

MINUTES
CHARLOTTE COUNTY BOARD OF ZONING APPEALS
Wednesday, July 8, 2009 - 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

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

Staff Present

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

I. Call to Order

Chairman Thornberry called the July 8, 2009 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

Chairman Thornberry led the members and the audience in reciting the Pledge of Allegiance.

III. Roll Call

Roll call was taken; a quorum was present.

IV. Swearing In of Those Giving Testimony

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

V. Approval of Minutes

ACTION: *A motion was presented by Audrey Seay and seconded by Bill Truex to approve the minutes of the June 10, 2009 meeting of the Board of Zoning Appeals, with one change. On page 11 of 15, under Action, where it says a motion was presented by Bill Truex, for Petition ADM-APP-09-03, the motion was made by Edmund Hittson. Motion carried unanimously.*

VI. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the July 8, 2009 Board of Zoning Appeals meeting were submitted.

VII. Introduction of Staff/Comments

Chairman Thornberry introduced staff. Nicole Dozier, Zoning Official, Attorney Derek Rooney and Chair Thornberry made introductory remarks regarding the types of requests that the Board of Zoning Appeals would be reviewing and the standards which must be met, the notification process and how the Board of Zoning Appeals makes its decision.

VIII. New Business

The following petitions were advertised on June 23, 2009: VAR-09-09, VAR-09-10, SE-09-10, SE-09-12, SE-09-13, SE-09-14 and SE-09-15 (Petitions SE-09-10 and SE-09-12 have been continued by the applicant)

Petition #VAR-09-09

Robert Wyne is requesting a variance to reduce the required side yard setback from 7.5' to 4.0' to allow a garage addition to the existing single-family residence in a Residential Single-Family 3.5 (RSF-3.5) zoning district. The property address is 2682 Auburn Boulevard, Port Charlotte, Florida and is described as Lot 55, Block 308, Port Charlotte Subdivision, Sub-section 21, located in Section 18, Township 40 South, Range 22 East. The property contains +/- 10,000 square feet. A complete legal description and additional information are on file.

Applicant Presentation

Thomas L. Elliot, son-in-law of Robert Wyne, Applicant, said they would like to add a garage in the front of the house. The house was built in 1976 as a model. The original design had the original garage made into an office, living room area. The house does not have a garage. We would like to add a garage. The easiest way would be to add a garage most efficient, would be to go in front of the bedroom, going forward. We are not encroaching in the front, just the side.

Mr. Thornberry asked when you purchased the home in 2000, I guess you knew you were only 4 feet off the side setback?

Mr. Wyne said they found that out on the survey.

Public Hearing

Warren Ross, P.A., represented James and Marilyn Davidson, neighbors who live at 2674 Auburn Blvd. They are opposed to the garage addition. The owner was aware there was no garage. He was also aware at the closing that there was a site setback issue. Mr. Ross said he has not found any record of a variance regarding the house. The house is already an illegal non-conforming structure that it is within the setback. He has not heard from anyone why this garage cannot be put on the other side of the house. He discussed some of the criteria.

There being no further requests to speak for or against the petition, the Public Hearing was closed. Mrs. Seay moved to close the public hearing, seconded by Mr. Stout, with a unanimous vote.

Applicant Rebuttal

Mr. Elliot said Mr. Wyne had a variance made and this is how they found out about the setback. The air conditioning reaching into the neighbor's property, that is false. It is right on the property line. We cannot put the garage on the other side of the house, because the septic system is on that side.

Mr. Hittson asked the owner, if he had a variance for this before?

Mr. Wyne said years ago, he came to the County because he wanted to put a pool in. At that time, he was told this setback on the house was grandfathered in.

Mr. Hittson asked Ms. Dozier if she approved a variance for this before?

Ms. Dozier replied not that she could recall. She said they should have made a correction in the report. This application should be to request a variance for the side yard setbacks for the structures together. This is a non-conforming structure. If you put an addition on to an existing non-conforming structure, it is no longer non-conforming. It needs to be brought into conformance.

Mr. Thornberry said this is exactly why he asked about the setback when the owner purchased the house. He said he does not know how they closed at the closing with this house in the setback being non-conforming.

Derek Rooney, Asst. County Attorney, said Mr. Ross now pointed this out. The issue now is if the variance request is incorrect, and needs to be resubmitted, no proper notice has been given for this hearing. He said this cannot be heard at this time.

Mr. Thornberry said looking at the plot plan, there are 2 places for the septic system to be located. One is where the new garage is proposed to be built. The builder chose to put it out in the front yard.

Ms. Dozier said staff will bring this back next month.

