downsizing that we would have no problem. We have incurred nothing, but problems thank goodness for the motor vehicle department stepping in. Otherwise, we would never have had any of our real issues addressed, like windows falling out when you clean them. At this stage I very much appreciate your consideration of the facts, and the community and the Port Charlotte Village board of directors has approved what we have as existing. As you can see, we have pavers because they can mover pavers and because it was cheaper, very honestly than concrete. That's all I have to say thank you for your consideration.

**Chair McVety** this is really unusual Shaun for me because there is no property lines and it's not a built home, it's a motor vehicle.

**Mr. Cullinan** correct and that's where things like the windows, stuff like that it's considered a motor vehicle. So, it's not regulated under building code. We do have setbacks even for un platted. Typically, their structure is structure, but because this is on water there is also the set back to water or any of the units lining the perimeter of the property would have a set back property line as well. This is one of those situations where these folks, the only thing they did wrong was hiring the wrong company.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

#### **Board Member Comments and Questions**

**Mr. Vieira** would you put exhibit C-13 on the screen please. In that photograph there is a line, it looks like a surveyor's line. Would that be the actual property line for this owner?

**Mrs. Saucier** answers yes sir.

**Chair McVety** asks Elizabeth do we know if the applicant is ok with the recommendations.

**Ms. Nocheck** I believe so we can ask them, and asks the applicants. Are you all ok with the conditions as there written for approval.

**Mrs. Saucier** yes.

**Chair McVety** for the record she shakes her head yes.

***ACTION: A motion was presented by Turner Rouse and seconded by Andrew Filieo that Petition VAR-23-026 be APPROVED based on the Community Development Staff Report dated January 3, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance with three conditions recommended by staff.***

***Motion was approved with a unanimous vote with the following three conditions:***

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 20-foot west side yard setback by 7 feet to allow a 13-foot west side yard setback, for a new carport.
2. The variance shall only apply to the proposed carport, as shown in the documents submitted with this application.
3. If the carport 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 carport.

**VAR-23-027**

Jankowski & Associates, Inc., representative for Robert & Lynda Weston, Trustees, are requesting five variances: (a) to reduce the required 25-foot front yard setback by 12 feet to allow a 13-foot front yard setback for a new garage, (b) to reduce the required 25-foot front yard setback by 1.6 feet to allow a 23.4-foot front yard setback to allow an existing single-family residence to remain "as-is," (c) to reduce the required 10-foot east side yard setback by 10 feet to allow a 0-foot east side yard setback to allow an existing deck to remain "as-is," (d) to reduce the required 10-foot east peripheral landscape strip by 10 feet to allow a 0-foot east peripheral landscape strip to allow an existing deck to remain "as-is," and (e) to reduce the required 20-foot rear yard setback by 6.4-feet to allow an existing single-family residence to remain "as-is," in the Manasota Single-family-3.5 (MSF-3.5) zoning district. The property is located at 4099 Pelican Shores Circle, in Englewood, and is described as portions of Lots 9 & 10, of the Pelican Shores Subdivision, located in Section 02, Township 41 South, Range 19 East.

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

**Chair McVety** so you asking for four different things for the garage, the house and two decks, we could pass all or none or as many as we want?

**Ms. Nocheck** correct.

**Applicant Presentation**

**Robert Weston, applicant, has been sworn.** Mr. Weston said my wife and I; Linda purchased the property twenty-five years ago. Eleven years ago, I became a permanent resident of Florida. Unfortunately, five years ago I started developing Neuropathy, which has eliminated golf, fishing, and few other essentials for my retirement. This placement of the garage would be very beneficial to me, in getting in and out of the car and getting in and out of the house is a primary problem. The uniqueness of our subdivision which was created in the fifties is that the actual used portion of the roads unfortunately ten to twelve feet wide. In front of my property there is sufficient room from the existing roadway to park cars in front of the new proposed garage. Even though there is set back is thirteen feet. If you look at the pictures, there is a Dodge Durango 2008 sitting there and is over twenty feet long and there is room for that to remain in the driveway portion in front of this garage. The side setbacks are not close to any adjacent properties or any adjacent residences, the property line is right there. There is a fence that runs along where those decks are located. The front deck does have my hot tub on it which is directly off my bedroom. Which I do use daily and it's very beneficial to me with my condition. Unfortunately, what I've got it's not going to get any better, it's only going to deteriorate more. Anyone have any questions?

**Chair McVety** no sir, thank you.

**Kimberly Desmaras, I have been sworn in.** Ms. Desmaras said I am the authorized agent for Jankowski & Associates. I don't have too much more to add unless you have any questions for me on my side.

