



# MINUTES

## Charlotte County Board of Zoning Appeals

Wednesday, July 14, 2021 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:**

Steve Vieira, Secretary  
William Abbatematteo, Vice-Chair (Absent)  
Larry Fix  
Blair McVety, Chair  
John Doner

**Staff:**

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

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I. **Call to Order**

Chair McVety called the July 14, 2021 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**

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

V. **Approval of Minutes**

**ACTION:** A motion was presented by Mr. Fix and seconded by Mr. Vieira to approve the minutes of June 9, 2021 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 July 14, 2021 Board of Zoning Appeals meeting were submitted.

VII. **Introduction of Staff/Comments**

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

**VIII. New Business**

***The following petitions were advertised on June 29, 2021: SE-21-012, SE-21-013, SE-21-014 and VAR-21-002***

**SE-21-012**

Jessica Folan is requesting a special exception to allow a major home occupation, consisting of a dog grooming business, in the Residential Single-Family-3.5 (RSF-3.5) zoning district. The property is located at **3801 Palm Drive**, Punta Gorda, and is described as Lot 11, Block C, of the Tierra Coronado Subdivision, Subsection C2C, located in Section 18, Township 41 South, Range 23 East.

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

**Applicant Presentation**

**Jessica Folan, applicant**, said she was sworn in. **Ms. Folan** said she would like to open a small dog grooming business in her home. She has been a dog groomer for the past 13 years. They recently moved to this area. She is looking to have a smaller amount of dogs to groom. She's cutting back. There will be no walk ins. They will make an appointment and she has instructions telling them the dogs need to be on a lease, they must be picked up within 5 minutes from the time they are done. She provides personal and exceptional service. She would like to work at a slower pace.

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

**Public Input**

**Carrie Luft, who lives in the area, said she was sworn in.** **Ms. Luft** said she does have a dog and loves pets, but she feels there can be problems with a business in the neighborhood. She doesn't think there is enough room in the applicant's driveway. She complained about sitting water in the driveways and flooding in the area. She is against this request.

**Eligio Colon, who lives in the area, said he was sworn in.** **Mr. Colon** said he has been in the Punta Gorda area for 30 years. He said there is only one exit in this area, and there is a lot of flooding. Many times he has helped people get their car out of the flooded area. He feels if her business grows, there will be even more traffic and deliveries. He is against this request.

**Sherrie Delagardelle, who lives in the area, said she was sworn in.** **Ms. Delagardelle** said she just built her house in the past year. She didn't know what the future will hold for this business. She said they will hear barking and there is flooding in the area. She is against this request.

**Yulia Supogova, said she was sworn in.** **Ms. Supogova** said she is also a pet groomer. She said they do not use chemicals on the animals. They are biodegradable products. She said we wash our hair and clothes with chemicals. She said most dogs don't bark when with the handler, maybe when playing. She said dogs who go to high volume places, they are crated and it is more stress on the dog. It would be more relaxing this way at the house. She supports this request.

**David Johnson, who lives in the area, said he was sworn in.** **Mr. Johnson** said the first witness alerted to the fact said she represents most in the area. I live right next to this applicant and I would be the most affected. The side she will take dogs in is next to my garage. This area does not flood. We might get a little if it is a heavy rain, but this area drains quickly. I don't see a problem with a few extra cars each day. Her driveway will support 3 more vehicles. He said this is not a kennel. He supports this request.

**John Abbate, who lives in the area, said he was sworn in. Mr. Abbate** said he owns 7 lots behind her site. He lives in PGI, is a full time resident. He has plans to build 7 new homes on these lots. He said there will be an increase of traffic. The roads are not wide enough.

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

#### **Rebuttal**

**Ms. Folan** said she hears what the neighbors are saying but she wanted to clear up a few things. She doesn't want lots of traffic either. She wants to work at home so she can do less. She doesn't want to work in a shop from 8 a.m. to 8 p.m. working on 10 dogs a day. The pets will not be outside with me. They will only be out when coming and going with their owner. It is one dog at a time. I don't want a dog sitting while the next person comes in. It is very important they pick up their dog within 5 minutes. If the flooding is bad, I will cancel their appointments. I don't want danger for my clients. I use all natural shampoos. There is no chemicals. I have room in my driveway. No on street parking.