Mrs. Seay asked are you suggesting that we are not going to hear this program today. It has to be reissued?

Ms. Dozier said the reason being as Mr. Rooney stated, it was not correctly advertised. It was advertised as a side yard setback for a garage addition. It should have been advertised as a side yard setback for the existing structure in addition to the garage. Because it was not advertised correctly, Mr. Rooney has advised it should be advertised correctly and then reheard by the Board as an entire setback for the whole side of the structure.

Mrs. Seay asked then so are we doing this or is the applicant doing this?

Ms. Dozier said no we (staff) are doing this. It was our error.

Mr. Thornberry asked should we make a motion to do anything?

Mr. Rooney replied no. At this point, it will be back at the next meeting.

Mr. Thornberry told the applicant he will have to come back next month. This advertisement needs to be correct.

Ms. Dozier apologized to the applicant for any inconvenience.

Mr. Wyne said the Title people should have caught this at the closing. This application has now been continued.

Petition #VAR-09-10

David Reeves is requesting a variance to reduce the required front yard setback from 25' to 13.0' to allow a garage addition to the existing single-family residence in a Residential Single-Family 3.5 (RSF-3.5) zoning district. The property address is 4360 Point Court, Port Charlotte Florida and is described as Lot 16, McGrath Point Estates, located in Section 29, Township 40 South, Range 22 East. The property contains +/- 3.5 acres. A complete legal description and additional information are on file.

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

Applicant Presentation

David Reeves, Applicant, said we own the lot next door, but there are deed restrictions. They do not allow us to put up a garage on that lot. He said this request has gone through their architectural review board and the association approved it. We are a cul de sac. At the end of the cul de sac, we own the road and maintain it. No one in the neighborhood is opposed to this addition. The garages in our area, are any where from 3 to 6 car garages. This would not be detrimental to this area.

Mr. Thornberry asked how long have you owned the house?

Mr. Reeve replied since 2000.

Mr. Thornberry asked is that the old Bitner house?

Mr. Reeve replied yes.

Mr. Thornberry said he knows the area very well.

Chairman Thornberry opened the meeting to Public Hearing.

There being no further requests to speak for or against the petition, Mrs. Seay moved to close the public hearing, seconded by Mr. Stout. The public hearing was closed with a unanimous vote.

Mr. Thornberry said we just heard a case where the applicant wanted to put a garage on the side of the house (side property line). He said Zoning was going to approve it. In their analysis and conclusions, they were going to approve it. He said the Board already has the staff report and in the analysis and conclusions it looks like staff would like this denied. He asked are you weighing alot of your decision on the fact that they own the lot next door?

Ms. Dozier said no. The decision is based on the fact that we have an applicant with a hardship where they own a property that was actually non-conforming, regardless of whether they own the neighboring property or not. In that particular incidence, the issue was that the structure was already built and their intention was to add on to the existing structure by adding on a garage. In this case, the issue is there has to be a hardship. In this instance, we are not talking about a non-conformity and there is not a real hardship. This Board needs to decide if this applicant meets the 7 criteria that was presented by staff and based on the criteria presented, that this applicant meets the needs in order to be granted a variance in order to obtain the additional garage space that he is seeking.

Mr. Thornberry said he can appreciate that but in the first applicant's case, the home was built as a 2 car garage that the contractor decided to turn into an office. The floor is recessed 3.5 inches, it has a garage look to it and they turned it into living area and air conditioned it. That applicant in my mind bought that home because of the square foot air conditioned space, likes that and decided he wanted a garage. He had a garage already. Zoning was going to approve it with a single car stick out on the side. In my mind, the Zoning Official could have said the same thing. You have a garage, just put a garage door on it. In this case, I do not know what the hurt is.

Mrs. Seay asked if the applicant owns the property next door, their deed restrictions (which we have nothing to do with) doesn't allow them to put this garage on that property, but if this was a unified property, (one property) they could do that.

Ms. Dozier replied that is correct.

Mrs. Seay said to the applicant, I don't know what the deed restrictions allow, but my question to you is if you unified that property, then you could put that garage on there. **Mrs. Seay** asked if that was possible?

Mr. Reeves said that would be the most expensive garage, somewhere in the neighborhood of \$400,000 one car garage. He said according to the deed restrictions, no, he cannot do that either. He cannot have a detached garage on that lot or anywhere.

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

Board Member Comments and Questions

Mr. Hittson said our rules require us to take into consideration competent substantial expert testimony. We have received competent substantial expert testimony from our staff. Our staff has concluded that they failed 6 out of 7 criteria. We have had no evidence of any kind addressing the 7 criteria from the applicant. I personally do not see that there is a hardship here. He said he is not prepared to support this.