**Chair McVety** no thank you.

***Chair McVety opened the meeting to Public Comments.***

**Public Input**

**Damian Ochap, I am the president of South Manasota Sandpiper Key Association on Manasota Key. I have been sworn in.** Mr. Ochap said the Manasota and Sandpiper Key overlay code was put in place to protect the health, safety, and welfare of all the residents living on the key. It supersedes the Charlotte County code to address planning and zoning issues unique to the barrier island. As you know we get periodic heavy rains and mostly, most recently two major storms that cause a lot of flooding. We have many small lots and the existing minimal setbacks of ten feet on each side called peripheral landscape buffers and twenty-foot rear and twenty-five-foot front. Carefully balance the placement of buildings and accessories on these lots. With the need to maintain areas for water run off and retention and to avoid development on one property pushing run off onto an adjacent property with adverse impacts. Specifically, this property is in the MSF 3.5 zoning district which requires a minimum lot size of 12,445 square feet and a maximum lot coverage of 35 %. Front yard setbacks are no less than twenty-five-feet, side setbacks no less than ten, rear yard no less than twenty, rear yard setbacks no less than twenty-five-feet. This property has a structure deck and driveway that occupy most of the undersized lot. This property should not be permitted to further encroach in the required setbacks. The lot is irregular in shape which is under the 12,445 minimum lot size so it is grandfathered. The existing building built in 1958 predates the overlay code, so it's grandfathered non-conforming use and no variance is required. A wooden deck was added in 2006 after the overlay was adapted and a zero setback from the property line. In violation of the overlay code side setbacks of ten feet. How could this have been inspected by the county and approved without a variance? We are now being asked to accept all as is, requesting an additional variance for a new garage to reduce the front setback from twenty-five-feet to thirteen feet is contrary to the intent of the code and will only exacerbate encroachment issues. Just because a property owner wants to build or expand structures such as a house or a garage and accessory

structures into the required setbacks does not constitute hardship. We oppose granting the variance this could lead to more exceptions. We have a restricted overlay code beyond the Charlotte County code to prevent these types of changes. Reducing setbacks would set a precedent. Cramming buildings and accessories structures on these small lots on south Manasota Key is contrary to the code and should not be approved. But our biggest concern is not the garage it is actually the as is on the deck and again encroachment of the setbacks thank you.

**Chair McVety** there is two decks which deck are you talking about?

**Mr. Ochap** any deck that is inside or outside the setbacks.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

#### **Board Member Comments and Questions**

**Chair McVety says two of the five is to keep the house where it's at.**

**Mr. Vieira** before we get to that, I've got a question. The decks in question that seems to be the issue here Shaun do we have any background information on the decks, were they approved, were they applied for? Do we have anything on that at all?

**Mr. Cullinan** no and due to the age of the deck when it went on the tax rolls in 2024 it may have been built in 2006 or 2005 respectfully, that's twenty years ago. We don't have, we are not required to keep those permits for residential. We've cleared out a ton of them, if it was one that never got scanned to the clerk's office so we can't prove or disprove that it wasn't properly permitted. At that time, it's possible it could have been an existing deck there that was being replaced and the regulations have changed numerous times even with the Manasota Key overlay district since it was first put into place. So, to be able to determine what may or may not have occurred over you know about twenty years ago would be next to impossible unfortunately. We understand their concerns and that's why typically when we see these, and we can't prove one way or another. We wrap in any other types of variances that would be necessary. Prior to the Manasota zoning of MSF this would have been residential single family 3.5 with side setbacks of seven and a half feet instead of the ten-foot peripheral landscape strip requirement. The front set back again this was built in 1958, the only thing I could guess cause obviously I was not around then. That they probably pulled off the road and just ran a tape from the actual edge of pavement and not the actual property line. Because if you add those numbers together it gets pretty close to being about twenty-five-feet. That would be my guess as to how they did that, and it was 1958. Unfortunately, I don't have any better answers then that just due to the age of the structures and some of the changes in code that have happened in the past twenty years.

**Mr. Vieira** have we had any commentary from the direct abutters on either side, east or west side?

**Ms. Nocheck** not that I am aware of.

**Ms. Beyer** asks C, D and E all three of those are asking to remain as-is no changes.

**Ms. Nocheck** that was B.



**Ms. Beyer** and B ok.

**Chair McVety** A is for the garage, everything else is as-is. But two of them relate with the house and two relate with decks if I'm not mistaken.

***ACTION:*** A motion was presented by Steve Vieira and seconded by Turner Rouse that Petition VAR-23-027 be APPROVED based on the Community Development Staff Report dated January 3, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance with four conditions recommended by staff.

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

1. The variances, as approved by the Board of Zoning Appeals, are: **(a)** to reduce the required 25-foot front yard setback by 12 feet to allow a 13-foot front yard setback for a new garage, **(b)** to reduce the required 25-foot front yard setback by 1.6 feet to allow a 23.4-foot front yard setback to allow an existing single-family residence to remain "as-is," **(c)** to reduce the required 10-foot east side yard setback by 10 feet to allow a 0-foot east side yard setback to allow an existing deck to remain "as-is," **(d)** to reduce the required 10-foot east peripheral landscape strip by 10 feet to allow a 0-foot east peripheral landscape strip to allow an existing deck to remain "as-is," and **(e)** to reduce the required 20-foot rear yard setback by 6.4 feet to allow a 13.6-foot rear yard setback to allow an existing single-family residence to remain "as-is."
2. The variances shall only apply to the new attached garage, the existing single-family residence, and the existing wooden decking, as shown in the attached 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 variances' term expires.
4. If the new attached garage, existing single-family residence, or existing wooden decking 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 new garage, existing single-family residence, or existing wooden decking.

