



MINUTES

Charlotte County Board of Zoning Appeals

Wednesday, September 13, 2023 9:00 a.m. – Room 119

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

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

Board Member:

Blair McVety, Chair, Absent
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

I. Call to Order

Vice-Chair Vieira called the September 13, 2023 meeting of the Board of Zoning Appeals to order at 9:00 a.m.

II. Pledge of Allegiance

Vice-Chair Vieira 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. Staff Comments

None.

VI. Approval of Minutes

ACTION: A motion was presented by Mr. Filieo and seconded by Mr. Rouse to approve the minutes of August 9, 2023, meeting of the Board of Zoning Appeals which passed with a unanimous vote.

VII. Disclosure Statements

Ex-parte forms indicating site visits concerning the petitions being presented before the September 13, 2023 Board of Zoning Appeals meeting were submitted.

VIII. Introduction of Staff/Comments

Vice-Chair Vieira introduced staff. *Shaun Cullinan, Planning and Zoning Official*, read the Zoning rules, *Asst. County Attorney David*, and *Vice-Chair Vieira* 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.

IX. New Business

The following petitions were advertised on August 29, 2023: SE-23-022, SE-23-023, SE-23-024, SE-23-025, VAR-23-018, VAR-23-019 & VAR-23-020

SE-23-022

The property owner is requesting a special exception to exceed the maximum of 3,000-square feet of accessory structures, to allow a total of 3,400-square feet of accessory structures, in the Residential Estates-1 (RE-1) zoning district. The property is located at 30110 Loblolly Pine Drive, in Punta Gorda, and is described as Lot 8, of the River Acres Subdivision, located in Section 19, Township 40 South, Range 24 East.

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

Applicant Presentation

Franklin Gott, applicant, Mr. Gott said Ms. Nocheck has put everything out there quite nicely. All we are trying to do is protect our property, keep it safe and life she said from the elements of the weather. Because they really play havoc on motor homes, trailers, and trucks stuff like that. Everything that's there was built when we got there so we never wanted to put anything extra on the property until we acquired this. Like she said it's very expensive to keep stuff at the local places, over \$300.00 a month and there is really no security for that. So, you can't watch your own stuff. I am open for any questions.

Vice-Chair Vieira 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, Ms. Beyer 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.

ACTION: A motion was presented by Andrew Filieo and seconded by Turner Rouse that Petition SE-23-022 be APPROVED based on the Community Development Staff Report dated September 6, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with five conditions recommended by staff.

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

1. The Special Exception, as approved by the Board of Zoning Appeals, is to exceed the maximum of 3,000-square feet for accessory structures on a property greater than one-half acre in size, to construct a total of 3,400-square feet of accessory structures and extends only to the lands included in the Site Plans and legal description submitted with this application.

2. The Concept Plans submitted by the applicant, as part of the petition, 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 right-of-way access and building permits.
3. The construction of any additional accessory structures will require a modification of the Special Exception.
4. 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.
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, may be approved by the Zoning Official.

SE-23-023

Wilmar Treminio & Jesus Avalos are requesting a special exception to allow a plant nursery and garden center, in the Residential Estates-1 (RE-1) zoning district. The property is located at 7824 Cleveland Drive, in Punta Gorda, and is described as the West 165 Feet of Tract 113, of the Town Estates Subdivision, Unit 2, located in Section 36, Township 40 South, Range 23 East.

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

Vice-Chair Vieira has one question; we call for an opaque fence in the area where storage is going to be near the roadway. The rest of the property is going to be fenced what's the recommendation on the rest of the property.

Ms. Nocheck they are proposing to do a hog wired fence, which is typical AG type of fencing. We are not recommending a specific type of fencing for the perimeter of the property other than around that storage area.

Vice-Chair Vieira asks the type of fence that's being recommended, is that a wire fence?

Ms. Nocheck yes sir.

Vice-Chair Vieira ok thank you.

Applicant Presentation

Jesus Avalos, applicant, we just purchased this property right after Ian the storm, we had a year ago. Mr. Avalos said as Elizabeth said we have a nursery on Pine Island. We have been operating for over twenty years, mainly growing fruit trees, and basically, we got devastated by the storm. We lost a big portion of our business and since day one after the storm we have been trying to find a solution to stay in business. Since we enjoy the most growing plants, growing trees. Being on an Island it's a lot more complicated because we are surrounded by water. So, due to the storm we lost 85% of our business. We are trying to diversify it a little bit on different areas. We found this area since we already have a lot of customers a lot of garden centers. Basically, we are a wholesale nursery that supplies trees for other garden centers, other nurseries. We also do retail and the idea we had for this place is since we already have the place on Pine Island. We operate most of our business over there, have a second location where we can do more propagation and have a second option in case we get hit again by a storm. However, we were thinking on bringing not only grow plants on this location but once we got plants

growing on the place. Make the place as a garden center so people can have an idea how they can grow trees on the area where we live. What kind of trees they can grow where we are. Provide all kinds of information to the people and our customers what they can grow, what they can not grow. How you are supposed to grow things. We always try to be very respectful with the community, not to change anything that is already there. So, we try to work with our neighbors. Most of our customers have a really good opinion of our business. We try to stay according to the rules and regulations with the neighborhood and try to help as many people as we can. But basically, what we are trying to do is diversify the area where we are growing things. This place is going to be mainly a grow location where we are gonna grow and propagate. However, we were going to have the gates open for people to come in. But most of our business is gonna be set up on Pine Island which is already our retail location. We are not expecting to impact the neighborhood with big trucks or noisy cars or something that is going to impact the shape of the road or cause a lot of traffic, or disturb the neighbors. We are just trying to make the place look good and have a second location in case we get hit again from another storm. I don't know if anybody has any questions.

Vice-Chair Vieira asks do you accept Elizabeth as an expert witness?

Mr. Avalos yes.

Vice-Chair Vieira have you been sworn?

Mr. Avalos I've been sworn.

Vice-Chair Vieira ok thank you very much.

Vice-Chair Vieira opened the meeting to Public Comments.

Ms. Nocheck Mr. Chair we did receive several emails late last night, which I printed off. So, I will pass these out to the board for the people who are not able to attend that wanted to provide comment.

Asst. Co. Atty. Thomas David are you going to label those as exhibit, tell us what exhibit number you are going to use for those.

Ms. Nocheck for the record that will be exhibit G. Thank you, Tom.

Vice-Chair Vieira opened the meeting to Public Comments.

Public Input

Helen Edwards, I live at 1100 Cleveland Court, Mrs. Edwards said property is adjacent to the applicant. We have found him to be very easy to work with. We very much support his wholesale business, and we know that the property next to him has been an existing wholesale business. It has not been a severe impact on our area, on our rural area. However, we have great concerns about the retail business. There is no guarantee of the number of vehicles that will eventually show up to access that property. There are a lot of children, animals etc. that we would like to maintain the rural area, the nature of that entire complex. While we very much support the fact that he is gonna to have a beautiful wholesale business. We very much object to the retail portion.

Nancy Hill, I've lived in the town estates area for almost 24 years.

Vice-Chair Vieira have you been sworn?

Nancy Hill, no I have not.

Mrs. Sargent swears in Nancy Hill.

Nancy Hill, I've lived in the town estates area for almost 24 years. Ms. Hill said I live within the thousand square foot adjacent area to this property. It's a rural area, with lots of family, neighbors in the area, lots of children walking up and down the streets. It's a very tight knit community, we all pull together quite a bit. I am aware that the wholesale nursery, Peter's nursery is located in this area. It has been there since I've lived there, we never have any concerns with them. I have no concerns with a wholesale nursery moving into this property, I do have concerns about the retail portions. That will increase traffic into our neighborhood. We already have a lot of increased traffic in the neighborhood due to the recent accidents on Bermont with the increased traffic on Bermont Road. We have traffic diverted through there after there is accidents which seems to be quite often now a days. Any retail business in this area will certainly increase the traffic in this area. I strongly object to that. I think everybody in this neighborhood moved to this area for the rural family neighborhood type environment. Retail businesses is not what we want not is it what we need in that area thank you.

Danielle Turowski, I live at 7776 Cleveland Drive, I have been sworn in. Ms. Turowski said I am just coming up here to appeal against this petition. My kids play in this neighborhood, my pets are there, people walk their dogs, kids ridding their bikes. Making it a retail is going to bring a lot more traffic, we don't have sidewalks as it is. So, they have to walk and ride their bikes in the street. Having the cars is going to completely eliminate that for our neighborhood. As far as the place next door it is a nursery, but they are a landscape company. They are not a retail business; they do not bring in customers to their nursery. So, it doesn't affect the neighborhood in the same way as having a place that's gonna have a parking area and all of this stuff. So, I am just against it, that's pretty much it.

Vice-Chair Vieira is your primary concern because of the retail component?

Danielle Turowski pretty much Yeah, I mean obviously it being a big piece of land, trees don't really affect anybody. But having parking spots as their business grows, which is what you hope it's gonna do when you open a business. You know they say ten cars per day now but what happens when they are very successful. Then it becomes twenty-five or thirty cars and at what point do you regulate that and who stops it. You can't you gotta let their business grow. As properties sells do they purchase more properties and make the business bigger. I mean that's gonna go ahead and push all of us farmers, families right out of the community. Like Ms. Hill said it's such a small knit community we're all so close as it is. We just don't want to create that chaos in our neighborhood thank you.

Michael Rhodes, I live at 1100 Cleveland Court, Mr. Rhodes said and our property actually backs up to, their property actually backs up to our property. Now like when I first heard about this whole thing, I talked to them, and they said it's going to be a wholesale nursery. It wasn't until later I found out that it would be a retail component to this project. Now I am totally in favor of them doing a wholesale nursery there I don't have a problem with that. I do have a problem with the retail side. Now people haven't mentioned yet, but to get back to that property you have to go through almost two miles of very narrow roads with lots of several curves that are pretty much blind. So, it makes it, even in our daily process for bicycles, dogs, and people you have to be very, very, cautious when you're driving because there is now space. It's extremely narrow road and it would be detrimental to the area as far as traffic

concern, if they put in a retail side to that. I am in totally in favor once again of the wholesale side of them growing things there, but I oppose the retail side thank you.

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.

Asst. Co. Atty. Thomas David speaks about after you do your questions, the staff that just some opportunity for the applicant to rebut any comments that were made thank you.

Vice-Chair Vieira why don't we do that. Could we have the applicant come back up if you would like to rebut any of the testimony.