Mr. Stout said yes, there are good and valid reasons for the 7 criteria. The applicant has only met one of them. I am not in favor.

Mrs. Seay said the reason she asked about making the 2 lots one, was to try and make it easier for him to build. He has already indicated it is too expensive and cannot have that done. She is not in favor of this.

Mr. Thornberry asked if Point Court is a County maintained road? 90% of his property is environmentally sensitive. He could not build on it anyway. I don't see this room filled with any neighbors objecting he wants another garage. I don't have a problem with this request.

Mr. Truex said in trying to do something with the lot next door. They only have 68 feet in front of their lot. The lot next door looks smaller. If you section a part of that lot next door, you ruin that lot. It's a private subdivision with private roads. He agrees with Mr. Thornberry. He doesn't have a problem with this request.

The Board discussed some of the criteria for this request. The Recorder shut down for a computer update, so the meeting stopped for 5 minutes waiting for the computer to reboot.

ACTION: A motion was presented by Robert Stout and seconded by Ed Hittson that VAR-09-10 be DENIED based on the Growth Management Staff Report dated June 29, 2009, the evidence presented at the hearing and finding that the applicant HAS NOT MET #1, 2, 4, 5, 6 and 7 the required criteria for the granting of the special exception.

Mr. Truex said he wanted to point out this Board has approved other petitions that have not meet all the criteria.

Motion carried 3 to 2 (Seay, Stout, Hittson voted Yes: Thornberry and Truex voted No)

Petition #SE-09-10 (continued by applicant)

Alison Blanchette is requesting a special exception to allow a commercial parking lot in the Manasota Commercial Tourist (MCT) zoning district. The property address is 1975-1985 Beach Road and 1861-1863 Gulf Boulevard, Englewood, Florida and is described as Lots 14, 15, 16, 17 and 18, of Block 9, Chadwick Beach Subdivision, located in Section 12, Township 41 South, Range 19 East. The property contains +/- 34,000 square feet.

Petition #SE-09-12 (continued by applicant)

Bill Maddox is requesting a special exception to allow an Agricultural Exposition area (up to eight times per year) in the Agriculture General (AG) zoning district. The property is accessed through DeSoto County off of State Route 31 by taking Notts Dairy Street west three miles in Punta Gorda, Florida and is described as Part of Section 04, Township 40 South, Range 25 East. The property contains +/- 307 acres. A complete legal description and additional information are on file.

Mr. Thornberry said he is very familiar with all the Pik 'N Run sites. He has done a lot of plumbing contracting work on all the Pik 'N Runs in the area. He knows the owners but the applicant is the sign people. He wanted to disclose this.

Mr. Rooney said there is no problem with that, it is just a sign.

Petition #SE-09-13

Pik 'N Run, Inc. is requesting a special exception to allow three wall signs on a canopy in a Commercial Intensive (CI) and Commercial General (CG) zoning district. The property address is 829 Tamiami Trail, Port Charlotte, Florida and is described as Lots 22, 24, 25, 26, 27 and 28, Block 689, Port Charlotte Subdivision, Sub-section 41, located in Section 12, Township 40 South, Range 21 East. The property contains +/- 47,500 square feet. A complete legal description and additional information are on file.

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

Applicant Presentation

Diane Shaw, represented the applicant and West Coast Signs. Ms. Shaw said they are prepared to do what is needed to get the special exception today. Their intentions are to comply with the Boards recommendations to allow them to put up these new signs.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Mrs. Seay moved to close the public hearing, seconded by Mr. Stout. The public hearing was closed with a unanimous vote.

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

Board Member Comments and Questions

ACTION: A motion was presented by Audrey Seay and seconded by Robert Stout that Petition SE-09-13 be APPROVED based on the Growth Management Staff Report dated June 29, 2009, 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 the following conditions:

1. This special exception is to allow a third secondary class "A" wall sign only on the gas pump canopy as indicated on the sign drawings previously submitted with sign permits numbered 2009030469 and 2009030470 and not to exceeding 12 square feet in area. Any additional secondary class "A" wall signs proposed for

- the gas pump canopy or the principal building will require a modification of this special exception.
2. A sign permit must be obtained for the third secondary class "A" wall sign to be located on the gas pump canopy and all applicable permit fees and fines for an "after the fact permit" must be paid.
 3. The primary class "A" sign (free-standing sign) that has the "Shell" logo on top, and shown in Exhibit 3, shall be modified by removing one 2' by 7' panel so this sign complies with the 150 square foot maximum size permitted by code.
 4. A permit must be obtained for the awning that is located on the building and all applicable permit fees and fines for an "after the fact permit" must be paid.
 5. The secondary class "A" signs (building awning signs) shown in Exhibit 5, shall be modified by removing the text that reads: "Pizza-Subs-Calzones-Stromboli-Pizza-Subs" so that the awning sign reads only: "DUNKIN' DONUTS" and "PIZZA CITY".
 6. A permit must be obtained for the signs that are located on the awning and all applicable permit fees and fines for an "after the fact permit" must be paid.
 7. 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 existing commercial business and all associated signage.