**Shaun Cullinan, Planning and Zoning Official,** said he has been sworn in. We brought these 3 Special Exceptions to you because they came in before the new Legislation Rules going into effect. In this year's Legislation Session, there was a house bill – House Bill 403 that was proposed. Regulating home based businesses (Section 559.955 of Florida Statute). It pre-empted us from regulating home based businesses any stricter than what a residence would be restricted. It has taken away home rule. That will affect many residents. It says "Local Government may not enact or enforce any ordinance, regulation, or policy to take any action to license or otherwise regulate a home based business in violation of this section" Then it goes into a number of standards but at the end of each standard there is a section that states "the regulations may not be more stringent than those that apply to a residence where no business is conducted". So for instance, if you are allowed to groom your dogs yourself, you cannot regulate or restrict from a business grooming dogs. This was a pre-emption bill that took that away. The intent was to try to increase entrepreneurship on small businesses.

**Mr. McVety** said then technically we cannot deny these petitions?

**Mr. Cullinan** said you can deny it, that is still your right. She would still be able to do it. This does not exempt her from any building code requirements. She is still required to get a business tax receipt. If you do approve this and the State law changes, we expect that a lot of citizens might be upset, and then that law could change. By granting this, they would be able to keep the special exception request.

**Thomas David, Asst. County Attorney,** said the questions you have allow Stacy Bjordahl to come up. She has an additional condition she would like to add.

**Stacey Bjordahl, Asst. County Attorney,** said in light of the recent legislation that went into effect on July 1, 2021, what we would like to do is add a condition to the proposed special exception (for this one and the other 2 you will hear) just so the applicant's rights are protected and provided for under the Statute. We suggest that language state "the applicant may submit documentation to the Zoning Official demonstrating that the use meets the criteria set forth in Section 559.995 Florida Statutes (home based businesses) and if consistent with the Statute the business may operate in accordance with the Statute."

**Asst. Co. Attorney David** said comments made by the public was related to Code Enforcement. Code Enforcement still applies. For example, if there is any other violation of the county code that we would normally enforce under the code, we will do that. There are other limitations on the use of private property that relate to the building code, none of that was pre-empted. This Statute really only touches on home based businesses, but even they have to comply with the Florida building code and all the codes relating to Fire, etc. This does not pre-empt any of those other code type activities.

**Mr. Cullinan** said just a bit more background on this bill. This bill went through committees and stopped on April 30. We are constantly tracking bills and watching new legislation go through. This was not presented to the Governor until June 28<sup>th</sup> and it was signed by the Governor on June 29<sup>th</sup> and affective July 1, 2021.

**Asst. Co. Attorney David** said he would like each applicant to state if they agree with that new condition and let us know if you are okay with that condition.

**Ms. Folan** said she agrees.

Elizabeth Nocheck presented the recommended conditions for the petition.

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

None

***ACTION: A motion was presented by Larry Fix and seconded by John Doner that Petition SE-21-012 be APPROVED based on the Community Development Staff Report dated July 7, 2021, 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 seven conditions recommended by staff.***

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

1. This special exception, as approved by the Board of Zoning Appeals, is to allow a major home occupation, consisting of a dog grooming business, as an accessory use to the existing single-family residence.
2. This special exception shall be conducted according to these conditions as well as all standards and conditions set forth in Section 3-9-74, Home Occupations, of the Land Development Regulations, as may be amended.
3. There shall be no retail sales on the premises, except via internet, phone, or mail.
4. This special exception shall apply only to the applicant. In the event of the sale of this property, change in residency, or termination of the dog grooming business, this special exception shall expire.
5. The granting of a special exception to conduct a major home occupation shall be automatically conditioned upon continued compliance with all the requirements of Section 3-9-74: Home Occupations, and all other applicable codes and ordinances. Failure of the operator to meet these requirements shall empower the BZA to revoke the special exception after notice and a public hearing.

6. Any major changes or additions to this special exception, including a change of location, scope of services, or change in the type of major home occupation conducted, 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.
7. The applicant may submit documentation to the Zoning Official demonstrating that the use meets the criteria set forth in Section 559.955 Florida Statutes (Home-based Businesses), and if consistent with the statute, the business may operate in accordance with the statute.

### **SE-21-013**

Alexander Castaneda is requesting a special exception to allow a major home occupation, consisting of a pet grooming business, in the Residential Single-Family-3.5 (RSF-3.5) zoning district. The property is located at **22080 Belinda Avenue**, Port Charlotte, and is described as Lot 14, Block 2787, of the Port Charlotte Subdivision, Section 33, located in Section 14, Township 40 South, Range 22 East.