**10:17 Break**

**10:23 Resume**

**VAR-23-028**

Carmen D'Amico & Rachel Von Daacke are requesting two variances: (a) to reduce the required 20-foot rear yard setback by 6.4 feet to allow a 13.6-foot rear yard setback to allow an existing swimming pool to remain "as-is," and (b) to reduce the required 20-foot rear yard setback by 5.4 feet to allow a 14.6-foot rear yard setback to allow an existing chickee hut to remain "as-is," in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 158 Morgan Lane SE, in Port Charlotte, and is described as Lot 415, Block 2091, of the Port Charlotte Subdivision, Section 40, located in Section 27, Township 40 South, Range 22 East.

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

### **Applicant Presentation**

**Carmen D'Amico & Rachel Von Daacke, applicants, I am Rachel Von Daacke I am owner of 158 and I am sworn in. Carmen D'Amico owner of 158 and I have been sworn in as well. Mr. D'Amico** said when we came down here the structure has been in place since 2011. What you're going to hear from the next-door neighbor who is that we should know better. We need to get a permit, it's not a permanent structure. There is no concrete, there is nothing that needs to be inspected owning a chickee hut that's why we were under the impression that we were ok. What we didn't do right is try to get the variance or try to find out what the initial setback was to have it initially built. We would greatly appreciate you helping us out with the excellent work that Elizabeth did for us to move this forward and grant us some relief. This is directly in the center of our back yard, has no implication at all for either side. Since these pictures have been taken there is a six-foot privacy fence that's going up between us and the neighbor. So, that's their view at this point.

**Ms. Daacke** along with a wooden shelving structure that they put; I hope that they argue the fact that they don't have views because that structure is up with garbage on it blocking their view from their pool cage.

**Mr. D'Amico** it's also the same person the day we made settlement that informed us that he reached over our fence and cut our bushes down for his view. So, I just wanted to make that for the record.

**Ms. Daacke** we do hope that you guys approve these variances we would appreciate it.

### ***Chair McVety opened the meeting to Public Comments.***

**Ms. Nocheck** I did receive two emails letters, one was dropped off and one was submitted by email yesterday. Both of these letter writers were unable to attend due to health issues. So, I will distribute these, the letter from Evans is going to be Exhibit I and the letter from Mr. Pias is exhibit J.

### **Public Input**

**Donald Altimus, I live at 157 Morgan Lane which is across the street from the said property. Mr. Altimus** said this is a collaboration between me and Patrick Pias who live at 156 he is under the weather and didn't think he would be able to get all of this out. So, I'm here to read this as far as on both of our behalf's. So, the applicants would like us to believe that we don't know, we're naive and we had no idea. It's somebody else's fault, both are resumes and you have copies of that up there in a packet that you received. On Linked In which shows Mr. D'Amico to be a 25-year construction specialist, he has management expertise at all levels of construction and construction management. She is employed by a HVAC equipment seller who therefore is affiliated with permitting and things of that nature. The petitioner's narrative they state they were filing a variance due to having no knowledge at the time of the settlement that the existing pool structure was located within the maintenance easement of the twenty-foot setback. There was a seller's disclosure on that property that they signed when they bought that house from the previous owner who did not build the swimming pool. He signed that also, and it was disclosed that, that pool was into the easement, so they knew that and there is a paper I believe you have in front of you with that signature on it. The survey shows that the seller on the survey that it was encroached into the twenty-foot setback and utility easement. The applicants clearly initialed that and signed that on February 2<sup>nd</sup> and both their signatures where they signed that. The buyers had the opportunity to negotiate that at the time with the guy they were buying it from. They chose not to do that, like they did with the dock that was in need of repair. The second statement they made was they presumed that the pool structure everything was ok with that. It's noted right on the survey that it's encroached. Regarding the Big Kahuna Tiki Company that's not the truck that put this

structure up or the company that put the structure up. You've got pictures of a truck that was in Mr. Pias's driveway that has nothing to do, I did a little research this morning on Big Kahuna Tiki Company and that paper they give you that states it's an Indian thing and that. It seems to be and you can get right on the internet and pay a \$9.99 fee and you can construct that letter. I have a copy of that letter in somebody else's name that is identical to theirs. So, the damage that was done to Mr. Pias's property that is not the same people that paid the bill to fix his driveway that they give the Tiki Company approval to back across. So, there is numerous things that they can claim they did not know about this. There is nothing on that Big Kahuna thing as far as an invoice, a contract.

**Chair McVety** So just tell us your opposed to what.

**Mr. Altimus** I am opposed to the tiki structure staying where it is at., and the proposed swimming pool., cause they knew this. They signed the paper that has their signature on it.