Motion carried unanimously.

Petition #SE-09-14

Liane Koebler is requesting a special exception to allow a Home Occupation, consisting of a Bed & Breakfast, in a Residential Multifamily-15 (RMF-15) zoning district. The property address is 337-B Boundary Boulevard, Rotonda, Florida and is described as Lots 1059 and 1060 Rotonda West Pebble Beach Subdivision, located in Section 15, Township 41 South, Range 20 East. The property contains +/- 28,950 square feet. A complete legal description and additional information are on file.

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

Applicant Presentation

Liane Koebler, Applicant, was present. *Ms. Koebler* said she helped construct and designed this property and believes this would be an asset to the community. This will add something to the community they do not have.

Mrs. Seay asked looking at the design, you have a master bedroom on one side, and a master bedroom on the other side, and there is a 3rd and 4th bedroom.

Mr. Stout showed her the units on the diagram.

Mr. Truex said he has been in this building before. It is a very nice building.

The Board looked over the bedrooms and determined you rent out Unit A & C.

Chairman Thornberry opened the meeting to Public Hearing.

Public Hearing

Jay Lions, Manager of Rotonda West Association, said the Rotonda West Association is a deed restricted community and does not contain language that could provide opposition for the intended use by the applicant. Should this Board approve this Special Exception, the Association would request that the Special Exception be approved only for the existing footprint and square footage of the existing building. This is the only issue the Association has at this time.

Mr. Thornberry said his concern is addressed in the #1 stipulation.

There being no further requests to speak for or against the petition, Mrs. Seay moved to close the public hearing, seconded by Mr. Truex. The public hearing was closed with a unanimous vote.

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

Board Member Comments and Questions

Mr. Hittson asked if there are enough parking spaces?

Mr. Quillen said yes. He pointed to parking spaces on the diagram of the site and said he had no problem parking when he went out there for this site review.

ACTION: A motion was presented by Bill Truex and seconded by Audrey Seay that Petition SE-09-14 be APPROVED based on the Growth Management Staff Report dated June 29, 2009, 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 the following conditions:

1. This special exception shall allow a home occupation, consisting of a Bed & Breakfast with two guest bedrooms, as an accessory use in only one dwelling unit within the existing triplex.
2. The owner must continue to provide at least six paved off-street parking spaces during the operation of this home occupation.
3. This special exception, allowing a home occupation, shall be conducted according to all of the standards and conditions of Section 3-9-79 of the Zoning Ordinance.
4. Any major modification or change in the type of home occupation conducted shall require a modification to the special exception. Minor changes or additions such as accessory uses or structures may be approved by the Zoning Official.

Motion carried unanimously.

Mr. Hittson said his cousin is a President of Radio Shack and also he owns shares, and recused himself from taking part in the next case.

Petition #SE-09-15

RadioShack is requesting a special exception to allow two wall signs in a Commercial General (CG) zoning district. The property address is 3280 Tamiami Trail, Unit 360, Port Charlotte, Florida and is described as Lot 00P1, Port Charlotte Plaza Section One Subdivision, Sub-section 7, located in Section 22, Township 40 South, Range 22 East. The property contains +/- 26 acres. A complete legal description and additional information are on file.

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

Applicant Presentation

Larry Small, represented the applicant. *Mr. Small* said he agrees with the staff report and does not have any questions. He has no problems with the stipulations.

Chairman Thornberry opened the meeting to Public Hearing.

Public Input

No one spoke for or against this request.

There being no further requests to speak for or against the petition, Mrs. Seay moved to close the public hearing, seconded by Mr. Stout. The public hearing was closed with a unanimous vote.

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

Board Member Comments and Questions

ACTION: ***A motion was presented by Audrey Seay and seconded by Bill Truex that Petition SE-09-15 be APPROVED based on the Growth Management Staff Report dated June 29, 2009, 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 the following conditions:***

1. This special exception is to allow two *secondary class "A" wall signs* on the RadioShack storefront as indicated on the sign drawings submitted with this application.
2. 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.