

**MINUTES**  
**CHARLOTTE COUNTY BOARD OF ZONING APPEALS**  
**Wednesday, September 10, 2008 - 9 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)*

**Members Present**

Bill Coy, *Chairman*  
Tom Thornberry, *Vice-Chair*  
Bob Stout, *Secretary*  
Ed Hittson  
Audrey Seay

**Staff Present**

Derek Rooney, *Assistant County Attorney*  
Nicole C. E. Dozier, *Zoning Official*  
Ken Quillen, *AICP, Planner III*  
Barbara D. Watkins, *Recorder*

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**I. Call to Order**

*Chairman Coy* called the September 10, 2008 meeting of the Board of Zoning Appeals to order at 9 a.m.

**II. Pledge of Allegiance**

*Chairman Coy* 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**

*Barbara Watkins* swore in all persons who wished to provide testimony.

**V. Approval of Minutes**

**ACTION:** *A motion was presented by Bob Stout and seconded by Ed Hittson to approve the minutes of the August 13, 2008 meeting of the Board of Zoning Appeals as written. Motion carried unanimously.*

**VI. Disclosure Statements**

Ex-parte forms indicating site visits concerning the petitions being presented before the September 10, 2008 Board of Zoning Appeals meeting were submitted.

**VII. Introduction of Staff/Comments**

*Chairman Coy* introduced staff. *Nicole Dozier, Zoning Official, Attorney Derek Rooney and Chairman Coy* 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 August 26, 2008: The following petitions were advertised on August 26, 2008: SE-08-29; SE-08-30; SE-08-31); SE-08-32***

**Petition #SE-08-29**

Thomas Beddard of Lady Moon Farms is requesting a special exception to allow housing for farm labor in an Agriculture General (AG) zoning district. The property address is 47270 Bermont Road, Punt Gorda, Florida and is described as Parcel P3 in Section 36, Township 40 South, Range 26 East. The property contains +/- 167 acres.

*Ken Quillen* presented general information and staff findings for the petition.

*Amjad Sitti, PE, Sitti Engineering Group*, representing the applicant, appeared before the Board to further present the petition, with assistance from the owners, traffic engineer and the contractor for the project. He provided a Power Point demonstration to assist with his detailed presentation/discussion. He noted that the proposed structures are permanent buildings which meet all the building and hurricane codes. They believe all of the County's criteria and standards have been met and they agree with staff's findings and recommended conditions.

*Ed Hittson* asked if the farm laborers are going to be driving cars to which the response was no. Shuttle service will be provided for them.

*Tom Thornberry* asked where the children will go during the day. *Mr. Sitti* responded that there will be no families residing on the farm, only workers...the units will not have families in them. Discussion ensued.

*Thomas Beddard*, owner of the Lady Moon farming operation, stated that the reason for the change from domestic workers to migrant workers is that he utilizes the Federal H2A Program, a program for agricultural workers. He explained exactly how this high-standard program functions in employing farm workers. The farm operation contracts with the H2A program in Mexico.

*George Dykstra*, the contractor for the project, explained how the buildings are more structurally sound than concrete block and that they meet all the hurricane standards. He explained that with this style of construction, a hip roof, as recommended, cannot be used. He assured that the building is engineered for 150 mph winds. In his opinion, a hip roof would cause a problem.

*Audrey Seay* questioned the length of time that the migrant families are separated. *Thomas Beddard* responded that it is for (8) months and that, yes, it is a hardship, but it is lucrative for them as well and is completely voluntary on their part.

*Audrey Seay* commented that there is a very high number of unemployed people in Florida and asked if the farming operations consider hiring locally. *Mr. Beddard* explained that he has been in the business over 20 years and due to the physically hard labor involved in farm work, domestic workers will just not do the work...but noted that the opportunity is available to them...the jobs are always advertised. *Kathy Lyden*, Sunshine Engineering, shared with the Board her conversation she had with Sister Kathy Buster of the Diocese of Venice who is very involved with the H2A program, including how it functions and some background on migrant workers. Regarding the concerns raised about increase in crime, *Kathy Lyden* noted that Sister Buster pointed out that there is very little trouble or crime at work locations.