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

### **Applicant Presentation**

**Yulia Supogova, applicant**, said she was sworn in. **Ms. Supogova** said they have 3 small children and it would be beneficial to have a slower pace and pay as much attention to our children, having the business at home. She has been a groomer for 7 years. Having the business at home, would have less stress on her.

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

### **Public Input**

No one spoke for or against this request.

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

Elizabeth Nocheck presented the recommended conditions for the petition.

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

**Mr. Vieira** said looking at how many dogs she may work on during the day, this could go until 8 p.m. He asked if the hours of operation could end at 4:00 p.m.?

**Ms. Supogova** said that is fine.

***ACTION: A motion was presented by Steve Vieira and seconded by Larry Fix that Petition SE-21-013 be APPROVED based on the Community Development Staff Report dated July 7, 2021, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with nine conditions recommended by staff.***

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

1. This special exception, as approved by the Board of Zoning Appeals, is to allow a major home occupation, consisting of a pet grooming business, as an accessory use to the existing single-family residence.
2. This special exception shall be conducted according to these conditions as well as all standards and conditions set forth in Section 3-9-74, Home Occupations, of the Land Development Regulations, as may be amended.
3. There shall be no retail sales on the premises, except via internet, phone, or mail.
4. There shall be no pet boarding, pet daycare, or pet training conducted on the premises.
5. This special exception shall apply only to the applicant. In the event of the sale of this property, change in residency, or termination of the pet grooming business, this special exception shall expire.
6. The granting of a special exception to conduct a major home occupation shall be automatically conditioned upon continued compliance with all the requirements of Section 3-9-74: Home Occupations, and all other applicable codes and ordinances. Failure of the operator to meet these requirements shall empower the BZA to revoke the special exception after notice and a public hearing.
7. Any major changes or additions to this special exception, including a change of location, scope of services, or change in the type of major home occupation conducted, 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.
8. Hours of operation shall be limited to 8:00 AM to 4:00 PM.
9. The applicant may submit documentation to the Zoning Official demonstrating that the use meets the criteria set forth in Section 559.955 Florida Statutes (Home-based Businesses), and if consistent with the statute, the business may operate in accordance with the statute.

#### **SE-21-014**

Frank and Deborah Timmerman are requesting a special exception to allow a major home occupation, consisting of a pool service business, in the Residential Single-Family-3.5 (RSF-3.5) zoning district. The property is located at **109 Bedford Drive NE**, Port Charlotte, and is described as Lot 73 and a portion of Lot 74, Block 24, of the Port Charlotte Subdivision, Section 2, located in Section 22, Township 40 South, Range 22 East.

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

#### **Applicant Presentation**

**Deborah Timmerman, applicant**, said she was sworn in. **Ms. Timmerman** said her husband and her started this business in 2018. We wanted to provide a service for the community. We started small, just him and I. I have a disability and cannot drive. We got our first employee until the end of 2019 and did not think of any restrictions. He would come to our home, get in the truck and go to work. We found out this is a violation, so we found out the rules. Our employees now keep the trucks at their house and do not come to our house in the morning. They just go to work from their house. I do the office work from our home. No customers comes to our house. My husband drives one truck home and to work.

**Asst. Co. Attorney David** asked her if she heard the discussion about the new legislation and the condition our other Co. Attorney came up with?

**Ms. Timmerman** replied yes and she is okay with that condition.

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

#### Public Input

**Deborah Carlin, who lives in the area, said she was sworn in.** Ms. Carlin said they put up a fence, but they have chlorine behind that fence. They throw out the bottles in the trash. There is an open drainage in this area that does go into the canal. They are concerned about the disposal of the cans, is there hazmat training, is there an eye wash businesses should have? There are children in the area.

**Raul Anchia, who lives in the area, said he was sworn in.** Mr. Anchia said he echoes the concerns Debbie has. Also, the issue with the children, the exit or entrance is across from where children live. There was a delivery the other day. I don't think they were office supplies. He is also concerned with the chlorine and drainage into the canal.

**Robert Cortes, who lives in the area, said he was sworn in.** Mr. Cortes said he has children and another man down the road has children. I came here today to find out what all this was about. He met Frank and Debbie and like them. Nice people. My main concern was the trucks because of the children in the neighborhood. The children walk to the bus stop and that was my main concern. Now that there's less trucks, I feel better about this.