Rebuttal

Jesus Avalos so basically what we said it's our main location is located on Pine Island and that's where our retail section it's going to be. So, the intention for this area is to have a location not to bring a whole bunch of cars and a whole bunch of people to buy into the property but some onto the roads. The idea is to grow things there and if anybody wants to come see what we are growing and the way we are growing and the way we have the stuff for sale, that's going to be the idea. It's not going to be a Wal-Mart, it's not gonna be a Publix where you're gonna have twenty or thirty or fifty. I mean the property is only 3 point something acres so. There is no chances of having thirty or forty cars park, we decide to put on the drawing small parking spaces on the property for the specific reason. We don't want to have cars park on the side of the street, blocking the traffic or interfering with people. But I mean that's basically the idea, the idea is to make it as nice as possible or as the best way that we can. With out disturbing people that has been living on the neighborhood, we always like to incorporate to the neighborhoods. We try to respect the way they've been living for years; we don't want to come over here and change anything for bad reason. We're hear to basically educate people, just because we're also just trying to make a living as well. Since we lost pretty much everything at the other location, so I just want to ask everybody all the neighbors they give us a chance to show them that we're not going to impacting their neighborhood. We are very friendly people we will like to work, if they have any concerns, if they are not happy about anything just please let us know. We will be glad or willing to work with any of the neighbors on the area. We're here to respect the way people has been living and we don't want to come and change anything. We just ya know we just like to work and we just trying to make a living.

Vice-Chair Vieira can I ask you, because there maybe some confusion we're not talking about selling plantings or cuttings or anything like that. We are talking about selling shrubs, trees and that sort of thing, in the fully grown state.

Mr. Avalos yeah so, yes right, right.

Wilmar Treminio my name is Wilmar, very much we're trying to do as for the neighbors, they can show up. We don't plan to bring anybody from the outside, like I said we are trying to grow for the business already in place in Pine Island. Just to protect ourselves from the type of disaster we had a year ago.

Vice-Chair Vieira can I ask if the storage of the mulch and the fill at the front of the property, is that for your own use, it's not for retail use.

Mr. Treminio no it's just for our planting. It's very much for our growth.

Vice-Chair Vieira and that would be protected from the roadway from vision from the roadway and at a six-foot height.

Mr. Treminio yes sir.

Vice-Chair Vieira ok thank you, anything else.

Mr. Avalos no we're just asking people to give us a chance, ya know to show people that we're not trying to disturb anybody, we just come here to incorporate into the neighborhood, and I mean if you ask anybody what we do at the nursery. We in Pine Island, we bring people in obviously over there is our retail location. But we bring people in to give education about how to grow plants, how to propagate trees, how to grow their own food. Which you know these days a lot of people is worried about not being able to afford food these days cause everything is so expensive. So, we're trying to teach people how to grow their own stuff, their own fruit, their own trees. Like I said we're not trying to impact with a Wal-Mart or a Publix or a 300 cars at once. It's not like our place is gonna grow on one year or two or three years to the point where we gonna displace or we're gonna buy everybody out and just become a giant. That's not how things work, you know we're not gonna, I don't want to say, or I don't want to think we're gonna have reckless driving people ya know going 50, 60 miles an hour for what I don't see the reason why somebody would be driving. If anybody is gonna go out there to buy a tree, I don't see why they gonna be driving 50 or 60 miles an hour to go see our plants.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Vice-Chair Vieira asks has the applicant seen these conditions.

Ms. Nocheck they were sent a copy of the staff report about ten days prior to the meeting.

Vice-Chair Vieira do they agree with the conditions, they do ok thank you.

Mr. Filieo Mr. Chair I have a little bit of concern regarding this petition because there's been talk and so forth regarding retail operations, and there is nothing in this petition specific to retail operations.

Ms. Beyer yes similar, I think the major concern is just retail. If you guys keep saying, they've said retail several times, but it says wholesale and propagations so maybe we could clarify that or they could make an adjustment would be a lot easier.

Vice-Chair Vieira yeah, I am in agreement with that rest of the board members. The retail component seems to be the overriding factor here. As far as objection goes to the operation everybody is willing the applicants, the neighbors are approving or in approval of a wholesale business but no retail component. I couldn't find any mention to that either, and we refer in the conditions to a plant nursery and garden center under item number four. So, that gives me a little bit further concern that we're allowing a retail component to come into the area. I personally think, I've driven out there, that it would be detrimental. I am not saying people drive down that road sixty miles an hour, or whatever. But clearly if you don't know where you're going in the neighborhood it does create a hazardous condition,

especially if you're a stranger in the area. Personally, I don't have a problem with the wholesale component, but I do have to take pause with the retail aspect of it.

Asst. Co. Atty. Thomas David if you wish Mr. Chairman you could remove the term garden center from the conditions and you know the code refers to the term plant nursery. Does not refer to garden center as a special exception use so you could take that out. If the applicants were willing to accept that.

Mr. Cullinan you could restrict no on-site sales, no on-site retail sales, there are a number of conditions that you could put on this. If you chose too moving forward.

Vice-Chair Vieira this is our time to make it right so, looking for some suggestions from the board. Is the board in favor of removing the term garden center from item number four as conditions.

Mr. Filieo I would move to strike the term garden center from every part of the staff recommendation and just proceed forward without that specific language.

Vice-Chair Vieira then would you go further to say that you would restrict or eliminate the retail component of the operation and let it remain as a wholesale component.

Mr. Filieo I would be in agreement with that sir.

Asst. Co. Atty. Thomas David I mean you could make that motion. Move the item with striking the term garden center from the conditions and adding a condition that restricts the use to wholesale plant nursery.

ACTION: A motion was presented by Andrew Filieo and seconded by Nichole Beyer that Petition SE-23-023 be APPROVED based on the Community Development Staff Report dated September 6, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception subject to the conditions and further modification striking the words garden center and include the restriction of no retail to make 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 a plant nursery 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, environmental review, stormwater management, and landscape plan approval.
3. Accessory structures, such as a greenhouse, shed, or barn, may be permitted on subject property prior to or without a primary structure being constructed on subject property. Accessory structures shall be limited to a total of 5,000-square feet.

4. The outdoor storage of landscaping materials such as mulch, dirt, and stones shall be permitted as an accessory to the plant nursery. The area used for outdoor storage of materials shall not exceed 500 square feet and shall be screened from adjacent properties with a six-foot-tall opaque fence or wall. Bins, piles, or stacks of materials may not exceed 5 feet in height. Final location, size, and screening of the accessory outdoor storage area will be determined during the Site Plan Review process.
5. The storage of construction materials, dump trucks, heavy machinery, semi-trucks, or hazardous materials is prohibited.
6. A maximum of 3 commercial landscaping vehicles or pick-up trucks may be stored on subject property. Only commercial vehicles owned by the property owner may be stored on site. Rental of storage spaces to other commercial vehicles is prohibited. Small machinery, such as bobcats, may be stored on site.
7. Any perimeter outdoor lighting shall be directed towards the interior of the property.
8. The plant nursery use may not be used until all required improvements are completed and a Certificate of Occupancy has been issued.
9. 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.
10. Any major changes or additions to this special exception shall require a modification of the special exception, including a change in type of business located on site. A change in ownership shall not require the modification of the special exception, provided the business operations as a retail landscaping and plant nursery business remain. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.
11. Retail sales are prohibited.

10:02 Five-minute recess

10:08 In session

SE-23-024

Geri Waksler, representative for Boys & Girls Club of Charlotte County, Inc., is requesting a special exception to allow a private club, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 11112 Willmington Boulevard, in Englewood, and is described as the East 484.11 Feet of Block 3720, of the Port Charlotte Subdivision, Section 63, located in Section 01, Township 41 South, Range 20 East.

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

Applicant Presentation

Geri Waksler, representative for the applicant, said I do need to sworn.

Mrs. Sargent swears in Geri Waksler.

Geri Waksler, good morning, I am Geri Waksler an attorney, I reside in Punta Gorda, Florida. Ms. Waksler said I am here today representing the Boys and Girls Clubs of Charlotte County Inc. on a pro-

bono basis, that means without fee. I am requesting a special exception for a private club in the residential single family 3.5 zoning district. Boys and Girls clubs currently operate a club in Englewood serving 65 children with a waiting list. The proposed club will serve 150 children each day. Boys and Girls clubs have to date raised over two million dollars for purchase of the land and construction of the building. Primarily from donors in the west county area. The proposed facility will be 15,000 square feet with a paved basketball/recreation area, a grass playground, a garden, and parking including spaces for three buses. Which will transport children from local schools to this site each day. During the school year hours of operation are 3:40 pm to 6:30 pm Monday thru Friday. On school holidays and during the summer the club will operate from 7:30 am to 5:30 pm Monday thru Friday. On rare occasions the club hosts events for members and families in the evening or on weekends. On those rare occasions overflow parking is permitted by agreement to utilize the parking at the church next door, the West Charlotte Baptist Church. This board must evaluate the application for a special exception against three criteria. First is consistency with the comp plan, permitted uses in the low density residential future land use map designation. Include recreational facilities and schools, the club provides after school care for west county. Including tutoring, and recreational facilities. Further the comprehensive plan is actually implemented by the zoning regulations. This property is zoned RSF 3.5, and a private club is a permitted special exception within the RSP 3.5 zoning district. Second the proposed special exception must be compatible with the existing and permitted uses on surrounding lands. All land surrounding the site is also zoned RSF 3.5, but parcel has roadway frontage on three of the four sides. Across those streets to the North, South and East, are a mix of vacant lots and single-family homes. The site is contiguous to the church on the west and it's the church that sold the property to the Boys and Girls Clubs. The Charlotte County Sheriff's Office district one substation is also located on Wilmington Boulevard directly across the street and southwest of the property. Private clubs offer a compatibly in residential districts throughout Charlotte County. Including the Boys and Girls club in Port Charlotte which is located at the family services center on Gibraltar and which like this site has single family homes across the street. Not just on three sides but on all four sides. The Port Charlotte and Punta Gorda Isles Yacht Clubs and various Moose, Elk, and VFW halls all peacefully coexist within single family neighborhoods. As do most elementary schools, I think actually and many middle schools within Charlotte County. At this facility the paved and grassy recreation areas are located intentionally adjacent to the church and cad corner across from the Sheriff's substation. They also if you notice them particularly the playground area, is interior to the site, you have the playground and then to the south of the playground you actually have their stormwater area. To the north you also have after the paved area, you additionally have a storm water facility. So, they intentionally replaced adjacent to the church interior the site and not right up against the property lines that are on streets that are across from single family homes. They will all be surrounded these areas will be surrounded by a type C landscape buffer which is the next to last most intense. The only more intense buffer for industrial uses and they will be used to mitigate both visual and noise impacts on the surrounding property. The limited hours of operation will also reduce impacts for surrounding properties. Compatible is actually a term defined in the Charlotte County code as quote "capable or orderly and efficient integration and operation with other land uses in zoning districts". The limited hours of operation, placement of outdoor recreational areas adjacent to the church and interior to the site, landscape buffers, shielded lighting, the traffic flow design and generous onsite parking ensure that the facility will operate in an orderly manor with limited impacts to the surrounding properties. The third criteria is that the proposed use will not be detrimental to or endanger the public health safety or general welfare. The site is designed to minimize impacts on the surrounding neighborhood, most activities of the club occur indoors. The students arrive at the site, they're given a snack, they are helped with tutoring, they complete their homework, they have program activities like arts and crafts, things like that. In the summertime when they do have the camp, again limited time spent outdoors just because of the heat. Mostly they are in the facility, or they

are taken by the school buses to various off site, they'll go to see a movie once a week, they go to the public pools to go swim, that sort of thing. Children are transported to the sites on three buses, pick up occurs throughout the afternoon and early evening, not all at one time. There are two lanes for cars picking up children with stacking on site. Meaning that cars that are waiting are not necessarily going to be waiting on the adjacent roadway. The site has been designed so that they will stack interior to the site. I understand that neighbors are concerned about traffic, so I reached out to Ravi Kamarajugadda who is the project manager for the transportation engineering division of Charlotte County Public Works. He provided me with a 2023 traffic analysis, and I have highlighted, that should have been handed out to you all. Is that correct you receive that? Oh, I am sorry

Ms. Nocheck is this for everyone?