**Patricia Haver, my property is within the circle provided on the document that was mailed to me. I have been sworn in. Ms. Haver** said the home on Mr. D'Amico and Mrs. Von Daacke was built in 1970 and followed all codes at that time. The pool was permitted under number 20110505110 and was placed May 2<sup>nd</sup>, 2011. Prior to Mr. D'Amico and Mrs. Von Daacke's purchase of the property. This should be allowed for the swimming pool to remain it was permitted. The construction of the Tiki hut by the Seminole tribe was placed parallel to the existing swimming pool, placed in the center of the property as noted by Mrs. Von Daacke. This causes no surrounding issues for the peripheral views of the neighbors. I have also used google earth to view the site lines provided for the properties surrounding properties to determine that issue. It's not an issue. Based on all the requirements and the complaints by the neighbors being on a personal issue with that said the variance should be approved thank you very much.

**Nick Garbacz, I am a fourteen-year resident on Morgan Lane. Mr. Garbacz** said which doesn't make me the senior owner on the lane but close. The only problem I have with this is I don't know. I don't know when I don't know means you can break the law. Secondly to me it's kinda like going to the bank robbing the bank walking out and walking back in and expecting a reward for turning the money back. The facts are, I back what he was trying to read there, because I read that beforehand. I went over and studied it and I was there when the truck that didn't have anything to do with the Seminole Indian drive went in there to build that structure. It doesn't bother my sight line I have to admit that because I am across the street. But if I was on that side of the street it would. There is a reason for the twenty-foot-setback which we all go by. There's no one else in the neighborhood that has violated the twenty-foot-setback that I know of and there's no plans to. We don't live in an HOA, ok we kinda self-govern each other and we ask when you don't know you ask. So, it's all I've got to say thank you very much.

**Chair McVety** I just want to say they can have a tiki hut as long as they made the twenty-foot setback. The only problem here is four foot six of the tiki hut just so you know. We are only here to approve four-foot six of the tiki hut.

**Mr. Garbacz** yeah.

**Chair McVety** so they could cut four-foot six off and still have a tiki just so everyone here knows. We're not making them take the tiki hut down no matter what.

**Mr. Garbacz** thank you.

**Chair McVety** correct Shaun.

**Mr. Cullinan** correct that would be an allowed structure, if it has been built or is modified by the Native Americans of Seminole Tribe it would not need the building permit but it would still need zoning to meet setbacks.

**Denise Garbacz, I am the neighbor across the street again. Mrs. Garbacz** said I don't, I just want to make sure this. Has this tiki hut been inspected? I am fine with just moving it back four-feet or four-feet six inches back. Does this building been inspected at all?

**Chair McVety** by the Florida building code as long as the Seminole Indians approve it or build it, it does not need any permit structurally, and only needs a zoning permit for placement.

**Mrs. Garbacz** I just have a question about whether those pilings are actually four feet in the ground which is what the Seminole Indians call for and I'm not and I just want to make sure because I'm the house across the street and I'm the house that's gonna get hit with those pilings if it ever comes out. That's right in the back side of a hurricane we've had three and we're still fighting from Ian. I don't think I can just take it.

**Chair McVety**, and Mrs. Garbacz have a small discussion.

**Steve Cornwell, I live at 165 Morgan Lane. Mr. Cornwell** said I like to oppose the variance and my reasoning is that these codes and these setbacks were in place for a reason. I don't like that someone can just build one and come back and ask for forgiveness. That's just not the way that things work.

**Chair McVety** and the pool deck, you oppose the tiki hut.

**Mr. Cornwell** the pool deck I don't have a real problem with it sits down there. It's not going to be an impairment to everybody. The tiki hut, build it per the code the contractor that built it if he told you that it was fine. Then it's his responsibility to make it fine. That's my whole thing, I really think that it should be subject to wind loading, engineering surveys but we can't do that, and I understand that. I have a dock and I saw them put my pilings into the ground and they were down, I asked them why the poles were so darn long, and he said they have to be so much below the grade. I saw him drive those poles down in there and there is a lot of pole underneath the grade of the canal. That's just my points.

**Carol McCormack, I also live in Grassy Point Sailing Community. Ms. McCormack** said which is the community we're discussing, and I happen to serve as the President of their civic association. The concern that I am bringing before you is not the pool itself as you stated. The pool is actually within the measurements that it needs to be in. It's the pool deck, the pool deck is in the ground. We don't have to worry about that deck, the pool deck taking to the air. The issue then becomes simply the Chickee hut, the Chickee hut is what was built by the current owners and nothing else. So, that really should be the only thing that is of concern in this situation. Anybody else would reasonable say we should approve the pool and decking. But the Chickee hut was built without the appropriate variances. There is regress to be able to have from the owners. The builder did it, the contractor did it, so simply going back to the contractor and stating you did something incorrectly and you must fix it at your expense. This is typically what we do whenever there is anything that is not built to code. I've had that happen thank goodness because of Charlotte County's inspectors. I've had two builders who were on the list of wind mitigation for the State of Florida. My safe Florida home both of them did something incorrectly. The inspector came back and at their expense they fixed it. My suggestion is not the fault of the

neighbors let's give them the benefit of the doubt or the other neighbors let's give them the benefit of the doubt. But the contractor is the one at fault, don't approve the variance and have them go back and have the contractor move it to where it's supposed to be thank you.