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

**Mr. McVety** asked Ms. Timmerman to come back up.

**Mr. McVety** asked don't you refill the chlorine bottles? They cost money.

**Ms. Timmerman** said yes, we do not throw away the bottles. Chlorine is not delivered to our house. It is not allowed to be delivered into a residential area. Our employees go to one of two places where they get their chlorine. They go to work, use the product and go home with empty bottles.

**Asst. Co. Attorney David** said it is prohibited in this County to discharge hazardous materials into a waterway or sewer system or even your backyard.

Elizabeth Nocheck presented the recommended conditions for the petition.

#### Board Member Comments and Questions

None

***ACTION: A motion was presented by Larry Fix and seconded by John Doner that Petition SE-21-014 be APPROVED based on the Community Development Staff Report dated July 7, 2021, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with twelve conditions recommended by staff.***

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

1. This special exception, as approved by the Board of Zoning Appeals, is to allow a major home occupation, consisting of a pool service business, as an accessory use to the existing single-family residence.
2. This special exception shall be conducted according to these conditions as well as all standards and conditions set forth in Section 3-9-74, Home Occupations, of the Land Development Regulations, as may be amended.
3. There shall be no storage of company vehicles on subject property other than those used by the owners.
4. There shall be no bulk storage of any hazardous chemicals on subject property, including chlorine.
5. There shall be no retail sales on the premises, except via internet, phone, or mail.
6. No more than three employees from outside the home may be employed by the business operating as Pristine Pool Services of SWFL, Inc.
7. Hours of operation shall be limited to 8:00 AM to 8:00 PM.
8. Employees may not be dispatched from the home.
9. This special exception shall apply only to the applicants. In the event of the sale of this property, change in residency, or termination of the pool service business, this special exception shall expire.
10. The granting of a special exception to conduct a major home occupation shall be automatically conditioned upon continued compliance with all the requirements of Section 3-9-74: Home Occupations, and all other applicable codes and ordinances. Failure of the operator to meet these requirements shall empower the BZA to revoke the special exception after notice and a public hearing.
11. Any major changes or additions to this special exception, including a change of location, scope of services, or change in the type of major home occupation conducted, 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.
12. The applicant may submit documentation to the Zoning Official demonstrating that the use meets the criteria set forth in Section 559.955 Florida Statutes (Home-based Businesses), and if consistent with the statute, the business may operate in accordance with the statute.

**Shaun Cullinan** said there was another bill passed that said if you are complaining about a code problem, you have to give your name. You can not longer call in anonymous. Name and address needed.

**11:20 a.m. Mr. Vieira needed to leave for an appointment**



**VAR-21-002**

Robert Berntsson, agent for Phillip and Diana Kmiec, is requesting seven variances: **(a)** to reduce the required 20-foot rear yard setback by 5 feet to allow a 15-foot rear yard setback for a pool and pool deck, **(b)** to reduce the required 10-foot west interior side yard setback by 5.4 feet to allow a 4.6-foot west interior side yard setback for the existing house to remain “as-is”, **(c)** to reduce the required 10-foot west interior side yard setback by 5 feet to allow a 5-foot west interior side yard setback for a pool and pool deck, **(d)** to reduce the required 10-foot east interior side yard setback by 6 feet to allow a 4-foot east interior side yard setback for the existing house to remain “as-is”, **(e)** to reduce the required 10-foot east interior side yard setback by 5 feet to allow a 5-foot east interior side yard setback for a pool and pool deck, **(f)** to reduce the required 10-foot west peripheral landscape strip by 5.4 feet to allow a 4.6-foot west peripheral landscape strip and reduce the required 10-foot east peripheral landscape strip by 6 feet to allow a 4-foot east peripheral landscape strip, and **(g)** to allow the existing air conditioning equipment and wooden decks to remain “as-is” and to allow the placement of new pool equipment in the side yard peripheral landscape strips, in the Manasota Single-Family-5 (MSF-5) zoning district. The property is located at **220 Mockingbird Lane**, Englewood, and is described as Lot 9, Block C, of the Chadwick Subdivision, Re-subdivision of Lots 2 to 6, located in Section 07, Township 41 South, Range 20 East.