Ms. Waksler yes that is for everybody I apologize; I didn't make it that clear. Give me a moment. And there is enough for both the clerk and for Shaun and.

Ms. Nocheck we will label this as exhibit J.

Ms. Waksler thank you, as you're getting that you'll notice that there are two sheets. There is three sheets, there is the actual email from Ravi indicating that he is sending the 2023. I detest by that what you have is a true and correct copy of the 2023 traffic counts that Ravi provided to me. The third page are the 2021 traffic counts not provided by Ravi. I was able to pull those off the internet and again they are a true and correct copy of what was shown on the internet. So, you have two sections in 2021 which is the back page, Charlotte County studied Wilmington Boulevard, which is a main collector roadway in this area. Meaning that most of the residential traffic ultimately has to flow out onto Wilmington and then goes either east or west to get back down to 776. They studied it in two segments, one from Coliseum Boulevard which is on the east side up to the Gondolier Waterway and second from the Gondolier Waterway down to 776. In 2023 they only looked at Wilmington from the Gondolier Waterway west to 776. So, what you need to understand is that what constitutes acceptable traffic on a road in Charlotte County. Is not objective it's not what the property owners think constitutes too much traffic or what they say with this. This will add too much traffic and we don't want this much traffic. It is actually a very specific subjective objective analysis. Charlotte County has adopted standards for roadways which is expressed as a letter and on that sheet, when you go towards the end, you'll see it talks about the level of service and under this it talks about the C it gives you the C and D levels of service. The adopted level of service meaning that the amount of traffic that a road can have has to comply with the standards for level of service D on these roadways in Charlotte County. Now the D level of service D when we talk about the level of traffic and how much is acceptable within that. They look at they look at the peak hour adopted of level of service. So, they're not looking at it throughout the day, they take traffic counts, they look at how much average annual daily traffic there is. Then they look at how much traffic there is and what they called the hundredth hour which is the peak hour. Typically, it is the pm peak hour it's what we think of as rush hour and that is also a number that's looked at annually and then looked at as an average number. So, as you look at the information that I've provided. In 2021 from Coliseum to Gondolier they utilized only 6% of the adopted maximum capacity rule along that section of road. So, they do their traffic counts the road they know how many cars can effectively utilize that roadway during the peak hour of traffic. They determine from Coliseum to Gondolier in 2021 it was only utilizing 6% leaving 94% of the capacity still available for additional traffic as there is growth and additional uses in the neighborhood. From Gondolier to 776 during that same time frame 16% of the adopted maximum capacity of the roadway along that section was utilized. I think that is the last numbers you scanned to the right. Perhaps, because Wilmington from Coliseum to Gondolier was utilizing so little capacity in 2021. No traffic counts were collected in 2023 however the

section from Gondolier to 776 was monitored. The percentage of adopted maximum capacity utilized increased during that time period from 16% to 18%. Though, I can not state that the section from Coliseum to Gondolier would have had the same percentage increases. It does seem that you could reasonably conclude that if the Gondolier to 776 section was at 18% in 2023. The Coliseum to Gondolier sections capacity was certainly no more than that, because prior in was 16% for the section that was studied the two years the 2021 and 2023. Whereas the other section which is the section that this property is located on. The one from Coliseum to Gondolier was only at 6% so if the section from Gondolier to 776 in 2023 was at 18% I think it is a safe assumption that this would not be anymore than that on this section though. But even if you add the addition of the Boys and Girls club traffic and say that, that traffic would triple what they had had in 2021. That still only takes you to 18% of the traffic being utilized on that section. So, under the standards that are adopted by Charlotte County which is what governs whether there is sufficient capacity and whether more traffic is acceptable on a roadway. There is more than enough capacity on Wilmington right now for the future growth of the area as well as for utilization of this site by the Boys and Girls club. Notwithstanding how the neighbors might feel about the existing traffic on Wilmington. It continues to have plenty of available capacity to handle additional trips on the roadway and the use will not be detrimental to or endanger the public health, safety, or welfare. The request meets each of the three criteria for a special exception. We join with staff's analysis accept all proposed conditions of approval with the exception of the condition that this will last if we have not started construction within three years. Because they are still raising funds, we ask for that to be extended to five years. That the special exception be approved for a period of five years to ensure that they have completed their fundraising and are able to begin construction within that period of time. Other than that, we accept all the conditions of approval and request approval of the special exception for a private club, and we thank you very much for your time.

Vice-Chair Vieira thank you very much any questions.

Vice-Chair Vieira opened the meeting to Public Comments.

Public Input

Hans Picinich, I reside at 11151 Euler Avenue, I have been sworn in. Mr. Picinich said I accept Ms. Nocheck as an expert. First off, I would like to ask at least of a minimum of a 90-day continuance for board recommendation. I received the notice on the 6th I believe of, I am sorry the 26th of August, and I don't think it gave enough opportunity for the rest of the residents within the community to attend this meeting due to work requirement and prior commitments. I would like a 90-day continuance prior to the board's recommendation. Also, this would give us an opportunity to speak with the Boys and Girls club and see the, research the data as far as the traffic study and the environmental impact. Which we have not received, we have not received any of council's recommendations or documentation for impact on this proposal. This area is zoned for single family prior to this, I am not against kids, my background is I am a retired deputy sheriff out of another state. Prior to that I served as a school resource officer, so I am very sensitive to the kids needs. This area is zoned for single family residences, it's not for large buildings and if you look at the 1,000 square foot map, I believe Ms. Nocheck can pull that up. You'll see that there is nothing, but residences located around that and just to the north where it says Sarasota. That is a state wildlife preserve. I live approximately just north off of a Series Steet and to the right of just east of where the proposal is. I've seen panthers, bobcats, gopher tortoises, scrub jays all within that area. I am afraid with that traffic, with the activity that's going to be happening there. It will impact the buildings. Currently there is sixteen sex offenders located within a two-mile radius of the proposal. There are four sex offenders located within one mile of the proposal and there

are two sex offenders located within two blocks of the building proposal. The transportation issues, is my time up how come she had more time? Censored-bad language.

Mr. Cullinan says Mr. Chair incase this happens again cause this did happen at another hearing recently, please remind the public to watch your language this goes out live on Charlotte County television as well as on Facebook and there may be some significant FCC situations with that.

Viet-Hung Nguyen my address is 11080 Grafton Avenue, I have been sworn in. Mr. Nguyen said if you look at the picture there. The entrance and the exit is right across from my property on Grafton. If you look at the site 23, 24, 25 that is my property ok, and you putting tall building in front of my property. Plus, you put a dumpster on the lot 25, if I see it as the picture shown correctly. My concern is the traffic it was said that was counted in 2021, didn't we have a shut down then? So, the traffic is going to be really low. You count that and you count now it's going to be low then average. If you look five or ten years down the road it's gonna get really busy. There is no sidewalk on Grafton or in that area, the Grafton Avenue is very small it's not a big average street. If you have two cars going down, there it's tight. My concern is the noise, the light when it's on which is going to be on night most likely. You say it's operating from 3:30 to 6:30, I've seen Boys club that's open way later than that. I've seen Boys Girls club and you said the weekend it's from 7-5, 7-5 o'clock in the afternoon in the evening of summertime that's still bright. People will still be out, that's my main concern. The dumpster is also gonna be an issue you got two dumpsters there. Summertime you have food that's gonna be thrown in there, it's gonna really smell the neighborhood. You got also, I'm concerned about the turtle, the bird and the wild animal that's coming from the other side, the state forest thank you very much.

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.

Vice-Chair Vieira a couple things could you give me a timeline on when the notices were sent out to the people within the 1,000-foot barrier please.

Ms. Nocheck our code requires two weeks prior to the hearing date the notices being mailed. I know they were sent out extra early because I was out of the office for surgery. So it was prior to that date, let me look at my calendar real quick. Sorry, the gentleman in the audience has his postcard and the post mark is from August 25th.

Rebuttal:

Geri Waksler just a reminder the entire site will be fenced for the protection of the children. It will protect them from sexual predators in the area, it will protect them from wildlife wandering through the area as well. While this area is zoned for RSF which is single family, it's called Residential Single Family. When you look at the uses it allows for uses other than single family and it allows by special exception. Which means you come and do as exactly what we're doing for things like private clubs, and schools and government facilities. This is not particularly this block remember they are adjacent to an existing church; they are cadi corner across the street from a Sheriff's substation facility. So, there are other uses other than single family uses within this area. Beyond that I was going to point out that the gentleman testified that he received his postcard on the 26th which is more than two weeks in advance of this hearing. Which is what is required that has to be mailed out two weeks in advanced. He not only was it mailed out more than two weeks in advanced, it was received more than two weeks in advanced. The materials have been on file for six weeks prior to that with the Charlotte County and the notice does

state that you can see those materials. They're available for public view at any time prior to this hearing. They were also advertised on the Charlotte Counties website, you can link to the agenda. The agenda you can see the materials that you received with the exception of the studies that were provided to you today. That would have been the only thing that they didn't have, but again those are public information. I asked the county for that information, and I found the 2021 study online. So, they're available for the public if they want, had gone looking for them. Again, we believe that this has been designed to minimize impacts to the neighborhood, if you want to add a condition about shielded lighting, I mentioned that in my presentation I think it's required by code. But if you want to specifically talk about any lighting on the site would need to be shielded, so that the light remains on the property we would have no objection to that. Again, we accept all conditions we acknowledge Elizabeth as an expert, staff has recommended approval and found us to be in compliance with the three criteria. We would ask that you approve this petition thank you very much.

Vice-Chair Vieira we haven't gone to site plan review yet. So. Obviously this site plan that we are showing for illustration purposes is gonna be tweaked one way or the other.

Ms. Nocheck correct.

Vice-Chair Vieira I am assuming that with the discussion that has taken place here today and the neighborhoods input that certain adjustments relative to fencing around dumpsters or dumpsters being secured and that sort of thing are all going to be taken into consideration when that occurs am I correct. Both discuss.

Asst. Co. Atty. Thomas David Mr. Chair relating to continuances, the board rules, the rules for this board of zoning appeals are that requests for continuances must be made in writing and then the requestor must appear at the hearing. So, and then it's up to the board of zoning appeals to whether to adopt or accept a request for continuance. The applicant has not requested a continuance, we did not receive any other written request for continuances.

Vice-Chair Vieira based on the testimony, I can't see us taking that into consideration anyways, it seems that the notice was sent out in advance, received with enough time for anybody to respond to so thank you for bringing that up. I had just let it pass quite frankly, so I will let you continue and finish your presentation.