**Brick Rule, I am the neighbor directly to the southeast we share the seawall.** Mr. Rule said I am a certified building contractor and I'm always interested in when I don't have to follow the rules because I do spend a lot of time and effort trying to follow the rules and stay current. I haven't heard anything or any significance that this was actually built by the members of the Seminole tribe that the building code requires. I am talking about receipts or invoices or something that proves that, that affiliation. I just like to add that this does, this is a big structure, it's tall and it does affect my view to the North.

**Unknown name,** says I am the neighbor next door to this, and we had submitted information, facts, pictures.

**Chair McVety** sir, were not here about who built it we're only here about the location. A discussion takes place between the both of them.

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

#### **Rebuttal**

**Mr. D'Amico** the expert contractor, if you knew anything about construction it's just what's in the ground that is part of the variance, has nothing to do with the canopy. He is just upset because his line of sight has been interrupted. I appreciate that we rectified that with a six-foot privacy fence. So, he will be looking at fence from now on rather than my chickee hut. We prefer not to do any alterations at all, but we acquiesce to the board's decision.

**Mr. Vieira** Shaun, can you enlighten me about Seminole Tribe construction etc. what their requirements are, how they operate?

**Mr. Cullinan** I can do my best I'm not an expert in that area. My understanding of that is that there is a provision in Florida building code that states that any Chickee or Tiki hut built by members of that. I don't know if that include subs what ever the actual person that's a member, I don't know that. If they build it, it is not subject to the Florida building code standards. So, there are no standards for its construction. They do not have to pull permits, that is my understanding of it. They do need to pull zoning permit for location. Because under our code it's still considered to be an accessory structure, still has to meet setbacks, all of those things. But they do not have to, my understanding again I maybe corrected by my building official. I don't believe they have to meet any specific wind load requirements, anything like that because it's built by the tribe's people.

**Mr. Vieira** so if we come four-feet closer to the home, we wouldn't even be here. Other than talking about the pool deck.

**Mr. Cullinan** correct, and roof overhangs are allowed to encroach five feet into required setbacks. So, the overhang if the poles were right at the twenty-foot, the roof overhang portion of it could encroach five-feet into the required setback as well.

**Mr. Vieira** so again they can have the tiki hut if they were to put it twenty-foot from the property line and have the zoning permit.

**Mr. Cullinan** that is correct sir.

**Ms. Beyer** we are talking about the poles driven into the ground not the thatching or the roof which isn't a perfect spot. It's encroaching .4 feet.

**Chair McVety** the overhang's ok. The whole thing is four-foot six to close to the seawall. So, the whole thing was built closer to the house, we wouldn't be here today.

**Ms. Beyer** again the poles were moved closer to the house.

Elizabeth Nocheck presented the recommended conditions for the petition.

### **Board Member Comments and Questions**

**None**

***ACTION: A motion was presented by Nichole Beyer and seconded by Steve Vieira that Petition VAR-23-028 be APPROVED based on the Community Development Staff Report dated January 3, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance with three conditions recommended by staff.***

***Motion was approved with a 3-2 vote with the following three conditions:  
(Mr. Filieo and Mr. Rouse voted against this approval)***

1. The variances, as approved by the Board of Zoning Appeals, are: **(a)** to reduce the required 20-foot rear yard setback by 6.4 feet to allow a 13.6-foot rear yard setback, to allow an existing swimming pool to remain "as-is," and **(b)** to reduce the required 20-foot rear yard setback by 5.4 feet to allow a 14.6-foot rear yard setback, to allow an existing chickee hut to remain "as-is."
2. The variances shall only apply to the swimming pool, pool deck, and chickee hut, as shown in the documents submitted with this application. If a pool cage is constructed at a later date, the variance allowing a 13.6-foot rear yard setback shall also apply to the pool cage.
3. If the swimming pool, pool deck, or chickee hut is removed or replaced, the applicable 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, future pool cage, or chickee hut.

### **VAR-23-029**

Edward Cruz, representative for WAWAWERAH LLC, is requesting two variances: (a) to reduce the required 20-foot rear yard setback by 11 feet to allow a 9-foot rear yard setback, and (b) to reduce the required 10-foot rear peripheral landscape strip by 1 foot to allow a 9-foot rear peripheral landscape strip, for a new swimming pool, in the Manasota Single-family-3.5 (MSF-3.5) zoning district. The property is located at 4500 Russell Road, in Englewood, and is described as Lot 1, of the Pelican Shores Subdivision, located in Section 02, Township 41 South, Range 19 East.