***Chairman Coy opened the meeting to Public Hearing.***

***There being no requests to speak for or against the petition, the Public Hearing was closed.***

Ken Quillen presented the analysis, conclusion and recommended conditions for the petition.

**Board Member Comments and Questions - None**

**ACTION:** A motion was presented by Audrey Seay and seconded by Bob Stout that SE-08-29 be APPROVED based on the Growth Management Staff Report dated September 2, 2008, the evidence presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception, with the following conditions:

1. This special exception is for the establishment of "housing for farm labor" for no more than 96 individuals, and extends only to the area included in the Site Plan submitted with this application.
2. The site plan presented by the applicant as part of the petition is for illustrative purposes only. However, the "housing for farm labor" must be developed substantially in accordance with the plans submitted with this application and as proposed in the application, and must include three separate residential buildings with two individual units in each building, and kitchen and bathroom facilities located in each individual unit. All required permits must be obtained prior to construction of any of the proposed residences.
3. The owner is required to obtain Development Review Committee (DRC) site plan approval for all phases of development of these residences prior to issuance of any building permits and construction of each phase of development of this housing for farm labor.
4. The owner is required to provide, install and maintain a minimum of 15 Live Oak shade trees, each being a minimum size of three-inch caliper, and planted at the locations shown on the sketch labeled Proposed Shade Tree Locations.
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.

**Discussion:**

- Tom Thornberry stated in detail that he is going to oppose the petition because he does not see any advantage for Charlotte County. He does not feel that criteria #6 has been met.
- Bill Coy commented that he had an opportunity to visit Lady Moon Farms a few years ago and he was very impressed with its operation and the workers and does not feel approving the petition will be a problem.
- Audrey Seay commented that the farm workers are aware of what they are getting into when they come to perform this type of work. The local workers will not apply for these jobs.
- Ed Hittson commented that he shares Tom Thornberry's concerns and does not feel this type of operation is conducive to the safety of the community.

**Motion carried 3-2 (Thornberry and Hittson opposed).**

**Petition #SE-08-30**

Charlotte Honda-Volkswagen is requesting a special exception to allow three wall signs totaling 65 square feet in an Industrial Light (IL) zoning district. The property address is 1252 Tamiami Trail, Port Charlotte, Florida and is described as Lots 7, 8 and 9, Block 5, Port Charlotte Industrial Subdivision, in Section 07, Township 40 South, Range 22 East. The property contains +/- 292,000 square feet.

*Ken Quillen* presented general information and staff findings for the petition.

*Jim McKinnen*, *Gulf Coast Signs of Sarasota*, representing the applicant, appeared before the Board to further present the petition. He stated they agree with staff's findings and recommended conditions.

*Bill Coy* stated that the current sign is hard to see until you get close to the business.

***Chairman Coy opened the meeting to Public Hearing.***

***There being no requests to speak for or against the petition, the Public Hearing was closed.***

*Ken Quillen* presented the analysis, conclusion and recommended conditions for the petition.

**Board Member Comments and Questions - None**

***ACTION: A motion was presented by Tom Thornberry and seconded by Bob Stout that SE-08-30 be APPROVED based on the Growth Management Staff Report dated September 2, 2008, the evidence presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception, with the following conditions:***

- 1. This special exception is to allow three secondary class "A" wall signs on the Volkswagen dealership building, not to exceed 65 square feet in area, as indicated on the sign drawings submitted with this application. Any proposed additional future secondary class "A" wall signs for this building will require a modification of this special exception.***
- 2. The existing wall signs located on the Honda dealership building are permitted and allowed to remain "as is". Any additional or future secondary class "A" wall signs for the Honda dealership building will require a modification of this special exception.***
- 3. The third "primary class "A" sign" that reads: "USED CAR BARGAIN LOT" shall be removed from the property prior to issuance of any new sign permits for this property.***
- 4. Any primary class "A" signs that comply with all of the requirements of the sign code shall be permitted.***
- 5. The site plan presented by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of the proposed commercial business and all associated signage.***

***Motion carried unanimously.***

**Petition #SE-08-31**

Steven and Maria Mishkind are requesting a special exception to allow a guest house in a Residential Single-family-3.5 (RSF-3.5) zoning district. The property address is 4680 Riverside Drive, Punta Gorda, Florida and is described as Lots 2 and 3, Block 7, Cleveland Subdivision; a part of Lot 3, Block 13, Cleveland Subdivision lying north of Riverside Drive; a portion of vacated First Street and a portion of vacated Front Street all in Section 34, Township 40 South, Range 23 East. The property contains +/- 2.9 acres.