Ms. Nocheck thank you Mr. Chair

Elizabeth Nocheck started to present the recommended conditions for the petition.

Board Member Comments and Questions

Vice-Chair Vieira speaks with Ms. Nocheck and she was reading it as written and staff has no objections to changing it that to five years or as long as they ask for.

ACTION: A motion was presented by Nichole Beyer and seconded by Andrew Filieo that Petition SE-23-024 be APPROVED based on the Community Development Staff Report dated September 6, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception with nine conditions recommended by staff.

Ms. Waksler I want to be certain that the motion did not change the condition to the five years and I didn't know if that was intentional or?

Vice-Chair Vieira speaks to Ms. Waksler on this.

Asst. Co. Atty. Thomas David if we could do, let's do it the long way we will do a motion to reconsider and then place the motion back on the table with the amendment of five years. That is my fault I should have caught that when you said it. If we could do a motion to reconsider the previous motion.

Vice-Chair Vieira I'll accept the motion to reconsider the previous motion that was made.

ACTION: *A motion was presented by Andrew Filieo and seconded by Turner Rouse to reconsider the previous motion that was made. All in favor.*

Asst. Co. Atty. Thomas David we would like you to remake the motion with the five years as opposed to the three years, I apologize for that. A small discussion takes place with Vice-Chair Vieira and Ms. Beyer.

ACTION: *A motion was presented by Nichole Beyer and seconded by Andrew Filieo that Petition SE-23-024 be APPROVED based on the Community Development Staff Report dated September 6, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria and extending the term to five years 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. The Special Exception, as approved by the Board of Zoning Appeals, is to allow a private club, consisting of the Boys & Girls Club of Charlotte County, Inc., 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, environmental review, vegetation removal, fencing, stormwater management, and landscape plan approval.
3. A "Type C" buffer shall be constructed and planted around the area to be used for outdoor recreation, as shown on the **Concept Plan** (Exhibit E), provided by the applicant. The use of chain link fencing as part of the required buffer is prohibited. Final design of the required buffers shall be determined during the Site Plan Review process.
4. An 8-foot-wide perimeter landscape strip with decorative perimeter landscaping or parking lot screening, as applicable, shall be planted along the north, south, and eastern property lines. Any fencing shall be located behind the required plantings.
5. Any perimeter outdoor lighting shall be directed towards the interior of the property.
6. Any special event exceeding 200 attendees shall obtain a Temporary Use Permit.
7. Any building(s) shall meet or exceed all applicable Commercial Design Standards set forth in Chapter 3-5, Article XXIV, as may be amended.
8. This Special Exception is granted for a term of five (5) 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.

9. Any major changes or additions to this special exception shall require a modification of the special exception, including a change in type of private club. A change in ownership shall not require the modification of the special exception, provided the type of private club remains a childcare and educational facility. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

Vice-Chair Vieira says that staff has requested an adjustment to the agenda for today, we would like to move VAR-23-019 to be heard next.

VAR-23-019

Traci Creighton, representative for Ronald Simmons, is requesting two variances: (a) to reduce the required 7.5-foot north side yard setback by 4 feet to allow a 3.5-foot north side yard setback, to allow an existing carport to remain "as-is," and (b) to reduce the required 25-foot front yard setback by 0.5 feet to allow a 24.5-foot front 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 6162 Redwing Avenue, in Englewood, and is described as Lot 187, of the Lemon Bay Isles Subdivision, Phase II, located in Section 04, Township 41 South, Range 20 East.

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

Vice-Chair Vieira says did I hear you correctly that no permit has yet been filed.

Ms. Nocheck that is correct.

Vice-Chair Vieira ok so hypothetically if this is approved the applicant does have to go out and hire a licensed contractor for permit, no further would be able to be done, wouldn't be completed. We would just be legally available to do that work now.

Ms. Nocheck correct this would just authorize the setback deviation, but they would still have to follow other processes and codes, would still have to get a permit, still have to have a licensed contractor, engineer plans all of that.

Vice-Chair Vieira thank you.

Applicant Presentation

Barbara Glim, said she was sworn in. **Ms. Glim** said I am here in place of Traci Creighton who she has been working with. Traci fell and broke her shoulder, so she asked me to participate in this today. I have been out to the subject property the carport is very well built. Before it was just a metal carport with a metal garage behind it. Now it has been extremely well built and it was widened to accommodate Mr. Simmons in stepping out of his truck and being able to pull his truck into the carport. He is a retired Veteran with handicaps, he has had one knee surgery, and is getting ready to have a second knee surgery. So, it's important that he step out into a stable environment instead of stepping out onto grass. It would present a hardship for him to have to dismantle this and rebuild it financially. So, he is asking for the special exception. He did not know when he bought the property that the trailer was a foot closer to the road than it should have been. But we understand if the trailer is to be removed and a new one put in, it would have to be put into the new standards, the twenty-five-foot property line. The carport is inside of the fence, and the fence was there when the property was bought by Mr. Simmons. So, he is inside of the fence line. I don't know of anything else; I mean everything she has said I agree with and I hope the board will consider this exception.

Vice-Chair Vieira there are a number of recommendations attached to this if it should be approved. Is Mr. Simmons in agreement with those recommendations, have you had an opportunity to review those?

Ms. Glim yes, you will go ahead and do the permit promise?

Asst. Co. Atty. Thomas David if Mr. Simmons is present, can he step forward and testify on his own behalf please. State your name, address for the record sir, and then ask the question to him. Because we do not have anything on record for this representative today.

Ronald Simmons, applicant, the reason that I built it the way I did is the fact that I was under the understanding that it was a four-foot setback. My neighbor next door Bill always told me that you have to be four feet from the property line. My fence that was there at the time when I bought it, was supposedly four feet. So, when I designed what I wanted as a carport I wanted it to be, I made it, so it was inside the fence line which was what my understanding was. As she stated, I am getting up in age and I need a little bit more room to get in and out of my car. The garage that I built in the back I needed more space for my golf cart and my lawn mower and some other incidentals that I need, so that's why I put the door in the back. So, I could put that equipment out of the way and there is not other way that I could do anything on that lot as small as it is. That is my reasons for this, and I hope that you will give me a variance for what's there now.

Vice-Chair Vieira staff has attached four recommendations to your application if it should be approved, have you had a chance to review those recommendations.

Mr. Simmons I haven't seen any recommendations.

Asst. Co. Atty. Thomas David I can read them into the record sir, and then you can decide whether that your accepting them then.

#1 the variances as approved by the board of zoning appeals are to A. reduce the required 7.5 foot north side yard set back by 4 feet to allow a 3.5 north side yard set back to allow an existing car port to remain as is and B. to reduce the required 25 foot front yard set back by 0.5 feet to allow a 24.5 foot front yard set back to allow an existing manufactured home to remain as is. Do you accept that condition?

Mr. Simmons yes.

Asst. Co. Atty. Thomas David ok, the variances shall only apply to the existing manufactured home and the attached carport as shown in the document submitted with this application. These variances shall not apply to any new accessory structures. Do you accept that?

Mr. Simmons yes.

Asst. Co. Atty. Thomas David #3 these variances are granted for a term of one year from the date of approval of 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. Since you've already done the work that really doesn't apply but, you understand what that says?

Mr. Simmons yes.

Asst. Co. Atty. Thomas David #4 if the manufactured home or carport 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 opposed at that time. This condition shall not apply to removal or replacement cause by a natural disaster or involuntary destruction of the manufactured home or carport. Do you agree with that?

Mr. Simmons yes.

Asst. Co. Atty. Thomas David thank you very much.

Mr. Simmons thank you.

Vice-Chair Vieira opened the meeting to Public Comments.

Ms. Nocheck I received a significant number of emails and calls from neighbors of the petition. I will pass these out, one of the letters does include the immediately adjacent next-door neighbor he is in Canada and unable to attend. All of the letters are in objection, and we will label them as exhibit H.

Vice-Chair Vieira could you put up on the screen the photograph of how it existed before Hurricane Ian.

Ms. Nocheck yes sir.

Vice-Chair Vieira I am sorry, thank you for your patience go ahead sir.

Public Input

Robert Willoughby, I live at 8472 Nighthawk Drive. **Mr. Willoughby** said which is within the 1,000-foot shreckle of the subject property. I appreciate Mr. Simmons and Veteran status; I am a Veteran myself I am not handicapped like he is. He is and sorry for that. This property was purchased a couple years ago apparently. At that time everyone signs a document saying they understand the rules, regulations of the association and the county. Which includes the 7.5-foot setback, they've signed that somewhere along the way. Part B of this is perfectly reasonable, I don't see any reason at all not to approve that. Part A if that stands, I really think your doing a real disservice to the county. It shows disrespect for the county, the association and it's the homeowner's responsibility to make sure the contractor is licensed, registered and those are regulations of the county, and this is not the case at all. You can't even mow the grass now without going on someone else's property unless you use a push mower. The problem I have is I am not trying to make it hard for anybody but, if this is approved you've got several hundred homes in there. That people are watching and there already talking about if this goes the county is going to have more troubles with people that say the county will let you do it anyway. That's not gonna work. The other thing that bothers me a little bit is that I understand that Mr. Simmons has bought another property and is not in this property. I maybe wrong but I would like to verify that before you make a decision. I think if you approve this.

Asst. Co. Atty. Thomas David sir I misunderstood what you just said, could you repeat this.

Mr. Willoughby I'm sorry.

Asst. Co. Atty. Thomas David I misunderstood what you just said, could you repeat that.

Mr. Willoughby I said that I understand that Mr. Simmons has bought another property.

Asst. Co. Atty. Thomas David ok.

Mr. Willoughby and not in that one now.

Asst. Co. Atty. Thomas David thank you.

Mr. Willoughby so to grant a variance to someone who is not using it is not right. And that I am not a contractor, I have done a lot of building, but I believe that could be rectified by replacing the posts and the carrying sticks and bring that back. The original size and give the 7.5-foot setback without a lot of money being involved. So, just something to consider this, some things here that aren't quite right.

Bruce Ramos, good morning, I live at 6292 Partridge Avenue in Englewood. **Mr. Ramos** said I am within the 1,000-foot area. I do have some things to present to the board. Some evidence, part of that is ten emails from property owners in the area that could not be here. Cause they're up north, but I think they all sent emails to Ms. Nocheck so if you have that I won't burden you with extra information. I do also have copies of our deed restrictions, which I know you don't enforce those but, every homeowner is given these. When they buy property in our area, these tell them about the setbacks and the requirement to be with to go to the county to make sure they're permitting properly. Ok I am a director on the executive board for the Lemon Bay property owner's association that includes this property. I am here on behalf of the board and to request that this variance be denied. Setbacks and other zoning rules and requirements were put in place for a reason. They ensure homeowners homes are built with safety and quality of life issues taken into account. This is a significant variance request and is not in the best interest of our community. In addition, the homeowner completed renovations without a permit to allow this variance would only encourage other community residents to bypass the system and ask for forgiveness after the fact. The permit process is in place for a reason it is not only for the protection of neighbors but, the homeowner who is building or renovating. If the process was followed in this instance the property owner would not be faced with expensive corrections. Because this property was not reviewed there is no way to know if it is structurally sound. Opinion is not count, I'd rather have engineers for the county look at plans and say whether that was built structurally sound. The Lemon Bay Isles Board respectfully request that the zoning appeals board deny the variance and require the homeowner to return the property to compliance as soon as possible. We don't mind about the front variance obviously that half a foot we wouldn't expect someone to move a home. But we do want the carport returned, also as a side note I did notice that there was a for sale by owner sign in front of the home. Which leads me to believe that the reasons for the widening of the carport no longer exist thank you for your time I appreciate it.