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

### **Applicant Presentation**

**David Waldren, applicant, said I am one of the partners of LLC WAWAWERAH and I have been sworn in. Mr. Waldren said I just want to for the record just acknowledge that I am a full-time resident of**

Tampa, Florida. My business partner is a full-time resident of Chicago, Illinois. He could not be here today, so I am speaking on his behalf. We both have been business partners for over twenty-years. We both have bought homes in Manasota Key, and we are both planning to live in the houses full time, permanently in the next few years once our kids are both in college and on their way. We find that the property has it's designed the parallel gram shape doesn't really do much justice. The back yard is not useable for any service and the addition of the pool would solve a number of issues that we would like to have addressed. Can answer any questions, and we are not putting a tiki hut on the property either so.

***Chair McVety opened the meeting to Public Comments.***

**Public Input**

**Damian Ochap, I am the president of South Manasota Sandpiper Key Association on Manasota Key. I have been sworn in.** Mr. Ochap said the Manasota and Sandpiper Key overlay code was put in place to protect the health, safety and welfare of the residents living on the key. It supersedes the Charlotte County code to address planning and zoning issues unique to the barrier island. As you know we get periodic heavy rains and most recently two major storms that caused a lot of flooding. We have many small lots, and the existing minimal setbacks of ten-feet on each side, peripheral landscape buffers and twenty-foot rear and a twenty-five-foot front carefully balance the placement of buildings and accessory buildings on these lots. With the need to maintain areas for water run off and retention and to avoid development on one property pushing run off onto adjacent properties with adverse impacts. The code allows for a variance to address hardships such as new buildings on corner lots which have greater setbacks from the roads. So, reducing the setback a little on the opposite side is acceptable and expected. Just because a property owner wants to build or expand structures and accessory structures such as pools and decks into a required setbacks does not constitute a hardship. We oppose granting these variances they could lead to more exceptions. We have a restricted overlay code beyond Charlotte County's code to prevent these types of changes. It would set a precedent which we may not want to grant across the board. The lot is irregular in shape it is 10,287 square feet as mentioned under the 12,445 minimum lot size for the MSF 3.5 zoning. The applicant is requesting reducing the twenty-foot setback by eleven-feet to nine-feet, that is a substantial encroachment that is not warranted if it is for a pool or any other non-essential use. The applicant is requesting a variance to encroach one-foot into the ten-foot side setback for a swimming pool. The owner presents a written letter from his doctor due to a heart condition. As mentioned, if you look up the applicant this is not his residence. He lives somewhere else. What is interesting is that the structure in question is being rented on a VBRO for the coming season. This house is listed as a four bedroom that sleeps ten on VBRO neighbors have called this a party house due to the many rentals. I would like to submit for the record an image from the VRBO website on this to show that again that this is not a residence, but it is a rental property. We are asking that you deny this variance request at this time thank you.

**Ms. Nocheck** for the record we will label this as exhibit I.

**Chair McVety** I am sorry what did you say.

**Ms. Nocheck** the handout that is being distributed right now will be labeled exhibit I for the record.

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

### **Rebuttal**

**David Waldren** yes, we did buy the property in 2022 we are currently renovating the property. We bought a second property on the same development at 4090 Pelican Shores. We are going to be full time residents in the interim until my daughter is finished high school. Which is in two more years and my business partner's son is in college which is two more years. We will be renting it sporadically; it is not a party house. We have very few rentals as it is. I personally use the house more than anyone, as I come down at least once or twice every month to use the house with my family and dogs.

Elizabeth Nocheck presented the recommended conditions for the petition.

### **Board Member Comments and Questions**

**None**

***ACTION: A motion was presented by Nichole Beyer and seconded by Andrew Filieo that Petition VAR-23-029 be APPROVED based on the Community Development Staff Report dated January 3, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance with four conditions recommended by staff.***

***Motion was approved with a 3-2 vote with the following four conditions:  
(Mr. Vieira and Mr. Rouse voted against this approval)***

1. The variances, as approved by the Board of Zoning Appeals, are: **(a)** to reduce the required 20-foot rear yard setback by 11 feet to allow a 9-foot rear yard setback, and **(b)** to reduce the required 10-foot-wide rear peripheral landscape strip by 1 foot to allow a 9-foot-wide rear peripheral landscape strip, for a new swimming pool and pool deck.
2. The variances shall only apply to the proposed swimming pool and pool deck, as shown in the documents submitted with this application. The variances shall also apply to a pool cage, if constructed in the future.
3. The 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 variances' term expires.
4. If the swimming pool or pool deck 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. If a pool cage is installed at a later date, it must conform to the terms of this variance. 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-23-030**

Sloan Engineering Group, Inc., representative for Fenard Properties LLC, is requesting a variance to reduce the required 25-foot rear yard setback by 6 feet to allow a 19-foot rear yard setback, for a new commercial development, in the Commercial General (CG) zoning district. The property is located at 25240 Sandhill Boulevard, Punta Gorda, and is described as a portion of Tract A, 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.