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

**Mr. McVety** asked why is this two separate variances?

**Mr. Cullinan** said this is one of those cases of a much older house. In 1991 when the permit was pulled for the house, there also was a demolition permit. The Clerk’s office does not have any records. He said when we get a variance, we try to bring all items into compliance.

**Applicant Presentation**

**Robert Berntsson, Esq., representative for the applicant**, said he was sworn in. **Mr. Berntsson** said this looks worse than it is, but it is to allow the existing house to remain and allow a pool to come in. After they purchased the house, he spoke to Elizabeth about putting a pool and deck in. After looking at the survey, they realized other things were out of whack. He discussed those items regarding the a/c and other items. He said the neighbor to the west sent in a text saying they are not against this variance. He agrees with the staff report and accepts the conditions.

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

**Public Input**

**Nancy Marmel, who lives on Sand Dollar Lane, said she was sworn in.** **Ms. Marmel** said she does not have any issue with anything. She lives on the Key and is involved with the overlay code. She has an issue with something new that is added. She wants the overlay code to mean something. She knows it is only a pool, but it may need a cage and anything new she feels needs to consider the overlay code.

**Mr. Beaudoin said he was sworn in.** **Mr. Beaudoin** said he is on the Manasota Key street and drainage committee and has served on other boards. The Manasota Key Code states limited relief for land development regulations. Requesting 7 variances is excessive. They spent hundreds of hours working and establishing a fair overlay code for Manasota Key. He would like you to defend that code.

*There being no further requests to speak for or against the petition, Mr. Fix moved to close the public comments, seconded by Mr. Doner. 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 John Doner and seconded by Larry Fix that Petition VAR-21-002 be APPROVED based on the Community Development Staff Report dated July 7, 2021, 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 5 conditions recommended by staff, with the one recommended change.*

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

1. The seven variances, as approved by the Board of Zoning Appeals, are: **(a)** to reduce the required 20-foot rear yard setback by 5 feet to allow a 15-foot rear yard setback for a pool and pool deck, **(b)** to reduce the required 10-foot west interior side yard setback by 5.4 feet to allow a 4.6-foot west interior side yard setback for the existing house to remain “as-is”, **(c)** to reduce the required 10-foot west interior side yard setback by 5 feet to allow a 5-foot west interior side yard setback for a pool and pool deck, **(d)** to reduce the required 10-foot east interior side yard setback by 6 feet to allow a 4-foot east interior side yard setback for the existing house to remain “as-is”, **(e)** to reduce the required 10-foot east interior side yard setback by 5 feet to allow a 5-foot east interior side yard setback for a pool and pool deck, **(f)** to reduce the required 10-foot west peripheral landscape strip by 5.4 feet to allow a 4.6-foot west peripheral landscape strip and reduce the required 10-foot east peripheral landscape strip by 6 feet to allow a 4-foot east peripheral landscape strip, and **(g)** to allow the existing air conditioning equipment and wooden decks to remain “as-is” and to allow the placement of new pool equipment in the side yard peripheral landscape strips.
2. The future construction of a pool cage shall also be permitted within the footprint of the approved swimming pool and deck, provided all setbacks established by these variances are maintained.
3. The variances shall only apply to the existing house, air conditioning unit, and wooden decks, and the proposed swimming pool, pool deck, and mechanical pool equipment, as shown in the documents submitted with this application.
4. If the existing house, air conditioning unit, and wooden decks are at a later date permanently removed, 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 house, air conditioning unit, or wooden decks.
5. If the proposed swimming pool, pool deck, and mechanical pool equipment are constructed and at a later date permanently removed, this variance shall expire and all future development must

be constructed according to all applicable codes in existence at that time, unless a new variance is granted specific to the development proposed at that time. This condition shall not apply to removal or replacement caused by a natural disaster or involuntary destruction of the swimming pool, pool deck, and mechanical pool equipment.

IX. **Public Comments** –  
None

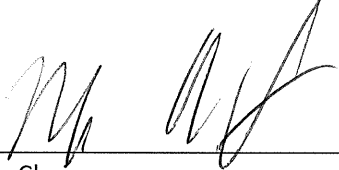
X. **Staff Comments** –  
Ms. Nocheck said we have 4 items for next month's meeting.

XI. **Member Comments** –  
None

XII. **Next Meeting**  
*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, August 11, 2021 at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 12:15 p.m.

Respectfully submitted,  
Diane Clim, Recorder  
/dlc

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

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

8-11-21