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

Vice-Chair Vieira is there anybody else that would like to speak on behalf of this petition?

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

Rebuttal:

Mr. Simmons I don't know if you have a copy of the engineers drawing that I had drawn up, to bring it a little bit up to code. Some of the things that I have to do the property to bring it up to code. Yes, I did buy another house in Lemon Bay Isles and at this point. In able to keep that house that I bought recently if I can't sell this one to pay for that one. I don't have the money to do that. So, if that doesn't, if I don't get the variance than I will sell the other house that I just bought and go back to where I am at. Because I can't afford both of them and all the things that the engineers told me I have to do. I am

going to do but, most of the ones that are constructed here that I've seen in the subdivision and other places around is their rough joists are like 24-inch centers. I built this with 16-inch centers which is twice as much strength in the roof as any other one in the subdivision or any other place that I've seen around Charlotte County. So, I believe that I built something even though I was ignorant to the facts what I should have had done. I still think that I built one of the best carports in this area.

Vice-Chair Vieira have you hired a contractor sir?

Mr. Simmons that contractor that I hired, was Aqua tech seamless gutters and exteriors. They're in the subdivision yet today doing work. I tried to get all kinds of contractors to come and give me a price of putting up what I needed. All Pro done my roof I finally got All Pro last January; I think it was to put a roof on my house. Then they were supposed to, they have given me a contractor that would put the carport on they never showed up. I've got different ones that I've contacted here, just all kinds of them that I've called, and nobody showed up.

Vice-Chair Vieira you don't actually have a contract signed with anybody to do these repairs or to remediate the problems that we have today.

Mr. Simmons no I didn't yet.

Vice-Chair Vieira and no permit filed at this point in time correct.

Ms. Glim but he will contact a contractor, a licensed contractor to do the work.

Mr. Simmons yes.

Ms. Glim the person that did the work, we have their business card here and they represented themselves as a contractor in Charlotte County. They are still doing work in this area without a contractor's license.

Vice-Chair Vieira I just wanted to understand if you've taken any pro-active steps to handle the situation that we have before us today. That's all I am trying to find out. Because there is obvious opposition to what you're doing at the site. I want to make sure that regardless of whether you're buying another property or not that you're doing what is required by Charlotte County to make those necessary repairs and in a permit manner. So, that we can be safe and if you sell it to somebody else the next person down the line gets a house with integrity. So, I want to make sure that when we have a discussion, and we vote on this that you're heading in the right direction and that we have a clear understanding of what you're doing.

Mr. Simmons yes.

Mr. Cullinan if I may just really quickly, they just stated that the unlicensed contractor is currently still in that neighborhood doing work. I am asking some of our licensing folks to come over and meet with them after this meeting so that maybe we can get out there and catch them in the act.

Vice-Chair Vieira thank you very much Mr. Simmons.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Andrew Filieo asks Vice-Chair Vieira this variance has two components is it permissible by our rules to split these?

Asst. Co. Atty. Thomas David the answer is yes, you have the board can partially approving and partially denying. So that would be how you make the motion, you would say that we move to approve part A and move to deny part B or vice versa whatever that the boards pleasure would be.

Vice-Chair Vieira B is through no fault of the applicant, that issue existed when he purchased the property. So, that would just leave us with A to deal with I would think.

Asst. Co. Atty. Thomas David I think you had quite a bit of competent substantial evidence presented and testimony. I think the testimony that the staff report addresses the question on part A and part B you know. So, I think it really is a question for the board to determine whether each of these two parts have met the requirements of the code. That's what were asking you to weigh in to determine.

Vice-Chair Vieira speaks to Ms. Beyer regarding the motion and they both discuss, since she had questions regarding the two parts.

Asst. Co. Atty. Thomas David speaks to Ms. Beyer, she had questions on part B because they bought the property as is. So, I can move on part B, unless you want me to do the whole thing. So, he suggests that the motion would be to deny part A and to approve part B. I guess the question Elizabeth is are any of our conditions going to have to be changed if we partially approve and partially deny. The other question would be whether the applicant would like to have the whole thing denied, if were going deny a part.

Ms. Nocheck the conditions can be modified to remove if you approve variance B, we would just strike any reference of the carport in the approval language and it would authorize the existing manufactured home only to remain as is. The carport would not be affected, that would be denied.

ACTION: *A motion was presented by Nichole Beyer and seconded by Turner Rouse that Petition VAR-23-019 Part B be APPROVED based on the Community Development Staff Report dated September 6, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria and also move that part A be DENIED because the applicant HAS NOT MET the required criteria for the granting of the Variance with four conditions recommended by staff, which only three conditions now apply.*

Asst. Co. Atty. Thomas David staff will conform the conditions based on that motion.

Motion was approved with a unanimous vote with the following three conditions, due to part A was DENIED:

1. The variance, as approved by the Board of Zoning Appeals, is to reduce the required 25-foot front yard setback by 0.5 feet to allow a 24.5-foot front yard setback, to allow an existing manufactured home to remain "as-is."
2. The variances shall only apply to the existing manufactured home as shown in the documents submitted with this application. This variance shall not apply to any new 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. This condition shall not apply to removal or replacement caused by a natural disaster or involuntary destruction of the manufactured home.

Asst. Co. Atty. Thomas David says if you have questions regarding this matter you can talk to staff after the hearing is completed thank you.

11:38 Five-minute recess

11:45 In session

SE-23-025

Robert Berntsson, representative for Blackhedge Capital Partners, LLC, is requesting a special exception to allow the outdoor storage of boats, trailers, recreational vehicles, and pod storage containers, in the Commercial General (CG) zoning district. The property is located at 4450, 4462, and 4560 Duncan Road, in Punta Gorda, and is described as Parcels P 28-1, P 29, P 29-1, P 29-2, P 29-3, and P 45, located in Section 25, Township 40 South, Range 23 East.

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

Mr. Cullinan says please remember because we've had this discussion before, items such as storage containers that are used for the purpose of and in place of building must follow all the commercial designs standards in CG zoned districts.

Applicant Presentation

Robert Berntsson, representative, said he has been sworn in. Mr. Berntsson said we accept Ms. Nocheck as an expert for this hearing. I've been involved with this property for many, many years. We did obtain a special exception to allow contractor yards and there was multiple small contractor yards that were set up on this site. Small businesses that didn't have enough of a business to have their own location were able to have a place where they could park their trucks and materials and things to that nature. It was quite successful; it ran for a number of years. When the recession came a lot of those businesses were some of the first to go. We at that point did not come into extended the special exception because we had a determination from the zoning official. That the site was used for outdoor storage historically and we could remain as a legal non-conforming use for outdoor storage. That has occurred since that time, and I am talking about the main. The middle of the three parcels that was the one that I was originally involved with. As you can see it's obviously being used for outdoor storage now. It is being used to store commercial vehicles, equipment, materials and from our view. My client is coming in, my client has never turned a shovel or parked a car or done anything there. They're coming in and buying the site from the current owner. Any of the sins belong to the current owner and not to the potential buyer who is my client. My client is looking at this as an opportunity to come in and really improve a legal non-conforming situation. Being it up to code with regard to the eight-foot wall, the landscaping, you know really fix it up and we're asking as part of that consideration. That we not be punished for that, because there is currently commercial vehicles that are using this site. Commercial equipment on trailers that are using this site and so if we do nothing. They can keep doing it, but if we get the special exception approved with a condition that says no commercial vehicles. We're cleaning it up but now we can't use it for everything we're currently using it for. So, when we get to that point of the hearing, we're hopefully you're in a position to recommend approval. I do want to go over those conditions. But in the meantime, I've been told by representatives for the current owner they are under

a swif-mud consent order and will be putting in the stormwater on that western most part of the property. They had done some initial clearing, the trees that were there, the heritage trees were lost during the hurricane. So, they were taking out after they fell in the hurricane. But again, they are going through the swif-mud process to turn that into the stormwater area. Any storage will be removed from that area, there will be no storage in that area with my client's operation of the facility. We join in the staff report as to the meeting of the three criteria. As I've indicated the comprehensive plan allows for outdoor storage in commercial areas. The use has been ongoing for at least I wanna say eighteen years if not longer than that. It has been compatible with the adjoining property you've got. If you go you can see across the way, there's other storage facilities. I think some of them are legal non-conforming as well. There are not areas that have been brought up to current code for their storage and I think hopefully this will encourage those in the future to improve theirs as well. But the proposed special exception would be compatible with the surrounding uses, there is a lot of storage in the area. It will not be detrimental or endanger the public health, safety, or general welfare. So, with that I will stop there I will save time for rebuttal.

Ms. Nocheck speaks about drone pictures with Mr. Berntsson.

Mr. Berntsson I did have, this is an aerial picture we have some drone pictures that just give you an opportunity to see. These were taken recently you can see there's semi-trucks there, storage containers, all different type of things that are operated there. So, again that's why we're asking that we delete the prohibition from commercial vehicles and things of that nature. It's a small percentage it's less than 20% of the current business, the current owner doesn't expect that to be any different. But again, we just don't feel they should be punished for bringing the site up to standards. With that I am happy to answer any questions.

Vice-Chair Vieira can I ask a question, do you have another drone shot that shows the property that were actually considering.

Mr. Berntsson that's this it's the, these, go back.

Mr. Cullinan they did not include that parcel.

Mr. Berntsson no we don't have a drone shot of that, that's not the operation.

Vice-Chair Vieira can I also ask you, is the clean up of that site the parcel in question is going to be retention, is that a contingency of the sale.

Mr. Berntsson no, the consent order is under the current owner's name, so the current owner is required to do that through swif mud none the less. But, with my client purchasing it they would do it as part of it as well.

Vice-Chair Vieira so the current owner is still liable even though there is a deed transfer etcetera.

Mr. Berntsson that'll all be part of the sales contract and agreement and you know who takes responsibility for what. But the swif mud problem doesn't go away because there is a new owner.

Vice-Chair Vieira all right thank you.

Mr. Cullinan if I may add a few things, agree with most of what Mr. Berntsson stated. The current property owner we have had issues with this property owner in the past. Not on Burnt Store Road he should be and is well aware of our regulations with that these folks are looking to improve on the site significantly and for that we are very appreciative of it. Some of the items that he stated with respect to the determination of legally existing non-conforming. When the current owner came in, he significantly expanded said nonconformity as you know you can't expand you can't do anything with a non-conformity it can continue in the same footprint, looking back through numerous aeriels a majority of the frontage along Duncan Road had been not being used for the uses. Again, this is Mr. Berntsson's client is coming in to fix the issues and again for that we are very appreciative. I just want to lay out some of the history of it as to why we're bringing up the things as we are. That parcel P28-1 where the significant clearing took place, we actually have ariels from immediately after Hurricane Ian that still show numerous trees standing obviously those numerous trees were standing are no longer there. It appears he's brought in more that would most likely be a swif mud violation as well. So, yes there's a consent order with swif mud there's significant issues with the current property owner. But again, these folks are looking to come in and try to fix that situation. I just want to put this all into context because there is significant history as has been brought up on this.