**Mr. Vieira** the FPL right of way, I was surprised doing the research that it was listed as RSF. There is not another designation for public utility. It seems to me unlikely that this would get developed but is that what the intention is to leave it as a property that can be developed.

**Mr. Cullinan** we do have other classifications, public lands and facilities, other types of things like that. This was one because that back to one of the really old zoning maps. It was something else I believe maybe industrial; I am not sure what R-LC or IC stands for from 1979. I was just a year old. When we redid our changes, we would have put it at whatever that was. Now FPL they don't like to give up any rights that they may have in things. This is not something that is high on our radar to go and make large changes to. You're correct it probably won't be, but we have to go as the zoning is in place. Until they change it, we won't be changing it and actually we're precluded from changing. If it downgrades by state statute now due to the storm and the executive order and some of the legislation that came through. We can't change any zoning or do any land use regulation changes that would make it more burdensome to develop. Again, this is everything is based on zoning district, the zoning district so yeah, this is the only reason this is here is because it's CG immediately abutting RSF but that's why. As you heard in the analysis, we don't have many concerns on it because you're correct. It most likely won't be developed.

**Chair McVety** FPL is never giving that up.

#### **Applicant Presentation**

**Sam Medina, with Sloan Engineering Group, 150 South Woodlawn Avenue in Bartow, representative, said he was sworn in.** **Mr. Medina** said first I would just like to thank Elizabeth for a very thorough staff report. We've probably been at this project for about a year. Had pre-application meetings with the county and it was only discovered at the time of our site plan submittal that there is another line that this isn't directly shown in the county's setback table. It sits in another little, so we have obtained a county utility approval and county stormwater approval for this project. We are looking to develop this project as soon as possible even construction within ninety days. Assuming we obtain your approval here today. As Elizabeth said the DG market is a relatively new concept this will be the first one in Charlotte County. It caters to the grocery needs of residents, we specifically targeted this property trying to capture residents traveling toward Kings Avenue and the busy intersection that exists there at Sandhill. We did look at some smaller prototypes, unfortunately the smaller prototypes do not have that produce, meat component and there not considered markets. Again, this is a new concept, I am happy to answer any questions that may come up.

**Chair McVety opened the meeting to Public Comments.**

#### **Public Input**

No one spoke for or against this request.

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

**Chair McVety** how much of the building were we able to cut off at a forty-five-degree angle to make it work I am just curious.

**Ms. Nocheck** if you look here on your screen the site plan, they provided they show this little area. It's a little hard to see, I apologize this red line this is the area. It's just within those red parallel lines.

**Chair McVety** it's crazy because there's power lines beyond that line.

Elizabeth Nocheck presented the recommended conditions for the petition.

### **Board Member Comments and Questions**

**None**

***ACTION: A motion was presented by Steve Vieira and seconded by Turner Rouse that Petition VAR-23-030 be APPROVED based on the Community Development Staff Report dated January 3, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance with 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 25-foot rear yard setback by 6 feet to allow a 19-foot rear yard setback, for a new commercial development.
2. The variance shall only apply to the proposed commercial building, as shown in the documents submitted with this application.
3. The 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 proposed commercial building is constructed and at a later date 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 commercial building.

### **SE-23-034**

DeShane Billings, representative for Billings Septic Service LLC, is requesting a special exception to allow outdoor storage for a building trades contractor, in the Commercial General (CG) zoning district. The property is located at 424 Sally Street & 425 Dexter Street, in Port Charlotte, and is described as Lots 17 & 2, Block 1086, of the Port Charlotte Subdivision, Section 16, located in Section 01, Township 40 South, Range 21 East.

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

### **Applicant Presentation**

**DeShane Billings, representative for the applicant, said he was sworn in.** Mr. Billings said I just want you to know a little about myself. I worked for a septic company for ten years down here, Miller Brothers out of Sarasota. I since then worked for them, got my license finally after three years. I started this company three years ago, and the equipment that I have, I started out renting equipment, then finally obtained as I went along. As you see I got bigger and so I need some place to call Billings Septic home. The biggest thing is I serve Charlotte County and North Port. So, this was a good spot for us in

the middle of both counties. I just need a place for Billings Septic to call home, I think that using both lots was good for me. But other than that, I think that's it.