*Ken Quillen* presented general information and staff findings for the petition.

*Steven Mishkind, 4680 Riverside Drive*, the applicant, appeared before the Board to further present the petition. He stated he agrees with staff's findings and recommended conditions.

*Tom Thornberry* asked *Mr. Mishkind* whether the streets shown on the map which go through his property have been vacated and that he now owns the entire property. *Mr. Mishkind* responded yes, they own the entire property.

*Audrey Seay* asked whether water and septic services will be provided to the guest house. *Mr. Mishkind* responded yes.

***Chairman Coy opened the meeting to Public Hearing.***

***There being no requests to speak for or against the petition, the Public Hearing was closed.***

*Ken Quillen* presented the analysis, conclusion and recommended conditions for the petition.

**Board Member Comments and Questions - None**

***ACTION: A motion was presented by Tom Thornberry and seconded by Audrey Seay that SE-08-31 be APPROVED based on the Growth Management Staff Report dated September 2, 2008 , the evidence presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the special exception, with the following conditions:***

- 1. The special exception as approved by the Board of Zoning Appeals is to allow a guest house, not exceeding 2,000 square feet in area, as that term is defined in Section 3-9-2 of the Zoning Code of Charlotte County, Florida.***
- 2. The guest house must be located on Lot 2 of Block 7 so that it would comply with all the setbacks requirements of code as if Lot 2 was a separate free standing lot.***
- 3. The Boundary Survey presented by the applicant as part of the petition is for illustrative purposes only. All permitting procedures and codes are applicable to the construction and operation of the guest house as an accessory use to the principal single-family residence.***

***Motion carried unanimously.***

**Petition #SE-08-32**

Peace River Landing LLC, is requesting a special exception to allow an adult congregate living facility in a Residential Multifamily-10 (RMF-10) zoning district. The property address is 6131-6171 Scott Street, Punta Gorda, Florida and is described as Lots 8, 9, 10, 11, 12, 13 and 14, Block W, Jacks Replat of LaVilla Subdivision in Section 05, Township 41 South, Range 23 East. The property contains +/- 1.5 acres.

*Ken Quillen* presented general information and staff findings for the petition.

*Ed Hittson* asked if *Ken Quillen* and *Nicole Dozier* are considered expert witnesses, to which the response was yes. He also asked how many persons are considered residents of a dwelling unit; *Mr. Quillen* responded that the average for multi-family is 1.3 residents per dwelling unit and for single family residences in Charlotte County, it is approximately 1.9...for this example, it was rounded up to 2.

*Wayne Sallade, Director of Emergency Management for Charlotte County, and a Court Certified Hurricane Expert,* appeared before the Board and strongly emphasized that the thought of putting 100 elders on the banks of the Peace River is unconscionable, and the thought of relying on someone else to get them out of the facility during a disaster makes it all the more difficult. He further explained in depth why this area is an extremely "at risk" area, stating nothing can be done to flood-proof this proposed site from storm surge inundation.

*Ed Hittson* commented that he recalled a considerable rain event in June and how it flooded the area. *Mr. Sallade* stressed that in this situation, he's not concerned about the flooding, rainfall events are not impactful at all, but the real concern is the rising tide potential (storm surge) resulting from a hurricane. *Ed Hittson* asked *Mr. Sallade* if he feels that the State standards for evacuation are adequate to protect individuals from living on this site...*Mr. Sallade* responded no.

*Attorney Geri Waksler,* representing the applicant, appeared before the Board to further present the petition in depth. She emphasized that this proposed facility is not a nursing home, but an adult congregate living facility; the residents are mobile and will reside in individual apartments with kitchenettes and a community dining area. The individuals are not frail, but may need a little assistance. *Attorney Waksler* reviewed and commented on each of the standards. Exhibits I and II were distributed for the record which represent the storm surge areas. In response to the comment by *Mr. Sallade* regarding evacuation in the event of a disaster, *Attorney Waksler* stressed that any facility of this type is required to have a emergency management action plan. *Attorney Waksler* stated that South County deserves to provide an adult congregate living facility; this site can provide this opportunity. They respectfully request approval of this petition. They accept the recommended conditions, excluding the denial.