Chair McVety opened the meeting to Public Comments.

Public Input

Speaker has not been sworn.

Mrs. Sargent swears in speaker.

Willie Campbell, I live at 652 Androse Court in PGI, Punta Gorda, Mrs. Campbell said the reason I would like to speak up is I would like to see this happen. My husband we own the properties directly across Argo Road at the if you pull up that map. Across from where that clearing is, that corner on Argo Road, it's down at that end. We own that property, and we would like to see these people buy it from the current owner. Because I think they're going to really do a wonderful job in making that area look much, much more attractive. Since we own the property across the street, we would like to see that area look more attractive. So, we are very much hoping for an approval thank you.

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

Rebuttal:

Mr. Berntsson I am not going to rebut Mrs. Campbell that's for sure. The only thing is I don't know if you want me to get into the conditions or wait until Elizabeth reads them.

Asst. Co. Atty. Thomas David we might as well do it now.

Mr. Berntsson there are 11 proposed conditions, I think my issues are on the first three or four. We would like to be able to store the commercial vehicles and heavy equipment that's been stored there historically. So, #1 we would propose to read the special exception is approved by the board of zoning appeals is to allow the outdoor storage of boats, trailers, commercial and recreational vehicles, and pod storage containers and extends only to the lands included in the site plans and legal descriptions submitted with this application. #2 we would have no change. #3 would read the storage of construction materials, debris, or hazardous materials is prohibited. But delete the heavy machineries,

semi-trucks or commercial vehicles including landscaping and dump trucks. Finally with #4 we would delete the but shall not be stacked for the pod containers. Quite frankly that there eight foot tall so two of them is at sixteen feet is no different in height than your typical RV's and semi-trucks and things of that nature. So, it's really in keeping with the others. Other than that, I think we're ok with all of the rest of the conditions. We respectfully request your approval with those amendments.

Asst. Co. Atty. Thomas David can we go through that just one more time. I want to make sure I got what you said.

Mr. Bertsson I did us all a favor I wrote it down instead of making it up as I'm standing here and passes it to Asst. Co. Atty. Thomas David.

Mr. Cullinan with respect to the stacking of the pods and he is correct, it is functioning about the same size as a semi-trailer if you were to approve that. Those are typically moved on and off the site. The stacking of storage pods typically consists of dead storage where they don't move and then they're a permanent type of thing.

Mr. Bertsson I think he's just typing in you can move on.

Vice-Chair Vieira so are you going to read back Mr. David.

Asst. Co. Atty. Thomas David I am going to put it together here and read it into the record. Once you get ready for your motion and when you're ready to discuss it we can talk about whatever you want to talk about.

Vice-Chair Vieira I just have a concern about the stacking as well. Because in my mind it turns out to be a permanent structure I mean if they're not moved on or off the site they're staying on site. In my mind it's means it is a permanent structure.

Mr. Bertsson I don't think there as much permanent, I mean it's somebodies got one of them that's filled with their moving stuff and they're building a new house. They're going to put it there for six or eight months, another one comes in around the same time. They can organize them from a management standpoint to know this one is going to be here. So, we're gonna put that one on top and that one is going first.

Vice-Chair Vieira shuffling inventory.

Mr. Bertsson yeah that's how I understand it.

Mr. Cullinan if you would be inclined to do what Mr. Bertsson is asking, we would respectfully request that those items be located within the dead center interior type of area.

Mr. Bertsson I believe we showed it that way on our, um it's been going on for so long I can't remember.

Ms. Nocheck on the site plan these two skinnies are modular self-storage containers labeled as such.

Mr. Bertsson if you said may not be stacked on the southern area. We would be ok with that.

Mr. Cullinan that way I see that I believe those modular self-storage containers and self-store, it reads self-storage/modular storage containers. Those are the ones that are fulfilling the use specifically as a building, which would need to meet the commercial design standards of CG zoning. To the left of the uncovered storage as I am looking at the screen. There is a section that says commercial containers just below commercial vehicles. So, I believe that maybe ok, the commercial vehicles which are also extremely large are also closer to the front and immediately adjacent to the stormwater ponds. So, there would be pretty significant visibility from Duncan Road of those. But we could, again this is not a binding site plan. Again, if you were inclined to approve this with his requested modifications, we would also request direction to work with them on the site plan to minimize the visibility. As you know when you're standing there if it's right by the road, you're gonna see it. Even with vegetation, even with a wall if it's set to the center of the site, you may not see those stacked things, or those larger vehicles.

Mr. Bertsson we're fine with that, you're correct we actually, I mean this one, we looked at so many times and for so long. That I'm confused of so many different areas, but yes, the commercial area in the middle is where we intended to have them precisely for that reason. So, the stacking was internal. We will certainly work with you during the site planning.

Asst. Co. Atty. Thomas David just for the knowledge of the new board members, nothing that you do here is a condition will supersede the code. So, even if we were to agree to a condition here, even if you were to impose a condition here or have that allows something if it conflicts with the code. It wouldn't be allowed anyway. Maybe Elizabeth could finish her thing and we can.

Vice-Chair Vieira I was just looking at the screen that's all. I'm sorry go-ahead Elizabeth.

Elizabeth Nocheck started to present the recommended conditions for the petition.

Asst. Co. Atty. Thomas David I have the amended language, before I read that is it your intent Rob or your client's intent to stack these pods more than two.

Mr. Bertsson no.

Asst. Co. Atty. Thomas David so you just want to be able to stack, on top of each other. So, here's what the amended one would say. The special exception is approved by the board of zoning appeals as to allow outdoor storage of boats, trailers, commercial and recreational vehicles, and pod storage containers and extends only to the lands included in the site plans and legal description submitted with this application. Number two is not changed, number three with storage of construction materials, debris or hazardous materials is prohibited. Number four was the request was pod storage containers maybe stored on site, storage of shipping or cargo containers shall not be permitted. I think what with the way we should say it is. The pod storage containers maybe stored on site but shall not be stacked more than two containers in height, something to that effect.

Mr. Bertsson that's fine.

Asst. Co. Atty. Thomas David so, number four will read pod storage containers may be stored on site but shall not be stacked more than two containers high. Storage of shipping or cargo containers shall not be permitted. So, if you make a motion to approve this, I would ask that you, that we incorporate the motion that was read by council.

Mr. Bertsson both councils.

Asst. Co. Atty. Thomas David both councils yes, we want to make sure that everybody is recognized here for their efforts.

Mr. Cullinan what about the condition regarding visibility from any property lines, any location interior to the site whereby they won't be visible. As again there is a large 100-foot FPL easement that there will be no plantings in, there will be no anything in because FPL doesn't let you do anything within their easements. Which give a straight view corridor right down Duncan Road into the exact areas where they're putting commercial vehicles and commercial containers.

Asst. Co. Atty. Thomas David but, which

Mr. Berntsson he's number four would you like it to say pod storage containers maybe stored internally on the site.

Mr. Cullinan correct what I was proposing any areas where cargo containers are stacked, they shall be limited to two and must be located within the interior of the property and not be visible from any property lines.

Asst. Co. Atty. Thomas David and Mr. Cullinan discuss this. Mr. Berntsson talks about the buffer and a small discussion takes place and goes over #4.

Board Member Comments and Questions

None.

ACTION: A motion was presented by Andrew Filieo and seconded by Turner Rouse that Petition SE-23-025 be APPROVED based on the Community Development Staff Report dated September 6, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Special Exception including the conditions as amended by council and staff regarding the 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 the outdoor storage of boats, trailers, commercial and recreational vehicles, and pod storage containers, 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 construction materials, debris, or hazardous materials is prohibited.
4. Pod storage containers may be stored on site but shall not be stacked more than two containers high, must be located in the interior of the property, and shall not be visible from any property line. Storage of shipping or cargo containers shall not be permitted.
5. 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 H), provided by the applicant. The use of chain link fencing as part of

- the required buffer is prohibited. Perimeter landscape strips shall be planted on the north, south, and west property lines of the portion of the site to be used for stormwater management. Any fencing in these areas shall be located behind the required plantings.
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. Outdoor storage shall not be permitted on the western parcel of the site, identified as Parcel P28-1.
 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. Minor changes or additions, such as accessory uses or structures, may be approved by the Zoning Official.

VAR-23-018

Brigon Homes, representative for Eduardo & Alexandra Vultorius, is requesting a variance to reduce the required 15-foot rear yard setback by 3 feet, to allow a 12-foot rear yard setback for a swimming pool, in the Residential Single-family-3.5 (RSF-3.5) zoning district. The property is located at 15578 Staunton Circle, in Port Charlotte, and is described as Lot 6, Block 4419, of the Port Charlotte Subdivision, Section 82, located in Section 27, Township 41 South, Range 21 East.

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

Vice-Chair Vieira asks to put the photograph back up that you just showed. So, I guess simplistically if I look at this, the stem wall should be to the left of that grassy area right. We're three feet short roughly so, looking at the pool straight on the meeting edge towards the water for the pool would actually be the stem wall in this case.

Ms. Nocheck correct so the three-foot encroachment this should be the outside face, over here.

Mr. Cullinan so in the confusion and issues that arose is because the pool plan used the same exact site plan as the original single-family dwelling, and they whited out the 16.79 and changed that to 20. Staff compared the two and did not catch that number was changed to 20 even though it was the same exact footprint as was what was being shown on the house plan that says pool and cage by others.

Applicant Presentation

Brian Gonsauves, Brigon Homes, representative, has not been sworn in.

Mrs. Sargent swears in Brian Gonsauves.

Mr. Gonsauves I accept Elizabeth as being a professional in her field. What she has outlined in the presentation is accurate. We had contracted with Mr. And Mrs. Vultorius to construct a single-family residence at the above property and they had indicated to us that when they wanted to construct a pool. They wanted a twenty-foot by fifty-five pool on the rear of the home. Back in March of last year

in 2022 we submitted the permit application; it had been approved on 6/21 and upon the start of construction and clearing the property. We had noticed that we needed to do a different foundation plan. So, we basically went from part of the homes showed it as being a monolithic slab and the rear was not showing any of the pool and cage pool stem wall at the present time. So, what we had done is in November of last year 11/2/22 and 11/7/22 it was submitted. Was a submitted plan showing a 20x55 stem wall for the pool as the plans changed and was approved on 11/8/2022 and that was submitted to the department, and it was approved. So, make a long story short I just, we are requesting a variance as Elizabeth has indicated to move to a 12-foot rear yard setback for the swimming pool because of the work that has been completed to this timeframe thank you.

Vice-Chair Vieira opened the meeting to Public Comments.