***Chair McVety opened the meeting to Public Comments.***

**Public Input**

**David Fowler, I live on 17122 Toledo Blade Blvd., I have been sworn in.** Mr. Fowler said I do wish you the best luck. My wife and I moved down here a few years ago. I still work remotely for the United States Coast Guard. I live at the edge, is it possible to get the google map back up there. Ok if you see where Toledo Blade is and Orion, I live at Toledo Blade and Orion on those two lots that are there. You can tell it now, because it's the only house left on the block with a tarp on the roof. So anyway, my concern is I believe Ms. Nocheck you said you referred to this as the contractor corridor, it certainly is. Geddes Avenue kinda is the dividing point between the residential and the commercial industries. It's not uncommon at all on the side streets. Particularly the ones involved to have trucks lined up in the morning and waiting to get in. A lot of traffic people leaving work at night. My wife won't even walk our dog along that road anymore because with all the contracting that's been coming in since Ian. The roads are in disrepair, there is a lot of potholes. I have seen a few people obey the speed limit on these side roads generally not and I think it's gonna add considerably to the traffic there. With ten additional items, also I think when I was reading the report on your website. It said there was no residents in the surrounding area, I am not sure what surrounding area means. I know that at the intersection of Geddes and Sally Street, there has been a house for sale for approximately a year. In addition to that right across the street from that there are five different lots that have been cleared. Besides that, there is a church there which I didn't see mentioned and the church has a playground. The church has a playground, the church is used on Sundays, Mondays, and Wednesdays it's a nice church. I've been there a few times. But from my house I can hear the kids playing outside. I also didn't see addressed; I missed the environmental component on this too. But I'm not sure whether or not there will be at the end of the day if there done on a job. Is there septic stuff that comes back preventing if there's septic stuff there if there is any septic discharges. It seems to me that would pose a health safety or welfare concern to the general public who live in this area. I guess my time is up so that's all I have to say thank you.

**Rebuttal**

**Mr. DeShane** I can understand his concerns I get that. To address the septic part, the tanks we go down to Charlotte County and empty our trucks down there. The soils from the actual drain fields that we take out are taken to the dump right away. There never brought back to the site. Right now, as far as no traffic, I rent right around the corner from here. So, there's gonna be no more traffic than what there's already involved. Yeah, I rent right around the corner that's where all my equipment is now currently.

**Chair McVety** I think we approved another septic company.

**Mr. DeShane** I'm right next door to them.

**Chair McVety** SOS or something.

**Mr. DeShane** SOS, here is SOS they got four lots. Then there is one between us, then there's my lots. His son, Septic Tank Man is right kiddie corner in front of me. I just wanted you to know that. There's no more additional traffic what's already there really. There's no septic brought back there. New pipe,

tanks that are new will be, for storage for us not to have to travel all the way to TWC where else to get it. It will all be right there convenient.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

#### **Board Member Comments and Questions**

**None**

***ACTION: A motion was presented by Andrew Filieo and seconded by Steve Vieira that Petition SE-23-034 be APPROVED based on the Community Development Staff Report dated January 3, 2024, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with eleven conditions recommended by staff.***

***Motion was approved with a unanimous vote with the following eleven conditions:***

1. The Special Exception, as approved by the Board of Zoning Appeals, is to allow outdoor storage for a building trades contractor 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 debris, semi-trucks, or hazardous materials is prohibited.
4. A "Type D" Landscape Buffer with an eight-foot-tall sight-obscuring (opaque) fence or wall, shall be constructed and planted around the perimeter of the area to be used for outdoor storage, as shown on the **Concept Plan** (Exhibit G), provided by the applicant. The use of chain link fencing as part of the required buffer is prohibited.
5. Materials stored in stacks or piles shall not exceed eight (8) feet in height.
6. Any perimeter outdoor lighting shall be directed towards the interior of the property.
7. Any future building(s) shall meet or exceed all applicable Commercial Design Standards set forth in Chapter 3-5, Article XXIV, as may be amended.
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. The outdoor storage use shall be limited to vehicles, equipment, and materials owned by the business(es) operating on subject property. Storage spaces may not be leased or sold to other individuals or businesses.

10. This Special Exception is granted for a term of three (3) years from the date of approval from the Board of Zoning Appeals; however, the Special Exception shall not expire if the owner commences the proposed development on or before the Special Exception's term expires.
11. Any major changes or additions to this special exception shall require a modification of the special exception. A change in type of outdoor storage shall require a modification of the special exception. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

**IX. Public Comments –**  
None

**X. Staff Comments –**

**Ms. Nocheck** our next meeting is on February 14<sup>th</sup> and my Valentine's gift to you is that we only have one petition, we have one variance.

**Chair McVety** February what?

**Ms. Nocheck** February 14<sup>th</sup>.

**XI. Election of Officers –**

- Chair
- Vice-Chair
- Secretary

**Asst. Co. Atty. David Thomas** I like to open up the floor for nominations for the office of the chair.

**Mr. Vieira** moved to nominate Mr. McVety for Chair, seconded by Mr. Rouse, motion passed with a unanimous vote.

**Mr. Filieo** moved to nominate Mr. Vieira for Vice-Chair, seconded by Mr. Rouse, motion passed with a unanimous vote.

**Mr. Vieira** moved to nominate Ms. Beyer for Secretary, seconded by Mr. Rouse, motion passed with a unanimous vote.

**XII. Next Meeting**

*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, February 14, 2024, at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 12:09 p.m.

Respectfully submitted,  
Kimberly Sargent, Recorder  
/kas

  
\_\_\_\_\_  
Blair McVety, Chair

Approval Date: \_\_\_\_\_

*2-14-24*