*Tom Thornberry* reiterated that the County suggests that an ACLF not be located in this area.

*Wayne Sallade* provided clarification to some of the comments/statements made during the discussion:

- East Marian Avenue is inbound to the City of Punta Gorda and is certainly not an evacuation route;
- Olympia Avenue which leads out of the City is not designated as an evacuation route because of its proximity to the water;
- The hospital located across from the proposed site today will not be there in a Category 1 hurricane.

- Vertical evacuation within the proposed structure being an acceptable mode of protection for the residents was abandoned long ago as a plan.
- The County will not provide emergency evacuation for this proposed ACLF; the facility is required to have its own evacuation plan. It does, however, provide emergency evacuation for residents who are “registered special needs”.
- Facilities that are mandated by law to have in place an evacuation plan will not receive County evacuation assistance in the event of a disaster.

*Attorney Waksler* responded to the vertical evacuation comment made making it very clear that it would not be part of their approved plan...it would only be utilized during an unanticipated flood event. If a storm is expected and there is the potential for a storm surge, the facility’s emergency plan would be put into action and that would not include vertical evacuation. She emphasized that if the residents do not have their own transportation, the facility is required to provide transportation within their plan. She commented that it is mandated that an emergency plan has to be submitted to and receive approval by County’s Emergency Management prior to the State giving the facility a license to open its doors.

*Ed Hittson* referred to the Comp Plan and this proposed project being consistent with the plan and asked *Attorney Rooney* if he concurred with staff’s comments. *Attorney Rooney* responded. *Nicole Dozier* clarified that the Comp Plan states that it “recommends”, it does not state that the facility “cannot” be at this location.

***Chairman Coy opened the meeting to Public Hearing.***

***There being no requests to speak for or against the petition, the Public Hearing was closed.***

*Kevin McKyton, representing Peace River Landing LLC,* commented they would not be seeking this petition if they didn’t think it was a viable, needed facility in the area. Intense market studies have been done.

*Audrey Seay* referred to the market study that *Mr. McKyton* commented was done, and asked if this market study showed that this facility is needed at this particular site. *Mr. McKyton* responded no not at this particular site, but they liked this particular property and looked at the site being positive because of its proximity to the hospital.

*Ken Quillen* presented the analysis, conclusion and recommended conditions for the petition.

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

- *Bob Stout* commented that he has a problem getting beyond standard #6.
- *Audrey Seay* commented that it has been recommended by staff and emergency management that this petition not be approved. She has a hard time going against their recommendations. She does not agree with the petitioner to place this facility at this location and feels there is another location.
- *Ed Hittson* also has a problem with standards #2 and #5; is opposed to the petition.
- *Tom Thornberry* has a problem with most of the standards. He has complete faith in the comments made by *Mr. Sallade* and staff. The Comp Plan was written and made recommendations for common sense reasons. He is not in favor of supporting the motion, specifically #s 5 and 6.

**ACTION: A motion was presented by Bob Stout and seconded by Audrey Seay that SE-08-32 be DENIED based on the Growth Management Staff Report dated September 2, 2008, the evidence presented at the hearing and finding that the applicant HAS NOT MET the required criteria for the granting of the special exception, specifically #s 2, 5 and 6, with particular emphasis on #s 5 and 6.**

***Motion carried unanimously.***

**IX. Public Comments - None**

**X. Staff Comments**

*Ken Quillen announced there are (6) applications for the October meeting.*

**XI. Member Comments - None**

*Tom Thornberry announced he most likely will not be able to be in attendance at the October meeting.*

**XII. Next Meeting**

*The next meeting of the Board of Zoning Appeals is scheduled for **October 8, 2008, 9 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 11:29 a.m.

Respectfully submitted,

Barbara D. Watkins, Recorder

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*Willard Coy, Chairman/Board of Zoning Appeals*

Approved: \_\_\_\_\_