Public Input

David Hill and I am not sworn.

Ms. Nocheck asks Mr. Chair if anyone else that intends to speak that has not yet been sworn in please stand up and be sworn now.

Vice-Chair Vieira yes thank you.

Mrs. Sargent swears in the parties who wish to speak.

David Hill, can you go back to one of your original ariel views there. You'll notice all the houses that were currently built are all nice in a row on the front and all nice in a row on the back. With this one we now have a sore thumb sticking out, and it's gonna block the view from the house on the right, it's gonna block the view from the house on the left. It changes the aesthetic of all of the back yards going all the way down the canal. The other thing as to do with the erosion theoretically there's not been any substantial erosion of the canals. From almost all the way back to 1960 whenever it was originally built. The stem wall itself is the issue, if that revised drawing had been submitted to scale, it would have been noticed by the reviewers. But the fact that they didn't redo it to scale, they just changed 16.79 to 20 feet and it didn't, it's still only 16.79 change the numbers all you want. But it's still only 16.79 drawn to scale. That retaining wall has already failed in multiple locations, across the back of that property. There are cracks that go from the top all the way to the bottom, and I'm not talking about just cracks that are splitting the grout joints. These cracks are splitting whole blocks, separated that far already. This was brought up to the builders by my neighbors when they first hit the job site and started putting this retaining wall in. We knew something was wrong, this is too close to the water. Does that have anything to do with the fact that the retaining wall itself is failing in at least four or five locations across the fifty-five-foot span of that wall. There was also a drawing that showed it was only supposed to go how many three courses high, it was built five courses high or six courses high. There are issues with the wall as it's built now, to take it down and the other thing is to the pool isn't put where the pool was supposed to be put. The pool since oh we got that twenty feet were gonna shove the pool back a little back too. So, it kinda snow balled a little bit. That's where we're at.

Theresa Falcomb, I live directly next door at 15570 Staunton Circle. **Ms. Falcomb** said although I haven't met my new neighbors, I do welcome them. But, because of the issue that this was approved my house which I've built seventeen years ago, and I've enjoyed seventeen years of beautiful sunsets. Because of this and it looks like it's five feet, I actually have a photo here. Built further than my cage, so already that's compromised. More so because the house the new code they're built higher than I am. I'm at eight feet my main concern is erosion. So, were no longer straight, we're that's not going to

happen everybody's grass behind there cage slopes to the water and you're done. This now creates erosion I have a twenty-year-old palm that is right near that line. My fear is water it's gonna go. What can be done to protect my property. I did have my house up for sale before Ian. I no longer am putting it up for sale. I've decided to redo it and stay there. I lost two potential buyers because of this. It's the view, my main concern is erosion. Where this high wall is, that is the top of their lanai and where I am standing is my lanai.

Ms. Nocheck informs the speaker to make sure she is speaking into the microphone so everyone can hear thank you.

Mrs. Falcomb said where I'm standing on the ground is about my lanai. You put that wall and it looks like a good five feet past my cage. All that water is going onto my property, that's my main concern. This picture actually shows a better view of the build and where my house is located and how it's compromised, I don't know if you guys just want to take a look at it. So, looking at the picture my house is the only house that you're going to see. But you'll see how far out that wall is thank you for your time.

Lynn Vogt, 15586 Staunton Circle. Mrs. Vogt said I can't believe we've even gotten to this point. When they first cleared the lot, I was upset they took out the mangroves, that's for a different department. Then the next thing they brought in a bunch of dirt, everybody does. I get that you gotta raise up the ground real, real, well. But then they set the stakes and I'm looking at these back survey marks and I'm saying something is wrong here. I go over and I'm talking to the guy, and he curses me out and tells me I don't know what I'm talking about and go away. I called the township, and somebody needs to come out here and take a look at these back survey marks. Cause I pulled up permits that were on your site and I'm looking at them and how could the back stem wall be this close. So, I questioned it and the girl said I'll tell somebody. So, I trusted, few months go by next thing I know they're out with their little bulldozers in there digging the trenches to lay all the cement for the footings. I'm looking and nothing has changed, nobody has come out, nobody has checked it out. I call back, I said what is going on with this somebody has to fix this because here we're all in a line. Then theirs sticks out and I'll pass it around, but that picture shows in the middle of their white little area is half of the pool. When I first, the second two times that I called that the property was close to ten feet off of where it should have been. It depends on who you send out to measure, I have a survey mark on the back of my properties stem wall, not my stem wall, my little block wall. My retaining wall, and from that point up to where their wall is now it is 10 foot even. It's not 16 it's not, it's five feet short of what it should be. That according to your records online it's supposed to be three courses high, I have a photograph here that shows it's six courses high. Now I have that stem wall that is being possibly approved, has major structural cracks on the corners, that have gone right through the center of a block. The pictures will show that, then there are four other hairline cracks as you walk down the line. Those hairline cracks are all new since Hurricane Idalia. The wall is failing already when these new owners get in there and the wall fails, and the pool cracks and they find out everything got through Charlotte County approvals my tax dollars are gonna pay for that lawsuit. The line, this was right after Ian and then the second picture shows where that stem wall is. You can clearly see the debris line, which we didn't have a water event in South Gulf Cove it was not considered a water event for us. But this is our mean high tide line, I see the water up this high regularly. So, the stem wall is right on top of where the mud was. This was all swamp mushy mud until they brought in a whole bunch of sand. This picture I climbed up on my screen cage eyeballed down my screen line, to Theresa's the other neighbors screen line, and you can see it's more than half of the pool and wall that is encroached over beyond what everybody else has done and the rules that we all played by. We designed our houses to accommodate a pool, if they wanted said pool. We had to readjust so the pool was in set some. If you look at that one arial picture, you can see

how we all did it. But then when you look at what he did this builder it was suggested to me that it's easier to ask for forgiveness after the fact then ask for permission up front. And that is a quote from several people from that work site. I don't know who they were but this is what I told. That got me a little angry, because it's like who it to protect us the people of Charlotte County against a builder coming in saying I can give you what you want don't worry about it we can claim hardship variance. I've even been told that, and I am like that no that's wrong. But I live by different standards, I guess. But I don't think that's what you people do I think you people look out for everybody. We are the little guy asking for a little help here. When we designed our homes with being able to look up the lagoon in one direction. That's why we bought that specific lot and see the sunset knowing that all the houses were going to abide by the same rules and we can see the sun rise. I bought the east west lagoon for that reason. Now with this not playing by the rules and the pool is greater than the three feet that they're requesting. I hope you can help us with this, I thank you for your time. Here is the

Vice-Chair Vieira excuse me mam, just one moment please.

Mrs. Vogt this is after the one storm, this last storm the water was over. Oh, I'm sorry. Was over their silt fence and halfway up the sand and it wasn't really considered our water storm. So, if we were to get a water storm yeah, we're all gonna get wet feet. But being that, that is already starting out weak and starting out cracked. Will you put the weight of a pool, you put the weight of the pavers, the water, and the cage on top of that it's asking for failure. And I don't want us to as a County to be sued thank you.

Ms. Nocheck for the record we'll label that as a composite exhibit J all of the pictures that have been submitted.

Deborah S. Hill, I have been sworn in, I live at 15594 Staunton Circle. Mrs. Hill said I also want to start welcoming the neighbors, but I can't fathom how this situation happened. This application should have never been approved from the get-go. It was brought to your attention by my neighbor Lynn that there was a problem from the word go. We are now in a horrific situation at this time because we are where we are. This situation not only takes away our views, God gives us this sunset every morning that's going to be gone. But it's also going to erode the land that is parallel to that house. For those of us and I happen to be one of those houses along with my neighbors. Who have already spoken, the erosion will ultimately happen at some time if this variance is allowed. I bought my house with the same premise along with my neighbors, that we were gonna see sunrise and sunset and allowing this variance you're taking that million-dollar view away from all of us and again allowing our properties to erode. But it's not just about me in this situation it's about others in this situation. I am sure that this situation has happened previously, and this situation needs to stop. I pay over \$8,000 dollars a year to have my house and see God's sunrise and this variance takes everything away. If this is allowed there is no compensation that you can give any of us. In this row of houses, there is no amount of compensation that will ever be given for what will happen if this variance is allowed. I'm under the understanding and I don't know for sure what the fine is for the builder to pay after forgiveness. But that amount needs to be raised to over \$10,000.00 dollars for a penalty for one such as this. That would keep future builders from doing this and asking for forgiveness after the fact. Again, this is not the first time that this has happened. The builders know it's only gonna cost me this much, I don't care about the other people I'm being paid good money to build this house. It's not about the little people, it's not about us, for the builder it's about him and his pocketbook and that's very sad. If you allow this variance, I just can't even fathom it. What it's gonna do in the future, to the land, to the erosion, it will all fail. You have pictures in front of you. If you do allow the variance, I respectfully ask which I can't imagine you will. I respectfully ask that you do not allow the builder to build a cage. That would at least compensate our view partially, we can't do anything about the erosion if you allow this variance. But you can do

something a little bit to give us back the view that we long for. Gods' sunrise and Gods sunset. I respectfully ask you chairman to make a motion to not let a cage be built, that's the least that can be done if you allow this variance. I sincerely hope that you take my words to heart, by allowing this variance you are allowing the back of our homes to erode. We do not know what will happen in the future about the erosion. I thankfully respect all of you for caring about all of us thank you.

William Vogt, 15586 Staunton Circle. Mr. Vogt said my wife is the one had all the pictures I guess my question comes up to be is it right that it's only three feet back? Like she said looking down the line and unless all of our pools are set way back that comes out a lot further and are there stipulations as far as when a cage goes in. Whether or not they can be three feet away from the pool, four feet away from the pool if you look at that one picture of the pool and the wall. There is only like, it's supposed to be according to your one. Three feet we have about three feet on our pool I think, and you can just barley fit a chair there. That seems a lot thinner than that, so it's like all right um and after talking to the County how many different times. First it was a foot off, it was ten foot off first, then it was a foot off, now it's three-foot off. I think the whole thing was just built back to far. Again, the water just laps up against that seawall where it is now. I think everything else has been said so I don't think I have to berate anything I just, I look at that and it's like how can that be only three feet too far back that's all thank you.

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

Rebuttal:

Mr. Gonsauves there was a document that was brought up I think with the foundation location survey. That was done, that shows the house being set back at 25 feet for the front, which it is, runs identical to the other adjoining properties. The house depth is 55 feet ok, the stem wall for the pool is another 25, excuse me 20 feet to the rear. So, the pictures depicting the edge of the pool and the end of the stem wall is a distance of three feet. So, the stem wall does go back from the house a total of 20 feet. So, it's not like we added or did anything additional. We did what was indicated on the original survey, the site plan to construct the home and the pool. We have not pushed the house back any further. So, my rebuttal is the pool goes back a little bit further than theirs does. Their houses probably aren't as deep along with their swimming pool. Ours happens to, my clients actually happen to extend a little bit further. I have not seen any of the pictures on the rear of the stem wall. I would like to take a look at that, if at all possible. If the board allows me to do so.

Asst. Co. Atty. Thomas David is that exhibit with you Kim or where.

Ms. Nocheck speaks that she has them all of them.

Asst. Co. Atty. Thomas David you got it all.

Ms. Nocheck yes and presents them to the applicant.

Mr. Gonsauves ok um, with regards to the foundation being compromised for the stem wall. That can be addressed it's not a, it can be a minor structural issue that can be repaired at this particular time and not be an ongoing issue. There was a comment made about the courses stem wall being three courses high. You can't do three courses of stem wall to be four inches below the slab of the home. Three courses of stem wall equates to twenty-four inches. This house is elevated, and it drops off significantly

in the back of the house, therefore we could not just do a stem wall for three and a half courses or three courses. It just will not work, cause then you would basically have stairs coming out of the lanai area down to the pool deck area. Probably dropping down another twenty-four inches, that we don't do. I've been building homes in Charlotte County for over twenty years, I've never had or never been in front of the board for any type of a violation, of permitting, of building, conduct, being abused, never been before the board for anything. I have a good track record in Charlotte County, and I build an outstanding home for my client's, and I take pride in doing that. With that being said there's nothing out of the norm other than us moving back a little bit further into the rear of the canal area. Ya know it's unfortunate that I as a building contractor over the years when ever I come into a community to build a home for somebody. I'm always infringing on neighbors, there always upset because now a house is coming in. Now they don't have that privacy. Ya know I'm contracted with a client to build a home what can I tell the people I can't build a home because your neighbors are gonna be upset because we are infringing on their territory and that's not fair to the client. So, I ask that this variance be approved as noted and um if you have any questions, I will be more than happy to answer for you.

Vice-Chair Vieira actually, I do, we're not here to discuss code or what the construction is or what the final look is. That's not our purview but listening to the whole discussion and the concern about erosion. What is the finished product leading down to the waterway?

Mr. Gonsauves I have asked the owner to do a seawall of some sort. Whether he's going to do a rip-rap seawall or a concrete seawall. He's leaning towards a rip-rap seawall that's going to be the quickest to keep any type of ya know additional erosion happening on the rear of the property. I've indicated that to him, I said you need to do this, and you need to take seriously.

Vice-Chair Vieira I guess it just listening to everything, the fact that we started out with 16.79 feet I think it was and we went, somehow it got changed to 20 feet. I've built a few houses so, when I take a look at that, and I see there has been a plans change or something is greater than what I expected to do. Did anybody question why everything was changed and how we ended up at 20 feet as opposed to.

Mr. Gonsauves that was not changed by our office, that was changed by the pool contractor. I did not change that, our office did not change it from 16.79 to 20 so, were not, I'm not responsible for that. That was done by the pool contractor. They have elected not to be here for a hearing, they said no you're building the home it's your responsibility. So, that's we're I'm at, the point is when we originally sent in the plans to be approved, they were approved with the 20-foot stem wall on the rear of the pool. We're not encroaching any side easements, it's just on the rear that is the issue.

Mr. Cullinan if I may Mr. Chair, I'm looking at the approved house plan permit there that's saying 16.79 to the edge of the stem wall. Was there a plans change that was done for the stem wall that moved it out to the 20 feet or was the only changed approved floor plan. Who was responsible for installing the stem wall that is essentially the subject here?

Mr. Gonsauves the stem wall.

Mr. Cullinan did you install the stem wall at twenty feet instead of 16.79.

Mr. Gonsauves yes.

Mr. Cullinan so you were the one that did not follow the approved house plan permit that was issued 6/21/2022 and you squared it off to make it 20 feet it appears and not in compliance with the approved plan.

Mr. Gonsauves we were in compliance with the approved plans, because they did show a 20-foot setback, or a 20-foot stem wall on the plans. The original plans showed 20 foot and then when we revised the plans and resubmitted them in November of last year. It did show a 20-foot stem wall for the pool area 20x55 foot stem wall and I have the approval right here from the building department.

Mr. Cullinan I will have to check that may not have gone to zoning for zoning review, cause this was the permit that was signed off by zoning showing 16.79. It appears based on what the approved pool plan is that appears to be squared off as well as a other whole other various dimensions that may have confused the issue. It does appear as a builder here in Charlotte County for numerous years as you stated that this may not be, you may have squared it off not in compliance with the code.

Elizabeth Nocheck presented the recommended conditions for the petition.

Board Member Comments and Questions

Vice-Chair Vieira question for Mr. Cullinan or Mr. David. Can we recommend as an additional condition that a seawall, rip rap seawall, concrete seawall be installed to prevent future erosion because of the condition that we have in place now. Which appears on the surface, I know it's a construction site so things go in all different directions but I'm looking down the line and whether we should correct that issue now rather than wait for it to become a broader issue later on. Is there anything we allowed to do that as a recommendation.

Asst. Co. Atty. Thomas David is that a requirement for the code.

Mr. Cullinan no sir, we have no requirements for any stabilization, that's up to a property owner. If they want to secure their property. Whether you can request that or not I'll defer that to Tom. We're not like the city of Punta Gorda where they do require sea walls.

Asst. Co. Atty. Thomas David It would be my opinion that you could add that as a condition. Part of the reason for the variance is because it's encroaching, and potential could cause additional damage to neighboring properties. So, I think you know if, in order to cure a, the layout of the property I think that would make some, I think it's reasonably connected to the approval.

Vice-Chair Vieira I would like to see that added as a condition, as a recommendation that a structure seawall rip rap, concrete what ever the choosing is of the owner be a condition if we were to approve this variance.

Asst. Co. Atty. Thomas David if it's the boards intent to approve the rules do not require a basis for approval but if there's an intent to move to deny and we need one or the other of those two motions. Then it's appropriate under the rules to at least why the mover believes that the petition should not be approved.

ACTION: A motion was presented by Andrew Filieo and seconded by Turner Rouse that Petition VAR-23-018 be DENIED based on the Community Development Staff Report dated September 6, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS NOT MET the required criteria for the granting of the Variance with four conditions recommended by staff.

Motion was denied with a 2 to 1 vote (Mr. Filieo and Mr. Rouse voted against this request – Mr. Vieira voted against the denial. Ms. Beyer did not vote)

Ms. Nocheck stated that Ms. Beyer has not voted.

Asst. Co. Atty. Thomas David asks Ms. Beyer do you vote to approve the denial or to vote against the denial.

Ms. Beyer I vote against the denial.

Asst. Co. Atty. Thomas David so the denial fails 2 to 2. That actually works out to be a denial either way.

Vice-Chair Vieira so the motion does not carry and the request is denied.

Motion was denied with a 2 to 2 vote (Mr. Filieo and Mr. Rouse voted to deny the petition, Mr. Vieira and Ms. Beyer voted against the denial) Motion does not carry.

VAR-23-020

Robert Berntsson, representative for Sunseeker Florida, Inc., is requesting a variance to allow additional building signage, in the Charlotte Harbor River Walk (CHRW) zoning district. The property is located at 5350 Sunseeker Way, Port Charlotte, and is described as Parcel P17, of the Lastinger's Addition to Charlotte Harbor Subdivision, located in Section 36, Township 40 South, Range 22 East.

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

Applicant Presentation

Robert Berntsson, representative for the applicant, said he was sworn in. Mr. Berntsson said my 1:30 appointment has been rescheduled. We accept Elizabeth as an expert. We join in the staff report, I think you'd have to be living in a hole in Charlotte County to not have seen the Sunseeker project at some point in its development. I think it's everything that the members of the original CRA could have dreamed of but, never expected to have one project to come in and connect the two county parks with a river walk. You were given an incentive if you were to revive your little section of the river walk so that it could be added to the next guy and added to the next guy and added to the next guy. Hopefully one day be able to create the river walk I don't think anyone contemplated it being done at one time. But that's what this project has allowed, based on the river walk the building, the main building was allowed to go to ninety feet. Which they did, you can see from the pictures the parking garage is about half of that height. Right along US 41 and again the code was looking for redevelopment anticipating that redeveloping would likely be on the scale in magnitude of what Charlotte Harbor had been. So, the code regulations pretty much limited it that way. Smaller signage, more of a quaint fishing village, set of regulations to address development there. While we did not, we Sunseeker did not have to apply for a rezoning or any kind of special exception. Everything that is being done there to date is being done as of right under the existing codes. This is the first relief we're asking for and it's truly because the code didn't contemplate this type of development. I have in the past represented large commercial developments like the Wal-Mart and some shopping centers. Where even when ya know our code was written in the sign code originally written, we didn't have these super warehouse stores and super Wal-Mart's and things of that nature. So, we had to come in and request variances because those buildings based on their size. If you were limited to the signage under this general code. This signage would look silly and wouldn't really fit in with the overall motive and that's the same as we have here. There are three criteria as Elizabeth indicated one of them doesn't even apply because we're not asking for a pole or pilon sign. We join in the staff report between my narrative and the staff report. Those conditions have been addressed and we respectfully request your approval of this variance to allow the two additional signs. I am happy to answer any questions.

Vice-Chair Vieira are you in agreement with all the recommendations.

Mr. Berntsson yes.

Vice-Chair Vieira 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 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

Vice-Chair Vieira I understand item number six, what if the company changes it logo and goes to a different design is that do they have to come in again and ask for a new variance to have that signage changed.

Ms. Nocheck as long as they comply with all of the conditions set forth for size, they would be allowed to change out the face or text.

Asst. Co. Atty. Thomas David we generally do not regulate content generally but there are certain circumstances where we can regulate commercial content but generally, we do not regulate content.

ACTION: A motion was presented by Nichole Beyer and seconded by Andrew Filieo that Petition VAR-23-020 be APPROVED based on the Community Development Staff Report dated September 6, 2023, the evidence and testimony presented at the hearing and finding that the applicant HAS MET the required criteria for the granting of the Variance with six conditions recommended by staff.

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

1. The variance, as approved by the Board of Zoning Appeals, is to allow additional building signage for the Sunseeker Resort development.
2. The site shall be limited to no more than 2,000-square feet of building signage.
3. No individual building sign shall exceed 750-square feet in area and each sign's vertical dimension shall not exceed 40 feet in height.
4. The signage shall be subject to all other provisions established by Section 3-9-47 and Section 3-9-85 for non-residential signage.
5. This variance is granted for a term of three (3) years from the date of approval from the Board of Zoning Appeals; however, the variance shall not expire if the owner commences the proposed development on or before the variance's term expires.

6. If the building signage requested by this variance 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 building signage subject to this application. Other signage not subject to this variance shall not be affected by this provision.

X. Public Comments –
None

XI. Staff Comments –
Ms. Nocheck next month we have either six or seven petitions. I don't know of anything particular, but we will have a very full agenda next month again.

XII. Member Comments –
Andrew Filieo says I, I didn't say I, so I am saying it now.

XIII. Next Meeting
*The next meeting of the Board of Zoning Appeals is scheduled for **Wednesday, October 11, 2023 at 9:00 a.m., in Room 119.***

There being no further business, the meeting **ADJOURNED** at 1:39 p.m.

Respectfully submitted,
Kimberly Sargent, Recorder
/kas



Blair McVety, Chair

Approval Date: 10-11-23